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SUPREME COURT
THIRD DIVISION

GOLD CITY INTEGRATED PORT SERVICES, INC. (INPORT),
***Petitioner*,**

-versus-

G.R. No. 86000
September 21, 1990

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC) and JOSE L. BACALSO,
***Respondents*.**

x---x

D E C I S I O N

FELICIANO, *J*.:

Private respondent Jose Bacalso was employed as an admeasurer by the petitioner Gold City Integrated Port Services, Inc. ("Gold City"). He was suspected by management of undermeasuring cargo. Hence, on 23 January 1987, the cargo control officer ordered two (2) other admeasurers to re-measure three (3) pallets of bananas which had already been measured by private respondent.[1] The re-measurement revealed that respondent had under-measured the bananas by 1.427 cubic meters.[2]

Private respondent felt insulted by the re-measurement and so the next day he went to the office of the Chief Admeasurer, Rolando Guangco, and there confronted Nigel Mabalacad, one of the two (2) admeasurers who had re-checked his work, regarding the matter. Private respondent quarreled with Mabalacad in the presence of Guangco, their immediate superior, inside the latter's office. Guangco directed private respondent to stop provoking Mabalacad and told both that being in his office, they should behave properly. Private respondent ignored this oral directive and a fistfight erupted then and there between him and Mabalacad. Both were eventually pacified by their co-workers.[3]

Private respondent Bacalso was then charged with assaulting a co-employee and falsifying reports and records of the company relative to the performance of his duties, and was preventively suspended pending investigation of his case by the union-management grievance committee.[4] In a letter dated 20 March 1987, the grievance committee referred the disposition of the matter to management in view of the objections of the aggrieved parties to the proposal that private respondent be meted out a penalty of forty-five (45) days suspension.[5] Apparently, Guangco and Mabalacad did not consider suspension an adequate sanction considering private respondent's alleged inability to get along with the other admeasurers and with the company's customers. On 11 April 1987, private respondent received a notice of termination of services upon the grounds of assaulting a co-employee and of insubordination.[6]

Private respondent Bacalso filed a complaint for illegal dismissal with the Regional Arbitration Branch No. 10 of the Department of Labor and Employment on 25 May 1987. He controverted the finding of insubordination, contending that there was no evidence he had wilfully disobeyed any order given by his superior during the incident. He admitted assaulting his co-employee but claimed that did not constitute just cause for his dismissal under Article 282 (d) of the Labor Code because that act was not an offense committed against his employer's duly authorized representative. He prayed for reinstatement with backwages and damages.[7]

Petitioner Gold City in its answer argued that Bacalso's failure to heed Guangco's order to stop provoking Mabalacad constituted

insubordination or disrespect towards a superior officer punishable by dismissal under the Schedule of disciplinary sanctions and norms of conduct, incorporated in the existing Collective Bargaining Agreement ("CBA") with the union.[8]

The Labor Arbiter rendered an award in favor of private respondent Bacalso holding that the dismissal was illegal because there was no evidence to support the charge of insubordination, and that assault on a co-employee was punishable only with fifteen (15) days suspension under the CBA's Schedule of penalties. In view of the strained relations between the parties, however, the Labor Arbiter did not order reinstatement and awarded Bacalso separation pay and attorney's fees instead.[9]

Both parties appealed to the National Labor Relations Commission ("NLRC").

The NLRC, in a decision dated 30 August 1988, held that only Bacalso's appeal was meritorious. It declined to characterize the assailed conduct of Bacalso as insubordination under Article 282 (a) of the Labor Code because Guangco's order was "not connected with" Bacalso's work, and did not amount to willful or gross disrespect. The NLRC modified the Labor Arbiter's decision by ordering private respondent Bacalso's reinstatement with backwages.[10]

Petitioner, having moved for reconsideration without success, is before this Court on *certiorari*. On 20 February 1989, the Court issued a temporary restraining order enjoining execution of the NLRC's decision pending resolution of this Petition, effective upon petitioner's posting of a cash or surety bond in the amount of P60,000.00.[11] Petitioner Gold City posted a cash deposit in the required amount.[12]

In its Petition, Gold City emphasizes management's prerogative to promulgate rules of discipline and to enforce the Schedule of disciplinary sanctions providing for dismissal of an employee who commits gross disrespect of a superior officer.[13]

In his Comment on the Petition, private respondent Bacalso alleged that he was apprised of the charge of insubordination only in his

notice of termination, and that he was thereby denied an opportunity to be heard on this charge before being dismissed, in violation of Sections 2 and 5 of Rule 14 of the Omnibus Rules Implementing the Labor Code.[14]

Two (2) issues are posed for resolution in this case; (a) whether private respondent was denied due process in the course of his dismissal; and (b) whether private respondent was dismissed for a just cause.

