SUPREME COURT
THIRD DIVISION

ROMEO LAGATIC,
***Petitioner*,**

-versus-

G.R. No. 121004
January 28, 1998

NATIONAL LABOR RELATIONS COMMISSION, CITYLAND DEVELOPMENT CORPORATION, STEPHEN ROXAS, JESUS GO, GRACE LIUSON, and ANDREW LIUSON,
***Respondents*.**
x----------x

D E C I S I O N

ROMERO, *J.*:

Petitioner seeks, in this Petition for *Certiorari* under Rule 65, the reversal of the Resolution of the National Labor Relations Commission dated May 12, 1995, affirming the February 17, 1994,

Decision of Labor Arbiter Ricardo C. Nova finding that petitioner had been validly dismissed by private respondent Cityland Development Corporation (hereafter referred to as Cityland) and that petitioner was not entitled to separation pay, premium pay and overtime pay.

The facts of the case are as follows:

Petitioner Romeo Lagatic was employed in May 1986 by Cityland, first as a probationary sales agent, and later on as a marketing specialist. He was tasked with soliciting sales for the company, with the corresponding duties of accepting call-ins, referrals, and making client calls and cold calls. Cold calls refer to the practice of prospecting for clients through the telephone directory. Cityland, believing that the same is an effective and cost-efficient method of finding clients, requires all its marketing specialists to make cold calls. The number of cold calls depends on the sales generated by each: more sales mean less cold calls. Likewise, in order to assess cold calls made by the sales staff, as well as to determine the results thereof, Cityland requires the submission of daily progress reports on the same.

On October 22, 1991, Cityland issued a written reprimand to petitioner for his failure to submit cold call reports for September 10, October 1 and 10, 1991. This notwithstanding, petitioner again failed to submit cold call reports for September 2, 5, 8, 10, 11, 12, 15 17, 18, 19, 20, 22, and 28, as well as for October 6, 8, 9, 10, 12, 13 and 14, 1992. Petitioner was required to explain his inaction, with a warning that further non-compliance would result in his termination from the company. In a reply dated October 18, 1992, petitioner claimed that the same was an honest omission brought about by his concentration on other aspects of his job. Cityland found said excuse inadequate and, on November 9, 1992, suspended him for three days, with a similar warning.

Notwithstanding the aforesaid suspension and warning, petitioner again failed to submit cold call reports for February 5, 6, 8, 10 and 12, 1993. He was verbally reminded to submit the same and was even given up to February 17, 1993 to do so. Instead of complying with said directive, petitioner, on February 16, 1993, wrote a note, “TO HELL WITH COLD CALLS! WHO CARES?” and exhibited the same to his

co-employees. To worsen matters, he left the same lying on his desk where everyone could see it.

On February 23, 1993, petitioner received a memorandum requiring him to explain why Cityland should not make good its previous warning for his failure to submit cold call reports, as well as for issuing the written statement aforementioned. On February 24, 1993, he sent a letter-reply alleging that his failure to submit cold call reports should not be deemed as gross insubordination. He denied any knowledge of the damaging statement, "TO HELL WITH COLD CALLS!"

Finding petitioner guilty of gross insubordination, Cityland served a notice of dismissal upon him on February 26, 1993. Aggrieved by such dismissal, petitioner filed a complaint against Cityland for illegal dismissal, illegal deduction, underpayment, overtime and rest day pay, damages and attorney's fees. The labor arbiter dismissed the petition for lack of merit. On appeal, the same was affirmed by the NLRC; hence the present recourse.

Petitioner raises the following issues:

1. WHETHER OR NOT RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN NOT FINDING THAT PETITIONER WAS ILLEGALLY DISMISSED;

2. WHETHER OR NOT RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONER IS NOT ENTITLED TO SALARY DIFFERENTIALS, BACKWAGES, SEPARATION PAY, OVERTIME PAY, REST DAY PAY, UNPAID COMMISSIONS, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

The petition lacks merit.

