**SUPREME COURT**
**SECOND DIVISION**

**PROCTER AND GAMBLE PHILIPPINES,**
***Petitioner*,**

***-versus-***

**G.R. No. 139847**
**March 5, 2004**

**EDGARDO BONDESTO,**
***Respondent*.**
**x----------x**

**D E C I S I O N**

**TINGA, *J.*:**

For Review on Certiorari is the Decision[1] dated June 16, 1999 of the Court of Appeals, affirming in toto the decision of the National Labor Relations Commission (NLRC), which in turn ordered the reinstatement of respondent Edgardo C. Bondesto and the payment of backwages for one (1) year only.

The facts are simple.

On July 18, 1975, respondent Edgardo Bondesto started work in the employ of petitioner Procter and Gamble Philippines, Inc. Nineteen (19) years later, the events which preceded the respondent's dismissal from work unfolded. At that time, he was working as production technician at the company's Tondo Plant in Tondo, Manila.

On June 13, 1994, the respondent received a Letter[2] dated June 3, 1994, asking him to explain why his absences consisting of 35 days[3] should not be classified as "unauthorized absence." Unauthorized absence, as a company policy, is a ground for termination of employment.[4]

The respondent presented his explanation in two (2) separate letters,[5] both dated June 16, 1994. However, on June 22, 1994, he received another letter, this time informing him that his employment in the company was to be terminated effective June 23, 1994 on the ground of "unauthorized absences." The letter states, thus:

June 22, 1994

Mr. Edgardo Bondesto
PR # 751003

We received your replies to our letter dated June 3, 1994 asking you to reply in writing why your absence of 35 days should not be classified as Unauthorized Absence. When you presented your letters and reported for work last June 16, 1994, you incurred another eight (8) work days of absences (June 06 to June 15, 1994). You now have a total of 43 work days of absences.

Last June 16 and June 20, 1994, you and I discussed your replies and your 43 days of absences. You were not able to justify your absences.

After a thorough study of your case, you have indeed violated a Company Policy governing Unauthorized Absences, read (sic) as follows:

> "As a general rule, employees with six (6) continuous work days or a total of ten (10) work days of unauthorized absences within a calendar year may be subject to termination."

> You have incurred more than ten (10) work days of unauthorized absences.
>
> We hereby inform you, therefore, that your employment with the Company is being terminated effective close-of-business Thursday, June 23, 1994.[6]

Claiming that his dismissal was without just cause, the respondent, represented by the United Employees Union of Procter and Gamble Phils., Inc., filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC). The respondent contended that his absences were justified.

Sometime in November 1993, the respondent alleged, the petitioner directed him to go to Mindanao for field assignment. Except for the plane fare which the petitioner paid prior to his departure, the respondent advanced all the other work-related expenses incurred during the assignment. One of the petitioner's Staff District Managers issued a check in the amount of Ten Thousand Pesos (P10,000.00) supposedly to cover respondent's traveling expenses, but it bounced after he presented it to the bank.

On January 31, 1994, the respondent was re-assigned in Manila. He immediately worked on the reimbursement of his advances. But as the reimbursements were not immediately released, he was constrained to go to the petitioner's General Office located in Makati to follow-up the reimbursement.

Meanwhile, the children of the respondent became sick. He spent time attending to them. And as he needed money, he also went to the company's Makati office to follow-up the reimbursement process. The delay in the release of his reimbursement even forced him to apply for wage advances under the collective bargaining agreement between the company and the union.

On April 6, 1994, or after more than two months, the petitioner finally released the respondent's reimbursements.

One week later, or on April 13, 1994, the respondent received a letter asking him to explain his "excessive absences,"[7] which according to

him, included the days he worked on his reimbursements. The respondent demurred. He claimed that the seventeen (17) days should be considered as compensable working time since he was then at the Makati office working on the reimbursement of his money.

On May 2, 1994, the respondent himself got sick. He went to the company clinic the following day to secure a working permit. The company doctor however refused to give him one and even required him to see the doctor who operated on his "Colonic Cancer" way back in 1986. The respondent failed to locate the doctor. Thus, he was given an indefinite sick leave instead of a working permit.

