

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**IBM PHILIPPINES, INC., VIRGILIO L.
PEÑA, and VICTOR V. REYES,**
Petitioners,

-versus-

**G.R. No. 117221
April 13, 1999**

**NATIONAL LABOR RELATIONS
COMMISSION and ANGEL D. ISRAEL,**
Respondents.

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D E C I S I O N

MENDOZA, J.:

This is a Petition for Certiorari to set aside the Decision,^[1] dated April 15, 1994, of the National Labor Relations Commission (NLRC) finding private respondent to have been illegally dismissed and ordering his reinstatement and the payment of his wages from August 1991 until he is reinstated.

Petitioner IBM Philippines, Inc. (IBM) is a domestic corporation engaged in the business of selling computers and computer services. Petitioners Virgilio L. Peña and Victor V. Reyes were ranking officers of IBM during the period pertinent to this case.

On April 1, 1975, private respondent Angel D. Israel commenced employment with IBM as Office Products Customer Engineer. For the next sixteen (16) years, he occupied two other positions in the company,^[2] received numerous awards,^[3] and represented the company in various seminars and conferences in and out of the company.^[4]

On February 1, 1990, private respondent was assigned to the team supervised by petitioner Reyes.

On June 27, 1991, petitioner Reyes handed a letter to private respondent informing the latter that his employment in the company was to be terminated effective July 31, 1991 on the ground of habitual tardiness and absenteeism. The letter states, thus:

June 27, 1991

Mr. Angel D. Israel
Present

Dear Angel,

This refers to our previous discussion regarding your habitual absences and tardiness the last of which was on June 26, 1991.

Your records will attest to the fact that on several occasions, your attention has been called to your habitual tardiness and non-observance of standing office procedures regarding attendance. Despite several opportunities given to you, you cannot seem to reform your ways and attitude on the matter of attendance. Considering that we are a service-oriented company, you can appreciate that we cannot allow such a situation to continue lest we put the best interest of the Company in jeopardy.

Much to our regret, therefore, pleased (sic) be advised that the Company is terminating your employment effective July 31, 1991.

You are requested to report to Personnel Department at your earliest convenience for the settlement of any money or benefits due you.

Very truly yours,

(Sgd) V. V. REYES
Business Manager

cc: L.L. Abano

Alleging that his dismissal was without just cause and due process, private respondent filed a complaint with the Arbitration Branch of the Department of Labor and Employment (DOLE) on July 18, 1991.

In his position paper filed on September 6, 1991, he claimed that he was not given the opportunity to be heard and that he was summarily dismissed from employment based on charges which had not been duly proven.^[5]

Petitioners denied private respondent's claims. It was alleged that several conferences were held by the management with private respondent because of the latter's unsatisfactory performance in the company and he was given sufficient warning and opportunity to "reform and improve his attitude toward attendance,"^[6] but to their regret, he never did. It was alleged that private respondent was constantly told of his poor attendance record and inefficiency through the company's internal electronic mail (e-mail) system. According to petitioners, this system allows paperless or "telematic"^[7] communication among IBM personnel in the company offices here and abroad. An employee is assigned a "User ID" and the corresponding password is provided by the employee himself and, theoretically, known only to him. Employees are then expected to turn on their computers everyday, "log in" to the system by keying in their respective IDs and passwords in order to access and read the messages sent to and stored in the computer system. To reply, an employee types in or encodes his message-response and sends the same to the intended recipient, also via the computer system. The system automatically records the time and date each message was sent and received, including the identification of the sender and

receiver thereof. All messages are recorded and stored in computer disks.^[8]

Attached to petitioners' position paper were copies of print-outs of alleged computer entries/messages sent by petitioner Reyes to private respondent through IBM's internal computer system. The following is a summary of the contents of the print-outs which mostly came from petitioner Reyes' computer:

