

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**SHOEMART, INC., and ROMEO B.
PEREZ,**

Petitioners,

-versus-

**G.R. No. 74229
August 11, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION (First Division) and
MAXIMA R. SORIANO,**

Respondents.

X-----X

D E C I S I O N

GUTIERREZ, JR., J.:

This is a Petition seeking to reverse and set aside the December 3, 1985 decision of the National Labor Relations Commission (NLRC) in Case No. AB-4-10-10849-81 [should be NLRC-NCR Case No. 10-4473-83],^[1] entitled "Maxima R. Soriano vs. Shoemart, Inc." The NLRC modified the April 26, 1985 decision of the Labor Arbitrator which sustained the termination/dismissal of respondent employee by Shoemart, Inc., but directed the latter to pay the former certain short payments and withheld payments in the total amount of P199.26. The respondent Commission ordered the reinstatement of the private respondent.

Respondent Maxima R. Soriano was employed by petitioner Shoemart, Inc., on July 5, 1973, as salesclerk-invoicer in its cosmetics department.

On March 17, 1981, Shoemart sent Soriano a notice of termination on the ground of abandonment of work from February 13, 1981 to March 17, 1981. Soriano, in turn, filed a complaint with the then Ministry of Labor and Employment (Case No. AB-4-10849-81) for illegal dismissal and certain money claims. While the case was pending before the labor arbiter, Soriano was allowed to resume work on July 21, 1981 at the Company's Cubao store.

Despite Soriano's reinstatement, trial proceeded but only on the issue of money claims. On December 7, 1981 a decision was rendered by the Labor Arbiter in favor of Maxima Soriano, the decretal portion of which reads:

"WHEREFORE, respondent SHOEMART, INC., of 627 C. Palanca Sr., St., San Miguel, Manila, is directed to pay complainant MAXIMA SORIANO in care of Attorney Felixberto Boquiren, 5th Floor, Maritima Bldg., 117 Dasmarinas St., Manila, the amount of FIVE THOUSAND SEVENTY PESOS AND 63/100 (P5,070.63), as backwages, service incentive leave and overtime pay, plus FIVE HUNDRED (P500.00) PESOS as attorney's fee." (p. 25, Rollo-63912)

An appeal to the NLRC was dismissed in a resolution dated December 28, 1982.

On certiorari with preliminary injunction and/or a restraining order in G.R. No. 63912 "Shoemart vs. The NLRC, et al.", the Second Division of this Court in its resolution dated May 18, 1983 dismissed the petition for lack of merit. (p. 44, Rollo-63912)

Meanwhile, after her reinstatement, due to a difficult pregnancy, Soriano filed successive leaves of absences. On September 30, 1981, when she was four (4) months pregnant, she applied for a fifteen (15) day sick leave, September 30, 1981 to October 14, 1981 due to threatened abortion. On October 20, 1981 she applied for four (4)

months vacation leave commencing October 21, 1981 to February 20, 1982 upon her physician's advice to avoid possible complication in her pregnancy. Then on February 7, 1982, Soriano applied for forty-five (45) days maternity leave (February 21, 1982 to April 7, 1982) giving February 22, 1982 as her expected date of confinement. All these applications were granted.

After the expiration of her maternity leave, Soriano did not report back for work. No leave extension having been granted nor any word sent to Shoemart as to why she could not report for work, her continued absence was marked unauthorized.

On April 15, 1982, Soriano sent a notice to Shoemart stating that she had not yet delivered her baby, and that she could have been mistaken in her "counting." Shoemart's department manager accepted the note but informed its bearer (Soriano's husband) that Soriano should report for work on May 30, 1982. However, on May 30, 1982 and on the succeeding days, Soriano did not return to work. She did not inform Shoemart of her condition nor give any reason for her unexplained absence. Consequently, Shoemart was prompted to terminate her services for gross neglect of duty amounting to abandonment of work under Article VI of its Rules and Regulations which is also a ground for dismissal under the New Labor Code.

On October 7, 1983, Soriano filed a new complaint with the Ministry of Labor and Employment (MOLE) [NLRC-NCR Case No. 10-4473-83] charging Shoemart with illegal dismissal, violation of PD 1571 (integration into the basic wage of the emergency cost of living allowances under PD 525 and PD 1123) and of the CBA wage increase of P1.00 a day effective July 1, 1981, and withholding of SSS check for sickness benefits in the amount of P122.70 (p.27, Rollo).

