SUPREME COURT
FIRST DIVISION

ELISEO B. TAN,
***Petitioner*,**

-versus-

G.R. No. 128290
November 24, 1998

NATIONAL LABOR RELATIONS COMMISSION, UNITED LABORATORIES, INC., JULIO SISON, FRANCISCO PAMINTUAN, TAN WAN LIAN and DELFIN SAMSON,
***Respondents*.**
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D E C I S I O N

PANGANIBAN, *J.*:

The employer has the prerogative to transfer an employee when the interest of the business so requires. When the transfer is not unreasonable, discriminatory, or attended by a demotion in rank or a diminution in pay, such transfer cannot be deemed a constructive dismissal. Furthermore, sanctions must be imposed upon an employer for failure to observe the requirements of due process in effecting a lawful dismissal.

Statement of the Case

These principles are applied by this Court in resolving this petition for *certiorari* under Rule 65 of the Rules of Court assailing the October 8, 1996 Decision[1] of the National Labor Relations Commission[2] (NLRC) in NLRC Case Nos. RAB-05-00063-91 and RAB 05-00474-92, which disposed as follows:

> "WHEREFORE, the decision appealed from is hereby AFFIRMED. Let the instant appeal be, as it is, hereby DISMISSED for lack of merit."[3]

Petitioner also challenges the NLRC Resolution dated November 29, 1996 denying reconsideration. The assailed Decision and Resolution affirmed Executive Labor Arbiter Vito C. Bose's March 29, 1996 Decision,[4] which dismissed the complaint for lack of merit.

The Antecedent Facts

The facts, as found by Respondent NLRC, are as follows:

> "Records disclose that complainant was a sales supervisor of respondent Unilab who was assigned to cover the Bicol Region accounts of respondent company. As such, he reported to and was under the direct supervision of Julio Sison, the Area Sales Manager and one of the respondents in this case. Records further disclose that in July 1990, complainant Tan upon recommendation of respondent Sison, was chosen to attend a six-month management training course which respondent Unilab sponsored for selected employees. The said training course was held in Manila, and since complainant would be away for some time, his covered route of assignment (Bicol Region) was assigned to other salesmen then stationed in Bicol.
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> "Six (6) months thereafter, and complainant having completed the aforesaid management training course, he returned to Bicol and reported for work. It would appear, however, that Unilab's salesman assigned in Sorsogon, Ely Ruiz went on AWOL and Bert Agripa the other salesman designated to take over the Sorsogon account could not cope with such additional work

causing the sales in Sorsogon to plunge. Hence, complainant, fresh from his management training course, was temporarily assigned in Sorsogon, presumably to arrest its deteriorating sales and revitalize its unfavorable market condition in the province.

"Complainant accepted the assignment and proceeded to Sorsogon to service the company's accounts. However, after a while, he complained that his temporary assignment thereat did not match his experience, training and capabilities. Shortly thereafter, complainant went on leave of absence for several days for the month of February and March 1991 and then starting 16 March 1991, stopped reporting for work altogether. Complainant instead, filed the instant complaint for constructive dismissal alleging, in the main, that his Sorsogon assignment resulted in the removal of his usual duties and responsibilities as sales supervisor. He charged that his assignment to the province of Sorsogon and the corresponding withdrawal of his supervisory functions were the handiwork of respondent Julio Sison, whom complainant claimed, had suspected him of spearheading a protest letter against Sison.

"A similar complaint was later filed by herein complainant before this Commission. This time however, one charging respondent Unilab in the main of illegal dismissal. Both cases were consolidated and . . . heard by the Executive Labor Arbiter a quo, who, after hearing the case on its merits, rendered a decision in this case in favor of herein respondent company.

"On appeal, complainant insists that the Executive Labor Arbiter below committed serious errors in his findings of facts and abused his discretion in rendering the appealed decision. In essence, he reiterates that his Sorsogon assignment resulted in the removal of his usual duties and responsibilities as Sales Supervisor as well as his contention that his assignment to the province of Sorsogon and the corresponding withdrawal of his supervisory functions were all part of a grand scheme plotted against him by individual respondents, more particularly Julio Sison, due to his union activities in forming and strengthening their ranks and that of Unilab's rank and file employees.

