SUPREME COURT
SECOND DIVISION

TEODORICO ROSARIO,
***Petitioner*,**

-versus-

G.R. No. 147572
February 19, 2003

VICTORY RICEMILL,
***Respondent*.**
x----------x

D E C I S I O N

CALLEJO, SR., *J.*:

Petitioner Teodorico Rosario filed the instant petition for review on certiorari seeking to reverse and set aside the Decision[1] dated September 22, 2000 and Resolution[2] dated March 16, 2001 of the Court of Appeals in CA-G.R. SP No. 52487. In the assailed decision, the appellate court affirmed the decision of the National Labor Relations Commission (NLRC) declaring petitioner's dismissal from employment valid. The assailed resolution denied petitioner's motion for reconsideration.

The case stemmed from a complaint for illegal dismissal with money claims (separation pay, overtime pay, 13th month pay and incentive pay) filed by petitioner against respondent Victory Ricemill, a single

proprietorship owned by Emilio Uy. The antecedent facts, as culled from the records of the case are, as follows:

Emilio Uy was engaged in the business of milling palay under the business name Victory Ricemill. He employed petitioner as truck driver from January 11, 1982 up to his dismissal on June 22, 1993. Petitioner was paid the wage rate of P110.00 per day. As truck driver, petitioner was tasked to, among others, haul palay from various points in Isabela and Cagayan and bring them to respondent's ricemill in Cabatuan, Isabela. In addition, petitioner acted as personal driver to the family of Mr. Uy during their trips to Manila.

On June 22, 1993, respondent terminated petitioner's employment for his notorious acts of insubordination and that he attempted to kill a fellow employee. According to respondent, petitioner was guilty of insubordination when he refused to serve as driver of Mr. Uy's son when the latter needed a driver. Further, on one occasion, petitioner was instructed to deliver 600 bags of cement to the Felix Hardware in Tuguegarao. Instead of bringing the merchandise to the said store, petitioner delivered the same to one Eduardo Interior, who had not since then paid for it to the damage of respondent in the total sum of P60,000.00. Because of petitioner's tendency to disobey the orders to him, respondent was constrained to engage the services of another driver in the person of Michael Ng. Petitioner resented the new driver and became uncooperative, disrespectful and quarrelsome. On June 21, 1993, petitioner, armed with a dagger, fought with Michael Ng and inflicted an injury on the latter. Petitioner likewise inflicted injuries on the head of Rody Senies, a co-employee, when he intervened in the fight and tried to pacify petitioner.

After the proceedings, the regional labor arbiter rendered his Decision[3] dismissing for lack of merit the complaint for illegal dismissal. The regional labor arbiter found that there were valid causes, i.e., willful disobedience to the lawful orders of the employer and commission of a crime or offense against the employer's duly authorized representative, for the termination of petitioner's employment.

On appeal, the NLRC ordered the remand of the case to the regional labor arbiter for further proceedings.[4] The NLRC found that

petitioner was denied due process during the proceedings with the regional labor arbiter as he (petitioner) was not given the opportunity to present his additional rebuttal evidence. On the other hand, respondent was allowed to submit in evidence various exhibits to discredit the rebuttal testimony of petitioner.

During the subsequent proceedings before the regional labor arbiter, petitioner submitted the affidavit of Mario Roque. Roque averred that contrary to respondent's claim, the 600 bags of cement delivered to Eduardo Interior had been paid as evidenced by DBP Check No. B-065462, dated May 22, 1993, in the sum of P58,950.00 payable to respondent.

Thereafter, the regional labor arbiter promulgated his Decision[5] stating that he found no reason to deviate from his previous decision. Roque's testimony was not given any probative value as the same was found to be hearsay. The regional labor arbiter concluded that respondent was justified in terminating the employment of petitioner on ground of loss of confidence. Accordingly, the regional labor arbiter again dismissed, for lack of merit, petitioner's complaint for illegal dismissal.

On appeal, the NLRC affirmed the ruling of the regional labor arbiter and declared that petitioner's dismissal was valid.

