SUPREME COURT
SECOND DIVISION

ATLAS FARMS, INC.,
Petitioner,

-versus-

G.R. No. 142244
November 18, 2002

NATIONAL LABOR RELATIONS COMMISSION, JAIME O. DELA PEÑA and MARCIAL I. ABION,
Respondents.
x----------x

D E C I S I O N

QUISUMBING, *J.*:

Petitioner seeks the reversal of the decision[1] dated January 10, 2000 of the Court of Appeals in CA-G.R. SP No. 52780, dismissing its petition for *certiorari* against the NLRC, as well as the resolution[2] dated February 24, 2000, denying its motion for reconsideration.

The antecedent facts of the case, as found by the Court of Appeals,[3] are as follows:

> Private respondent Jaime O. dela Peña was employed as a veterinary aide by petitioner in December 1975. He was among several employees terminated in July 1989. On July 8, 1989, he

was re-hired by petitioner and given the additional job of feedmill operator. He was instructed to train selected workers to operate the feedmill.

On March 13, 1993,[4] Peña was allegedly caught urinating and defecating on company premises not intended for the purpose. The farm manager of petitioner issued a formal notice directing him to explain within 24 hours why disciplinary action should not be taken against him for violating company rules and regulations. Peña refused, however, to receive the formal notice. He never bothered to explain, either verbally or in writing, according to petitioner. Thus, on March 20, 1993, a notice of termination with payment of his monetary benefits was sent to him. He duly acknowledged receipt of his separation pay of ₱13,918.67.

From the start of his employment on July 8, 1989, until his termination on March 20, 1993, Peña had worked for seven days a week, including holidays, without overtime, holiday, rest day pay and service incentive leave. At the time of his dismissal from employment, he was receiving ₱180 pesos daily wage, or an average monthly salary of ₱5,402.

Co-respondent Marcial I. Abion[5] was a carpenter/mason and a maintenance man whose employment by petitioner commenced on October 8, 1990. Allegedly, he caused the clogging of the fishpond drainage resulting in damages worth several hundred thousand pesos when he improperly disposed of the cut grass and other waste materials into the pond's drainage system. Petitioner sent a written notice to Abion, requiring him to explain what happened, otherwise, disciplinary action would be taken against him. He refused to receive the notice and give an explanation, according to petitioner. Consequently, the company terminated his services on October 27, 1992. He acknowledged receipt of a written notice of dismissal, with his separation pay.

Like Peña, Abion worked seven days a week, including holidays, without holiday pay, rest day pay, service incentive leave pay and night shift differential pay. When terminated on October

27, 1992, Abion was receiving a monthly salary of ₱4,500.

Peña and Abion filed separate complaints for illegal dismissal that were later consolidated. Both claimed that their termination from service was due to petitioner's suspicion that they were the leaders in a plan to form a union to compete and replace the existing management-dominated union.

On November 9, 1993, the labor arbiter dismissed their complaints on the ground that the grievance machinery in the collective bargaining agreement (CBA) had not yet been exhausted. Private respondents availed of the grievance process, but later on refiled the case before the NLRC in Region IV. They alleged "lack of sympathy" on petitioner's part to engage in conciliation proceedings.

Their cases were consolidated in the NLRC. At the initial mandatory conference, petitioner filed a motion to dismiss, on the ground of lack of jurisdiction, alleging private respondents themselves admitted that they were members of the employees' union with which petitioner had an existing CBA. This being the case, according to petitioner, jurisdiction over the case belonged to the grievance machinery and thereafter the voluntary arbitrator, as provided in the CBA.

In a decision dated January 30, 1996, the labor arbiter dismissed the complaint for lack of merit, finding that the case was one of illegal dismissal and did not involve the interpretation or implementation of any CBA provision. He stated that Article 217 (c) of the Labor Code[6] was inapplicable to the case. Further, the labor arbiter found that although both complainants did not substantiate their claims of illegal dismissal, there was proof that private respondents voluntarily accepted their separation pay and petitioner's financial assistance.

