SUPREME COURT
FIRST DIVISION

FEDERICO NUEZ,
***Petitioner*,**

-versus-

G.R. No. 107574
December 28, 1994

NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER MANUEL ASUNCION, PHILIPPINE OVERSEAS TELECOMMUNICATIONS CORPORATION (PHILCOMSAT), HONORIO POBLADOR, RAMON NIETO, FRED AUJERO and ROMEO VALENCIA,
***Respondents*.**
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D E C I S I O N

BELLOSILLO, *J.*:

After nineteen years of service to private respondent company, the Philippine Overseas Telecommunications Corporation (PHILCOMSAT), petitioner Federico Nuez found himself dismissed from his job for his refusal to heed an order of a ranking company official. He is now before us contending that his inaction did not constitute willful disobedience and, in any case, his dismissal from

the service is a penalty grossly disproportionate to the charge of willful disobedience in view of his length of service. He seeks reinstatement.

Petitioner Nuez was a driver of private respondent PHILCOMSAT since 1 May 1970. On 25 November 1988 he was assigned to its station in Baras, Antipolo, Rizal, from seven-thirty in the morning to three-thirty in the afternoon. At one-thirty that afternoon, Engr. Jeremias Sevilla, the officer in charge and the highest ranking official of the station, asked Nuez to drive the employees to the Makati head office to collect their profit shares. Nuez declined saying that he had an important personal appointment right after office hours. At two-thirty that same afternoon, he also declined a similar order given on the phone by his vehicle supervisor, Pedro Sibal, reasoning that "Ayaw kong magmaneho dahil may bibilhin ako sa Lagundi. Kung gusto mo yong 'loyalist' ang magmaneho."

In his memorandum of 28 November 1988, Station Manager Ramon Bisuna required Nuez to explain within seventy-two hours why he should not be administratively dealt with for disobeying an order of their most senior officer on 25 November 1988. In his written reply dated 1 December 1988, Nuez mentioned a personal appointment in justification for his refusal to render "overtime" service and that "ferrying employees was not a kind of emergency that warrants (the) charge of disobedience."

Taking into consideration the reports of Engr. Sevilla and Supervisor Sibal as well as the letter of petitioner Nuez, AVP for Transport and Maintenance Fredelino Aujero referred the matter to Vice President for Administration Ramon V. Nieto for appropriate action and invited his attention to the Code of Disciplinary Action of the company providing that "refusal to obey any lawful order or instruction of a superior is classified as insubordination, an extremely serious offense and its first infraction calls for dismissal of the erring employee." The report of Aujero pointed out that Nuez could have obeyed the directive and still have enough time to attend to his appointment because the order was given him two hours before his tour of duty ended and, moreover, he was seen playing billiards after office hours. Vice President Nieto then issued a memorandum to Nuez terminating his employment effective 26 December 1988 for insubordination.

In his letter for reconsideration dated 1 January 1989, Nuez explained to Vice President Nieto that after failing to get a ride to Lagundi, he went with the company coaster at four-thirty in the afternoon and then proceeded to TMC to play billiards when the person he wanted to see at Lagundi had already left.

On 6 March 1989, Nuez filed this suit for illegal dismissal, indemnity pay, moral and exemplary damages and attorney's fees.

On 29 January 1990, Labor Arbiter Manuel P. Asuncion dismissed the complaint for lack of merit but awarded Nuez a "monetary consideration" in an amount equivalent to his one-half month salary for every year of service. On appeal, the National Labor Relations Commission affirmed on 15 June 1992 the decision of the Labor Arbiter but limited the financial assistance to Nuez in an amount equivalent to three months basic pay only.

In this extraordinary recourse for certiorari, Nuez seeks to set aside the decision of the NLRC and prays for reinstatement with full back wages from the date of dismissal to actual reinstatement without loss of seniority rights and other benefits, an award of P50,000 in moral damages and P50,000 in exemplary damages, attorney's fees of 10% of the total monetary award and other equitable reliefs. Nuez avers that NLRC committed grave abuse of discretion in failing to consider the evidence on record and in relying only on the memorandum of PHILCOMSAT; in finding that there was just cause for dismissal; and, in affirming his dismissal which is too harsh and disproportionate a penalty for a minor charge considering his 19 years of good service.

