

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ILOCOS SUR ELECTRIC
COOPERATIVE, INC. and EFREN
BAUTISTA.**

Petitioners,

-versus-

**G.R. No. 106161
February 1, 1995**

**THE NATIONAL LABOR RELATIONS
COMMISSION and the NLRC
REGIONAL ARBITRATORS, BRANCH
NO. I, (San Fernando, La Union),
*Respondents.***

X-----X

DECISION

KAPUNAN, J.:

This is a Petition for *Certiorari* questioning the jurisdiction of the National Labor Relations Commission over termination cases involving employees of electric cooperatives.

Briefly, the facts of the case are as follows:

Engr. Egdon Sabio was employed as Manager of the Engineering Department of Ilocos Sur Electric Cooperative (ISECO), herein

petitioner, in May 1982. He was relieved of his duties on June 10, 1989 and was dismissed on July 1, 1989 pursuant to ISECO's Board Resolution No. 63 s. 1989 dated July 19, 1989.

It appears that on June 8, 1989, Sabio wrote to the ISECO Board of Directors, thru its President, Atty. Manuel Agpalo, about the expenses incurred by Acting General Manager, Atty. Efren Bautista, in the total amount of P131,788.79 from May 1988 to May 1989 for his travel to the Office of the National Electrification Administration (NEA) and places outside the area serviced by the cooperative. Sabio revealed that in one year, Bautista was away for two hundred twenty (220) days, while, in contrast, the previous Acting General Manager, Genaro Cada, who stayed out of the cooperative for not more than thirty (30) days for the same length of time spent not more than ten thousand pesos (P10,000.00).^[1]

On June 9, 1989, Bautista summoned Sabio to his office and asked him to file a letter of irrevocable resignation with the assurance that separation benefits will be granted to him. Bautista also suggested to Sabio to apply as Acting General Manager of Abra Electric Cooperative. When asked why he made such request, Bautista could not give any satisfactory answer. Bautista also offered Sabio a one-month vacation leave with pay, but Sabio refused the offer. Bautista made known that the resignation letter or the application for leave must be in before 9:00 in the morning of June 10. With or without the letter of resignation or application for leave, Sabio was told, he would be terminated just the same.

Instead of filing either, Sabio on June 10, 1989 sent a letter of apology^[2] to Bautista with copies furnished to the Board of Directors, Department Managers and Sub-Area Managers, but maintaining that he had not violated any of the cooperative's rules and regulations.^[3] However, on that same day Sabio received Memo No. 47-80 from Bautista, relieving him from his position as Engineering Manager without giving any reason.^[4]

On June 16, 1989, Bautista issued Memo No. 55-89 requiring Sabio to explain in writing within 24 hours upon receipt why he should not be separated from the service for grave and serious misconduct for committing the following acts:

1. Unauthorized assumption of authority and power to relay message through the Radio Operator when such authority is exclusively reposed to (sic) the General Manager or his duly authorized representative for confidentiality of communication.
2. Unauthorized assumption of power and authority by requesting NEA for my replacement of another NEA Manager with the caliber of Engr. Genaro O. Cada, when such authority is exclusively reposed and vested to (sic) the Board of Directors as a corporate body for a corporate action which authority you arrogated upon yourself without authority.
3. Your alleged solicitation of signatures to the petition for my replacement with another NEA Manager, personally or thru linemen from personnel of Main Office and sub-officers during office hours, hampering the operation of their respective offices, causing confusion and diversion among rank and file, factionalism among supervisors, endangering the positive gains of the coop as proven by the 25% system loss for the months of March, April and May which ultimately and finally will lead to the downfall and disintegration of ISECO as in the part (sic) of which you are very well aware of, and part of the confusion, leading to the disconnection of ISECO by NPC and depriving the coop employees of the benefits they are now receiving/enjoying.
4. Your failure to coordinate with NPC on the higher contracted energy and demand for power allocating to NPC when NPC deferred its operation for one month causing NPC to penalize ISECO in the amount of P139,000.00 for failure to use the higher contracted energy and demand allocation for NPC.^[5]

On June 24, 1989, Sabio submitted his answer denying all the charges against him. On June 30, 1989 Bautista placed him under preventive suspension without pay effective July 1, 1989, which prompted Sabio to file a complaint for illegal suspension and a claim for

representation/travel allowances before the Labor Arbiter. On July 13, 1989 Bautista issued Office Memo No. 69-89, creating an ad hoc committee, to investigate the case against Sabio. Thereafter, the ad hoc committee submitted a report of its investigation containing the following conclusions and recommendation, to wit:

