

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**CENTURY TEXTILE MILLS, INC. and
ALFREDO T. ESCAÑO,**
Petitioners,

-versus-

**G.R. No. 77859
May 25, 1988**

**NATIONAL LABOR RELATIONS
COMMISSION, HON. LABOR ARBITER
FELIPE P. PATI, and EDUARDO
CALANGI,**
Respondents.

X-----X

DECISION

FELICIANO, J.:

Since 13 December 1974, private respondent Eduardo Calangi had been employed at the factory of petitioner Century Textile Mills, Inc. where he worked initially as an apprentice and later on as a machine operator in the Finishing Department. Effective 10 June 1983, however, petitioner Corporation, acting through its company officers,^[1] placed him under preventive suspension and, on 27 July 1983, completely terminated his services with the company. Private respondent Calangi was accused of having masterminded a criminal

plot against Melchor Meliton and Antonio Santos, two of his supervisors at his place of work.

The events that led to private respondent's dismissal are as follows:

According to Rodolfo Marin (a factory co-worker of private respondent Calangi), at around 12:15 a.m. on 4 June 1983 and within company premises, he chanced upon "Gatchie" Torrena (a machine operator at petitioner's factory) and noticed the latter mixing some substance with the drinking water contained in a pitcher from which Meliton and Santos regularly drank. Before anyone could take a drink from the pitcher, Marin reported what he had observed to Meliton who, in turn, informed Santos of the same. Soon after, Meliton and Santos took possession of the pitcher of water and filed a formal report of the incident with company management.^[2] The contents of the pitcher were subsequently brought to and analyzed by chemists at the Philippine Constabulary Crime Laboratory at Camp Crame, Quezon City who found the presence of a toxic chemical (formaldehyde) therein.^[3]

In the police investigation that followed, Torrena confessed that private respondent Calangi personally instructed him, and he agreed, to place formaldehyde in the pitcher of water. Torrena also admitted that he and private respondent were then motivated by a desire to avenge themselves upon Meliton and Santos, both of whom had instigated their (i.e., Torrena's and private respondent's) suspension from work several times in the past.^[4] These circumstances moved petitioner Corporation preventively to suspend Torrena and private respondent Calangi, and eventually to dismiss them from its employ. Additionally, criminal charges for attempted murder were filed against these two employees with the Office of the Provincial Fiscal of Rizal.

On 11 October 1983, private respondent Calangi filed a Complaint^[5] for illegal dismissal (docketed as Case No. NLRC-NCR-10-4518-83) with the Arbitration Branch, National Capital Region, of the then Ministry of Labor and Employment. Among other things, private respondent alleged in his complaint that "[p]rior to his preventive suspension neither the company nor any of its officers furnished him [with] a copy of their charges, if any, nor afforded him the

opportunity to answer the same and defend himself.” Hence, private respondent claimed entitlement to the following:

“A. Moral damages	P50,000.00
Actual damages	
a) Wages for 3 years	P6,520.80
b) ECOLA for 3 years	3,841.60
c) 13 th month pay for 3 years	903.60
d) Vacation and Sick Leave of 15 days each	<u>627.00</u> 11,893.00
Exemplary damages	<u>25,000.00</u>
Attorney’s fees	17,398.60
TOTAL	P104,291.60” =====

A prayer for “such other reliefs and remedies consequent upon the premises” was likewise set out in the complaint.

In a Decision^[6] dated 16 August 1984, the Labor Arbiter dismissed private respondent’s Complaint. The Labor Arbiter found that not only was the evidence against private respondent Calangi “so overwhelming” and “sufficient enough” to justify his dismissal, but that private respondent had himself failed inexplicably to deny or controvert the charges against him.

An appeal was brought by private respondent Calangi before the public respondent National Labor Relations Commission, which agency, on 3 December 1985, rendered a Decision,^[7] the dispositive portion of which reads:

“WHEREFORE, with all the foregoing considerations, let the appealed decision dated 27 August 1984 be, as it is hereby REVERSED. Accordingly, complainant’s dismissal is hereby declared to be illegal, and consequently, respondents [petitioners] are hereby ordered to reinstate Eduardo Calangi to his former or equivalent position without loss of seniority and other benefits, with full back wages from 27 July 1983 until he is actually reinstated.

SO ORDERED.”

Petitioner Corporations' Motion for Reconsideration was denied on 4 April 1986. Sometime in November of 1986, the Labor Arbiter issued a writ of execution directing petitioners to pay private respondent Calangi the amount of P54,747.74 representing the latter's backwages, 13th month pay, living allowance, and vacation and sick leave — i.e., actual damages.

The present Petition for *Certiorari* with Preliminary Injunction or Restraining Order was filed with this Court on 3 April 1987. The Court issued a Temporary Restraining Order^[8] on 8 April 1987 and, on 24 August 1987, issued a Resolution^[9] giving due course to the Petition and directing the parties to submit their respective memoranda.