It is undisputed that Nuez deliberately refused to obey the directive of officer-in-charge Engr. Sevilla and his supervisor Sibal. The argument that Engr. Sevilla is not the immediate superior of Nuez is not an excuse not only because Sibal, the other officer who reiterated the same directive, was his own supervisor but more importantly because it is not required that the officer giving the order must be the immediate superior of the employee, it being sufficient that the officer is the alter ego of the employer with regard to the order and the order relates to the duty of the employee. In Family Planning Organization

of the Philippines, Inc. vs. National Labor Relations Commission,[1] we said —

> In order that the willful disobedience by the employee of the orders, regulations or instructions of the employer may constitute a just cause for terminating his employment, said orders, regulations, or instructions must be: (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) in connection with the duties which the employee has been engaged to discharge.
>
> Petitioner claims that the absence of an emergency situation when the alleged infraction was committed would not warrant his dismissal, considering that he is a recipient of two citations for exemplary service during his 19-year stint with the company and that not one of the employees supposedly adversely affected complained.

We are not persuaded. In San Miguel Corporation vs. Ubaldo,[2] we acknowledged the discretion of the employer to regulate all aspects of employment as well as the corresponding obligation of the workers to obey company rules and regulations. Deliberate disregard or disobedience of the rules cannot be countenanced and any justification for the violation is deemed inconsequential. In fact, this is one ground the Labor Code provides for termination of employment since an employer cannot be compelled to continue retaining a worker found guilty of maliciously committing acts detrimental to its interests. A contrary rule would render a mockery of the regulations the employees are required to observe.

The existence of an emergency situation is irrelevant to the charge of willful disobedience; an opposite principle would allow a worker to shield himself under his self-designed concept of “non-emergency situation” to deliberately defy the directive of the employer. Neither is the resulting damage vital. The heart of the charge is the crooked and anarchic attitude of the employee towards his employer. Damage aggravates the charge but its absence does not mitigate nor negate the employee’s liability. The fact that a replacement driver was able to perform the task could neither alter the gravity of the charge, this responsibility being personal to the perpetrator. The length of service

rendered by the employee is also inconsequential for it does not lessen a bit the rebellious temper of the employee object of the charge. We thus find no grave abuse of discretion in the finding of the NLRC that there is a just ground for the termination of petitioner from the services.

As regards the procedural due process, it is provided in Art. 277, par. (b), of the Labor Code that —

> Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

Particularly, the Implementing Rules and Regulations of the Labor Code provides that —

> Sec. 1. Security of tenure and due process. — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.
>
> Sec. 2. Notice of Dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal.

> Sec. 5. Answer and hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.
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> Sec. 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.
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> Sec. 7. Right to contest dismissal. — Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.
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> Sec. 11. Report on dismissal. — The employer shall submit a monthly report to the Regional office having jurisdiction over the place of work all dismissal effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the dates of commencement and termination of employment, the positions last held by them and such other information as may be required by the Ministry for policy guidance and statistical purposes.[3]

We also held in Manggagawa ng Komunikasyon sa Pilipinas vs. National Labor Relations Commission:[4]

> What the law requires, as held in De Leon vs. NLRC (G.R. No. L-52056, October 30, 1980, 100 SCRA 691), cited by petitioners, is for the employer to inform the employee of the specific charges against him and to hear his side or defenses. This does not however mean a full adversarial proceeding. Litigants may be heard thru: (1) pleadings, written explanations, position papers, memorandum; (2) oral arguments. In both instances, the employer plays an active role — he must provide the employee the opportunity to present his side and answer the charges, in substantial compliance with due process. Actual adversarial proceeding becomes necessary only for clarification or when there is a need to propound searching