To constitute a valid dismissal from employment, two requisites must be met, namely: (1) the employee must be afforded due process, and (2) the dismissal must be for a valid cause.[1] In the case at bar, petitioner contends that his termination was illegal on both

substantive and procedural aspects. It is his submission that the failure to submit a few cold calls does not qualify as willful disobedience, as, in his experience, cold calls are one of the least effective means of soliciting sales. He thus asserts that a couple of cold call reports need not be accorded such tremendous significance as to warrant his dismissal for failure to submit them on time.

These arguments are specious. Petitioner loses sight of the fact that "(e)xcept as provided for, or limited by, special laws, an employer is free to regulate, according to his discretion and judgment, all aspects of employment."[2] Employers may, thus, make reasonable rules and regulations for the government of their employees, and when employees, with knowledge of an established rule, enter the service, the rule becomes a part of the contract of employment.[3] It is also generally recognized that company policies and regulations, unless shown to be grossly oppressive or contrary to law, are generally valid and binding on the parties and must be complied with.[4] "Corollarily, an employee may be validly dismissed for violation of a reasonable company rule or regulation adopted for the conduct of the company business. An employer cannot rationally be expected to retain the employment of a person whose lack of regard for his employer's rules has so plainly and completely been bared."[5] Petitioner's continued infraction of company policy requiring cold call reports, as evidenced by the 28 instances of non-submission of aforesaid reports, justifies his dismissal. He cannot be allowed to arrogate unto himself the privilege of setting company policy on the effectivity of solicitation methods. To do so would be to sanction oppression and the self-destruction of the employer.

Moreover, petitioner made it worse for himself when he wrote the statement, "TO HELL WITH COLD CALLS! WHO CARES?" When required to explain, he merely denied any knowledge of the same. Cityland, on the other hand, submitted the affidavits of his co-employees attesting to his authorship of the same. Petitioner's only defense is denial. The rule, however, is that denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence which has no weight in law.[6] More telling, petitioner, while making much capital out of his lack of opportunity to confront the affiants, never, in all of his pleadings, categorically denied writing the

same. He only denied knowledge of the allegation that he issued such a statement.

Based on the foregoing, we find petitioner guilty of willful disobedience. Willful disobedience requires the concurrence of at least two requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[7]

Petitioner's failure to comply with Cityland's policy of requiring cold call reports is clearly willful, given the 28 instances of his failure to do so, despite a previous reprimand and suspension. More than that, his written statement shows his open defiance and disobedience to lawful rules and regulations of the company. Likewise, said company policy of requiring cold calls and the concomitant reports thereon is clearly reasonable and lawful, sufficiently known to petitioner, and in connection with the duties which he had been engaged to discharge. There is, thus, just cause for his dismissal.

On the procedural aspect, petitioner claims that he was denied due process. Well settled is the dictum that the twin requirements of notice and hearing constitute the elements of due process in the dismissal of employees. Thus, the employer must furnish the employee with two written notices before the termination of employment can be effected. The first apprises the employee of the particular acts or omissions for which his dismissal is sought; the second informs him of the employer's decision to dismiss him.[8]

In the case at bar, petitioner was notified of the charges against him in a memorandum dated February 19, 1993, which he received on February 23, 1993. He submitted a letter-reply thereto on February 24, 1993, wherein he asked that his failure to submit cold call reports be not interpreted as gross insubordination.[9] He was given notice of his termination on February 26, 1993. This chronology of events clearly show that petitioner was served with the required written notices.

Nonetheless, petitioner contends that he has not been given the benefit of an effective hearing. He alleges that he was not adequately informed of the results of the investigation conducted by the company, nor was he able to confront the affiants who attested to his writing the statement, "TO HELL WITH COLD CALLS!" While we have held that in dismissing employees, the employee must be afforded ample opportunity to be heard, "ample opportunity" connoting every kind of assistance that management must afford the employee to enable him to prepare adequately for his defense,[10] it is also true that the requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing be conducted.[11] Petitioner had an opportunity to be heard as he submitted a letter-reply to the charge. He, however, adduced no other evidence on his behalf. In fact, he admitted his failure to submit cold call reports, praying that the same be not considered as gross insubordination. As held by this Court in Bernardo vs. NLRC,[12] there is no necessity for a formal hearing where an employee admits responsibility for an alleged misconduct. As to the written statement, "TO HELL WITH COLD CALLS!," petitioner merely denied knowledge of the same. He failed to submit controverting evidence thereon although the memorandum of February 19, 1993, clearly charged that he had shown said statement to several sales personnel. Denials are weak forms of defenses, particularly when they are not substantiated by clear and convincing evidence. Given the foregoing, we hold that petitioner's constitutional right to due process has not been violated.