The Petition at bar raises the following issues for consideration: (1) whether or not private respondent Calangi was illegally dismissed from his job as machine operator; and (2) assuming he was illegally dismissed, whether or not petitioner Corporation can be ordered legally (a) to reinstate private respondent Calangi to his former position in the company, with full backwages and without loss of seniority rights and other benefits, considering that such relief had not been sought by private respondent in his complaint, and (b) to pay private respondent an amount for actual damages in excess of what had been claimed by the latter in his Complaint.

We sustain the ruling of public respondent Commission that private respondent Calangi had been dismissed without just cause from his employment by petitioner Corporation.

Public respondent Commission found that private respondent Calangi was effectively denied his right to due process in that, prior to his preventive suspension and the termination of his services, he had not been given the opportunity either to affirm or refute the charges proffered against him by petitioner Corporation. Petitioners allege however that private respondent Calangi had been previously informed of and given the chance to answer the company's accusations against him, but that he had "kept silent" all the while. The following Memorandum issued by petitioner's Personnel

Manager on 10 June 1983 (Calangi's first day of preventive suspension) was cited in this connection:

“MEMO: TO ALL CONCERNED

SUBJ.: Under Preventive Suspension Employees. Please be advised that the following employees are under preventive suspension (indefinite) namely:

1. Eduardo Calangi - effective June 10, 1983
2. Gatchie Torrena - effective June 20, 1983

GROUND:

‘Policy Instruction No. 10 of the New Labor Code of the Philippines, Revised Edition 1982.’

NOTE: Decision about the indefinite suspension of concerned employees was reached after the meeting between the union and the management.

Be guided accordingly.

MANAGEMENT

(SGD.)

Jovencio G. Tolentino
Personnel Manager”

Petitioners contend that the above Memorandum “clearly shows that prior investigation and consultation with the union was made,” and “will therefore negate the theory of respondents that respondent Calangi was not afforded the chance to present his side for the memo itself speaks otherwise.”

The procedure that an employer wishing to terminate the services of an employee must follow, is spelled out in the Labor Code:

“ART. 278. Miscellaneous provisions. —

X X X

However, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the [Department] of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity and legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The [Department] may suspend the effects of the termination pending resolution of the case in the event of a prima facie finding by the ministry that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

x x x” (Emphasis supplied)

Rule XIV, Book V of the Rules and Regulations Implementing the Labor Code reiterates the above requirements:

X X X

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 case of abandonment of work, the notice shall be served at the worker’s last known address.

X X X

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.

SEC. 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

x x x” (Emphasis supplied)

The twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal: the requirement of notice is intended to inform the employee concerned of the employer’s intent to dismiss and the reason for the proposed dismissal; upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer’s charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution.

The record of this case is bereft of any indication that a hearing or other gathering was in fact held where private respondent Calangi was given a reasonable opportunity to confront his accuser(s) and to defend against the charges made by the latter. Petitioner Corporation’s “prior consultation” with the labor union with which private respondent Calangi was affiliated, was legally insufficient. So far as the record shows, neither petitioner nor the labor union actually advised Calangi of the matters at issue. The Memorandum of petitioner’s Personnel Manager certainly offered no helpful particulars. It is important to stress that the rights of an employee whose services are sought to be terminated to be informed beforehand of his proposed dismissal (or suspension) as well as of the reasons therefor, and to be afforded an adequate opportunity to defend himself from the charges levelled against him, are rights personal to the employee. Those rights were not satisfied by petitioner Corporation’s obtaining the consent of or consulting with the labor union; such consultation or consent was not a substitute for actual observance of those rights of private respondent Calangi. The employee can waive those rights, if he so chooses, but the union cannot waive them for him. That the private respondent simply “kept

silent” all the while, is not adequate to show an effective waiver of his rights. Notice and opportunity to be heard must be accorded by an employer even though the employee does not affirmatively demand them.

Investigation of the alleged attempt to poison the drinking water of the two (2) supervisors of the private respondent was conducted by the Cainta police authorities. These authorities interrogated and took the sworn statements of Messrs. Marin, Torrena, Meliton and Santos who, in one way or another, had been involved in such incident. Petitioners argue that the decision to place private respondent Calangi under preventive suspension and subsequently to terminate his services was arrived at only after the incident complained of, and Mr. Calangi, had been investigated by the company. There is, once again, nothing in the record to show that private respondent Calangi had been interrogated by the Cainta police authorities or by anyone else; indeed, it appears that practically everybody, save Calangi, was so interrogated by the police. If petitioner Corporation did notify and investigate private respondent and did hold a hearing, petitioners have succeeded in keeping such facts off the record. It needs no documentation, but perhaps it should be stressed, that this Court can act only on the basis of matters which have been submitted in evidence and made part of the record.

