SUPREME COURT
FIRST DIVISION

FRANCISCO P. CANDO,
***Petitioner*,**

-versus-

G.R. No. 91344
September 14, 1990

NATIONAL LABOR RELATIONS COMMISSION and PILIPINAS BANK,
***Respondents*.**
x----------x

D E C I S I O N

GANCAYCO, *J.*:

The propriety of the dismissal of an employee is put in issue in this special civil action for *certiorari*.

The record of the case discloses that the herein petitioner Francisco P. Cando had been employed with the herein private respondent Pilipinas Bank since August 1974. Immediately prior to his dismissal from the bank, the petitioner was the senior distributing clerk at the head office of the respondent bank. During the period of his employment, he was a ranking officer of the Pilipinas Bank Employees Union.

In September 1984, the union declared a strike against the respondent bank which lasted around a month. Thereafter, then Minister of Labor Blas Ople issued an order enjoining the strike and directing the striking workers to return to work. Inasmuch as the union refused to comply with the said order, the Ministry of Labor and Employment issued another order dated October 29, 1984 instructing the workers to return to work under the same terms and conditions obtaining before the strike. While the striking employees followed the return-to-work order, the petitioner still failed to report for work. His absence was to last for quite some time.

The petitioner managed to file an application to go on official leave from November 5 to 21, 1984. In fine, however, he did not report for work from October 29, 1984 to the end of February 1985 — a period of more than four months. His time cards for the months of December 1984 and January 1985 recited entries like "union matter" and "hearing." His time card for February 1985, however, was devoid of any entry. All in all, his absences from October 29, 1984 up to the end of February 1985 were unauthorized, save for the brief period covering his application to go on official leave.

On March 4, 1985, the respondent bank instructed the petitioner to explain in writing, within forty-eight (48) hours, why appropriate disciplinary measures should not be taken against him in view of his numerous absences. Inasmuch as the petitioner failed to submit the written explanation sought from him within the prescribed period, the matter was referred to the bank president. It was only on March 7, 1985 when the petitioner submitted his written explanation. He contended that his numerous absences were prompted by various matters affecting the union which needed immediate attention.

An ad hoc investigating committee was created for the purpose of looking into these infractions committed by the petitioner. After an administrative charge for gross and habitual neglect in the performance of official duties had been filed against the petitioner, the said committee informed him about the nature and the possible consequences thereof. The committee also informed him that he must submit his reply to the said charges within seventy-two (72) hours and that he had the option of requesting a formal hearing where he may present evidence and avail of the assistance of counsel.

On April 10, 1985, the petitioner submitted his written reply but did not expressly request a formal hearing.

On April 24, 1985, the committee submitted its observations and recommendations to the bank president. Accordingly, a memorandum dated May 2, 1985 was issued to the petitioner informing him that he was terminated from his employment effective May 7, 1985 and that his termination was for gross and habitual neglect in the performance of duties through absences without official leave.

The petitioner filed a complaint for illegal dismissal against the respondent bank before the National Labor Relations Commission. The parties submitted their corresponding position papers and formal hearings were conducted wherein the said parties presented witnesses. In due time, the labor arbiter assigned to the case rendered a decision sustaining the dismissal of the petitioner and dismissing the complaint.

Finding the decision of the labor arbiter unsatisfactory, the petitioner elevated his case to the First Division of the Commission. In a decision promulgated on November 17, 1989, the Commission noted that there was a sufficient basis for terminating the services of the petitioner.[1] Nonetheless, the Commission ordered the respondent bank to pay the petitioner separation pay equivalent to one month salary for every year of service.[2]

On January 22, 1990, the petitioner elevated the case to this Court. The petitioner contends that the decision of the Commission has no legal basis.

As instructed by the Court, the Office of the Solicitor General filed its comment on the petition seeking therein the dismissal of the same. Some time thereafter, the case was deemed submitted.

It should be noted that labor cases are reviewed by the Supreme Court through a special civil action for *certiorari* and not by way of appeal.[3] The instant petition, however, is erroneously designated as a "petition for review." This error notwithstanding, and in the interest

of justice, the Court resolved to treat the instant petition as a special civil action for *certiorari*.[4] Thus, the only issue to be resolved in this petition is whether or not the respondent National Labor Relations Commission committed a grave abuse of discretion in sustaining the dismissal of the petitioner.

After a careful evaluation of the entire record of the case, the Court finds the petition devoid of merit.

It appears that the dismissal of the petitioner is based on his unjustified absences for a number of months. As an employee, the petitioner is expected to be aware of the rules and regulations of the bank regarding leaves of absences. As observed by the Commission, the absences of the petitioner were not authorized. On this score, his dismissal appears to be warranted.

