

NORMAN DE VERA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND BANK OF THE PHILIPPINE ISLANDS, INC., RESPONDENTS.

G.R. No. 93070, August 09, 1991

Ponente: SARMIENTO J.

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SARMIENTO J.:

The twin requirements of notice and hearing are essential elements of due process in cases of employee dismissal. Failure to satisfy these requisites has been recognized to be fatal. This orthodoxy is not about to be abandoned yet.

The paramount question is whether or not the requirements of due process were substantially complied with in dismissing an employee, after an inquiry conducted for the purpose of filing a criminal case against another employee. The respondents contend that it is sufficient. The petitioner holds otherwise.

The decision in question pertains to the National Labor Relations Commission (NLRC, for brevity),^[1] promulgated on March 8, 1990, deleting the award of separation pay granted by the labor arbiter to the herein petitioner.

The material facts, as culled from the records of the case, are as follows:

Petitioner Norman de Vera was an Assistant Cashier at the Taft Avenue Branch of the respondent Bank of the Philippine Islands (BPI, for brevity), when he was placed under preventive suspension then subsequently dismissed. By then, he had served the respondent bank for a total of twenty five (25) years, more or less.

The petitioner's predicament started on May 28, 1987, when the representatives of ASB Realty Corporation (ASB, for brevity) presented to the BPI Taft Avenue Branch a P10-million RCBC Manager's Check payable to BPI for the time deposit account of ASB. The branch manager, Rebecca Dizon, asked the petitioner to present the check to the drawee bank for special clearing, which the latter did. RCBC cleared the P10-million check and a Special Clearing receipt was subsequently issued to the petitioner, which receipt was in turn given to Branch Manager Dizon.

Meanwhile, Dizon and teller Myrna Apostol presented to the petitioner for the latter's initials three (3) personal checks with a total amount of P1,650,000.00, all drawn against the account of one Daniel Martinez. The petitioner claims that since he is one of the validating officers for the encashment of checks, as per bank procedure requiring two (2) officers to approve transactions of P50,000.00 and above, and since the said checks had already been encashed under the orders of Dizon, his superior, he endorsed them. In short, the "transaction" was already fait accompli when the petitioner entered the picture.

Afterwards, Dizon apparently made a mistake (or slipped) and handed to the petitioner for his signature Time Certificate of Deposit (TCD, for brevity) No. 119762 with a face value of P10 million. The petitioner asserts that "he got the shock of his life, became tongue-tied and refused to affix his signature" after realizing that the said TCD contained his forged signature.

Later that day, Dizon entered ASB's check in the computer at the BPI Roxas Boulevard Branch (since the computers at the Taft Avenue Branch were out of order), not in ASB's account, but instead, in the account of Daniel Martinez.

On the following day, May 29, at around 10:00 o'clock a.m., ASB's representative informed BPI Vice-President Rogelio Nera that ASB had placed a P10-million time deposit with BPI's Taft Avenue Branch. Vice-President Nera then called the Branch to verify the transaction. He talked to the petitioner who said that it was Dizon who had full knowledge of the transaction, but that Dizon had not yet reported for work at that time. Vice-President Nera then requested for a return call from Dizon. The petitioner later relayed the Vice-President's request to Dizon who allegedly ignored the same.

After office hours, petitioner de Vera, together with BPI Asst. Manager Virgilio Ventura, informed BPI Asst. Vice President Gregorio Santayana of the forged signature on the TCD and its apparent irregular issuance.

On the 30th of May 1987, a non-working Saturday, a group composed of the petitioner, Asst. Managers Virgilio Ventura and Abelardo Ortiz, and Ret. General Bueno, head of BPI Security, proceeded to the BPI Taft Avenue Branch and examined its books. They discovered that the P10-million time deposit of ASB was diverted to the personal account of Martinez.

Several personal and cashier's checks drawn against the account of Martinez were then intercepted and retrieved, and the remaining balance in his checking account was frozen. However, by then, around P3-million had already been withdrawn, although this was refuted by the petitioner who argued that since some three (3) checks amounting to P1.4-million had been "stopped payment", the actual amount withdrawn was only P1,650,000.00, and not P3-million as claimed by the respondent bank.

