SUPREME COURT
SECOND DIVISION

MARIO GUTIERREZ,
***Petitioner*,**

-versus-

G.R. No. 140982
September 23, 2003

SINGER SEWING MACHINE COMPANY and LEONARDO CONSUNJI,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

For review is the Decision[1] of the Court of Appeals, dated November 29, 1999, in CA-G.R. SP No. 50498. The appellate court reversed the Decision[2] of the National Labor Relations Commission (NLRC), 2nd Division, dated December 22, 1997, and thereby affirmed the ruling[3] of the Labor Arbiter in NLRC NCR Case No. 00-10-06201-96, which dismissed petitioner's complaint for illegal dismissal.

Culled from the records are the following facts:

> Petitioner Mario Gutierrez was initially hired by Singer Sewing Machine Company (hereafter "Singer" for brevity) as Audit

> Assistant on contractual basis in 1993. He became an Accounts Checker on probationary status on February 8, 1994. Thereafter, he acquired regular status as Asset Auditor on March 1, 1995, receiving a monthly salary of P4,455, until September 9, 1996, when he was dismissed from employment.

Singer premised the petitioner's termination on the following incidents:[4]

> On August 1, 1996, at around 3:15 p.m., Ms. Emelita Garcia, Personnel Supervisor of Singer, caught Gutierrez and three other Asset Auditors, watching a video tape inside the Asset/Legal Department Office. Despite Ms. Garcia's reminder that it was no longer break time and that the other occupants of the room might be disturbed, Gutierrez and company ignored Ms. Garcia and continued to watch the video.
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> The following day, August 2, 1996, Ms. Evangeline Que-Ilagan, Administration Manager of Singer, noticed a sign posted at the door of the Asset/Legal Department Office, which read "MAIPARIT TI UMISBO DITOY." When she asked who placed the sign at the door, Gutierrez admitted responsibility. When Ms. Que-Ilagan asked what it meant, Gutierrez answered, "BAWAL ANG UMIHI DITO" (No Urinating Here). Ms. Que-Ilagan then asked if Gutierrez had seen anyone urinate at the door where the sign was posted and the latter replied in the negative. Ms. Que-Ilagan then asked why he placed such a sign, to which Gutierrez replied, "Gusto ko, eh" (It is my pleasure). She admonished him not to do the same thing again and requested him to remove the sign, but Gutierrez refused to do so.
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> Later that same day, August 2, 1996, Gutierrez personally explained his side to the Asset Manager, Mr. Leonardo Consunji, at the latter's office. Gutierrez claimed that he only admitted to the posting of the sign in order to take the cudgels for a co-employee. He also explained that their use of the video equipment was upon the orders of their supervisor, Mr. Romeo C. Ninada. The latter wanted to test the quality of their video players.

Mr. Consunji brought the matter to the attention of Mr. Ninada. The latter promptly issued a Memo dated August 6, 1996, requiring Gutierrez to explain his side.

Gutierrez then informed Mr. Ninada that he had already discussed the matter with Mr. Consunji.

In his letter to Mr. Consunji dated August 21, 1996,[5] Mr. Ninada opined, "The case does not deserve to be devoted with too much time and effort" as he considered it a "minor offense."[6]

Nevertheless, Mr. Consunji issued a Memo[7] dated August 28, 1996, informing Gutierrez of the latter's violation of company rules and regulations, specifically citing the following:

> Part V-B.9 Use of Company's time, materials, equipment and other assets for personal use or business; and
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> Part V-B.18 Acts of vandalism such as defacing or destroying Company documents and records; posting, altering or removing any printed matter, announcements or signs in the Bulletin Boards unless specifically authorized.

Under the Company Code of Discipline, these infractions were classified as 4th Degree Offenses with the corresponding sanction of dismissal.

In the same Memo, Gutierrez was directed to explain in writing why the aforesaid penalty should not be imposed on him. He was given until August 30, 1996, to comply with the directive.

As Gutierrez insisted that he had previously verbally explained his side to Mr. Consunji, no written explanation was submitted by him.

On September 9, 1996, another Memo[8] was issued by Mr. Consunji, worded as follows:

> After a thorough investigation of the incident and after having found your explanations to be unsatisfactory and due to your refusal to comply with my memo to you dated August 28, 1996 which constitutes willful defiance or disregard of Company authority, the management deems it fitting and proper to impose upon you the penalty of dismissal effective immediately upon receipt hereof. *(Emphasis ours)*

On September 19, 1996, petitioner filed a motion/request for reconsideration with Singer, but the latter stood pat on its decision to dismiss him.

