SUPREME COURT
SECOND DIVISION

PHILIPPINE GEOTHERMAL, INC.,
***Petitioner*,**

-versus-

G.R. No. 106370
September 8, 1994

NATIONAL LABOR RELATIONS COMMISSION and EDILBERTO M. ALVAREZ,
***Respondents*.**
x----------x

D E C I S I O N

PADILLA, *J.*:

Petitioner Philippine Geothermal, Incorporated filed the present petition for certiorari seeking the reversal of the decision of public respondent National Labor Relations Commission in NLRC CA No. L-000295-91/RB-IV-1-3583-91 entitled "Edilberto M. Alvarez vs. Philippine Geothermal, Inc. et al."

The relevant facts of this case are as follows:

Private respondent Edilberto M. Alvarez was first employed by petitioner on 2 July 1979. On 31 May 1989, private respondent, who was then occupying the position of Steam Test Operator II, injured

his right wrist when a steam-pressured "chicksan swivel joint assembly" exploded while he was checking a geothermal well operated by petitioner. As a result, private respondent's right arm was placed in a plaster cast and he was confined at the San Pablo Doctor's Hospital from 31 May 1989 to 3 June 1989.

Dr. Oscar M. Brion, the attending physician, diagnosed private respondent's injuries to be:

1) Complete fracture/dislocation distal radius (r);

2) Complete fracture styloid process and dislocation of the ulna;

3) Right pelvic contusion, which required a recuperation period of approximately forty-five (45) days.

Petitioner thus gave private respondent a fifty (50) day "work-connected accident" (WCA) leave with pay until 29 July 1989. Petitioner also referred private respondent's case to Dr. Liberato A.C. Leagogo, Jr. of the Philippine Orthopedic Institute, at petitioner's expense.

On 26 July 1989, Dr. Leagogo certified that private respondent was fit to return to work with the qualification however, that he could only perform light work. Thus, on 31 July 1989, when respondent Alvarez returned to work, he was assigned to "calibration of barton recorders", in accordance with the doctor's recommendations.

On 13 November 1989, Alvarez was again examined by Dr. Leagogo who issued a medical certificate which reads:[1]

> "This is with regards [sic] the work recommendation for Mr. Bert Alvarez.
>
> At this point in time, 5 months post-injury, he can be given moderate working activities, pulling, pushing, carrying and turning a 20 lbs.-25 lbs. weight/force.
>
> On the 6th month, he can go back to his previous job."

Despite this certification, respondent Alvarez continued to absent himself from work and by the end of 1989 he had used ten (10) days of vacation leave, eighteen (18) days of sick leave, fifteen (15) days of WCA leave and four (4) days of emergency leave for the period starting 31 July 1989.

On 28 December 1989, Dr. Leagogo, after examining Alvarez, certified that the latter's injury had healed completely and that he could thus return to his pre-injury work.

On the same day, Alvarez consulted another doctor, Dr. Angela D.V. Garcia, a private physician, who likewise confirmed that there were "no contraindications for him (Alvarez) not to attend to his work."

On 29 December 1989, based on Dr. Leagogo's findings, petitioner wrote Alvarez stating:

> "This is to inform you that based on the examination performed on December 28, 1989 by your attending physician, Dr. Liberato Antonio C. Leagogo, Jr., your right wrist fracture is completely healed as stated in the attached medical certificate. Therefore, you are advised to go back to your regular duty as an Operator II at the Well Testing Section effective immediately.
>
> x x x
>
> Any absences you may incur in the future will be subject to our existing policy on leaves and absences."[2]

Since Alvarez failed to report for work from 2 to 10 January 1990, petitioner again wrote him stating:

> "It is indicated that your therapy has no contraindication for you not to attend to your work. However, from that date up to now, January 11, you have not reported for work.
>
> Therefore, as of January 11, 1990, you are considered to be 'Absent Without Official Leave (AWOL) and Without Pay'. This

> letter serves as a warning letter per our rules and regulations, Unauthorized absences, rule 3, par. i, page 31.
>
> You are advised to immediately report for work or further disciplinary action will be taken."[3]

After reading the letter. Alvarez wrote a hand-written note on petitioner's copy of the letter, stating "Please wait for my doctor's medical certificate from Dr. Relampagos."

