SUPREME COURT
SECOND DIVISION

ROSARIO MANEJA,
***Petitioner*,**

-versus-

G.R. No. 124013
June 5, 1998

NATIONAL LABOR RELATIONS COMMISSION and MANILA MIDTOWN HOTEL,
***Respondents*.**
x----------x

D E C I S I O N

MARTINEZ, *J.*:

Assailed in this Petition for Certiorari under Rule 65 of the Revised Rules of Court are the Resolution[1] dated June 3, 1994 of the respondent National Labor Relations Commission in NLRC NCR-00-10-05297-90, entitled "Rosario Maneja, Complainant, vs. Manila Midtown Hotel, Respondent," which dismissed the illegal dismissal case filed by petitioner against private respondents company for lack of jurisdiction of the Labor Arbiter over the case; and its Resolution[2] dated October 20, 1995 denying petitioner's motion for reconsideration.

Petitioner Rosario Maneja worked with private respondent Manila Midtown Hotel beginning January, 1985 as a telephone operator. She was a member of the National Union of Workers in Hotels, Restaurants and Allied Industries (NUWHRAIN) with an existing Collective Bargaining Agreement (CBA) with private respondent.

In the afternoon of February 13, 1990, a fellow telephone operator, Rowena Loleng received a Request for Long Distance Call (RLDC) form and a deposit of P500.00 from a page boy of the hotel for a call by a Japanese guest named Hirota Ieda. The call was unanswered. The P500.00 deposit was forwarded to the cashier. In the evening, Ieda again made an RLDC and the page boy collected another P500.00 which was also given to the operator Loleng. The second call was also unanswered. Loleng passed on the RLDC to petitioner for follow-up. Petitioner monitored the call.

On February 15, 1990, a hotel cashier inquired about the P1,000.00 deposit made by Ieda. After a search, Loleng found the first deposit of P500.00 inserted in the guest folio while the second deposit was eventually discovered inside the folder for cancelled calls with deposit and official receipts.

When petitioner saw that the second RLDC form was not time-stamped, she immediately placed it inside the machine which stamped the date "February 15, 1990." Realizing that the RLDC was filed 2 days earlier, she wrote and changed the date to February 13, 1990. Loleng then delivered the RLDC and the money to the cashier. The second deposit of P500.00 by Ieda was later returned to him.

On March 7, 1990, the chief telephone operator issued a memorandum[3] to petitioner and Loleng directing the two to explain the February 15 incident. Petitioner and Loleng thereafter submitted their written explanation.[4]

On March 20, 1990, a written reports[5] was submitted by the chief telephone operator, with the recommendation that the offenses committed by the operators concerned covered violations of the Offenses Subject to Disciplinary Actions (OSDA): (1) OSDA 2.01: forging, falsifying official document(s), and (2) OSDA 1.11: culpable

carelessness — negligence or failure to follow specific instruction(s) or established procedure(s).

On March 23, 1990, petitioner was served a notice of dismissal[6] effective April 1, 1990. Petitioner refused to sign the notice and wrote therein `"under protest."

Meanwhile, a criminal case[7] for Falsification of Private Documents and Qualified Theft was filed before the Office of the City Prosecutor of Manila by private respondent against Loleng and petitioner. However, the resolution recommending the filing of a case for estafa was reversed by 2nd Asst. City Prosecutor Virgilio M. Patag.

On October 2, 1990, petitioner filed a complaint for illegal dismissal against private respondent before the Labor Arbiter. The complaint was later amended to include a claim for unpaid wages, unpaid vacation leave conversion and moral damages.

Position papers were filed by the parties. Thereafter, the motion to set the case for hearing filed by private respondent was granted by the Labor Arbiter and trial on the merits ensued.

In his Decisions[8] dated May 29, 1992, Labor Arbiter Oswald Lorenzo found that the petitioner was illegally dismissed. However, in the decision, the Labor Arbiter stated that:

> "Preliminarily, we hereby state that on the face of the instant complaint, it is one that revolves on the matter of the implementation and interpretation of existing company policies, which per the last par. of Art. 217 of the Labor Code, as amended, is one within the jurisdictional ambit of the grievance procedure under the CBA and thereafter, if unresolved, one proper for voluntary arbitration. This observation is re-entrenched by the fact, that complainant claims she is a member of NUWHRAIN with an existing CBA with respondent hotel.