"It should be stated at the outset that this case had been heard below in an open and extensive trial on its merits. Certainly, under these circumstances, the findings of the Labor Arbiter cannot be simply disregarded in the absence of a clear and convincing evidence that he abused his discretion and seriously erred in the appreciation of the evidence presented before him during the proceedings. On the contrary, the same carry great weight and respect if found supported by facts and law.

"The Executive Labor Arbiter below, in rejecting complainant's accusations in this case traversed:

> 'We are not unaware of complainant's accusation that the Sorsogon assignment was respondent Sison's way of humiliating and harassing complainant out of vengeance for the letter-complaint against respondent Sison which was allegedly masterminded by complainant. But we cannot give credence to the charge. In the first place, it was not only complainant who signed the aforesaid letter. Almost all of the Bicol salesmen were involved therein hence, there is no palpable reason for respondent Sison to focus his ire on complainant alone, if revenge was indeed in respondent Sison's mind. In the second place, respondent Sison himself had recommended complainant to undergo the UMDP training in Manila, a coveted privilege he would have not logically conferred upon the alleged subject of his wrath. Thirdly, Unilab had already expressed its willingness to discuss with complainant the possibility of assignment in another area, a concession it would not have extended to an employee it intended to harass. Lastly, and more importantly, we noted that during the whole period of almost one year that complainant refused to report for work and to service Sorsogon as directed, Unilab religiously paid him his monthly salary and allowed complainant to retain possession of the company vehicle, a very unlikely situation if Unilab had truly intended to harass complainant. Surely, all of the foregoing circumstances negated very strongly complainant s claim of harassment.

'We have observed that at the first instance when complainant requested for a reconsideration of the decision to assign him temporarily to Sorsogon, he did not even mention the allegation that the same diminished his functions and responsibilities. Instead he lengthily dwelt on his own impression that such assignment did not 'match my experience, training, and capabilities', as he was allegedly used to 'handling big accounts'. To us, this indicated that complainant's principal reason for refusing his Sorsogon assignment was that the same, in his mind, appeared too small for his stature and that the fact that the company nonetheless fielded him to such small assignment might have hurt his ego. However, this does not appeal to us as a valid consideration especially so that the company precisely needed his experience, training, and capabilities to rehabilitate its flagging market in Sorsogon. We believe that when the survival of a part of the company is at stake, its welfare should take precedence over personal interest. As a senior salesman, complainant should have been the first to understand the predicament of the company instead of bicker over the smallness of the accounts. Moreover, the Sorsogon assignment was only temporary, a remedial measure that was to be implemented pending the hiring and training of a new salesman to be assigned to said province. Being just a temporary arrangement, and considering the financial boost complainant's experience and service [could] lend to the company insofar as Sorsogon was concerned, we really cannot see any acceptable reason why complainant should intensely oppose the assignment.

'What is evident from the above is that complainant's assignment to Sorsogon did not take away from him any of his previous responsibilities. He retained his rank, and was designated to perform in Sorsogon the same functions as he always had while assigned in Naga. Neither can it be argued that he suffered a diminution in pay because his incentives, as before, were based on the sales performance of the whole Bicol region and not

> mainly on his Sorsogon accounts. Upon the other hand, it has been satisfactorily established herein that Unilab needed complainant in Sorsogon to recover its lost accounts in the area. This appeared to us to be a perfectly lawful and valid reason for complainant' s temporary transfer to that province. Consequently, we cannot be persuaded to think that complainant's Sorsogon assignment constituted constructive dismissal."[5]

Public Respondent's Ruling

The NLRC, in affirming the Labor Arbiter's Decision, ruled as follows:

> "The above findings find support from the records and law in issue. There is no cogent reason for us to disturb the same. Complainant failed to sufficiently establish his accusations during the arbitral proceedings as well as in this appeal. On the contrary, the records show that the protest letter referred to by complainant Tan took place in May 1990, and which admittedly were patched up as Julio Sison had already shaken hands in peace with the employees involved. On the other hand the fact that it was Sison himself who recommended him for a six-month management training course in Manila and even assisted him in the preparation of his thesis, belie his bare assertions. But what particularly convinced us regarding the unreasonableness of complainant's accusation of harassment and grand plot was the way Unilab accommodated him during the time he refused to report for work, as directed, to Sorsogon. Certainly, with the stubborn and unjustified refusal of complainant to comply with respondent Unilab's instruction to report for work in Sorsogon, he had catered the justification for his termination. Yet, Unilab did not grab this opportunity as it would have, had it been true that the company had so maneuvered and plotted to ease complainant out of his job. Instead, Unilab, for about a year that complainant failed to work, tolerantly and generously continued to pay him his monthly salary. Not only did complainant receive his regular pay without rendering work, Unilab even allowed him to keep the company vehicle otherwise intended for work-related purposes only. On top of it all, as additional concession, Unilab

even offered to discuss with complainant the possibility of assigning him to another area if he really did not want to work in Sorsogon (Exhibit "7"). The foregoing obviously are simply inconsistent with complainant's claim of harassment and a plot to ease him out his employment. To us, there is nothing illegal in his temporary transfer to Sorsogon. Unilab was encountering problems in the said province because the salesman handling it went on AWOL. Complaint appeared to be the most logical and appropriate choice to service Sorsogon and with his newly acquired management training skills he was expected to resuscitate Unilab's sales in the province. Such, we find, is a valid exercise of management prerogative in furtherance of the company's business interests.

"Along this same vein, we cannot agree with complainant's claim that simultaneously with his transfer to Sorsogon, he was stripped of his supervisory functions. i.e., to receive and evaluate weekly and monthly reports of the Bicol salesmen; to approve the latter s expense reports, as well as their entertainment and traveling expenses; to audit their accountabilities; and to plan, assign and review their territorial assignments. There is simply no evidence on the records to support these claims of complainant. The records are bereft of competent evidence to prove that complainant actually performed and exercised the functions he mentioned. On the contrary, the disclaimers of two (2) Bicol Salesmen, namely Carlito Santos and Rudy Yumul, attesting that they submit[ted] all their 'reports such as weekly coverages, collections, expenses and competitive activities directly to Mr. Sison, who in turn, evaluate[d] my performance (Exhs. 54 and 55), negate complainants assertions. Moreover, the letter to the herein complainant from three Bicol salesmen (Joaquin Vallejo, Jose Zozobrado, and Rudy Yumul, Exh. 27) questioning his authority to ask them to submit to him their reports as "entirely new to us" simply is too thick to be brushed aside. Thus, between complainant's unsupported averments against the aforesaid statements of his colleagues, surely the latter, considering their preponderance and weight, there being nothing on records to even hint or suggest that they have been motivated by ill

feelings towards complainant must be given weight on its face value.

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"The position of complainant as Sales Supervisor is unmistakably infused with a certain degree of trust and confidence and unlike ordinary rank and file employees, there is a more strict code of conduct required of him, such that a single act reflecting breach thereof is enough reason to terminate his employment. Complainant in this case was guilty, not of one but of a litany of offenses each of which is descriptive of the incongruity of his attitude with the demands of his fiduciary functions."[6]

Undaunted petitioner filed a Motion for Reconsideration, which was denied for lack of Merit by the public respondent in its Resolution dated November 29, 1996.[7] Hence, this petition.[8]

The Issues

Petitioner raises the following issues:

"I. W[h]ether or not the transfer of assignment of petitioner from Naga City to Sorsogon without his consent is tantamount to constructive dismissal.