On 19 January 1990, Dr. Victoria Pineda, an orthopedic doctor of the National Orthopedic Hospital whom Alvarez also consulted issued the following medical certificate:

> "Patient has reached a plateau in his rehabilitation with limitations of wrist motion (r) as regular. Fit for work."[4]

On 20 January 1990, Alvarez consulted Dr. Francisco, another orthopedic doctor at the Polymedic General Hospital, who recommended a set of laboratory tests to be conducted on Alvarez' right wrist.

On 1 February 1990, Dr. Relampagos of the National Orthopedic Hospital certified Alvarez to be "Fit for light job."[5]

On 6 February 1990, Dr. Francisco, who read and interpreted the results of the tests undertaken on Alvarez at the St. Luke's Medical Center, certified that there is no "hindrance for him (Mr. Alvarez) to do his office work."[6]

Notwithstanding the above medical findings, respondent Edilberto M. Alvarez continued to incur numerous absences. He did not report for work in the months of January and February 1990.

On 7 February 1990, petitioner addressed its third letter to Alvarez stating:

> "The attached medical certificates from Dr. Garcia, Dr. Pineda, Dr. Relampagos, Dr. Francisco, and Dr. Leagogo all indicate that you are fit to work. Based on these medical certificates,

> your absences from January 11 to February 6 1990 (23 working days) will be charged to your sick leave credits. Be advised that your sick leave credits will be exhausted on February 8, 1990 therefore, you will not be paid for subsequent absences.
>
> In addition, if you fail to report to work and are unable to present a medical certificate explaining your absences, you will face disciplinary action. I am enclosing the statement of company policy on absences for your information and would strongly suggest that you report to work immediately."[7]

Under petitioner's company rules, employees who incur unauthorized absences of six (6) days or more are subject to dismissal. Thus, when Alvarez failed to report for work from 8 to 28 February 1990, a total of eighteen (18) working days with three (3) days off, petitioner wrote Alvarez a fourth time stating in part:

> "This refers to your continued refusal to report back to work following your recovery from a work-related accident involving your right wrist last May 31, 1989. That you have recovered is based on the certification of four (4) physicians, including the company-retained orthopedic doctor and three (3) other orthopedic specialists whom you personally chose and consulted.
>
> x x x
>
> In order not to lose your income, the company has allowed you to charge all these unwarranted absences against your accumulated sick leave credits. Our records show that as of February 7, 1990, you have used up all your remaining sick leaves. We would like to emphasize that from February 8 to 28, all your absences are considered unauthorized and without pay. Please be reminded that, according to company rules, employees who go on unauthorized absences of six (6) or more days are subject to dismissal.
>
> The company, therefore, believes that it has given all the time, help, and considerations in your case. We go by the doctor's certifications that you are already fit to work.

> In view of the above, we are giving you a final warning. Should you fail to report to work on Monday, March 5, 1990 your employment with the company will be terminated."[8]

This fourth warning letter of petitioner was unheeded. Alvarez failed to report for work; neither did he inform petitioner of the reason for his continued absences.

As a consequence, petitioner terminated Alvarez' employment on 9 March 1990.

On 19 June 1990, Alvarez filed a complaint for illegal dismissal against petitioner with the Regional Arbitration Branch, Region IV.

On 19 December 1990, the labor arbiter dismissed the complaint, without prejudice, for failure of the complainant to submit his position paper despite repeated orders from the labor arbiter.

On 16 January 1991, private respondent refiled his complaint for illegal dismissal.

On 6 September 1991 the labor arbiter rendered a decision holding private respondent's termination from employment as valid and justified.

On appeal to the public respondent National Labor Relations Commission (NLRC), the decision was reversed and set aside. Petitioner was ordered to reinstate Edilberto M. Alvarez to his former position without loss of seniority rights but without backwages.

A Motion for Reconsideration was denied on 15 May 1992. Petitioner then filed the present petition for certiorari, based on two (2) grounds namely:

> "RESPONDENT COMMISSION ABUSED ITS DISCRETION AND ACTED BEYOND ITS JURISDICTION BY ENTERTAINING AN APPEAL THAT WAS FILED OUT OF TIME."

> "EVEN ON THE MERITS OF THE CASE, RESPONDENT COMMISSION ABUSED ITS DISCRETION BY FAILING TO APPRECIATE OVERWHELMING EVIDENCE UNIFORMLY SHOWING THAT THE TERMINATION OF MR. ALVAREZ WAS VALID AND JUSTIFIED."[9]

On the issue of whether or not the appeal from the decision of the labor arbiter to the NLRC was filed within the ten (10) day reglementary period, it is undisputed that private respondent received a copy of the labor arbiter's decision on 5 September 1991. Alvarez thus had up to 15 September 1991 to perfect his appeal. Since this last mentioned date was a Sunday, private respondent had to file his appeal on the next business day, 16 September 1991.

