SUPREME COURT
SECOND DIVISION

DELFIN PALAGPAG,
***Petitioner*,**

-versus-

G.R. No. 96646
February 8, 1993

HON. LABOR RELATIONS COMMISSION AND LEPANTO CONSOLIDATED MINING COMPANY,
***Respondents*.**
x----------x

D E C I S I O N

NOCON, *J.*:

This is a Petition for *Certiorari* filed by Delfin Palagpag assailing the Resolution of the National Labor Relations Commission on November 29, 1990[1] affirming the dismissal by the Labor Arbiter of petitioner's complaint for illegal dismissal in a Decision dated April 3, 1989 2 for lack of merit.

The facts of the case are as follows:

Delfin Palagpag was employed with the Lepanto Consolidated Mining Company (Lepanto for brevity) on April 28, 1972 as mucker and was finally hired as a regular employee on July 28, 1972.

During his employment with Lepanto, it is undisputed that petitioner had been guilty of the following infractions:

1. On August 21, October 16, December 26, 1978 and February 5, 1979, petitioner was absent from his work without an official leave and was therefore subsequently warned of the same in writing;

2. On May 14 to 20, 1979, petitioner was laid off or suspended without pay for seven (7) days for being AWOL on August 21, October 16, December 26, 1978 and February 5;

3. On March 27, 1979, petitioner was warned for the 5th time for AWOL;

4. On November 26, 1979, petitioner was warned for the 6th time for AWOL;

5. On November 26, 1979, petitioner was warned for the 8th time for AWOL;

6. On December 1, 1979, petitioner was warned for the 9th time for AWOL;

7. On April 14, 1980, petitioner was issued a 10th warning for AWOL on July 6, 1981;

8. On July 11, 1981, petitioner was warned for the 11th time for AWOL on July 6, 1981;

9. On September 11, 1981, a 12th warning for AWOL was given to the petitioner for AWOL on September 8, 1981;

10. On April 5, 1982, a 13th warning was issued on petitioner for AWOL on March 22, 1982;

11. On May 15, 1982, a 14th warning was issued on petitioner for AWOL on April 26, 1982;

12. On August 26, 1982, a 15th warning was issued on petitioner for AWOL; on August 23, 1982;

13. On April 16, 1983, a 16th warning was issued on petitioner for AWOL on April 4, 1983;

14. On January 13, 1984, petitioner was given a 17th warning for AWOL on November 2, 1383;

15. On December 21, 1983, petitioner was warned for the 18th time for AWOL;

16. On March 20, 1985. a 19th warning was issued on petitioner for AWOL on May 21, 1984;

17. On March 18, 1985, petitioner was warned for the 20th time for AWOL;

18. On May 24, 1985, a first warning was given on petitioner for driving his trolley pole against the direction of the locomotive (firepoling); and

19. On February 17, 1986, he was warned for the 21st time for being absent without official leave on February 8, 1986.[3]

The last violation committed by petitioner was on July 19, 1987, when he was apprehended by the security guards of Lepanto for having taken within the premises of the company plant gold bearing rocks wrapped in a burlap sack weighing 6.69 kilograms.

Consequently, petitioner was brought to the office of the security force where he refused to give a statement and said that he would only give his statement before the Mankayan, Benguet Integrated National Police (INP).[4]

Petitioner later received from Lepanto a notice[5] of preventive suspension, with a directive to submit an answer to the charge of highgrading and to explain why no disciplinary action should be taken against him. The notice further stated that failure to do so

would mean a waiver of his right to be heard and to present his defense.

Instead of answering, petitioner gave Lepanto a copy of a sworn statement[6] dated July 20, 1987 purportedly taken by a certain Sgt. Malafu of the Mankayan, Benguet INP and sworn to before Judge Tito A. Payoyo on July 27, 1987.

Hence, a criminal complaint for violation of P.D. 581 for frustrated highgrading was filed against petitioner before the Municipal Court of Mankayan, Benguet.

Petitioner on the other hand filed a complaint[7] against Lepanto for illegal dismissal.

Labor Arbiter Norma Olegario rendered a Decision[8] dismissing petitioner's complaint for lack of merit.

Aggrieved by the decision of the Labor Arbiter, petitioner went to the National Labor Relations Commission, which affirmed the decision of the Labor Arbiter, the dispositive portion of which reads:

> "There being no cogent reason for Us to deviate from the decision appealed from, which is in Our view based upon the applicable law peculiar to the circumstances herein, We affirm.
>
> "WHEREFORE, ALL THINGS CONSIDERED, the decision appealed from is hereby affirmed.
>
> "SO ORDERED."[9]

Petitioner however, was acquitted in the criminal case filed against him.