On this score alone, this case should have been dismissed outright."[9]

Despite the aforequoted preliminary statement, the Labor Arbiter still assumed jurisdiction "since Labor Arbiters under Article 217 of the same Labor Code, are conferred original and exclusive jurisdiction of all termination case(sic.)." The dispositive portion of the decision states that:

> "WHEREFORE, premises considered, judgment is hereby rendered as follows:
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> (1) Declaring complainant's dismissal by respondent hotel as illegally effected;
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> (2) Ordering respondent to immediately reinstate complainant to her previous position without loss of seniority rights;
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> (3) Ordering further respondent to pay complainant the full backwages due her, which is computed as follows:
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> | | | |
> |---|---|---|
> | 3/23/90 - 10/31/90 | = 7.26/mos. | |
> | P2,540 x 7.26/mos. | | P18,440.40 |
> | 11/1/90 - 1/7/91 | = 2.23/mos. | |
> | P3,224.16 x 2.23/mos. | | 7,189.87 |
> | 1/8/91 - 4/29/92 | = 15.7/mos. | |
> | P3,589.16 x 15.7/mos. | | 56,349.89 |
> | | | ––––––––– |
> | | | P81,980,08 |
>
> (4) Moreover, respondent is ordered to pay the 13th month pay due the complainant in the amount of P6,831.67 including moral and exemplary damages of P15,000.00 and P10,000.00 respectively, as well as attorney's fees equivalent to ten (10) percent of the total award herein in the amount of P11,381.17;
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> (5) Finally, all other claims are hereby dismissed for lack of merit.
>
> "SO ORDERED."

Private respondent appealed the decision to the respondent commission on the ground inter alia that the Labor Arbiter erred in "assuming jurisdiction over the illegal dismissal case after finding that the case falls within the jurisdictional ambit of the grievance procedure under the CBA, and if unresolved, proper for voluntary arbitration."[10] An Opposition[11] was filed by petitioner.

In the assailed Resolution[12] dated June 3, 1994, respondent NLRC dismissed the illegal dismissal case for lack of jurisdiction of the Labor Arbiter because the same should have instead been subjected to voluntary arbitration.

Petitioner's motion for reconsideration[13] was denied by respondent NLRC for lack of merit.

In this petition for certiorari, petitioner ascribes to respondent NLRC grave abuse of discretion in —

1. Ruling that the Labor Arbiter was without jurisdiction over the illegal dismissal case;

2. Not ruling that private respondent is estopped by laches from questioning the jurisdiction of the Labor Arbiter over the illegal dismissal case; and

3. Reversing the decision of the Labor Arbiter based on a technicality notwithstanding the merits of the case.

Petitioner contends that Article 217(a)(2) and (c) relied upon by respondent NLRC in divesting the labor arbiter of jurisdiction over the illegal dismissal case, should be read in conjunction with Article 261[14] of the Labor Code. It is the view of petitioner that termination cases arising from the interpretation or enforcement of company personnel policies pertaining to violations of Offenses Subject to Disciplinary Actions (OSDA), are under the jurisdiction of the voluntary arbitrator only if these are unresolved in the plant-level grievance machinery. Petitioner insists that her termination is not unresolved grievance as there has been no grievance meeting between the NUWHRAIN union and the management. The reason for this, petitioner adds, is that it has been a company practice that

termination cases are not anymore referred to the grievance machinery but directly to the labor arbiter.

In its comment, private respondent argues that the Labor Arbiter should have dismissed the illegal dismissal case outright after finding that it is within the jurisdictional ambit of the grievance procedure. Moreover, private respondent states that the issue of jurisdiction may be raised at any time and at any stage of the proceedings even on appeal, and is not in estoppel by laches as contended by the petitioner.

For its part, public respondent, through the Office of the Solicitor General, cited the ruling of this Court in Sanyo Philippines Workers Union-PSSLU vs. Cañizares[15] in dismissing the case for lack of jurisdiction of the Labor Arbiter.

