

RUBBERWORLD (PHILS.), INC., AND K. P. YAO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, AND NELSON E. ESCOTO, RESPONDENTS.

G.R. NO. 72779. March 21, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

Nelson Escoto worked with Rubberworld (Phils.) Inc. as "binding operator/sewer" for some six (6) years, from 1973 to November 19, 1979 on which later date he voluntarily resigned.[1] Slightly more than three (3) years later, he was re-hired and signed a contract of employment on probationary basis on January 10, 1983.[2] His contract stipulated inter alia that (1) his employment was on temporary basis and hence he was not entitled to the benefits enjoyed by regular employees but only to those expressly granted to probationary and/or contractual workers; (2) his employment was for a fixed period of six (6) months from January 11, 1983 and would automatically terminate at the end of the period without necessity of notice; and (3) he could be dismissed before expiry of the term if found to be not qualified, inefficient, or unfit to continue working, or when the job had been completed.[3]

Five (5) days before the expiration of the term of his probationary engagement, or on July 6, 1983, Nelson Escoto was advised in writing by Rubberworld's Personnel Supervisor that his services would end on July 7, 1983 on account of his "failure to meet the standard work performance required." The communication had to be sent to him by registered mail since he had refused to accept it when first personally tendered to him.[4]

Escoto filed a complaint[5] for illegal dismissal with the Ministry of Labor and Employment. After appropriate proceedings, the Labor Arbiter rendered judgment on December 23, 1983[6] dismissing Escoto's complaint for lack of merit. The judgment declared that Escoto's dismissal was justified by the explicit terms of his employment contract, and the evidence established the commission by him of several offenses imputed to him by his employer, i.e., not observing the standard operating procedure, absenteeism, frequently leaving his work place without prior notice or permission, tampering with machinery. Escoto appealed to the National Labor Relations Commission.

By a two-one vote, the First Division of the respondent Commission reversed the decision of the Labor Arbiter.[7] In its own decision, dated June 10, 1985, the Commission ruled that Escoto should have been considered a regular employee; that since he had been sewer, at an earlier time and for a period of six (6) years, had resigned, and had after a few years been re-employed, it was "inconceivable" that he should still be deemed not to have acquired skill and dexterity in that job; that since he was in fact performing functions usually necessary and desirable in his employer's business, he should be considered a regular employee; that if the dismissal was sought to be justified as made for just cause, Escoto had not been given an opportunity to be heard and defend himself, and if the termination of employment was attempted to be justified on the ground of failure to qualify, the record bore no indication that he had been apprised of the work standards by which his qualification would be determined. The decision accordingly decreed Escoto's reinstatement to his former position without loss of seniority rights and the

payment to him of back wages.

Rubberworld and its co-petitioner have filed with this Court a petition for certiorari seeking nullification of the Commission's aforesaid judgment on the theory that it had been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.

It is worthy of note that the respondent Commission does not seriously dispute the proposition set out in the Labor Arbiter's decision that there is substantial evidence establishing that aside from "not observing the standard operating procedure," Escoto had committed several offenses, namely: absenteeism, frequently leaving his work place without prior notice or permission, tampering with machinery. These circumstances, according to the Arbiter, justified the termination of his probationary employment, considering that "Article 282 of the Labor Code is clear on the matter *** (and) provides that 'The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standard ***'." [8] In this regard the Commission simply observed that Escoto's dismissal on account of the particular offenses cited by the Arbiter, was "illegal for it was effected without affording *** (him) a chance to be heard and defend himself as required by Art. 278 of the Labor Code, and opined that "the alleged offenses *** may not be sufficient enough to cause his dismissal." [9]

It is now axiomatic that if just cause for termination of employment actually exists and is established by substantial evidence in the course of the proceedings before the Labor Arbiter, the fact that the employer failed, prior to such termination, to accord to the discharged employee the right of formal notice of the charge or charges against him and a right to ventilate his side with respect thereto, will not operate to eradicate said just cause so as to impose on the employer the obligation of reinstating the employee and otherwise granting him such other concomitant relief as is appropriate in the premises. As pointed out by the Court in *Wenphil Corporation v. NLRC, et. al.*, G.R. No. 80587, February 8, 1989, a contrary policy --

" *** may encourage *** (the employee) to do even worse and will render a mockery of the rules of discipline that employees are required to observe. Under the circumstances, the dismissal of the *** (employee) for just cause should be maintained. He has no right to return to his former employment.

"However, the petitioner must nevertheless be held to account for failure to extent to *** (the employee) his right to an investigation before causing his dismissal. The rule is explicit ***. The dismissal of an employee must be for just or authorized cause and after due process. Petitioner (employer having) committed an infraction of e second requirement *** it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing *** (the employee) from employment. Considering the circumstances of this case, petitioner (employer) must indemnify the private respondent (employee) in the amount of P1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission ** by the employer."

The *Wenphil* doctrine was reaffirmed and applied in *Seahorse Maritime Corporation, et al. v. NLRC, et al.* G.R. No. 84712, May 15, 1989, and *Shoemart, Inc. et al. v. NLRC, et al.*, G.R. No. 74229, August 11, 1989. Conformably therewith, the termination of Escoto's employment must be sustained, but his employer must be meted a sanction for omitting to accord him notice and hearing prior to advising him of his dismissal.

WHEREFORE, the petition id GRANTED and the writ of certiorari ISSUED annulling and setting aside the challenged decision of respondent Commission promulgated on June 10, 1985. The decision of Labor Arbiter Porfirio E. Villanueva dated December 23, 1983, dismissing private respondent's complaint is REINSTATED, with the modification that the petitioners herein shall pay to said private respondent the sum of One Thousand Pesos (P1,000.00) as indemnification for their failure to observe the requirements of due process prior to the termination of private respondent's employment for just cause. No pronouncement as to costs.

IT IS SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 4, 14, 21, 35-36

[2] Id., pp. 14, 21

[3] Id., pp. 5, 35-36

[4] Id., pp. 4, 14-15, 21, 35

[5] Docketed as Case No. NLRC-NCR-7-3288-83

[6] Annex A, petition: rollo, pp. 14-19

[7] First Division, NLRC, concurred in by Presiding Commissioner and Commissioner Geronimo Q. Quadra; but Commissioner Cleto T. Villatuya voted "for the affirmation en toto of the decision below." Rollo, pp. 20-27

[8] Rollo, p. 18

[9] Id., pp. 26-27

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