SUPREME COURT
SECOND DIVISION

PHILIPPINE TELEGRAPH AND TELEPHONE CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 80600
March 21, 1990

NATIONAL LABOR RELATIONS COMMISSION and BOBBY TORIBIANO,
***Respondents*.**
x----------x

D E C I S I O N

REGALADO, *J.*:

Assailed in this Petition for Certiorari is the Resolution[1] of respondent commission, dated August 21, 1987, which affirmed with modification the decision of Labor Arbiter Nicolas S. Sayon, the decretal portion of which resolution reads:

> "WHEREFORE, premises considered, judgment is hereby rendered, modifying the Labor Arbiter's decision dated November 14, 1986, ordering respondent:

1. To reinstate complainant to his former position without payment of backwages;

2. To pay complainant his unpaid wages for the month of July, 1985; and

3. To pay complainant his entitlement on holiday pay, rest day pay and incentive leave pay for three years starting from August 23, 1982 to August 23,1983."[2]

We quote the generative facts of the case as synthesized by Labor Arbiter Sayon and implicitly adopted by respondent commission:

> "Complainant was employed with the respondent since February 1, 1979 at its branch station at General Santos City, first as a collector and later on as a counter-clerk and long distance operator. On August 24,1985 complainant was terminated by the respondent for tampering (with) the vodex receipt by writing the amount of P41.15 as appearing in the duplicate while the original copy issued to the customer was P113.25.
>
> "Complainant alleged that he explained to the respondent's Branch Supervisor that the discrepancy of the amounts reflected in the duplicate and the original of said receipt was done by inadvertence and without malicious interest to defraud the respondent. Complainant contended that at the particular incident on July 26, 1985, he was alone in the office attending to customers who filed their respective telegrams wherein he has to count the number of words, determine the amount payable, collect the payment and file with the telex operator; that in addition, there were several customers placing long distance calls and (he) had to wait (for) them (to) finish their calls to determine the minutes consumed. Complainant argued that it is in this process that he forgot to take the number of minutes used up and he estimated that one customer who was issued a receipt used eleven minutes and in haste (he) wrote the particulars but he failed to use a carbon paper for the duplicate and when he summarized the duplicate receipts issued for that day, the latter found out that duplicate receipt bearing 324698

has no particulars. Considering that he could not anymore recall how much he had actually wrote (sic) in the original, the complainant wrote through a carbon paper the amount of P41.15. Complainant now alleged that without proper investigation and warning, he was terminated by the respondent effective August 24, 1985. He is also claiming for his salary for the month of July, 1985 which was withheld by the respondent, his holiday pay, rest day pay and incentive leave pay.

"Respondent, on the other hand, alleged that a regular audit was conducted at their PT & T General Santos City branch on August 14 to 19,1985, by its Internal Auditor; that, it was discovered during the audit that complainant on July 26, 1985 had accepted and receipted a long distance call in the amount of P113.25 under TOR No. 324698 (Annex 'A' of respondent) but what was reflected in the duplicate copy was only P41.15, with a difference of P72.10 which was used for his own personal comfort. Respondent argued that while this fact has been admitted by the complainant, his explanation was flimsy and shallow; that the fact that there was no carbon placed for the duplicate is enough evidence for (sic) his illegal interest and that his intention to tamper (with) and malverse company funds is very glaring to be ignored. It was further argued that the acts of the complainant reflect that he is morally deprived and, therefore, could not be trusted considering that he violated the trust and confidence reposed upon him which constitutes a valid reason for his termination."[3] (Corrections in parentheses supplied).

After a careful review of the records, Labor Arbiter Sayon rendered his decision, with the following dispositive part:

"WHEREFORE, responsive to the foregoing, judgment is hereby rendered against the respondent, Philippine Telegraph and Telephone Corporation (PT & T), General Santos branch:

1. To reinstate complainant, Bobby Toribiano, to his former position without loss of seniority rights plus

backwages and emergency living allowance equivalent to six (6) months;

2. To pay complainant his unpaid wages for the month of July, 1985; and

3. To pay complainant his entitlement on holiday pay, rest day pay and incentive leave pay for three years starting from August 23, 1982 to August 23,1985."[4]

As earlier stated, respondent commission affirmed said decision with modification, deleting therefrom the award of backwages. Not satisfied therewith, the employer corporation resorted to the instant petition.

Petitioner submits for consideration substantially the same arguments it adduced in the labor arbiter's office and on appeal to respondent commission on the matter of private respondent's dismissal.

The petition is without merit.

