SUPREME COURT
EN BANC

STELLAR INDUSTRIAL SERVICES, INC.,
***Petitioner*,**

-versus-

G.R. No. 117418
January 24, 1996

NATIONAL LABOR RELATIONS COMMISSION and ROBERTO H. PEPITO,
***Respondents*.**
x----------x

D E C I S I O N

REGALADO, *J.*:

Imputing grave abuse of discretion by public respondent as its cause of concern in this special civil action for certiorari, petitioner Stellar Industrial Services, Inc. (Stellar) seeks the annulment of the Decision,[1] date May 31, 1994, of the National Labor Relations Commission in NLRC NCR CA No. 004326-93 and its resolution of July 21, 1994 denying petitioner's motion for reconsideration. Interestingly, this recourse is the culmination of petitioner's sustained corporate and legal efforts directed against a mere janitor who was formerly employed by it.

Stellar Industrial Services, Inc., an independent contractor engaged in the business of providing manpower services, employed private respondent Roberto H. Pepito as a janitor on January 27, 1975 and assigned the latter to work as such at the Maintenance Base Complex of the Philippine Airlines (MBC-PAL) in Pasay City. There, Pepito toiled for a decade and a half. According to petitioner, private respondent's years of service at MBC-PAL were marred by various infractions of company rules ranging from tardiness to gambling, but he was nevertheless retained as a janitor out of humanitarian consideration and to afford him an opportunity to reform.[2]

Stellar finally terminated private respondent's services on January 22, 1991 because of what it termed as Pepito's being "Absent Without Official Leave (AWOL)/Virtual Abandonment of Work — Absent from November 2 — December 10, 1990." Private respondent had insisted in a letter to petitioner dated December 2, 1990, to which was attached what purported to be a medical certificate, that during the period in question he was unable to report for work due to severe stomach pain and that, as he could hardly walk by reason thereof, he failed to file the corresponding official leave of absence.[3]

As petitioner disbelieved private respondent's explanation regarding his absences, the latter contested his severance from employment before the Arbitration Branch of the National Labor Relations Commission (NLRC) in Manila in a complaint docketed as NLRC NCR-00-03-01869-91 for illegal dismissal, illegal deduction and underpayment of wages under Wage Order NCR-001, with prayer for moral and exemplary damages and attorney's fees. While the labor arbiter was of the view that Pepito was not entitled to differential pay under said wage order, or to moral and exemplary damages for lack of bad faith on the part of petitioner, he opined that private respondent had duly proved that his 39-day absence was justified on account of illness and that he was illegally dismissed without just cause.[4]

Thus the decision rendered on December 28, 1992 by Labor Arbiter Manuel R. Caday decreed:

> "WHEREFORE, judgment is hereby rendered declaring the dismissal of the complainant as illegal and ordering the respondent to immediately reinstate complainant to his former

position as Utilityman, without loss of seniority rights and with full backwages and other rights and privileges appurtenant to his position until he is actually reinstated. As computed, the judgment award in favor of the complainant is stated hereunder:

Backwages 1/27/91 - 12/27/92 at P118.00 per day.....	P82,550.83
Refund of amount illegally deducted (3 years).....	288.00
Grand Total	P82,838.83 ========

The respondent is further ordered to pay the complainant reasonable attorney's fees equivalent to 10% of the amount recoverable by the complainant."[5]

As hereinbefore stated, said judgment of the labor arbiter was affirmed by respondent commission. Petitioner's subsequent motion for reconsideration was likewise rebuffed by the NLRC, hence the present remedial resort to this Court.

Petitioner contends that public respondent acted with grave abuse of discretion when it discussed and resolved the issue of abandonment which petitioner had not, at any time, raised before it for resolution. Further, petitioner considers it patently erroneous for public respondent to rule that the medical certificate adduced by Pepito sufficiently established the fact of sickness on his part which thereby justified his absences. Additionally, it claims that respondent commission gravely erred when it did not carefully examine the evidence, pointing out Pepito's errant behavior and conduct.[6]

Petitioner argues, moreover, that the award of back wages and attorney's fees was not justified considering that Pepito was validly dismissed due to serious misconduct on his part. Lastly, petitioner insists that the deductions it imposed upon and collected from Pepito's salary was authorized by a board resolution of Stellar Employees Association, of which private respondent was a member.[7] The Court, however, is unable to perceive or deduce facts constitutive

of grave abuse of discretion in public respondent's disposition of the controversy which would suffice to overturn its affirmance of the labor arbiter's decision.

On the initial issue posed by petitioner, respondent commission should indeed have refrained from passing upon the matter of abandonment, much less from considering the same as the ground for petitioner's termination of private respondent's services. The records of the case indicate that Pepito's employment was cut short by Stellar due to his having violated a company rule which requires the filing of an official leave of absence should an employee be unable to report for work, aside from the circumstance that Stellar did not find credible Pepito's explanation that he was then suffering from severe stomach and abdominal pains.

