

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

WILFREDO R. CAMUA,
Petitioner,

-versus-

G.R. No. 116473
September 12, 1997

**NATIONAL LABOR RELATIONS
COMMISSION and HERBERT S. DEE
JR./HOOVEN PHILS. INC.,**
Respondents.

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D E C I S I O N

MENDOZA, J.:

This is a Petition for *Certiorari* to Set Aside the Decision of the National Labor Relations Commission in NLRC NCR Case No. 00-01-00441-90, reversing the Decision of the Labor Arbiter which found that petitioner had been illegally dismissed by private respondents.

The facts are as follows:

Private respondent Hooven Phil. Inc. is engaged in the manufacture of aluminum sections. Petitioner was first hired by it as a casual employee on November 18, 1986. On October 8, 1987, he was made a

permanent employee, working as an anodizing aide. He was later transferred to the Quality Inspection Division and made a quality assurance inspector.

During the term of petitioner as quality assurance inspector, respondent company received during the period of April to October 1989, complaints from customers concerning the quality of products delivered by the company. On the basis of these complaints the company found petitioner to be grossly negligent and, possibly, even guilty of fraud.

Accordingly, on October 26, 1989, Edgardo S. Crisostomo recommended petitioner's dismissal on the ground of loss of trust and confidence. The recommendation was approved on October 27, 1989 by respondent Herbert S. Dee, Jr., but implementation of the order was put off because the company allegedly wanted to catch petitioner in flagrante delicto. However, the respondent company was frustrated in its attempt because petitioner allegedly learned about the plan. On November 30, 1989, petitioner was finally dismissed.

On January 23, 1990, petitioner filed this case for illegal dismissal and nonpayment of 13th month pay against private respondents. Respondent company paid petitioner Camua's 13th month pay on February 28, 1990, leaving as the sole issue petitioner's dismissal.

In a decision dated January 21, 1994 Labor Arbiter Melquiades Sol D. Del Rosario found petitioner to have been illegally dismissed. On appeal, however, the NLRC reversed the Labor Arbiter's decision. Hence, this petition for *certiorari*.

First. Petitioner contends that he was dismissed without due process of law. The law requires that before an employee may be dismissed two notices must be given to him by the employer, to wit: (1) notice apprising the employee of the particular acts or omission for which his dismissal is sought, and (2) notice informing the employee of the decision to dismiss him and the ground or grounds therefor.^[1] In the case at bar, both the Labor Arbiter and the NLRC found that no written notice of the charges had been given to petitioner by the respondent company. With respect to the second notice required, private respondents claim that, on November 30, 1989, petitioner was

informed of his dismissal by means of a written memorandum but petitioner refused to receive the notice. Private respondents could have sent such notice, however, by registered mail in order to have evidence of such notice to petitioner, but they did not do so.

There is thus no evidence to show that respondent company gave petitioner the required two notices before he was dismissed. Accordingly, in accordance with the well-settled rule,^[2] private respondents should pay petitioner P1,000 as indemnity for violation of his right to due process.

Second. Private respondents contend that petitioner was guilty of gross negligence and possibly of fraud against the company. Therefore, they claim that petitioner was dismissed for just cause. In their reply filed in the NLRC they said Camua was an “incompetent employee and worse, may even be dishonest” and that Camua’s incompetence was probably a “mere facade to hide his felonious acts.”^[3]

But the NLRC found petitioner guilty not of gross negligence but for dishonesty for having allegedly certified aluminum sections to be defective when the fact is that they were not products of the company. This is erroneous because the only evidence that respondent company had to support its allegation that petitioner was colluding with some customers to defraud the respondent Company were in the latter’s own word “unconfirmed reports.”^[4] Private respondents said they were planning to catch the petitioner and his accomplices in flagrante delicto^[5] but did not succeed because petitioner learned about the plan and so was able to take the necessary precaution. It is just as possible, however, that private respondents were not able to catch petitioner in flagrante delicto precisely because he was not involved in any wrongdoing.

