SUPREME COURT
FIRST DIVISION

PANGASINAN III ELECTRIC COOPERATIVE INC. (PANELCO III),
Petitioner,

-versus-

G.R. No. 89876
November 13, 1992

NATIONAL LABOR RELATIONS COMMISSION (MANILA), AND ITS SUB-REGIONAL ARBITRATION BRANCH I (DAGUPAN), LABOR ARBITER IRENARCO R. RIMANDO, and LUZON PEREJAS,
Respondents.
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D E C I S I O N

CRUZ, *J.*:

The Court is once again called upon to determine the validity of an employee's dismissal. The facts leading thereto are briefly narrated.

Sometime in September, 1984, when petitioner Pangasinan III Electric Cooperative, Inc. (PANELCO) was on the brink of bankruptcy, the National Electric Administration (NEA) took over its management. Among the initial measures it adopted were the

performance audit of all PANELCO's employees and the inspection of the kilowatt hour meters of all its consumers, including its employees.

Luzon Perejas, the herein private respondent, had been employed as a meter reader of PANELCO since December 21, 1981. In the course of his examination, it was discovered that between April 1984 to November, 1984, he manipulated the kilowatt hour meter readings of his co-employees by underreading their electric consumptions. He was also found to have a jumper wire attached to his electric kilowatt hour meter in his house.

On December 1, 1984, Perejas received a memorandum from the petitioner requiring him to explain within twelve hours the presence of the tampered KWH meter in his residence.[1] He did not bother to answer. On December 3, 1984, another memorandum again directed him to submit his explanation in writing, also within twelve hours.[2] The following day, he wrote PANELCO a letter admitting the charge. He promised never to commit the infraction again.[3]

On December 6, 1984, the private respondent was issued another Memorandum,[4] this time requiring him to explain within six hours why he manipulated the KWH meter readings of his co-employees. He submitted a written explanation the next day also admitting the said act.[5]

On that same date, the petitioner issued a notice to him terminating his employment effective at the close of office hours on December 8, 1984.[6]

On January 3, 1985, Perejas filed with the National Labor Relations Commission of Dagupan City a complaint against the petitioner for illegal dismissal and underpayment of wages and allowances. On April 18, 1985, the petitioner lodged a criminal complaint against him in the Municipal Trial Court of Rosales, Pangasinan, for theft of electric current with the use of a jumper.

On December 10, 1986, Labor Arbiter Irenarco R. Rimando rendered a decision directing the petitioner to: 1) reinstate the private respondent without loss of seniority rights; 2) pay him back wages from the date of dismissal up to the time of reinstatement; and 3) pay

him the sum of P675.00 as salary and emergency cost-of-living allowance differentials.[7]

On appeal, this decision was modified by the respondent National Labor Relations Commission with the reduction of the award of back pay to only six months.[8] It was affirmed in all other respects. The motion for reconsideration having been denied, PANELCO has come to this Court, imputing to the NLRC grave abuse of discretion in upholding Perejas.

Specifically, PANELCO claims that, contrary to the findings of the NLRC, the evidence against Perejas was sufficient to justify his dismissal.

We find that there was just cause for his dismissal.

Perejas readily admitted the first charge against him, saying in his written explanation.

> Ito po ay may kinalaman sa sulat na natanggap ko mula sa inyo noong kayo ay magpalit ng mga metro ng lahat ng mga empleado.
>
> Noong Nobiyembre 30, 1984, pinalitan ang metro sa aming bahay at natuklasan na ang aking metro ay may jumper. Inaamin ko pong nagawa ko iyon at nababatid na ako pala ay nakagawa ng malaking pagkakasala sa Kooperatiba at sa batas. Ako po ay mahirap lamang may limang (5) anak. Sa kaunti ko pong kinikita ay nais kong makatipid kaya nagawa ko po ang paglalagay ng jumper sa aking metro. Isinusumpa ko po sa inyo hindi ko na po uling gagawin iyon.
>
> Humihingi po ako, ng malawak na pang-unawa sa inyo. Ano man po ang igagawad ninyong parusa sa akin ay malugod ko pong tatanggapin. Ipinapakiusap ko po lamang na sana ay hindi ito makaapekto sa aking trabaho.
>
> Hanggang dito na po lamang at ako ay umaasa ng inyong malawak na pang-unawa.[9]