CONCLUSIONS:

In view of the foregoing the ADHOC Committee finds that:

1. Engr. Egdon Sabio is guilty of No. 2, of VI of the Rules and Regulations governing the conduct of employees for willfully ordering his subordinate, Mr. Onofre Habon (Annex 1) to type a petition for the ouster of AGM Bautista for his allegedly being extravagant a charge which he failed to substantiate.
2. Egdon Sabio did indeed solicit signatures of employees to a petition for the ouster of the AGM, as shown and verified by the execution of affidavits of at least 6 employees (Annex 2) which act is inimical to the smooth operation of the cooperative as it promotes divisiveness among the employees.
3. Egdon Sabio ordered the radio operator to transmit a radio message quoted as follows:

From: ISECO Concerned employees

To: NEA Administrator

Please send another GM with a caliber of GM. Cada. Present GM is gastador.

EGDON SABIO

Although such message is not in the possession of the Radio Operator, an affidavit to this effect has been executed (Annex 3). The actuation is corroborated by Egdon Sabio himself when he sent

a letter of Apology addressed to AGM Bautista (Annex 9). Premises above-stated, Egdon Sabio is also guilty of Board Policy No. 3-3 dated November 3, 1974 specifically “and all other acts prejudicial to the interest and welfare of the coop and such other grounds as provided by existing laws” (Annex 14).

4. For gross negligence of duty; for failure to coordinate with the National Power Corporation on the anticipated lean period, causing the Coop to lose P139-T which it could have been avoided if proper representation was made earlier (see letter of Engr. Cu undated). All these factors contribute to loss of trust and confidence on Egdon Sabio which is punishable by dismissal as per labor laws.
5. Egdon Sabio is also guilty of No. 2 of VI of the Rules and Regulations governing the conduct of employees for airing publicly over station DWRS derogatory remarks and malicious accusations against AGM Bautista, his superior. Especially that the informations being fed to media are incorrect.

RECOMMENDATION:

Human considerations taken into account, it would best serve the best interest of the cooperative if Egdon Sabio be DISMISSED if only to serve as a precedent and/or stern warning to all employees especially from among the staff, not to indulge themselves in any act which could be detrimental to the welfare of the coop by using their influence or their subordinates to attain their personal ambitions or whatever purposes, regardless of whether they have valid grounds or none at all.^[6]

On July 27, 1989, Bautista recommended to the ISECO Board of Directors the approval of the report and recommendation of the ad hoc committee. On July 29, 1989, the Board adopted the recommendation of the ad hoc committee and passed Resolution No. 63 s. 1989, terminating the services of Sabio retroactive July 1, 1989.^[7] Consequently, Sabio filed a complaint for illegal dismissal

with claim for damages against petitioner with respondent National Labor Relations Commission (NLRC), docketed as NLRC Case No. RAB-1-07-1050-89, which was assigned to Labor Arbiter Amado T. Adquilen of the Regional Arbitration Branch, DOLE, for compulsory arbitration.

On January 8, 1990, the Labor Arbiter, after considering the evidence on record, held in his decision dated January 8, 1990^[8] that Sabio was illegally and unjustly dismissed without due process of law. The dispositive portion of the decision reads:

WHEREFORE, with all the foregoing considerations, we hereby order the respondents Ilocos Sur Electric Cooperative, Inc. (ISECO) and/or AGM Efren Bautista as follows:

1. To reinstate complainant Engr. Egdon Sabio to his former position as ISECO Engineering Department Manager, without loss of seniority rights and to pay him full backwages in the amount of THIRTY THREE THOUSAND TWENTY PESOS (P33,020.00) plus medical, rice allowances, 1989 13th month pay balance as well as all other benefits/bonuses customarily granted to employees by ISECO as a matter of company policy and established practice; and
2. To pay complainant THIRTY THOUSAND PESOS (P30,000.00) as moral and exemplary damages.

SO ORDERED.

