

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

ROLINDA B. PONO,
Petitioner,

-versus-

G.R. No. 118860
July 17, 1997

**NATIONAL LABOR RELATIONS
COMMISSION, RAFAELITO I.
CASTILLO, and SANDOZ PHILS., INC.,**
Respondents.

X-----X

DECISION

ROMERO, J.:

Petitioner Rolinda B. Pono seeks the annulment of the Decision of the National Labor Relations Commission dated August 31, 1994, affirming the August 27, 1993 Decision of Labor Arbiter Benigno C. Villarente, Jr. which, in turn, dismissed petitioner's complaint for illegal dismissal, as well as the NLRC's Resolution of November 9,

1994, denying petitioner's Motion for Reconsideration for lack of merit.

This case arose from a Complaint filed by Pono against herein private respondents Sandoz Phils., Inc. (Sandoz) and Rafaelito I. Castillo for illegal dismissal, unfair labor practices, separation pay and damages.

Pono averred that she was employed by Sandoz as medical representative, with the primary task of conferring with doctors to update them about Sandoz' various medical products. Sometime in May 18, 1992, she was asked by Castillo, her immediate supervisor, to report to his office and explain her alleged incompetence in the performance of her work. At said meeting, Castillo confronted Pono concerning her alleged infraction of company policies. It was then that Castillo started to physically take advantage of Pono by touching different parts of her body. Aghast at her supervisor's action, Pono resisted his advances.

Unable to consummate his prurient desires, Castillo warned Pono not to inform anybody about the incident; otherwise, her continued employment in the company would be placed in jeopardy.

Fearful lest she should lose her job which she apparently valued more than her dignity, Pono decided to remain silent and maintained a facade of normalcy for the next five months. On October 5, 1992, however, she was again asked by Castillo to report to his office ostensibly to discuss company matters and policies.

Apprehensive that the so-called conference was another ploy of Castillo for sexually harassing her, Pono decided to divulge the May 18, 1992 incident to her closest co-workers. Thereafter, along with two co-workers, she informed Sandoz National Sales Manager Godofredo Ruiz of the incident.

Subsequently, Mr. Ruiz called a meeting on October 6, 1992 to give a chance to Castillo to explain his side on the matter. As expected, Castillo denied the incident of May 18, 1992. Ruiz then asked Pono not to resign until after she has completely paid the amortizations on the company car assigned to her. Undecided, Pono asked for a reasonable time to consider the same. Two days later, however, Ruiz

withdrew the offer; whereupon, Castillo asked Pono to explain her inefficiencies in her work, which the latter did through a handwritten statement dated October 14, 1992. After five days, her services were formally terminated. With no recourse left, Pono filed the instant labor case, as well as the necessary criminal charges before the Prosecutor's Office of Makati.

Private respondents' reconstruction of the events was expectedly at variance with Pono's. They claimed that she was one of seven medical representatives under Castillo's supervision. Castillo's version is as follows. Having observed that Pono had been violating several company policies, she was asked to comment on her alleged infractions, such as absences in certain itineraries, discrepancies in her work report and non-liquidation of cash advances. During the meeting, she admitted that her failure to comply with her duties was due to personal problems and asked for some understanding so she could put her life in order.

Castillo advised Pono to "clean her backyard and follow company policies." Notwithstanding the advice, Pono's work still fell short of company standards. Hence, on October 5, 1992, he requested her to personally report to him so they could discuss matters concerning her work performance. Aware that she could no longer offer a reasonable justification of her continued inefficiency, Pono decided to fabricate her attempted rape story.

To add credence to her story, Pono went to Godofredo Ruiz to narrate the attempted rape allegedly committed by Castillo, and at the same time offered to resign from her job effective April 1993, at which time she would already be entitled to purchase the company car she was then using at 50% of its appraised value. Unfortunately, her request was denied by the company.

Pono, on the other hand, offered no plausible explanation as to her shortcomings. Instead, she accused Castillo of harassing her and threatened to take legal action against him to stave off her dismissal. Making good her threat, she filed charges for unfair labor practice and sexual harassment against private respondents.

After considering the evidence and arguments of the parties, the Labor Arbiter dismissed the complaint for lack of merit. As stated at the outset, this decision was affirmed by the NLRC on appeal. It found that the infractions of company policies committed by Pono warranted the penalty of dismissal.

Pono is now before this Court contending that the NLRC acted with grave abuse of discretion and/or acted without or in excess of jurisdiction in affirming the decision of the Labor Arbiter.

Before proceeding any further, it must be borne in mind that the issue of whether or not there is a valid dismissal of an employee is a question of fact, the determination of which is the statutory function of the NLRC.^[1] It is almost trite to state that factual findings of the NLRC are generally accorded, not only respect but also finality, provided that its decisions are supported by substantial evidence and devoid of any unfairness or arbitrariness.^[2]

Pono contends that the NLRC erred when it deliberately disregarded her complaint for sexual harassment against Castillo. The Court takes cognizance of the fact that a criminal complaint for attempted rape or acts of lasciviousness filed by Pono against Castillo before the Prosecutors Office in Makati was eventually dismissed due to lack of merit, which dismissal was affirmed by the Department of Justice.^[3] Indisputably, an investigating fiscal is under no obligation to file a criminal information where he is not convinced that he has the quantum of evidence at hand to support the averments.^[4]

Thus, the determination of the persons to be prosecuted rests primarily with the prosecutor who is vested with quasi-judicial discretion in the discharge of this function.^[5] The courts should give credence, in the absence of a clear showing of arbitrariness, to the findings and determination of probable cause by prosecutors in a preliminary investigation.^[6]

With respect to the legality of Pono's dismissal, we have consistently held that, to validate a dismissal, the employer must show that (1) there was sufficient or just cause therefor and that (2) due process was observed.^[7]

Bearing these standards in mind, we find that while Pono was dismissed for cause, the same disregarded the requirements of due process.

