SUPREME COURT
THIRD DIVISION

ROBERTO SEGISMUNDO and ROGELIO MONTALVO,
***Petitioners*,**

-versus-

G.R. No. 112203
December 13, 1994

NATIONAL LABOR RELATIONS COMMISSION (Second Division) and ASSOCIATED FREIGHT CONSOLIDATORS, INC.,
***Respondents*.**
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D E C I S I O N

BIDIN, *J.*:

Petitioners Roberto Segismundo and Rogelio Montalvo were regular employees of private respondent Associated Freight Consolidators, Inc., a corporation engaged in the air freight forwarding business. It picks up parcels and packages from different parts of the globe and delivers them "door to door" to their consignees or addresses in the country. Segismundo was a driver whereas Montalvo was a loader/helper. They worked as a team, delivering packages to their respective addresses or consignees.

Sometime in 1988, private respondent began receiving complaints from its client/consignees regarding missing items in their packages which were delivered by private respondent's personnel. The number of complaints increased, to the point that some of private respondent's delivery arrangements were in danger of being discontinued by disgruntled clients. This prompted private respondent to conduct an exhaustive investigation to determine whether its delivery personnel were involved in the pilferages complained of. The investigation yielded the unfortunate result that the pilferages could only have taken place while the packages were in the custody of private respondent's delivery personnel.

Based on tabulated records, private respondent discovered that of the 27 complaints of pilferages lodged during the period from August 1988 to February 1989, 6 of the complaints involved packages delivered by petitioners' delivery team.

In view of the results of the investigation, private respondent's General Manager called a meeting on February 17, 1989 of all delivery personnel to discuss the pilferage incidents. During the meeting, petitioners denied any involvement therein. They were allowed to inspect the records gathered in the course of the company investigation. On the same day, petitioners were given notices by management, placing them under preventive suspension effective February 18, 1989.

On March 15, 1989, private respondent formally terminated petitioner's services without first conducting a hearing.

Consequently, petitioners filed on May 8, 1989 a complaint for illegal suspension and dismissal, alleging that their dismissal was not based on a just cause and was effected in violation of their right to due process.

On December 5, 1990, the Labor Arbiter rendered a decision in favor of petitioners, ordering their reinstatement with backwages, damages and attorney's fees.

Not satisfied with the decision, private respondent appealed, and on September 30, 1993, the public respondent reversed the decision of the Labor Arbiter, upholding petitioners' dismissal as valid.

Hence, this petition.

We uphold the finding of the public respondent that petitioners' dismissal was for a just cause. The public respondent's findings on this score are fully supported by the results of the investigation conducted by private respondent regarding the pilferages, and these results were presented before the Labor Arbiter. The conclusion that petitioners were involved in the pilferages was solidly premised on the tabulated complaints of consignees, the records of pilfered packages delivered by petitioner's team and delivery receipts. No evidence was presented to show that private respondent was motivated by any ill feeling or bad faith in dismissing petitioners. On the contrary, it could have been more difficult for private respondent to dismiss petitioners considering that petitioner Segismundo was hired upon the recommendation of respondent's General Manager himself while petitioner Montalvo was hired upon the recommendation of a member of private respondent's Board of Directors. In view of these recommendations, petitioners could not have been dismissed unless there was sufficient cause therefor. It is thus clear that private respondent's decision to terminate petitioners' services was prompted by the necessity to protect its good name and interests.

Private respondent's documentary evidence showing the culpability of petitioners should prevail over petitioners' uncorroborated explanations and self-serving denials regarding their involvement in the pilferages. All administrative determinations require only substantial proof and not clear and convincing evidence (Manalo vs. Roldan-Confesor, 215 SCRA 808). Proof beyond reasonable doubt of the employee's misconduct is not required, it being sufficient that there is some basis for the same or that the employer has reasonable ground to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of the trust and confidence demanded by his position (Riker vs. Ople, 155 SCRA 85). Thus, petitioners cannot assert that the public respondent closed its eyes to their evidence. The latter's findings are

supported by substantial evidence which goes beyond the minimum evidentiary support required by law.

