SUPREME COURT
SECOND DIVISION

CARLOS A. GOTHONG LINES, INC.,
***Petitioner*,**

-versus-

G.R. No. 96685
February 15, 1999

NATIONAL LABOR RELATIONS COMMISSION, AND ADOLFO LAURON,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

This Special Civil Action for Certiorari seeks to annul the Decision[1] of the National Labor Relations Commission, Fourth Division, Cebu City, dated August 7, 1990, which affirmed with modification the judgment of the Labor Arbiter; and the Resolution[2] dated November 29, 1990, which denied petitioner's motion for reconsideration.

Immediately prior to the controversy, private respondent, Adolfo Lauron, was employed as a watchman with a monthly salary of P1,600, on board MV Don Benjamin owned by petitioner Carlos A. Gothong Lines, Inc.

On April 4, 1987, while the vessel was cruising the waters of Cebu and Cagayan, a fire occurred in the cabin of private respondent, burning his pillow and his blanket. The Chief Engineer's cabin was also set on fire.

On April 6, 1987, private respondent was ordered to disembark for purposes of the investigation to be conducted in connection with the incident.

There was no investigation held until the middle of May, 1987. Thereafter, private respondent was informed that he had been dismissed from his employment.

Consequently, on May 28, 1987, private respondent filed an illegal dismissal case with the Department of Labor and Employment, Regional Arbitration, Branch VII, Cebu City. Private respondent filed an amended complaint to include reinstatement with backwages, damages, attorney's fees, and other incidental pay (overtime, proportional 13th month pay).

On May 2, 1989, Labor Arbiter Alhambra Llenos-Alfafara rendered a Decision,[3] the dispositive portion of which states:

> "Wherefore premises considered, judgment is hereby rendered ordering respondent to pay herein complainant the sum of Forty Five Thousand Nine Hundred Forty One Pesos and Thirty One Centavos (P45,941.31) corresponding to his backwages covering the period April 7, 1987 to May 15, 1989 at the rate of P1,600.00, his 13th month pay for the same period in the sum of P4,047.87, and the amount of P20,490.00 corresponding to his separation pay for the period 1962 to May 15, 1989, all in the total sum of P71,024.18."
>
> All other claims are hereby denied for lack of legal and/or factual basis.

SO ORDERED."[4]

Petitioner appealed to the National Labor Relations Commission (NLRC) which modified the decision of the Labor Arbiter, the dispositive portion of which reads:

> "WHEREFORE, the decision of the Labor Arbiter is hereby modified as follows: Respondent is hereby ordered to pay complainant his backwages from date of dismissal on April 4, 1987 up to finality of judgment but limited to three (3) years, and in lieu of reinstatement, separation pay equivalent to one-month pay for every year of service computed from 1962 up to April 4, 1987 less the amount of P5,430.00 as indicated above.
>
> All other aspect of the decision is hereby AFFIRMED.
>
> SO ORDERED."[5]

Petitioner filed a motion for reconsideration of the NLRC decision, which was denied for lack of merit.

Hence, this petition.

Petitioner advanced the following assignment of errors committed by the public respondent NLRC:

I. ERROR WAS COMMITTED IN DETERMINING THAT NO INVESTIGATION WAS CONDUCTED AND THAT HE [ADOLFO LAURON] WAS DENIED DUE PROCESS.

II. ERROR WAS COMMITTED IN GRANTING FULL BACKWAGES AS WELL AS IN COMPUTING THE SAME, ASSUMING THAT PETITIONER IS LIABLE.

The basic issue to be considered in this petition is whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the decision of the Labor Arbiter that private respondent was illegally dismissed. Secondarily, we must

also resolve whether or not the NLRC erred in granting the monetary awards to private respondent.

Petitioner states that as a common carrier, it is bound to carry the passengers and cargoes safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person with due regard for all circumstances. Consequently, when a fire occurred, it is bound to conduct a fact-finding investigation to elicit the truth behind the incident. Hence, the private respondent's refusal to submit to such investigation is a willful defiance of an order of the employer, which is a sufficient cause for dismissal governed by Article 282 (a)[6] of the Labor Code.

On the other hand, private respondent alleges that as a result of the fire, he was ordered to disembark on the pretext that he would be investigated. However, no investigation was ever conducted, so that private respondent was forced to approach the personnel manager and the house counsel, only to be told that it was already the desire of management to dismiss him from work.

After considering the evidence of the parties, the Labor Arbiter gave more credence to the version of the private respondent over that of petitioner. In view of the Labor Arbiter's findings, the NLRC ruled on appeal that the dismissal of the private respondent was indeed effected without regard to substantive and procedural due process.

Given the circumstances of this case and after considering the record with the memoranda of the parties, it is our view that the petition at bar cannot prosper. We are in accord with the decision reached by the NLRC, modifying the Labor Arbiter's own.

