

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**SUNRISE MANNING AGENCY, INC.,
*Petitioner,***

-versus-

**G.R. No. 146703
November 18, 2004**

**NATIONAL LABOR RELATIONS
COMMISSION and RUEL ZARASPE,
*Respondents.***

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DECISION

CARPIO MORALES, J.:

From the Court of Appeals Decision of August 4, 2000 and Resolution of January 11, 2001 denying petitioner's Motion for Reconsideration thereof, the present Petition for Review on Certiorari was lodged.

Private respondent Ruel Zaraspe was hired as Chief Cook of petitioner's vessel M.V. "Nikolaos" commencing on December 18, 1995.

On June 22, 1996, private respondent's services were terminated.

By petitioner's claim, private respondent had, from the start of his employment, showed signs of deviant behavior. Mentioned by petitioner as undesirable acts of private respondent involving "insubordination, inefficiency and neglect of duty," and theft, are as follows:

His abrasive character was the subject of conversation as he would figure in near violent confrontations with his fellow workers; that in January 1996, Chief Mate Berdanilo caught him lying in bed in his cabin at lunch time and told him to get up and make himself busy; that in the presence of twenty (20) other seamen, complainant told to mind his own business and locked himself in his cabin; that when the Chief Mate was informed of the incident, Master Captain Dimos told the Chief Mate to give complainant time to adjust to his work environment; that complainant was caught several times drinking beer even in the presence of the officers; that even his work attitude deteriorated; that in February 1996, Chief Engineer Simiriotis caught him roaming around the vessel and chatting when he was supposed to be cooking for the crew; that when the Chief Engineer came closer to ask him if food was ready, complainant smelled of liquor; that instead of answering, complainant threw a roll of toilet paper at the Chief Engineer's face; that it was learned that complainant had just spent hours in the comfort room vomiting because of heavy drinking; that when the Captain talked to complainant about his work attitude, he retorted that he was the victim of all the incidents and it was the others who should be reprimanded; that complainant left the vessel several times without permission in violation of a strictly enforced rule; that when the Master of the vessel asked complainant why there was no bread for breakfast, complainant retorted that he should look in the refrigerator as he did not feel like cooking; that complainant was warned by the Master that anymore insubordination will be dealt with severity; that for several weeks, packs of cigarettes were reported missing and complainant who does the inventory of ship supplies reported that the crew were consuming the missing cigarettes by exceeding their consumption list; that during one inspection, the missing cigarettes were found in complainant's cabinet; that when asked on the spot,

complainant merely replied that it was a ploy by someone to discredit him but he would not specify; that the Master started an investigation and it was gathered that complainant was responsible for the pilferage; that the captain told complainant that he did not merely violate the rules but committed a crime and was terminated; that complainant was terminated for cause for violation of company rules and regulations, willful disobedience and insubordination and willful breach of trust; that he was accorded due process of law; and that he is not entitled to the unexpired portion of his contract and his other money claims.^[1]

Petitioner claims that while it was initially lenient toward private respondent, he subsequently committed intolerable offenses, the last of which was theft, thus compelling the captain of the vessel to terminate his services on June 22, 1996.

Aggrieved by his dismissal, private respondent filed an illegal dismissal case with the National Labor Relations Commission (NLRC). The case was assigned to Labor Arbiter Edgardo M. Madriaga who, by decision of June 4, 1998, found the dismissal legal and accordingly dismissed the complaint.

On appeal by private respondent, the NLRC, by Resolution of December 18, 1998, reversed the Labor Arbiter's decision. Petitioner filed a Motion for Reconsideration which only raised the procedural issue of private respondent's failure to serve it a copy of his memorandum of appeal. This motion was denied by Resolution of June 22, 1999.

Petitioner thereupon filed on August 17, 1999 a petition for certiorari with the Court of Appeals seeking to vacate the above-mentioned resolutions of the NLRC. By Decision of August 4, 2000, the Court of Appeals affirmed the resolutions of the NLRC.

On the procedural issue, the appellate court held that private respondent's failure to furnish petitioner a copy of his memorandum of appeal was not a jurisdictional defect that would bar the appeal as to render the Labor Arbiter's decision final and executory. On the merits, the same court held that petitioner failed to satisfy the burden

of proving that private respondent was terminated for a valid cause and in accordance with due process:

As already pointed out by the NLRC, petitioner failed to present sufficient evidence to prove that private respondent committed the imputed acts. Neither an affidavit nor any piece of company record was submitted before the NLRC.

Verily, when there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter as a case of illegal dismissal and the burden is on the employer to prove that the termination was for valid and authorized cause. (Valiant Machinery and Metal Corp. vs. National Labor Relations Commission, 252 SCRA 369 [1996])

x x x

To be validly effected, the dismissal must observe the twin requirements of due process – notice and hearing. The employer has the burden of proving that the former has been served with two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought and (2) the other to inform him of his employer's decision to dismiss him. x x x In the case before us, the record is bereft of any showing that formal notice of the charge was given to private respondent prior to his dismissal.^[2]

Petitioner's Motion for Reconsideration of the appellate court's decision was denied by Resolution of January 11, 2001, hence, the present petition.

In seeking the reversal of the challenged Decision and Resolution of the Court of Appeals, petitioner argues that the NLRC resolutions are null and void, (1) the Labor Arbiter's decision having become final and executory because the reglementary period was not stopped by private respondent's appeal owing to his failure to serve a copy of his memorandum of appeal upon petitioner, and (2) they having been rendered in violation of petitioner's right to due process as it was not given the opportunity to refute private respondent's allegations in his memorandum of appeal.

Public and private respondents do not deny that petitioner was not served a copy of private respondent's memorandum of appeal. What is disputed is the legal consequence thereof.