However, we find that petitioners were dismissed from employment without being accorded due process. As correctly observed by the Solicitor General, non-compliance with the twin requirements of notice and hearing is fatal because these requirements are conditions sine qua non before a dismissal may be validly effected (Manebo vs. NLRC, G.R. No. 107721, January 10, 1994, citing Tiu vs. NLRC, 215 SCRA 540). Neither of these two requirements can be dispensed with without running afoul with the due process requirement of the Constitution (Century Textile Mills, Inc. vs. NLRC, 161 SCRA 528).

In the instant case, the records show that private respondent failed to give petitioners the benefit of a hearing. The meeting called by the General Manager on February 17, 1989 does not qualify as the hearing required by law since the same was apparently for the purpose of merely informing the delivery personnel about the investigation conducted by the company on the pilferages, and to serve petitioners and two other employees notices of their preventive suspension. Barely a month later, petitioners were summarily dismissed.

While it may be true that petitioners were allowed to explain their side during the February 17, 1989 meeting, the fact remains that no hearing was actually conducted before petitioners' services were terminated. The opportunity given to petitioners during the meeting to answer the charges against them and to verify the records of the pilferage cases is not the kind of "ample opportunity" contemplated by law, which connotes every kind of assistance that management must accord to the employee to enable him to prepare adequately for his defense including legal representation (Abiera vs. NLRC, 215 SCRA 476). In the case at bar, both petitioners denied any involvement in the pilferages at the February 17, 1989 meeting, and these denials warranted at least a separate hearing to enable petitioners to fully air their side. Consultations or conferences are not a substitute for the actual observance of notice and hearing (Pepsi-Cola Bottling Co. vs. NLRC, 210 SCRA 277).

Moreover, that petitioners simply "kept silent" from the time they were suspended until they were formally dismissed is not adequate to

constitute a waiver of their rights. Notice and hearing must be accorded by an employer, even though the employee does not affirmatively demand it (Century, supra.).

Suffice it to say that in this case, private respondent failed to comply with the requirement that the decision to dismiss an employee must come only after he is given a reasonable period from receipt of the first notice within which to answer the charge, an ample opportunity to be heard and to defend himself with the assistance of a representative if he so desires. Such non-compliance is fatal and constitutes an infringement of petitioners' constitutional right to due process. On this score, the public respondent manifestly erred in holding otherwise.

It appearing that petitioners were dismissed for cause but without the observance of due process, the ruling in Wenphil Corporation vs. NLRC, 170 SCRA 69, as cited by the Solicitor General in its Comment, squarely applies to the case at bar:

> "The Court holds that the policy of ordering the reinstatement to the service of an employee without loss of seniority and the payment of his wages during the period of his separation until his actual reinstatement . when it appears he was not afforded due process, although his dismissal was found to be for just and authorized cause in an appropriate proceeding in the Ministry of Labor and Employment, should be re-examined. It will be highly prejudicial to the interests of the employer to impose on him the services of an employee who has been shown to be guilty of the charges that warranted his dismissal from employment. Indeed, it will demoralize the rank and file if the undeserving, if not undesirable, remains in the service.
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> However, the petitioner (employer) must nevertheless be held to account for failure to extend to private respondent (employee) his right to an investigation before causing his dismissal. The rule is explicit as above discussed. The dismissal of an employee must be for just or authorized, cause and after due process. Petitioner committed an infraction of the second

requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from employment. Considering the circumstances of this case, petitioner must indemnify the private respondent the amount of P1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer." (Emphasis supplied).

ACCORDINGLY, the assailed Decision of the public respondent NLRC dated September 30, 1993 reversing and setting aside the decision of the Labor Arbiter and ordering the dismissal of petitioners' complaint for illegal dismissal is hereby **AFFIRMED WITH MODIFICATION** that private respondent Associated Freight Consolidators, Inc. is hereby **ORDERED** to pay each of the petitioners the sum of P1,000.00 as penalty for failing to conduct a hearing prior to petitioners' dismissal from employment. This Order is immediately executory.

SO ORDERED.

Melo and Vitug, *JJ.*, concur.
Romero, *J.*, took no part.
Feliciano, *J.*, is on leave.