

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

CELIA A. FLORES,
Petitioner,

-versus-

G.R. No. 109362
May 15, 1996

**NATIONAL LABOR RELATIONS
COMMISSION and PHILIPPINE
PUBLIC SCHOOL TEACHERS
ASSOCIATION,**

Respondents.

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DECISION

MENDOZA, J.:

This is a Petition for *Certiorari* to Annul the Decision, dated December 29, 1992, of the National Labor Relations Commission (Second Division), reversing the Labor Arbiter's decision which found petitioner to have been illegally dismissed, but ordering private respondent to pay petitioner separation pay at the rate of one-half month's salary for every year of service. The present petition also seeks to annul the NLRC's resolution of February 10, 1993, denying petitioner's motion for reconsideration for having been filed beyond the reglementary period.

The facts are as follows:

Petitioner Celia Flores was hired as a casual employee by private respondent Philippine Public School Teachers Association (PPSTA) in 1973. On August 6, 1976 she was made a regular employee.

On September 3, 1990 she was dismissed upon recommendation of an investigating committee. It appears that, on February 20, 1990, at around 8:35 a.m., petitioner engaged a fellow employee, Lamberto Jamlang, in a brawl on the 4th Floor of the PPSTA Administration Building in full view of other employees and visitors. Her antagonist was also dismissed upon recommendation of the committee.

In dismissing petitioner, the private respondent also took into account petitioner's past misconduct. Its Memorandum to petitioner, dated August 31, 1990, stated:

An examination of your employment record with the PPSTA show that your involvement in the above-described incident is not the first time you have committed acts of misconduct or offenses and/or have been involved in disruptive controversies with your co-workers in the Association. It reveals that barely a week after you were extended a regular appointment, your chief in the Premium Accounts Department, Mrs. Esperanza Chavarria, complained to the General Manager, Mr. Santos P. Pascual, that you refused to "accept the responsibilities and duties assigned to you." In 1977 alone, you were disciplinarily charged six (6) times by the different chiefs of the departments you worked with. Four (4) of those charges were filed in the month of March. All of these charges involve (a) misconduct (b) violation of rules and regulations (c) tardiness and absenteeism. On 29 March 1977, you were suspended for fifteen (15) days without pay for the same reasons just mentioned. Sometime in February 1978 you were again the subject of an administrative investigation for misconduct for slapping another employee while under the influence of liquor. Finally, on 16 December 1986 you were dismissed due to (a) misconduct, (b) willful breach of trust or loss of confidence, (c) crime against the employer or his authorized representative and (d) causes analogous to the foregoing. You were only temporarily

reinstated pending further investigation pursuant to a compromise agreement to settle the strike staged by some PPSTA employees.

The Board considers the aforementioned series of acts of misconduct which you have committed against the Association as serious enough to warrant the immediate termination of your services and is convinced that your continued employment by the PPSTA has become prejudicial to the interests of the Association. Therefore, to protect the rights and interests of the PPSTA against employees like you who show patent disregard of its rules and policies, the Board, by resolution, decided to dismiss you from its service and bar you from entering the premises of the Association without proper authorization from the Board effective upon receipt of this memorandum.

As regards your complaint against Mr. Jamlang, the Board considers it as moot and academic by its decision to terminate also his employment.

Petitioner filed a complaint for illegal dismissal. She alleged that her involvement in the February 20, 1990 incident was not a valid ground for the termination of her employment because there was no finding that she started the fight. She contended that neither could her alleged past misconduct be used as ground for her dismissal because she had not been informed of the charges against her nor given the opportunity to answer them. Petitioner claimed that her dismissal was actually due to her union activities, having been president of the union from 1985 up to the time of her dismissal on September 3, 1990.

Private respondent denied the charge, maintaining that petitioner's continued employment was inimical to its interest.

The Labor Arbiter declared petitioner's dismissal illegal but dismissed her complaint for unfair labor practice. The dispositive portion of his decision reads:^[1]

ACCORDINGLY, respondent is hereby declared guilty of illegal dismissal and is hereby ordered to reinstate complainant

immediately upon receipt of this decision to her former position or to the payroll without loss of seniority rights and other benefits and with full backwages counted from the time of her dismissal up to her reinstatement.

The charge of unfair labor practice is hereby dismissed for want of merit.

On appeal, the NLRC reversed but awarded separation pay to petitioner, as follows:^[2]

WHEREFORE, premises considered, the assailed decision insofar as declaring complainant's dismissal illegal is hereby reversed and set aside and in lieu thereof a new one is hereby entered declaring the dismissal valid and justified. However, respondent is hereby ordered to pay complainant her separation pay equivalent to one-half (1/2) month salary for every year of service and a fraction of 6 months considered as one whole year. The finding that respondent is not guilty of unfair labor practice is affirmed.