The petitioner denied the respondent's assertions. It alleged that from February 4, 1994 to March 11, 1994, the respondent, without prior notice, failed to report for work. When asked to explain his numerous absences,[8] the respondent contended that he was at the petitioner's General Office, working on the reimbursement of his expenses incurred during his provincial assignments.

Unconvinced, the petitioner reconsidered only seven (7) days[9] of the respondent's absences and asked the latter to explain the remaining absences for seventeen (17) working days.[10] Since the respondent, according to the petitioner, could not satisfactorily explain his absences, it sent him a letter[11] requiring him to explain in writing, within five days, why appropriate disciplinary measures should not be taken against him in view of his "excessive absences." According to the petitioner, the respondent did not respond to the letter.

On May 2, 1994, the respondent did not report for work due to exhaustion. Following a standard office procedure, he went to the petitioner's clinic the next day to get a "return to work" permit. However, the clinic deferred issuance of the permit until after he shall have undergone a check-up and submitted a medical certificate from his attending physician. Consequently, the respondent's manager did not allow the respondent to work.

On May 4, 1994, the respondent again went to the clinic and requested that he be allowed to work until he could have an appointment with his doctor. His request was denied. According to the petitioner, from that time on the respondent had been absent. He

reported back to work only on June 16, 1994, after receiving the petitioner's letter dated June 3, 1994.

On February 10, 1997, the labor arbiter rendered a Decision[12] finding the respondent's termination as one for cause and accordingly dismissing the complaint. Considering, however, the respondent's length of service to the company, the arbiter awarded separation pay at the rate equivalent to one-half (1/2) month's salary for every year of service.

The respondent appealed to the NLRC which, on April 23, 1998, reversed the labor arbiter's decision and found the respondent's dismissal illegal.[13] Finding the respondent's absences to be justified, the NLRC ruled that his absences from work were actually spent in following-up reimbursement of the expenses he incurred during the provincial assignment. The absences could have been caused by the petitioner's delay in processing the reimbursement, the NLRC pointed out. It also took into consideration the fact that the children of the respondent were in and out of the hospital during the months of February and March of 1994.

With respect, however, to the absences incurred during the months of May and June, the NLRC ruled that the respondent failed to show that he exerted any effort in trying to locate his physician. Nevertheless, the NLRC considered the penalty of termination too harsh, and ordered the reinstatement of the respondent with limited back wages equivalent to one (1) year.

The petitioner moved for the reconsideration of the NLRC Decision, but its motion was denied in a Resolution[14] dated July 29, 1998. Undaunted, the petitioner elevated the case to the Court of Appeals on a petition for certiorari,[15] arguing that (1) the respondent's dismissal is justified because he deliberately disregarded the company rules and regulations on leaves and absences; (2) the respondent's absences were not only unauthorized but also unjustified, and; (3) the reinstatement of the respondent is no longer feasible in view of the strained relations between the parties.

In the meantime, the respondent filed a Motion for Execution[16] of the NLRC Decision. On January 18, 1999, the labor arbiter issued a

Writ of Execution directing the petitioner to reinstate the respondent to his former position, without loss of seniority rights and other employee benefits. In compliance with the writ, the petitioner reinstated the respondent in its payroll, effective February 25, 1999.

On June 16, 1999, the appellate court rendered a Decision[17] affirming the NLRC judgment. Accordingly, the Court of Appeals ordered the respondent's reinstatement with limited back wages equivalent to one (1) year.

Its Motion for Reconsideration having been denied by the Court of Appeals per the latter's Resolution[18] dated August 26, 1999, the petitioner now seeks relief from this Court. Relying once more on its defense of just cause for termination, the petitioner insists that the respondent's violation of the company rules and regulations on absences constitutes serious misconduct and/or willful disobedience of the lawful orders of his superiors.

The pivotal issue is whether the respondent was terminated from service for a just cause or whether he was illegally dismissed.

The Court rules that the respondent was illegally dismissed and accordingly denies the petition.

