

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ESPERO SANTOS SALAW,
*Petitioner,***

-versus-

**G.R. No. 90786
September 27, 1991**

**NATIONAL LABOR RELATIONS
COMMISSION, ASSOCIATED BANK
AND/OR JOSE R. TENGCO, Chairman
of the Board, ROLLIE TUAZON,
Manager,**

Respondents.

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DECISION

SARMIENTO, J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] rendered in NLRC Case No. 4-1272-85 dated July 26, 1989, affirming the dismissal of the petitioner by the respondent bank, and reversing thereby the Decision^[2] of Labor Arbiter Benigno C. Villarente, Jr. of March 29, 1988 which declared the petitioner's dismissal as illegal and ordered his reinstatement with backwages and benefits.

The records show that the petitioner, Espero Santos Salaw, was employed by the private respondents in September 1967 as a credit

investigator-appraiser. His duties included inspecting, investigating, appraising, and identifying the company's foreclosed assets; giving valuation to its real properties, and verifying the genuineness and encumbrances of the titles of properties mortgaged to the respondents.

On November 27, 1984, the Criminal Investigation Service (CIS) of the Philippine Constabulary, National Capital Region, extracted from the petitioner — without the assistance of counsel — a Sworn Statement^[3] which made it appear that the petitioner, in cahoots with a co-employee, Reynaldo Madrigal, a supervisor in charge of the acquired assets of respondent Associated Bank, sold twenty sewing machines and electric generators which had been foreclosed by the respondent bank from Worldwide Garment and L.P. Money Garment, for P60,000.00, and divided the proceeds thereof in equal shares of P30,000.00 between the two of them.

On December 5, 1984, the petitioner was requested by private respondent Rollie Tuazon, the bank manager, to appear before the bank's Personnel Discipline and Investigation Committee (PDIC) which would be meeting the following day, December 6, 1984, at 9:00 a.m., in connection with the Worldwide case.

When petitioner Salaw signified his readiness to appear before the PDIC, private respondent Rollie Tuazon sent him a Letter^[4] stating —

Your request to appear before the Personnel Discipline and Investigation Committee (PDIC) with regard to the Worldwide Case has been accepted.

Thus, you are requested to come on Thursday, February 28, 1985 at 11:00 at the Board Room, 10th Floor of the Madrigal Building, Ayala, without counsel or representative. (Emphasis supplied).

On April 1, 1985, the petitioner was terminated from his employment effective March 27, 1985, for alleged serious misconduct or willful disobedience and fraud or willful breach of the trust reposed on him by the private respondents.

Subsequently, the petitioner filed with the NLRC on April 17, 1985, a complaint for illegal dismissal against respondent Bank Jose R. Tengco, and Rollie Tuazon. This case was docketed as Case No. NCR-4-1272-85. He likewise submitted an affidavit recanting his Sworn Statement before the CIS (Annex “A”) mentioned earlier.

After the proper proceedings, on March 29, 1988, Labor Arbiter Benigno C. Villarente, Jr., rendered a Decision,^[5] the decretal portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant illegal and ordering respondents to reinstate complainant to his former or equivalent position without loss of seniority rights and to pay him his backwages and benefits due an employee of respondent Bank from the time of illegal dismissal until actual reinstatement.

The private respondents appealed the labor arbiter’s decision to the National Labor Relations Commission (NLRC) which on July 26, 1989, rendered a Decision^[6] reversing that of the labor arbiter and dismissing the case for lack of merit.

The petitioner filed a Motion for Reconsideration of the NLRC Decision, but this was denied in a Resolution^[7] dated October 31, 1989. Hence, this recourse.

The only issue for our resolution is whether or not the dismissal of the petitioner by the private respondents was legally justified.

Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are two-fold: the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause as provided by law (Articles 279, 281, 282-284, New Labor Code), but the rudimentary requirements of due process — notice and hearing — must also be observed before an employee may be dismissed. One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal.^[8]

The inviolability of notice and hearing for a valid dismissal of an employee can not be over-emphasized. Those twin requirements constitute essential elements of due process in cases of employee dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal; on the other hand, the requirement of hearing affords the employee the opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither one of these two requirements can be dispensed with without running afoul of the due process requirement of the Constitution.^[9]

We agree with the labor arbiter that the petitioner was terminated without the benefit of due process of law. His dismissal was, therefore, illegal. Thus:

Respondents' initial act in convening their Personnel Discipline and Investigation Committee (PDIC) to investigate complainant (after the CIS experience) would have complied with the demands of due process had complainant been given the opportunity to present his own defense and confront the witnesses, if any, and examine the evidence against him. But as the records clearly show, complainant was denied that constitutional right when he subsequent request to refute the allegations against him was granted and a hearing was set "without counsel or representative." (See respondent Tuazon's letter to respondent dated February 25, 1985).^[10]

The investigation of petitioner Salaw by the respondent Bank's investigating committee violated his constitutional right to due process, in as much as he was not given a chance to defend himself, as provided in Rule XIV, Book V of the Implementing Rules and Regulations of the Labor Code governing the dismissal of employees. Section 5 of the said Rule requires that "the employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires."^[11] (Emphasis supplied.) Here petitioner was perfunctorily denied the assistance of counsel during the investigation to be conducted by the PDIC. No reasons were proffered which vitiated the denial with irregularity and unfairness.

