

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

PHIMCO INDUSTRIES, INC.,
Petitioner,

-versus-

G.R. No. 118041
June 11, 1997

**NATIONAL LABOR RELATIONS
COMMISSION and RENATO CARPIO,**
Respondents.

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DECISION

BELLOSILLO, J.:

RENATO CARPIO was hired by petitioner PHIMCO INDUSTRIES, Inc., on 1 April 1983 as a log and lumber grader. In 1987 he was promoted to the position of documentation assistant. In 1990 he further advanced in rank to handle the company's export of selective lumber until he filed his letter of resignation on 14 August 1991^[1] addressed to Mr. Lut Lopez, Assistant General Manager, Export

Trading Division, PHIMCO, to take effect fifteen (15) days later or on 30 August 1991.

The records show that during his years of service, Carpio had an excellent employment record. He was a hardworking, efficient and effective worker. He was awarded various recognitions, e.g., a certificate of recognition for perfect attendance in 1988^[2] and service awards for dedicated and valued services to the company from 1983 to 1988.^[3]

Carpio still reported for work even after tendering his letter of resignation up to the time the same was to take effect; in the meantime however no action was taken by petitioner with respect to his letter of resignation. It was only on 4 September 1991,^[4] in a letter dated 3 September 1991 from Francis Ferdinand C. Cinco, Human Resource Manager, that Carpio was required to explain within seven (7) days the reason for his neglect to serve an advance written notice and his failure to seek approval from his department head for a shorter notification period. At that time, he had already left for the United States. As such, he petitioned through his wife for additional time to prepare his answer. In a letter dated 12 September 1991, which was received by PHIMCO on 26 October 1991, Carpio clarified the reason for his resignation, stating that he had mentioned to Mr. Lut Lopez his plans of resigning to seek better opportunities in the United States. He also requested that he be granted his separation pay.^[5]

On 4 November 1991 Cinco informed Carpio that he was being terminated by the company for failure to abide with the company's rules, particularly Rules 7, 7.1 and 7.2 of the company's Handbook, which provide thus:

Rule 7 — The resignation of any employee shall be effected only upon its proper acceptance by Management.

Rule 7.1 — Failure of resigning employee to serve advance written notice to the company at least thirty (30) days before the date he intends to leave the service except in cases where a shorter notification period is accepted by the department head concerned.

Rule 7.2 — Failure of resigning employee to continue to work or render actual service during the 30-day period covered by the advance written notice, except where the employee has secured authority to go on leave of absence.^[6]

As a result of his dismissal, his claim for separation pay was denied in consonance with the company's Handbook providing for forfeiture of separation pay in case of termination from employment.

On 16 June 1993, feeling aggrieved, Carpio filed with the Labor Arbiter a complaint for non-payment of separation pay. On 21 February 1994 the Labor Arbiter rendered a decision finding the dismissal of Carpio tainted with bad faith and ordering PHIMCO to pay Carpio his separation benefits equivalent to his one (1) month salary for every year of service.^[7]

Petitioner appealed to the National Labor Relations Commission (NLRC) which on 29 July 1994 affirmed in toto the decision of the Labor Arbiter.^[8] Petitioner sought reconsideration but was denied by NLRC. Hence this petition for certiorari alleging that the NLRC gravely abused its discretion when it granted the separation pay and attorney's fees prayed for by Carpio.

PHIMCO contends that Carpio was terminated for just cause; therefore he was not entitled to separation pay. Moreover, petitioner maintains that even on the assumption that Carpio validly resigned, still his resignation would not entitle him to separation pay of one month for every year of service since under the company's health, welfare and retirement plan, Carpio would only be entitled to 40% of one (1) month pay for every year of service in case of voluntary resignation.

As regards the validity of the dismissal of Carpio, petitioner claims that Carpio received a copy of the company's Handbook on 26 October 1990 which clearly states that if an employee resigns from work he has to serve an advance written notice at least thirty (30) days before he leaves the service with a proviso that a shorter notification would be acceptable only if authorized by the department

head concerned and that he should continue to render service during the interim unless he has secured authority to go on leave. Moreover, any resignation shall be effected only upon its proper acceptance by management. The penalty prescribed for the violation thereof is dismissal. Accordingly, PHIMCO maintains that since Carpio violated the rules and regulations of the company with respect to his leaving the company which resulted in the disruption of its operations, then his termination was for a just cause based particularly on willful disobedience under the law. Corollarily, PHIMCO was not obligated to give separation pay to Carpio.