Settled is the rule that the requisites of a valid dismissal are: (1) the dismissal must be for any of the causes provided for under Article 282 of the Labor Code, and (2) only after the employee has been notified in writing and given the opportunity to be heard and defend himself, as required under Sections 2[7] and 5,[8] Rule XIV, Book V of the Rules and Regulations Implementing the Labor Code.[9]

Furthermore, even in a case involving willful disobedience of the employer's lawful orders as a just cause for the dismissal of an

employee, at least two requisites must concur: (1) the employee' s assailed conduct must have been willful or intentional, the willfulness being characterized by "a wrongful and perverse attitude;" (2) the order allegedly violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[10]

In this case, there was no showing that private respondent's actuation was marked by any perverse attitude to defy the order of his employer requiring him to submit to an investigation. In fact, when he was ordered to disembark, he willfully obeyed and then waited for the aforesaid investigation.

Moreover, petitioner admitted that the memorandum given by its Assistant Vice President for Human Resources was addressed to Capt. Victor Bayotas, directing the latter to inform the private respondent of an investigation. But the investigation was merely fact-finding. The memorandum was not an order directly concerning the alleged dismissal.[11] Apart from this memorandum, there was no notice addressed directly to the private respondent informing him of his dismissal from employment. As held in Pampanga II Electric Cooperative, Inc. vs. National Labor Relations Commission,[12] two written notices must be given to an employee before he may be dismissed. The first notice must apprise him of particular acts or omissions for which his dismissal is sought. The second notice, after hearing, is that of dismissal itself. Moreover, even if in the case at bar private respondent allegedly abandoned his job, as claimed by the petitioner, these notices must be served at the worker's last known address as required by the rules.[13]

As an alternative ground for the dismissal, petitioner contends it is beyond dispute that private respondent was subsequently charged with having committed the crime of arson. Petitioner went further by claiming that the private respondent was given the opportunity to air his side by the fact that a report of the incident was required of all crew members. To grant monetary award to private respondent, petitioner contends, would in effect reward him for committing an offense.

We find petitioner's contention less than convincing. Mere filing of a criminal case against the private respondent would not suffice to warrant his dismissal from his job. Basic is the principle that an accused is presumed innocent until proven guilty. And if the basis of an employee's termination from employment was that he committed an offense, the same should have been proved by at least substantial evidence, to satisfy administrative due process. In the case at bar, the alleged responsibility of the private respondent concerning the fire aboard ship was not proven at all.

Petitioner tried to indict private respondent for the offense of arson by presenting affidavits of witnesses imputing negligence by the private respondent as the proximate cause of the fire. The Labor Arbiter, however, questioned the admissibility and credibility of these exhibits, to wit.:

> "Exhibit '2', affidavit of Lilian Cabahug and Joint affidavit of Vidal Bustamante and Cornelio Tero were offered 'in order to show that the incident arose out of the negligence of Adolfo Lauron leading to the decision of respondent to place him under investigation.' (Respondent's Formal Offer of Exhibits dated December 15, 1988). Respondent would want this office to believe that such affidavits were submitted by the crew members in compliance with the order of management to render a report of the incident. (Respondent's position paper dated July 18, 1988 page 2).

A close scrutiny of the affidavits (A & B), however, reveal (sic) that they were executed on July 3, 1987 and June 29, 1987, respectively, after complainant had already filed a complaint for illegal dismissal with the DOLE. The assumption that can be drawn therefrom is that the execution thereof was merely a rectificatory measure of management to establish compliance with the requirements of due process and not as bases for a supposed investigation."[14]

An affidavit is only prima facie evidence and should be received with caution because of its weak probative force. It is not a complete reproduction of what the declarant has in mind. Nor is it indubitable when prepared on command or as a requirement by someone in authority. Unless the affiant is placed on the witness' stand to testify

thereon, an affidavit is considered hearsay. The affidavits of alleged witnesses do not constitute evidence sufficient to prove that Adolfo Lauron is administratively responsible for the offense of arson so as to warrant his termination.

The constitutional guarantee of protection to labor and security of tenure requires that an employer terminate the services of an employee only for valid and just causes which must be supported by substantial evidence.[15] The burden of proving that the termination of an employee is for a valid or authorized cause rests on the employer.[16] In any event, the employer must comply with due process requirements before any termination is done. That burden was not discharged by petitioner. Thus, we find no reason to reverse the ruling of the public respondent NLRC that the private respondent was illegally dismissed.

Anent the subsidiary issue, petitioner alleges that the Labor Arbiter and the NLRC erred in determining the length of service of the private respondent. By attaching several vouchers as proof of payment of separation pay from prior years of service to the petitioner from August 30, 1968 to December 31, 1980, petitioner claims that private respondent's unpaid separation pay should be reckoned only from the time of re-employment as watchman, or from January 1, 1981.

