

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**SAN MIGUEL CORPORATION,
*Petitioner,***

-versus-

**G.R. No. 78277
May 12, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION, EXECUTIVE LABOR
ARBITER ILDEFONSO AGBUYA and
FERNANDO M. ALMONICAR,
*Respondents.***

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DECISION

CORTES, J.:

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 [Arts. 279, 281, 282-284], but the rudimentary requirements of due process — notice and hearing — must also be observed before an employee may be dismissed [Art. 277 (b).] One cannot go without the other, for otherwise the termination would, in the eyes of the law, be illegal.

The resolution of the instant case hinges on the determination of whether or not petitioner had complied with the procedural requirements before it dismissed private respondent.

The antecedents of this case, as summarized with particularity by the Solicitor General, are as follows:

1. Private respondent, Fernando M. Almonicar, had been an employee of the petitioner corporation for almost ten years preceding his termination on August 15, 1982. He started working for the petitioner on October 1, 1973 as Route Helper in the Company's Beer Marketing Division, Cotabato Sales Office, Cotabato City; and since then, he was promoted twice before his elevation to his last position of Route Salesman.
2. During his period of employment, Almonicar had a clean record until at around 5:30 o'clock in the afternoon of February 22, 1982, after arriving from his day's work, he was approached at the Sales Office inside the company's warehouse in Cotabato City by another company Route Salesman named Abdulkadil Dumamba. Then and there, in the presence of the company warehousemen, Dumamba requested Almonicar if the latter could transfer to his account the 100 cases of empty regular beer bottles and 100 cases of empty Beer Grande bottles worth P3,340.00, which were returned allegedly for cash refund by Dumamba's customer, but that Dumamba did not have sufficient sales/collections for the refund.
3. Finding nothing wrong with Dumamba's proposition, as in fact, it was then a common practice among salesmen whenever one of them did not have sufficient sales/collection to pay for the value of beer empties returned for cash refund, Almonicar agreed to the proposition. Forthwith, Almonicar handed to Dumamba the P3,340.00 out of his sales/collections, and issued in the name of Dumamba's customer the corresponding cash refund invoice (Annex "B", Petition). Whereupon,

Almonicar advised the warehouseman to reflect in his Checker's Stock Report said returned beer empties.

4. It turned out, however, that the beer empties were returned not for cash refund, but to be credited to the customer's account with the petitioner company. For which, Dumamba issued to the customer a charge refund invoice (Annex "A", Petition), but which was not recorded in the latter's account ledger card because Dumamba did not include it in his sales report to make his transaction records appear to be in order.
5. Consequently, when a verification was made on February 25, 1982, of the account of Dumamba's customer, the latter refused to sign the confirmation slip (Annex "C", Petition) of his account with the petitioner company, claiming that the same did not tally with his record. As a result, an inquiry was conducted wherein it was found out that the discrepancy lies in Dumamba's failure to include in his report the charge refund invoice he issued for the return of said beer empties, and the misappropriation for his personal use [of] the cash intended for the refund of the value thereof which was extended to him by Almonicar out of the latter's sales/collections. This, resulted in the recommendation for the grounding of Dumamba until further investigation (Annex "D", Petition).
6. Thereafter, an investigation was conducted sometime in March 1982 in connection with several acts of defalcation allegedly committed by Dumamba during the year 1982, one of which was the misappropriation of the P3,340.00 covered by a cash refund invoice issued by Almonicar.
7. It was for the purpose of helping the Company in the investigation against Dumamba, particularly with respect to the above-mentioned cash refund, as he was made to understand by Regional Sales Manager Romeo A. Reyes who conducted the investigation, that Almonicar gave his statement (Annex "F", Petition) in the early morning of March 4, 1982.

8. As a result of said investigation, Dumamba was immediately grounded. Almonicar on the other hand was even recommended by the company's sales supervisor, Ranulfo Mabacho, for promotion to Salesman-in-Charge of the Midsayap (North Cotabato) Sales Office. He was likewise entrusted to act as Salesman-in-Charge of the Cotabato Sales Office whenever the regular salesman was absent.
9. However, to Almonicar's shock and astonishment, he received on July 26, 1982, a letter dated July 21, 1982 from their Regional Manager, advising him that, "after due investigation of your recent case, we have decided to separate you from service at the close of business on August 15, 1982."
10. Immediately, Almonicar sought an explanation from the Regional Manager but the latter told him that the "decision" came from the company's head office in Manila. However, when the Regional Manager was asked for copies of the alleged "investigation" and "decision", the latter simply told him that the pertinent papers will be forwarded to the Ministry of Labor.
11. This prompted Almonicar to file on October 16, 1982 a complaint for illegal dismissal with the Labor Ministry's Regional Office No. 12 in Cotabato City against the herein petitioner and Regional Sales Manager Romeo A. Reyes.
12. After efforts of conciliation with the Labor's Regional Office in Cotabato City failed, the case was indorsed for compulsory arbitration to the Executive Labor Arbiter in Cagayan de Oro City, wherein the parties, through their respective counsels, agreed at the hearing called on October 26, 1983 to submit their case for decision on the bases of their position papers and supporting evidence.
13. Pursuant thereto, complainant Almonicar (herein private respondent) duly filed his position paper and supporting