Additionally, the Court notes that the application filed by petitioner Corporation with the Ministry of Labor and Employment for clearance to suspend or terminate the services of Mr. Calangi, cited as ground therefor “[Calangi’s] frustrated plan to poison Mr. Antonio Santos and Mr. Melchor Meliton last June 5, 1983.” This ground, so far as can be gathered from the allegations of petitioners in their pleadings and from the evidence of record, both in the public respondent Commission and in this Court, is anchored mainly, if not wholly on Mr. Torrena’s sworn statement, given to the Cainta police authorities, that both he (Torrena) and private respondent had conspired with each other to inflict physical harm upon the persons of Messrs. Meliton and Santos. A finding of private respondent’s participation in the alleged criminal conspiracy cannot, however, be made to rest solely on the unilateral declaration of Mr. Torrena himself a confirmed “co-conspirator.” Such declaration must be corroborated by other competent and convincing evidence. In the

absence of such other evidence, Mr. Torrena's "confession" implicating Mr. Calangi must be received with considerable caution. The very least that petitioner Corporation should have done was to confront private respondent with Torrena's sworn statement; the record does not show that petitioner Corporation did so. The burden of showing the existence of a just cause for terminating the services of private respondent Calangi lay on the petitioners. Petitioners have not discharged that burden.

It remains only to note that the criminal complaint for attempted murder against Mr. Calangi was dismissed by the Provincial Fiscal of Rizal.^[10]

Coming now to the second issue raised by petitioners in their pleadings, Article 280 of the Labor Code, as amended states:

"Art 280. — Security of Tenure. — In case of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of his reinstatement."
(Emphasis supplied)

We have held in the past that both reinstatement, without loss of seniority rights, and payment of backwages are the normal consequences of a finding that an employee has been illegally dismissed, and which remedies together make the dismissed employee whole.^[11] A finding of illegal dismissal having been correctly made in this case by public respondent Commission, private respondent is, as a matter of right, entitled to receive both types of relief made available in Article 280 of the Labor Code, as amended. It matters not that private respondent Calangi had omitted in his complaint filed in Case No. NLRC-NCR-10-4518-83 a claim for reinstatement without loss of seniority rights for he is entitled to such relief as the facts alleged and proved warrant.^[12]

In view of the finding of illegal dismissal in this case, petitioner Corporation is liable to private respondent Calangi for payment of the

latter's backwages for three (3) years, without qualification and deduction. Considering the circumstances of this case, however, the Court believes that reinstatement of private respondent to his former position — or to any other equivalent position in the company — will not serve the best interests of the parties involved. Petitioner Corporation should not be compelled to take back in its fold an employee who, at least in the minds of his employers, poses a significant threat to the lives and safety of company workers. Consequently, we hold that private respondent should be given his separation pay in lieu of such reinstatement. The amount of separation pay shall be equal to private respondent's one-half (1/2) month's salary for every year of service, to be computed from 13 December 1974 (date of first employment) until 10 June 1986 (three years after date of illegal dismissal).^[13]

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The Temporary Restraining Order and the Resolutions issued on 8 April 1987 and 24 August 1987, respectively, by the Court in this case are **WITHDRAWN**. The Decision of public respondent Commission in Case No. NLRC-NCR-10-4518-83 is hereby **AFFIRMED**, subject to the modifications that petitioners shall pay private respondent Calangi: (a) three (3) years backwages without qualification or deduction, and (b) separation pay, computed as above indicated, in lieu of reinstatement. No pronouncement as to costs.

SO ORDERED.

Fernan, Gutierrez, Jr., Bidin and Cortes, JJ., concur.

[1] Petitioner Alfredo T. Escaño is the President and General Manager of Century Textile Mills, Inc.

[2] Affidavit dated 8 June 1983, p. 61, Rollo, Annex "I" of Petition.

[3] Report, p. 46, Rollo, Annex "E" of Petition.

[4] Affidavit dated 8 June 1983, p. 64, Rollo, Annex "L" of Petition.

[5] Rollo, pp. 24-26, Annex "A" of Petition.

[6] *Id.*, pp. 33-35, Annex "C" of Petition.

[7] *Id.*, pp. 47-49, Annex "F" of Petition.

[8] *Id.*, pp. 67-68.

[9] *Id.*, p. 100.

[10] See Decision of NLRC, Rollo, p. 49.

- [11] Santos vs. National Labor Relations Commission, G.R. No. 76721 [21 September 1987]; and Alzosa vs. National Labor Relations Commission, 120 SCRA 611 [1983].
- [12] See Baguioro vs. Barrios and Tupas Vda. de Atas, 77 Phil. 120 [1946]; Aguilar vs. Rubiato and Gonzales Villa, 40 Phil. 570 [1919]; and Rosales vs. Reyes and Ordoveza, 25 Phil 495 [1913].
- [13] The amount of separation pay includes allowances regularly paid by the employer: Manila Midtown Commercial Corporation vs. NUWHRAIN, G.R. No. 57268 [25 March 1988]; Soriano vs. National Labor Relations Commission, G.R. No. 75510 [27 October 1987]; and Santos vs. National Labor Relations Commission, G.R. No. 76721 [21 September 1987].

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