

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**H. G. HENARES & SONS,
*Petitioner,***

-versus-

**G.R. No. L-17535
December 28, 1961**

**NATIONAL LABOR UNION,
*Respondent.***

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DECISION

REYES, J.:

Petition for *Certiorari* to Review the Decision of the Court of Industrial Relations in its Case No. 1914-ULP, finding the herein applicant guilty of unfair labor practice for having dismissed Pablo Fernandez, one of its employees, and ordering his reinstatement to the company with back wages.

Pablo Fernandez was employed by H. G. Henares & Sons as laboratory assistant in the quality control section whose job was “to conduct tests on the percentage of solidity of ink and other products” of the petitioner. His regular working hours were from 7:00 a.m. to 4:00 p.m. daily. On November 24, 1958, Fernandez approached Francisco Frio, another laboratory assistant working on the night shift, and arranged to take over the latter’s shift from midnight of November 25 to 8:00 a.m., of the next day. Francisco Frio, on the other hand, was to work on Fernandez’ shift from 7:00 a.m. to 4:00 p.m. of November 26. The arrangement, which was effected without the company’s prior approval, was to enable Fernandez to testify, as he did testify, in the hearing of November 26, 1958, in case No. 1778-ULP of the Court of Industrial Relations, an unfair labor practice case filed against the petitioner company on behalf of one of its employees.

The evidence adduced by the petitioner shows that Conchita Martinez, Fernandez’ immediate superior, learned of the unauthorized exchange of shift from Francisco Frio whom she questioned after she allegedly discovered evidence of poor quality control work on the night shift. When this fact was brought to the attention of the production manager, the latter issued a memorandum recommending Fernandez’ discharge from the company. Both Francisco Frio and Pablo Fernandez were investigated, but the latter alone was dismissed. Frio was given a suspension term.

The Industrial Court concluded that there was discriminatory motivation behind the dismissal of Pablo Fernandez. Contrary to petitioner’s claim, substantial evidence is not wanting to support said finding of the court.

The petitioner makes undue emphasis of the fact that Fernandez took it upon himself to exchange shifts with Francisco Frio without first securing the previous authorization of the company. It is hardly convincing, however, to say that this trivial infraction, if at all, could have really been the immediate cause of Fernandez’ discharge. His action does not by itself show any wanton disregard of the company’s now apparent stern rule of discipline; on the contrary, rather than absenting himself on the day he was called to testify before the Industrial Court in another case against the petitioner company,

which he was free to do, he worked on the night shift the day before and urged Francisco to take over his day shift on the day of the trial in order to avoid impairing the normal business operation of the company. In fact, both Frio and Fernandez performed the same kind of work in the company; and Fernandez' absence, without replacement, would have placed the quality of the company's products in greater jeopardy.

There is testimony to the effect that no prior authorization of the company is required whenever the exchange of shift takes place because of some important or urgent missions of the employees, to which the Industrial Court apparently gave credence. In the case of Fernandez, his testifying in an unfair labor practice case was certainly an important task.

Pablo Fernandez, like most employees had been found guilty of some other irregularities, it is true, but for said offenses he was already meted out the corresponding penalties.^[1] The usual warning that a repetition of the same offense would subject the offender to immediate dismissal can not, however, be said to refer to the alleged malfeasance now in question.

As the records stand, there is more reason to believe that Pablo Fernandez was dismissed from work because of union activities, i.e., in testifying unfavorably against the petitioner in another unfair labor practice case then pending in the Industrial Court. It may be noted that Fernandez is a member of the Board of Directors of the H. G. Henares & Sons Employees Association, an affiliate of the respondent union, and that he received the dismissal notice on November 29, 1958, or barely three days after he testified as aforesaid.

It need not be stressed by now that the findings of the Court of Industrial Relations may be reversed only if there is no substantial evidence to support them. We are not prepared to rule in this case that there was no such evidence.

The matter of back wages rests within the sound discretion of the lower court, and no abuse of that discretion has been shown to warrant our interference with its decision in respect thereto.

WHEREFORE, the Decision appealed from is affirmed, with costs against the petitioner.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Dizon, and De Leon, JJ., concur. Paredes, J., did not take part.

[1] See National Fastener Corporation of the Philippines vs. Court of Industrial Relations, et al., G.R. No. L-15834, January 21, 1961, where this Court likewise refused to consider other irregularities committed by the dismissed employee, for which he had already been reprimanded or otherwise punished by the company.