SUPREME COURT
THIRD DIVISION

ERNESTO MABAYLAN,
***Petitioner*,**

-versus-

G.R. No. 73992
November 14, 1991

HONORABLE NATIONAL LABOR RELATIONS COMMISSION, HONORABLE BENJAMIN E. PELAEZ and RHINE MARKETING CORPORATION,
***Respondents*.**
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D E C I S I O N

FERNAN, *C.J.*:

In this Petition for *Certiorari*, petitioner Ernesto Mabaylan seeks the modification of the Decisions of the National Labor Relations Commission dated December 19, 1985 and of Labor Arbiter Benjamin E. Pelaez dated January 30, 1985.

Petitioner Mabaylan was employed as a driver of the branch service vehicle of private respondent Rhine Marketing Corporation on September 11, 1975. At the time of his dismissal in 1984, he was

receiving a monthly salary of P1,080.00 and an emergency cost of living allowance of P570.00 a month.

From August 3 to 8, 1984, petitioner absented himself from work allegedly due to the peace and order situation in his hometown, Barangay Mambuaya, Cagayan de Oro City. For that reason the area manager of respondent company, in a memorandum dated August 6, 1984, required petitioner to explain his absences within twenty-four hours from notice. Upon receipt of that memorandum on August 8, 1984, petitioner immediately went to the office of the branch manager, arriving there at past five in the afternoon of the same day, to explain his absences but the company official reportedly left without giving him a chance to present his side.

On August 17, 1984, petitioner received a second memorandum from respondent company dated August 14, 1984 officially informing him of his termination effective August 3, 1984 for his failure to submit an explanation of his unauthorized absences since August 3, 1984 and for abandonment of work.

Whereupon, on August 20, 1984, petitioner instituted a complaint for illegal dismissal, non-payment of separation pay and service incentive leave pay with the Regional Office of the then Ministry of Labor and Employment, Cagayan de Oro city (NLRC RABX Case No. 9-0588-84).

In his assailed decision of January 30, 1985, the Labor Arbiter found that while petitioner was not entirely faultless for incurring unauthorized absences, his dismissal was illegal for failure of respondent company to observe due process in not giving the employee sufficient time and opportunity to be heard before he was discharged. Accordingly, the Labor Arbiter ordered respondent company "to immediately reinstate complainant Ernesto Mabaylan to his former position without loss of seniority rights and without backwages, the period of which he was deprived of work being more than reasonable penalty for his infractions. Further, to pay the complainant incentive leave pay equivalent to five days pay for every year of service in the amount of P499.95."[1]

On appeal by both parties, the National Labor Relations Commission, in its decision of December 19, 1985, modified the Labor Arbiter's judgment and merely ordered respondent company "to pay the complainant the sum of P499.95 as incentive leave pay."[2]

The NLRC found that the infractions committed by petitioner (e.g. habitual absenteeism, tardiness and negligence in handling company equipment) were proper grounds for separation and that there was no denial of due process. On the question of due process, respondent tribunal reasoned:

> "The Labor Arbiter misappreciated the evidence on record in holding that the complainant was not afforded due process and the respondent refused to hear his explanation. The memorandum dated 6 August 1984 requiring him to explain his absence was received by complainant on 10 August 1984 as shown in the return card. This vividly indicates that he could not have reported to the office on 8 August 1984 to submit his explanation as required in the same. Evidently, this is the reason why of all times, he chose 5:30 p.m. as the time he allegedly went to see the Branch Manager. He did not choose a regular working time as there would be other employees that could attest that he never appeared on said date. Ergo, if he was not afforded opportunity to explain his side for reason attributable to him, it was because he never reported since 3 August 1984 thereby giving respondent no opportunity to investigate him. Under the circumstances, it cannot be said that the respondent violated B.P. 130."[3]

Hence, this petition for *certiorari*.