The NLRC said in its decision:

The scheme, as presented by the respondents in that, the aluminum products of the respondent corporation like those of its competitors do not bear any trade mark or seal that would clearly identify them from other aluminum products; that the products delivered to the customers are quality products as certified by the complainant; that

upon delivery, the customers will in turn reject the product but would actually return other substandard products. Hence, there is no way of determining with certainty the identity and other sources of these rejected products. Otherwise, if the product was indeed inspected and certified to as quality product before delivery by the complainant, then, We see no plausible reason for the complainant to declare it as substandard upon its return after the same was rejected by the customer.

If there was no way of identifying the defective products to determine if they were those of respondent company, there can be no basis for concluding that petitioner is guilty of certifying as defective products which were not those of respondent company. Indeed, even the company only suspected that more than gross negligence, petitioner was guilty of fraudulently certifying other manufacturer's products and thereby caused respondent company damage.

Indeed, what private respondents presented was evidence not of dishonesty but of gross negligence of petitioner. Thus it presented the affidavit of its sales service manager, Lorna Encallado, who stated that "Mr. Camua did nothing less than approve rejectable items for packing as well as delivery to the detriment of Hooven's business reputation" and that she was giving the affidavit "for the purpose of attesting to the gross negligence committed by Wilfredo Camua." No mention of dishonesty, fraudulent scheme or cheating by Camua was ever made in the affidavit.

Petitioner personally inspected, certified and authorized the delivery of certain aluminum sections to customers, some of which were later returned by customers for being defective. Petitioner was sent to inspect the aluminum sections complained of and, upon his certification that they were defective, respondent company replaced the goods in question. But the goods returned were those which the company had sold. The company complained that because of the number of times it had to replace defective products on several occasions during the period April to October 1989, its reputation suffered and it incurred losses because of additional expenses for transportation and handling.

Thus, while the evidence does not sustain the NLRC's finding of fraud, it does prove gross negligence on the part of petitioner. The evidence shows that the aluminum sections found to be defective had not been properly inspected before delivery, considering that the defects were visible to the naked eyes and consisted of blisters, crooked or twisted sheets, corrosion, and the like. The company submitted in evidence Aluminum Transfer Slips (ATS), Field Inspection Reports and a document denominated as "Attachment A," which summarizes the aluminum sections found to be defective after reinspection. These records show that a total of 54 aluminum sections were found to be defective after field inspection.^[6] These had allegedly been previously inspected by petitioner and certified by him to be of good quality prior to their delivery to customers. At least, 26 of these appear in the ATS as having been among those certified of good quality by petitioner on April 22, 24 and 25, August 15, 30 and October 23 and 24, 1989, but upon inspection were later found to be defective.

Although an employee is validly dismissed for cause, he may nevertheless be given separation pay as a measure of social justice provided the cause is not serious misconduct reflecting on his moral character.^[7] Where the reason for the dismissal of the employee is gross negligence in the performance of his duties resulting in loss of trust and confidence, financial assistance may be given the employee.^[8]

WHEREFORE, the Decision of the National Labor Relations Commission is **AFFIRMED** with the modification that private respondents are **ORDERED** jointly and severally to pay petitioner the sum of P1,000.00 as indemnity for violation of his right to due process and separation pay at the rate of one month salary for every year of service, a fraction of at least six months being considered as one whole year, based on his salary at the time of dismissal.

SO ORDERED.

Regalado, Puno and Torres, Jr., JJ., concur.

- [1] Philippine Savings Bank vs. NLRC, 261 SCRA 409 (1996), citing Jones vs. NLRC, 250 SCRA 668 (1995); Pampanga II Electric Cooperative, Inc. vs. NLRC, 250 SCRA 31 (1995); Nitto Enterprises vs. NLRC, 248 SCRA 654 (1995); Kingsize Manufacturing Corp. vs. NLRC, 238 SCRA 349 (1994); Pepsi-Cola Bottling Co., Inc. vs. NLRC, 210 SCRA 277 (1992).
- [2] See, e.g., Tañala vs. NLRC, 252 SCRA 314 (1996).
- [3] Records, p. 77.
- [4] Rollo, p. 52.
- [5] Id., p. 53.
- [6] Records, p. 72.
- [7] Philippine Long Distance Telephone Company vs. NLRC, 164 SCRA 671 (1988).
- [8] PepsiCo, Inc. vs. NLRC, 177 SCRA 308 (1989).