Pending further investigation, allegedly to ascertain the extent of the loss to the bank, and to pinpoint responsibility of the parties involved, the petitioner, on June 4, 1987, received a Notice of Preventive Suspension dated June 2, 1987.

On the following day, June 5, 1987, the petitioner was queried regarding the incident. This was followed by an interview with the Criminal Investigation Service (CIS, for brevity) on June 8, 1987, when the petitioner was summoned by Ret. General Bueno to give a statement in connection with the estafa case filed by the respondent bank against Daniel Martinez.

The bank, in the course of its investigation, also uncovered a similar pattern of operation which had transpired earlier. On May 5, 1987, the NAFP Retirements and Separation Benefit System (NAFP-RSBS, for brevity) issued a P4.7-million check in favor of the respondent bank in consideration of a P5-million TCD placement with the Taft Avenue Branch. The P4.7-million was the net of the front end discount of six per centum (6%) of the face value of the TCD granted by Dizon to NAFP-RSBS as an incentive for placing the money with the bank. However, it turned out that this was neither deposited nor credited in the account of NAFP-RSBS, but instead in the account of a certain Russel, Crame and Co., Inc. (Russel, for brevity) whose authorized signer is the same Daniel Martinez.

By the time the irregularity was discovered, four (4) checks, all payable to cash and drawn against the account of Russel, had already been encashed at the Taft Avenue Branch, three of which were jointly approved by Dizon and the petitioner. Thereafter, eleven (11) other checks drawn against the account of Russel, four of which had an aggregate amount of P2,578,480.00, were discovered to have been approved for encashment by Dizon, together with the petitioner. It must, however, be noted that nowhere in the records was there an indication that the petitioner was questioned regarding this anomaly involving the account of the NAFP-RSBS.

On August 3, 1987, the petitioner received a Notice of Termination dated July 10, 1987, terminating his services

on the ground of fraud or willful breach of trust and setting forth therein the transgressions he had allegedly committed.

Aggrieved, the petitioner, on August 6, 1987, commenced this proceeding by filing a case with the NLRC. On December 7, 1988, Labor Arbiter Evangeline Lubaton rendered a decision on the sole basis of the pleadings presented and the evidence attached thereto, the dispositive portion of which is quoted hereunder, a savoir:

WHEREFORE, premises considered, judgment is hereby rendered ordering the Bank of the Philippine Islands to pay Norman M. de Vera separation pay according to bank policy, or in the absence thereof, equivalent to one-half month pay for every year of service plus all other benefits, privileges and emoluments he may have been entitled to at the time of his termination from his employment.

The claims for moral and exemplary damages, attorney's fees and costs of suit are hereby dismissed for lack of merit.

SO ORDERED.[2]

The respondent bank, not satisfied with the labor arbiter's decision, interposed an appeal with the NLRC. The Second Division of the NLRC then promulgated a resolution on March 8, 1990, holding that the requirements of due process were substantially complied with and accordingly, deleted the award of separation pay. The petitioner's subsequent motion for reconsideration was later denied by another resolution.[3] These resolutions are now assailed in this special civil action for certiorari.

The petitioner basically contends that the respondent NLRC committed a grave abuse of discretion in holding that his dismissal had indicia of due process. He also claims that he is entitled to reinstatement or separation pay, plus full backwages and all other benefits, in either case. He stresses that while it is true that he was interviewed and later summoned by the CIS to give sworn statements in connection with the anomalous transaction, he was not aware that he was already being indicted and tried for an offense of which he was never informed. To support his contentions on due process, the petitioner cited Sections 1 to 6 of Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code,[4] which lay down the procedure taken in cases of termination of employment.

