**SUPREME COURT**
**SECOND DIVISION**

**PRIMO T. TANALA,**
***Petitioner*,**

***-versus-***

**G.R. No. 116588**
**January 24, 1996**

**NATIONAL LABOR RELATIONS COMMISSION, DIANA S. OCHOA and/or VIA MARE CATERING SERVICES,**
***Respondents*.**
**x----------x**

## D E C I S I O N

**REGALADO, *J.*:**

The Extraordinary Writ of Certiorari is invoked in this Petition to Nullify the Decision of public respondent National Labor Relations Commission (NLRC), dated May 23, 1994, which reversed the Decision of the Labor Arbiter, as well as said respondent's Order of July 28, 1994 which denied petitioner's motion for reconsideration of its Decision.[1]

Petitioner was employed as a service driver of respondent company. on November 9, 1992, after his tour of duty, petitioner and some of his co-employees went to a restaurant located near the company's

premises at Bagtikan, San Antonio Village, Makati. At about 7:30 P.M., while they were drinking beer, petitioner had an altercation with his co-employee, Rodolfo Laurente, which could have resulted into a fight were it not for the timely intervention of some bystanders.

The security guard on duty reported the incident to respondent company. Based on said report, private respondent placed both petitioner and Rodolfo Laurente under preventive suspension for thirty days effective December 4, 1992.

By reason of his suspension, petitioner filed a complaint on December 28, 1992 with the labor arbiter for illegal suspension, non-payment of allowances, separation pay and retirement benefits.

After the lapse of the period of preventive suspension, petitioner was not readmitted to work, hence on February 26, 1993, petitioner filed an amended consolidated complaint for illegal dismissal. Petitioner alleged that his 30-day suspension and subsequent dismissal were illegal, the same having been the offshoot of a shouting match he had with a co-employee in a place outside of respondent's premises and long after they had been on off-duty status.[2]

In its answer, respondent company averred that the suspension of both protagonists was imposed as a precautionary measure to avoid a more serious incident; that the occurrence of the fight outside of respondent's premises and while the employees were off duty were immaterial inasmuch as petitioner allegedly took a knife from his bag inside the garage of the company, which was a violation of house rules; and further, that petitioner deserved the penalty of dismissal for his illegal possession of a deadly weapon.[3]

On September 13, 1993, a decision was rendered by the labor arbiter finding the dismissal illegal and ordering petitioner's reinstatement with payment of back wages, but disallowing his other monetary claims.[4]

On appeal, respondent NLRC reversed the decision of the labor arbiter and dismissed the complaint for lack of merit.[5] A motion for reconsideration of the said decision was also denied by the NLRC in its order dated July 28, 1994.[6]

Petitioner has come to us contending that public respondent acted with grave abuse of discretion tantamount to excess or lack of jurisdiction and without regard to the facts on record, the law, as well as established jurisprudence, when:

a) it said that the two affidavits upon which the labor arbiter based his findings of fact that petitioner did not carry a knife were obviously surreptitiously inserted into the records;

b) public respondent said that, in any case, the affidavits which purport to show that the affiants, one of whom was Rodolfo Laurente, petitioner' s opponent, did not notice petitioner carrying the knife, pales in comparison to the straightforward I and detailed report of the guard who witnessed petitioner bring out a knife from his bag inside respondents' garage; and

c) due process was not observed when petitioner was dismissed from employment.[7]

The factual findings of administrative bodies are, as a rule, binding on this Court, but this is true only when they do not come under the established exceptions. one of these is where the findings of the labor arbiter and the NLRC are contrary to each other.[8] In the instant case, the findings of the NLRC and the labor arbiter are inconsistent, hence there is a necessity to review the records to determine which of them should be preferred as more conformable to the evidentiary facts.

A review of the decision rendered by the NLRC discloses that in upholding the legality of the dismissal of herein petitioner, the commission relied on the fact that on the day of the incident herein petitioner took a knife from his bag inside the garage of respondent company in violation of its Company House Rules and Regulations. We are inclined to agree with the said finding of the NLRC which was based on the report made by the security guard on duty who has not been shown to be harboring any ill feeling against petitioner.[9]

On the other hand, the two affidavits executed by Rodolfo Laurente and Deomedes Roca,[10] which served as the basis for the findings of the labor arbiter that petitioner did not carry a knife, are not sufficient to refute the written report of the security guard. In their said affidavits, affiants merely attested to the fact that they did not notice petitioner carrying any knife or deadly weapon, whereas in the written report of the security guard it was specifically affirmed in a detailed and straightforward manner that petitioner brought out a knife from his bag inside the company's garage. Testimony is positive when the witness affirms that a fact did or did not occur, and negative when he says that he did not see or know of the factual occurrence. Positive testimony is entitled to greater weight.[11]

An employee may be validly dismissed for violation of a reasonable company rule or regulation adopted for the conduct of the company's business.[12] It is recognized principle that company policies and regulations are, unless shown to be grossly oppressive or contrary to law, generally valid and binding on the parties and must be complied with until finally revised or amended, unilaterally or preferably through negotiation, by competent authority.[13]

However, considering the other attendant circumstances, viz., the incident occurred outside company premises after office hours and this is the first infraction committed by petitioner after working with the company for almost fifteen years without any previous derogatory record, the ends of social and compassionate justice would be served if petitioner be given some equitable relief in the form of separation pay.