Thus, private respondents brought the case to the NLRC, which reversed the labor arbiter's decision. Dissatisfied with the NLRC ruling, petitioner went to the Court of Appeals by way of a petition for review on certiorari under Rule 65, seeking

reinstatement of the labor arbiter's decision. The appellate court denied the petition and affirmed the NLRC resolution with some modifications, thus:

> WHEREFORE, the petition is DENIED. The resolution in NLRC CA No. 010520-96 is AFFIRMED with the following modifications:
>
> 1) The private respondents can not be reinstated, due to their acceptance of the separation pay offered by the petitioner;
>
> 2) The private respondents are entitled to their full back wages; and
>
> 3) The amount of the separation pay received by private respondents from petitioner shall not be deducted from their full back wages.
>
> Costs against petitioner.
>
> SO ORDERED.[7]

Petitioner forthwith filed its motion for reconsideration, which was denied in a resolution dated February 24, 2000, which reads:

> Acting on the Motion for Reconsideration filed by petitioners which drew an opposition from private respondents, the Court resolved to DENY the aforesaid motion for reconsideration, as the issues raised therein have been passed upon by the Court in its questioned decision and no substantial arguments were presented to warrant its reversal, let alone modification.
>
> SO ORDERED.[8]

In this petition now before us, petitioner alleges that the appellate court erred in:

> I. DENYING THE PETITION FOR CERTIORARI AND IN EFFECT AFFIRMING THE RULINGS OF THE PUBLIC

RESPONDENT NLRC THAT THE PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED;

II. RULING THAT THE PRIVATE RESPONDENTS ARE ENTITLED TO SEPARATION PAY AND FULL BACKWAGES;

III. RULING THAT PETITIONER IS LIABLE FOR COSTS OF SUIT.[9]

Petitioner contends that the dismissal of private respondents was for a just and valid cause, pursuant to the provisions of the company's rules and regulations. It also alleges lack of jurisdiction on the part of the labor arbiter, claiming that the cases should have been resolved through the grievance machinery, and eventually referred to voluntary arbitration, as prescribed in the CBA.

For their part, private respondents contend that they were illegally dismissed from employment because management discovered that they intended to form another union, and because they were vocal in asserting their rights. In any case, according to private respondents, the petition involves factual issues that cannot be properly raised in a petition for review on certiorari under Rule 45 of the Revised Rules of Court.[10]

In fine, there are three issues to be resolved: 1) whether private respondents were legally and validly dismissed; 2) whether the labor arbiter and the NLRC had jurisdiction to decide complaints for illegal dismissal; and 3) whether petitioner is liable for costs of the suit.

The first issue primarily involves questions of fact, which can serve as basis for the conclusion that private respondents were legally and validly dismissed. The burden of proving that the dismissal of private respondents was legal and valid falls upon petitioner. The NLRC found that petitioner failed to substantiate its claim that both private respondents committed certain acts that violated company rules and regulations,[11] hence we find no factual basis to say that private respondents' dismissal was in order. We see no compelling reason to deviate from the NLRC ruling that their dismissal was illegal, absent a showing that it reached its conclusion arbitrarily.[12] Moreover, factual

findings of agencies exercising quasi-judicial functions are accorded not only respect but even finality, aside from the consideration here that this Court is not a trier of facts.[13]

Anent the second issue, Article 217 of the Labor Code provides that labor arbiters have original and exclusive jurisdiction over termination disputes. A possible exception is provided in Article 261 of the Labor Code, which provides that –

> The Voluntary Arbitrator or panel of voluntary arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and or malicious refusal to comply with the economic provisions of such agreement.
>
> The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the grievance Machinery or Arbitration provided in the Collective Bargaining Agreement.
>
> But as held in *Vivero vs. CA,*[14] "petitioner cannot arrogate into the powers of Voluntary Arbitrators the original and exclusive jurisdiction of Labor Arbiters over unfair labor practices, termination disputes, and claims for damages, in the absence of an express agreement between the parties in order for Article 262 of the Labor Code [Jurisdiction over other labor disputes] to apply in the case at bar."

Moreover, per Justice Bellosillo:

> It may be observed that under Policy Instruction No. 56 of the Secretary of Labor, dated 6 April 1993, "Clarifying the Jurisdiction Between Voluntary Arbitrators and Labor Arbiters Over Termination Cases and Providing Guidelines for the Referral of Said Cases Originally Filed with the NLRC to the NCMB," termination cases arising in or resulting from the interpretation and implementation of collective bargaining agreements and interpretation and enforcement of company personnel policies which were initially processed at the various steps of the plant-level Grievance Procedures under the parties' collective bargaining agreements fall within the original and exclusive jurisdiction of the voluntary arbitrator pursuant to Art. 217 (c) and Art. 261 of the Labor Code; and, if filed before the Labor Arbiter, these cases shall be dismissed by the Labor Arbiter for lack of jurisdiction and referred to the concerned NCMB Regional Branch for appropriate action towards an expeditious selection by the parties of a Voluntary Arbitrator or Panel of Arbitrators based on the procedures agreed upon in the CBA.
>
> As earlier stated, the instant case is a termination dispute falling under the original and exclusive jurisdiction of the Labor Arbiter, and does not specifically involve the application, implementation or enforcement of company personnel policies contemplated in Policy Instruction No. 56. Consequently, Policy Instruction No. 56 does not apply in the case at bar.[15]

