

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ORIENTAL MINDORO ELECTRIC
COOPERATIVE, INC.,**
Petitioner,

-versus-

**G.R. No. 111905
July 31, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION and OSCAR NITURAL,**
Respondents.

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D E C I S I O N

REGALADO, J.:

Through this Special Civil Action for *Certiorari*, petitioner seeks the nullification of the May 20, 1993 Decision and the July 28, 1993 resolution of respondent National Labor Relations Commission (NLRC) in NLRC Case No. RB-IV-2-2646-89 for having been issued with grave abuse of discretion. Said Decision ordered petitioners Oriental Mindoro Electric Cooperative, Inc. (ORMECO), among others, to reinstate private respondent Oscar Nitural to his former or equivalent position without loss of seniority rights and with full back wages not exceeding three years. The resolution of July 28, 1993 was issued to correct a typographical error in the amount of the award to

private respondent by a nunc pro tunc amendment thereof and, also, to dismiss ORMECO's appeal to the Secretary of Labor.

On February 20, 1989, private respondent filed before the Arbitration Branch, Regional Office No. IV, NLRC, a complaint against ORMECO for illegal suspension, non-payment of half of his 13th month pay and non-payment of his salary differential pay.^[1] After due submission of the position papers and other pleadings of the parties, the labor arbiter rendered a decision on July 10, 1990 to the effect that —

Considering the strained relationship between the complainant and the respondents exacerbated by the instant complaint, Ormeco, Inc. is hereby directed to pay complainant separation pay computed at one month pay for every year of service plus 1/2 of the 13th month pay still unpaid. Further, 10% of all the amounts due to complainant is hereby awarded as attorney's fees.^[2]

Both parties appealed said decision to the third Division of the NLRC. On May 20, 1993, the NLRC promulgated its decision with the following disposition:

WHEREFORE, premises considered, the appeal of respondents is dismissed for failure to file the required bond, even as it really lacks merit, and the appeal of the complainant is hereby granted insofar as his prayer for reinstatement is concerned. Consequently, a respondent is hereby directed to reinstate complainant to his former or equivalent position without loss of seniority rights and with full backwages not to exceed three years, computed as follows:

From: September 20, 1988 — September 20, 1991

Latest salary: P1,775.00 per month

P1,775 x 36 months = P36,900.00

The grant of separation pay is hereby deleted.

Except for the foregoing Modifications the rest of the Decision appealed from is hereby affirmed.^[3]

On July 28, 1993, a resolution was issued by the NLRC stating, inter alia, that a typographical error had been committed when it indicated in the decision that the product of P1,775.00 multiplied by 36 is P36,900.00, and clarifying that it should instead be P63,900.00.^[4]

Petitioner submits the following allegations: Private respondent Nitural was an employee of Oriental Mindoro Electrical Cooperative II, wherein he was subjected to several disciplinary actions, to wit:

- April 25, 1985 — Suspended for two months for non-remittance of collections;
- April 22, 1986 — Apprehended for misuse of cooperative vehicle;
- April 4, 1987 — Reported by security guard as drunk and throwing stones at the ORMECO building; and
- July 20, 1987 — Suspended for drunkenness at work.^[5]

On May 16, 1988, Ormeco II merged with Ormeco I, resulting in the existence of herein petitioner ORMECO. Prior to his formal absorption by ORMECO, Nitural was instructed to report to the engineering department of the corporation at Calapan, Oriental Mindoro. He reported for work for several days but after August 7, 1988, he rarely reported for duty until his suspension on September 20, 1993.^[6]

Previous to these dates, on July 22, 1988 to be precise, a complaint against private respondent was filed by one of ORMECO's customers for unauthorized solicitation of P250.00 allegedly for the purchase of service drop wire. Asked to explain by the general manager of petitioner, Nitural said that the customer himself asked him to buy the service drop wire. Unconvinced, the general manager asked him to put his explanation in writing but Nitural failed to do so.^[7]

After August 7, 1988, Nitural was frequently absent from work without permission from ORMECO. Petitioner was thus compelled to temporarily suspend him on September 20, 1988 due to habitual

absenteeism and absence without official leave. On February 4, 1989, Nitural was directed to appear before the Board of Directors of ORMECO to explain his side but he informed said body that he would rather see them before the Department of Labor and Employment. Again on February 25, 1989, Nitural was asked to appear before the same body but he failed to show up on said date.^[8]

On the other hand, Nitural alleges that from September, 1981, he started working as a service driver in Ormeco II. On September 20, 1988, he received from his employer a letter of indefinite suspension for alleged absence without leave from August 15 to September 20, 1988. He maintains that he was sick at that time, hence his inability to report for work, and he submitted a medical certificate as evidence thereof. Nitural claims that his indefinite suspension from work amounted to a constructive dismissal from work, thus he was denied due process. He further claims that in 1986, labor inspectors who came to the company discovered instance of underpayment of wages. To cover up such violation, the employees were required to sign waivers of their right to claim the salary differentials. As a result of his decision to pursue his claim for salary differentials before the Regional Office in Quezon City,^[9] he was illegally dismissed.^[10]

