SUPREME COURT
FIRST DIVISION

FILIPRO, INC.,
***Petitioner*,**

-versus-

G.R. No. 72129
February 7, 1990

THE HONORABLE MINISTER BLAS F. OPLE, NUTRITIONAL PRODUCTS ASSOCIATION OF FREE WORKERS and ROMEO PILI,
***Respondents*.**
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D E C I S I O N

GRIÑO-AQUINO, *J.*:

Filipro, Inc. has filed a Petition for *Certiorari* charging the Minister of Labor and Employment with grave abuse of discretion in reversing the Order of the Regional Director, Francisco Estrella, who found the complainant employee, Romeo Pili, guilty of habitual absenteeism, granted the petitioner clearance to terminate his employment, and dismissed his complaint for illegal dismissal. The Minister of Labor and Employment ordered Filipro, Inc. "to reinstate complainant to his former position without diminution in rank and salary and with full back wages to be reckoned from the date of termination" for a period of two years (pp. 120 and 131, Rollo).

Under the collective bargaining agreement then existing between Filipro and the workers' union, a regular employee with at least one (1) year of continuous service is entitled to sick leave for a period of 15 days. The procedure for taking a sick leave is set forth in Section 1, Article VIII of the CBA which provides:

> "Section 1 — Any regular employee. To enjoy sick leave, an employee shall, whenever possible, secure a prior written certification from the company physician regarding his sickness and the approximate length of time that he will be unable to work by reason thereof. If this is not possible, the employee shall immediately notify the Company, preferable [sic] in writing, that he is sick, and upon his return to work, he shall present to the company a medical certificate to show that he has been actually sick during the period of his leave." (pp. 81-82, Rollo.)

Whenever Pili was absent, he never obtained "prior written certification" from the company physician that he would be absent (p. 81, Rollo), but invariably sent to the personnel officer, or his immediate superior, a note stating that he could not report for work on account of his or a family member's illness, or death, but, more often than not, he truthfully wrote that he had some important business to attend to elsewhere ("mahalagang lakad"). Furthermore, in 1976 he took a total of 21 days' leave, instead of only 15. In 1978 he chalked up to 20 days of leaves for various causes.

As framed by the petitioner: "The only question that arises is whether or not the act of private respondent Romeo Pili in habitually and incorrigibly absenting himself from work without prior notice and permission through the years consistently is a just cause for his dismissal from employment" (p. 10, Rollo).

While it is not generally possible for an employee to anticipate when he will be ill or have to attend to some family problem or emergency, and be able to give prior notice to his employer, he should give such notice when he will be absent for some other cause, such as when he will attend to some other business elsewhere, for such engagements can be properly scheduled by him so as not to interfere with his

regular working hours and disrupt the operations of the company in his particular area of assignment. Without prior notice of the employee's absence, the company is not afforded enough time to get a temporary replacement for him. As pointed out by the personnel officer, Ms. Almira, Pili's frequent unannounced absences were unfair to the company and to his co-employees who had to take over his share of the work in addition to their own assigned functions. The company had just cause to discipline him on account of his habitual absenteeism for over a period of three years from 1976 to 1979, as in fact it penalized him with two-weeks to one month suspensions in 1976, 1977 and 1979 for his absences in those years.

And this circumstance, as pointed out by Minister Ople in his decision, is precisely why the company may not dismiss him for the same cause.

> "It appears that on October 25, 1976, complainant — then with 10 years of service with the company — was meted out a suspension for two weeks for being absent without the permission of the company on October 1, 10, 12 and 13; on August 26, 1977, he was given a month's suspension for being absent on August 16 after his request for a day off to celebrate their barrio fiesta was denied by the management; on April 3, 1979, he was punished again with two week's suspension for being absent on April 2 despite the disapproval of his leave; finally, on May 16, 1979, he was informed that he would be dismissed for being absent on May 10 allegedly for stomach ache whereas the doctor hired by the company executed a certificate on May 15 that the complainant was 'fit to work.'
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> "Admittedly, complainant incurred absences in the past. But the record shows that complainant had already suffered the corresponding penalty for each violation. Collectively, these past infractions cannot be used as a justification for complainant's dismissal from service. To do so would put complainant to penalty twice for the same offense. At most, these collective infractions could be used as supporting justification to a subsequent similar offense, but as we have

found, the absence of May 10, 1979 was made in accordance with the rules, hence complainant should not be made to suffer for them again. For this alone, a reconsideration of the previous ruling is in order." (pp. 117-120, Rollo.)

Pili's absence on May 10, 1979 did not justify the company's meting to him the capital punishment of dismissal. As pointed out by the Solicitor General, "while Pili had been found medically fit to work after an examination at the Makati Medical Center on May 15, 1979, this did not prove that he was malingering on May 10, 1979 when he absented himself from work upon notice that he was suffering from stomach ache" (p. 167, Rollo).

Under the circumstances, we find that the Minister of Labor and Employment did not abuse his discretion in finding the dismissal of respondent employee, Romeo Pili, illegal and in ordering his reinstatement with back salaries for a period of two years without deductions and qualification.

WHEREFORE, the Petition for *Certiorari* is dismissed for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, Gancayco and Medialdea, *JJ.*, concur.
Cruz, *J.*, took no part.