

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**FOODMINE, INCORPORATED
(KENTUCKY FRIED CHICKEN),
*Petitioner,***

-versus-

**G.R. No. 84688
August 20, 1990**

**NATIONAL LABOR RELATIONS
COMMISSION (NLRC) and
NUWHRAIN-KENTUCKY CHAPTER
and REYNALDO L. ESCOLANO,
*Respondents.***

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DECISION

PARAS, J.:

This Petition seeks the review and reversal of the Decision of respondent National Labor Relations Commission in NLRC Case No. 10-3492-85 entitled "Nuwhrain-Kentucky Chapter and Reynaldo L. Escolano vs. Foodmine Inc. (Kentucky Fried Chicken)" dated August 16, 1988, which affirmed on appeal the Decision of the Labor Arbiter dated February 26, 1988 declaring private respondent Reynaldo L. Escolano's dismissal illegal and ordering the petitioner to reinstate him to his previous or equivalent position without loss of seniority rights and benefits and to pay him full back wages.

The following background facts gave rise to the controversy:

Private respondent Reynaldo Escolano was a regular employee (chopper) of petitioner for a period of six (6) years at the petitioner's outlet at the Bonanza Compound, EDSA, Quezon City until his dismissal on September 20, 1985 on the alleged ground of "hitting the right cheek with his (Escolano) fist and further grabbing and pulling the 'left bust' of a co-employee — Miss Milagros Paz." (p. 2, Petition)

The incident occurred on September 10, 1985 at about 3:00 p.m. inside the processing area of the petitioner's compound. It all started when the employees (about 9) of them including private respondent Escolano were having their coffee break when complainant Milagros Paz appeared and approached the group of Escolano bringing with her a labelling gun, complaining that said instrument has a missing part. Thereafter, she asked Florencio Lobrin (company storekeeper who was also taking his coffee break) if the instrument can still be repaired to which the latter answered: "Sino naman ang nakawala ng goma niyan, inayos ko na yan kaninang umaga." (Records, p. 39, Lobrin's Affidavit, p. 43 Rollo) In reply, Milagros Paz pointed an accusing finger at private respondent Reynaldo Escolano after which the latter allegedly grabbed Milagros left breast and thereafter boxed her.

On October 3, 1985, a memorandum-letter of even date signed by the administrative manager of petitioner was served upon Reynaldo Escolano terminating his services on the strength of the accusation of Milagros Paz. Aggrieved by the management decision, he filed a complaint for illegal dismissal before the then Ministry of Labor and Employment against petitioner.

After trial, the Labor Arbiter rendered a decision in favor of Reynaldo Escolano. The pertinent portion of the said decision reads —

"We have repeatedly reviewed the records and we find the preponderance of evidence in favor of complainant. As already mentioned, his testimony, unlike that of Milagros Paz, was corroborated by witnesses who are also employees of respondent; hence, it appear to be more credible. Witnesses

Madrilejos and Navarro would not dare take the witness stand and gave adversarial testimonies against their employer if they were not telling the truth as they would then unnecessarily place the security of their very own employment in grave peril.

“It is possible that complainant had touched the breast and face of Milagros Paz. However, it appeared that same was accidental and not intentionally done.

“Respondent submitted a xerox copy of a purported medical certificate. Suffice to say that same can not be given any consideration in view of the fact that its authenticity has not been established and also because the certificate was not under oath. Additionally, even the name of the supposed physician is not legible.” (p. 45, Rollo)

On appeal, the respondent Commission affirmed in toto the Labor Arbiter’s Decision.

Hence, this petition which We find to be patently devoid of merit.

Petitioner claims that it terminated the services of private respondent because of serious misconduct.

This claim of petitioner was found by the Labor Arbiter to be unsubstantiated. This finding was affirmed on appeal by respondent Commission.

In the absence of any showing that the findings of the Labor Arbiter and the NLRC are not supported by substantial evidence, such findings are conclusive with this Court. (Unitran/Bachelor Express Inc. vs. Olvis, 165 SCRA 254, 256; Reyes vs. Phil. Duplicators, 109 SCRA 489)

There is no dispute that fighting on company premises may be considered as a valid ground for dismissal of an employee but in the case at bar, the facts do not warrant the application of the same. Firstly, because petitioner has miserably failed to substantiate its allegations of serious misconduct. Secondly, granting that the allegations of the petitioner are true, the penalty of dismissal is not

commensurate with the misconduct allegedly committed. Private respondent had been a regular employee of the petitioner for six (6) years and apparently, the alleged incident is his first. Finally, the records fail to show that private respondent was afforded due process before he was summarily dismissed.

ACCORDINGLY, this Petition is ordered **DISMISSED**.

SO ORDERED.

Melencio-Herrera, Padilla and Regalado, JJ., concur.
Sarmiento, J., On leave.