Petitioner then elevated the case to the CA which rendered the assailed Decision.[6] The appellate court accorded respect to the findings of the NLRC. It declared that petitioner's act of delivering the merchandise to Edgardo Interior, instead of Felix Hardware, without being authorized to do so by respondent was not only inimical to the latter's business interests, but constitutive of insubordination or willful disobedience as well. The CA likewise held that petitioner's act of fomenting a fight with a co-worker constituted serious misconduct. It further noted that petitioner's contumacious refusal to obey the reasonable orders of respondent was not sufficiently explained The CA thus found that respondent had justifiable cause to dismiss petitioner.

Anent the procedural aspect, the CA observed that although there was no strict compliance with the two-notice rule, it could be gleaned

from the records that petitioner was given ample opportunity to explain his side. Moreover, even granting that respondent fell short of the two-notice requirement, such irregularity, according to the CA, does not militate against the legality of the dismissal.[7]

The dispositive portion of the assailed CA decision reads:

> WHEREFORE, premises considered, the decision, dated August 24, 1998, of the National Labor Relations Commission in NLRC NCR CA 0008213-95 (NLRC RAB-II-CN-07-00262-93) is hereby AFFIRMED. Costs against the petitioner.[8]

Petitioner filed a motion for reconsideration of the aforesaid decision but the CA denied the same in the assailed resolution. Aggrieved, petitioner filed with this Court the instant petition on the ground that:

> THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE QUESTIONED DECISION OF THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION NOTWITHSTANDING THE FACT THAT PETITIONER WAS ILLEGALLY DISMISSED. THE HONORABLE COURT OF APPEALS LIKEWISE ERRED IN NOT SUSTAINING PETITIONER'S STANCE THAT HIS DISMISSAL FROM HIS EMPLOYMENT WAS NOT IN ACCORDANCE WITH THE DUE PROCESS REQUIREMENT OF THE LAW. AND AS A CONSEQUENCE OF PETITIONER'S ILLEGAL DISMISSAL, HE IS ENTITLED TO SEPARATION PAY, OVERTIME PAY, INCENTIVE LEAVE PAY, HOLIDAY PAY AND OTHER BENEFITS GRANTED BY LAW. IN SO DOING, THE HONORABLE COURT OF APPEALS RENDERED A DECISION WHICH IS CONTRARY TO THE FACTS OF THE CASE, THE EVIDENCE, LAW AND ESTABLISHED JURISPRUDENCE. THESE MANIFEST AND GLARING ERRORS, IF NOT CORRECTED, WOULD INEVITABLY WORK INJUSTICE TO HEREIN PETITIONER AND MAKE HIM SUFFER IRREPARABLE DAMAGE.[9]

Petitioner presented the following issues for the Court's resolution:

I

WHETHER OR NOT PETITIONER'S TERMINATION WAS FOR A JUST AND LAWFUL CAUSE.

II

WHETHER OR NOT PETITIONER'S DISMISSAL FROM HIS EMPLOYMENT WAS IN ACCORDANCE WITH THE DUE PROCESS REQUIREMENT OF THE LAW.

III

WHETHER OR NOT PETITIONER IS ENTITLED TO SEPARATION PAY, OVERTIME PAY, INCENTIVE LEAVE PAY, HOLIDAY PAY AND OTHER BENEFITS GRANTED BY LAW.[10]

It is the contention of petitioner that his act of delivering the 600 bags of cement to Edgardo Interior, instead of the Felix Hardware to which they were intended, does not constitute willful disobedience nor serious misconduct so as to justify his dismissal. He was allegedly constrained to look for another buyer for the merchandise because the proprietor of Felix Hardware rejected the aforesaid materials. It has been allegedly company practice for respondent to allow the delivery of materials to other business establishments when these are rejected by the intended customers. Contrary to respondent's claim, Mr. Interior allegedly paid for the bags of cement as testified to by Roque.

Petitioner maintains that his refusal to serve as driver to Mr. Uy's son does not constitute willful disobedience to the employer's lawful order because it was not work-related. Further, he could not allegedly be dismissed for committing an offense against his co-worker, Michael Ng, because he was neither the employer, nor a member of his family nor his duly authorized representative.

Petitioner likewise claims that he was not afforded due process of law because prior to the termination letter, he was not furnished a written

notice detailing the particular acts and/or omissions which he allegedly committed to warrant his dismissal. Petitioner thus prays that respondent be directed to reinstate him and pay his money claims.

