

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**MAURO DE LA CRUZ,
*Petitioner,***

-versus-

**G.R. No. 82703
September 15, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION and RAMIE TEXTILE,
INC.,**

Respondents.

X-----X

DECISION

GRÍÑO-AQUINO, J.:

The petitioner, Mauro De la Cruz, was employed on August 16, 1977 as card machine operator with a daily wage of P59 until he was dismissed from the service on October 15, 1985 on account of the following incidents:

- (1) On August 7, 1985, at 2:20 o'clock in the afternoon, his attention was called by his department manager regarding his manner of transporting the slivers in a can and dragging the same from his place of work to the pre-intersecting area, instead of using a cart as required by the company's

regulations. He reasoned out that there was no available cart; and

- (2) After being dressed down by the department manager, Cruz proceeded to the company clinic on the pretext that he had an upset stomach. He asked the company's lady physician, Dr. Rivera, to give him a sick leave. But Dr. Rivera, wary of the tricks of employees feigning illness to get off duty earlier than usual, advised Cruz to wait in the clinic for further observation. Affronted, Cruz shouted invectives at her saying: "Sayang ang pagka-professional mo!" (p. 13, Rollo) and left the premises.

At 7:15 P.M., Cruz returned to the clinic and asked for a referral slip, but Dr. Rivera refused to issue one to him, whereupon, he shouted at her: "Putang Ina mo!" (p. 13, Rollo)

As his acts constituted insubordination and misconduct, punishable under Rules Nos. 40 and 46 with dismissal, he was informed of the violations and advised of his right to a hearing before the Grievance Committee as provided in the collective bargaining agreement between the union and the company. Beginning August 15, 1985, he was no longer allowed to report for work. The grievance committee hearing was held on August 27, 1985. After the committee had submitted its report, finding the charges to be true, the management dismissed Cruz.

The Labor Arbiter found that petitioner's conduct toward the company physician amounted to insubordination and conduct unbecoming of an employee, which merited the penalty of dismissal.

The petitioner appealed to the National Labor Relations Commission which dismissed his appeal for tardiness because the records showed that petitioner's counsel received the copy of the Labor Arbiter's decision on October 13, 1986, but he filed an appeal on November 3, 1986 only, or 21 days after notice of the decision, hence, "way beyond the reglementary ten (10) calendar days for filing an appeal to the Commission" (Annex B, p. 25, Rollo).

In his petition for *certiorari* in this Court, Cruz assails the decision of the Labor arbiter and the dismissal of his appeal by the NLRC.

The Solicitor General, in his comment, observed that the alleged misconduct of the petitioner in the medical clinic was not fully proven because Dr. Rivera did not testify. In dismissing Cruz's appeal, the NLRC completely disregarded the explanation of his counsel's clerk that she had misplaced the decision of the Labor Arbiter in her hurry to leave for the province to be at the side of her ailing father. He recommended that the petitioner be reinstated with back wages, without loss of seniority and other employment privileges and benefits.

On the other hand, the NLRC in its own comment on the petition, pointed out that before the petitioner was finally discharged, he was heard by the Grievance Committee and "in the ensuing grievance report, the union did not disagree with the charges nor questioned it, but protested only the penalty of dismissal imposed on the petitioner" (p. 58, Rollo) which it considered too harsh.

The petitioner insists, however, that his dismissal was illegal and without due process because it was effected by the company on August 15, 1987, twelve (12) days before the grievance committee was convened on August 27, 1987 to hear the charges against him.

The case is therefore covered by our decision in *Wenphil vs. NLRC*, G.R. No. 80587, February 8, 1988, where we ruled that the dismissal of an employee must be for just or authorized cause and after due process. The petitioner was held to account for its failure to extend to the employee his right to an investigation before causing his dismissal. This Court ordered the company to indemnify the employee in the amount of P1,000.

WHEREFORE, the Petition for *Certiorari* is granted. The private respondent, Ramie Textile, Inc., is ordered to pay indemnity to the petitioner in the amount of P1,000 for having violated his right to due process before it dismissed him for cause. In other respects, the decision of the Labor Arbiter is affirmed. No costs.

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, *JJ.*, concur.

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