In support of its position that by private respondent's failure to serve a copy of his memorandum upon petitioner, the running of the reglementary period to appeal was not tolled, petitioner cites Section 3(a), Rule VI of the NLRC Rules of Procedure, viz:

Requisites for Perfection of Appeal. – (a) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 5 of this Rule; shall be accompanied by a memorandum of appeal and proof of service on the party of such appeal.

A mere notice of appeal without complying with the other requisites aforesated shall not stop the running of the period of perfecting an appeal. (Underscoring supplied)

Petitioner's position does not lie. It has long been settled that mere failure to serve a copy of a memorandum of appeal upon the opposing party does not bar the NLRC from entertaining an appeal. In *Pagdonsalan vs. NLRC*,^[3] this Court held:

The first issue raised herein is not of first impression. In *J.D. Magpayo Customs Brokerage vs. NLRC* (118 SCRA 646), this Court ruled that the appellant's failure to furnish copy of his memorandum appeal to respondent is not a jurisdictional defect, and does not justify dismissal of the appeal. Thus:

The failure to give a copy of the appeal to the adverse party was a mere formal lapse, an excusable neglect. Time and again We have acted on petitions to review decisions of the Court of Appeals even in the absence of proof of service of a copy thereof to the Court of Appeals as required by Section 1 of Rule 45, Rules of Court. We act

on the petitions and simply require the petitioners to comply with the rule.

Jurisprudential support is not absent to sustain Our action. In *Estrada vs. National Labor Relations Commission*, G.R. 57735, March 19, 1982, 112 SCRA 688, this Court set aside the order of the NLRC which dismissed an appeal on the sole ground that the appellant had not furnished the appellee a memorandum of appeal contrary to the requirements of Article 223 of the New Labor Code and Section 9, Rule XIII of its Implementing Rules and Regulations.

The same rule was reiterated in *Carnation Phil. Employees Labor Union-FFW vs. NLRC* (G.R. No. 64397, promulgated October 11, 1983). (Underscoring supplied)

As for petitioner's claim that the NLRC resolutions are void for having been rendered in violation of its right to due process, petitioner cites the case of *Philippine National Construction Corporation vs. NLRC*^[4] wherein this Court held:

X X X

It appears that petitioner was not a participant in the appeal interposed by private respondents. Apparently, such non-participation was never petitioner's choice as the record is bereft of any indication that petitioner was ever informed or notified of private respondents' appeal. There is no proof that petitioner was furnished a copy of private respondents' Memorandum of Appeal, nor was it required to comment thereon. No reference is made whatsoever in the NLRC Decision to any argument, position or comment raised by petitioner in response to the appeal. That petitioner was denied due process is well-substantiated." (Underscoring supplied)

This case is not analogous to the one at bar, however. For even if petitioner was not furnished a copy of private respondent's memorandum of appeal, it eventually became a participant in the proceedings on appeal when it filed a motion for reconsideration of

the NLRC Decision, unlike the petitioner in Philippine National Construction.

More in point is the case of Estrada vs. NLRC^[5] (cited in Pagdonsalan) where the respondent-employer, who was likewise not furnished a copy of the memorandum of appeal, filed a motion for reconsideration of the NLRC resolution. In ruling out denial of due process, this Court held:

X X X

Neither can private respondent validly complain that it has been denied its right to due process by having been allegedly deprived of the opportunity to answer petitioner's appeal on account of the latter's failure to furnish the former with a copy of his memorandum of appeal. Since the entire record of the case on appeal is open for review by the NLRC, the absence of an answer or opposition to the appeal would not really have a significant bearing on the adjudication of the case, as would otherwise perhaps constitute a denial of private respondent's right to due process. Besides, private respondent had already the opportunity to answer petitioner's appeal when he filed a motion for reconsideration of the earlier decision of the NLRC. Significantly, however, said respondent never touched on the merits of the case in his aforementioned motion for reconsideration. Instead, it relied solely on technicality to oppose petitioner's appeal which thereby reasonably creates the impression that its case is weak as in fact it is. (Emphasis and underscoring supplied)

Considering that the entire record of a case on appeal is open for review by the NLRC, and that herein petitioner was afforded a fair opportunity to be heard when it filed a motion for reconsideration after receiving a copy of the first NLRC resolution, it cannot validly claim that it was deprived of due process. Petitioner's assertion that its motion solely questioned private respondent's failure to serve a copy of his Memorandum^[6] only strengthens the pararellism between the present case and Estrada and further undermines its position. In limiting its motion for reconsideration to procedural issues, petitioner effectively waived its opportunity to be heard on the merits of the

case. It was thus not deprived of its right to due process which this Court in Paat vs. Court of Appeals^[7] discoursed on as follows:

X X X

Due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and practicable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense. Indeed, deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration, as in the instant case, when private respondents were undisputedly given the opportunity to present their side when they filed a letter of reconsideration dated June 28, 1989 which was, however, denied in an order of July 12, 1989 of Executive Director Baggayan. In Navarro III vs. Damasco, we ruled that:

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial type hearing is not at all times and in all instances essential. The requirements are satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice or hearing. (Underscoring supplied)

WHEREFORE, the petition is **DENIED**.

Costs against petitioner.

SO ORDERED.

Panganiban, J., (Chairman), and Garcia, JJ., concur.

**Sandoval-Gutierrez, J., no part. Chair of the CA Division
which rendered the assailed Decision.
Corona, J., on leave.**

[1] Rollo at 37-39.

[2] Id. at 42-43.

[3] 127 SCRA 463 (1984).

[4] 292 SCRA 266 (1998).

[5] 112 SCRA 688 (1982).

[6] Rollo at 190.

[7] 266 SCRA 167 (1997).

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