SUPREME COURT
THIRD DIVISION

JOSE MARCELO and CARLITO SARCIA,
***Petitioners*,**

-versus-

G.R. No. 113458
January 31, 1995

NATIONAL LABOR RELATIONS COMMISSION and T. P. MARCELO and LUZ ICE PLANT and COLD STORAGE,
***Respondents*.**
x----------x

R E S O L U T I O N

VITUG, *J.*:

Petitioners were employed — Jose Marcelo as truck driver on 10 November 1972 and Carlito Sarcia as truck helper on 06 May 1988 — by private respondent. On 27 November 1990, petitioners delivered and unloaded a truckload of ice to Frabelle Fishing Corporation. When a security guard (Negrido) of Frabelle Fishing Corporation noticed that a one-fourth block of ice (the exact size remained in dispute) was left on board the truck,, he ordered it to be likewise unloaded. Petitioner Sarcia allegedly "threw" the piece of ice to the ground, splashing mud on the pants of Negrido that infuriated the latter. Negrido reported the matter on the same day to Frabelle's chief investigator (Domingo Lacon). On 07 December 1990, Lacon wrote

private respondent, stating that petitioners were "caught red-handed stealing 1/4 block of ice."

On 08 December 1990, petitioners were given individual misconduct reports and advised of their preventive suspension for dishonesty by private respondent. Petitioners refused to sign the misconduct slips.

Private respondent filed, on 04 January 1991, with the Prosecutor's Office at Navotas, Metro Manila, a criminal case for Qualified Theft (docketed I.S. No. 91-49) against petitioners. The case was later dismissed for insufficiency of evidence.

Meanwhile, or on 14 February 1991, petitioners received separate letters from private respondent, advising them that their services were being terminated for loss of trust and confidence. Forthwith, petitioner Jose Marcelo filed a complaint for illegal dismissal (docketed NLRC Case No. NC-00-02-01015-91) against private respondent. The following day, 15 February 1991, petitioner Carlito Sarcia filed his own complaint (docketed NLRC Case No. NCR-00-02-01019-91). These two (2) cases were consolidated and tried jointly.

On 05 December 1991, a decision was rendered by Labor Arbiter Eduardo J. Carpio, the dispositive portion of which stated:

> "WHEREFORE, judgment is hereby rendered declaring the dismissal of the two (2) complainants herein as illegal and ordering the respondent T.P. Marcelo and Luz Ice Plant and Cold Storage to reinstate the complainants to their former positions with full backwages from December 11, 1990 until actual or payroll reinstatement."[1]

Private respondent appealed the decision of the Labor Arbiter to the National Labor Relations Commission ("NLRC"). Petitioners likewise appealed but only "insofar as the decision [did] not contain an award for Attorney's Fees." On 20 February 1992, petitioners filed a "Motion to Dismiss Respondent's Appeal and for Execution" for failure of private respondent to file an appeal bond (cash or surety required under Article 223 of the Labor Code). Parenthetically, these motions were not acted upon by the NLRC.

In its decision of 21 May 1993, the NLRC reversed the Labor Arbiter. It held:

> "WHEREFORE, the questioned Decision is SET ASIDE but the respondents are ordered to indemnify the complainants, in the amount of P1,000.00 each."[2]

Petitioners' motion for reconsideration was denied for lack of merit.

Hence, the instant petition. In a resolution, dated 16 February 1994, this Court required the respondents to comment on the petition. The Solicitor General, instead of filing a comment in behalf of respondent NLRC, filed a "Manifestation and Motion (In Lieu of Comment)," with the prayer that the Court should 1) annul and set aside respondent NLRC's decision, dated 31 May 1993, and its resolution of 23 November 1993; 2) order the reinstatement of petitioners to their former positions with full back salaries from 11 December 1990 until actual or payroll reinstatement; and 3) grant public respondent NLRC a new period of time within which to file, if desired, its own comment. On 25 October 1994, NLRC filed its comment to the petition.