Thus, petitioner filed the complaint for illegal dismissal with claims for damages before the Labor Arbiter, docketed as NLRC NCR Case No. 00-10-06201-96. In a Decision[9] dated August 13, 1997, Labor Arbiter Renato A. Bugarin dismissed the complaint for lack of merit, thus:

> Taking into consideration the totality of the evidence for the respondents all extant in the records, we find and so hold that complainant was dismissed for valid and just cause.
>
> Lastly, we find no necessity to discuss at length complainant's prayer for award of damages, for lack of factual and legal basis to apply Article 2217 and 2229 of the Civil Code, as well as Article 111 of the Labor Code.
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> WHEREFORE, let this case be, as it is hereby DISMISSED, for want of merit.
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> Respondent's counter-claim is hereby likewise DISMISSED, for the same reason.
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> SO ORDERED.[10]

On appeal, the NLRC's 2nd Division reversed the Labor Arbiter and found in favor of petitioner, disposing as follows:

> WHEREFORE, finding merit in the appeal, the Decision dated August 19, 1997 is hereby REVERSED and SET ASIDE. A new one is entered declaring respondents guilty of illegal dismissal. Complainant is entitled to reinstatement with backwages commencing from the date of his dismissal on September 9, 1996 up to the date of his actual reinstatement. In case reinstatement is no longer feasible, complainant should be paid his separation pay at the rate of one month salary for every year of service in addition to backwages.
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> SO ORDERED.[11]

Singer's Motion for Reconsideration was likewise denied by the NLRC.

Aggrieved, Singer filed a petition for certiorari with this Court, which in turn was referred, by Resolution[12] dated December 2, 1998, to the Court of Appeals, pursuant to our ruling in St. Martin Funeral Homes vs. NLRC and Bienvenido Aricayos.[13]

The Court of Appeals reversed the NLRC, thereby upholding and reinstating the decision of the Labor Arbiter, to wit:

> WHEREFORE, the petition is hereby GRANTED. The questioned decision and resolution of the National Labor Relations Commission are SET ASIDE and the complaint filed by private respondent is DISMISSED, as decreed by the Labor Arbiter.
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> SO ORDERED.[14]

Gutierrez now comes to us via a petition for review on certiorari seeking to reverse and set aside the decision of the Court of Appeals, with a prayer for moral damages and attorney's fees. Petitioner alleges that the Court of Appeals gravely erred:

> WHEN IT DISMISSED THE COMPLAINT FOR ILLEGAL DISMISSAL, RELYING SOLELY ON THE BASIS OF THE AFFIDAVITS SUBMITTED BY RESPONDENTS' EMPLOYEES, CONTRARY TO THE FINDINGS OF THE NATIONAL LABOR

RELATIONS COMMISSION THAT THESE ARE BIASED AND THEREFORE SHOULD NOT BE GIVEN MUCH WEIGHT AND CREDIT;

WHEN IT SHIFTED THE BURDEN OF PROOF UPON THE PETITIONER TO PROVE HIS INNOCENCE FROM THE ALLEGED OFFENSE IMPUTED BY THE RESPONDENTS, CONTRARY TO EXISTING JURISPRUDENCE; and

WHEN IT SUSTAINED THE SUPREME PENALTY OF DISMISSAL NOTWITHSTANDING THE TRIVIAL NATURE OF THE INFRACTIONS ALLEGEDLY COMMITTED BY THE PETITIONER.[15]

In our view, the pertinent issues for our resolution are: (1) Whether the appellate court erred in procedural and evidentiary matters, such as its alleged reliance on mere affidavits of respondents' employees and shifting the burden of proof to the petitioner, in violation of due process; and (2) Whether the appellate court erred in reversing the NLRC which declared respondents guilty of illegal dismissal of the petitioner from his employment.

Anent the first issue, the sufficiency of Singer's evidence is strongly contested by petitioner. Generally, it is not our function to review findings of fact. However, the divergence in the findings and conclusions of the NLRC, on one hand, from those of the Labor Arbiter and the Court of Appeals, on the other, constrains us to examine the evidence presented by Singer to support its grounds for Gutierrez' dismissal.