On the other hand, the respondent bank posits that the Notice of Preventive Suspension received by the petitioner was sufficient notice since the tenor of the letter itself should have already alerted the latter that the investigation then being conducted was partly being done to determine the extent of the latter's involvement in the anomalies. Furthermore, it would have been unlikely for a person not suspected of involvement in the anomalies to be suspended pending investigation. Precisely, the petitioner was suspected of complicity in the swindle. And if the Notice of Preventive Suspension was not sufficient notice, certainly the subsequent interviews should have placed the petitioner on notice that he was suspected of possible involvement in the swindle.[5]

The respondent NLRC likewise contends that it is "hard to believe that a person with the education and position as that of the complainant (herein petitioner) after having gone through rigorous interrogations would still fail to convince himself of being suspected and investigated for possible complicity in the respondent bank's swindle. In fact, his answers to the questions then propounded or his explanation given thereto were all in defense or designed to show his innocence or non-connection with the culprits." [6]

The respondents also submit that the petitioner was given ample opportunity to be heard. The petitioner was allowed to explain his side when he was questioned on June 5, 1987 regarding the incident. Three days later, he was given another opportunity when he was summoned by the CIS.

The private respondent further claims that "what the due process clause of the Constitution proscribes is the total absence of the chance to be heard. If a party was not initially given a chance to be heard (i.e., at the level of a

school panel of investigators) but later was given full opportunity to present his case and arguments (i.e., before the arbitration branch of the NLRC), this defect is cured." [7]

Consequently, the respondents submit that the petitioner is not deserving of the reinstatement prayed for nor of any award for separation pay. They contend that the petitioner "had deliberately shied away from performing the legal and moral duty of reporting peremptorily [sic] the anomaly to his employer, an act of indiscretion of the highest order, or, better still, a deliberate omission or prevarication which undoubtedly makes him unworthy of being awarded the bonanza of separation pay. A contrary ruling would have the net effect of rewarding the complainant for betraying the interest of his employer." [8]

The Court rules that the petitioner, Norman de Vera, was denied due process of law. Accordingly, his dismissal is hereby declared illegal.

The respondents' submissions that the Notice of Preventive Suspension is adequate notice and the subsequent interviews ample opportunities to be heard are devoid of merit. We have laid down in *Ruffy v. NLRC* [9] and in *Tingson v. NLRC* [10] the procedure to be observed by an employer who seeks to dismiss an employee. Once more, we quote the Labor Code:

x x x. HOWEVER, THE EMPLOYER SHALL FURNISH THE WORKER WHOSE EMPLOYMENT IS SOUGHT TO BE TERMINATED A WRITTEN NOTICE CONTAINING A STATEMENT OF THE CAUSES FOR TERMINATION AND SHALL AFFORD THE LATTER AMPLE OPPORTUNITY TO BE HEARD AND DEFEND HIMSELF WITH THE ASSISTANCE OF HIS REPRESENTATIVE IF HE SO DESIRES IN ACCORDANCE WITH COMPANY RULES AND REGULATIONS PROMULGATED PURSUANT TO GUIDELINES SET BY THE MINISTRY OF LABOR AND EMPLOYMENT. x x x [11]

These requirements of notice and hearing are recited anew in the rules implementing the above-cited provision, *supra*, as correctly pointed out by the petitioner. Definitely, the Notice of Preventive Suspension can not be considered adequate notice since the objectives of the petitioner's preventive suspension, as stated in the notice, were merely to ascertain the extent of the loss to the bank, and to pinpoint responsibility of the parties involved, and not to apprise the petitioner of the causes of his desired dismissal. Likewise, the subsequent interview is not the "ample opportunity to be heard" contemplated by law. Ample opportunity to be heard is especially accorded to the employee sought to be dismissed after he is informed of the charges against him in order to give him an opportunity to refute the accusations levelled against him, and it certainly does not consist of an inquiry conducted merely for the purpose of filing a criminal case against another person.

Similarly, the respondents' position that the petitioner, with his education and position, should have realized, after going through some rigorous interrogations, that he himself was being suspected and investigated for possible complicity in the anomalies is unacceptable. The petitioner as an assistant cashier is not expected to be proficient with the intricacies of law and procedure. He should not be faulted if he relied on the statement of the private respondent that the investigation was being conducted in connection with the criminal case filed against Martinez, and consequently failed to realize that he himself was being suspected for possible involvement in the fraud. In fact, the private respondent should be admonished for provoking self-incriminating statements from the petitioner under the guise of conducting an investigation for some other reason.