Strangely, however, the Labor Arbiter completely overlooked this document and observed instead that:

> With respect to the memorandum on the tampered meters, there was no showing that the meters were indeed being used by complainant. The evidence does not show that such was tampered by him, or that he had participation in the doing of the same. The employer failed to substantiate this charge.
>
> The private respondent also admitted the second charge of manipulation of the electric consumption of his co-employees. His admission was also in writing.[10] Again, however, the Labor Arbiter practically disregarded it, holding that it could not by itself alone support the said charge. His ruling was that the partial schedule of meter reading irregularities was not the best evidence and that what the petitioner should have presented was the billing or meter reading cards accomplished by the private respondent.

It is settled that in administrative or quasi-judicial proceedings, proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee.[11] Not even a preponderance of evidence is necessary as substantial evidence is considered sufficient.[12]

We note the relevant fact that on July 11, 1990, the private respondent was convicted in the criminal case filed against him for illegal use of a jumper.[13] While this is admittedly a supervening event, it nevertheless shows that the administrative charge against him for the same offense was not unfounded Perejas was held guilty of the criminal case not by only substantial or preponderant evidence but by proof beyond reasonable doubt.

In the view of the Court, the two written admissions of respondent Perejas constitute substantial evidence of the charges against him. The meter reading cards could have been submitted by the petitioner but this became unnecessary because of the admission of the private respondent. It is an elementary principle of law that an allegation does not have to be proved if it has already been admitted.[14]

The Labor Arbiter faulted the petitioner for failing to prove the extent and value of the malversation, but this was not really material as Perejas was not being made to account for it. It was enough to show that he had committed a dishonest act as a justification for his dismissal.

Let it be repeated that the petitioner was then in financial straits. Compelling it to continue with the employment of a person who had contributed to its plight would have been oppressive. We have held that the law, in protecting the rights of the laborer, does not authorize the destruction of the employer.[15]

The public respondent tries to justify Perejas's conduct, claiming that necessity forced him to commit the offenses and that he had promised not to repeat them.

It invokes in this connection the ruling in San Miguel Corporation vs. Secretary of Labor,[16] to wit:

> In view of the high cost of living and the difficulties of supporting family, it is not surprising that members of the wage-earning class would do anything possible to augment their small income. (Compare with People vs. Macbul, 74 Phil. 436).

Taking into account the circumstances of the case, particularly Yanglay's initial attitude of confessing that his error was dictated by necessity and his promise not to repeat the same mistake, we are of the opinion that his dismissal was a drastic punishment.

The discharged employee in that case committed only one misdeed, that of trafficking in company-supplied drugs, which, while contrary to company policy, was nevertheless not illegal. In the present case, the offenses Perejas committed constituted theft of electricity and were not only prejudicial to the petitioner but clearly criminal.

The public respondent's reliance on the case of Almira vs. B.F. Goodrich Phil.[17] is also misplaced in view of its entirely different factual background. What was involved there was the dismissal of laborers who had participated in a strike, the Court declaring that

their conduct did not warrant such a severe penalty. None of the strikers was guilty of dishonesty, as is the herein private respondent.

On the issue of procedural due process, however, we must affirm the findings of the Labor Arbiter.

We agree that the petitioner did not comply with the procedure laid down in Rule XIV of the Omnibus Rules Implementing the Labor Code, particularly Sections 5 and 6, which provide:

> SECTION 5. Answer and hearing. The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. 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.
>
> SECTION 6. Decision to dismiss. The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

The petitioner submits that the three memoranda issued to the private respondent are equivalent to the "notice of dismissal" envisioned under Section 2 of Rule XIV of the Rules Implementing the Labor Code. They were in writing; they stated specifically the acts constituting the ground for dismissal; and they even required the employee to explain the charges. Even if the charges leveled against the private respondent were staggered in the sense that the charge of underreading manipulation of the KWH meters of his co-employees was not included in the December 1 and 3, 1984 memoranda although this was discovered in late November, 1984, there was still no denial of due process. The separation of the charges was in fact advantageous to Perejas because he had a better chance to explain each offense separately. Besides, nowhere in the rules is an employer mandated to incorporate all the charges under one notice of dismissal.