Petitioners appealed to the National Labor Relations Commission which, in a resolution promulgated June 29, 1990^[9] dismissed the appeal for having been filed out of time. The NLRC found that petitioners received a copy of the Labor Arbiter's decision on January 20, 1990 but interposed their appeal only on January 31, 1990, which was beyond the ten-day period prescribed by the Revised Rules of the NLRC, specifically Rule VIII, Section I(a). A motion for reconsideration was, likewise, denied by the NLRC in its resolution of November 16, 1990.^[10] A notice of appeal to the President was filed. This was merely noted by the Commission. On June 24, 1991, a

petition for the issuance of a writ of execution was submitted by Sabio. Upon computation of the exact amount to be awarded to Sabio, the Executive Labor Arbiter issued a writ of execution dated April 13, 1992, to wit:

WHEREFORE, let writ of execution issue in order to effect the following:

1. The reinstatement aspect of the decision of the Labor Arbiter dated January 8, 1990; and
2. The payment of the monetary award due the complainant in the total amount of P74,487.50, as also decreed in said decision.

SO ORDERED.^[11]

Thus, this petition which raises the following issues:

1. Whether or not the NLRC has jurisdiction over the case of Engr. Egdon A. Sabio.
2. Whether or not Engr. Egdon A. Sabio was dismissed by the Board of Directors of ISECO in accordance with law.

The petition is devoid of merit.

Presidential Decree No. 269, as amended by P.D. 1645, relied upon by petitioners, does not apply in this case. Said Decree pertains to NEA's exercise of its power of supervision and control over electric cooperative.

Thus, Section 10, of P.D. 269, as amended, provides:

Enforcement Powers and Remedies. In the exercise of its power of supervision and control over electric cooperatives and other borrower, supervised or controlled entities, the NEA is empowered to issue orders, rules and regulations and motu proprio or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters

affecting said electric cooperatives and other borrower, or supervised or controlled entities.

If the electric cooperative concerned or other similar entity fails after due notice to comply with NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:

X x x

(e) Take preventive and/or disciplinary measures including suspension and/or removal and replacement of any or all the members of the Board of Directors, officers or employees of the Cooperative, other borrower institutions or supervised controlled entities as the NEA Board of Administrator may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide. (Emphasis supplied.)

It is clear from the aforequoted provision of P.D. 269, as amended by P.D. 1645 that only the power of supervision and control over electric cooperatives and other borrowers, supervised or controlled, is given to the NEA. There is nothing in said law which provides that the NEA administration has the power to hear and decide termination cases of employees in electric cooperatives. That authority is vested in the Labor Arbiter.

In the present case, there is no dispute that Sabio is an employee of ISECO whose services as manager of the Engineering Department of ISECO were terminated. The dismissal arose from a purely labor dispute which falls within the original and exclusive jurisdiction of the Labor Arbiters and the NLRC. Thus, Section 217 of the Labor Code provides:

ART. 217. Jurisdiction of Labor Arbiters and the Commission.
— (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without

extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;
2. Termination of disputes;

X X X

Moreover, the NLRC's jurisdiction was only raised for the first time in this petition. Petitioners did not question the jurisdiction of the Labor Arbiter either in a motion to dismiss or in their answer. In fact, petitioners participated in the proceedings before the Labor Arbiter, as well as in the NLRC to which they appealed the Labor Arbiter's decision. It has been consistently held by this Court that while jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of it.^[12] It is an undesirable practice of a party participating in the proceedings and submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse.^[13]

Petitioners also claim that the dismissal of Sabio was an exercise of management prerogative under Article 283 of the Labor Code. We do not agree.

Well settled is the rule that the employer's prerogative/power to dismiss an employee must not be exercised arbitrarily and without just cause, otherwise the constitutional guarantee of security of tenure would be rendered nugatory.^[14] Moreover, it must be done without abuse of discretion.^[15]

In the case at bench, records show that petitioner Bautista acted with grave abuse of discretion in having Sabio dismissed. After Sabio denounced the excessive expenditures of Bautista for one year and his (Bautista) absences totalling 220 days for the same period, he was called by Bautista himself who told him to resign and when asked for the reason why he was being asked to do so, Bautista was not able to answer and instead, gave another option to Sabio, that is, for Sabio to

take a vacation leave. Failing to convince Sabio, Bautista informed him that he would be terminated just the same.^[16]

It should be noted that the ad hoc committee which recommended the dismissal of Sabio was composed of Bautista's men and, in fact, two of them executed affidavits in favor of Bautista.^[17]

The factual circumstances clearly demonstrate that petitioners arbitrarily exercised their prerogative in dismissing Sabio.