It is manifest that the petition raises an issue that is fundamentally factual, which the Court is not at liberty to review. The veracity of a fact is not for the Court to examine. The Court steps in and exercises its power of review only when the inference or conclusion arrived at on the basis of facts is manifestly erroneous.[19]

The Court reiterates the much-repeated rule that the findings of fact of the Court of Appeals, where there is absolute agreement with those of the NLRC, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence.[20]

Nonetheless, the Court has reviewed the records of this case and found there is indeed no compelling reason to disturb the findings of the NLRC, which the Court of Appeals affirmed in toto. Verily, the respondent's seemingly prolonged absences during the period from

February 4 to March 11, 1994 were sufficiently explained in the Sur-Rejoinder[21] filed before the labor arbiter. There, the respondent made an account of each day of absence chronologically. As thus accounted, the respondent spent most of the days at the company's General Office following-up the reimbursement of his advances. He asked the petitioner to check the security guard's logbook at the General Office to check the veracity of his claim. He also presented hospital bills and receipts to prove that his children were in and out of the hospital during the period.

The petitioner sought to counter the respondent's claims by referring to his time cards. According to the petitioner, the respondent' time card shows no "punched in" times for February 8 and 9 and no "punched out" time for February 10 and 11. The problem, however, is that while they were referred to in the petition, the time cards themselves were not attached thereto. Nonetheless, such discrepancy, if any, is immaterial considering that aside from February 11 the dates adverted to were not included in the list of the respondent's absences.

The Court agrees, however, with the petitioner that the respondent failed to justify his prolonged absences during the months of May to June. While his intention to go back to work was manifest, he regrettably failed to show that he exerted any effort to locate his physician. Nevertheless, the failure to locate the physician cannot amount to "serious misconduct or willful disobedience," as the petitioner would like this Court to believe. "Misconduct" has been defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[22] On the other hand, "willful disobedience" envisages the concurrence of at least two (2) requisites: the employee's assailed conduct has been 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 had been engaged to discharge.[23]

Even assuming that the respondent's absenteeism constitutes willful disobedience, such offense does not warrant the respondent's dismissal. Not every case of insubordination or willful disobedience

by an employee reasonably deserves the penalty of dismissal. There must be a reasonable proportionality between the offense and the penalty.

At the time of the filing of the complaint, the respondent had worked with the petitioner for nineteen (19) years. It has not been shown that the respondent committed any infraction of company rules during his two (2) – decade stint in the company. Undoubtedly, dismissal is too harsh a sanction. Dismissal has always been regarded as the ultimate penalty.[24]

While the Court recognizes the rights of an employer to terminate the services of an employee for a just or authorized cause, the dismissal of an employee must be made within the parameters of law and pursuant to the tenets of equity and fair play. Truly, the employer's power to discipline its workers may not be exercised in such an arbitrary manner as to erode the constitutional guarantee of security of tenure.[25] The Constitution mandates the protection of labor. This command the Court has to heed and cannot disregard.

In sum, the Court is convinced that the respondent has been illegally terminated from employment. The normal consequences of illegal dismissal are reinstatement without loss of seniority rights and the payment of back wages computed from the time the employee's compensation was withheld from him. However, in view of the Court's finding that some of the respondent's absences were not wholly justified, the Court agrees with the NLRC and the Court of Appeals that backwages should be limited to one (1) year.

The petitioner claims that the existence of strained relationship between the parties militates against the reinstatement of the respondent. While the Court agrees that human nature engenders, in the normal course of things, a certain degree of hostility as a result of litigation, the strained relations are not necessarily sufficient to rule out reinstatement. As aptly put by the Court of Appeals, "if petitioner's contention should be sustained, reinstatement would thus become the exception rather than the rule in cases of illegal dismissal."[26]

However, during the pendency of the case, the petitioner filed an Urgent Manifestation and Motion,[27] stating that more than a year after the respondent was placed on payroll reinstatement the company's Tondo Plant, where the respondent was assigned, was shut down. Since the respondent's employment could not be maintained at the Tondo Plant, so the petitioner maintains, it was constrained to discontinue the respondent's payroll reinstatement.