Hence, this petition.

The issues raised before Us are the following:

1. Whether or not public respondent NLRC had committed grave abuse of discretion in affirming the decision of the

Executive Labor Arbiter declaring the dismissal of petitioner to be valid;

2. Whether or not due process was observed in the termination of the services of herein petitioner; and

3. Whether or not the acquittal of petitioner in the criminal case against him justifies his reinstatement.

The Decision of the NLRC is supported by substantial evidence, hence, We find no grave abuse of discretion committed by the NLRC. The succeeding discussion will explain the rationale of the foregoing conclusion.

The first and second issues will be discussed jointly, as they are interrelated with each other.

Records will show that when petitioner was apprehended by the company's security guards and was brought to the security office, the former refused to give a statement. He likewise did not submit an explanation to the charge against him.

As held in the case of Superior Concrete Products, Inc. vs. Workmen's Compensation Commission,[10] there was no denial of due process when an employee was given opportunity to be heard.

In the instant case, petitioner was given ample opportunity to be heard and to present his defense, if any. But he waived his right to do so. Thus, there is no denial of due process. Petitioner was given plenty of time to present his side of the case.[11]

Now to the main issue. Jurisprudence teaches us that acquittal of an employee in the criminal case filed against him by his employer does not guarantee his reinstatement where the employer has lost confidence in him.[12]

The records clearly show that petitioner has not only been charged with the offense of highgrading but also have been warned twenty-one (21) times for absences without official leave (AWOL).

These repeated acts of misconduct and willful breach of trust by an employee justify his dismissal and forfeiture of his right to security of tenure as held in the case of Philippine Long Distance Telephone Co. vs. NLRC.[13]

Furthermore, in the case of Tabacalera Insurance Co. and Alejandro Ros vs. NLRC and Domingo Simborio,[14] the Court said:

> "Loss of confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. It is enough that there be 'some basis' for such loss of confidence or that the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position."

Finally, the issue before Us is explained clearly in the case of Dole Philippines, Inc. vs. NLRC,[15] which said:

> "The acquittal of an employee in the criminal case filed against him by his employer does not also guarantee his reinstatement if the employer has lost confidence in him. In Phil. Education Co., Inc. vs. Union of Phil. Education Employees and CIR, 107 Phil. 1003, we held:
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> > 'The relation of employer and employee, especially where the employee has access to the employer's property in the form of articles and merchandise for sale, necessarily involves trust and confidence. If said merchandise are lost and said loss is reasonably attributed to said employee, and he is charged with theft, even if he is acquitted of the charge on reasonable doubt, when the employer has lost its confidence in him, it would be highly unfair to require said employer to continue employing him or to reinstate him, for in that case, the former might find it necessary for its protection to employ another person to watch and keep an eye on him. In such a case the employee, despite his acquittal is not entitled to reinstatement to his former position from which he was dismissed.'

> "A company has the right to dismiss its erring employees if only as a measure of self-protection against acts inimical to its interest (Manila Trading and Supply Co. vs. Zulueta, 69 Phil. 485 and International Hardwood and Veneer Co. of the Phil. vs. Leogardo, G.R. No. 57429, October 28, 1982, 117 SCRA 967)."

WHEREFORE, there being no reversible error nor grave abuse of discretion committed by the NLRC, the appealed resolution is hereby **AFFIRMED.**

SO ORDERED.

Narvasa, *C.J.*, Feliciano, Regalado and Campos, Jr., *JJ.*, concur.

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[1] Records, pp. 130-137.
[2] Records, pp. 99-109.
[3] Records, pp. 923-924.
[4] Records, p. 926.
[5] Records, p. 928.
[6] Records, pp. 931-933.
[7] Records, pp. 901-904.
[8] Rollo, pp. 31-36.
[9] Rollo, pp. 23-30.
[10] 82 SCRA 270 (1978).
[11] Associated Citizens Bank vs. Ople, 103 SCRA 130 (1981).
[12] Dole Phil., Inc. vs. NLRC, 123 SCRA 673 (1983).
[13] G.R. No. 58004, 122 SCRA 601 (1983).
[14] G.R. No. 72555, 152 SCRA 667 (1987) citing Reyes vs. Zamora, 90 SCRA 92 (1979); Galsim vs. PNB, 29 SCRA 293 (1969).
[15] L-55413, 123 SCRA 673 (1983).