The petitioner contends that his dismissal is not justified inasmuch as his absences were authorized and/or condoned by his superiors. The contention is untenable.

In the labor arbiter's decision dated May 25, 1988, which was reproduced in the decision of the Commission dated November 12, 1989, it is stated:

> "Anent the first question, the evidence on record shows that complainant informed his supervisor, Mr. Joselito San Miguel, by phone at least twice, the first being on October 29, 1984 and the second being sometime in January 1985, that the former could not report for work due to some urgent union business. However, it is also established that Mr. San Miguel told complainant to file his leave in accordance with existing bank rules.
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> The record likewise shows that complainant came to see Mr. Leon Tibia, Manager of the Cash Department, at least twice in November, 1984 and informed the latter that he was not going to report for work because he was busy attending to certain union matters. However, Mr. Tibia testified that while the same was true, he informed complainant that he should follow the bank's rules and regulations pertaining to leave of absences.

> Pursuant to Mr. Tibia's directive, complainant in fact filed his written application for leave but only for covering the period November 5 to 21, 1984, which was duly approved by the former.
>
> The record further shows that on at least three (3) occasions, Mr. Rogel Zenarosa, OIC of the Treasury Division, casually met complainant and the former inquired when the latter was going to report for work. Complainant replied that he will simply talk to Mr. Tibia about it.
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> From the facts cited above, it appears that only the absences incurred by complainant on October 29, 1984 and November 5 to 21, 1984 were with the prior knowledge and consent of his superiors as the same were duly approved by the latter. The other days that complainant was absent do not bear any prior knowledge, consent and or approval of any of his superiors. There is no other documentary evidence on record showing such approval. It would seem that complainant took it upon himself to incur said absences without complying with existing bank rules and regulations despite the reminders given to him by the superiors which negate the contention that such prolonged absences, were tolerated.
>
> It is understandable for respondent's officers to just verbally remind or warn complainant to follow bank rules on leave of absences, instead of issuing him with written warnings as complainant was the Union President, who is presumed to be the most knowledgeable among the rank-and-files of what to do and not to do. The undersigned takes cognizance of the fact that in almost all business organizations with existing labor unions, the latter's officers are extended some degree of leeway, particularly in the implementation of house rules. This practice is consistent with maintaining harmonious labor-management relationship."[5]

While the petitioner easily asserts that his absences were brought about by his having to attend to union matters, his testimony before the labor arbiter betrays otherwise. We quote with approval the

following portion of the decision of the labor arbiter:

> "Anent the second question of whether complainant's (the herein petitioner's) absences are justified, the undersigned finds that the reasons 'union matter' and 'hearing' were being alluded to by complainant as an anticipated shield against respondent's (the herein private respondent's) reactions on his absences. Indeed, on cross-examination on the entries in his time cards, complainant grossly and glaringly betrayed his insincerity since he could not recall any single case, criminal, administrative or labor or any subject matter discussed and taken up in the reasoned out 'union matter' or 'hearing.' It is very unfortunate that during such cross-examination, complainant consistently hid under the convenient cloak of 'I cannot recall.'"[6]

His argument that his absences were nonetheless condoned by his superiors has no legal basis. The respondent bank took steps to look into his alleged violation/s of bank rules and regulations governing leaves of absences. An investigation ensued where he was given the opportunity to defend himself. In due time, disciplinary measures were taken against him. Besides, the petitioner did not show any proof of the alleged condonation on the part of his superiors.

All in all, the Court is convinced that there is substantial evidence to support the questioned decision of the respondent Commission. His violation of the rules and regulations of the bank governing absences of employees was demonstrated in the course of an investigation on the matter. He was given a chance to defend himself in the investigation. His testimony before the labor arbiter was, at the least, hardly in accord with his explanation as to his absences. Inasmuch as the findings of facts made by the respondent Commission are supported by substantial evidence, the same will be accorded respect and finality.[7]

WHEREFORE, in view of the foregoing, the instant Petition is hereby **DISMISSED** for lack of merit. The Court makes no pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Page 42, Rollo.
[2] Ibid.
[3] Asiaworld Publishing House, Inc. vs. Ople, 152 SCRA 219 (1987).
[4] Dentech Manufacturing Corporation vs. National Labor Relations Commission, 172 SCRA 588 (1989).
[5] Pages 32 to 34, Rollo.
[6] Pages 61 to 62, Rollo.
[7] Lacorte vs. Inciong, 166 SCRA 1 (1988).