To be sure, public respondent may well have been misled by the fact that petitioner, in dismissing Pepito, labelled his violation as "Absent Without Official Leave (AWOL)/Virtual Abandonment.[8] Respondent NLRC should have noted that the matter of abandonment was never brought up as an issue before it and that Stellar never considered Pepito as having abandoned his job. As a matter of fact, private respondent was only considered by petitioner as absent until December 10, 1990.[9] Pepito was dismissed from work simply for going on leave without prior official approval and for failing to justify his absence. This is evident from the fact that petitioner did not assail Pepito's allegations that, at the start of his extended absence, he had informed Stellar, through telephone calls to his superior at MBC-PAL, that he should not report for work due to illness. Thus, while abandonment is indisputably a valid legal ground for terminating one's employment,[10] it was a non-issue in this dispute. Be that as it may, that misapprehension of the NLRC on this particular issue is not to be considered an abuse of discretion of such gravity as to constitute reversible error.

In the main, therefore, what is truly at issue here is whether or not serious misconduct for non-observance of company rules and regulations may be attributed to Pepito and, if so, whether or not the extreme penalty of dismissal meted to him by Stellar may be justified under the circumstances. We resolve both issues in the negative.

Stellar's company rules and regulations on the matter could not be any clearer, to wit:

> "Absence Without Leave
>
> Any employee who fails to report for work without any prior approval from his superior(s) shall be considered absent without leave.
>
> In the case of an illness or emergency for an absence of not more than one (1) day, a telephone call or written note to the head office, during working hours, on the day of his absence, shall be sufficient to avoid being penalized.
>
> In the case of an illness or an emergency for an absence of two (2) days or more, a telephone call to the head office, during regular working hours, on the first day of his absence, or a written note to the head office, (ex. telegram) within the first three (3) days of his absence, and the submission of the proper documents (ex. medical certificate) on the first day he reports after his absence shall be sufficient to avoid being penalized.
>
> 1st offense — three (3) days suspension
> 2nd offense — seven (7) days suspension
> 3rd offense — fifteen (15) days suspension
> 4th offense — dismissal (with a period of one (1) year."[11]

There was substantial compliance with said company rule by private respondent. He immediately informed his supervisor at MBC-PAL of the fact that he could not report for work by reason of illness. At the hearing, it was also established without contradiction that Pepito was able to talk by telephone to one Tirso Pamplona, foreman at MBC-PAL, and he informed the latter that he would be out for two weeks as he was not feeling well.[12] Added to this is his letter to the chief of personnel which states that, on November 2, 1990, he relayed to his supervisor at MBC-PAL his reason for not reporting for work and that, thereafter, he made follow-up calls to their office when he still could not render services.[13] As earlier noted, these facts were never questioned nor rebutted by petitioner.

While there is no record to show that approval was obtained by Pepito with regard to his absences, the fact remains that he complied with the company rule that in case of illness necessitating absence of two days or more, the office should be informed beforehand about the same, that is, on the first day of absence. Since the cause of his absence could not have been anticipated, to require prior approval would be unreasonable. On this score, then, no serious misconduct may be Imputed to Pepito. Necessarily, his dismissal from work, tainted as it is by lack of just cause, was clearly illegal.

More importantly, private respondent duly presented the requisite medical certificate. True, Stellar did not accept the veracity of the same, but it did so quite erroneously. Carlos P. Callanga, petitioner's vice-president for operations, interpreted the certificate submitted by Pepito in the following strained and nitpicking manner:

> "a) The medical certificate merely states that Pepito suffered from 'alleged, abdominal pain' from November 2, 1990 to December 14, 1990. It does not state that the abdominal pain was so severe as to incapacitate him for (sic) work.
>
> b) Because the medical certificate states that the abdominal pain was merely 'alleged,' I had reason to believe that the doctor who issued it did not personally know if such abdominal pain really existed for the period in question.
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> c) From the medical certificate, I gathered that the doctor who signed it examined Pepito only on December 14, 1990, which is the date it, appears to have been issued. It does not state that said doctor actually treated Pepito for the period of his absence.
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> d) The medical certificate also says Pepito was suffering from alleged abdominal pains until December 14, 1990, but that he could resume work anytime thereafter. This implies that he was physically fit to resume work anytime thereafter. However, our records show that Pepito was absent only until December 10, 1990. If it is true that Pepito's abdominal pains incapacitated him for (sic) work. he should have been absent until December 14, 1990. These

> give me reason to believe that the medical certificate was secured only as an afterthought and does not satisfactorily explain Pepito's protracted absence."[14]

A careful perusal and objective appreciation of the medical certificate in question, which was properly signed by a physician. whose existence and professional license number was not questioned by petitioner, convince us to conclude otherwise. Handwritten by the issuing doctor, it states in no uncertain terms:

> "This is to inform that I had examined Roberto Pepito. He has already recovered from his intestinal abdominal pains suffered last Nov. 2/90 to Dec. 14/90.
>
> He may resume his work anytime."[15]

Thus, nowhere in said certificate is there any indication that the abdominal pain suffered by Pepito was only as alleged by him. It definitely states that Pepito was personally examined by the physician and it can be clearly deduced from the affirmative statements "(h)e has already recovered" and "(h)e may resume his work anytime" that Pepito was really not in a position to report for work from November 2 to December 14, 1990 on account of actual, and not merely alleged, intestinal abdominal pains. The certificate further confirms Pepito's earlier information given by him on November 2, 1990 and which he duly relayed to his supervisor as the true reason for his inability to work. Callanga obviously misread, we hope unwittingly, "intestinal abdominal pain" as "alleged abdominal pain."