Well-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees.^[8] It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be effected: (a) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (b) the second informs the employee of the employer's decision to dismiss him.^[9]

The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.^[10]

In the case at bar, Pono was duly notified of the charges against her. The records reveal that on October 5, 1992, she was asked to explain why there were some discrepancies in her "reported calls and the actual signatures of the doctors in the call cards."^[11] In another notice^[12] dated October 12, 1992, she was apprised of an apparent forgery in the signatures of a certain Dra. Melissa Bilgera, and was asked to explain her side within 72 hours from receipt thereof.

An examination of the records, however, reveals that no hearing was ever conducted by Sandoz before Pono was dismissed. The meeting called by Ruiz on October 5, 1992, is not the hearing contemplated by law since it was merely for the purpose of informing Pono about her questionable "work report," and to serve Pono a written notice detailing her infractions in her "work sheet." In fact, barely two weeks later, she was summarily dismissed. While it may be true that Pono was allowed to explain her side at this meeting, it is undisputed that no hearing was actually conducted before her employment was terminated.

Consultations or conferences may not be a substitute for the actual holding of a hearing.^[13] Every opportunity and assistance must be accorded to the employee by the management to enable him to prepare adequately for his defense, including legal representation.^[14]

Considering that Pono denied the accusation that she forged a doctor's signature in her work report, these denials should at least have warranted a separate hearing to enable her to fully ventilate her side. Absent such a hearing, Pono's constitutional right to due process was clearly violated.

This conclusion, notwithstanding, we uphold the findings of the NLRC that Pono's dismissal was for a just cause.

Under Article 282 of the Labor Code, the just causes for dismissal are the following:

“Article 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

- (1) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (2) Gross and habitual neglect by the employee of his duties;
- (3) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (4) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (5) Other causes analogous to the foregoing.”

We cannot countenance Pono's incompetence and lack of diligence in the performance of her duties. In fact, from June to October 1992, she received no less than five written notices calling her attention to her negligence in discharging her duties, not to mention the documented delinquencies she incurred prior to the alleged May 18, 1992 incident. Moreover, the habit of “reporting visits or calls to several doctors when no such visits or calls were actually made” constitutes serious

misconduct. We, therefore, hold that Pono's dismissal was for a just cause.

In a growing number of cases, this Court has consistently held that where the dismissal of an employee is, in fact, for a proven just and valid cause, but he is not accorded due process, the dismissal shall be upheld, but the employer must be held liable for the violation of his right to due process.^[15] The identical situation obtains in the case at bar.

WHEREFORE, the instant Petition is hereby **DISMISSED** for lack of merit. The August 31, 1994 decision of respondent National Labor Relations Commission is **AFFIRMED** with the **MODIFICATION** that private respondent shall pay to the petitioner P1,000.00, in keeping with the Court's policy regarding the same, as damages for its failure to observe procedural due process in effecting the dismissal.^[16]

SO ORDERED.

Regalado, Puno and Mendoza, JJ., concur.
Torres, Jr., J., is on leave.

-
- [1] Cardona vs. NLRC, 195 SCRA 92 (1991).
[2] Artex Development Co., Inc. vs. NLRC, 187 SCRA 611 (1990); Loapstar Shipping Co. vs. NLRC, 229 SCRA 654 (1993); Morales vs. NLRC, 241 SCRA 103 (1994); Radio Communication of the Philippines vs. NLRC (1996).
[3] Rollo, pp. 144-146.
[4] People vs. Pineda, 20 SCRA 748 (1967).
[5] Ogburn vs. Court of Appeals, 212 SCRA 483 (1992); People vs. Devaras, 228 SCRA 482 (1993).
[6] Drilon vs. Court of Appeals, 258 SCRA 280 (1996).
[7] Shoppers Gain Supermarket, et al. vs. NLRC, G.R. No. 110731, July 26, 1996.
[8] Corral vs. NLRC, 221 SCRA 693 (1993); Marcelo vs. NLRC, 240 SCRA 782 (1995).
[9] Amor Conti & Leopoldo Cruz vs. NLRC, Corfarm Holding Corporation, Carlito J. Rabang & Cipriano Bayarang, G.R. No. 119253, April 10, 1997.
[10] Pamantasan ng Lungsod ng Maynila vs. CSC, 241 SCRA 506 (1995).
[11] Rollo, pp. 102-103.
[12] Ibid., p. 106 .
[13] Pepsi Cola vs. NLRC, 210 SCRA 277 (1992).

- [14] Segismundo vs. NLRC, 239 SCRA 167 (1994); Abiera vs. NLRC, 215 SCRA 476 (1992)
- [15] Seahorse Maritime Corp. vs. NLRC, 173 SCRA 390 (1989); Rubberworld (Phils.), Inc. vs. NLRC, 183 SCRA 421 (1990); Aurelio vs. NLRC, 221 SCRA 432 (1993), Anambra Industries, Inc. vs. NLRC, 238 SCRA 232 (1994).
- [16] MGG Marine Services, Inc. and/or Doroteo C. Garlan and Ceasar Rotilo vs. NLRC and Elizabeth A. Molina, G.R. No. 114313, July 29, 1996.

Philippine Copyright © 2005
ChanRobles Publishing Company
www.chanrobles.com