Private respondent argues that the present petition was filed out of time because prior to its filing, a writ of execution ordering his reinstatement was already issued by the labor arbiter on August 11, 1993. On September 14, 1993, the labor arbiter likewise directed the branch manager of the Philippine National Bank, Calapan Branch, Oriental Mindoro to release from the time deposit of ORMECO the amount of P71,266.25 as monetary award to Nitural and the amount of P800.00 as execution fees in the name of the cashier, NLRC, Manila.

Citing *Philippine Overseas Drilling and Oil Development vs. Ministry of Labor, et al.*,^[11] private respondent further argues that a petition for *certiorari* is considered to have been filed belatedly if made after the lower tribunal had already issued a writ of execution. This is not exactly correct. The petition may precisely have been filed to question the very issuance of the writ of execution as well as the decision and/or resolution on which it was based. Nonetheless, the present petition must fail for the reasons hereunder stated.

Firstly, petitioner failed to reasonably seek relief from the decision of the NLRC in the proper forum and within the prescribed period. The questioned decision was promulgated on May 20, 1993.^[12] On June 6, 1993, Nitural filed a motion for recomputation and to include his 13th month pay therein.^[13] On July 3, 1993, petitioner filed a notice of appeal to the Secretary of Labor^[14] and, on July 9, 1993, a motion for extension of time to file an appeal memorandum.^[15] On July 28, 1993, a resolution was issued by the NLRC denying the recomputation sought by Nitural for being filed out of time and likewise denying the notice of appeal with extension of time filed by ORMECO for being “untenable, as this is not provided for by our existing law on the matter.”^[16]

Obviously, ORMECO’s attempt to appeal the NLRC’s decision and resolution to the Secretary of Labor was erroneous. Parenthetically, Article 223 of the Labor Code formerly granted an aggrieved party the remedy of appeal from a decision of the NLRC to the Secretary of Labor.^[17] Presidential Decree No. 1391, however, amended said Article 223 and abolished appeals to the Secretary of Labor “to insure speedy labor justice.”^[18] Since petitioner’s appeal to the secretary of Labor was not authorized in law, it did not toll or affect the period for seeking relief from the decision and resolution of the NLRC through a petition for *certiorari*. In fact, petitioner did not even file a motion for reconsideration with the NLRC for purposes of such a petition.

Secondly, petitioner even failed to file the requisite appeal bond in its appeal to the NLRC from the decision of the labor arbiter. The NLRC decision, dated May 20, 1993, states that “at the outset we wish to point out that indeed the respondent failed to file the required appeal bond and this makes its appeal outright dismissible.”^[19] Indeed, Article 223 of the Labor Code provides that —

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is understood by the provision that an appeal by the employer may be perfected “only upon the posting of a cash or surety bond.” The word “only” makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer’s appeal may be perfected. That requirement is intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees’ just and lawful claims.^[20]

Considering, however, that the current policy is not to strictly follow technical rules but rather to take into account the spirit and intention of the Labor Code,^[21] it would be prudent for us to look into the merits of the case, especially since petitioner disputes the allegation that private respondent was illegally dismissed. It contends that Nitural was merely placed under suspension, hence there was not severance of employer-employee relationship. We disagree.

A portion of the letter sent to Nitural by ORMECO Administrative Manager Danilo G. Pesigan reads:

Ang iyong pinuno ay nagmumungkahi na pansamantala ka munang patigilin sa iyong trabaho hanggat hindi natatapos and pagsisiyasat sa iyong bagong kaso.

Sa dahilang may panibago na namang reklamo sa iyo, ipinasiya ng ating tanggapan ang pansamantalang pagtigil sa iyong trabaho habang ikaw ay walang matibay na katibayan na maipakikita upang matapos ang pagsisiyasat sa dati at ngayong bagong reklamo sa iyo.^[22] (Emphases supplied)

This clearly shows that Nitural was placed under indefinite suspension which is tantamount to constructive dismissal. Petitioner may call it by another name but it is nevertheless constructive dismissal.