SO ORDERED.

On January 27, 1993 petitioner moved for reconsideration. Her motion was, however, denied on the ground that the motion had been filed out of time. Hence, this petition, petitioner alleging that the NLRC gravely abused its discretion in dismissing her complaint.

The petition has no merit.

First. Rule VII, §14 of the NLRC Rules of Procedure provides that motions for reconsideration must be filed within ten (10) calendar days from receipt of the order, resolution or decision of the NLRC. The registry return card in this case shows that a copy of the decision of the NLRC was served on petitioner's counsel on January 15, 1992. Since she filed a motion for reconsideration only on January 27, 1992, it is clear that her motion was filed out of time, with the result that the decision of the NLRC became final and executory.

Petitioner's counsel claims that the decision was actually delivered to "somebody unknown and not a member of [his] legal staff" and that it was received by counsel after it was left at the door of his office on January 18, 1992. The fact, however, is that the decision was sent by registered mail to counsel at his office address. The presumption is that the decision was delivered to a person in his office, who was duly authorized to receive papers for him, in the absence of proof to the contrary.^[3] Petitioner has not presented evidence to overcome this presumption of regularity in the performance of official duty. We therefore hold that the decision of the NLRC became final and executory on January 25, 1992.^[4]

Second. We have nevertheless gone over the records of the case to see if, in holding that petitioner's dismissal was for cause, the NLRC did not gravely abuse its discretion. We have found no basis for holding that it did. If the NLRC committed an error at all, it was committed in favor of petitioner. We are referring to the award of separation pay to her. Since private respondent has not questioned the decision of the NLRC, we can not review this part of its decision.

Petitioner's dismissal was anchored on two grounds: first, violations of office rules and regulations consisting of tardiness and absenteeism, insubordination and misconduct, and second, brawling with another employee in the employer's premises on February 20, 1990.

The records show that for unauthorized absences, violations of company rules and regulations and misconduct, petitioner was suspended for fifteen (15) days on March 29, 1977. She was warned that repetition of the same offenses would be punished more severely in the future.^[5] But petitioner did not heed the warning. She was frequently absent without leave. While under the influence of liquor, she assaulted another employee.^[6] Several members of the PPSTA transacting business with her complained of her discourtesy and arrogance.^[7] Petitioner was investigated. In the meantime, she was transferred to the General Services Department of the PPSTA on February 3, 1978.^[8]

On December 16, 1986 an investigating committee recommended the dismissal of petitioner. She was required by private respondent to

show cause within five (5) days from notice why she should not be dismissed. Meanwhile she was suspended for thirty (30) days.^[9] However, instead of answering, petitioner got her union to strike, resulting in the paralyzation of operations of the PPSTA. Private respondent was forced to agree to a further investigation of the charges against petitioner and, in the meantime, to her reinstatement and the return to work of the striking employees.^[10]

The investigation was to be conducted by a committee composed of two representatives of the then Ministry of Labor and Employment and one representative of the Board of the PPSTA. For some reason not appearing in the record, however, no report was submitted by the committee. Then on February 20, 1990 the fight between petitioner and Lamberto Jamlang took place. This incident finally made the PPSTA, by this time under a new management, take a decisive action against petitioner by dismissing her.

Petitioner blames her dismissal on her union activities. She claims that she was dismissed because she had been a thorn on the side of management, exposing corruption therein. She also makes much of the fact that although several complaints had been filed against her, not one resulted in a finding of guilt as proof of the lack of evidence against her. This was also the point of the Labor Arbiter in declaring Petitioner's dismissal to be illegal.

It would appear, however, that if investigations in the past had been inconclusive, it was precisely because of the weak if not corrupt leadership of the PPSTA which, according to petitioner, prompted the government to assume control of the professional organization of public school teachers.^[11] It could be that this perception of weakness of the management abetted — if it did not in fact encourage — petitioner to commit her own abuses. In fact petitioner now claims that private respondent is estopped from dismissing her for past misconduct.

The PPSTA never lacked the resolve to take action against petitioner. As already stated, on March 29, 1977, it suspended petitioner for a period of fifteen (15) days. In 1986, it again suspended her, pending investigation of serious charges of misconduct, willful breach of trust against her. Instead of answering the charges against her, she

retaliated with a strike by her union. As a consequence private respondent was forced to recall the suspension of petitioner, without prejudice to the holding of further investigation against her.

There is thus no basis for petitioner's claim that she was not informed of the charges against her. She knew the charges against her but she refused to answer them. In fact from 1978 to 1986, she was required to answer various complaints made against her but she ignored them. Neither did she question her transfer earlier to the General Services Department. Indeed it was only in her Memorandum filed in this case on April 15, 1990 that she made a denial of the charges.