The labor arbiter made a finding that private respondent was indeed alone in the office on July 26, 1985 busily performing his duties as counter-clerk and long distance operator at the same time, the functions of which dual positions precisely caused him to commit a mistake in the entry receipt through negligence. Further, it was found that private respondent had repeatedly brought to the attention of petitioner his predicament of having to singly perform manifold duties but the same were ignored by the latter.[5]

We find no cogent reason to disturb such findings. Well entrenched is the rule that when the conclusions of the labor arbiter are sufficiently corroborated by the evidence on record, the same should be respected by appellate tribunals since he is in a better position to assess and evaluate the credibility of the contending parties.[6] Not even the failure of petitioner to present witnesses or counter-affidavits will constitute a fatal error as long as the parties were given a chance to submit position papers on the basis of which the labor arbiter rendered a decision.[7]

Considering all the attendant circumstances, even assuming that there may have been a valid ground for dismissal, the imposition of such supreme penalty would certainly be very harsh and disproportionate to the infraction committed by private respondent, especially considering that it was private respondent's first offense after having faithfully rendered seven (7) long years of satisfactory service. These, and the fact that the imputed defalcation involved the sum of only P72.10, bolster the credibility of private respondent's explanation in his defense.

While an employer has its own interests to protect and, pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must not be abusively exercised. Such power should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's posihon but his livelihood as well.[8]

This ruling is only in keeping with the constitutional mandate for the State to afford full protection to labor such that, when conflicting interests of labor and capital are to be weighed on the scales of social justice, the heavier influence of the latter should be counterbalanced by the sympathy and compassion the law must accord the underprivileged worker.[9]

Parenthetically, petitioner's claim that the offense in actuality partakes of the nature of falsification, which would justify outright dismissal, is of no moment. Whether or not the infraction committed constitutes a criminal act is not for this Court to rule upon in the present petition.

It is not to be misconstrued, however, that private respondent's act is being condoned, much less tolerated. As ratiocinated by respondent Commission:

> "However, considering that complainant is not entirely faultless as to entirely absolve him from liability, we believe that a modification of the Labor Arbiter's decision is in order in that reinstatement to his former position without backwages would

> be the proper relief. Of course, his reinstatement is subject to the condition that commission of similar offense will justify his outright dismissal."[10]

Apropos of the award of unpaid wages, the finding of the labor arbiter that private respondent was indeed not paid his salary corresponding to the month of July, 1985[11] was not contradicted by petitioner, for which reason it must be upheld.

A contrario sensu, regarding respondent commission's pronouncement on the award of holiday pay, rest day pay and incentive leave pay for three (3) years from August 23, 1982 to August 23, 1983 (sic),[12] we are inclined to subscribe to the position taken by the Solicitor General. On appeal to respondent commission, petitioner submitted uncontradicted evidence[13] showing payment to private respondent of his holiday pay and rest day pay, and private respondent's non-entitlement to incentive leave pay due to his enjoyment of vacation leave privileges, consistent with Article 95, Chapter III, Title I, Book III of the Labor Code. Such evidence was, however, rejected by respondent commission on the erroneous justification that it was not presented at the first opportunity, presumably when the case was pending with the labor arbiter.[14]

The belated presentation of the evidence notwithstanding, respondent commission should have considered them just the same. As correctly pointed out by the Solicitor General, who has impartially taken a contrary view vis-a-vis that portion of said decision of respondent commission which he is supposed to defend, technical rules of evidence are not binding in labor cases. Labor officials should use every and reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.[15]

Thus, even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to respondent commission is enough basis for the latter to have been more judicious in admitting the same, instead of falling back on the mere technicality that said evidence can no longer be considered on appeal. Certainly, the first course of action would be more consistent with equity and the basic notions of fairness.

ON THE FOREGOING PREMISES, the resolution of respondent commission, dated August 21, 1987 is hereby **MODIFIED** in the sense that the award of holiday pay, rest day pay and incentive leave pay is **DELETED**. In all other respects, the same is hereby **AFFIRMED**.

SO ORDERED.

Melencio-Herrera, *J.*, *Chairman*, Paras, Padilla and Sarmiento, *JJ.*, concur.

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[1] Per Commissioner Rosario G. Encarnacion, with Commissioners Edna Bonto Perez and Conrado B. Maglaya concurring.
[2] Rollo, 45-46.
[3] Ibid., 22-24.
[4] Ibid., 27.
[5] Ibid., 26.
[6] Mary Johnston Hospital, et al., vs. National Labor Relations Commission, et al., 165 SCRA 110 (1988); Pan-Philippine Life Insurance Corporation vs. National Labor Relations Commission, et al., 114 SCRA 866 (1982).
[7] Manila Doctors Hospital vs. National Labor Relations Commission, et al., 135 SCRA 262 (1985).
[8] Santos vs. National Labor Relations Commission, et al., 166 SCRA 759 (1988).
[9] Eastern Shipping Lines, Inc. vs. Philippine Overseas Employment Administration, et al., 166 SCRA 533 (1988).
[10] Rollo, 45.
[11] Ibid., 27.
[12] This should read "1985."
[13] Ibid., 36-41.
[14] Ibid., 45.
[15] Article 221, Labor Code; Magna Rubber Manufacturing Corporation vs. Drilon, et al., G.R. No. 81771, December 29, 1988.