The legal issue in this case is whether or not the Labor Arbiter has jurisdiction over the illegal dismissal case.

The respondent Commission, in holding that the Labor Arbiter lacks jurisdiction to hear the illegal dismissal case, cited as basis therefor Article 217 of the Labor Code, as amended by Republic Act No. 6715. It said:

> "While it is conceded that under Article 217(a), Labor Arbiters shall have original and exclusive jurisdiction over cases involving "termination disputes," the Supreme Court, in a fairly recent case ruled:
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> > 'The procedure introduced in RA 6715 of referring certain grievances originally and exclusively to the grievance machinery, and when not settled at this level, to a panel of voluntary arbitrators outlined in CBAs does not only include grievances arising from the interpretation or implementation of the CBA but applies as well to those arising from the implementation of company personnel policies. No other body shall take cognizance of these cases.' (Sanyo vs. Cañizares, 211 SCRA 361, 372)"[16]

We find that the respondent Commission has erroneously interpreted the aforequoted portion of our ruling in the case of Sanyo, as divesting the Labor Arbiter of jurisdiction in a termination dispute.

Article 217 of the Labor Code gives us the clue as to the jurisdiction of the Labor Arbiter, to wit:

> Article 217. Jurisdiction of Labor Arbiters and the Commission. — a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide within thirty (30) calendar days after the submission of the case by the parties for decision without extension even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:
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> 1. Unfair labor practice cases;
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> 2. Termination disputes;
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> 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
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> 4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
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> 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts;
>
> 6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements."

As can be seen from the aforequoted Article, termination cases fall under the original and exclusive jurisdiction of the Labor Arbiter. It should be noted, however, that in the opening paragraph there appears the phrase: "Except as otherwise provided under this Code." It is paragraph (c) of the same Article which respondent Commission has erroneously interpreted as giving the voluntary arbitrator jurisdiction over the illegal dismissal case.

However, Article, 217 (c) should be read in conjunction with Article 261 of the Labor Code which grants to voluntary arbitrators original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies. Note the phrase "unresolved grievances." In the case at bar, the termination of petitioner is not an unresolved grievance.

The stance of the Solicitor General in the Sanyo case is totally the reverse of its posture in the case at bar. In Sanyo, the Solicitor General was of the view that a distinction should be made between a case involving "interpretation or implementation of Collective Bargaining Agreement" or interpretation or "enforcement" of company personnel policies, on the one hand and a case involving termination, on the other hand. It argued that the dismissal of the private respondents does not involve an "interpretation or implementation" of a Collective Bargaining Agreement or "interpretation or enforcement" of company personnel policies but involves "termination." The Solicitor General further said that where the dispute is just in the interpretation, implementation or enforcement stage, it may be referred to the grievance machinery set

up in the Collective Bargaining Agreement or by voluntary arbitration. Where there was already actual termination, i.e., violation of rights, it is already cognizable by the Labor Arbiter.[17] We fully agree with the theory of the Solicitor General in the Sanyo case, which is radically apposite to its position in this case.

Moreover, the dismissal of petitioner does not fall within the phrase "grievances arising from the interpretation or implementation of collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies," the jurisdiction of which pertains to the grievance machinery or thereafter, to a voluntary arbitrator or panel of voluntary arbitrators. It is to be stressed that under Article 260 of the Labor Code, which explains the function of the grievance machinery and voluntary arbitrator, "(T)he parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies." Article 260 further provides that the parties to a CBA shall name or designate their respective representative to the grievance machinery and if the grievance is unsettled in that level, it shall automatically be referred to the voluntary arbitrators designated in advance by the parties to a CBA of the union and the company. It can thus be deduced that only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators.[18]

In the case at bar, the union does not come into the picture, not having objected or voiced any dissent to the dismissal of the herein petitioner. The reason for this, according to petitioner is that "the practice in said Hotel in cases of termination is that the latter cases are not referred anymore to the grievance committee;" and that "the terminated employee who wishes to question the legality of his termination usually goes to the Labor Arbiter for arbitration, whether the termination arose from the interpretation or enforcement of the company personnel policies or otherwise."[19]

As we ruled in Sanyo, "Since there has been an actual termination, the matter falls within the jurisdiction of the Labor Arbiter." The aforequoted doctrine is applicable foursquare in petitioner's case. The dismissal of the petitioner does not call for the interpretation or enforcement of company personnel policies but is a termination dispute which comes under the jurisdiction of the Labor Arbiter.