However, it can be gleaned from the records that the Labor Arbiter considered all the evidence presented by the parties and ascertained that the private respondent's employment started in 1962. The Labor Arbiter also took note of the existence of a "Release and Quitclaim". As indicated therein, the private respondent received on October 25, 1985, the amount of P5,430.00 representing his "advance partial retirement pay from January 1, 1971 to December 31, 1980 (10 years)."[17] Moreover, petitioner made conflicting assertions in the Petition filed before this Court and in the Motion for Reconsideration before the NLRC. In its motion before the NLRC, petitioner claimed that Lauron was employed on January 1, 1971.[18] In the present petition, petitioner states that voucher number 07603, dated October 7, 1983, concerned the separation pay for services rendered by private respondent from August 30, 1968, until December 31, 1970.[19] Now, how could petitioner give private respondent a separation pay from

August 30, 1968, to December 31, 1970, if he was employed only on January 1, 1971? Thus, the contradictory allegations of the petitioner cause doubts fatal to its claim to exculpate itself from the liability.

With no showing that the Labor Arbiter or the NLRC gravely abused their discretion, or otherwise acted without jurisdiction or in excess of the same,[20] we are bound by their findings. It is not the Court's function at this stage to re-evaluate the findings, given a limited review properly confined to issues of jurisdiction or grave abuse of discretion.[21] Succinctly put, factual issues are beyond the ambit of our review.

Finally, we find no cogent reason not to uphold the award by the NLRC of backwages in favor of private respondent, limited to a period of three (3) years without deduction or qualification. Private respondent was illegally dismissed in April, 1987, or before March 21, 1989, so that the benefits of Republic Act No. 6715[22] may not be considered in his favor because this amendatory law has no retroactive effect.[23] Likewise, we agree that in lieu of reinstatement, at the time it was more appropriate for NLRC to order the petitioner to pay to private respondent the separation pay equivalent to one-month salary for every year of service, rather than compel his reinstatement. It is settled that separation pay may be given to the employee only as an alternative to reinstatement emanating from illegal dismissal.[24] Moreover, in this case, reinstatement appears also not in the best interest of the parties after the bitter exchange between them concerning the alleged arson on board ship wherein the private respondent as a watchman was being implicated, though unsuccessfully, by petitioner's crew so that now the relations of the parties have become so strained that reinstatement would pose a risk to the employer or its shipping business.[25]

WHEREFORE, the petition is hereby **DISMISSED**, and the decision dated August 7, 1990, and the resolution dated November 29, 1990, of the National Labor Relations Commission, are hereby **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

Bellosillo, Puno, Mendoza and Buena, *JJ.*, concur.

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[1] Penned by Commissioner Bernabe S. Batuhan, and concurred in by Presiding Commissioner Ernesto G. Ladrido III and Commissioner Irenea E. Ceniza; rollo, pp. 32-43.
[2] Rollo, pp. 60-61.
[3] Rollo, pp. 19-25.
[4] Ibid., pp. 24-25.
[5] Supra, see note 1, at pp. 42-43.
[6] Termination by employer — An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.
[7] Sec. 2 — Notice of Dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.
[8] Sec. 5 — Answer and Hearing — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.
[9] Imperial Textile Mills, Inc. vs. National Labor Relations Commission, 217 SCRA 237; Mirano vs. National Labor Relations Commission, G.R. No. 121112, 19 March 1997, 270 SCRA 96; Magcalas vs. National Labor Relations Commission, G.R. No. 100333, 13 March 1997, 269 SCRA 453; Ala Mode Garments vs. National Labor Relations Commission, G.R. No. 122165, 17 February 1997, 268 SCRA 497, RDS Trucking vs. National Labor Relations Commission, G.R. No. 123941, August 27, 1998.
[10] Stolt-Nielsen Marine Services (Phils.) Inc. vs. NLRC , 264 SCRA 307, citing Nuez vs. NLRC , 239 SCRA 518, San Miguel Corporation vs. Ubaldo, 218 SCRA 293 at 300.
[11] See Petitioner's Memorandum, rollo, p. 143.
[12] 250 SCRA 31.
[13] Rules and Regulations Implementing the Labor Code, Book V, Rule XIV, Section 2.
[14] Supra, see note 3, at p. 22.
[15] Pili vs. National Labor Relations Commission, 217 SCRA 338, at 345, citing Manila Electric Company vs. NLRC , 198 SCRA 681 (1991).
[16] Magnolia Corporation vs. National Labor Relations Commission, 250 SCRA 332.
[17] Rollo, p. 24.
[18] Rollo, p. 45.

[19] Rollo, p. 6.
[20] Wyeth-Suaco Laboratories, Inc. vs. National Labor Relations Commission, 219 SCRA 356.
[21] Geslani vs. National Labor Relations Commission, 253 SCRA 612.
[22] Republic Act No. 6715, which took effect on March 21, 1989, Sec. 34 amended Article 279 of the Labor Code, provides that an illegally dismissed employee is entitled to full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
[23] Judy Philippines, Inc. vs. NLRC , G.R. No. 111934, (April 29, 1998).
[24] Capili vs. NLRC , 337 Phil. 210, at 216.
[25] See Century Textile Mills vs. NLRC , 161 SCRA 528 (1988), at p. 530; Hydro Resources Contractors Corp. vs. Pagalilauan, 172 SCRA, 399, (1989) at p. 404, Mapalo vs. NLRC , 233 SCRA 266, at p. 273. (1994).