In respect of the first issue, it must be noted that petitioner did not properly inform private respondent of all the infractions of company regulations which subsequently became the justification for his dismissal. After being preventively suspended, he was charged with assaulting a co-employee and falsifying reports and records of the company relating to the performance of his duties. Consequently, throughout the investigation conducted at the company level, private respondent's explanations in defense were shaped to meet only those charges. Petitioner discovered it could not sustain the charge of falsification of company records against private respondent. Since assault upon a co-employee, the charge admitted by private respondent, is punishable only with fifteen (15) days suspension under the CBA's Schedule of penalties, it in effect became necessary for petitioner to characterize said assault as an act of "insubordination or disrespect towards a superior officer", an offense punishable with dismissal under the Schedule.[15] So it came to pass that when private respondent received his notice of termination, the causes therefor were stated as assault on a co-employee and insubordination.

The Court considers that there was here at least a partial deprivation of private respondent's right to procedural due process. He could not be expected adequately to defend himself as he was not fully or correctly informed of the charges against him which management intended to prove. It is less than fair for management to charge an employee with one offense and then to dismiss him for having committed another offense with which he had not been charged and against which he was therefore unable adequately to defend himself. Correct specification of private respondent's alleged wrongdoing was obviously important here, since the penalty that could appropriately

be meted out depended upon what offense was charged and proven. It has been stressed by the Court that the right of an employee to procedural due process consists of the twin rights of notice and hearing.[16] The purpose of the requirement of notice is obviously to enable the employee to defend himself against the charge preferred against him by presenting and substantiating his version of the facts. Since Gold City here in effect charged private respondent with a second offense other than falsification of company records, it was incumbent upon petitioner employer to have given private respondent additional time and opportunity to meet the new charge against him of insubordination. Gold City failed to do that here. In so failing, Gold City failed to accord to private respondent the full measure of his right to procedural due process. The fact that in the proceedings before the Labor Arbiter the conduct of private respondent that petitioner regarded as insubordination was substantiated, does not militate against this conclusion.

Coming to the second issue, Article 282 of the Labor Code provides in part:

> "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.
>
> x x x"
>
> (Emphasis supplied).

Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two (2) requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[17] Both requisites are present in the instant case.

By private respondent Bacalso's own admission, he felt insulted by the re-measurement of the cargo he had already measured. He was

apparently much offended by the implication he perceived that management was uncertain either about his honesty or his competence or possibly both. He determined to lose his temper, became very angry and picked a fight with one of the co-workers who had been instructed by their common superior to carry out the re-measurement of private respondent's pallets of bananas. In the process, private respondent Bacalso completely disregarded the courtesy and respect due from a subordinate to his superior. Indeed, he may have been, consciously or otherwise, precisely sending a signal to his superior officer in whose presence he provoked and then engaged in physical violence with his co-worker. Prior to the fistfight, Guangco had warned Bacalso to desist from further provoking his co-worker with insulting language. This warning constituted an order from private respondent's immediate superior not to breach the peace and order of the Surveyors' (Admeasurers') Division; Guangco was obviously attempting to maintain basic employee discipline in the workplace.

It is thus not easy to understand how public respondent NLRC could have reasonably concluded that Guangco's order and warning were "not connected" with private respondent's work. We believe and so hold that private respondent's act constituted willful disobedience to a lawful order of petitioner's representative obviously connected with private respondent's work.

It does not follow, however, that private respondent Bacalso's services were lawfully terminated either under Article 282 (a) of the Labor Code or under the CBA Schedule of penalties. We believe that not every case of insubordination or willful disobedience by an employee of a lawful work-connected order of the employer or its representative is reasonably penalized with dismissal. For one thing, Article 282 (a) refers to "serious misconduct or willful disobedience —". There must be reasonable proportionality between, on the one hand, the willful disobedience by the employee and, on the other hand, the penalty imposed therefor. Examination of the circumstances surrounding private respondent's assault upon his co-employee shows that no serious or substantial danger had been posed by that fistfight to the well-being of his other co-employees or of the general public doing business with petitioner employer; and neither did such behavior threaten substantial prejudice for the business of his employer. The