Furthermore, this Court has repeatedly held that the employer is mandated to furnish the employee sought to be dismissed two notices, the written charge, and the notice of dismissal, if, after hearing, dismissal is indeed warranted. [12] No written charge was ever furnished the petitioner in this case.

The respondents then claim that the alleged defects in due process were cured when the petitioner presented his case and arguments before the NLRC. This is untenable. The case before the NLRC is the petitioner's complaint

for illegal dismissal. At that time, he had already been terminated. What the Labor Code sets forth is the procedure prior to dismissal.[13] "Fire the employee, and let him explain later" is not in accord with the due process under the law.[14]

We can not accept claims of "a wider latitude of discretion"[15] of management in the discipline of managerial employees. First, management's discretion is subject to the requirements of due process.

As we held, "loss of confidence", as a ground for dismissal, must rest on "some basis".[16] Here, none has been established, for the plain reason that the petitioner was never investigated or heard in his defense. It can not be said therefore that he is guilty--to justify management's claim of loss of trust. To that extent, this case must be distinguished from *PLDT v. NLRC*,[17] where "theft" was established clearly and convincingly and no question of due process was involved.

Due process, as we also held,[18] is applicable to managerial employees. In the absence thereof, any dismissal becomes unlawful and reinstatement plus backwages are warranted.

WHEREFORE, the petition is GRANTED. The RESOLUTION of the public respondent is hereby ANNULLED and SET ASIDE. The private respondent is ORDERED to REINSTATE petitioner NORMAN DE VERA to his former or equivalent position without loss of seniority rights and other benefits with BACKWAGES equivalent to three years, without qualifications and deductions.

SO ORDERED.

Melencio-Herrera, (Chairman) and Regalado, JJ., concur.

Paras and Padilla, JJ., no part.

[1] Second Division; Decision penned by Commissioner Edna Bonto-Perez (Presiding Commissioner), concurred in by Commissioners Domingo Zapanta and Rustico Diokno.

[2] Rollo, 69.

[3] Resolution dated April 16, 1990.

[4] SECTION 1. Security of tenure and due process. No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

SEC. 2. Notice of dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

SEC. 3. Preventive Suspension. The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers.

SEC. 4. Period of Suspension. No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

SEC. 5. Answer and hearing. The worker may answer the allegations stated against him in the notice of dismissal

within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

SEC. 6. Decision to dismiss. The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefore.

[5] Rollo, 95-96.

[6] Ibid., 77.

[7] Id., 97-98, citing *Montemayor v. Araneta University Foundation*, No. L-44251, May 31, 1977, 77 SCRA 321.

[8] Id., 49.

[9] G.R. No. 84193, February 15, 1990, 182 SCRA 365.

[10] G.R. No. 84702, May 18, 1990, 185 SCRA 498.

[11] Sec. 13 of Batas Pambansa Bilang 130, an act amending certain provisions of the Labor Code.

[12] *Tingson v. NLRC*, supra; *National Service Corp. v. NLRC*, Nos. 69870 and 70295, November 29, 1988, 168 SCRA 122, citing Sections 2 and 6 of Rule XIV, Book of the Omnibus Rules Implementing the Labor Code, supra.

[13] *Tingson v. NLRC*, supra.

[14] *Ruffy v. NLRC*, supra.

[15] *Manila Midtown Commercial Corp. v. Nuwhrain*, No. 57268, March 25, 1988, 159 SCRA 212; although erroneously cited by the private respondent to be found at 168 SCRA 722.

[16] *Starlite Plastic Industrial Corp. v. NLRC*, G.R. No. 78491, March 16, 1989, 171 SCRA 315.

[17] G.R. No. 80609, August 23, 1988, 164 SCRA 671.

[18] *Offshore Industries, Inc. v. NLRC*, G.R. No. 83108, August 29, 1989, 177 SCRA 50.

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