Article 283 of the Labor Code on which the dismissal of Sabio was claimed to have been anchored states:

Art. 283. Closure of establishments and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment (now Department of Labor and Employment) at least one (1) month before the intended date thereof. (Emphasis supplied)

Here, the instances when the employer may validly terminate the employment of an employee in the exercise of management prerogative are not present. Petitioners claim that the position of Sabio as Manager of the Engineering Department was already deleted or abolished. However, the memorandum dated January 15, 1990^[18] which contained the recommendations for reorganization and replacement of ISECO personnel did not satisfactorily explain or give a credible justification why the Engineering Department was abolished. As correctly observed by the Solicitor General, there was merely a change in nomenclature from "Engineering Department" to "Technical Services Department" while the classifications of the other departments, namely, Administrative, Finance and Member Services were retained. As there was no evidence presented to show that the abolishment of the Engineering Department was due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the

establishment, then said deletion of the position of Sabio cannot be said to be a proper exercise of management prerogative. Thus, the dismissal of Sabio was illegal. On this point, we quote with favor the findings of the Labor Arbiter:

On the first issue, we find complainant illegally and unjustly dismissed and without due process of law. Gleaned from the facts presented and the evidence adduced, respondents anchored the dismissal of complainant on the alleged overt (sic) acts of unauthorized assumption of authority and power to relay message through the Radio Operator when such authority is exclusively reposed to the General Manager or his duly authorized representative for confidentiality of information; unauthorized assumption of power and authority by requesting NEA for the replacement of respondent AGM Bautista when such authority is exclusively repose and vested to the Board of Directors as a corporate body for a corporate action which complainant arrogated unto himself without authority; alleged solicitation of signatures to the petition for the replacement of AGM Bautista, personally or thru linemen from Personnel of Main Office and Sub-Offices during office hours, hampering the operation of their respective offices, causing confusion and diversion among rank and file employees, factionalism among supervisors, endangering the positive gains of the cooperative as proven by the 25 % system loss for the months March, April and May which ultimately and finally will lead to the downfall and disintegration of ISECO and as part of the confusion lead to the disconnection of ISECO by the National Power Corporation and depriving the cooperative employees of the benefits they are now enjoying; and, the alleged failure of complainant to coordinate with the NPC on the higher contracted energy and demand for power allocation to NPC when National Tobacco Corporation deferred its operation for one month causing the NPC to penalize ISECO in the amount of P139,000.00 for failure to use the higher contracted energy and demand allocation for National Tobacco Corporation. All these accusations were ably refuted by complainant and the record is bereft of any substantial evidence to show complainant's alleged offenses. Indeed, nowhere in the record shows that complainant sent unauthorized messages or communication duly signed by

him and relayed through the radio operator to the NEA or to any other agency. Nor is there any showing that Engr. Sabio prepared any letter/request or petition for the replacement of respondent Bautista as ISECO Acting General Manager. What is clear and revealing though, and respondent admits, is that AGM Bautista called the complainant to his office on June 9, 1989, a day after complainant wrote Atty. Manuel Agpalo, President of the ISECO Board of Directors, about the expenses of AGM Bautista in the amount of P131,788.79 covering the period May 1988 to May 1989 and his absences totalling two hundred twenty (220) days as compared to the expenses of the previous Acting General Manager Genaro O. Cada which is only P10,000.00 more or less covering the same span of time. On this occasion, AGM Bautista tried to convince the complainant to resign so he could paid (sic) all his separation benefits or that complainant may apply as Acting General Manager of the Abra Electric Cooperative. But when complainant inquired as to the reason why he is being asked to resign, respondent Bautista cannot give an answer and again presented another option to complainant for the latter to file his vacation leave immediately or on or before 10:00 o'clock in the morning of the following day (June 10, 1989). And failing to convince complainant either to resign or file his vacation leave, AGM Bautista informed complainant that he (Bautista) will terminate him just the same. These acts of respondent Bautista, taken together, clearly manifest and indubitably show his desire to ease out complainant from his job. And true enough, he carried out his scheme and succeeded in having complainant eventually terminated by issuing his Office Order to that effect in succession — firstly, by relieving complainant thru Memorandum No. 47-89, dated June 10, 1989, immediately and directing him to turn over all the documents and accountabilities in his (complainant) possession to the designated OIC, Engr. Fred R. Jacob. The said relief memo does not contain any reason why complainant is being relieved from his job; secondly, by placing complainant under preventive suspension effective July 1, 1989 for 30 days as per Official Order No. 143-89 dated June 29, 1989 on the sole ground that complainant's explanation in compliance to Memo No. 55-89 dated June 16, 1989 is allegedly satisfactory; thirdly, creating an