Invoking the provisions of Article 280 of the Labor Code (P.D. No. 442, as amended) and Rule XIV, Section 5 of the Rules Implementing BP Blg. 130, petitioner claims that his termination was illegal because respondent company did not comply with the procedural requirements of due process. Consequently, an award to him of backwages, on top of reinstatement, is in order.

Respondent NLRC counters that petitioner cannot invoke his right to due process because it was precisely through his unexplained non-

appearance that respondent company was unable to give him his day in court. Respondent tribunal further avers that petitioner did not state the truth when he recounted in his affidavit of October 17, 1984 that he went to the office of respondent company on August 8, 1984 to make the required explanation.

The ultimate issue to be resolved in the petition at bar is whether or not petitioner Mabaylan was afforded due process before he was dismissed from work.

Article 278 of the Labor Code, as amended, lays down the procedure to be followed by an employer in terminating the services of an employee, to wit:

> "Miscellaneous provisions. — . . . (b) . . . 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 to 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. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer."

The above-cited provision has been reiterated in Sections 1, 2, 5, 6 and 7 of Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code.

In Century Textile Mills, Inc. and Escano vs. NLRC, et al., G.R. No. 77859, May 25, 1988, the Court explained:

> "The twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal: the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the

> reason for the proposed dismissal; upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution."

While it is not disputed that petitioner Mabaylan was officially notified of his impending dismissal and the reasons therefor, the Court is more inclined to give credence to petitioner's affidavit of October 17, 1984 which narrated the circumstances leading to his separation from the service, and which indubitably demonstrated that his employer failed to comply with the requirements of administrative due process in not having given petitioner, before his dismissal, the hearing required by law.

The only evidence adduced by respondent company to support its assertion that it gave petitioner the chance to present his side was a memorandum of its branch manager addressed to its president and general manager which states: "On August 6, a memo was sent to him by registered mail requiring him to report to the office and explain within 24 hours why he was absent. Although Mabaylan received the memo on August 10, he did not bother to report to the office and explain."[4] Significantly, said memorandum was not under oath and no evidentiary weight was attached to it by the Labor Arbiter. At any rate, whatever doubt remains should ultimately be resolved in favor of the worker.

Neither was there abandonment of work, as alleged by respondent company. Records show that three (3) days after receipt of notice of his termination affective August 3, 1984, petitioner filed a complaint for illegal dismissal. It would be illogical for him to leave his job and later on file said complaint.[5]

Thus, standing alone, the failure of respondent company to provide petitioner with the proper forum to ventilate his side is an infringement of his constitutional right to due process. As stressed in the case of Wenphil Corporation vs. NLRC and Mallare, G.R. No. 80587, February 8, 1989, "(t)he standards of due process in judicial

as well as administrative proceedings have long been established. In its bare minimum due process of law simply means giving notice and opportunity to be heard before judgment is rendered."

Considering the circumstances of this case, we hold that petitioner is not entitled to reinstatement with backwages as it was clearly established that he committed various infractions detrimental to the business of the company.[**] However, respondent company should be made to account for its omission to observe due process by paying the discharged petitioner indemnity in the amount of P3,000.00.

WHEREFORE, the assailed Decision of the National Labor Relations Commission dated December 19, 1985 is **AFFIRMED** with the modification that private respondent Rhine Marketing Corporation is ordered to indemnify petitioner Ernesto Mabaylan in the amount of P3,000.00. No costs.

SO ORDERED.

Gutierrez, Jr., Bidin, Davide, Jr. and Romero, *JJ.*, concur.

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[1] Rollo, p. 15.
[2] Rollo, p. 12.
[3] Rollo, p. 12.
[4] Rollo, p. 48.
[5] See Asphalt and Cement Pavers, Inc. vs. Leogardo, Jr., et. al., G.R. No. 74563, June 20, 1988.
[**] In his Memorandum dated September 8, 1987, petitioner has deviated from his original demand that he be re-employed and has indicated his preference for separation pay instead "due to already strained relationship" between him and respondent company (Rollo, p. 82).