We find the penalty of dismissal imposed on Carpio for non-observance of the rules and regulations provided in the Handbook of PHIMCO, particularly Rules 7, 7.1 and 7.2 concerning the resignation of the employee, too harsh. There is no dispute that Carpio failed to comply with company rules and regulations regarding his resignation. Nonetheless, it has to be noted and emphasized that he did not outrightly disregard the same. Looking back at the antecedents, it was on 14 August 1991 that he tendered his resignation to take effect fifteen (15) days later or on 30 August 1991. Before that period expired he still reported for work. Significantly, the fact that his letter of resignation was only acted upon after he had left for United States opens the avenues for speculations and suspicions. While he continued to work to await the acceptance of his resignation, he was not even informed of the status thereof or that he had to stay for fifteen (15) more days. The rule could have been easily pointed out or relayed to him by Mr. Lopez to whom he handed his letter of resignation and who was staying with him in the same office. But management waited until after he had left for the United States. Evidently, there was bad faith in the manner his resignation was resolved.

Petitioner also avers that Carpio's termination was for a just cause under the law^[9] grounded on his willful disobedience to comply with the company's rules and regulation. But to constitute willful disobedience the employee's conduct must be willful or intentional, the willfulness being characterized by a wrongful and perverse attitude and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he has been engaged to discharge.^[10] In the instant case, we find absent

any intentional or willful conduct on the part of Carpio to disregard the rules regarding voluntary resignation. On the contrary, there was earnest and sincere effort on the part of Carpio to comply.

In cases of voluntary resignation, the employee finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment;^[11] hence, the law affords the employee the right to resign regardless of whether the company has found an able and competent replacement and whether the operation of the company would be affected provided he serves a written notice on the employer at least one (1) month in advance. The rule of requiring an employee to stay or complete the 30-day period prior to the effectivity of his resignation becomes discretionary on the part of management as an employee who intends to resign may be allowed a shorter period before his resignation becomes effective. In the instant case, the noncompliance with the period should not be used by management as a subterfuge to avoid the payment of separation pay.^[12]

Finally, we recognize the prerogative of an employer company to prescribe reasonable rules and regulations necessary or proper for the conduct of its business and to provide certain disciplinary measures in order to implement said rules, and to assure that the same would be complied with.^[13] That notwithstanding, from the holistic perspective, we view the resignation of Carpio as having sufficiently and substantially complied with the company's requirement. This is not to say that we are condoning the failure of Carpio to abide by the rules. But considering his length of service and his dedicated and faithful employment in the company, the totality of his infraction simply does not justify the extreme penalty of dismissal.

As regards the claim of Carpio for separation pay, inasmuch as we find his dismissal unjustified, necessarily some form of separation benefits is forthcoming. In affirming the award of separation pay to Carpio, no doubt the NLRC invoked Art. 283 of the Labor Code which provides that separation pay shall be equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher, and a fraction of at least six (6) months considered as one (1) whole year. But severance pay under Art. 283

only refers to termination of employment due to retrenchment and cessation of operation not due to serious business losses or financial reverses. It does not refer to separation by reason of voluntary resignation. In fact, the rule is that an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or CBA, or it is sanctioned by established practice or policy of the employer.^[14] Hence, in granting separation benefits to Carpio, we follow the established company policy which provides for forty percent (40%) of one (1) month basic compensation for every year of service.^[15] Under the circumstances, the award of separation pay to Carpio must be reduced.

WHEREFORE, we affirm the Decision of respondent National Labor Relations Commission except that the separation pay to respondent RENATO CARPIO is ordered reduced to conform with the existing company policy of petitioner PHIMCO INDUSTRIES, INC., providing for separation pay for voluntarily resigning employees in an amount equivalent to forty percent (40%) of one (1) month compensation for every year of service.

SO ORDERED.

**Vitug, Kapunan and Hermosisima, Jr., JJ., concur.
Padilla, J., is on leave.**

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- [1] Annex "C," Private Respondent's Position Paper; Original Records, p. 23.
[2] Annex "A," id., p. 21.
[3] Annex "B," id., p. 22.
[4] Annex "D," id., p. 24.
[5] Annex "E," id., p. 25.
[6] Annex "C-1," Petition; Rollo, p. 32.
[7] Decision penned by Labor Arbiter Eduardo J. Carpio; Original Records, pp. 73-79.
[8] NLRC decision penned by Commissioner Rogelio I. Rayala, concurred in by Presiding Commissioner Edna Bonto-Perez and Commissioner Victoriano R. Calaycay; Original Records, pp. 105-111.
[9] Art. 282, par. (a), Labor Code of the Philippines.
[10] *Manebo vs. NLRC*, G.R. No. 107721, 10 January 1994, 229 SCRA 240.
[11] *Molave Tours Corporation vs. NLRC*, G.R. No. 107721, 10 January 1994, 229 SCRA 240.

- [12] Art. 285, par. (a), Labor Code of the Philippines.
- [13] Soco vs. Mercantile Corporation of Davao, G.R. Nos. 53364-65, 16 March 1987, 148 SCRA 526.
- [14] Hinatuan Mining Corporation and/or the Manager vs. NLRC and Margot Batister, G.R. No. 117394, 21 February 1997.
- [15] Annex "K," Petition; Rollo, p. 58.

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