

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**IMPERIAL TEXTILE MILLS, INC.,  
*Petitioner,***

***-versus-***

**G.R. No. 101527  
January 19, 1993**

**NATIONAL LABOR RELATIONS  
COMMISSION, Third Division, and  
ANGIE MENDOZA,  
*Respondents.***

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**D E C I S I O N**

**REGALADO, J.:**

This original Petition for *Certiorari* seeks to annul the Decision<sup>[1]</sup> of the National Labor Relations Commission (hereafter, respondent commission), dated June 28, 1991, finding that herein private respondent Angie Mendoza was illegally dismissed and awarding her three years backwages and separation pay.

We quote the undisputed facts as found by respondent commission:

“Appellant Angie Mendoza had been employed with appellee since 1977. She rose from the ranks from the position of secretary to the Finishing Department Head to secretary to the

Executive Vice President, and later to personnel manager up to March 7, 1986. Her latest salary was P6,190.00. In the latter part of 1986, a new management group took over appellee. Appellant, who was on leave, found out about the changes and consequently wrote the widow of the former president of appellee, to wit:

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‘Dear Mrs. Salazar:

‘In compliance with my verbal promise and in abiding by the company rules and regulations, the undersigned reported to your goodself on March 7, the expiration of an approved one month vacation leave.

‘It is sad to know that during my absence, major changes took place in ITM. There was a take-over of new management, appointment and reorganization of new officers and other key positions have been effected. Needless to say, the position of the undersigned as Personnel Manager was also filled up by a newcomer.

‘In view of the above circumstances, I deem it proper and wise to cease my employment, but with equivalent separation pay from the company. I am happy to announce that I am one of the pioneer employees, having employed (sic) in 1971 as secretary to then Finishing Dept. Head. Being an experienced and competent secretary, after two months I rose to the position of secretary to the Exec. Vice President. In January 1975, I was appointed to succeed and execute the duties and responsibilities of the resigned Personnel Manager and at same time as secretary to the executives of the company. During the period June 1984 to June 1985, I was appointed in the concurrent capacity as Personnel Manager of Grand Alliance Mills, sister company of ITM.

‘For fifteen years of stay, I could proudly say that I dedicated one-third of my life in serving the company

honestly and efficiently, my employment records can fully vouch for that.

‘I sincerely hope that you will merit this request with your usual kind consideration and immediate attention.’

Respectfully yours,

Angie S. Mendoza”

“On June 6, 1986, the instant complaint for illegal dismissal was filed. Complainant alleged that she was dismissed without sufficient grounds after 14 years of service.

“In its defense, respondent averred that complainant voluntarily resigned and if she was terminated such termination was due to valid and just grounds. Being a managerial employee she could be terminated for loss of trust and confidence.”<sup>[2]</sup>

Thereafter, the parties submitted their respective position papers. Petitioner then filed a Motion to Dismiss<sup>[3]</sup> alleging that: (1) private respondent’s position paper is unverified and should be stricken off the record; and (2) complainant failed to appear despite notice, thereby depriving petitioner of its right to cross-examine her. In an Order<sup>[4]</sup> dated May 25, 1988, the labor arbiter dismissed the complaint without prejudice, on the ground that complainant’s absence deprived herein petitioner of the opportunity to cross-examine her.

On appeal, respondent commission reversed the Labor Arbiter in a Decision<sup>[5]</sup> dated October 28, 1988, holding that under Article 221 of the Labor Code, respondent commission and the labor arbiter have the authority to decide cases based on position papers and documents submitted by the parties without resorting to technical rules of evidence; and that herein petitioner was not denied due process because on the basis of the records of the case, an intelligent decision could be arrived at without resorting to a formal hearing. Petitioner went to this Court on a petition for *certiorari*, entitled “Imperial Textile Mills, Inc. vs. National Labor Relations, et. al.,” docketed as

G.R. No. 86663, which was however dismissed in our Resolution<sup>[6]</sup> of February 15, 1989.

The case was thereafter remanded to the labor arbiter who subsequently rendered a Decision<sup>[7]</sup> on April 10, 1990 declaring the dismissal of complainant as legally effected on the ground that she resigned voluntarily and that her dismissal was for a valid cause, that is, loss of trust and confidence. On appeal, respondent commission rendered its questioned decision reversing the findings of the labor arbiter and holding that herein private respondent was illegally dismissed, thus:

“Was appellant illegally dismissed? We believe so. The letter dated March 31, 1986 clearly stated that she was asking for separation pay because she found out that she had already been replaced during her leave of absence. Appellant’s resignation and request for separation pay was prompted solely by her removal as indicated in her letter. In short, complainant was forced to resign.

“If it was loss of confidence that prompted appellee to remove appellant, appellee had the burden of proving it. Appellee had not adduced an iota of evidence that would account for the alleged ‘loss of confidence.’

“Considering, however, that complainant appears to have sought employment elsewhere in lieu of reinstatement, an award of separation pay and three years backwages, consistent with the rulings of the Supreme Court, is but proper.”<sup>[8]</sup>

Petitioner’s motion for reconsideration was denied in a Resolution<sup>[9]</sup> dated August 16, 1991, hence the instant petition.