> questions to unclear witnesses. This is a procedural right which the employee must, however, ask for it is not an inherent right, and summary proceedings may be conducted. This is to correct the common but mistaken perception that procedural due process entails lengthy oral arguments. Hearing in administrative proceedings and before quasi-judicial agencies are neither oratorical contests nor debating skirmishes where cross examination skills are displayed. Non-verbal devices such as written explanations, affidavits, position papers or other pleadings can establish just as clearly and concisely aggrieved parties' predicament or defense. What is essential is ample opportunity to be heard, meaning, every kind of assistance that management must accord the employee to prepare adequately for his defense.
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> In the case at bar, petitioner was given adequate opportunity under the circumstances to answer the charge. His written explanation was taken into consideration in arriving at the decision to dismiss him. His demand for a hearing before his employer is now too late. First, he should have insisted on a hearing in the initial proceedings conducted by the company, and second, his written explanation admitted the complained inaction thereby rendering unnecessary any hearing thereon. Since the defense Nuez interposed was in the nature of a justifying circumstance, the burden shifted to him to prove that his inaction was warranted. This, Nuez failed to overthrow not only before the company but also before the Labor Arbiter and NLRC.

Nuez now seeks refuge in Sec. 8, Art. VII, of the existing Collective Bargaining Agreement which provides —

> No employee shall be deemed dismissed, suspended, demoted or reprimanded without any just, lawful and reasonable cause and previous due process. Both the employee concerned and the Union shall be informed in writing of the charges against the former who shall be allowed union representation during the investigation. If no disciplinary action is taken by the company within fifteen (15) days from and after the case has been

> reviewed by the VP concerned, the case shall be considered closed.[5]

The CBA provision imposes on PHILCOMSAT three (3) non-statutory responsibilities, namely, to inform the union in writing of the charge, to allow the employee union representation, and for its Vice-President to take action on the charge within fifteen days otherwise the case shall be deemed closed. The testimony of union lady President Frances Cariño discloses that the union was served the show cause memorandum addressed to Nuez the day after Nuez received his and that the union helped edit the explanation submitted by Nuez to PHILCOMSAT. There was no occasion for PHILCOMSAT to disallow, hence to violate, the right of Nuez to union representation for the reason that neither Nuez nor the union asked for an investigation where that right may be demanded. The allegation of Nuez that the AVP/VP concerned acted on the report of Station Manager Bisuna 12 days from receipt thereof[6] proves compliance with the third responsibility. The fact that under the company rules, the AVP/VP concerned must decide the case within 48 hours from receipt of the papers from the Personnel Manager is inconsequential for two reasons: first, this provision does not impose a sanction for failure to meet the 48 hour deadline (unlike in the aforequoted CBA provision) and it cannot be fairly presumed that the charge prescribes after the 48th hour; and second, the rule presupposes the transmittal of papers from the Personnel Manager who does not appear to have participated in the proceedings below.

There is no ground, statutory or contractual, for the claim of Nuez that he should have been required to present his side before Aujero and Bisuna in the course of the making of their reports. This is not required by law nor by the aforequoted CBA provision.

As if grasping for straws, Nuez hurls a malicious allegation that NLRC "relied only on the memorandum of respondents." Strangely, what he quotes in support of this accusation is not the said memorandum but the findings of fact of the Labor Arbiter which the NLRC reaffirmed. In any case, however, the discretion of a quasi-judicial body, like the Labor Arbiter or the NLRC, to decide a case one way or another is broad enough to justify his or its adoption of the arguments put forth by one of the parties, as long as these are legally tenable and

supported by facts on record. Since in almost all cases only one of the contending parties prevails and usually the tribunal adopts the theory of the prevailing party, it is not safe to postulate that the evidence of the losing party is never considered.