As regards the second issue, petitioner contends that he is entitled to amounts illegally deducted from his commissions, to unpaid overtime, rest day and holiday premiums, to moral and exemplary damages, as well as attorney's fees and costs.

Petitioner anchors his claim for illegal deductions of commissions on Cityland's formula for determining commissions, viz.:

> COMMISSIONS = Credits Earned (CE) less CUMULATIVE NEGATIVE (CN) less AMOUNTS RECEIVED (AR)

= (CE - CN) – AR where CE = Monthly Sales Volume x Commission Rate (CR)

AR = Monthly Compensation/.75
CR = 4.5%

Under said formula, an increase in salary would entail an increase in AR, thus diminishing the amount of commissions that petitioner would receive. Petitioner construes the same as violative of the non-diminution of benefits clause embodied in the wage orders applicable to petitioner. Inasmuch as Cityland has paid petitioner commissions based on a higher AR each time there has been a wage increase, the difference between the original AR and the subsequent ARs have been viewed by petitioner as illegal deductions, to wit:

Wage Order	Date of Effectivity	Amount of Increase	Corresponding Increase in Quota (AR)		Duration Up To 2/26/93	Total
RA 6640	1/1/88	P265.75	P353.33	x	62 mos.	P21,906.46
RA 6727	7/1/89	780.75	1,040.00	x	44 mos.	45,760.00
NCR 01	11/1/90	785.75	1,046.67	x	28 mos.	29,306.76
NCR 01-A						
		Grand Total				P96,973.22[13]

Petitioner even goes as far as to claim that with the use of Cityland's formula, he is indebted to the company in the amount of P1,410.00, illustrated as follows:

Petitioner's Basic Salary = P4,230.00
= 4,230.00/.75
AR. = 5,640.00
Petitioner's Basic Salary - AR= P1,410.00

While it is true that an increase in salary would cause an increase in AR, with the same being deducted from credits earned, thus lessening his commissions, the fact remains that petitioner still receives his basic salary without deductions. Petitioner's argument that he is indebted to respondent by P1,410.00 is fallacious as his basic salary remains the same and he continues to receive the same, regardless of

his collections. The failure to attain a CE equivalent to the AR of P5,640.00 only means that the difference would be credited to his CN for the next month. Clearly, the purpose of the same is to encourage sales personnel to accelerate their sales in order for them to earn commissions.

Additionally, there is no law which requires employers to pay commissions, and when they do so, as stated in the letter-opinion of the Department of Labor and Employment dated February 19, 1993, "there is no law which prescribes a method for computing commissions. The determination of the amount of commissions is the result of collective bargaining negotiations, individual employment contracts or established employer practice."[14] Since the formula for the computation of commissions was presented to and accepted by petitioner, such prescribed formula is in order. As to the allegation that said formula diminishes the benefits being received by petitioner whenever there is a wage increase, it must be noted that his commissions are not meant to be in a fixed amount. In fact, there was no assurance that he would receive any commission at all. Non-diminution of benefits, as applied here, merely means that the company may not remove the privilege of sales personnel to earn a commission, not that they are entitled to a fixed amount thereof.

With respect to petitioner's claims for overtime pay, rest day pay and holiday premiums, Cityland maintains that Saturday and Sunday call-ins were voluntary activities on the part of sales personnel who wanted to realize more sales and thereby earn more commissions. It is their contention that sales personnel were clamoring for the "privilege" to attend Saturday and Sunday call-ins, as well as to entertain walk-in clients at project sites during weekends, that Cityland had to stagger the schedule of sales employees to give everyone a chance to do so. Put simultaneously, Cityland claims that the same were optional because call-ins and walk-ins were not scheduled every weekend. If there really were a clamor on the part of sales staff to "voluntarily" work on weekends, so much so that Cityland needed to schedule them, how come no call-ins or walk-ins were scheduled on some weekends?