- (a) Private respondent was admonished when he would miss out on meetings with clients and failed to attend to important accounts, such as that of Hella Philippines;^[9]
- (b) Petitioner Reyes conducted consultations with private respondent concerning the latter's work habits;^[10]
- (c) A new policy of requiring employees to be at the office at 8:30 a.m. every morning was adopted and employees were no longer allowed to sign out of the office by phone;^[11]
- (d) Petitioner Reyes would type into his computer the records of the security guard which reflect private respondent's daily tardiness and frequent absences;^[12]
- (e) Private respondent was admonished when he failed to respond to instructions from his superiors;^[13]
- (f) IBM Australia, contacted by Hella Australia, once asked about the reported lack of attention given to Hella Philippines.^[14] Private respondent directly answered IBM Australia, through telematic memo, and reported that Hella Philippines was deferring its computer plan and decided to use micros in the meantime;^[15]
- (g) The said response was denied by Hella Australia which later made it clear that it would be buying "anything but IBM";^[16] and
- (h) While private respondent showed some improvement after consultations where he allegedly admitted his

shortcomings, petitioner Reyes reported that he (private respondent) would eventually slide back to his old ways despite constant counseling and repeated warnings that he would be terminated if he would not improve his work habits.^[17]

Through these computer print-outs calling private respondent's attention to his alleged tardiness and absenteeism, petitioner sought to prove that private respondent was sufficiently notified of the charges against him and was guilty thereof because of his failure to deny the said charges.

On March 13, 1992, the labor arbiter rendered a decision finding private respondent to have been terminated for cause and accordingly dismissing the complaint. Considering, however, the ground for termination as well as private respondent's long record of service to the company, the arbiter ordered the award of separation pay at the rate equivalent to one-half (1/2) month salary for every year of service. The dispositive portion of the decision reads —

WHEREFORE, judgment is hereby rendered in this case declaring respondent IBM Phils., Inc. not guilty of the charge of illegal dismissal. However, respondent company is directed to pay complainant Israel the sum of Two Hundred Forty Eight Thousand (P248,000.00) as separation pay. All other claims are denied for lack of merit.

It appears, however, that prior to the release of the labor arbiter's decision at 11:21 a.m. on March 26, 1992, private respondent had filed a "Manifestation And Motion To Admit Attached New Evidence For The Complainant" which was received by the Arbitration Branch at 10:58 a.m. of the same day. The evidence consisted of private respondent's Daily Time Records (DTRs) for the period June 1, 1990 to August 31, 1990 and pay slips for the period January 1990 to June 1991 showing that private respondent did not incur any unexcused absences, that he was not late on any day within the period and that no deduction was made from his salary on account of tardiness or absences.

Private respondent appealed to the NLRC which, on April 15, 1994, reversed the labor arbiter's decision and found private respondent's dismissal illegal. The NLRC ruled: (1) that the computer print-outs which petitioners presented in evidence to prove that private respondent's office attendance was poor were insufficient to show that the latter was guilty of habitual absences and tardiness; and (2) that private respondent was not heard in his defense before the issuance of the final notice of dismissal. 18 The dispositive portion of the NLRC's decision reads:

WHEREFORE, the Decision dated March 13, 1992 is hereby SET ASIDE and a new one entered declaring the dismissal of the complainant as illegal. Respondent (sic) are hereby ordered to reinstate complainant to his former position without loss of his seniority rights and to pay backwages starting August 1991 until reinstated at the rate of P40,516.65 a month including all its benefits and bonuses.

Presiding Commissioner Edna Bonto-Perez dissented on the ground she found that petitioners have presented strong and convincing documentary evidence that private respondent was guilty of habitual tardiness and absences. She was also of the opinion that private respondent was sufficiently warned before he was actually dismissed.^[19]

Petitioners moved for a reconsideration, but their motion was denied in a resolution, dated July 20, 1994. Hence, this petition for certiorari. Petitioners contend that —

1. THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION IN HOLDING THAT NO JUST CAUSE EXISTS NOR WAS THERE DUE PROCESS OBSERVED IN THE DISMISSAL OF THE PRIVATE RESPONDENT BECAUSE THE COMPUTER PRINTOUTS WHICH PROVE JUST CAUSE AND DUE PROCESS ARE NOT ADMISSIBLE IN EVIDENCE.

2. THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF ITS JURISDICTION IN HOLDING THAT EVEN IF THE COMPUTER PRINTOUTS WERE ADMISSIBLE, PETITIONER FAILED TO SATISFY DUE PROCESS.

We find petitioners' contention to be without merit.

First. Petitioners argue that the computer print-outs submitted by them need not be identified or authenticated according to the rules of procedure in regular courts in order for the same to be admissible in evidence. They contend that technical rules of evidence do not apply to administrative/labor cases^[20] and because of a relaxation of the rules of evidence, private respondent was in fact allowed by the labor arbiter to adduce additional evidence even after a decision had been rendered.^[21]

It is indeed true that administrative agencies, such as the NLRC, are not bound by the technical rules of procedure and evidence in the adjudication of cases.^[22] This was the reason private respondent was allowed to submit additional evidence even after the case was deemed submitted for resolution by the labor arbiter. The practice of admitting additional evidence on appeal in labor cases has been sanctioned by this Court.^[23]

However, the liberality of procedure in administrative actions is subject to limitations imposed by basic requirements of due process. As this Court said in *Ang Tibay vs. CIR*,^[24] the provision for flexibility in administrative procedure "does not go so far as to justify orders without a basis in evidence having rational probative value." More specifically, as held in *Uichico vs. NLRC*:^[25]

It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before

the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. The Statement of Profit and Losses submitted by Crispa, Inc. to prove its alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, are nothing but self-serving documents which ought to be treated as a mere scrap of paper devoid of any probative value.

The computer print-outs, which constitute the only evidence of petitioners, afford no assurance of their authenticity because they are unsigned. The decisions of this Court, while adhering to a liberal view in the conduct of proceedings before administrative agencies, have nonetheless consistently required some proof of authenticity or reliability as condition for the admission of documents.

In *Rizal Workers Union vs. Ferrer-Calleja*,^[26] this Court struck down the decision of the Director of Labor Relations which was based on an unsigned and unidentified manifesto. It was held:

From even a perfunctory assessment, it becomes apparent that the "evidence" upon which said decision is professedly based does not come up to that standard of substantiality.

It is of course also a sound and settled rule that administrative agencies performing quasi-judicial functions are unfettered by the rigid technicalities of procedure observed in the courts of law, and this so that disputes brought before such bodies may be resolved in the most expeditious and inexpensive manner possible. But what is involved here transcends mere procedural technicality and concerns the more paramount principles and requirements of due process, which may not be sacrificed to speed or expediency. The clear message of [Article 291 of the Labor Code] is that even in the disposition of labor cases, due process must never be subordinated to expediency or dispatch. Upon this principle, the unidentified documents relied upon by respondent Director must be seen and taken for what they are, mere inadmissible hearsay. They cannot, by any stretch of

reasoning, be deemed substantial evidence of the election frauds complained of.

Likewise, in the case of EMS Manpower & Placement Services vs. NLRC,^[27] the employer submitted a photocopy of a telex which supposedly shows that the employee was guilty of "serious misconduct" and which became the basis of her dismissal. This Court ruled that the telex, a "single document, totally uncorroborated and easily concocted or fabricated to suit one's personal interest and purpose,"^[28] was insufficient to uphold the employer's defense.

In *Jarcia Machine Shop and Auto Supply, Inc. vs. NLRC*, this Court held as incompetent unsigned daily time records presented to prove that the employee was neglectful of his duties:

Indeed, the DTRs annexed to the present petition would tend to establish private respondent's neglectful attitude towards his work duties as shown by repeated and habitual absences and tardiness and propensity for working undertime for the year 1992. But the problem with these DTRs is that they are neither originals nor certified true copies. They are plain photocopies of the originals, if the latter do exist. More importantly, they are not even signed by private respondent nor by any of the employer's representatives.^[29]

In the case at bar, a specimen of the computer print-out submitted by petitioners reads:

Date and time 10/12/90 09:23:1

From: REYESVV — MNLVM1
To: ISRAEL — MNLVRM Israel, A.D.
SEC: I-IBM INTERNAL USE ONLY

Subject:

