

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**LOADSTAR SHIPPING CO., INC. and
TEODORO G. BERNARDINO,**
Petitioners,

-versus-

**G.R. No. 138956
August 7, 2003**

ROMEO MESANO,
Respondent.

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D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Employers should respect and protect the rights of their employees, which include the right to labor.^[1] Towards this end, due process must be observed in dismissing an employee because it affects not only his position but also his means of livelihood.^[2]

At bar is a petition for review on certiorari seeking to nullify the Decision^[3] dated March 11, 1999 and Resolution^[4] dated June 4, 1999 of the Court of Appeals which set aside the decision dated November 11, 1996 of the National Labor Relations Commission (NLRC) and ordered petitioner Loadstar Shipping Company, Inc. to pay private

respondent Romeo Mesano his separation pay (in lieu of reinstatement), full backwages and other monetary benefits.

The facts as borne by the records are:

Loadstar Shipping Co., Inc., petitioner, is a domestic corporation engaged in the operation of shipping vessels, which included the M/V Beaver.

On November 4, 1980, Romeo R. Mesano, respondent, was employed by petitioner as a seaman. Subsequently, he occupied the position of bosun/boatswin in charge of the care and custody of the entire vessel as well as its accessories and cargo.

On January 22, 1995, respondent brought out from the vessel M/V Beaver a colored television set and a telescope. This incident prompted petitioner company to conduct an investigation.

Immediately, respondent voluntarily submitted his written explanation asking for forgiveness. He explained that he intended to have the television repaired. However, when it could not be done, he returned the unit to the vessel.

On February 24, 1995, respondent asked from petitioner a disembarking clearance from his accountabilities. But what petitioner handed to respondent was a disembarkation order dated March 1, 1995 terminating his services effective February 28, 1995.

Feeling aggrieved, respondent filed with the Labor Arbiter a complaint for illegal dismissal against petitioner and Teodoro G. Bernardino, its president and/or general manager.

On April 23, 1996, the Labor Arbiter rendered a decision dismissing respondent's complaint for lack of merit.

On appeal, the NLRC affirmed the Arbiter's decision.

Consequently, on February 17, 1997, respondent filed with this Court a petition for certiorari under Rule 65 of the 1997 Rules of Procedure, as amended. In a Resolution dated November 25, 1998, this Court referred the petition to the Court of Appeals.

In due course, the Court of Appeals issued the assailed Decision^[5] dated March 11, 1999, setting aside the decision of the NLRC, thus:

“We find the Petition replete with merits.

“Section 1 of Rule XIV of the Implementation Regulations provides that no worker shall be dismissed except for a just or authorized cause provided by law and after due process.

“The two facets of this legal provision are: (a) the legality of the act of dismissal, that is dismissal under the grounds provided for under Article 283 (now 282) of the New Labor Code; and (b) legality in manner of dismissal (Shoemart Inc. vs. NLRC, G.R. No. 74225, August 11, 1989).

“Anent the first issue, the law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer’s decision to dismiss him. (Section 13, BP 130; Section 2, Rule XIV, Book V, Rules and Regulations of the Labor Code, as amended). Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory, in the absence of which any judgment reached by management is void and inexistent.

“In the instant case, no written charge prior to the dismissal was ever furnished the petitioner. Respondent Loadstar tries to answer this by reasoning that, considering that petitioner submitted to respondent his handwritten explanation in which he categorically admitted his bringing down of the subject television set without prior permission from the company, then no notice was required.

“We cannot accept this contention. The law is clear. The High Court has repeatedly held that the two notice-requirement is mandatory. Moreover, the twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal (Century Textile Mills, Inc., et al. vs. NLRC, G.R. No. 77859, May 25, 1988).

“In the present case, there is no showing that petitioner was ever given ample opportunity to be heard between the time after his handwritten explanation dated February 15, 1995 was submitted and his disembarkation order dated March 1, 1995. Respondent Loadstar insists that petitioner’s handwritten explanation is a categorical admission of his guilt. We are not persuaded. A cursory reading of the said letter would show that, petitioner was merely explaining his actions, but did not categorically admit having stolen the item. In any case, the fact remains that no hearing was made to hear petitioner’s side. Respondent Loadstar virtually made an assumption on the basis of petitioner’s letter alone that considering the time and the manner in which the taking was made, then petitioner is guilty of stealing and, therefore, should be dismissed. No notice was ever given to inform petitioner that his dismissal is being sought and by which he could be apprised on the full consequence of his acts. And neither was a hearing conducted, in order that he be given an opportunity to refute the accusations leveled against him. ‘Ample opportunity’ is meant every kind of assistance that management must accord to the employee to enable him to prepare adequately for his defense (Diosdado Duffy vs. NLRC and Central Azucarera, G.R. No. 84193, February 15, 1990).

“In this case, although the interregnum between the date of the notice of dismissal and the date of effectivity ostensibly provided the petitioner time within which to defend himself, there really was no hearing conducted, and hence no opportunity to defend himself.

