SUPREME COURT
FIRST DIVISION

MANILA ELECTRIC COMPANY,
***Petitioner*,**

-versus-

G.R. No. 83751
September 29, 1989

NATIONAL LABOR RELATIONS COMMISSION & RAMON L. MERIS,
***Respondents*.**
x----------x

D E C I S I O N

GRIÑO-AQUINO, *J.*:

This petition for *certiorari* seeks to annul the decision dated May 18, 1988, of the National Labor Relations Commission ordering the petitioner, Manila Electric Company (Meralco), to reinstate the complainant, Ramon L. Meris, as a probationary employee for a period of five (5) months with backwages from March 23, 1987 to April 17, 1987.

In a complaint filed by respondent Ramon L. Meris against the petitioner on March 30, 1987, the former charged the latter with illegal dismissal and prayed for reinstatement with full backwages. Petitioner's defense to the charge was that "the termination of the complainant's probationary employment is sanctioned by Section 6,

Rule 1, Book VI of the Rules and Regulations implementing the Labor Code, which provides that "the service of an employee who has been engaged on probationary basis may be terminated when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer."

The facts of the case as found by the Labor Arbiter and adopted by the NLRC are as follows:

> "The complainant was hired by the respondent company as a probationary employee under a probationary Employment Agreement for a period of five (5) months starting November 17, 1986, wherein he was assigned as a messenger and given a monthly salary of P1,130.00 and an allowance of P580.00. His work among others, was to file pleadings in court, serve summons for execution, verify or follow-up cases in court and other related matters under the legal department. That on March 23, 1987 (after 4 months),[*] he received a memorandum dated March 19, 1987, from the personnel Administration Division advising him of the termination of his probationary employment effective March 23, 1987.
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> "From the foregoing facts just stated, it behooves upon us to determine whether the dismissal of complainant was for a just and valid cause or not.
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> "Respondent avers that the work activities of complainant were monitored by his supervisors namely Guillermo F. Estabaya and Alfredo J. Fernandez, who 'observed and determined that complainant could not meet the standard performance required and explained to him;' 'that respondents' complaint in Civil Case No. 54326, entitled 'Manila Electric Company vs. Victoria Manufacturing Corp.,' was ordered dismissed with prejudice due to the failure of complainant to pay the sheriff's fee which was one of his functions;' 'that there were instances of late delivery, service and filing of urgent and vital documents outside company premises; he frequently did not follow what was instructed for him to accomplish; his performance was way below what was required of him; notwithstanding efforts and instructions to make him work according to the level of

efficiency required of him, he failed or ignored the same;' that there were instances that he failed to report back at the close of the office hours after performing his official tasks; that he does not follow instructions; that he usually takes taxis instead of jeepneys or buses at company expenses; and that he does not cooperate with his co-employees with an attitude of answering back his superiors.

"It is apparent from the records that before complainant was terminated he was never furnished with a written notice containing a statement of the causes for termination and was likewise denied ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires, thus — depriving complainant his right to due process, which makes the dismissal illegal. While it may be true that complainant was hired on a probationary basis, yet — we cannot deny him the right to security of tenure which may be terminated only for a just cause or when authorized by existing laws or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him upon his engagement.

"As regards, the claim of respondent that complainant usually comes late and that he often fails to return after an official outside trip particularly on December 15 & 24, 1986; January 2; 5; 17 (Sat) 19; 20; 26; and 29; February 12; 16; 18; 24; 26 and 27; and March 2, 1987, respondent failed to present complainant's daily attendance records allegedly because, 'The daily attendance pads during the period November 20, 1986 to March 23, 1987 were not being retained as those are not being utilized for payroll preparation; hence these were disposed of every end of the payroll period.' The beet proof to establish that complainant's daily attendance leaves much to be desired would have been his daily time records, but respondent was not able to submit these despite the issuance of a subpoena duces tecum to them upon the request of complainant himself, which to our mind militates against respondent's position that complainant often comes late in the morning. What was submitted among others, were the time sheets and overtime notices of complainant." (pp. 162-164, Rollo.) (Emphasis ours.).

On December 28, 1987, the labor arbiter rendered judgment, disposing as follows:

> 'WHEREFORE, premises considered, respondent Manila Electric Company, with main office and postal address at Lopez Building, Meralco Center, Ortigas Avenue, Pasig, Metro Manila, is hereby ORDERED to REINSTATE complainant RAMON L. MERIS to his former position as a regular employee with all the benefits and privileges appertaining thereto and to PAY him the amount of TEN THOUSAND TWO HUNDRED SIXTY PESOS (P10,260.00) by way of six (6) months backwages without any qualification nor deduction." (pp. 129-130, Rollo; Emphasis supplied.)