Again, there is no logic in Callanga's assumption that the certificate was obtained only as an afterthought. It should be noted that Callanga required Pepito to make a written explanation regarding his absences only on December 18, 1990.[16] Pepito accordingly complied with the same and he attached therewith the medical certificate which showed its date of issuance as December 14, 1990.[17] Thus, even before he was made to explain his absences, he already had the medical certificate to prove the reason therefor. To characterize the procurement of the certificate as an afterthought is consequently baseless, especially considering that it bears all the earmarks of

regularity in its issuance. Labor is entitled to at least elementary fairness from management.

Petitioner's reliance on Pepito's past infractions as sufficient grounds for his eventual dismissal, in addition to his prolonged absences, is likewise unavailing. The correct rule is that previous infractions may be used as justification for an employee's dismissal from work in connection with a subsequent similar offense.[18] That is not the case here. Stellar contends that Pepito's service record shows that he was under preventive suspension in October, 1979 due to gambling and that, at various days of certain months in 1986, 1987, and 1988, he was issued several warnings for habitual tardiness. Then, in October, 1988, he was asked to explain why he was carrying three sacks of rice in violation of company rules.

In the present case, private respondent's absences, as already discussed, were incurred with due notice and compliance with company rules and he had not thereby committed a "similar offense" as those he had committed in the past. Furthermore, as correctly observed by the labor arbiter, those past infractions had either been "satisfactorily explained, not proven, sufficiently penalized or condoned by the respondent." In fact, the termination notice furnished Pepito only indicated that he was being dismissed due to his absences from November 2, 1990 to December 10, 1990 supposedly without any acceptable excuse therefor. There was no allusion therein that his dismissal was due to his supposed unexplained absences on top of his past infractions of company rules. To refer to those earlier violations as added grounds for dismissing him is doubly unfair to private respondent. Significantly enough, no document or any other piece of evidence was adduced by petitioner showing previous absences of Pepito, whether with or without official leave.

Regarding the amount deducted from Pepito's salary, Stellar stresses that said deduction concerning death aid benefits is lawful since these were made in accordance with Board Resolution No. 02-85 adopted on August 17, 1988 by the board of directors of the Stellar Employees Association. However, Article 241 (n) of the Labor Code and the implementing rules thereon in Section 13(a), Rule VIII, Book III disallow such deductions. Article 241 (n) states that "(n)o special

assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members of a general membership meeting duly called for the purpose."

The deduction could be characterized as a special assessment for a "Death Aid Program." Consequently, a mere board resolution of the directors, and not by the majority of all the members, cannot validly allow such deduction. Also, a written individual authorization duly signed by the employee concerned is a condition sine qua non therefor. Employees are protected by law from unwarranted practices that have for their object the diminution of the hard-earned compensation due them.[19] Private respondent herein must be extended that protection, especially in view of his lowly employment status.

IN VIEW OF THE FOREGOING, no grave abuse of discretion having been committed by respondent National Labor Relations Commission in its decision and resolution assailed in the case at bar, the instant petition of Stellar Industrial Services, Inc. is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Romero, Puno and Mendoza, *JJ.*, concur.

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[1] Per Commissioner Rogelio I. Rayala, with the concurrence of Presiding Commissioner Edna Bonto-Perez.
[2] Rollo, 9-10, 35, 43.
[3] Ibid., 78-80; Annexes "J," "K," and "L," Petition.
[4] Ibid., 48-54.
[5] Ibid.. 54-55
[6] Ibid., 18.
[7] Ibid., loc. cit
[8] Ibid., 80; Annex "L," Petition.
[9] Ibid., 63.
[10] Nueva Ecija I Electric Cooperative, Inc. (NEECO — I) vs. Minister of Labor, et al., G.R. No. 61965, April 3, 1990, 184 SCRA 25; Cando vs. National Labor Relations Commission, et al., G.R. No. 91344 September 14, 1990, 189 SCRA 666.
[11] Rollo, 51.

[12] Ibid., 44.
[13] Ibid., 78, 44; Annex “J,” Petition.
[14] Rollo, 63-64.
[15] Ibid., 79; Annex “K,” Petition.
[16] Rollo, 77; Annex “I,” Petition.
[17] Ibid., 78-79; Annexes”J” and “K,” Petition.
[18] Filipro, Inc., vs. Ople, et al., G.R. No. 72129, February 7, 1990, 182 SCRA 1.
[19] Palacol, et al., vs. Calleja, etc., et al., G.R. No. 85333, February 26, 1990, 182 SCRA 710.