Clearly, the respondent is entitled to reinstatement, without loss of seniority rights, to another position of similar nature in the company. It should be stressed that while the petitioner manifested to this Court the closure of the Tondo Plant, it failed to indicate the absence of an unfilled position more or less of a similar nature as the one previously occupied by the respondent at its other plant/s. However, if the respondent no longer desires to be reinstated, he should be awarded separation pay at the rate of one (1) month for every year of service as an alternative, following settled jurisprudence.[28]

**WHEREFORE**, the petition is **DENIED** and the assailed decision dated June 16, 1999 of the Court of Appeals is **AFFIRMED**. Petitioner Procter and Gamble Philippines, Inc. is directed to reinstate respondent Edgardo Bondesto without loss of seniority rights, or in the alternative, i.e., should he opt not to be reinstated, to pay him separation pay in the amount equivalent to one (1) month pay for every year of service, plus backwages for one (1) year only in either case.

**SO ORDERED.**

**Quisumbing, *J.*, *(Acting Chairman)*, Austria-Martinez, and Callejo, Sr., *JJ.*, concur.**
**Puno, *J.*, *(Chairman)*, on leave.**

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[1] Rollo, p. 55.
[2] Rollo, p. 43.
[3] February 7, 11, 16, 17, 18, 21, 24, 28, March 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 30, May 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31, and June 1, 2, 3.

[4] As a general rule, employees with six (6) continuous work days or a total of ten (10) work days of unauthorized absences within a calendar year maybe subject to termination.
[5] Rollo, pp. 44 and 45.
[6] Rollo, p. 46.
[7] February 4, 11, 16, 17, 18, 21, 24, 28, March 1, 2, 3, 4, 7, 8, 9, 10, and 11, 2004. The petitioner did not include February 7, 1994. (See letter dated April 13, 1994, Rollo, p. 42). But see letter dated April 13, 1994, supra, note 2, where the petitioner included February 7, 1994 and excluded February 4, 1994.
[8] February 4, 7, 8, 9, 10 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 28, March 1, 2, 3, 4, 7, 8, 9, 10, and 11, 2004.
[9] February 8, 9, 10, 14, 15, 22, and 23.
[10] February 4, 11, 16, 17, 18, 21, 24, 28, March 1, 2, 3, 4, 7, 8, 9, 10, and 11, 2004. The petitioner did not include February 7, 1994. (See letter dated April 13, 1994, Rollo, p. 42). But See letter dated April 13, 1994, supra, note 2, where the petitioner included February 7, 1994 and excluded February 4, 1994.
[11] Supra note 2.
[12] Rollo, p. 47.
[13] See Decision dated April 23, 1998, Rollo, p. 271.
[14] See CA Decision, Rollo, p. 56.
[15] Docketed as CA-G.R. SP No. 50160, "Procter and Gamble Philippines, Inc. vs. National Labor Relations Commission and Edgardo Bondesto."
[16] See Motion for Issuance of a Writ of Preliminary Injunction, Rollo, p. 264.
[17] Per Justice Artemio G. Tuquero, and concurred in by Justices Eubulo G. Verzola and Candido V. Rivera of the Thirteenth Division of the Court of Appeals.
[18] Rollo, p. 80.
[19] Sunset View Condominium Corporation vs. National Labor Relations Commission, G.R. No. 87799, December 15, 1993, 228 SCRA 466; Travelaire and Tours Corporation vs. National Labor Relations Commission, 355 Phil. 932 (1998).
[20] Permex, Inc. vs. National Labor Relations Commission, 380 Phil. 79 (2000).
[21] Rollo, pp. 133-237.
[22] Dept. of Labor Manual, Sec. 4343.01.
[23] Gold City Integrated Port Services, Inc. vs. National Labor Relations Commission, G.R. No. 86000, September 21, 1990, 189 SCRA 811.
[24] Philippine Long Distance Telephone Company vs. National Labor Relations Commission. 362 Phil. 352 (1999).
[25] Hantex Trading Co., Inc. vs. Court of Appeals, G.R. No. 148241, September 27, 2002, 390 SCRA 189.
[26] Rollo, p. 63.
[27] Id., at p. 599.
[28] Liana's Supermarket vs. National Labor Relations Commission, G.R. No. 111014, May 31, 1996, 257 SCRA 186.