Records show, however, that private respondents sought without success to avail of the grievance procedure in their CBA.[16] On this point, petitioner maintains that by so doing, private respondents recognized that their cases still fell under the grievance machinery. According to petitioner, without having exhausted said machinery, the private respondents filed their action before the NLRC, in a clear act of forum-shopping.[17] However, it is worth pointing out that private respondents went to the NLRC only after the labor arbiter dismissed their original complaint for illegal dismissal. Under these circumstances private respondents had to find another avenue for redress. We agree with the NLRC that it was petitioner who failed to

show proof that it took steps to convene the grievance machinery after the labor arbiter first dismissed the complaints for illegal dismissal and directed the parties to avail of the grievance procedure under Article VII of the existing CBA. They could not now be faulted for attempting to find an impartial forum, after petitioner failed to listen to them and after the intercession of the labor arbiter proved futile. The NLRC had aptly concluded in part that private respondents had already exhausted the remedies under the grievance procedure.[18] It erred only in finding that their cause of action was ripe for arbitration.

In the case of *Maneja vs. NLRC*,[19] we held that the dismissal case does not fall within the phrase "grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies." In *Maneja*, the hotel employee was dismissed without hearing. We ruled that her dismissal was unjustified, and her right to due process was violated, absent the twin requirements of notice and hearing. We also held that the labor arbiter had original and exclusive jurisdiction over the termination case, and that it was error to give the voluntary arbitrator jurisdiction over the illegal dismissal case.

In *Vivero vs. CA*,[20] private respondents attempted to justify the jurisdiction of the voluntary arbitrator over a termination dispute alleging that the issue involved the interpretation and implementation of the grievance procedure in the CBA. There, we held that since what was challenged was the legality of the employee's dismissal for lack of cause and lack of due process, the case was primarily a termination dispute. The issue of whether there was proper interpretation and implementation of the CBA provisions came into play only because the grievance procedure in the CBA was not observed, after he sought his union's assistance. Since the real issue then was whether there was a valid termination, there was no reason to invoke the need to interpret nor question an implementation of any CBA provision.

One significant fact in the present petition also needs stressing. Pursuant to Article 260[21] of the Labor Code, the parties to a CBA shall name or designate their respective representatives to the

grievance machinery and if the grievance is unsettled in that level, it shall automatically be referred to the voluntary arbitrators designated in advance by the parties to a CBA. Consequently only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators. In these termination cases of private respondents, the union had no participation, it having failed to object to the dismissal of the employees concerned by the petitioner. It is obvious that arbitration without the union's active participation on behalf of the dismissed employees would be pointless, or even prejudicial to their cause.

Coming to the merits of the petition, the NLRC found that petitioner did not comply with the requirements of a valid dismissal. For a dismissal to be valid, the employer must show that: (1) the employee was accorded due process, and (2) the dismissal must be for any of the valid causes provided for by law.[22] No evidence was shown that private respondents refused, as alleged, to receive the notices requiring them to show cause why no disciplinary action should be taken against them. Without proof of notice, private respondents who were subsequently dismissed without hearing were also deprived of a chance to air their side at the level of the grievance machinery. Given the fact of dismissal, it can be said that the cases were effectively removed from the jurisdiction of the voluntary arbitrator, thus placing them within the jurisdiction of the labor arbiter. Where the dispute is just in the interpretation, implementation or enforcement stage, it may be referred to the grievance machinery set up in the CBA, or brought to voluntary arbitration. But, where there was already actual termination, with alleged violation of the employee's rights, it is already cognizable by the labor arbiter.[23]

In sum, we conclude that the labor arbiter and then the NLRC had jurisdiction over the cases involving private respondents' dismissal, and no error was committed by the appellate court in upholding their assumption of jurisdiction.