II. Whether or not the termination of employment of petitioner is illegal.

III. Whether or not petitioner is entitled to the reliefs prayed for in his two (2) complaints."[9]

The Court's Ruling

The petition is partly meritorious. We affirm the ruling of the NLRC that the dismissal of petitioner was for a valid cause, but we hold that his dismissal was effected without due process for which the employer must be sanctioned in accordance with prevailing jurisprudence.

Preliminary Matter: Scope of Review under Rule 65

At the outset, we emphasize that the jurisdiction of the Court in reviewing decisions of the NLRC under Rule 65 of the Rules of Court is limited to the issue of grave abuse of discretion.[10] A decision of the NLRC may be deemed tainted with grave abuse of discretion when said tribunal renders the same "in a capricious, whimsical, arbitrary or despotic manner."[11] It is settled that the Court is not duty-bound to delve into the accuracy of the NLRC's factual findings "in the absence of a clear showing that it is arbitrary and bereft of any rational basis."[12] The Court is not a trier of facts and, as a rule, it is not required to reevaluate the probative value of the evidence that was the basis for the decision on appeal.[13]

Since quasi-judicial agencies, such as the labor arbiter and the NLRC have acquired expertise in the exercise of their highly specialized jurisdiction, their factual findings are generally accorded respect and even finality when supported by substantial evidence.[14] Thus "the NLRC's decision, so long as it is not bereft of support from the records, deserves respect from the Court."[15]

First Issue: No Constructive Dismissal

The Court has held that constructive dismissal is "an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee."[16] On the other hand, we have also held that the transfer of an employee from one area of operation to another is a management prerogative and is not constitutive of constructive dismissal,[17] when the transfer is based on sound business judgment, unattended by demotion in rank or a diminution of pay or bad faith. Thus, in Philippine Japan Active Carbon Corp. vs. NLRC,[18] the Court ruled:

> "It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will

> function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal."

In the case bar, the claim of petitioner that he was constructively dismissed was based mainly on his allegations that, upon his transfer from the Bicol to the Sorsogon region of operation of respondent company,[19] he was (1) demoted from sales supervisor to sales representative, (2) made to suffer a diminution in pay,[20] and (3) harassed and humiliated.[21] Petitioner further maintains that such transfer was neither necessary[22] nor temporary.[23]

After careful scrutiny, the Court notes that the labor arbiter and then the NLRC have already ruled upon the foregoing factual contentions; and that their findings, which concur, are not tainted with arbitrariness or grave abuse of discretion, but are supported by substantial evidence — "that amount of relevant evidence which a reasonable mind might accept to be adequate in justifying a conclusion."[24]

Petitioner has not pointed to evidence on record — and neither have we found any — to substantiate his claim that his reassignment to Sorsogon was prompted by the malevolence or ill will of management. Indeed the minutes of the sales meeting dated January 5, 1991,[25] "show that such transfer was only temporary measure adopted by Unilab to augment its sales operation in Sorsogon, which had been adversely affected by the absence without leave of Cely Ruiz, the representative of the company in said province. To ensure the viability and profitability of its Sorsogon sales operation, the respondent company unmistakably had the prerogative to tap petitioner's skills, which were evident from his long years of service, as well as his attendance of several management seminars.

Petitioner cannot complain of constructive dismissal, just because his temporary transfer to Sorsogon as against his wishes and, in his view not commensurate to his self-worth or personal qualifications. "Certainly, the Court cannot accept the proposition that when an employee opposes his employer's decision to transfer him to another work place, there being no bad faith or underhanded motives on the part of either party, it is the employee's wishes that should be made to prevail."[26] We reiterate that on the basis of the qualifications, training and performance of the employee, the prerogative to determine the place or station where he or she is best qualified to serve the interests of the company belongs to the employer.

