

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

FELIXBERTO Biantan,
Petitioner,

-versus-

**G.R. No. 119912
March 19, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION (Fourth Division, Cebu
City) and VICTORIAS MILLING CO.,
INC.,**

Respondents.

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DECISION

BELLOSILLO, J.:

FELIXBERTO Biantan, petitioner, was hired in June 1957 by Victorias Milling Co., Inc. (VICTORIAS) as “wire straightener.” In 1987, or after thirty (30) years, rising from the ranks in the company,

he assumed the position of Head of its Salvage and Disposal Section, Inventory Control and Warehousing Department.

On 15 March 1989 respondent VICTORIAS' Internal Audit-Field Operations through its representatives aborted the anomalous sale of four (4) brand new Exide batteries passed off as "discarded" to a certain Victor Go. After conducting further investigations, the representatives unearthed that sometime prior thereto, particularly on 18 January 1989, four (4) other brand new Exide batteries but classified as "deteriorated" were also sold to Go.

On 7 April 1989 notices to explain the apparent anomaly were sent to petitioner and other employees who could have had a hand in the deviant transactions. On 10 April 1989 petitioner submitted his written explanation denying involvement therein whatsoever. On 12 April 1989 the Personnel Officer himself conducted an in-plant investigation.

On 24 April 1989, effective on the same day, petitioner was placed under preventive suspension for a month. On 8 May 1989 he sought reconsideration with a request for a formal investigation to enable him to confront the witnesses and dispute the evidence against him. On 22 May 1989 the request was denied. The following day, his suspension was extended for fifteen (15) days.

On the bases of the statements of witnesses, company records and petitioner's explanation letter, petitioner was declared principally involved in the anomalous transfer and sale of safe-kept and brand-new Exide batteries thus —

1. Falsely identified four (4) brand-new storage batteries, Exide, contained in Shipping List #213424 dated January 17, 1989, as "Deteriorated Batteries" per Shipping List #0789 dated January 18, 1989 prepared by you and on the basis of which the sale of the said brand-new batteries — Exide — to Mr. Victor Go materialized under the classification and pricing as deteriorated batteries.
2. Personally withdrawing from the main Warehouse four (4) brand-new storage batteries per Shipping List #213432

dated March 15, 1989, which batteries are marked, “For Safekeeping assigned to Rolling Stock,” and transferred to Scrap Yard without clearance from the Rolling Stock as owner/end-user of said brand-new batteries. Moreover, Shipping List #213432 had not been signed by Mr. Emilio Yee, Head of Inventory and Warehousing Department, nor the knowledge or authority of Mr. Rodolfo Victoriano, MCD Manager.

3. Selling the said four (4) brand-new storage batteries safe-kept by Rolling Stock to Mr. Victor Go by falsely identifying them as “Discarded Storage Batteries” per Shipping List #14149 dated March 15, 1989; in handwritten note dated March 15; and in Inventory Cash Sales Invoice (ICSI) #10752 also dated March 15, 1989. Moreover, said ICSI #10752 was not signed by either Mr. Victoriano or Mr. Yee who are the authorized persons but only signed by you. It was further gathered during the investigation that the preparation by Scrap Yard of S/L #14149 and approved by you was irregular having been prepared ahead of ICSI #10752 at which time there was yet no approval from either Mr. Victoriano or Mr. Yee. It was confirmed upon interception by Audit that said falsely identified discarded batteries are in reality brand-new storage batteries — Exide.^[1]

On 31 May 1989 petitioner’s services were terminated while his Department Head, Emilio Yee, was demoted one rank and suspended for six (6) months.

Petitioner then contested his dismissal as illegal and prayed for reinstatement and back wages.

On 29 May 1992, justifying the termination of petitioner’s services, the Labor Arbiter dismissed the claims of petitioner^[2] after taking into account these points —

With regard to the items sold in January 1989 it was shown that complainant, in his own handwriting classified the 4 industrial batteries as deteriorated ones, when he fully knew that said items were unused and therefore new. The acts of the

complainant in setting the pricing as scrap/deteriorated items of said 4 batteries as well as in preparing the shipping list covering the transfer of the batteries sold to the buyer describing same as deteriorated, clearly show that complainant took a direct hand in committing this offense of fraud against the company, which is enough and sufficient reason for the latter to lose its confidence on the complainant. Moreover, it was shown that complainant was even the one who marked these batteries for safekeeping as he was then assigned with the warehousing section in charge of safekept items and that despite the knowledge that the 4 batteries were brand-new, still marked and classified them as deteriorated.

The respondent company had also shown that on March 15, 1989, the complainant had again described 4 brand new locomotive batteries as “discarded batteries,” when he fully knew that these were brand new and therefore not destined for Scrap yard for sale as discarded batteries.^[3]

Public respondent National Labor Relations Commission found the conclusion of the Labor Arbiter amply supported by the evidence. Thus on 28 February 1995 NLRC dismissed the appeal.^[4]

The issue is very simple: whether the dismissal of petitioner from his employment was legal or illegal.