“In a long line of decisions, the Supreme Court has ruled that not even consultations or conferences can be substituted for the

actual observance of notice and hearing and neither is a notice of preventive suspension and investigation in relation thereto (Pepsi Cola Bottling Co. vs. NLRC, supra; Norman de Vera vs. NLRC and Bank of the Philippine Islands, Inc., G.R. No. 93070, August 9, 1991).

“With more reason than must we condemn its virtual absence in the case at bar.

“Anent the second issue, private respondent Loadstar posits that petitioner’s act of taking the television without permission constitutes gross misconduct and a breach of trust of the confidence reposed on him which justified his dismissal.

“x x x

“In the case at bar, we note that the intention of the employee to steal the item has not been fully established considering the absence of any investigation and hearing conducted. Hence, considering that petitioner had no derogatory record in the 15 years he was in service with respondent Loadstar, it is therefore arbitrary to make an immediate conclusion on his guilt. More importantly, we agree with petitioner that the penalty of dismissal was too harsh. In Gold City Integrated Port Services, Inc. vs. NLRC, G.R. No. 86000, September 21, 1990, it was ruled that there must be reasonable proportionality between the offense and the penalty imposed therefor.

“Considering that the television, a minimal item at that, was immediately restored and that petitioner immediately forwarded his letter of apology with explanation, and considering further that it was his first time to commit the charge leveled against him, a penalty of suspension could have just sufficed.

“Viewing from the foregoing, the dismissal of the employee was clearly illegal.

“With the finding that the petitioner was illegally dismissed, the order for reinstatement with full backwages should follow as a

matter of right. In this case, however, considering the strained relations between the parties, the Court deemed it best to award separation pay in lieu of reinstatement. Other monetary claims, rights and benefits, as prayed for and as granted by law and the shipping company, should also be awarded.

“X X X

“WHEREFORE, the decision of public respondent National Labor Relations Commission is hereby SET ASIDE. Private respondent Loadstar Shipping Co. is hereby ordered to pay petitioner separation pay in lieu of reinstatement, as well as full backwages from the time his compensation was withheld from him up to the finality of this decision, plus other monetary benefits which may be due petitioner.

“SO ORDERED.”

On April 5, 1999, petitioner filed a motion for reconsideration but was denied.

In this petition for review on certiorari, petitioner alleged that respondent was not deprived of his right to due process considering that he was given the opportunity to present his side through his written explanation wherein he admitted his guilt and pleaded for forgiveness. Petitioner further claimed that respondent failed to live up to the standard of responsibility and honesty called for by his position. Thus, gauged by any moral standard, his dismissal is not tainted with illegality.

A rule deeply embedded in our jurisprudence is that “(i)n order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes expressed in Art. 282 of the Labor Code; and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself.^[6]

Simply put, the twin requirements of due process, substantive and procedural, must be complied with before a dismissal can be considered valid.

In Cruz vs. NLRC,^[7] we held:

“The law requires that an employee sought to be dismissed must be served two written notices before termination of his employment. The first notice is to apprise the employee of the particular acts or omissions by reason of which his dismissal has been decided upon; and the second notice is to inform the employee of the employer’s decision to dismiss him. Failure to comply with the requirement of two notices makes the dismissal illegal. The procedure is mandatory. Non-observance thereof renders the dismissal of an employee illegal and void.”

The mandatory first notice is undeniably absent in the case at bar. Prior to respondent’s termination from the service, he was neither apprised of the particular acts for which his dismissal is sought, nor was he directed to explain why he should not be dismissed for taking out from the vessel company property.

While it is true that respondent voluntarily submitted his written explanation, nonetheless, he did not expressly acknowledge that he committed any offense. In fact, being in charge of the company’s vessel and its accessories and cargo, his intention in taking out the TV set was to have it repaired.

Even granting that by submitting his written explanation, he was considered to have been notified of the charge, still there was no investigation or hearing conducted wherein he could have presented evidence and adequately defended himself.

As gleaned from the foregoing circumstances, the Court of Appeals correctly ruled that respondent was deprived of his right to due process and, therefore, his termination from the service is illegal.

WHEREFORE, the petition is **DENIED**. The Decision dated March 11, 1999 and Resolution dated June 4, 1999 of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

Puno, Panganiban, Corona and Carpio Morales, JJ., concur.

[1] Malayang Samahan ng mga Manggagawa sa M. Greenfield (MSMG-UWP) et al. vs. Ramos, G.R. No. 113907, February 28, 2000, 326 SCRA 428, 462, citing Cariño vs. NLRC, G.R. No. 91086, May 8, 1990, 185 SCRA 177.

[2] Id.

[3] Rollo at 34-42.

[4] Id. at 44-45.

[5] Penned by Justice Eloy R. Bello, Jr. and concurred in by Justices Salome A. Montoya and Ruben T. Reyes.

[6] Ala Mode Garments, Inc. vs. NLRC, G.R. No. 122165, February 17, 1997, 268 SCRA 497, 505, citing Oania vs. NLRC, G.R. Nos. 97162-64, June 1, 1995, 244 SCRA 668.

[7] G.R. No. 116384, February 7, 2000, 324 SCRA 770.