In his decision dated April 26, 1985, the labor arbiter found Soriano's dismissal justified. However, he ordered Shoemart to pay her the amount of P76.56 representing her short payment and unpaid P1.00 wage increase a day per existing CBA, plus the amount of P122.70 covering the withheld payment of her sickness benefits, or a total of P199.26." (p. 34, Rollo)

As earlier stated, the NLRC on appeal modified the decision of the labor arbiter. It ruled that the discharge of Soriano was illegal for being violative of procedural due process as mandated in BP Blg. 130 and ordered her reinstatement with backwages. One commissioner dissented. The NLRC decision states:

“WHEREFORE, premises considered the appealed Decision is hereby, MODIFIED as above discussed, by ordering respondent-appellee to reinstate complainant-appellant to her position without loss of seniority rights plus backwages computed from October 7, 1983 up to the time of actual reinstatement.

“Respondent-appellee are (sic) likewise ordered to pay complainant the amount of P76.56 representing her short payment and the unpaid P1.00 wage increase a day per the existing CBA, plus the amount of P122.70 covering the withheld payment of her sickness benefit.

x x x

(p. 46, Rollo, Decision dated December 3, 1985)

On January 23, 1986, Shoemart filed a motion for reconsideration of the aforesaid decision. The motion was subsequently denied. Hence, the present petition for *certiorari*.

The petitioner submits that respondent NLRC gravely abused its discretion when it modified the decision below and decreed the reinstatement with backwages of Soriano despite the clear existence of a valid ground for termination.

It should be noted that respondent NLRC ordered the reinstatement with backwages of Soriano because it considered her dismissal as illegal for want of due process. It could not find evidence showing the petitioner's substantial, or at least minimum, compliance with the procedure set forth in the rules implementing BP Blg. 130, the pertinent provisions of which state:

“RULE XIV. TERMINATION OF EMPLOYMENT

“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.

“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.”

In its memorandum filed with this Court, dated November 14, 1986, the petitioner admitted that it failed to comply with the mandated requirements of BP Blg. 130. (pp. 126-127, Rollo)

Shoemart rationalized its omission by stating that a cloud of bias would have engulfed the process had it been resorted to and that it would merely be one of formality, a farce and a mockery of the procedural requirements. The petitioner may have had some reasons for not complying with the procedures outlined in the law but these are not sufficient to detract from the necessity of basic fair play.

The dismissal of an employee without any formal investigation is unwarranted. The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man’s innate sense of justice. (Miguel vs. National Labor Relations Commission, G.R. No. 78993, June 22, 1988)

It is clear in Section 1, Rule XVI — Implementing Regulations of the Labor Code, that “No worker shall be dismissed except for a just or authorized cause provided by law and after due process.”

Thus, the two facets of this legal provision as discussed by this Court in an earlier case (*Primero vs. Intermediate Appellate Court*, 156 SCRA 486 [1987]), are: (a) the legality of the act of dismissal; that is dismissal under the grounds provided for under Article 283 of the New Labor Code and (b) the legality in the manner of dismissal; that is with due observance of the procedural requirements of Sections 2, 5 and 6 of BP Blg. 130.

Conversely, illegality of the act of dismissal constitutes discharge without just cause, while illegality in the manner of dismissal is dismissal without due process.

While the Labor Code treats the nature of and the remedies available as regards the first which are: (1) reinstatement to his former position without loss of seniority rights and (2) payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement (Article 279, Labor Code; *DM Consunji, Inc. vs. Pucan*, 159 SCRA 113 [1988]), said Code does not deal at all with the second, that is the manner of the dismissal, which is therefore governed exclusively by the Civil Code. (*Primero vs. Intermediate Appellate Court*, *supra*.)

In any event, the decisive issue which arises is whether or not the denial of due process under the circumstances of this case makes the dismissal for just cause so arbitrary and illegal as to warrant reinstatement and payment of backwages.