ORMECO points out that, as earlier narrated, Nitural was instructed by the former on May 16, 1988 to report to the main office in Calapan, Oriental Mindoro. Although he reported for duty for a few days,

thereafter he seldom reported for work until he was eventually suspended. Notwithstanding the fact that Nitural sent radio messages on August 22 and September 16, 1988, informing the office of his absences, he never bothered to verify whether or not his absences were approved or granted.^[23]

The inquiry then is whether or not the requirement for the lawful dismissal of an employee by his employer was followed. Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are twofold: the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause^[24] but the rudimentary requirements of due process — notice and hearing — must also be observed before an employee may be dismissed.^[25] One cannot go without the other for, otherwise, the termination would, in the eyes of the law, be illegal.^[26]

Petitioner maintains that Nitural was dismissed due to habitual absenteeism and absence without leave. The latter although admitting that he was absent during the period involved, presented as proof that he was sick at the time of his absence a medical certificate issued by Municipal Health Officer Aristeo V. Baldos of Pinamalayan, Oriental Mindoro stating that Nitural was suffering from neuro-circulatory asthenia and was advised to rest and take medication for at least one month.^[27]

Petitioner did not question the validity of this medical certification, much less its authenticity. Hence for purposes of this case, it can be presumed that Nitural was really sick at that time. It must also be noted that Nitural sent two notices to his employer regarding his inability to report for work. Dismissal of an employee due to his prolonged absence with leave by reason of illness duly established by the presentation of a medical certificate is not justified.^[28]

It is also clear that procedural due process was not followed. Although it is the management's prerogative to transfer, demote, discipline and even to dismiss an employee to protect its business,^[29] Article 278 of the Labor Code requires that the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination. It 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.

Although ORMECO did send a notice of indefinite suspension, which was tantamount to a termination, Nitural was not afforded the right to a hearing. From the actuations of ORMECO, it would appear that the notices sent to Nitural for an audience with the board of directors was but a token gesture on its part to give its actions a semblance of regularity and legality. For, while Nitural was suspended effective September 20, 1988, it was only on February 4, 1989, or after more than four months from the sending of the notice of indefinite suspension, that ORMECO directed Nitural to appear before its board of directors.

The Court can well understand the reluctance of ORMECO to reinstate private respondent. Nitural has not exactly been the model employee, and had even previously been suspended or warned for various infractions. In fact, in its petition, ORMECO stated that it does “not disavow its dislike for the private respondent.” It points out Nitural’s “record of being the subject of various disciplinary actions, and his open and deliberate defiance of petitioner’s orders and directives.”^[30] Both the labor arbiter and the NLRC, however, noted that the previous infractions were condoned or the corresponding penalties had been imposed therefor. Furthermore, the assailed decision and resolution of respondent NLRC had actually attained finality.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**, and the impugned Decision and Resolution of public respondent National Relations Commission are hereby **AFFIRMED**.

SO ORDERED.

Narvasa, C.J., Puno, Mendoza and Francisco, JJ., concur.

[1] Original Record, 9.

[2] Ibid., 58.

[3] Ibid., 85-86.

[4] Ibid., 104.

- [5] Petition, 3; Rollo, 4.
- [6] Ibid., 4; id., 5.
- [7] Ibid., 4; id., 5.
- [8] Ibid., 5-6; id., 6-7.
- [9] In Re: Regular Inspection at Oriental Mindoro Electric Cooperative, Inc., Pinamalayan, Oriental Mindoro, R1-63-86, Regional Office No. IV.
- [10] Original Record, 9.
- [11] G.R. No. 55703, November 27, 1986, 146 SCRA 79.
- [12] Original Record, 79.
- [13] Ibid., 91.
- [14] Ibid., 93.
- [15] Ibid., 96.
- [16] Ibid., 103-104.
- [17] Pure Foods Corporation vs. National Labor Relations Commission, et al., G.R. No. 78591, March 21, 1989, 171 SCRA 415.
- [18] Pearl S. Buck Foundation, Inc. vs. National Labor Relations Commission, et al., G.R. No. 80728, February 21, 1990, 182 SCRA 446.
- [19] Original Record, 84.
- [20] Viron Garments Manufacturing Co., Inc., et al. vs. National Labor Relations Commission, et al., G.R. No. 97357, March 18, 1992, 207 SCRA 339.
- [21] Article 221, Labor Code. See Cabalan Pastulan Negrito Labor Association (CAPANELA), et al. vs. National Labor Relations Commission, et al., G.R. No. 106108 February 23, 1995.
- [22] Original Record, 5.
- [23] Original Record, 49.
- [24] Articles 279, 281, 282-284, Labor Code.
- [25] Article 277 (b), Labor Code.
- [26] San Miguel Corporation vs. National Relations Commission, et al., G.R. No. 78277, May 12, 1989, 173 SCRA 314.
- [27] Original Record, 7.
- [28] Atlas Consolidated Mining and Development Corporation vs. National Labor Relations Commission, et al., G.R. No. 75751, October 17, 1990, 190 SCRA 505.
- [29] International Harvester Macleod, Inc. vs. Intermediate Appellate Court, et al., G.R. No. 73287, May 18, 1987, 149 SCRA 641.
- [30] Petition, 14; Rollo, 15.