fistfight occurred inside the offices of the Surveyors' Division, more particularly, Mr. Guangco's office, away from the view of petitioner's customers or of the general public. In Lausa vs. National Labor Relations Commission,[18] petitioner Lausa exhibited disorderly and pugnacious behavior in the course of an argument with his immediate superior, in the presence of passengers and other crewmen on board the inter-island vessel of which Lausa was a crewmember. In that case, the Court sustained the dismissal of petitioner Reynaldo Lausa considering that his "behavior could easily have provoked or triggered off a brawl and mindless panic on board the vessel, and endangered the safety of people and crewmembers, and under certain conditions, the safety of the vessel itself." In Wenphil Corporation vs. National Labor Relations Commission,[19] the Court also sustained the dismissal of private respondent Roberto Mallare who, while tending the salad bar of a fast food restaurant, engaged in an altercation a co-worker slapping the latter on the head, stepping on his foot, brandishing an ice scooper against him and refusing to be pacified, right in front and in plain sight of customers dining in the restaurant, thus posing a substantial threat of disorder in the restaurant. In the instant case, private respondent Bacalso's disorderly behavior did not present a comparable threat to the safety or peace of mind of his co-workers or that of the customers of Gold City.

Considering that private respondent Bacalso's unruly temper did not become an effective threat to his co-workers or the safety of the customers dealing with his employer, or to the goodwill of his employer, and considering further that he had been quite candid in admitting that he had been at fault as soon as the investigation began in the company level, we agree with the NLRC that termination of his services was a disproportionately heavy penalty. We believe that suspension without pay for three (3) months would be an adequate penalty for the assault on a co-worker and act of insubordination that private respondent Bacalso actually committed.

It follows that private respondent Bacalso is entitled to reinstatement.[20] Should reinstatement to his previous position not be feasible because of his relationship or lack of relationship with his fellow admeasurers, he should be reinstated to a substantially equivalent position in another division of the company. If that is not possible or feasible either, then in lieu of such reinstatement,

petitioner shall pay private respondent separation pay equivalent to one-month's pay for every year of service.[21] Private respondent is also entitled to his backwages; however, an amount equivalent to his three (3) months pay shall be deducted from such backwages. The award of attorney's fees stays.

WHEREFORE, the Petition for *Certiorari* is hereby **DISMISSED** for lack of merit, and the Decision dated 30 August 1988 of public respondent NLRC is hereby **AFFIRMED** with the modifications that: (1) from private respondent's backwages, there shall be deducted an amount equivalent to his three-month's pay corresponding to the penalty properly imposable upon him; and (2) should reinstatement to private respondent Bacalso's former position, or to a substantially equivalent position in another division of petitioner Gold City, not be feasible, petitioner shall pay private respondent Bacalso, in lieu of such reinstatement, separation pay equivalent to one-month's pay for every year of service. The temporary restraining order dated 20 February 1989 is hereby **LIFTED**. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Bidin and Cortes, *JJ.*, concur.
Fernan, *C.J.*, is on leave.

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[1] Report from Chief Admeasurer Rolando I. Guangco, Rollo, p. 113.
[2] Report Regarding Admeasurer Jose Bacalso, Rollo, p. 116.
[3] Decision, Rollo, pp. 21, 23-24 and 26.
[4] Id., p. 21.
[5] Letter of the Macajalar Labor Union-Federation of Free Workers (MLU-FFW) Grievance Committee to the Personnel Manager, Rollo, p. 121.
[6] Decision, Rollo, p. 21.
[7] Id., pp. 21-22.
[8] Id., p. 23.
[9] Id., pp. 23-25.
[10] Id., pp. 26-28.
[11] Rollo, pp. 72-74.
[12] Id., pp. 81 and 100.
[13] Petition, Rollo, pp. 8-10.
[14] Comment, Rollo, p. 51.
[15] Rollo, p. 128.

[16] Century Textile Mills, Inc. vs. National Labor Relations Commission, 161 SCRA 528 (1988).
[17] Batangas Laguna Tayabas Bus Company vs. Court of Appeals, 71 SCRA 470 (1976).
[18] G.R. No. 79731, 9 July 1990.
[19] 170 SCRA 69 (1989).
[20] Mary Johnston Hospital vs. National Labor Relations Commission, 165 SCRA 110 (1988).
[21] Quezon Electric Cooperative vs. National Labor Relations Commission, 172 SCRA 88 (1989).

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