It is true that administrative and quasi-judicial bodies are not bound by the technical rules of procedure in the adjudication of cases. However, the right to counsel, a very basic requirement of substantive due process, has to be observed. Indeed, the rights to counsel and to due process of law are two of the fundamental rights guaranteed by the 1987 Constitution to any person under investigation, be the proceeding administrative, civil, or criminal. Thus, Section 12(1), Article III thereof specifically provides: “Any person under investigation for the commission of an offense shall have the right to have competent and independent counsel preferably of his own choice. If the person cannot afford the service of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.”^[12] To underscore the inviolability of this provision, the third paragraph of the same section explicitly states that, “any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.”^[13]

As aptly observed by the labor arbiter, the respondents premised their action in dismissing the complainant on his supposed admission of the offense imputed to him by the Criminal Investigation Service (CIS) in its interrogation in November, 1984. The said admission was carried in a three-page Sworn Statement signed by the complainant. Aside from this Statement, no other evidence was presented by the respondents to establish the culpability of the complainant in the fraudulent sale of the respondents’ foreclosed properties. Even the minutes of the proceeding taken during the investigation conducted by the respondents were not presented. This is a glaring denial of due process. We find it worth reiterating the cardinal primary rights which must be respected even in proceedings of an administrative character as enunciated by this Court in the classic landmark decision of Justice Laurel in *Ang Tibay*,^[14] to wit:

- (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof In the language of Chief Justice Hughes, in *Morgan vs. U.S.*, 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129,

“the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.”

- (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. (Chief Justice Hughes in *Morgan vs. U.S.* 298 U.S. 468, 56 S. Ct. 906, 80 Law. ed. 1288). In the language of this Court in *Edwards vs. McCoy*, 22 Phil. 598, “the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented thrust it aside without notice or consideration.”
- (3) “While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attacked.” (*Edward vs. McCoy*, supra.)
- (4) Not only must there be some evidence to support a finding or conclusion (*City of Manila vs. Agustin*, G.R. No. 45844, promulgated November 29, 1937, XXXVI O.G. 1335), but the evidence must be “substantial.” (*Washington, Virginia & Maryland Coach Co. vs. National Labor Relations Board*, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) “Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (*Appalachian Electric Power vs. National Labor Relations Board*, 4 Cir., 93 F. 2d 985, 989; *National Labor Relations Board vs. Thompson Products*, 6 Cir., 97 F. 2d 13,15 *Ballston-Stillwater Knitting Co. vs. National Labor Relations Board*, 2 Cir., 98 F. 2d 758, 760.)
- (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (*Interstate Commerce*

Commission vs. L. & N.R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431)

- (6) The Court of Industrial Relations (now the National Labor Relations Commission) or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.
- (7) The Court of Industrial Relations (now NLRC) should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

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Considering further that the admission by the petitioner, which was extracted from him by the Criminal Investigation Service of the Philippine Constabulary (National Capital Region) without the assistance of counsel and which was made as the sole basis for his dismissal, can not be admitted in evidence against him, then, the finding of guilt of the PDIC, which was affirmed by the public respondent NLRC; has no more leg to stand on. A decision with absolutely nothing to support it is a nullity.

Significantly, the dismissal of the petitioner from his employment was characterized by undue haste. The law is clear that even in the disposition of labor cases, due process must not be subordinated to expediency or dispatch. Otherwise, the dismissal of the employee will be tainted with illegality. On this point, we have ruled consistently.^[15]

We reiterate the rule laid down in Santos vs. NLRC^[16] that “the normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement.” The petitioner is entitled to no less.

WHEREFORE, premises considered, judgment is hereby rendered **SETTING ASIDE** the appealed Decision of the NLRC and **REINSTATING** the Decision of the labor arbiter.

SO ORDERED.

Melencio-Herrera, Paras, Padilla and Regalado, JJ., concur.

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- [1] “Espero Santos Salaw vs. Associated Bank, et al.,” NLRC NCR 4-1272-85, July 26, 1989, Rosario G. Encarnacion, Commissioner; Rollo, 68.
 - [2] “Salaw vs. Associated Bank et al.,” NLRC NCR 4-1275-85, March 29, 1988, Benigno C. Villarente, Jr., Labor Arbiter; Rollo, 46.
 - [3] Annex “A”, Rollo, 30.
 - [4] Annex “E”, Rollo, 38.
 - [5] “Salaw vs. Associated Bank, et al.,” supra, note 2, 1.
 - [6] “Salaw vs. Associated Bank, et al.,” supra, note 1, 1.
 - [7] Annex “P”, Rollo, 87.
 - [8] San Miguel Corporation vs. NLRC, G.R. No. 78277, May 12, 1989, 173 SCRA 314.
 - [9] Century Textile Mills, et al., vs. NLRC, et al., No. 77859, May 25, 1988, 161 SCRA 528.
 - [10] “Salaw vs. Associated Bark, et al.,” supra, note 5, 3.
 - [11] The Labor Code of the Phils. and its implementing rules and regulations, 1990 ed.
 - [12] Section 12(1), 1987 Constitution.
 - [13] Section 12(3), 1987 Constitution.
 - [14] Ang Tibay vs. Court of Industrial Relations, 69 Phil. 635.
 - [15] See San Miguel Corporation vs. NLRC, supra., note 8, 4; Far East Bank and Trust Co., vs. IAC, G.R. Nos. 73131-32, August 31, 1988, 165 SCRA 218; National Service Corporation vs. NLRC, G.R. No. 69870, November 29, 1988, 168 SCRA 122, San Miguel vs. NLRC, No. 78993, June 22, 1988, 612 SCRA 441.
 - [16] G.R. No. 76721, September 21, 1987, 154 SCRA 166.