documents on January 23, 1984. Anent the respondent (herein petitioner), its counsel filed a Manifestation and Motion asking for an extension of twenty (20) days from Jan. 20, 1984 within which to file its position paper. Subsequently, another motion was filed asking for a final extension of twenty (20) days from February 10, 1984 within which to file its position paper, but the petitioner failed to file even until Executive Labor Arbiter rendered his decision (Annex "G", Petition) on May 30, 1984 finding private respondent's dismissal to be without basis and, therefore, entitled to full back wages with all fringe benefits from the time of his termination up to the promulgation of the decision. However, since private respondent's reinstatement was no longer feasible, he was awarded a separation pay corresponding to his ten (10) years of service at 1/2 month pay for every year of service based on his last salary. In addition, petitioner was ordered to pay private respondent's counsel 10% of the total award.

14. From the foregoing decision, both parties appealed to the respondent Commission. In its appeal, petitioner alleged that the Executive Labor Arbiter abused his discretion and erred in his findings of fact and conclusion of law by introducing for the first time evidence in refutation of private respondent's position paper. For his part, private respondent assailed the Executive Labor Arbiter's decision for not ordering his reinstatement, despite the finding that his dismissal was without basis and no evidence whatsoever was shown that this was no longer possible.
15. The respondent Commission, which apparently overlooked private respondent's appeal and was misled into appreciating petitioner's evidence presented for the first time on appeal, promulgated on December 10, 1985 a decision (Annex "J", Petition), finding private respondent guilty of the offense imputed to him. However, considering his ten (10) years of unblemished record with the company, he was awarded a separation of 1/2 month's pay for every year of service, instead of reinstatement, without back wages.

16. So that, on a Motion for Reconsideration (Annex “K”, Petition) filed by private respondent, the respondent Commission rectified its errors by reversing and setting aside its previous decision of December 10, 1985 and instead, promulgated on March 30, 1987 another decision (Annex “L”, Petition) the dispositive portion of which reads:

WHEREFORE, premises considered the respondents are hereby ordered to reinstate complainant to his former position with full backwages with all of the benefits legal and by contract and without loss of seniority rights and other privileges, computed from the date of his dismissal up to his actual reinstatement. Consequently, respondent is directed to show proof of immediate compliance to the mandate of the decision after ten (10) days from receipt of this Resolution. [Rollo, pp. 121-128.]

Without seeking reconsideration of the NLRC’s decision of March 30, 1987, petitioner filed the instant petition seeking the reversal of said decision on the ground that public respondents had gravely abused their discretion.

The Court finds the petition unmeritorious.

The pleadings filed by petitioner and the annexes to its petition glaringly reveal a fatal lapse on its part — the failure, prior to private respondent’s dismissal, to furnish him written notice and to afford him the opportunity to be heard and to defend himself as mandated by the Labor Code, as amended. Thus, the code provides that “the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires” [Art. 277(b); formerly, Art, 278 (b).] In implementation of this requirement, the amended rules and regulations promulgated by the Secretary of Labor provides:

Sec. 1. Security of tenure and due process. No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

Sec. 2. Notice of dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

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Sec. 5. Answer and hearing. The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. 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.

Sec. 6. Decision to dismiss. The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

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[Rule XIV, Book V, Rules and Regulations Implementing the Labor Code; Emphasis supplied.]

In the instant case, after giving his statement as a witness for the company in connection with the investigation on the alleged acts of defalcation committed by Dumamba, private respondent was unexpectedly dismissed, without even being investigated in connection with the violation attributed to him, much less notified that the company intended to dismiss him for the alleged violation.