Angel, have been trying to pin you down for a talk the past couple of days. Whatever happened to our good discussion 2 weeks ago? I thought you would make an effort to come in on

time from then on? If you have problems which prevent you from coming in on time, let me know because I would really like to help if I can. The sum of all your quotas is less than mine so I really need all of you pitching in. Kindly take a look at your proofs in-tray as there are some to do's which are pending. Acts such as St. Louis U. and NEECO should be worth looking into as they've been inquiring about upgrading their very old boxes. If you are too tied up for these accounts do let me know so I can reassign. By Monday morning please. Let's give it that final push for the branch!

Regards from the APPLICATION MNLVM 1 (REYESVV)

SYSTEMS MARKETING group T (832)8192-279
Victor V. Reyes — Marketing Manager

Not one of the 18 print-out copies submitted by petitioners was ever signed, either by the sender or the receiver. There is thus no guarantee that the message sent was the same message received. As the Solicitor General pointed out, the messages were transmitted to and received not by private respondent himself but his computer.^[30]

Neither were the print-outs certified or authenticated by any company official who could properly attest that these came from IBM's computer system or that the data stored in the system were not and/or could not have been tampered with before the same were printed out. It is noteworthy that the computer unit and system in which the contents of the print-outs were stored were in the exclusive possession and control of petitioners since after private respondent was served his termination letter, he had no more access to his computer.^[31]

Second. Even if the computer print-outs were admissible, they would not suffice to show that private respondent's dismissal was justified.

Petitioners' contention is that private respondent was repeatedly warned through computer messages for coming in late or not reporting at all to the office during the period May 1990 — June 1991 but he never denied the allegations. Therefore, he must be deemed to have admitted these allegations.^[32] But the burden of proving that the

dismissal was for just cause is on petitioners. They cannot simply rely on any admission by private respondent implied from his failure to deny the alleged computer messages to him which he denied he had ever received. On the other hand, private respondent's additional evidence, consisting of DTRs and pay slips, show that he did not incur unexcused absences or tardiness or that he suffered deduction in pay on account of such absences or tardiness. Indeed, petitioners could have easily proven their allegations by presenting private respondent's DTRs. Since these were in petitioners' possession, their non-production thereof raises the presumption that if presented they would be adverse to petitioners. This is precisely what the best evidence rule guards against.

The purpose of the rule requiring the production of the best evidence is the prevention of fraud, because if a party is in possession of such evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes which its production would expose and defeat.^[33]

Private respondent's DTRs for the period June 1, 1990 — August 30, 1990^[34] show that while his attendance record may not have been perfect, it was at least satisfactory. The days when private respondent did not report to the office were credited either as vacation or as sick leaves. On days when he was away on business trips, his destination was shown. The DTRs were signed by petitioner Victor Reyes.

It is said that the DTRs presented were only for the period when private respondent's attendance was excellent; he took care not to submit his DTRs for other months during which he was often late in coming to office.^[35] As the Solicitor General has pointed out, however, it was precisely during that period of June 1, 1990 — August 30, 1990 when, according to the print-outs submitted by petitioners, private respondent was often late or absent.

Nor is there proof to support petitioners' allegation that it was private respondent's secretary and not him who often signed the attendance sheet.^[36] Indeed, petitioners did not present private respondent's secretary or, at the very least, attach an affidavit sworn to by her to prove their allegations and thus dispute the DTRs presented by

private respondent. This, notwithstanding ample opportunity to do so. On the other hand, as already stated, the DTRs, showing private respondent's good attendance, were signed by petitioner Victor Reyes himself, and no good reason has been shown why they cannot be relied upon in determining private respondent's attendance.

