

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**JOSE GABISAY and SABINA GOMEZ,  
*Petitioners,***

***-versus-***

**G.R. No. 108311  
May 18, 1999**

**NATIONAL LABOR RELATIONS  
COMMISSION, FIFTH DIVISION,  
PARATROOPERS SECURITY AGENCY,  
MAJOR FEDERICO DACANAY,  
PRESIDENT/EXECUTIVE DIRECTOR,  
JULIETA SENO, OIC and BISLIG  
WATER DISTRICT,**

***Respondents.***

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**D E C I S I O N**

**PARDO, J.:**

The Petition for *Certiorari* before us assails the Resolution<sup>[1]</sup> of the National Labor Relations Commission (NLRC) reversing the Decision<sup>[2]</sup> of the Labor Arbiter, as well as the Order<sup>[3]</sup> of the NLRC, denying the petitioners' motion for reconsideration for lack of merit. The factual background is as follows:

Paratroopers Security Agency employed petitioners Gabisay and Gomez as security guards and detailed mainly at Bislig Water District, since May 14, 1984 and August 20, 1984, respectively.

Gabisay worked during the night shift, from 6:00 p.m. until 6:00 a.m. daily, for seven (7) days a week, without rest day or holiday. Gomez worked in the day shift, from 6:00 a.m. to 6:00 p.m. daily, for seven (7) days a week, without rest day or holiday. Both received a measly sum of six hundred (P600.00) pesos, as monthly salary.

Sometime in May 1987, petitioners filed their letter-complaints with the Department of Labor and Employment (DOLE) claiming that they were underpaid, not compensated for overtime work rendered, not given holiday pay, rest day premium, 13<sup>th</sup> month pay and night shift differential respecting Gabisay, nor were they granted the mandated 5-day service incentive leave.

On June 12 and 16, 1987, the parties amicably settled the case upon the payment of P900.00 and P800.00 to Gabisay and Gomez, respectively, and they executed an “Affidavit of Desistance.”

On June 24, 1987, Regional Director Bartolome Amoguis issued an Order<sup>[4]</sup> declaring the case closed and terminated.

On July 22, 1987, Paratroopers Security Agency informed petitioners that they were discharged from the service effective immediately, due to the complaint filed before the DOLE.<sup>[5]</sup>

On August 1, 1987, petitioner Jose Gabisay sought employment with United Field Sea Watchman and Checker’s Agency.<sup>[6]</sup>

On December 14, 1987, the National Organization of Workers (NOW), on behalf of the petitioners, filed before the labor arbiter a case for illegal dismissal, with prayer for reinstatement, with full back wages and other money claims.

On June 28, 1988, the labor arbiter issued an Order<sup>[7]</sup> dismissing the case without prejudice, for failure of petitioners to file their position papers and for lack of interest.

On July 14, 1988, petitioners re-filed the Complaint<sup>[8]</sup> before the Regional Arbitration Branch XI, Davao City. Petitioners averred that they were underpaid, were not given their daily 4 hours overtime pay, holiday pay, rest-day premium, 13<sup>th</sup> month pay, accumulated service incentive leave equivalent to fifteen (15) days and night differential for Gabisay. They stressed that the receipt of P900 and P800 by Gabisay and Gomez, respectively, did not amount to a waiver of their right to claim the aforesaid benefits, as the documents signed by them were made without the presence of any representative from the DOLE or a notary public, nor were they assisted by any lawyer or counsel of their choice. Furthermore, they contended that they were dismissed without cause in retaliation for the filing of their complaints with the DOLE, and that such dismissal was made without due process of law.

Respondent Paratroopers, on the other hand, averred that the claims of the petitioners had been amicably settled upon their receipt of the above payments and may no longer be adjudicated anew. They refuted the allegation that petitioners worked with neither rest day nor holiday. They argued that petitioners were bound by the service contract executed with Bislig Water District and were estopped to demand more than what they were receiving. They denied that petitioners were illegally dismissed and maintained that the latter were merely “temporarily relieved” from their posts as a form of disciplinary measure. They stated that Gomez was disciplined since she was caught not wearing her uniform on July 9, 1987, while Gabisay was caught in improper attire on October 4 and 6, 1987. They claimed that petitioner Gabisay subsequently failed to report for work since he was already employed in another agency, while Gomez had gone on absence-without-leave (AWOL). They further sought the inclusion of Bislig Water District as an indispensable party to the case. Respondent Bislig, for its part, denied any liability for the claims of the petitioners, as stipulated in the Guard Service Contract executed with Paratroopers Security Agency.

On August 16, 1989, the Labor Arbiter<sup>[9]</sup> ruled in favor of petitioners. The labor arbiter relied on the letter of Julieta Seno, OIC of Paratroopers Security Agency, stating that petitioners were to be terminated effective immediately, per order of higher authorities. The labor arbiter rejected respondent’s claim that petitioners were “temporarily relieved” from duties for violation of agency rules and

regulations. He ruled that the allegation that Gabisay was caught not wearing his uniform on October 4 and 6, 1987 was a fabricated one, for how could Gabisay commit such infraction when he was already in the employ of another agency during that period. He further ruled that petitioners were terminated without due process of law, with neither notice nor proper investigation being held. He likewise concluded that Bislig Water District is an indirect employer, and thus jointly and severally liable with Paratroopers Security Agency, pursuant to Article 106 of the Labor Code. Furthermore, the affidavit of desistance was executed without the presence of a DOLE representative or counsel. At any rate, such affidavit did not amount to a waiver of the rights conferred by the labor statutes, as this is against public policy. Thus, the labor arbiter decreed that:

“WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring the dismissal of complainant Jose Gabisay and Sabina Gomez as ILLEGAL, and ordering respondent Paratroopers Security Agency, Inc. to pay their separation pay equivalent to one month pay per year of service based on the minimum wage at the time of their dismissal on July 22, 1987 or in the amount of P3,957.87 (P40.50 x 390.90/12) for each of them.