There is also no basis to disregard the letter report of Sibal containing the quotations in the vernacular for being hearsay. Although Sibal was not presented by PHILCOMSAT nothing prevented Nuez from summoning him to scrutinize the veracity of the report. If he was able to present Station Manager Bisuna as a hostile witness, there is no reason why he could not do the same to Sibal. Moreover, not only was the Sibal report not categorically denied by Nuez, but worse, he even used it in evidence against PHILCOMSAT.[7] Notwithstanding the foregoing, we need only reiterate our ruling in Rabago vs. NLRC[8] —

> The argument that the affidavit is hearsay because the affiants were not presented for cross-examination is not persuasive because the rules of evidence are not strictly observed in proceedings before administrative bodies like the NLRC, where decisions may be reached on the basis of position papers only.
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> The same could be said of the logbook reports of the security guard which are being assailed as hearsay.

Without admitting culpability, Nuez asserts that the penalty of dismissal is too harsh to warrant his dismissal, citing the cases of Philippine Airlines, Inc. vs. Philippine Airlines Employees Association (PALEA),[9] decided under the pre-Labor Code laws and jurisprudence, and Catalan vs. Genilo.[10]

The factual circumstances attending these two cases are different from what transpired in the case at bench. In the PAL case, Fidel Gotangco, charged with theft of company property, was ordered reinstated by the Court not only because this was his first offense in his 17 years of service and in the absence of damage to the company but also because of having been "under preventive suspension to date." More revealing in the said decision is the incertitude of the Court whether the facts did constitute the charge so much so that we considered the situation as "too harsh an appraisal to view it as constituting a theft." The Catalan case where petitioners therein were

charged with violation of the company rule against "Drinking in the Company Premises or Coming to Work Under the Influence of Alcohol," is similar to the PAL case aforecited. There, we sustained the observation of the Solicitor General that "the actual violation of the company rule or regulation was not committed." In the case at bar, the charge of willful disobedience is clearly established, hence, the dismissal of petitioner was inevitable.

We held in Aguilar vs. NLRC[11] that —

> Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two (2) requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude." 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 (Gold City Integrated Port Services vs. NLRC, 89 SCRA 811 [1990]).

We agree with the NLRC that the acts of herein complainant in defiantly disobeying the rules of the company even after investigation, shows her cavalier attitude which leaves the management no other recourse but to terminate her services. To condone such conduct will certainly erode the discipline that an employer would uniformly enforce so that it can expect compliance with said rules and obligations by its other employees. Otherwise the rule necessary and proper for the operation of its business would be rendered ineffectual (Soco vs. Mercantile Corporation of Davao, et al., 148 SCRA 526 [1987]). An employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interests (Colgate Palmolive Phils., Inc. vs. Ople, et al., 163 SCRA 323 [1988]).

As regards monetary awards given petitioner, we have no reason to deviate from our disposition in Aguilar vs. NLRC, supra, thus —

> With regard to the award of financial assistance to petitioner, We find that the same is not justified. Petitioner's willful

> disobedience of the orders of her employer constitutes serious misconduct. As We held in the case of Del Monte Phil., Inc. vs. NLRC (188 SCRA 370 [1990]), "henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character." Hence, the employer may not be required to give the petitioner separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

In fine, petitioner's employment with PHILCOMSAT for 19 years cannot save him in the same way as the 23 years of Aguilar with her employer.

WHEREFORE, the assailed Decision is **AFFIRMED** except as regards the award of financial assistance which is ordered deleted.

SO ORDERED.

Padilla, *J.*, Davide, Jr., Quiason and Kapunan, *JJ.*, concur.

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[1] G.R. No. 75907, 23 March 1992.
[2] G.R. No. 92859, 21 February 1993, 218 SCRA 293.
[3] Rule XIV, Book V.
[4] G.R. No. 90964, 10 February 1992, 206 SCRA 109, 114-115.
[5] Rollo, p. 20.
[6] Rollo, p. 21.
[7] Rollo, p. 12.
[8] G.R. No. 82868, 5 August 1991, 200 SCRA 158.
[9] No. L-24626, 28 June 1974, 57 SCRA 489.
[10] G.R. No. 62391, 8 June 1992, 209 SCRA 544.
[11] G.R. No. 100878, 2 December 1992, 216 SCRA 207.