It should be explained that "company personnel policies" are guiding principles stated in broad, long-range terms that express the philosophy or beliefs of an organization's top authority regarding personnel matters. They deal with matters affecting efficiency and well-being of employees and include, among others, the procedure in the administration of wages, benefits, promotions, transfer and other personnel movements which are usually not spelled out in the collective agreement. The usual source of grievances, however, are the rules and regulations governing disciplinary actions.[20]

The case of Pantranco North Express, Inc. vs. NLRC[21] sheds further light on the issue of jurisdiction where the Court cited the Sanyo case and quoted the decision of therein Labor Arbiter Olairez in this manner:

> "In our honest opinion we have jurisdiction over the complaint on the following grounds:
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> > First, this is a complaint of illegal dismissal of which original and exclusive jurisdiction under Article 217 has been conferred to the Labor Arbiters. The interpretation of the CBA or enforcement of the company policy is only corollary to the complaint of illegal dismissal. Otherwise, an employee who was on AWOL, or who committed offenses contrary to the personnel policies(sic) can no longer file a case of illegal dismissal because the discharge is premised on the interpretation or enforcement of the company policies(sic).
> >
> > Second. Respondent voluntarily submitted the case to the jurisdiction of this labor tribunal. It adduced arguments to the legality of its act, whether such act may be retirement and/or dismissal, and prayed for reliefs on the

> merits of the case. A litigant cannot pray for reliefs on the merits and at the same time attacks(sic) the jurisdiction of the tribunal. A person cannot have one's cake and eat it too."

As to the second ground, petitioner correctly points out that respondent NLRC should have ruled that private respondent is estopped by laches in questioning the jurisdiction of the Labor Arbiter.

Clearly, estoppel lies. The issue of jurisdiction was mooted by herein private respondent's active participation in the proceedings below. In Marquez vs. Secretary of Labor,[22] the Court said:

> "The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction."

In the assailed Resolution,[23] respondent NLRC cited La Naval Drug Corporation vs. Court of Appeals[24] in holding that private respondent is not in estoppel. Thus:

> "The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel' (5 C.J.S., 861-863). However, if the lower court had Jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position — that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does

not depend upon the will of the parties, has no bearing thereon." (Emphasis ours)

Again, the respondent NLRC has erroneously interpreted our ruling in the La Naval case. Under the said ruling, estoppel lies in this case. Private respondent is estopped from questioning the jurisdiction of the Labor Arbiter before the respondent NLRC having actively participated in the proceedings before the former. At no time before or during the trial on the merits did private respondent assail the jurisdiction of the Labor Arbiter. Private respondent took the cue only from the preliminary statement in the decision of the Labor Arbiter, which was a mere obiter, and raised the issue of jurisdiction before the Commission. It was then too late. Estoppel had set in.

Turning now to the merits of the case, We uphold the ruling of the Labor Arbiter that petitioner was illegally dismissed.

The requisites of a valid dismissal are (1) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code,[25] and (2) the employee must be given an opportunity to be heard and to defend himself.[26] The substantive and procedural laws must be strictly complied with before a worker can be dismissed from his employment because what is at stake is not only the employee's position but his livelihood.[27]

Petitioner's dismissal was grounded on culpable carelessness, negligence and failure to follow specific instruction(s) or established procedure(s) under OSDA 1.11; and, having forged or falsified official document(s) under OSDA 2.01.

Private respondent blames petitioner for failure to follow established procedure in the hotel on a guest's request for long distance calls. Petitioner, however, explained that the usual or established procedures are not followed by the operators and hotel employees when circumstances warrant. For instance, the RLDC forms and the deposits are brought by the page boy directly to the operators instead of the cashiers if the latter are busy and cannot attend to the same. Furthermore, she avers that the telephone operators are not conscious of the serial numbers in the RLDCs and at times, the used RLDCs are recycled. Even the page boys do not actually check the

serial numbers of all RLDCs in one batch, except for the first and the last.