Further, respondents Paratroopers Security Agency, Inc. and Bislig Water District are hereby ordered to pay jointly and severally to each of the complainants their:

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|---------------------------------------|------------|
| 1. Salary Differential                | 14,338.99; |
| 2. Emergency Cost of Living Allowance | 11,962.92; |
| 3. 13 <sup>th</sup> Month Pay         | 2,411.90;  |
| 4. Incentive Leave Pay                | 382.50.    |

or in the total sum of fifty-eight thousand one hundred ninety-two and 62/100 pesos (P58,192.62).”<sup>[10]</sup>

Both parties appealed from said decision. Petitioners contended that the proper relief was reinstatement with full back wages, and other monetary benefits, and likewise prayed for execution pending appeal.

On May 28, 1992, the NLRC issued a Resolution reversing the Decision of the labor arbiter. It found that petitioners were temporarily relieved from duties for violating basic rules and regulations in not wearing their uniforms while on duty. It ruled that petitioners were at fault in subsequently not reporting back to work. With respect to Gabisay, acceptance of employment from another agency, while still presently employed with Paratroopers was a just cause for his termination. It further decided that the labor arbiter committed grave abuse of discretion in inquiring about the validity of the affidavit of desistance, which had been previously submitted, passed and ruled upon by the Regional Director. It declared petitioners guilty of forum shopping in filing their money claims with the Regional Director, entering into a compromise and later on re-filing the claim before the labor arbiter. It ordered respondents jointly and severally to pay wage differentials amounting to P1,530.58 to Gabisay, and P1,396.83 to Gomez. By order dated October 14, 1992, the NLRC denied petitioners' motion for reconsideration, for lack of merit.

Hence, this Petition for *Certiorari*.

The factual findings of labor officials are generally accorded respect and even finality when supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[11]</sup> However, we deem it necessary to re-examine the ruling of the NLRC that the petitioners were illegally dismissed.

We reverse the ruling.

We uphold the findings of the Labor Arbiter. The record reveals that there is a material discrepancy on the dates of the commission of the violations of petitioner Gabisay and the date of his employment with another security agency. Petitioner Gabisay was employed with United Fields Sea Watchmen and Checker's Agency on August 1, 1987. Respondent Paratroopers contends that he was caught twice

not wearing uniform on October 4 and 6, 1987. His infraction of agency rules could not be possible. The private respondents contention that the petitioners were not dismissed but only temporarily relieved for violations of agency rules and regulations was not substantiated. The termination of petitioners' employment was effected through Julieta Seno, OIC, PARASAI.<sup>[12]</sup>

“When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause.”<sup>[13]</sup>

“Apropos thereto, Art. 227, par. (b), of the Labor Code mandates in explicit terms that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidential burden would necessarily mean that the dismissal was not justified, and, therefore, illegal.”<sup>[14]</sup>

Furthermore, not only does the law dictate that the reasons for dismissing a worker must be pertinently substantiated, it also mandates that the dismissal must be properly done, otherwise, the termination is gravely defective and may be declared unlawful.

To be validly effected, the dismissal must observe the twin requirements of due process — notice and hearing. The employer has the burden of proving that the former worker has been served with two notices: “(1) one to apprise him of the particular acts or omissions for which his dismissal is sought and (2) the other to inform him of his employer's decision to dismiss him. As to the requirement of a hearing, the essence of due process lies simply in an opportunity to be heard, and not always and indispensably in an actual hearing.”<sup>[15]</sup>

In the case before us, the record is bereft of any showing that formal notice of the charge was given to petitioners prior to their dismissal. Neither was there any investigation conducted to give adequate opportunity for petitioners to defend themselves.

**WHEREFORE**, the questioned Resolution of the National Labor Relations Commission, dated May 28, 1992, and the Order dated October 14, 1992, in Case No. RAB-11-7-00338-88, are **ANNULLED** and **SET ASIDE**. The Decision of the Labor Arbiter dated August 16, 1989, is **REINSTATED** and **AFFIRMED**.

**SO ORDERED.**

**Davide, Jr., C.J., (Chairman), Melo, Kapunan and Ynares-Santiago, JJ., concur.**

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- [1] Rollo, pp. 44 -54.
  - [2] Rollo, pp. 123-135.
  - [3] Rollo, pp. 55-56.
  - [4] Rollo, p. 104.
  - [5] Ibid., pp. 83-102, position paper, p. 3.
  - [6] Rollo, p. 112.
  - [7] Rollo, p. 105.
  - [8] Rollo, pp. 57-63.
  - [9] Rollo, p. 123-136.
  - [10] Rollo, pp. 44-54.
  - [11] C. Planas Commercial vs. NLRC, G. R. No. 121696, February 11, 1999.
  - [12] Rollo, p. 103.
  - [13] Valiant Machinery and Metal Corp. vs. NLRC, 252 SCRA 369, 377, citing General Baptist Bible College vs. NLRC, 219 SCRA 549; Gesulgon vs. NLRC, 219 SCRA 561.
  - [14] Serafin Quebec, Sr. vs. NLRC, G.R. No. 123184, January 22, 1999, citing Royal Crown Internationale vs. NLRC, 178 SCRA 569.
  - [15] Eliseo Tan vs. NLRC, G. R. No. 128290, November 24, 1998.