However, we find that a modification of the monetary awards is in order. As a consequence of their illegal dismissal, private respondents are entitled to reinstatement to their former positions. But since reinstatement is no longer feasible because petitioner had already closed its shop, separation pay in lieu of reinstatement shall

be awarded.[24] A terminated employee's receipt of his separation pay and other monetary benefits does not preclude reinstatement or full benefits under the law, should reinstatement be no longer possible.[25] As held in *Cariño vs. ACCFA*:[26]

> Acceptance of those benefits would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of the money. Because out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent their claim. They pressed it. They are deemed not to have waived their rights. *Renuntiato non praesumitur*.
>
> Conformably, private respondents are entitled to separation pay equivalent to one month's salary for every year of service, in lieu of reinstatement.[27] As regards the award of damages, in order not to further delay the disposition of this case, we find it necessary to expressly set forth the extent of the backwages as awarded by the appellate court. Pursuant to R.A. 6715, as amended, private respondents shall be entitled to full backwages computed from the time of their illegal dismissal up to the date of promulgation of this decision without qualification, considering that reinstatement is no longer practicable under the circumstances.[28]

Having found private respondents' dismissal to be illegal, and the labor arbiter and the NLRC duly vested with jurisdiction to hear and decide their cases, we agree with the appellate court that petitioner should pay the costs of suit.

WHEREFORE, the petition is **DENIED** for lack of merit. The decision of the Court of Appeals in CA-G.R. SP No. 52780 is **AFFIRMED** with the **MODIFICATION** that petitioner is ordered to pay private respondents (a) separation pay, in *lieu* of their reinstatement, equivalent to one month's salary for every year of service, (b) full backwages from the date of their dismissal up to the date of the promulgation of this decision, together with (c) the costs

of suit.

SO ORDERED.

Bellosillo, *J.*, *(Chairman)*, Mendoza, and Callejo, Sr., *JJ.*, concur.
Austria-Martinez, *J.*, on leave.

---

[1] Rollo, pp. 32-45.
[2] Id. at 47.
[3] Id. at 33-35.
[4] Erroneously stated as March 13, 1995 in NLRC Resolution and CA Decision.
[5] Referred also as Marcial L. Abion in NLRC Resolution and CA Decision.
[6] ART. 217. Jurisdiction of Labor Arbiters and the Commission.–

x x x

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

[7] Rollo, pp. 44-45.
[8] Id. at 47.
[9] Id. at 13.
[10] Id. at 9-10.
[11] CA Rollo, pp. 101-103.
[12] See Sanyo Travel Corporation vs. NLRC, 280 SCRA 129, 139 (1997).
[13] Bataan Shipyard and Engineering Corporation vs. NLRC, 269 SCRA 199, 209-210 (1997); Aurora Land Projects Corporation vs. NLRC, 266 SCRA 48, 58-59 (1997).
[14] 344 SCRA 268, 281 (2000). Stress supplied.
[15] Id. at 282.
[16] CA Rollo, pp. 61-62.
[17] Id. at 14.
[18] Id. at 23.
[19] 290 SCRA 603, 616 (1998).
[20] 344 SCRA 268 (2000).
[21] ART. 260. Grievance Machinery and Voluntary Arbitration.—The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies. See also Maneja vs. NLRC, supra.

All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission shall automatically be referred to voluntary arbitration prescribed in the Collective Bargaining Agreement.

For this purpose, parties to a Collective Bargaining Agreement shall name and designate in advance a Voluntary Arbitrator or panel of Voluntary Arbitrators, or include in the agreement a procedure for the selection of such Voluntary Arbitrator or panel of Voluntary Arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators, the Board shall designate the Voluntary Arbitrators, as may be necessary, pursuant to the selection procedure agreed upon in the Collective Bargaining Agreement, which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators has been selected by the parties as prescribed.

[22] Magcalas vs. NLRC, 269 SCRA 453, 470 (1997); Pepsi-Cola Distributors of the Philippines, Inc. vs. NLRC, 272 SCRA 267, 274-275 (1997).

[23] Maneja vs. NLRC, 290 SCRA 603, 616 (1998), citing Sanyo Philippines Workers Union-PSSLU vs. Cañizares, 211 SCRA 361, 368 (1992).

[24] Aurora Land Projects Corp. vs. NLRC, 266 SCRA 48, 66 (1997); De la Cruz vs. NLRC, 268 SCRA 458, 471 (1997); Hinatuan Mining Corporation vs. NLRC, 268 SCRA 622, 626 (1997).

[25] See Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179, 192 (1990), citing AFP Mutual Benefit Association, Inc. vs. AFP-MBAI-EU, 97 SCRA 715 (1980).

[26] 18 SCRA 183, 190 (1966).

[27] Iriga Telephone Co., Inc. vs. NLRC, 286 SCRA 600, 609 (1998); Kathy-O Enterprises vs. NLRC, 286 SCRA 729, 740 (1998).

[28] Mabeza vs. NLRC, 271 SCRA 670, 687 (1997), citing Bustamante vs. NLRC, 265 SCRA 61 (1996).