The regional labor arbiter, the NLRC and the CA are unanimous in finding that there was justifiable cause for the dismissal of petitioner. They are one in holding that petitioner committed willful disobedience when he delivered the 600 bags of cement to Mr. Interior, instead of the Felix Hardware, without respondent's knowledge nor permission.

The validity of petitioner's dismissal is a factual question. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency. Well-settled is the rule that findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but at times even finality if such findings are supported by substantial evidence.[11] This is especially so in this case, in which the findings of the NLRC were affirmed by the Court of Appeals. The findings of facts made therein can only be set aside upon showing of grave abuse of discretion, fraud or error of law.[12] None has been shown in this case.

The unanimous finding of the regional labor arbiter, the NLRC and the CA that petitioner is guilty of willful disobedience is based on substantial evidence on record. Petitioner's cause is not helped by the fact that he committed a crime against his co-worker. His actuations clearly constituted willful disobedience and serious misconduct justifying his dismissal under Article 282(a) of the Labor Code which provides:

> Art. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> x x x

> Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and (2) 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.[13]

In this case, the order to petitioner was simple, i.e., to deliver the merchandise to the Felix Hardware. It was clearly reasonable, lawful, made known to petitioner and pertained to his duty as driver of respondent. Petitioner did not even proffer a justifiable explanation for his disobedience thereto. Every employee is charged with the implicit duty of caring for the employer's property.[14] Petitioner's conduct showed that he could not even be trusted with this task. Further, his hostile attitude towards his co-workers which eventually led him to inflict physical injuries on one of them cannot be countenanced. As correctly put by the NLRC, petitioner's "continuance in the service of respondent company is partly inimical not only to its interests but also to the interest of its other employees."[15]

To effect the dismissal of an employee, however, the law requires not only that there be just and valid cause as provided under Article 282 of the Labor Code. It likewise enjoins the employer to afford the employee the opportunity to be heard and to defend himself. On the latter aspect, the employer is mandated to furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reason therefor.[16]

While there was unanimity among the regional labor arbiter, the NLRC and the CA on the existence of a valid and lawful cause for petitioner's dismissal, the same could not be said on their respective findings on whether or not respondent complied with the procedural requirements in effecting petitioner's dismissal, i.e., affording him the opportunity to be heard. The regional labor arbiter and the NLRC did not make any finding on whether respondent afforded petitioner the opportunity to be heard and to defend himself. On the other hand, as mentioned earlier, the CA found that petitioner was given ample opportunity to explain his side. Even granting that there was no strict compliance with the two-notice requirement, such irregularity, according to the CA, does not militate against the legality of the dismissal citing Serrano vs. NLRC.[17]

A careful review of the records revealed that, indeed, respondent's manner of dismissing petitioner fell short of the two-notice requirement. While it furnished petitioner the written notice informing him of his dismissal,[18] respondent failed to furnish petitioner the written notice apprising him of the charge or charges against him. Consequently, petitioner was deprived of the opportunity to respond thereto.

However, as correctly opined by the CA, respondent's omission does not render petitioner's dismissal invalid but merely ineffectual. The prevailing rule is that when the dismissal is effected for a just and valid cause, as in this case, the failure to observe procedural requirements does not invalidate nor nullify the dismissal of an employee. The Court had the occasion to expound this rule in the case of Serrano[19] in this wise:

> Not all notice requirements are requirements of due process. Some are simply part of a procedure to be followed before a right granted to a party can be exercised. Others are simply an application of the Justinian precept, embodied in the Civil Code, to act with justice, give everyone his due, and observe honesty and good faith toward one's fellowmen. Such is the notice requirement in Arts. 282-283. The consequence of the failure either of the employer or the employee to live up to this precept is to make him liable in damages, not to render his act (dismissal or resignation, as the case may be) void. The measure

> of damages is the amount of wages the employee should have received were it not for the termination of his employment without prior notice. If warranted, nominal and moral damages may also be awarded.
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> We hold, therefore, that, with respect to Art. 283 of the Labor Code, the employer's failure to comply with the notice requirement does not constitute a denial of due process but a mere failure to observe a procedure for the termination of employment which makes the termination of employment merely ineffectual. It is similar to the failure to observe the provisions of Art. 1592, in relation to Art. 1191, of the Civil Code in rescinding a contract for the sale of immovable property. Under these provisions, while the power of a party to rescind a contract is implied in reciprocal obligations, nonetheless, in cases involving the sale of immovable property, the vendor cannot exercise this power even though the vendee defaults in the payment of the price, except by bringing an action in court or giving notice of rescission by means of a notarial demand. Consequently, a notice of rescission given in the letter of an attorney has no legal effect, and the vendee can make payment even after the due date since no valid notice of rescission has been given.