Ad Hoc Committee thru Office Memo No. 68-89 dated July 13, 1989 to investigate the complainant which is composed of his own chosen men two (2) of whom, before being named as members of the Ad Hoc Committee, executed affidavits in favor of AGM Bautista. Hesitantly, complainant did not submit himself to the Ad Hoc Committee for it is evident that the body cannot act objectively on his case. While AGM Bautista maybe clothed with the authority to create the same and appoint members thereto, fairness demand and prudence dictates that the members composing the investigating body should be free from any cloud of doubt of being partial, nay, subservient to the appointing authority and biased against the person under investigation. This is not so in this case. As heretofore mentioned, two members had previously executed their written support in favor of AGM Bautista which they have coupled with their strongly worded subsequent recommendation for the ouster of complainant after their 'ex-parte' investigation which ended with their verdict, thus 'regardless of whether they have valid grounds or none at all.' A perusal of this portion of the Ad Hoc Committee's recommendation, read together with the rest of the committee's disposition and taking into account all the attendant circumstances of the issue they have delved upon, creates the impression that within the ISECO, even legitimate grievances from employees as what complainant did in this instant case, seemingly, cannot be tolerated. It is too clear that the main reason complainant earned the ire and disgust of respondent AGM Bautista is his courage in bringing to the attention of the ISECO Board of Directors what he believed as extravagance on the part of respondent Acting General Manager and his absences from his ISECO office for 220 days covering the period May 26, 1988 to May 25, 1989 and spending the amount of P131,732.79 as compared to the expenses and absences of the former Acting General Manager who spent no more than P10,000.00 and stayed out of his ISECO office for not more than 30-days covering almost the same period of time in comparison. Clearly, the complainant was acting in good faith and merely exercising his bounden duty, as he puts it in his letter of apology and explanation, to protect the interest of the cooperative of which he is a member-consumer and incidentally its employee.^[19]

Finally the findings of fact of the Labor Arbiter that Sabio was illegally dismissed by ISECO Board of Directors were based on substantial evidence. In certiorari proceedings under Rule 65 of the Rules of Court, judicial review by this Court does not go so far as to evaluate the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their determinations, the inquiry being limited essentially to whether or not said public respondents had acted without or in excess of its jurisdiction or with grave abuse of discretion.^[20] More importantly, this Court is bound by the findings of fact there being no showing that either the Labor Arbiter or the NLRC gravely abused its discretion or otherwise acted without jurisdiction or in excess of the same.^[21]

WHEREFORE, premises considered, the petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Padilla, Davide, Jr., Bellosillo and Quiason, JJ., concur.

[1] Annex B, Rollo, pp. 20-24.

[2] Comment, p. 3, *id.* at p. 94.

[3] *Ibid.*

[4] *Id.*

[5] Rollo, pp. 34-35.

[6] *Id.*, at pp. 23-24.

[7] Annex D, *id.*, at p. 27.

[8] *Id.*, at pp. 31-52.

[9] Annex G, *id.*, at pp. 53-55.

[10] Annex H, *id.*, at pp. 56-59.

[11] Annex K, *id.*, at p. 69.

[12] *Tijam vs. Sibonghanoy*, 23 SCRA 29, *Quimpo vs. de la Victoria*, 46 SCRA 139 [1972]; *Zulueta vs. Pan American World Airways, Inc.*, 49 SCRA 1 [1973]; *People vs. Munar*, 53 SCRA 278 [1973]; *Capilitan vs. De la Cruz*, 55 SCRA 706 [1974]; *Balais vs. Balais*, 159 SCRA 37 [1988]; *Tejones vs. Gironella*, 159 SCRA 100 [1988]; *Marquez vs. Secretary of Labor*, 171 SCRA 337 [1989]; *Bañaga vs. Commission on the Settlement of Land Problems*, 181 SCRA 599 [1990].

[13] *Tijam vs. Sibonghanoy*, *supra*.

[14] *Liosa-Tan vs. Silahis International Hotel*, 181 SCRA 738.

- [15] Filipinas Manufacturers Bank vs. NLRC, 182, SCRA 848.
[16] Rollo, pp. 31-46.
[17] Ibid.
[18] Annex L, id., at p. 70.
[19] Rollo, pp. 41-46.
[20] Busmente, Jr. vs. NLRC, 195 SCRA 710; Aguilar vs. Tan, 31 SCRA 205; Pacis, et al., vs. Avenia, 18 SCRA 907.
[21] Wyeth Suaco Laboratories, Inc. vs. NLRC, 219 SCRA 356.

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