The record shows that Singer's evidence against petitioner was based on three affidavits[16] made by three of its employees. These consisted of the affidavit of Mrs. Evangeline Que-Ilagan with respect to the "No Urinating Here" sign; the affidavit of Ms. Emelita Garcia, which narrated the details of the video-watching incident; and the sworn statement of Ms. Rosalina Orongan corroborating the affidavit of Ms. Garcia.

Petitioner Gutierrez refuted the allegations against him. He claimed that he only admitted authorship of the "No Urinating Here" sign in

order to bail out a co-employee who actually posted the sign. As to the video watching, according to him, it was pursuant to instructions of their supervisor.

The company arrived at its decision to dismiss petitioner after hearing the complaints against him and also giving him an opportunity to air his own side of the controversy.

On this score, we agree with the Court of Appeals in finding that in this case procedural due process was not violated by management. Singer has shown compliance with the two-notice requirement — first, of the intention to dismiss, indicating therein the acts or omissions complained against; and second, of the decision to dismiss an employee — and in between such notices, an opportunity for him to answer and rebut the charges against him.[17]

Indeed, the requirements of due process are satisfied where the parties are afforded fair and reasonable opportunity to explain their respective sides of the controversy.[18] The facts show that Singer had provided petitioner ample opportunity to explain his side in writing, after he was apprised of his alleged infractions. That he deemed his verbal explanation sufficient and opted to forego a written explanation, was a choice he voluntarily made and insisted upon.

As the Court of Appeals expressly found:[19]

> Private respondent was given "up to August 30, 1996 to explain in writing why management should not impose the corresponding disciplinary action" per memorandum dated August 28, 1996. He never did. When meted the administrative penalty of dismissal, private respondent filed a motion for reconsideration with management. Thus, he was given all the opportunity to present his side but opted not to avail of it. The right to due process is not violated where a person is not heard because he or she has chosen not to give his or her side of the case — if one has the right to speak chooses to be silent, he or she cannot complain of being unduly silenced.
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> Coming now to the substantive aspect of this case. Did the appellate court err in sustaining the dismissal of petitioner's

> complaint against the company; thus effectively upholding the dismissal of petitioner from his job?
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> On this point, we are constrained to disagree with the appellate court. We agree with the NLRC that petitioner's dismissal from employment was unjustified and illegal.
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> Petitioner's dismissal was based on his alleged violation of two company rules and regulations, namely: (1) acts of vandalism; and (2) use of company's time, materials, equipment and other assets for personal use/business. These acts were found by the Labor Arbiter to constitute serious misconduct or willful disobedience under paragraph (a) of Article 282 of the Labor Code. The Labor Arbiter characterized Gutierrez' "undesirable or unreasonable behavior and unpleasant deportment with his fellow employees, all the more his supervisors," as within the scope of the analogous just causes for termination under paragraph (e) of the same article.[20]

Singer averred that petitioner's defiance of the reasonable rules and regulations being implemented by Singer was enough reason for his dismissal.[21] Singer emphasized that the two violations of company rules and regulations on the two consecutive days, were manifestations that petitioner was "challenging the authorities of Singer."[22]

In its impugned decision, however, the NLRC stated:

> We agree with the complainant that the questioned poster contained an innocuous and harmless statement, which when translated in tagalog means "Bawal Umihi Dito" and that such posting cannot be interpreted as an act of vandalism. The affidavit of Ms. Ilagan, in relation with such poster, is not sufficient to establish complainant's guilt of vandalism.[23]
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> x x x x x x x x x

The complainant likewise justified his action in relation to his act of watching video films during office hours by arguing that he, together with four (4) other co-employees, were asked by their immediate

supervisor, Mr. Romy Ninada to test the video tape player. Such claim was not denied by Mr. Ninada, who could have been easily required by the respondents to do so. Mr. Ninada was the logical officer to negate the claim of the complainant that he was authorized to test the quality of the VHS and CTV 143 to guarantee the excellency (sic) of respondent firm's products.[24]

Though no admission was made that the use of the video player was upon the orders of the immediate supervisor of Gutierrez, Mr. Ninada himself considered the same to be a minor infraction, not worth the time and effort of the company spent on the matter.

We might add that, as contended by petitioner, the act of posting the sign does not fall squarely within the scope of the cited company rules and regulations, Part V-B.18, on vandalism. The rule prohibits unauthorized posting "in the Bulletin Board," while the present case involved posting of a sign at one of the office doors, a different matter.