Indeed, under the Labor Code, only the absence of a just cause for the termination of employment can make the dismissal of an employee illegal. This is clear from Art. 279 which provides:

> Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
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> Thus, only if the termination of employment is not for any of the causes provided by law is it illegal and, therefore, the

> employee should be reinstated and paid backwages.[20] *(Citations omitted)*

In so ruling, the Court recognized that "the law, in protecting the rights of labor, authorized neither the oppression nor self-destruction of the employer," thus:

> The refusal to look beyond the validity of the initial action taken by the employer to terminate employment either for an authorized or just cause can result in an injustice to the employer. For not giving notice and hearing before dismissing an employee, who is otherwise guilty of, say, theft, or even of an attempt against the life of the employer, an employer will be forced to keep in his employ such guilty employee. This is unjust.
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> It is true the Constitution regards labor as "a primary social economic force." But so does it declare that it "recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investment. The Constitution bids the State to "afford full protection to labor." But it is equally true that "the law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer. And it is oppression to compel the employer to continue in employment one who is guilty or to force the employer to remain in operation when it is not economically in his interest to do so.
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> x x x
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> On the other hand, with respect to dismissals for cause under Art. 282, if it is shown that the employee was dismissed for any of the just causes mentioned in said Art. 282, then, in accordance with that article, he should not be reinstated. However, he must be paid backwages from the time his employment was terminated until it is determined that the termination of employment is for a just cause because the failure to hear him before he is dismissed renders the termination of his employment without legal effect.[21] *(Citations omitted)*

In fine, the lack of notice and hearing is considered as being a mere failure to observe a procedure for the termination of employment which makes the dismissal ineffectual but not necessarily illegal. The procedural infirmity is then remedied by ordering the payment to the employee his full backwages from the time of his dismissal until the court finally rules that the dismissal has been for a valid cause.[22]

Having established that respondent had just and valid cause to terminate petitioner's employment but failed to hear him prior to his dismissal, respondent is obliged to pay petitioner his backwages computed from the time of his dismissal up to the time the decision in this case becomes final.

WHEREFORE, the Decision dated September 22, 2000 and Resolution dated March 16, 2001 of the Court of Appeals in CA-G.R. SP No. 52487, are hereby **AFFIRMED** with **MODIFICATION**. Emilio Uy, doing business under the business name Victory Ricemill, is ordered to pay petitioner full backwages from the time his employment was terminated on June 22, 1993 up to the time the herein decision becomes final. For this purpose, this case is **REMANDED** to the regional labor arbiter for the computation of the backwages due petitioner.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing and Austria-Martinez, *JJ.*, concur.

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[1] CA, Rollo, CA-G.R. No. 52487, pp. 197-210.
[2] Ibid., at 231.
[3] Original Records, pp. 233-236.
[4] Id., at 283-288.
[5] Id., at 371.
[6] CA Decision, September 22, 2002, pp. 9-11; Rollo, pp. 152-154.
[7] Ibid., at 11; Ibid., at 154.
[8] Id., at 14; Id., at 157.
[9] Rollo, p. 17.
[10] Id., at 17-18.
[11] Felix vs. Enertech Systems Industries, Inc., 355 SCRA 680 (2001).

[12] Ibid.
[13] Alcantara vs. Court of Appeals, et al., G.R. No. 143397, August 6, 2002, p. 11.
[14] Ibid.
[15] NLRC Decision, supra., p. 11; Records, p. 433.
[16] National Bookstore, Inc. vs. Court of Appeals Special Eight Division, G.R. No. 146741, February 27, 2002.
[17] 323 SCRA 445 (2000).
[18] Exhibit "8;" Records, p. 52.
[19] Ibid.
[20] Id., at 471-473.
[21] Id. at 474-476.
[22] Dayan vs. Bank of the Philippine Islands, G.R No. 140692, November 20, 2001, p. 13.