In addition to the above, the labor arbiter and the NLRC sanctioned respondent's practice of offsetting rest day or holiday work with

equivalent time on regular workdays on the ground that the same is authorized by Department Order 21, Series of 1990. As correctly pointed out by petitioner, said D.O. was misapplied in this case. The D.O. involves the shortening of the workweek from six days to five days but with prolonged hours on those five days. Under this scheme, non-payment of overtime premiums was allowed in exchange for longer weekends for employees. In the instant case, petitioner's workweek was never compressed. Instead, he claims payment for work over and above his normal 5½ days of work in a week. Applying by analogy the principle that overtime cannot be offset by undertime, to allow off-setting would prejudice the worker. He would be deprived of the additional pay for the rest day work he has rendered and which is utilized to offset his equivalent time off on regular workdays. To allow Cityland to do so would be to circumvent the law on payment of premiums for rest they day and holiday work.

Notwithstanding the foregoing discussion, petitioner failed to show his entitlement to overtime and rest day pay due, to the lack of sufficient evidence as to the number of days and hours when he rendered overtime and rest day work. Entitlement to overtime pay must first be established by proof that said overtime work was actually performed, before an employee may avail of said benefit.[15] To support his allegations, petitioner submitted in evidence minutes of meetings wherein he was assigned to work on weekends and holidays at Cityland's housing projects. Suffice it to say that said minutes do not prove that petitioner actually worked on said dates. It is a basic rule in evidence that each party must prove his affirmative allegations.[16] This petitioner failed to do. He explains his failure to submit more concrete evidence as being due to the decision rendered by the labor arbiter without resolving his motion for the production and inspection of documents in the control of Cityland. Petitioner conveniently forgets that on January 27, 1994, he agreed to submit the case for decision based on the records available to the labor arbiter. This amounted to an abandonment of above-said motion, which was then pending resolution.

Lastly, with the finding that petitioner's dismissal was for a just and valid cause, his claims for moral and exemplary damages, as well as attorney's fees, must fail.

WHEREFORE, premises considered, the assailed Resolution is **AFFIRMED** and this Petition is hereby **DISMISSED** for lack of merit. Costs against petitioner.

SO ORDERED.

Narvasa, *C.J.*, Melo, Francisco, and Panganiban, *JJ.*, concur.

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[1] Pizza Hut/Progressive Development Corporation vs. NLRC, 252 SCRA 531(1996).
[2] Manila Electric Co. vs. NLRC, 263 SCRA 531 (1996).
[3] AZUCENA, THE LABOR CODE WITH COMMENTS AND CASES (1992), p. 19, citing 31 Am Jur., Section 12, p. 389.
[4] Tanala vs. NLRC, 252 SCRA 315 (1996).
[5] Philippine-Singapore Transport Services, Inc. vs. NLRC, G.R. No. 95449, August 18, 1997, citing Makati Haberdashery, Inc. vs. NLRC, 79 SCRA 448 (1989).
[6] De Guzman vs. CA, 260 SCRA 389 (1996).
[7] Stolt-Nielsen Marine Service (Phils.), Inc. vs. NLRC, 258 SCRA 643 (1996).
[8] Pono vs. NLRC, G.R. No. 118860, July 17, 1997.
[9] Reply to Memo dated February 19, 1993, Rollo, p. 283.
[10] Mirano, et. al. vs. NLRC, G.R. No. 121112, March 19, 1997.
[11] Pono vs. NLRC, supra, note 8.
[12] 255 SCRA 108 (1996).
[13] Rollo, p. 27.
[14] Rollo, p. 299.
[15] Cagampan vs. NLRC, 195 SCRA 533 (1991).
[16] Jimenez vs. NLRC, 256 SCRA 84 (1996).
