

EASTERN PAPER MILLS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND EDUARDO MALABANAN, RESPONDENTS.

G.R. No. 85497, February 24, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

On January 10, 1983, the petitioner, after due notice, investigation, and hearing, dismissed the private respondent Eduardo Malabanan, an accounts payable clerk, for having physically assaulted and verbally abused, within full view and hearing of the other employees, a superior officer, Mariano Lopingco, who was then the personnel and administrative manager of the company. The reason for the assault was private respondent's resentment at being suspected of having stolen an ash tray from Lopingco's office and being questioned about the matter by the security office.

Private respondent filed a complaint for illegal dismissal (Annex "A") in the Ministry (now Department) of Labor and Employment (NLRC-NCR-Case No. 1-191-83).

After trial, the Labor Arbiter rendered a decision on December 29, 1987, dismissing Malabanan's complaint and finding that his dismissal from employment was for just and valid cause. However, the Labor Arbiter awarded him P10,000 "financial assistance" (Annex "C").

On appeal by the petitioner to the NLRC, the Commission on August 31, 1988 affirmed the Labor Arbiter's decision with modification. It awarded Malabanan separation or termination pay amounting to P10,780, in lieu of financial assistance. (Annex "E").

Charging grave abuse of discretion on the part of the NLRC, the company elevated the case to this Court on a petition for certiorari.

The petition is meritorious. Earlier decisions of this Court which, in the name of compassionate justice, awarded separation pay or financial assistance to employees who were lawfully dismissed for cause, were re-examined and abandoned in the recent case of *Philippine Long Distance Telephone Company vs. NLRC*, G.R. No. 80609, August 23, 1988, where We ruled:

"Separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for cause other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

"A contrary rule would have the effect of rewarding rather than punishing the erring employee for his offense. And We do not agree that the punishment is his dismissal only and that the separation pay has nothing to do

with the wrong he has committed."

An award of separation pay to an employee who was dismissed for a valid cause (in this case, for serious misconduct) is legally indefensible. It contravenes Rule 1, Sec. 7, Book VI of the Omnibus Rules Implementing the Labor Code which provides that:

"Sec. 7. Termination of Employment by Employer. - The just causes for terminating the services of an employee shall be those provided in Article 282 of this Code. The separation from work of an employee for a just cause does not entitle him to the termination pay, provided in the Code, without prejudice, however, to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice."

The only cases when separation pay shall be paid, although the employee was lawfully dismissed, are when the cause of termination was not attributable to the employee's fault but due to: (1) the installation of labor-saving devices, (2) redundancy, (3) retrenchment, (4) cessation of the employer's business, or (5) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co-employees. (Articles 283 and 284, Labor Code.) Other than these cases, an employee who is dismissed for a just and lawful cause is not entitled to separation pay even if the award were to be called by another name.

WHEREFORE, the petition for certiorari is granted. The decision of the National Labor Relations Commission dismissing the private respondent's complaint for illegal dismissal is affirmed, but the award of separation pay or financial assistance to him is hereby set aside for lack of legal basis.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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