On the charge of taking of the money by petitioner, it is to be noted that the second P500.00 deposit made by the Japanese guest Ieda was later discovered to be inserted in the folder for cancelled calls with deposit and official receipts. Thus, there exists no basis for personal appropriation. by the petitioner of the money involved. Another reason is the alleged tampering of RLDC No. 862406.[28] While petitioner and her co-operator Loleng admitted that they indeed altered the date appearing therein from February 15, 1990 to February 13, the same was purposely made to reflect the true date of the transaction without any malice whatsoever on their part.

As pointed out by Labor Arbiter Oswald B. Lorenzo, thus:

> "The specifics of the grounds relied by respondent hotel's dismissal of complainant are those stated in Annex 'F' of the latter's POSITION PAPER, which is the Notice of Dismissal, notably:
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> 1. OSDA 2.01 — Forging, falsifying official document(s).
>
> 2. OSDA 1.11 — Culpable negligence or failure to follow specific instruction(s) or established procedure(s).

On this score, we are persuaded by the complainant's arguments that under OSDA 1.11, infractions of this sort is not without qualifications, which is, that the alleged culpable carelessness, negligence or failure to follow instruction(s) or established procedure(s), RESULTING IN LOSS OR DAMAGE TO COMPANY PROPERTY. From the facts obtaining in this case, there is no quantum of proof whatsoever, except the general allegations in respondent's POSITION PAPER and other pleadings that loss or damage to company property resulted from the charged infraction. To our mind, this is where labor tribunals should come in and help correct interpretation of company policies which in the enforcement thereof wreaks havoc to the constitutional guarantee of security of tenure. Apparently, the exercise of little flexibility by complainant and co-employees which is predicated on good faith should not be taken against them and more

particularly against the complainant herein. In this case, to sustain the generalized charge of respondent hotel under OSDA 1.11 would unduly be sanctioning the imposition of too harsh a penalty — which is dismissal.

In the same tenor, the respondent's charge under OSDA 1.11 on the alleged falsification of private document is also with a qualification, in that the alleged act of falsification must have been done 'IN SUCH A WAY AS TO MISLEAD THE USER(S) THEREOF.' Again, based on the facts of the complained act, there appeared no one to have been misled on the change of date from RLDC #862406 FROM 15 TO 13 February 1990.

As a matter of fact, we are in agreement with the jurisprudence cited by VIRGILIO M. PATAG, the 2nd Asst. City Prosecutor of the City of Manila, who exculpated complainant MANEJA from the charges of falsification of private documents and qualified theft under IS No. 90-11083 and marked Annex 'H' of complainant's POSITION PAPER, when he ruled that an altercation which makes the document speak the truth cannot be the foundation of a criminal action. As to the charge of qualified theft, we too are of the finding, like the city prosecutor above-mentioned that there was no evidence on the part of MANEJA to have unlawfully taken the P500.00 either from the hotel or from guest IEDA on 13 February 1990 and moreover, we too, find no evidence that complainant MANEJA had the intention to profit thereby nor had misappropriated the P500.00 in question."[29]

Given the factual circumstances of the case, we cannot deduce dishonesty from the act and omission of petitioner. Our norms of social justice demand that we credit employees with the presumption of good faith in the performance of their duties,[30] especially petitioner who has served private respondent since 1985 up to 1990 without any tinge of dishonesty and was even named "Model Employee" for the month of April, 1989.[31]

Petitioner has been charged with a very serious offense — dishonesty. This can irreparably wreck her life as an employee for no employer will take to its bosom a dishonest employee. Dismissal is the supreme penalty that can be meted to an employee and its imposition cannot be justified where the evidence is ambivalent.[32] It must, therefore, be

based on a clear and not on an ambiguous or ambivalent ground. Any ambiguity or ambivalence on the ground relied upon by an employer in terminating the services of an employee denies the latter his full right to contest its legality. Fairness cannot countenance such ambiguity or ambivalence.[33]

An employer can terminate the services of an employee only for valid and just causes which must be supported by clear and convincing evidence. The employer has the burden of proving that the dismissal was indeed for a valid and just cause.[34] Failure to do so results in a finding that the dismissal was unjustified.[35]

Finding that there was no just cause for dismissal of petitioner, we now determine if the rudiments of due process have been duly accorded to her.

