**SUPREME COURT**
**THIRD DIVISION**

**PHILIPPINE AIRLINES, INC.,**
***Petitioner*,**

***-versus-***

**G.R. No. 114307**
**July 8, 1998**

**NATIONAL LABOR RELATIONS COMMISSION (2nd Division), LABOR ARBITER JOSE DE VERA, and EDILBERTO CASTRO,**
***Respondents*.**
**x----------x**

**R E S O L U T I O N**

**ROMERO, *J.*:**

The central issue in the case at bar is whether or not an employee who has been preventively suspended beyond the maximum 30-day period is entitled to backwages and salary increases granted under the

Collective Bargaining Agreement (CBA) during his period of suspension.

Private respondent Edilberto Castro was hired as manifesting clerk by petitioner Philippine Airlines Inc. (PAL) on July 18, 1977. It appears that on March 12, 1984, respondent, together with co-employee Arnaldo Olfindo, were apprehended by government authorities while about to board a flight en route to Hongkong in possession of P39,850.00 and P6,000.00 respectively, in violation of Central Bank (CB) Circular 265, as amended by CB Circular 383,[1] in relation to Section 34 of Republic Act 265, as amended.

When informed of the incident, PAL required respondent "to explain within 24 hours why he should not be charged administratively."[2] Upon failure of the latter to submit his explanation thereto, he was placed on preventive suspension effective March 27, 1984 for grave misconduct.

On May 28, 1984, an investigation was conducted wherein respondent admitted ownership of the confiscated sum of money but denying any knowledge of CB Circular 265. No further inquiry was conducted. On August 13, 1985, respondent, through the Philippine Airlines Employees Association (PALEA), sought not only the dismissal of his case but likewise prayed for his reinstatement, to which appeal, PAL failed to make a reply thereto. He reiterated the same appeal in his letter dated August 13, 1987.

On September 18, 1987 or three (3) years and six (6) months after his suspension, PAL issued a resolution finding respondent guilty of the offense charged but nonetheless reinstated the latter explaining that the period within which he was out of work shall serve as his penalty for suspension. The said resolution likewise required respondent to affix his signature therein to signify his full conformity to the action taken by PAL. Upon his reinstatement, respondent filed a claim against PAL for backwages and salary increases granted under the collective bargaining agreement (CBA) covering the period of his suspension which the latter, however, denied on account that under the existing CBA, "an employee under suspension is not entitled to the CBA salary increases granted during the period covered by his penalty."[3]

On March 22, 1991 Labor Arbiter Jose G. de Vera rendered a decision, the decretal portion of which reads as follows:

> "WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered limiting the suspension imposed upon the complainant to one (1) month, and the respondent to pay complainant his salaries, benefits, and other privileges from April 26, 1984 up to September 18, 1987 and to grant complainant his salary increases accruing during the period aforesaid. Further, the respondent is hereby ordered to pay complainant P50,000.00 in moral damages and P10,000.00 in exemplary damages.
>
> SO ORDERED."[4]

On appeal, this decision was affirmed by the National Labor Relations Commission (NLRC) in its decision dated December 29, 1993 with the deletion of the award of moral and exemplary damages. Hence, the instant petition.

We resolve to dismiss the petition.

Preventive suspension is a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.[5] The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.[6]

Sections 3 and 4, Rule XIV of the Omnibus Rules Implementing the Labor Code provides:

> "Sec. 3. Preventive suspension. — The employer can place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

> Sec. 4. Period of suspension. — No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the workers. In such case, the worker, shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker." (Emphasis supplied)

It is undisputed that the period of suspension of respondent lasted for three (3) years and six (6) months. PAL, therefore, committed a serious transgression when it manifestly delayed the determination of respondent's culpability in the offense charged. PAL stated lamely in its petition that "due to numerous administrative cases pending at that time, the Committee inadvertently failed to submit its recommendation to (the) management."[7] This is specious reasoning. The rules clearly provide that a preventive suspension shall not exceed a maximum period of 30 days, after which period, the employee must be reinstated to his former position. If the suspension is otherwise extended, the employee shall be entitled to his salaries and other benefits that may accrue to him during the period of such suspension. The provisions of the rules are explicit and direct; hence, there is no reason to further elaborate on the same.