Third. Even assuming the charges of habitual tardiness and absenteeism were true, such offenses do not warrant private respondent's dismissal. He has not been shown to have ever committed any infraction of company rules during his sixteen-year stint in the company. Although it is alleged that he failed to attend important client meetings and gave false representations to a valued client to cover his tracks, there is no record finding him guilty of such offenses. Dismissal has always been regarded as the ultimate penalty.^[37] The fact that lapses in private respondent's attendance record may have occurred only during his final year in the company, after a long period of exemplary performance, makes petitioners' contention dubious. While it is true that long years of service is no guarantee against dismissal for wrongdoing,^[38] at least the employee's record does provide an index to his work. In case doubt exists between the evidence presented by the employer and that presented by the employee, the scales of justice must be tilted in favor of the latter.^[39]

Fourth. The print-outs likewise failed to show that private respondent was allowed due process before his dismissal.

The law requires an employer to furnish the employee two written notices before termination of his employment may be ordered. The first notice must inform him of the particular acts or omissions for which his dismissal is sought, the second of the employer's decision to dismiss the employee after he has been given the opportunity to be heard and defend himself.^[40]

These requirements were not observed in this case. As noted earlier, there is no evidence that there was an exchange of communication between petitioners and private respondent regarding the latter's supposed substandard performance. Private respondent has consistently denied, however, that he was ever advised of the charges hurled against him. The so-called one-on-one consultations or

"personal counselling mentioned in the print-outs between petitioner Reyes and private respondent concerning the latter's work habits do not satisfy the requirements of due process, as we had occasion to say in *Pono vs. NLRC*.^[41]

Consultations or conferences may not be a substitute for the actual holding of a hearing. Every opportunity and assistance must be accorded to the employee by the management to enable him to prepare adequately for his defense, including legal representation.^[42]

In *Ruffy vs. NLRC*,^[43] this Court held that what would qualify as sufficient or "ample opportunity," as required by law, would be "every kind of assistance that management must accord to the employee to enable him to prepare adequately for his defense." No such opportunity was given to private respondent in this case. He was simply served his termination notice without being heard in his defense.

Fifth. Petitioners allege that the NLRC, after concluding that the evidence submitted by them were not properly identified or authenticated, should have remanded the case to the arbiter for "clarificatory" hearing.

A formal hearing was not de rigueur. The 1994 Rules of Procedure of the NLRC, §4 provides:

Immediately after the submission by the parties of their position papers/memorandum, the Labor Arbiter shall, *motu proprio*, determine whether there is a need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness.

As held by the NLRC:

Aside from these computer print-outs, respondents have not presented any other evidence to prove that complainant was ever called for investigation nor his side heard prior to receipt

of the termination letter dated June 27, 1991. In fact, even if we consider these computer print-outs, respondents still failed to satisfy the requirements of procedural due process. . . . In this particular case, we observe that there is failure on the part of respondents to prove the existence of a legal cause. The evidence presented before the Labor Arbiter did not sufficiently and clearly support the allegation of respondents that complainant committed habitual absences and tardiness resulting into inefficiency.^[44]

In spite of this finding, petitioners failed to adduce additional evidence when they moved for a reconsideration of the NLRC decision or when they filed the instant petition. Despite the opportunities afforded them, petitioners failed to substantiate their allegations. Neither have they shown sufficient reasons to convince this Court that, if the case were to be remanded to the arbiter for a formal hearing, they would be able to present evidence which they could not have presented during the initial stages of this case. As we held in *Megascope General Services vs. NLRC*:^[45]

As regards petitioner's contention that a hearing has to be conducted to fully ventilate the issues in the case, suffice it to state that nonverbal devices such as written explanations, affidavits, position papers or other pleadings can establish just as clearly and concisely an aggrieved party's defenses. Petitioner was amply provided with the opportunity to present evidence that private respondents were not its employees. Indeed, it was petitioner's failure to present substantial evidence to buttress its claims that worked to its disadvantage and not the absence of a full-blown hearing before the public respondent.

WHEREFORE, the petition is **DISMISSED** and the decision of the NLRC, dated April 15, 1994, is hereby **AFFIRMED**.

SO ORDERED.

Bellosillo, Puno, Quisumbing and Buena, JJ., concur.

[1] NLRC NCR Case No. 00-01-04250-91; NLRC CA No. 003134-92.