Petitioner insists that he had no involvement whatsoever in the disputed transactions. He argues that in the 18 January 1989 transaction, the disposal, sale and transfer of the four (4) Exide batteries were not decided nor performed by him but by the Head of his Department, the Chief of the Warehousing Section and the buyer. As regards particularly the 15 March 1989 transaction, petitioner proffers the excuse that it was duly authorized by the Capital Asset Management Group, the Disposal Committee and the Head of his Department.

Petitioner fails to convince us. Private respondent’s evidence adequately delineated and specified his participation in the 18 January 1989 sale of the supposedly deteriorated batteries —

Mr. Jaime Beboso, a storekeeper of the Salvage and Disposal Section whose immediate superior is the complainant, attested to the fact that they received the fifty (50) items on January 17, 1989 from the Warehousing Section covered by SL No. 213424, that when he inspected the items, he found out that 46 automotive batteries were totally damaged and rotten and the other four industrial batteries which were placed inside the wooden crate made of palochina and individually packed in cartons were brand new; that complainant was present when Mr. Beboso inspected and opened the cartons of these four industrial batteries and that when he remarked that these were brand new, he was instructed by the complainant to just receive them; that the following day, Mr. Victor Go pulled out these items (50) and bought them; that though it was Mr. Beboso who was tasked with the preparation of the shipping list covering the transfer of the items sold to the buyer, complainant tasked (?) it upon himself to prepare SL No. 0789; that in the said SL, complainant classified the four (4) industrial batteries as deteriorated when he fully knew well (sic) that said items were brand new and unused.^[5]

The same statement as above holds true with regard to the 15 March 1989 sale of purportedly discarded batteries —

That when Mr. Sta. Ana (Chief of the Warehousing Section) opened the wooden crate, and individual cartons in the presence of the complainant, he found out that these batteries were brand new; that despite the fact that these batteries were brand new and thus, not destined for Scrap Yard, complainant still asked Mr. Sta. Ana whether he could bring out the 4 batteries to which the latter answered that shipping list covering the transfer from the warehouse to the scrap yard should first be prepared; that in view of the representations made by complainant that he was instructed by Mr. Yee to bring out the batteries, Mr. Sta. Ana had instructed to prepare shipping list No. 213432 dated March 15, 1989, to which complainant acknowledged receipt of the items stated in the list; that the shipping list described the batteries as “discarded batteries;” that complainant then loaded the 4 batteries to the Scrap Yard service vehicle, which were still contained in the

wooden crate marked for “safekeeping,” assigned to Rolling Stock; that these batteries were bought by the buyer, Mr. Go, to which complainant instructed Mr. Beboso to prepare the handwritten note which was duly approved by complainant for the purchase amount for discarded batteries that upon instruction of complainant, Mr. Beboso also prepared ICSI No. 10752 duly approved by the former.^[6]

Culled from the mass of evidence of respondent company it is clear that petitioner indeed had a direct hand in perpetrating the fraud against the company. Taking into consideration the nature of the work of petitioner which consisted in planning, directing and controlling the over-all operation of the Salvage and Disposal Section,^[7] private respondent had sufficient grounds to lose confidence in him. In this connection, the findings of fact of the Labor Arbiter as well as those of respondent NLRC, being supported by substantial evidence, are binding upon this Court.^[8]

However, we agree with the observation of the Office of the Solicitor General that petitioner was not accorded due process hence he must be indemnified by private respondent in the amount of P1,000.00 conformably with established jurisprudence.^[9] In this regard, and there being no issue raised on the amount of indemnity, an award of P1,000.00 as recommended by the OSG may be granted to petitioner for denying him due process. The request of petitioner for formal investigation in order to confront the witnesses and controvert the evidence against him underscores the inadequacy of the in-plant investigation. It is a well-known rule that before an employer may dismiss an employee, the latter must be afforded due process which means, among others, the opportunity to confront the witnesses against him and to adduce evidence in his defense.^[10]

WHEREFORE, the Petition is **DISMISSED**. The Decision of respondent National Labor Relations Commission dated 28 February 1995 affirming the dismissal by the Labor Arbiter of petitioner’s complaint for illegal dismissal is **AFFIRMED**, subject to the modification that, as recommended by the Office of the Solicitor General, private respondent Victorias Milling Co., Inc., is ordered to pay petitioner Felixberto Biantan P1,000.00 as indemnity for non-observance of due process in his dismissal from the service.

SO ORDERED.

**Davide, Jr., Vitug and Quisumbing, JJ., concur.
Panganiban, J., took no part: Related to a party.**

- [1] Records, p. 28.
- [2] Penned by Executive Labor Arbiter Oscar S. Uy; Rollo, p. 55.
- [3] Rollo, pp. 51-52.
- [4] Penned by Commissioner Bernabe S. Batuhan with the concurrence of Presiding Commissioner Irene E. Ceniza and Commissioner Amorito V. Cañete; Rollo, p. 59.
- [5] Rollo, pp. 46-47.
- [6] Id., pp. 48-49.
- [7] Records, p. 91.
- [8] Cabalan Pastulan Negrito Labor Association vs. NLRC, G.R. No. 106108, 23 February 1995, 241 SCRA 643.
- [9] Wenphil Corporation vs. NLRC, G.R. No. 80587, 8 February 1989, 170 SCRA 69.
- [10] Manila Electric Company vs. NLRC, G.R. No. 84282, 6 March 1990, 183 SCRA 51.