These are ingenious arguments but not persuasive. The simple undeniable fact is that Perejas was not given the "ample opportunity"

required by the above-quoted Section 5 to enable him to prepare an adequate defense.

The memorandum dated December 1, 1984, required Perejas to explain within twelve hours the presence of a jumper in his house. The second memorandum dated December 3, 1984, again required him to explain the same charge, also within twelve hours. The memorandum of December 6, 1984, was more abrupt; he was given only six hours to explain why he manipulated the meter readings of his co-employees.

It is established that Perejas admitted the first charge on December 4, 1984, and so had in effect three days from December 1, 1984, date of the first memorandum, to defend himself against that charge. That was a sufficient period. To answer the second charge, however, he was given only six hours and, upon his admission thereof the following day, was immediately dismissed. There was no investigation or formal hearing conducted on either of the charges. The petitioner relied solely on Perejas's admissions.

In Abiera vs. NLRC,[18] the Court held that "ample opportunity" connotes every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense, including legal representation. The record does not show that Perejas was extended or even offered such assistance nor does it appear that he waived the right to a formal hearing. It is true that the charges were admitted by Perejas. Nevertheless, it is also true that the employee was not given a chance to consult a lawyer before making his admissions.

We feel that even with such admissions, the petitioner should have held an investigation where, at the very least, Perejas should have been informed of his right to counsel and warned of the consequences of such admissions. The petitioner chose instead to summarily dismiss him. Given the admissions, the petitioner really had no reason for its hasty action. These admissions had after all already established the employee's guilt and all the petitioner had to do was to present them at the formal investigation if it had been duly called, Perejas might have subsequently withdrawn them, but his letters would still have remained in the record as telling evidence he would

have been hard put to refute. Meantime, he could have been preventively suspended only instead of being dismissed outright.

The Court is not unaware of its ruling in Philippine Airlines, Inc. vs. NLRC,[19] also decided through its First Division, where we held that "since De Veyra admitted in her sworn statement having used tickets bearing the upgraded priority classification; the documentary evidence of PAL already proved the falsity of the tickets; and De Veyra was aware of this falsity, there was no necessity for the parties to undergo the ritual of holding a hearing."

The facts of that case are, however, vastly different from those in the case at bar. In that case, the employee was given enough time and opportunity to defend herself as early as on the company level and indeed even asked for extension of time to answer the charges against her. At this stage, she, was already represented by counsel, and she continued to be so in the proceedings before the Labor Arbiter, where she filed a lengthy position paper in her defense. By contrast, there is no showing that the herein private respondent had legal assistance when he made his admissions, and the record shows that the processes and pleadings in the proceedings before the Labor Arbiter and the NLRC were sent to him directly and not through counsel. Even in his petition now before us, in fact, no lawyer has entered his appearance for Perejas, which is probably the reason why he did not file his own comment on the petition, relying only on the comment of the Solicitor General on behalf of the public respondent.

We cannot blink away the petitioner's cavalier manner in terminating the private respondent's employment. Denial of due process is an offense for which PANELCO has incurred liability to Perejas, conformably to Wenphil Corporation vs. NLRC.[20] In that case, we required the employer to indemnify the employee in the sum of P1,000.00 for depriving him of the right to notice and hearing before his dismissal. We shall impose a similar sanction in the case at bar, repeating that:

> However, the petitioner must nevertheless be held to account for failure to extend to private respondent his right to an investigation before causing his dismissal. The rule is explicit as above discussed. The dismissal of an employee must be for just

> or authorized cause and after due process. Petitioner committed an infraction of second requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from employment. Considering the circumstances of this case petitioner must indemnify the private respondent the amount of P1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer.