Well-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be effected: (a) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and, (b) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[36]

In the case at bar, petitioner and her co-operator Loleng were issued a memorandum on March 7, 1990. On March 11, 1990, they submitted their written explanation thereto. On March 20, 1990, a written report was made with a recommendation that the offenses committed by them were covered by OSDA 1.11 and 2.01. Thereafter, on March 23, 1990, petitioner was served with a notice of dismissal for said violations effective April 1, 1990.

An examination of the record reveals that no hearing was ever conducted by private respondent before petitioner was dismissed. While it may be true that petitioner submitted a written explanation, no hearing was actually conducted before her employment was

terminated. She was not accorded the opportunity to fully defend herself.

Consultations or conferences may not be a substitute for the actual holding of a hearing. Every opportunity and assistance must be accorded to the employee by the management to enable him to prepare adequately for his defense, including legal representation.[37] Considering that petitioner denied having allegedly taken the second P500.00 deposit of the Japanese guest which was eventually found; and, having made the alteration of the date on the second RLDC merely to reflect the true date of the transaction, these circumstances should have at least warranted a separate hearing to enable petitioner to fully ventilate her side. Absent such hearing, petitioner's right to due process was clearly violated.[38]

It bears stressing that a worker's employment is property in the constitutional sense. He cannot be deprived of his work without due process of law. Substantive due process mandates that an employee can only be dismissed based on just or authorized causes. Procedural due process requires further that he can only be dismissed after he has been given an opportunity to be heard. The import of due process necessitates the compliance of these two aspects.

Accordingly, we hold that the labor arbiter did not err in awarding full backwages in view of his finding that petitioner was dismissed without just cause and without due process.

We ruled in the case of Bustamante vs. NLRC[39] that the amount of backwages to be awarded to an illegally dismissed employee must be computed from the time he was dismissed to the time he is actually reinstated, without deducting the earnings he derived elsewhere pending the resolution of the case.

Petitioner is likewise entitled to the thirteenth-month pay. Presidential Decree No. 851, as amended by Memorandum Order No. 28, provides that employees are entitled to the thirteenth-month pay benefit regardless of their designation and irrespective of the method by which their wages are paid.[40]

The award of moral and exemplary damages to petitioner is also warranted where there is lack of due process in effecting the dismissal.

Where the termination of the services of an employee is attended by fraud or bad faith on the part of the employer, as when the latter knowingly made false allegations of a supposed valid cause when none existed, moral and exemplary damages may be awarded in favor of the former.[41]

The anti-social and oppressive abuse of its right to investigate and dismiss its employees constitute a violation of Article 1701 of the New Civil Code which prohibits acts of oppression by either capital or labor against the other, and Article 21 on human relations. The grant of moral damages to the employees by reason of such conduct on the part of the company is sanctioned by Article 2219, No. 10 of the Civil Code, which allows recovery of such damages in actions referred to in Article 21.[42]

The award of attorney's fees amounting to ten percent (10%) of the total award by the labor arbiter is justified under Article 111 of the Labor Code.

WHEREFORE, premises considered, the petition is **GRANTED** and the assailed resolutions of the respondent National Labor Relations Commission dated June 3, 1994 and October 20, 1995 are hereby **REVERSED AND SET ASIDE**. The decision dated May 29, 1992 of the Labor Arbiter is therefore **REINSTATED**.

SO ORDERED.

Regalado, Puno and Mendoza, *JJ.*, concur.
Melo, *J.*, is on leave.

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[1] Penned by Presiding Commissioner Bartolome S. Carale and concurred in by Commissioner Vicente S.E. Veloso and Commissioner Alberto R. Quimpo (on leave), First Division.
[2] Ibid.
[3] Annex "D" of Respondent's Memorandum; Rollo, p. 105.