Unsubstantiated is petitioner's claim that his transfer to Sorsogon diminished his rank as sales supervisor, as well its corresponding pay. The Labor Arbiter noted:

> "What is evident from the above is that complainant's assignment to Sorsogon did not take away from him any of his previous responsibilities. He retained his rank, and was designated to perform in Sorsogon the same functions as he always had while assigned in Naga. Neither can it be argued that he suffered a diminution in pay because his incentives, as before, were based on the sales performance of the whole Bicol region and not mainly on his Sorsogon accounts. Upon the other hand, it has been satisfactorily established herein that Unilab needed complainant in Sorsogon to recover its lost accounts in the area. This appeared to us to be a perfectly lawful and valid reason for complainant's temporary transfer to that province. Consequently, we cannot be persuaded to think that complainant's Sorsogon assignment constituted constructive dismissal."[27]

Undoubtedly, Unilab cannot be deemed to have effected constructive dismissal in this case.

Second Issue: Validity of Dismissal

Petitioner insists that no valid cause attended his dismissal, arguing that the "alleged serious misconduct or OFFENSES upheld by public

respondents are nothing but vague, insubstantial and arbitrary charges."[28] We disagree.

The Court has held that as regards "cashiers, managers, supervisors, salesmen, or other personnel occupying positions of responsibility, the requirement that an employee should enjoy the trust and confidence of his employer may justify their termination."[29] Petitioner Eliseo Tan was not a mere rank-and-file employee; he was a senior salesman with the rank of sales supervisor. In the respondent company's business of manufacturing and marketing pharmaceutical products selling is a highly sensitive and important activity, because the company's profitability and survival as going concern depend on it. In this light petitioner undeniably occupied a sensitive position which required the employer's utmost trust and confidence.

In the instant case, petitioner was dismissed because of loss of trust and confidence. Specifically, the respondent company found him guilty of usurpation of authority, undermining the authority of a superior, illegal use of a concealed tape recorder in a meeting, failure to regularly report to the company depot, not following the rule on the wearing of uniform, and non-submission of periodic reports. The salient portion of the Notice of Termination reads:

> "In addition, although the Company, in a gesture of goodwill and good faith, allowed you to resume your usual duties and functions at Naga City, after you ha[d] stayed away from work for a year, and to continue to receive your pay, you have responded by continuously displaying a hostile and combative work attitude towards your superiors, your co-employees and the company in general.
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> "Needless to state, your actuations have led the company to lose its trust and confidence in you as a supervisor performing sensitive functions. Corollarily, your continued employment in the company is no longer feasible and clearly disruptive of normal operations, leaving the management no other alternative under the circumstances but to terminate your services."[30]

The Court sees no reason to reverse the NLRC's finding that petitioner was "guilty, not of one but of a litany of offenses each of which is descriptive of the incongruity of his attitude with the demands of his fiduciary functions."[31] Petitioner's position as sales supervisor in the respondent company demanded that he enjoy the trust and confidence of his employer, which he personally represented in dealing with clients. In addition, it must be stressed that the raison d'etre for his position was the generation of sales. His conduct was antithetical to his position, for he acted like a rogue with an ax to grind against his immediate superiors and in the process created confusion within the ranks of the Bicol salesmen. Indeed, an "employer has the right to dismiss an employee whose continuance in the service is inimical to the employer's interest."[32] The solicitor general aptly notes:

> "The events leading to the private respondent company's loss of trust and confidence with petitioner were duly substantiated by sufficient evidence. These can be traced partly to the petitioner's leaves of absence from his temporary work assignment in Sorsogon and his refusal to report for work starting March 16, 1991 until his recall to Naga City, despite the delicate task entrusted to him to revitalize the sales in Sorsogon. Worse, petitioner displayed a belligerent attitude even after respondent company had acceded to his request for recall from his work assignment in Naga City. In Naga City itself, petitioner pursued his grievances not in accordance with the established company grievance procedure but in a confrontational manner disruptive of company operations, thus fostering an adversarial atmosphere in the company.
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> "The barrage of complaints, protests, accusations and threats which petitioner had set loose not only against the private respondents Sison, and Tan Wan Lian but also against the Bicol salesmen negates petitioner's claim that his employment in the company is not inimical to the latter's interest. Their relations had become so adversarial that team work as an essential element of an effective and harmonious working relation was no longer feasible."[33]