But the procedural defect notwithstanding, the validity of the cause of his dismissal remains unimpaired. That flaw has not washed clean the sin of his dishonesty. His conviction of the same charge of stealing electric current from the petitioner only bolsters our finding that there was indeed lawful cause for his dismissal. As for his appeal for sympathy, we reiterate what we said in PLDT vs. NLRC,[21] thus:

> Social justice cannot be permitted to be a refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.

One last point. The Labor Arbiter classified PANELCO III as a commercial utility firm and thus applied the rates for non-agricultural workers (outside Metro Manila) in Wage Orders Numbers 4, 5, and 6 which are P31.00/day, P34.00/day and P36.00/day, respectively. This resulted in an award of:

1) P156.00 as salary differential and P39.00 as deficiency in emergency cost of living allowance for the month of November;

2) P441.00 as salary differential for the second half of the month of June up to October 31, 1984, and

3) P39.00 as salary differential for the period covering May up to June 15, 1984.

Significantly, while the public respondent initially classified the petitioner as a commercial entity, it now recognizes in its Comment that PANELCO is a retail establishment as defined in the rules implementing the questioned orders, to wit:

> "Retail Establishment" is one principally engaged in the sale of goods to endusers for personal or household use.

From the aforequoted definition, PANELCO should have indeed been classified as a retail establishment or a service entity, pursuant to Sections 3 and 35 of P.D. 269 providing as follows:

> SECTION 3. Definitions.
>
> (c) "Public service entities" shall mean (1) a cooperative, (2) the NPC, and (3) local governments and privately-owned public service entities in operation which furnish and are empowered to furnish retail electric service.
>
> SECTION 35. Non-profit, Non-discriminatory, Area Coverage Operation and Service. — A cooperative shall be operated on non-profit basis for the mutual benefit of its members and patrons.

Accordingly, what should have been applied was the rate for retail/service establishments (outside Metro Manila with more than ten (10) workers) which under Wage Order No. 4 is only P27.00/day, and under Wage Order No. 5 is P30.00/day. There was no underpayment since Perejas was then receiving P30.00 per day. However, under Wage Order No. 6. which took effect on November 1, 1984, he was underpaid by P2.00/day, not by P6.00/day as held by the Labor Arbiter, since the minimum daily wage for workers of retail entities was only P32.00 then.

WHEREFORE, the private respondent having been dismissed for lawful cause, the appealed Decision is **REVERSED** and **SET**

ASIDE. Nevertheless, as the manner of his dismissal did not conform to the procedural requirements, the petitioner is required to pay directly to Luzon Perejas, by way of indemnity, the sum of P1,000.00 for violation of his right to due process. PANELCO shall also pay him the amount of FIFTY TWO PESOS (P52.00) as salary differential and THIRTY NINE PESOS (P39.00) as deficiency in the emergency cost-of-living allowance for the month of November, 1984, with legal interest from the said date until actual payment. It is so ordered.

Padilla, Griño-Aquino and Bellosillo, *JJ*., concur.

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[1] Rollo, p. 28.
[2] Annex "B," Rollo, p. 16.
[3] Annex "C," Rollo, p. 17.
[4] Annex "D," Rollo, p. 18.
[5] Annex "E," Rollo, p. 19.
[6] Annex "F," Rollo, p. 20.
[7] Annex "J-1," Rollo, p. 25.
[8] Annex "L-1,"‘ Rollo, p. 53.
[9] Annex "C," supra.
[10] Annex "E," supra.
[11] Manila Electric Company vs. NLRC, 198 SCRA 681; Golden Farms, Inc. vs. Bughao, 195 SCRA 322; Reyes vs. Zamora, 90 SCRA 92.
[12] Manila Electric Company vs. NLRC, supra.
[13] Rollo, p. 124.
[14] Rule 129, Section 2 of the Revised Rules of Court.
[15] Del Carmen vs. NLRC, 203 SCRA 245.
[16] 64 SCRA 56.
[17] 58 SCRA 120.
[18] G.R. No. 102023, promulgated November 6, 1992.
[19] 198 SCRA 761.
[20] 170 SCRA 69.
[21] 164 SCRA 671.