1. Petitioner inceptively asserts that it was denied due process when it was not given the opportunity to cross-examine herein private respondent during the hearing before the labor arbiter.

It is a basic rule that it is not the denial of the right to be heard but the deprivation of the opportunity to be heard which constitutes a violation of the due process clause. As held in Var-

Orient Shipping Co., Inc., et al. vs. Achacoso, etc., et al.,<sup>[10]</sup> and subsequently reiterated in Bautista, et al. vs. Secretary of Labor and Employment, et al.:<sup>[11]</sup> “Equally unmeritorious is petitioners’ allegation that they were denied due process because the decision was rendered without a formal hearing. The essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one’s side, or an opportunity to seek a reconsideration of the action or ruling complained of.”

There was sufficient compliance with the requirement of due process as petitioner was given the opportunity to present its case through a motion to dismiss and a position paper filed with the labor arbiter.

2. It is contended that while the decisions of respondent commission may be rendered based on position papers, such rule is not applicable to the case at bar where the position paper submitted by the private respondent is not verified. The contention is without merit.

First, the issue on the admissibility of the unverified position paper has been passed upon by this Court in its disposition of the aforementioned petition in G.R. No. 86663 which upheld the decision of respondent commission, reversing the order of dismissal of the labor arbiter on the ground that the case could be resolved on the basis of the position papers submitted by the parties. In effect, it was there held by necessary implication that the unverified position paper submitted by herein private respondent is deemed sufficient. Besides, even the labor arbiter in his order dated May 25, 1988 admits that the unverified position paper is a mere procedural infirmity which does not affect the merits of the case.<sup>[12]</sup>

Second, well-settled is the rule that procedural technicalities do not strictly apply to proceedings before labor arbiters for they may avail themselves of all reasonable means to speedily ascertain the facts of a controversy.<sup>[13]</sup>

3. Petitioner claims that the findings of respondent commission to the effect that the former failed to adduce an iota of evidence that would account for the alleged “loss of confidence” is erroneous. Petitioner raised in its position paper filed before the labor arbiter the following facts which allegedly constitute the basis for the loss of trust and confidence, to wit:

“Complainant, during the trying times of new management take over, beset by shaky industrial relations, culminating in mass action, despite requests by new managers was nowhere to be found. If she was interested to maintain her position, she could have at least reported to the company and brief the new managers of the existing personnel problems. This, she opted not to do, in fact her leave of absence (was placed under quote as there is nothing on record that she was granted a one month leave of absence) ended March 7, 1986, it was only on March 31, 1986 that she wrote the letter opting for resignation.”<sup>[14]</sup>

Although loss of confidence is a valid cause to terminate an employee, it must nonetheless rest on an actual breach of duty committed by the employee and not on the employer’s caprices.<sup>[15]</sup> The burden of proof rests upon the employer to establish that the dismissal is for cause<sup>[16]</sup> in view of the security of tenure that employees enjoy under the Constitution and the Labor Code.<sup>[17]</sup> The failure of the employer to do so would mean that the dismissal is not justified.<sup>[18]</sup> It is likewise essential that there be substantial evidence to support a charge of loss of confidence. The employer’s evidence must clearly and convincingly establish the facts upon which the loss of confidence in the employee may fairly be made to rest.<sup>[19]</sup>

In the case at bar, the facts relied upon by petitioner barely establish any basis for the alleged loss of confidence. As it is, the same is, at most, a mere allegation.

In addition, we have ruled that to constitute a valid dismissal, two requisites must concur: (1) the dismissal must be for any of the causes provided for under Article 282 of the Labor Code, and (2) only after the employee has been notified in writing and given

the opportunity to be heard and defend himself as required under Sections 2 and 5, Rule XIV, Book V of the Implementing Rules.<sup>[20]</sup> In the case at bar, petitioner categorically stated in its position paper that “(t)here was never any official communication from the new management group of the company addressed to the complainant that her services were terminated,”<sup>[21]</sup> and yet it does not deny that it had appointed a replacement for private respondent even before she wrote her aforementioned letter of March 31, 1986.

4. Finally, petitioner asserts that findings of fact of the labor arbiter should be accorded respect and finality. Besides, the decision of the labor arbiter had become final considering that the appeal made by private respondent with respondent commission was filed out of time. Records show that the decision of the labor arbiter was received by private respondent on May 2, 1990, whereas the appeal was filed with respondent commission only on May 17, 1990, which is already beyond the 10-day reglementary period provided in the Labor Code.

While it is true that factual findings of the labor arbiter are usually binding on this Court, such situation does not obtain in this case. As we have earlier declared, the alleged loss of confidence was never sufficiently proven by herein petitioner.