Third Issue: Denial of Due Process

The Court takes this occasion to emphasize anew that for a dismissal to be validly effected, the twin requirements of due process — notice and hearing — must be observed. It was for this reason that we gave due course to this petition. In dismissing an employee, an employer has the burden of proving that the former worker has been served two notices: "(1) one to apprise him of the particular acts or omissions for which his dismissal is sought and (2) the other to inform him of his employee's decision to dismiss him. As to the requirement of a hearing, the essence of due process lies in an opportunity to be heard, and not always and indispensably in an actual hearing."[34]

In the case before us, the respondent company's memoranda addressed to Petitioner Eliseo Tan dated June 11, 1992,[35] June 15, 1992[36] and June 25, 1992[37] fell short of the required notice. None of these three memoranda indicated that petitioner's dismissal was being sought for the actions charged therein.

Furthermore, in dismissing petitioner, the respondent company disregarded its own rules for administrative disciplinary proceedings,[38] particularly the requirement that all cases involving the dismissal of an employee shall be subject to automatic review by the company's Employee Regulations Board (ERB) and ultimately to final action by its president.[39] The relevant part of the company rule reads:

> "The Board shall conduct the necessary fact-finding investigation of the charge/charges in coordination with the Human Resource Administrative Group. The employee concerned shall be given the opportunity to explain his side. The investigations, hearings and final decisions shall be properly documented and announced within a maximum period of one (1) month from the date the case is elevated to the Board and endorsed for final action by the Office of the President. It shall be the responsibility of the Chairman of the Employees Council to inform the Council body on the progress and decisions made by the Board on [an] individual case."[40]

In terminating petitioners employment, however, the respondent company merely relied on the charges contained in the aforementioned memoranda, thus ignoring its own rule requiring a fact-finding investigation, as well as the letters petitioner had sent to explain himself. Moreover, the Notice of Termination given to petitioner was signed only by Respondent Francisco Pamintuan, a regional vice president who did not even refer the dismissal to the ERB for automatic review or to the company president for final action.

It should be stressed that the respondent company is bound to observe its own procedural rules, which were put in place to protect the right of its employees to due process. Its failure to comply with such rules was indeed unfair and arbitrary. Although an employer may dismiss an employee for a just or valid cause, the constitutional right to due process remains sacrosanct.

Since petitioner's dismissal was for a just cause, which was sufficiently proven, jurisprudence requires that "the dismissal shall be upheld but the employer must be sanctioned for non-compliance with the requirements of or failure to observe due process."[41] In cases like this, the prevailing rule is that the employer should be required to indemnify the employee in the amount of P5,000 as indemnity.[42]

WHEREFORE, the Petition is **DISMISSED** and the assailed Resolution **AFFIRMED**, with the **MODIFICATION** that Respondent United Laboratories Inc. is hereby ORDERED to pay Petitioner Eliseo Tan indemnity in the amount of P5,000.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug and Quisumbing, *JJ*., concur.

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[1] Rollo, pp. 32-50.
[2] Third Division composed of Pres. Comm. Lourdes C. Javier, chairperson; Comm. Ireneo B. Bernardo, ponente; and Comm. Joaquin A. Tanodra, member.
[3] Decision of the NLRC, p. 19; Rollo, p. 50.
[4] Rollo, pp. 52-77.