We find merit in the petition.

This Court has almost always refrained from reviewing factual assessments of lower courts and agencies exercising adjudicative functions. Occasionally, however, the Court has delved into such matters as when, generally, there is little or nothing substantial on record that can support those factual findings. The same holds true when it is perceived that far too much is concluded, inferred or deduced from bare facts adduced in evidence.

We have often stressed that to be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust (Tiu vs. NLRC, 215 SCRA 540) and founded on clearly established facts sufficient to warrant the employee's separation from work (Pilipinas Bank vs. NLRC, 215 SCRA 750; China City Restaurant Corp. vs. NLRC, 217 SCRA 443).

Petitioners Marcelo and Sarcia have been in the employ of private respondent since 1972 and 1988, respectively, and except for the

incident in question, they apparently have no derogatory record. The allegedly "stolen" ice measured, according to private respondent, by a fourth of a block which, when discovered to have remained inside the delivery truck, was said to have been "thrown" to the ground by petitioner Sarcia. The likelihood that the piece could have merely broken off and inadvertently left inside the truck is not all that remote. The admitted fact, furthermore, that the "thrown" block or piece upon hitting the ground splashed mud on the security guard, might have indeed, such as petitioners suggest, prompted the latter to make an adverse report against the duo. This Court does not here intend to itself engage in hyperbole; all that it attempts to point out is that a conclusion contrary to that of the NLRC can likewise be easily drawn from the facts adduced. Factual findings of the NLRC, to be binding on this Court, must have a fairly good degree of freedom from uncertainty. The penalty of dismissal is too harsh to be meted for less than strong evidence and palpable reasons.

Here, petitioners were placed under preventive suspension, effective 11 December 1990,[3] and thereafter refused admission by private respondent without first being afforded an opportunity to present their side on, and defend themselves from, the accusations lodged against them. Instead, petitioners were sent separate notices of dismissal on 14 February 1991. The NLRC itself has thusly concluded: "However, We consider that there is at least a partial deprivation of complainants right to procedural due process. (Gold City Integrated Port Services, Inc. [INPORT] vs. NLRC, et al., 189 SCRA 811). Since the complainants were not given an opportunity to defend themselves before the imposition of the preventive suspension, the respondents shall be liable to indemnify the complainants in the sum of P1,000.00 each, as damages (Seashore Maritime Corp. vs. NLRC, 173 SCRA 390; Wenphil Corporation vs. NLRC, 170 SCRA 69)."[4]

It is settled that the twin requirements of notice and hearing constitute essential elements of due process in the dismissal of employees (Corral vs. NLRC, 221 SCRA 693).

Private respondent's assertion that there has been no denial of due process but simply a case of petitioners not having opted to avail themselves of due process is unacceptable. The provision of Section 5,

Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code is clear and categorical:

> "Sec. 5. Answer and hearing. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires."

Nevertheless, the filing of the complaint for illegal dismissal has now evidently strained the harmonious relationship between the parties; reinstatement would no longer, in our view, be beneficial to either party. An award of back salaries and severance pay in lieu of reinstatement would thus appear to be in order (People's Security, Inc. vs. NLRC, 226 SCRA 146; Pilipinas Bank vs. NLRC, 215 SCRA 750).

WHEREFORE, the petition is **GRANTED**, and the assailed decision of the NLRC, dated 31 May 1993, reversing that of the Labor Arbiter, is **SET ASIDE**. Private respondent is **ORDERED** to pay petitioners back salaries and separation pay. The case is **REMANDED** to the National Labor Relations Commission for the corresponding computation of the amounts due petitioners in consonance with this opinion. No costs.

SO ORDERED.

Feliciano, Romero, Melo and Francisco, *JJ.*, concur.

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[1] Rollo, p. 53.
[2] Rollo, p. 41.
[3] Rollo, p. 34.
[4] Rollo, p. 40.