Petitioner contends that the appeal was filed only on 20 September 1991. Respondent NLRC however found that private respondent filed his appeal by registered mail on 16 September 1991, the same day that petitioner's counsel was furnished copies of said appeal.[10]

We will not disturb this factual finding of the NLRC.

The contention that even assuming arguendo that the appeal was filed on time, the appeal fee was paid four (4) days late (and, therefore, the appeal to the NLRC should be dismissed) likewise fails to entirely impress us. In C.W. Tan Manufacturing vs. NLRC,[11] we held that "the broader interest of justice and the desired objective of deciding the case on the merits demand that the appeal be given due course."

On the issue of whether or not Edilberto M. Alvarez was validly dismissed, we rule in the affirmative and consequently the decision of respondent NLRC is set aside.

Article 282(b) of the Labor Code provides that an employer may validly dismiss an employee for gross and habitual neglect by the employee of his duties. In the present case, it is clear that private respondent was guilty of seriously neglecting his duties.

The records establish that as early as 26 July 1989, Dr. Leagogo already had certified that Alvarez could perform light work. On 13 November 1989, Dr. Leagogo certified that Alvarez could perform

moderate work and it was further certified that by December 1989, Alvarez could return to his pre-injury duties. Notwithstanding these certifications, Alvarez continued to incur unexplained absences until his dismissal on 9 March 1990.

A review of Alvarez' record of attendance shows that from August to December 1989, he reported for work only seventy-seven (77) times while he incurred forty-seven (47) absences.

An employee who earnestly desires to resume his regular duties after recovering from an injury undoubtedly will not go through the trouble of getting opinions from five (5) different physicians before going back to work after he has been certified to be fit to return to his regular duties.

Petitioner has not been shown to be without sympathy or concern for Alvarez. He was given fifty (50) days work-connected accident (WCA) leave with pay to allow him to recuperate from his injury without loss of earnings. He was allowed to use his leave credits and was actually given an additional fifteen (15) days WCA leave to allow him to consult his doctors and fully recover from his injuries. Moreover, petitioner gave Alvarez several warnings to report for work, otherwise, he would face disciplinary sanctions. In spite of these warnings, Alvarez was absent without official leave (AWOL) for eighteen (18) days. Under company policy, of which Alvarez was made aware, employees who incur without valid reason six (6) or more absences are subject to dismissal.

Petitioner, in its fourth and last warning letter to Alvarez, was willing to allow him to resume his work in spite of the eighteen (18) days he went on AWOL. It was made clear, however, that should private respondent still fail to report for work on 5 March 1990, his employment would be terminated.

Private respondent failed to report for work on 5 March 1990. Petitioner validly dismissed him not only for violation of company policy but also for violation of Section 282(b) of the Labor Code aforecited.

While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one's source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer.[12] It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. *Justitia nemini neganda est* (Justice is to be denied to none).

In Cando vs. National Labor Relations Commission[13] the Court awarded separation pay to an employee who was terminated for unauthorized absences. We believe that separation pay of one-half (1/2) month salary for every year of service is adequate in this case.

WHEREFORE, the decision of respondent National Labor Relations Commission is hereby **SET ASIDE** and the decision of the Labor Arbiter is reinstated with the **MODIFICATION** that petitioner Philippine Geothermal, Inc. is ordered to pay private respondent Edilberto M. Alvarez separation pay equivalent to one-half (1/2) month salary for every year of service starting from 2 July 1979 until his dismissal on 9 March 1990.

SO ORDERED.

Narvasa, *C.J.*, Regalado, Puno and Mendoza, *JJ.*, concur.

---

[1] Annex "D", Petition.
[2] Annex "G", Petition.
[3] Annex "H", Petition.
[4] Annex "I", Petition.
[5] Annex "J", Petition.

[6] Annex “L”, Petition.
[7] Annex “M”, Petition.
[8] Annex “N”, Petition.
[9] Rollo, p. 17.
[10] Rollo, p. 114.
[11] G.R. No. 79596, 10 February 1989, 170 SCRA 240.
[12] Pacific Mills, Inc. vs. Alonzo, G.R. No. 78090, 26 July 1991, 199 SCRA 617.
[13] G.R. No. 91344, 14 September 1990, 189 SCRA 666.