It is therefore apparent that private respondent's dismissal was an afterthought. He was asked to make a statement in connection with the investigation against Dumamba and when it became subsequently apparent to those in the head office in Manila that his act of issuing the invoice in the name of Dumamba's customer constituted a

possible violation of company rules and regulations he was unceremoniously meted the penalty of dismissal. Even the tenor of his statement [Annex “F”, Petition; Rollo, pp. 30-32], which was in the form of question and answer, indicates that it was being given in connection with the investigation of Dumamba’s misappropriation of the money given by the private respondent for the refund of the empty bottles. There is no indication in said statement that private respondent was also under investigation. In contrast, Dumamba’s statement [Annex “E”, Petition; Rollo, pp. 27-29] clearly stated that he was the subject of the investigation. Thus, it was prefaced by a paragraph entitled “Preliminaries”, which provides:

We are investigating you to shed light on reported beer empties that were retrieved from United Grocery, situated at SuperMarket, Cotabato City, and it (sic) were not credited to the account of said outlet. [Rollo, p. 27; Emphasis supplied.]

Moreover, that the company did not contemplate conducting an administrative proceeding against private respondent was bolstered by the undisputed fact that he was allowed to continue with his regular duties after he gave his statement, and even recommended for promotion some time before his sudden dismissal, contrasted with the immediate grounding of Dumamba. The failure of petitioner to afford private respondent due process, as required by the Labor Code, in effecting his termination, is thus patent.

No grave abuse of discretion could therefore be attributed to the NLRC for holding that private respondent was illegally terminated and ordering his reinstatement with backwages, as such was fully supported by the facts and the law. The reinstatement of private respondent, as ordered by the NLRC, in lieu of the payment of separation pay, as directed by the Labor Arbiter, is even made more imperative by the fact that he was arbitrarily deprived of his employment at the early age of thirty-two (32) when he was just approaching the prime of his life, causing his family economic dislocation and untold hardship as he pursued his case through the years.

Neither can grave abuse of discretion be ascribed to the Executive Labor Arbiter for basing his findings of fact and, consequently, his

decision exclusively on private respondent's position paper. It will be recalled that the parties agreed to submit the case for decision on the basis of their position papers and that in spite of the extension granted it, petitioner failed to file its position paper, forcing the arbiter to decide the case without it. Moreover, Art. 221 of the Labor Code, which provides that the technical rules of evidence are not controlling in proceedings before Labor Arbiters, allows the latter to decide the case on the basis of position papers and other documents submitted by the parties [Manila Doctors Hospital vs. NLRC, G.R. No. 64897, February 28, 1985, 135 SCRA 262; Asia World Publishing House, Inc. vs. Ople, G.R. No. 56398, July 23, 1987, 152 SCRA 219.].

No grave abuse of discretion warranting the issuance of the corrective writ of certiorari having been established, the dismissal of the petition is in order.

A final word. While the Court finds no cogent reason to set aside the NLRC's decision, We are not, however, disregarding or in any way diminishing the employer's prerogative to instill discipline in his employees and to impose reasonable penalties, including dismissal, on erring employees pursuant to company rules and regulations [Soco vs. Mercantile Corporation of Davao, G.R. Nos. 53364-65, March 16, 1987, 148 SCRA 526.] Neither is the Court deviating from the established rules that an employer cannot be compelled to continue with the employment of workers guilty of acts of misfeasance or malfeasance, and whose continuance in the service of the employer is clearly inimical to his interests, and that the law, in protecting the rights of workers, authorizes neither the oppression nor self-destruction of employers [Manila Trading & Supply Co. vs. Zulueta, 69 Phil. 485 (1940); San Miguel Brewery, Inc. vs. National Labor Union, 97 Phil. 378 (1955); Colgate Palmolive Philippines vs. Ople, G.R. No. 73681, June 30, 1988.] But it must be emphasized nevertheless that due process must be observed in effecting an employee's dismissal. And rightfully so, because the dismissal of an employee affects not only his position but also his means of livelihood and his dependents' sustenance. The employee must be informed of the alleged violation and given an opportunity to be heard before he is dismissed. Strict adherence to the requirements set forth in the Labor Code, as amended, is essential. Thus, the Court in the recent case of

Century Textile Mills, Inc., et al, vs. NLRC, et al. [G.R. No. 77857, May 25, 1988] stated:

The twin requirements of notice and hearing 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 and the reason for the proposed dismissal; upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution.

WHEREFORE, the instant Petition is hereby **DISMISSED** and the Decision of the NLRC dated March 30, 1987 is **AFFIRMED** with the modification that the award of backwages is fixed at three (3) years, without qualification or deduction, in line with current jurisprudence. The temporary restraining order issued by the Court on May 20, 1987 is **LIFTED** and **SET ASIDE**. This Decision is **IMMEDIATELY EXECUTORY**.

SO ORDERED.

Fernan, (C.J.), Gutierrez, Jr., Feliciano and Bidin, JJ., concur.