[4] Annex "E" of Complainant's Position Rollo, p. 59; Annex "E" of Respondent's Memorandum; Rollo, p. 106.
[5] Annex "F" of Respondent's Memorandum; Rollo, pp. 107-108.
[6] Annex "F" of Complainant's Position Paper; Rollo, p. 60.
[7] Entitled "Manila Midtown Hotel, Complainant, vs. Rowena Loleng y Sanares, et al., Respondents."
[8] Annex "I" of Petition; Rollo, pp. 133-144.
[9] Rollo, p. 136.
[10] Annex "J" of Petition; Rollo, pp. 145-155.
[11] Annex "K" of Petition, Rollo, pp. 157-164.
[12] See note 1; Annex "A" of Petition; Rollo, pp. 28-32.
[13] Annex "B" of Petition; Rollo, pp. 33-39.
[14] 14. Article 261. Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators. — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article.
[15] 211 SCRA 361 [1992].
[16] Resolution of respondent commission dated June 3, 1994; Rollo, pp. 28-32.
[17] Sanyo, supra.
[18] Ibid.
[19] Petition, Rollo, p. 15.
[20] San Miguel Corp. vs. National Labor Relations Commission, G.R. No. 108001, March 15, 1996, 255 SCRA 133, 140; citing C.A. Azucena, The Labor Code With Comments And Cases, Vol. II, 1993 ed., p. 272.
[21] G.R. No. 95940, July 24, 1996, 259 SCRA 161, 167-168.
[22] 171 SCRA 337, 346, cited in Stolt-Nielsen Marine Services (Phils.), Inc. vs. NLRC, G.R. No. 105396, November 19, 1996, 264 SCRA 307, 319.
[23] Annex "C" of Petition; Rollo, pp. 41-42.
[24] 236 SCRA 78.
[25] Article 282 of the Labor Code provides:
ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or duly authorized representative; and
(e) Other causes analogous to the foregoing.
[26] Midas Touch Food Corp. vs. NLRC, G.R. No. 111639, July 29, 1996, 259 SCRA 652, 657; citing Mapalo vs. NLRC, 233 SCRA 266; Pizza

Hut/Progressive Development Corp. vs. NLRC, G.R. No. 117059, January 29, 1996, 252 SCRA 531, 535 citing Mapalo vs. NLRC, supra.

[27] Midas Touch Food Corp. vs. NLRC, supra., 657.
[28] Annex "C" of Private Respondent's Position Paper, Rollo, p. 90.
[29] Decision of Labor Arbiter; Rollo, pp. 140-141.
[30] Pizza Hut/Progressive Development Corp. vs. NLRC, supra., 539.
[31] Rollo, pp. 91-92.
[32] Pizza Hut/Progressive Development Corp. vs. NLRC, supra., 540.
[33] Pantranco North Express, Inc. vs. NLRC, G.R. No. 114333, January 24, 1996, 252 SCRA 237, 243-244.
[34] Philippine Long Distance Telephone Company vs. NLRC, et. al., G.R. No. 99030, July 31, 1997.
[35] Uy vs. National Labor Relations Commission, G.R. No. 117983, September 6, 1996, 261 SCRA 505, 512; citing Labor Code, Article 277(b); Golden Donuts, Inc. vs. National Labor Relations Commission, 230 SCRA 153 [1994]; Reyes & Lim Co., Inc. vs. National Labor Relations Commission, 201 SCRA 772, 775 [1991].
[36] Pono vs. NLRC, et al., G.R. No. 118860, July 17, 1997.
[37] Ibid.
[38] Ibid.
[39] G.R. No. 111651, November 28, 1996, cited in the case of Philippine Long Distance Telephone Company vs. NLRC, et. al., G.R. No. 99030, July 13, 1997; Mabeza vs. NLRC, Hotel Supreme, et. al., G.R. No. 118506, April 18, 1997.
[40] Jackson Building Condominium Corporation vs. National Labor Relations Commission, G.R. No. 111515, July 14, 1995, 246 SCRA 329, 333.
[41] Lirag Textile Mills, Inc. vs. Court of Appeals, et. al., 63 SCRA 374, 385, April 14, 1975.
[42] Philippine Refining Co., Inc. vs. Garcia, 18 SCRA 107, September 27, 1966.