It appears that the appeal with respondent commission was indeed filed late. The general rule is that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. Failure to conform to the rules will render the judgment sought to be reviewed final and unappealable.<sup>[22]</sup>

We also note, in passing, that contrary to the Solicitor General’s allegation that petitioner failed to raise the issue of timeliness of appeal before the respondent commission and is, therefore, deemed to have waived its right to question the same, herein petitioner did raise this issue albeit belatedly, in its reply to private respondent’s memorandum of appeal.<sup>[23]</sup>

Nevertheless, in some instances, this Court has disregarded such unintended lapses so as to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof.<sup>[24]</sup> We are of the opinion and so hold that in consideration of the merits of this case, substantial justice could be rightfully invoked by way of an exception. This is one such case where we are convinced that substance should prevail over and not be sacrificed for form.

5. Petitioner asseverates that since private respondent is already employed elsewhere, respondent commission erred in awarding separation pay and three years backwages. We disagree.

In the case of *Torillo vs. Leogardo, Jr., etc., et. al.*,<sup>[25]</sup> we held:

“Backwages and reinstatement are two reliefs given to an illegally dismissed employee. They are separate and distinct from each other. However, in the event that reinstatement is no longer possible, separation pay is awarded to the employee. Thus, the award of separation pay is in lieu of reinstatement and not of backwages. In other words, an illegally dismissed employee is entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable and (2) backwages.”

The payment of backwages is one of the reliefs which an illegally dismissed employee prays the labor arbiter and the National Labor Relation Commission to render in his favor as a consequence of the unlawful act committed by the employer. The award thereof is not private compensation or damages but is in furtherance and effectuation of the public objectives of the Labor Code. Even though the practical effect is the enrichment of the individual, the award of backwages is not in redress of a private right, but, rather, is in the nature of a command upon the employer to make public reparation for his violation of the Labor Code,<sup>[26]</sup> such as the dismissal of an employee due to the unlawful act of the employer or the latter's bad faith.<sup>[27]</sup> Hence, we have ruled that where the ground of loss of confidence has neither been established nor sufficient basis thereof presented, the finding that respondent employee was illegally

dismissed was well taken and said employee, although not reinstated, was awarded three years backwages.<sup>[28]</sup>

With respect to the award of separation pay, we declared in Santos vs. National Labor Relations Commission, et. al.,<sup>[29]</sup> that where the decision ordering the reinstatement of the employee may no longer be enforced, or is no longer feasible because of the strained relations between the parties, the employee may be awarded separation pay as an alternative to reinstatement. Such a situation obtains in this case and considering further the confidential nature of private respondent's position, we find no reason why the foregoing doctrine should not here apply.

**WHEREFORE**, no grave abuse of discretion having been committed by respondent commission, the present Petition is hereby **DISMISSED** for lack of merit.

**SO ORDERED.**

**Narvasa, C.J., Feliciano, Nocon and Campos, Jr., JJ., concur.**

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[1] Annex A, Petition; Rollo 19.

[2] Rollo, 20, 22.

[3] Annex D, id.; ibid., 68.

[4] Annex D-2, id.; ibid., 76.

[5] Annex E-1, id.; ibid., 86.

[6] Rollo, 8.

[7] Annex A-2, id.; ibid., 40.

[8] Rollo, 23-24.

[9] Annex B, id.; ibid., 51.

[10] 161 SCRA 732 (1988).

[11] 196 SCRA 470 (1991).

[12] Rollo, 78.

[13] Bristol Laboratories Employees' Association-DFA, et. al., vs. National Labor Relations Commission, et. al., 187 SCRA 118 (1990).

[14] Rollo, 13.

[15] Anscor Transport & Terminals, Inc. vs. National Labor Relations Commission, et. al., 190 SCRA 147 (1990).

[16] Marina Port Services, Inc. vs. National Labor Relations Commission, et. al., 193 SCRA 420 (1991).

- [17] *Manggagawa ng Komunikasyon sa Pilipinas, et. al., vs. National Labor Relations Commission, et. al.*, 194 SCRA 573 (1991).
- [18] *Marina Port Services, Inc. vs. National Labor Relations Commission, et. al.*, supra.
- [19] *Commercial Motors Corporation, vs. Commissioners, et. al.*, 192 SCRA 191 (1990).
- [20] *Shoemart, Inc., et. al. vs. National Labor Relations Commission, et. al.*, 176 SCRA 385 (1989).
- [21] *Rollo*, 59.
- [22] *Colegio del Sto. Nino, et. al. vs. National Labor Relations Commission, et. al.*, 197 SCRA 611 (1991).
- [23] *Rollo*, 101.
- [24] *The Insular Life Assurance Co., Ltd., et. al. vs. National Labor Relations Commission, et. al.*, 156 SCRA 740 (1987); *Paramount Vinyl Products Corporation vs. National Labor Relations Commission, et. al.*, 190 SCRA 525 (1990).
- [25] 197 SCRA 471 (1991).
- [26] *Callanta vs. Carnation Phils., Inc., et. al.*, 145 SCRA 268 (1986).
- [27] *Reyes vs. Minister of Labor, et. al.*, 170 SCRA 134 (1989).
- [28] *City trust Finance Corporation vs. National Labor Relations Commission, et. al.*, 157 SCRA 87 (1988).
- [29] 154 SCRA 186 (1987); see also *Torillo vs. Leogardo, et. al.*, supra.