In the case of Soco vs. Mercantile Corporation of Davao, et al.,[14] cited in Cruz vs. Medina, et al.,[15] we ruled that where an employee who had been dismissed for violation of company rules had been employed for eighteen years, he may be afforded some equitable relief in consideration of the past services rendered by him by granting him separation pay equivalent to one month's salary for every year of his service to the company.

With respect to the issue of whether petitioner was denied due process in the administrative procedure entailed in his dismissal, we agree with the labor arbiter that petitioner was indeed denied

procedural due process therein. His dismissal was not preceded by any notice of the charges against him and a hearing thereon. The twin requirements of notice and hearing constitute the essential elements of due process in cases of dismissal of employees.[16] The purpose of the first requirement is obviously to enable the employee to defend himself against the charge preferred against him by presenting and substantiating his version of the facts.[17]

Contrary to the findings of the NLRC, the notice of preventive suspension cannot be considered as an adequate notice. Even the fact that petitioner submitted a written explanation after the receipt of the order of suspension is not the "ample opportunity to be heard" contemplated by law. Ample opportunity to be heard is especially accorded to the employee sought to be dismissed after he is informed of the charges in order to give him an opportunity to refute such accusations levelled against him.[18]

Furthermore, this Court has repeatedly held that to meet the requirements of due process, the law requires that an employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, that is, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice, after due hearing, which informs the employee of the employer's decision to dismiss him.[19]

In the instant case, petitioner was not furnished either a written charge or a notice of dismissal. Petitioner was never informed of why after his suspension of thirty days, he was no longer allowed to work. Quite clearly, therefore, respondent company violated petitioner's right to procedural due process before the termination of his employment. Ergo, he must be given indemnity in the amount of P1,000.00.[20]

**WHEREFORE**, the. judgment of respondent National Labor Relations Commission is hereby **AFFIRMED** with the **MODIFICATION** that petitioner is adjudged entitled to and should be paid separation pay equivalent to one month of his latest and highest salary for every year of service, and that respondent company

shall further pay petitioner the amount of P1,000.00 as indemnity for its disregard of procedural due process.

**SO ORDERED**

**Romero, Puno and Mendoza, *JJ.*, concur.**

---

[1] Commissioner Vicente S. E. Veloso, ponente, with Commissioners Bartolome S. Carale and Alberto R. Quimpo, concurring.
[2] Original Record, 75-79.
[3] Ibid., 25-29, 81-82.
[4] Annex "J", Petition; Rollo, 44-51.
[5] Annex "L", id.; ibid., 58-68.
[6] Annex "N", id.; ibid., 73.
[7] Rollo, 13-14.
[8] Prieto, et al. vs. NLRC, et al., G.R. No. 93699, September 10, 1993. 226 SCRA 232.
[9] Original Record, 43.
[10] Ibid., 83, 84.
[11] Bayasen vs. Court of Appeals, et al., L-25785, February 26, 1981, 103 SCRA 197.
[12] Soco vs. Mercantile Corporation of Davao, et al., G.R. Nos. 53364-65 March 16, 1987, 148 SCRA 526.
[13] GTE Directories Corporation vs. Sanchez, et al., G.R. No. 76219, May 27, 1991, 197 SCRA 452; San Miguel Corporation vs. Ubaldo, et al., G.R. No. 92859. February 1, 1993, 218 SCRA 293.
[14] Supra, Fn. 12.
[15] G.R. No. 73053, September 15, 1989, 177 SCRA 565.
[16] Salaw vs. NLRC, et al., G.R. No. 90786, September 27, 1991, 202 SCRA 7.
[17] Gold City Integrated Port Services, Inc. vs. NLRC, et al.. G.R. No. 86000. September 21, 1990, 189 SCRA 811.
[18] De Vera vs. NLRC, et al., G.R. No. 93070, August 9, 1991, 200 SCRA 439.
[19] Pepsi-Cola Bottling Co., et al. vs. NLRC, et al., G.R. No. 101900, June 23, 1992, 210 SCRA 277; Estiva vs. NLRC, et al., G.R. No. 95145, August S, 1993, 225 SCRA 169.
[20] Shoemart, Inc., et al. vs. NLRC, et al., G.R. No. 74229, August 11, 1989, 176 SCRA 385; Kwikway Engineering Works vs. NLRC, et al., G.R No 85014, March 22, 1991, 195 SCRA 526; Aurelio vs. NLRC, et al., G.R No. 99034, April 12, 1993, 221 SCRA 433.