While it appears that Shoemart failed to observe due process in the termination of Soriano's employment, the clearly apparent conclusion in this case is that respondent Soriano is not entirely without fault. She was grossly remiss in her duties toward her employer, as shown by her frequent, prolonged and unexplained absences. She was intermittently absent from September 30, 1981 to October 14, 1981 and from October 21, 1981 until the present complaint for illegal dismissal was filed on October 7, 1983. And while there might have been occasions when petitioner was apprised of the reasons for her non-appearance (e.g., Exhibit E, Letter to Shoemart dated August 10, 1982 with copy of the death certificate of Soriano's father), the fact remains that from May 30, 1982 and onwards to October 7, 1983,

there was absolutely no communication from her. (pp. 11-12, Private Respondent's Memorandum)

We note that Soriano was earlier dismissed, also for abandonment, but was allowed to work while the first case was pending before the labor arbiter. There was likewise misrepresentation if not deception because on February 21, 1982 the respondent filed an application for maternity leave stating that February 22, 1982 or the following day was her expected date of delivery. This expected date was supported by a medical certificate giving May 15, 1981 as her last menstrual period. Almost two months from the expected date or on April 15, 1982, Soriano sent word that the baby had not yet been delivered. The Labor Arbiter not only found the delay "unusual" but the alleged miscarriage of that same child on August 4, 1982 was declared "highly unbelievable and improbable." (p. 30, Rollo)

Otherwise stated, the petitioner was justified in assuming that Soriano was no longer interested in resuming her employment. "Abandonment" of work is manifest. It can not be said that Soriano was not aware of the consequences of her acts under the circumstances of this case. The petitioner cannot be faulted for not continuing Soriano in her employment.

In the final analysis, respondent Soriano was afforded due process although belatedly before the Labor Arbiter and then before the NLRC. As we have ruled, the purpose of the law is to insure that the employer's prerogative to dismiss or lay-off an employee is exercised without abuse of discretion or arbitrariness. The proceedings before the Labor Arbiter and the National Labor Relations Commission have upheld this guarantee. The rights of the employee have been effectively safeguarded. (Piedad vs. Lanao del Norte Electric Cooperative, Inc., 153 SCRA 511 [1987])

In fact, Shoemart generously reinstated her while the first case was pending. But the events that transpired thereafter, proved without question, that she is an inveterate absentee who does not deserve reinstatement.

In a recent case (Wenphil Corporation vs. National Labor Relations Commission and Roberto Mallare, G.R. No. 80587, February 8,

1989), under circumstances similar to the case at bar, this Court, without condoning the employer's failure to extend to an employee his right to an investigation before causing his dismissal, sustained the dismissal of the respondent employee where his dismissal was found to be for just and authorized cause in an appropriate proceeding in the Ministry of Labor and Employment. Thus, said the Court, "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 (Wenphil Corporation vs. National Labor Relations Commission, et al., *supra*).

For failure to observe the procedural requirements, a sanction was imposed by this Court on the employer to indemnify the dismissed employee. It was held however, that the measure of the award depends on the facts of each case and the gravity of the omission committed by the employer (*ibid*).

We take into account the following circumstances stressed by the petitioner in its memorandum:

- "1. Private Respondent was absent from work from May 30, 1982 to October 7, 1983 or a period of one (1) year, four (4) months and nine (9) days;
- "2. Such prolonged absence from work was without any valid notice or leave from Petitioner-Company;
- "3. Such absence was not by reason of any illness, disease or like ailments;
- "4. Private Respondent despite opportunity to resume employment deliberately refused to report back for work; and
- "5. The NLRC found Private Respondent guilty of negligence of duty." (p. 128, Rollo)

In view of the length of service of the private respondent with Shoemart, however, we apply the precedent in Wenphil vs. NLRC, et al., (supra) where a P1,000.00 indemnity was given to the dismissed employee for the failure of the employer to strictly comply with the requirements of due process.

WHEREFORE, the Decision of the National Labor Relations Commission dated December 23, 1985 is **REVERSED** insofar as its order of reinstatement with backwages is concerned. Petitioner Shoemart, Inc. is, however, ordered to indemnify the private respondent in the amount of P1,000.00. The P76.56 short payment, P1.00 wage increase a pay per the existing Collective Bargaining Agreement, and the P122.70 sickness benefit payment ordered by the respondent Commission are **AFFIRMED**.

SO ORDERED.

Fernan, Feliciano, Bidin and Cortes, JJ., concur.

[1] AB-4-10-10849-81 is the first case already decided by the Supreme Court in G.R. No. 63912, Shoemart, Inc. vs. NLRC, et al., May 18, 1983.
