

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**CLUB FILIPINO, INC.,
*Petitioner,***

-versus-

**G.R. No. 85490
July 23, 1992**

**VOLUNTARY ARBITRATOR JESUS C.
SEBASTIAN, CLUB FILIPINO
EMPLOYEES ASSOCIATION (CLUFEA),
FORTUNATO GUPA, JR. and ERNESTO
LORENZO,**

Respondents.

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DECISION

NOCON, J.:

This is a Petition for *Certiorari* to annul and set aside the award dated July 27, 1988 of the Voluntary Arbitrator Jesus Sebastian, the dispositive portion of which reads:

“Wherefore, in view of the foregoing, it is hereby ruled that Fortunato Gupa, Jr. is considered suspended from work effective May 22, 1988 up to September 22, 1988 while Ernesto Lorenzo is considered suspended from work effective June 22, 1988 up to August 22, 1988.”^[1]

The antecedent facts of the case are as follows:

At around 8:00 P.M. of May 20, 1988, respondent Fortunato Gupa, Jr., a pin boy of petitioner Club Filipino, went berserk and broke the mirror and drinking glasses of the employee's canteen of the petitioner while under the influence of liquor. Immediately, the house officer of the petitioner, Maximo Mercado, rushed to the scene of the incident and tried to pacify respondent Gupa, Jr. Instead, Mercado was punched by respondent Gupa, Jr. and, in order to stop the latter from inflicting more harm upon him hit respondent Gupa, Jr. with his guard's nightstick.

On June 16, 1988, petitioner sent a notice of termination effective June 22, 1988 to respondent Gupa, Jr. pertinent portion of which reads:

“Based on the investigation conducted by our fact finding committee you have been found guilty of violation Section 4(b) of the Rules and Regulations for Club Employees, particularly the following:

Paragraph 4 —

‘Deliberate destruction of property belonging to another person, committed during working time or on Club premises, or of Club property regardless of time or place.’

Paragraph 19 —

‘Drinking of alcoholic beverages during working time or on Club premises, except on Club — authorized occasions.’

Paragraph 21 —

‘Entering Club premises or performing work while under the influence of liquor or narcotics.’

Paragraph 30 —

‘Assaulting a supervisor or any official of the Club.’

Your letter dated May 30, 1988 shows a complete disregard for management’s efforts to seek the truth regarding the May 20, 1988 incident. Despite the fact that several witnesses attested to your having been seen breaking glasses and the mirror at the employees canteen and assaulting a house officer, you have feigned ignorance about the incident. In addition to the above violations you have complicated your case by giving untruthful statements in an investigation which is punishable by termination.”^[2]

On the same date, petitioner also sent a notice of termination effective June 23, 1988 to respondent Ernesto Lorenzo, a waiter of the petitioner, for continuously violating the Rules and Regulations for Club Employees on absenteeism, tardiness and compiling a long list of missing and unsigned chits.^[3] In fact, said respondent was suspended several times in the past for violation of said acts.

As a result of said terminations, respondent Club Filipino Employees Association (CLUFEA) filed a notice of strike on June 29, 1988 with the Department of Labor and Employment against petitioner for unfair labor practice, harassment and illegal termination.^[4]

On July 5, 1988, petitioner filed a Motion to Dismiss, alleging that respondent CLUFEA failed to comply with the existing Collective Bargaining Agreement which mandates that the parties have to go through a grievance procedure as set forth in said agreement in case of a controversy arising between the Club and employees involving disciplinary action.^[5]

In a conference held on July 22, 1988, the parties agreed that the cases of private respondents Gupa, Jr. and Lorenzo regarding their dismissals shall be resolved by a voluntary arbitrator by the name of Jesus Sebastian and as a consequence thereof, the Notice of Strike was withdrawn.^[6]

On July 27, 1988, public respondent Sebastian rendered a decision suspending respondent Gupa, Jr. for 4 months effective May 22, 1988

up to September 22, 1988 and respondent Lorenzo for 2 months effective June 22, 1988 up to August 22, 1988.

Unhappy over the decision of the voluntary arbitrator, petitioner elevated the matter to this Court in a petition for *certiorari* alleging grave abuse of discretion on the part of the voluntary arbitrator in merely suspending private respondents Gupa, Jr. and Lorenzo instead of outrightly dismissing them considering that the acts of said respondents constitute valid grounds for dismissal under the Labor Code and the Collective Bargaining Agreement between the CLUFEA and the petitioner.

The Labor Code of the Philippines sanctions termination by the employer of the employee's services for a just cause as enumerated in Article 282 of said Code which provides:

“ART. 282. 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;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.”

In the case of private respondent Gupa, Jr., his services were terminated by the petitioner after having been found guilty of destroying the properties of the petitioner and assaulting petitioner's

House Officer while under the influence of liquor, within petitioner's premises during working hours, which is a clear violation of Section 4(b) of the Rules and Regulations for Club Employees, particularly paragraphs 4, 19, 21 and 30, as well as the aforementioned Article of the Labor Code. Furthermore, previous to this incident, respondent Gupa, Jr. had already been terminated by the petitioner for misappropriation but which termination was reconsidered as part of a compromise agreement entered into between the CLUFEA and the petitioner.

Likewise, respondent Lorenzo's habitual absenteeism without leave, violated the Rules and Regulations for Club Employees, which is sufficient to justify his termination. Moreover, respondent Lorenzo was also previously suspended for inability to account for missing and unsigned chits, which suspension was decided upon by the Department of Labor. At any rate, since Lorenzo had already resigned from petitioner's service on October 15, 1988, he is not entitled to severance pay.

Serious misconduct in the form of drunkenness and disorderly and violent behavior, habitual neglect of duty, and insubordination or willful disobedience of the lawful order of his superior officer, are just causes for the dismissal of an employee.^[7]

The evidence on record clearly shows the unforgivable act of respondent Gupa, Jr. in causing trouble during working hours and who refused to be pacified in spite of the admonition of his superior, to the extent of even assaulting the latter. For such misconduct, respondent Gupa, Jr. should not be rewarded with re-employment and backwages. To do so would wreck havoc on the disciplinary rules that employees are required to observe. Under the circumstances, the dismissal of respondent Gupa, Jr. should be sustained. Petitioner had been more than lenient with respondent Gupa, Jr. when it reconsidered its decision to terminate him in a previous violation of company rules regarding misappropriation and refrained from prosecuting him criminally.

In the case at bar, there can be no question of private respondents' culpability for violation of company rules and regulations. Their

dismissal is called for without payment of separation pay as their dismissal is for a just and valid cause.

WHEREFORE, the Petition for *Certiorari* is hereby granted and the Decision of the Voluntary Arbitrator, Jesus Sebastian, is hereby annulled and set aside. Private respondents Fortunato Gupa, Jr. and Ernesto Lorenzo are hereby dismissed from the service of petitioner.

SO ORDERED.

**Narvasa, C.J., and Regalado, J., concur.
Padilla, J., No part in view of past membership with
petitioner.**

[1] Rollo, p. 85.

[2] Rollo, p. 48.

[3] Petition, Annex "F".

[4] Petition, Annex "A".

[5] Petition, Annex "B".

[6] Petition, Annex "E".

[7] Seahorse Maritime Corporation vs. NLRC, 173 SCRA 390 (1989).