[5] NLRC Decision, pp. 2-8; Rollo, pp. 33-39.
[6] Ibid., pp. 8-14; Rollo, pp. 39-45.
[7] Rollo, pp. 87-88.
[8] This case was deemed submitted for resolution on April 3, 1998 upon receipt by this Court of the Petitioner's Reply to Private Respondent's Memorandum.
[9] Memorandum for Petitioner, p. 8; Rollo, p. 309.
[10] Paguio Transport Corporation vs. National Labor Relations Commission and Wilfredo Melchor, GR No. 119500, p. 10, August 28, 1998.
[11] Philippine Advertising Counsellors, Inc. vs. NLRC, 263 SCRA 395, 401, October 18, 1996.
[12] Agao vs. National Labor Relations Commission (3rd Division), 280 SCRA 684, 691, October 16, 1997; per Hermosisima, Jr., J.
[13] Trade Union of the Philippines vs. Laguesma, 236 SCRA 586, 591, September 21, 1994.
[14] Agao vs. National Labor Relations Commission (3rd Division), supra, p. 691.
[15] Philippine Advertising Counselors, Inc. vs. NLRC, supra, p. 401; per Vitug, J.
[16] Escobin vs. NLRC, GR No. 118159, April 15, 1998; per Panganiban J.
[17] See Isabelo vs. National Labor Relations Commission (5th Division), 276 SCRA 141, July 24, 1997.
[18] 171 SCRA 164, 168, March 9, 1989; per Griño-Aquino, J.
[19] Memorandum for Petitioner, 8-13; Rollo, pp. 309-314.
[20] Ibid., pp. 18-21; Rollo, pp. 319-322.
[21] Ibid., pp. 15-17; Rollo, pp. 316-318.
[22] Ibid., pp. 13-15; Rollo, 314-316.
[23] Ibid., p. 17; Rollo, p. 318.
[24] Equitable Banking Corporation vs. NLRC, 273 SCRA 352, 373-374, June 13, 1997; per Vitug, J.
[25] Memorandum for Private Respondent, Annex A; Rollo, p. 458.
[26] Phil. Telegraph and Telephone Corp. vs. Laplana, 199 SCRA 485, 494-495, July 23, 1991; per Narvasa, C.J.
[27] Decision of the Labor Arbiter, Rollo, pp. 63-64.
[28] Memorandum for Petitioner, p. 29; Rollo, p. 330.
[29] Lamsan Trading Inc. vs. Leogardo Jr., 144 SCRA 571, 576, September 30, 1986; per Gutierrez, J.
[30] Notice of Termination Annex W; Rollo, pp. 167-168.
[31] Decision of the NLRC, p. 14; Rollo, p. 45.
[32] San Miguel Corporation vs. NLRC, 142 SCRA 376, 384, June 25, 1986; per Abad Santos, J.
[33] Memorandum for Public Respondent, pp. 13-14, 16; Rollo, pp. 229-230, 232.
[34] Paguio Transport Corporation vs. National Labor Relations Commission and Wilfredo Melchor supra, p. 13; per Panganiban, J.
[35] Annex R, Rollo, p. 139.
[36] Annex R-1, Rollo, pp. 140-142
[37] Annex T, Rollo, p. 150.

[38] Annex U, Rollo, pp. 151-163.
[39] Rollo, p. 151.
[40] Ibid., p. 152.
[41] Sebuguero vs. National Labor Relations Commission, 248 SCRA 532, 547, September 27, 1995; per Davide Jr., J.
[42] Better Building vs. NLRC, GR. No. 109714, December 15, 1997. See also Worldwide Papermills, Inc. vs. National Labor Relations Commission, 244 SCRA 125, 134, May 15, 1995. The herein ponente follows the current doctrine in Better Building by granting an indemnity of P5,000.00, but reiterates his personal belief, per his Dissenting Opinion in said case, that the failure to observe due process merits not merely an indemnity award, viz.:

> "Hence, I propose that — as a rule — where due process is violated, the dismissal should still be condemned as illegal even if the cause for the termination is legally justified. And the employer should be made to pay not only indemnity or nominal damages but likewise separation pay. I would concede that reinstatement will no longer be proper, because there is just and valid cause for dismissal, and thus, it would be unconscionable to force an employer to retain the erring employee in his service. This would be derogatory to the discipline and management prerogatives of the employer. I would also concede against payment of backwages, because a worker who commits a malfeasance or any act giving rise to loss of trust and confidence necessarily forfeits his right to continue working in the same company. Consequently, he is not entitled to wages for the period in which he did not render any service."