The second ground for petitioner's dismissal was her involvement in a fight with another employee on February 20, 1990. As noted, this incident was the last in a series of misconduct which finally brought about the action of private respondent.

Petitioner claims that, contrary to the finding of the NLRC, it was Jamlang who started the fight. She points out that the investigating committee found that the fight was actually brought about by animosity between her and Jamlang — petitioner was irritated by Jamlang's constant inquiry about the financial status of the union, while Jamlang was incensed at petitioner's spreading rumor that Jamlang was having an illicit affair with a union officer, Analiza Consumido. Petitioner contends that she could be dismissed only if she was the aggressor, which was not the case because in fact she filed a criminal case against Lamberto Jamlang as a result of the incident.

To be sure the criminal complaint which petitioner had filed against Lamberto Jamlang for injuries which she allegedly suffered was dismissed because Lamberto Jamlang meanwhile died. The fact that petitioner filed a case against Jamlang while the latter did not does not necessarily mean petitioner was the aggrieved party. If anything, the fact that Jamlang did not file charges against petitioner negates petitioner's claim that private respondent PPSTA merely took advantage of the incident in order to have a basis for dismissing her.

At all events it was not necessary to determine who started the fight. What is important is that petitioner engaged Jamlang in a fight in the work premises. We have already held in a number of cases that

fighting within company premises is a valid ground for dismissing an employee.^[12] Only recently we sustained the dismissal of relatives employed in a company who mauled an employee for reporting them to the management for their wrongdoings.^[13] In a case analogous to this one,^[14] a female employee was also found guilty of assaulting her male superior and, in addition, of insubordination, habitual tardiness, wasting time and not wearing a uniform. For these reasons she was dismissed by the company. The Labor Arbiter and the NLRC thought, however, that dismissal was “harsh and severe and not commensurate to the offense” and therefore ordered her merely suspended for three months. In setting aside the decisions of the labor agencies and upholding the employee’s dismissal, this Court held that “the continuance in the service of the [employee] is patently inimical to her employer’s interests” and that “it was oppressive and unjust in the premises to require reinstatement of the employee.”^[15]

The fight in this case, which was staged in full view of other employees and visitors, disturbed work in the office and justified the finding that the antagonists were guilty of serious misconduct, thus negating petitioner’s claim that she was dismissed because of union activities.

What this Court said in *Manila Trading & Supply Co. vs. Zulueta* through Justice Laurel has special application in this case: “The law, in protecting the rights of laborers, authorizes neither oppression nor self-destruction of the employer. There may, of course, be cases where the suspension or dismissal of an employee is whimsical or unjustified or otherwise illegal in which case he will be protected. This is not however the case here.”^[16] The NLRC, in approving petitioner’s dismissal, acted according to law and evidence.

The Solicitor General observes that separation pay should not have been awarded to petitioner, otherwise she would be rewarded rather than punished for her misconduct.^[17] As already stated, however, this is a question which private respondent should have raised. As it has not, the award of separation pay to petitioner cannot be reviewed.

WHEREFORE, the petition for certiorari is **DISMISSED** for lack of merit.

SO ORDERED.

Regalado, Romero, Puno and Torres, Jr., *JJ.*, concur.

- [1] Id., pp. 35-36.
- [2] Id., p. 49.
- [3] Cf. Cañete vs. NLRC, G.R. No. 114161, November 23 1995.
- [4] San Miguel Corp. vs. NLRC, 221 SCRA 48 (1993).
- [5] Rollo, p. 120.
- [6] Id., p. 123.
- [7] Id., p. 121.
- [8] Id., p. 130.
- [9] Id., p. 147.
- [10] Id., pp. 149-150.
- [11] Id., p. 5.
- [12] E.g., Foodmine, Inc. vs. NLRC, 188 SCRA 748 (1990); Wenphil Corp. vs. NLRC, 170 SCRA 69 (1989); North Camarines Lumber Co., Inc. vs. Barreda, 153 SCRA 244 (1987); Haverton Shipping, Ltd. vs. NLRC 135 SCRA 685 (1985).
- [13] Royo vs. NLRC, G.R. No. 109609.
- [14] Pacific Mills, Inc. vs. Alonzo, 199 SCRA 617 (1991).
- [15] 199 SCRA at 621-22.
- [16] Manila Trading Supply Co. vs. Zulueta, 69 Phil. 485, 487 (1940). Accord, Pacific Mills, Inc. vs. Alonzo, 199 SCRA 617 (1991).
- [17] Citing Lausa vs. NLRC, 187 SCRA 299 (1990); Cosmopolitan Funeral Homes, Inc. vs. Maalat, 187 SCRA 108 (1990); Eastern Papermills, Inc. vs. NLRC, 170 SCRA 595 (1989); PLDT vs. NLRC, 164 SCRA 671 (1988).