We must also stress that, even on the assumption that Gutierrez in fact committed the cited infractions, in our view they are not major violations but only minor ones which do not merit the supreme penalty of dismissal from employment. Time and again, this Court has underscored the need for restraint in the dismissal of workers:

> Extreme caution should be exercised in terminating the services of a worker for his job may be the only lifeline on which he and his family depend for survival in these difficult times. That lifeline should not be cut off except for a serious, just and lawful cause, for, to a worker, the loss of his job may well mean the loss of hope for a decent life for him and his loved ones.[25]

In the present case, the penalty of dismissal appears in our view unjustified, much too harsh and quite disproportionate to the alleged infractions. As held in Caltex Refinery Employees Association (CREA) vs. National Labor Relations Commission (Third Division).[26]

But while Clarete may be guilty of violation of company rules, we find the penalty of dismissal imposed upon him by respondent Caltex too harsh and unreasonable. As enunciated in Radio Communications of

the Philippines, Inc. vs. National Labor Relations Commission, supra, "such a penalty (of dismissal) must be commensurate with the act, conduct or omission imputed to the employee and imposed in connection with the employer's disciplinary authority". Even when there exist some rules agreed upon between the employer and employee on the subject of dismissal, we have ruled in Gelmart Industries Phils., Inc. vs. National Labor Relations Commission, 176 SCRA 295 (1989), that the same cannot preclude the State from inquiring on whether its rigid application would work too harshly on the employee.

Not only were the alleged violations minor in nature, in this case the evidence adduced to prove them did not fairly show they fall exactly within the rules and regulations allegedly violated. Otherwise stated, the evidence did not square fully with the charges. That is why the Labor Arbiter found only "analogous" causes which, in our view do not sufficiently justify the extreme penalty of termination.

The penalty imposed on the erring employee ought to be proportionate to the offense, taking into account its nature and surrounding circumstances. In the application of labor laws, the courts and other agencies of the government are guided by the social justice mandate in our fundamental law.

To be lawful, the cause for termination must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This is merely in keeping with the spirit of our Constitution and laws which lean over backwards in favor of the working class, and mandate that every doubt must be resolved in their favor.[27]

To conclude, the Court of Appeals erred in reversing the decision of the NLRC which declared respondents guilty of illegal dismissal.

WHEREFORE, the instant petition is **GRANTED**. The assailed decision of the Court of Appeals in CA-G.R. SP No. 50498 is **REVERSED** and **SET ASIDE**. The decision of the NLRC, 2nd Division, is hereby **REINSTATED**. Costs against respondents.

SO ORDERED.

Bellosillo, Austria-Martinez, Callejo, Sr. and Tinga *JJ.*, concur.

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[1] Rollo, pp. 33–42.
[2] Id. at 97–105.
[3] Records, pp. 94–102.
[4] See Rollo, p. 112.
[5] CA Rollo, pp. 140–141.
[6] Id. at 140.
[7] Rollo, p. 124.
[8] Id. at. 125.
[9] Records, pp. 94–102.
[10] Id. at 101–102.
[11] Rollo, pp. 104–105.
[12] CA Rollo, p. 143.
[13] G.R. No. 130866, 16 September 1998, 295 SCRA 494.
[14] Rollo, p. 42.
[15] Id. at 20.
[16] Rollo, pp. 119–122, Annexes "A," "B" and "C.
[17] See Pascua vs. NLRC, G.R. No. 123518, 13 March 1998, 287 SCRA 554, 579–580.
[18] Navarro III vs. Damasco, 316 Phil. 322, 328 (1995) citing Stayfast Philippines Corp. vs. NLRC, G.R. No. 81480, 9 February 1993, 218 SCRA 596.
[19] Rollo. p. 41.
[20] Id. at 84–85.
[21] CA Rollo, p. 19.
[22] Ibid.
[23] Rollo, p. 102.
[24] Id. at 103–104.
[25] Manggagawa ng Komunikasyon sa Pilipinas vs. National Labor Relations Commission, G.R. No. 90173, 27 February 1991, 194 SCRA 573, 577.
[26] G.R. No. 102993, 14 July 1995, 246 SCRA 271, 279.
[27] Hongkong and Shanghai Banking Corp. vs. NLRC, G.R. No. 116542, 30 July 1996, 260 SCRA 49, 57.