PAL faults the Labor Arbiter and the NLRC for allegedly equating preventive suspension as remedial measure with suspension as penalty for administrative offenses. The argument though cogent is, however, inaccurate. A distinction between the two measures was clearly elucidated by the Court in the case of Beja Sr. vs. CA,[8] thus:

> "Imposed during the pendency of an administrative investigation, preventive suspension is not a penalty in itself. It is merely a measure of precaution so that the employee who is charged may be separated, for obvious reasons, from the scene of his alleged misfeasance while the same is being investigated. While the former may be imposed on a respondent during the investigation of the charges against him, the latter is the penalty

> which may only be meted upon him at the termination of the investigation or the final disposition of the case."

A cursory reading of the records reveals no reason to ascribe grave abuse of discretion against the NLRC. Simply put, its decision was grounded upon petitioner's manifest indifference to the plight of its suspended employee and its consequent violation of the Implementing Rules of the Labor Code. As correctly ruled by the NLRC:

> "In fact, the long period of complainant's preventive suspension could even be considered constructive dismissal because were it not his letter dated September 12, 1985 and followed by another on September 18, 1987 demanding his reinstatement, respondent by its inaction appears to have no plan to employ him back to work. The manifest inaction of respondent over the pendency of the administrative charge is indeed violative of complainant's security of tenure because without any justifiable cause and due process complainant's employment would have gone into oblivion."[9] (Emphasis supplied)

PAL contends that when respondent consented to the resolution that the entire period of suspension shall constitute his penalty for the offense charged, the latter is thereby estopped to question the validity of said suspension. We concur with the labor arbiter when he ruled that the ensuing conformity by respondent does not cure petitioner's blatant violation of the law, and the same is therefore null and void. Thus, "to uphold the validity of the subsequent agreement between complainant and respondent regarding the imposition of the suspension would be repulsive to the avowed policy of the State enshrined not only in the Constitution but also in the Labor Code."[10]

In fine, we do not question the right of the petitioner to discipline its erring employees and to impose reasonable penalties pursuant to law and company rules and regulations. "Having this right, however, should not be confused with the manner in which that right must be exercised."[11] Thus, the exercise by an employer of its rights to regulate all aspects of employment must be in keeping with good faith and not be used as a pretext for defeating the rights of employees

under the laws and applicable contracts.[12] Petitioner utterly failed in this respect.

**WHEREFORE**, premises considered, the Petition is **DISMISSED** for lack of merit and the assailed Decision is **AFFIRMED**. No costs.

**SO ORDERED.**

**Narvasa, *C.J.*, Kapunan and Purisima, *JJ.*, concur.**

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[1] 4. Any person, firm, company or corporation, may import or export, and any incoming or outgoing traveller may bring with him, Philippine notes and coins, and checks, money orders and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount not exceeding P500.00; Provided, That an amount in excess of P500.00 may be imported into, exported from, or brought into or out of, the Philippines upon prior authorization of the Central Bank of the Philippines; AND PROVIDED FURTHER THAT FOR THE DURATION OF THE DEMONETIZATION PERIOD PRESCRIBED UNDER PRESIDENTIAL DECREE NO. 168 OF APRIL 12, 1973, PHILIPPINE NOTES MAY BE BROUGHT INTO THE PHILIPPINES ONLY BY INCOMING PASSENGERS IN AMOUNTS NOT EXCEEDING P500.00 FOR EACH PASSENGER WITHOUT EXCEPTION.

[2] Rollo, p. 26.

[3] Petition, pp. 2-20.

[4] Ibid., p. 43.

[5] Globe-Mackay Cable and Radio Communication vs. NLRC, 206 SCRA 701 (1992).

[6] Rural Bank of Baao, Inc. vs. NLRC, 207 SCRA 444 (1992).

[7] Rollo, p. 6.

[8] 207 SCRA 689 (1992).

[9] Rollo, p. 31.

[10] Ibid, p. 41.

[11] Philippine Telegraph and Telephone Corporation vs. Laplana, 199 SCRA 485 (1991).

[12] Tierra International Construction Corp. vs. NLRC, 256 SCRA 36 (1996).