This was affirmed on appeal by Meralco to the NLRC, but with the modification that "appellant is ordered to reinstate complainant as a probationary employee for a period of five (5) months with backwages from March 23, 1987 to April 17, 1987."

The basis for the termination of private respondent's probationary employment was his inability to meet the standard of performance required of him. Thus, the legality or illegality of the dismissal hinges on whether or not that ground existed.

In finding that private respondent was illegally dismissed, the NLRC, in its decision of May 18, 1988, said:

> "It goes without saying that it behooves upon appellant to exercise and give more freedom to probationary employees new as they are in the company and unaware of the nuances of their work and work habits. They need more attention. And they should, within the period of probation, be made aware of whatever mistakes they commit in the performance of their duties. The supervisor should personally confront them if they commit mistakes. And discipline them when warranted. It cannot be gainsaid that for the period of five (5)[**] months, appellee as probationary employee could not cope up with his work. If he could not, then the dismissal could have come earlier and respondent should not have waited for five (5)

> months to terminate his services. As it is everybody, except appellee, was informed of his evaluation." (p. 167, Rollo.)

On the other hand, the Office of the Solicitor General in its comment stated as follows:

> "Private respondent was dismissed without prior hearing on March 23, 1986, close to a month prior to the expiration of his probationary term on April 17, 1986. He was dismissed on the ground that he failed to meet the required standard performance. As to what was the standard of performance which private respondent was required to meet, petitioner has not disclosed. Nor had petitioner advised private respondent of such required standard of performance at the time it hired private respondent.
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> "Even a probationary employee is covered by the security of tenure guarantee of the Constitution (Euro-Lima, Phil., Inc. vs. NLRC, 156 SCRA 78). A probationary employee cannot be dismissed before the end of his probationary employment on the basis alone of a sweeping statement that he failed to meet the required standard performance. He is entitled to know what standards of performance he did not meet before he could be dismissed prior to the expiration of his contract (Biboso vs. Victorias Milling, 76 SCRA 250). (pp. 235-236, Rollo.)

The petitioner assails these findings of the labor arbiter and the NLRC. It contends that the dismissal of the private respondent was not illegal because it was done during his probationary employment period after he was found unfit for the position of messenger that he was occupying in the petitioner's legal department. Petitioner invokes Art. 280 of the Labor Code which provides that:

> "Probationary Employment — Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee

in accordance with reasonable standards made known by the employer to the employee at the time of his engagement."

We find merit in the petition. The very findings of fact of the labor arbiter and respondent NLRC reveal that the private respondent's superiors in the petitioner's legal department where he was employed as a messenger, were dissatisfied with his performance. He was neglectful of his duties. He frequently "played hookey," taking the rest of the day off and not returning to the office after having performed his errands.

The NLRC gravely abused its discretion in holding that the dismissal of the private respondent after a probationary period of five (5) months instead of six (6), as provided in Art. 280 of the Labor Code, was illegal, and in ordering his reinstatement as probationary employee for a period of five (5) months, or a total of nine (9) months of probationary employment. The provision of Art. 280 that "probationary employment shall not exceed six (6) months" means that the probationary employee may be dismissed for cause at any time before the expiration of six (6) months after hiring. If after working for less than six (6) months, he is found to be unfit for the job, he can be dismissed. But if he continues to be employed longer than six (6) months, he ceases to be a probationary employee and becomes a regular or permanent employee.

The records show that private respondent's superiors did exert reasonable efforts to instruct him and apprise him of "the standard of performance required and explained to him" but "he frequently did not follow what was instructed for him to accomplish." "Notwithstanding efforts and instructions his performance was very below what was required of him." He was also uncooperative toward his co-employees; and disrespectful to his superiors. Under the circumstances, we find there was sufficient cause for terminating his probationary employment after only four (4) months.

However, as he was never apprised of the charges against him before he was actually discharged, and no administrative investigation was undertaken so he could have presented his side and defended himself, the company is liable to indemnify him for damages for its breach of the legal procedure. In Wenphil vs. NLRC, G.R. No. 80587, Feb. 8,

1989, we ruled that said damages shall be in the sum of P1,000.00.

WHEREFORE, the Petition for *Certiorari* is granted. The Decision of the National Labor Relations Commission ordering the reinstatement of the private respondent as a probationary employee for a period of five (5) months with backwages is hereby set aside. However, the petitioner is ordered to indemnify the private respondent for damages in the sum of P1,000.00. No costs.

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, *JJ.*, concur.

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[*] Words in parentheses supplied.
[**] Four months only.