- [2] Office Products Marketing Representative: July 1, 1977 - December 31, 1982; Data Processing Marketing Representative: January 1, 1983 - July 31, 1991.
- [3] In 1977, he received the Customer Engineering Excellence in Service Award. He was also a consistent member of the Hundred Percent Club from 1979 to 1990. See NLRC Decision, p. 7; Petition, Annex U; Comment-Private Respondent, p. 4; Rollo, pp. 103, 146.
- [4] Comment-Private Respondent, pp. 4-5; Rollo, pp. 146-147.
- [5] Comment-NLRC, pp. 2-4; Rollo; pp. 209-211.
- [6] Comment-NLRC, p. 4; Rollo, p. 211.
- [7] The word "telematic" is not yet found in regular English dictionaries. According to petitioners, it is derived from the French word telematique which is used in communications to refer to the combination of computers and telecommunications for data processing and information. See Note 1, Petition, p. 43; Rollo, p. 44.
- [8] Petition, pp. 36-37; Rollo, pp. 37-38.
- [9] Petition, Annexes A, I, and J; Rollo, pp. 64, 73-74.
- [10] Ibid., Annexes B and C; Rollo, pp. 65-67.
- [11] Id., Annexes H and P; Rollo, pp. 72, 81.
- [12] Id., Annexes Q and Q-1; Rollo, pp. 82-83.
- [13] Id., Annexes D, E, F, and G; Rollo, pp. 68-71.
- [14] Id., Annex K; Rollo, p. 76.
- [15] Id., Annex L; Rollo, p. 77.
- [16] Id., Annexes M and N; Rollo, pp. 78-79.
- [17] Id., Annexes R and S; Rollo, pp. 84-85.
- [18] NLRC Decision, pp. 6-7; Rollo, pp. 102-103.
- [19] See Petition, Annex W-1; Rollo, pp. 106-107.
- [20] Petition, p. 43; Rollo, p. 44.
- [21] Reply, p. 4; Rollo, p. 246.
- [22] LABOR CODE, Art. 221; Jarcia Machine Shop and Auto Supply vs. NLRC, 266 SCRA 97 (1997).
- [23] Cañete vs. NLRC, 250 SCRA 259, 266 (1995); Bristol Laboratories Employees' Association vs. NLRC, 187 SCRA 118, 121 (1990).
- [24] 69 Phil. 635, 643 (1940).
- [25] 273 SCRA 35, 44-45 (1997).
- [26] 186 SCRA 431 (1990).
- [27] 276 SCRA 117 (1997).
- [28] Supra, at 121.
- [29] 266 SCRA at 104.
- [30] Comment-NLRC, p. 10; Rollo, p. 217.
- [31] Comment, p. 10; Rollo, p. 152.
- [32] Petition, pp. 45, 47; Rollo, pp. 46, 58.
- [33] 7 VICENTE V. FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES 121-122 (1973).
- [34] Comment-Private Respondent, Annexes A to A-3; Rollo, pp. 165-168.
- [35] Petition, p. 41; Rollo, p. 42.
- [36] Petition, p. 14; Rollo, p. 17.

- [37] Philippine Long Distance Telephone Company vs. National Labor Relations Commission and Enrique Gabriel, G.R. No. 106947, February 11, 1999 citing Pantranco North Express, Inc. vs. National Labor Relations Commission, 252 SCRA 237, 243 (1996).
- [38] Philippine Air Lines vs. National Labor Relations Commission, 198 SCRA 748, 762 (1991).
- [39] Triple Eight Integrated Services, Inc. vs. National Labor Relations Commission, G.R. No. 129584, December 3, 1998.
- [40] Rule XIV, Book V, Omnibus Rules Implementing the Labor Code; National Service Corporation vs. Third Division, NLRC; Credo vs. NLRC, 168 SCRA 122, 128-129 (1998).
- [41] 275 SCRA 611 (1997).
- [42] Id. at 619.
- [43] 182 SCRA 365, 369-370 (1990).
- [44] Rollo, pp. 100-101, 102.
- [45] 274 SCRA 147, 155 (1997) (Emphasis added).