SUPREME COURT
SECOND DIVISION

VH MANUFACTURING, INC.,
***Petitioner*,**

-versus-

G.R. No. 130957
January 19, 2000

NATIONAL LABOR RELATIONS COMMISSION and HERMINIO C. GAMIDO,
***Respondents*.**
x----------x

D E C I S I O N

DE LEON, JR., *J.*:

Before us is a Petition for *Certiorari*, under Rule 65 of the Rules of Court, seeking to annul the Decision[1] and the Order[2] of the National Labor Relations Commission (NLRC), First Division, dated February 27, 1997 and August 14, 1997, respectively, which set aside the Decision[3] dated June 20, 1996 of the Labor Arbiter. Essentially,

public respondent found and declared that the petitioner's allegation that private respondent slept on the job on February 10, 1995 was not proven and, as a result, there was no just and valid cause for his dismissal, and that even if there was, the penalty of dismissal was too harsh a punishment for violation of petitioner's Company Rule 15-b.

The facts of the case are the following:

Since November 5, 1985 private respondent was employed in petitioner's business of manufacturing liquefied petroleum gas (LPG) cylinders.[4] He served as a quality control inspector with the principal duty of inspecting LPG cylinders for any possible defects and earning P155.00 a day.[5] His service with the company was abruptly interrupted on February 14, 1995, when he was served a notice of termination of his employment.[6]

His dismissal stemmed from an incident on February 10, 1995 wherein petitioner's company President, Alejandro Dy Juanco, allegedly caught private respondent sleeping on the job.[7] On that same day, private respondent was asked through a written notice from the petitioner's Personnel Department[8] to explain within twenty-four (24) hours why no disciplinary action should be taken against him for his violation of Company Rule 15-b[9] which provides for a penalty of separation for sleeping during working hours. Without delay, private respondent replied in a letter which reads:

> "Sir, ipagpaumanhin po ninyo kung nakapikit ako sa aking puwesto dahil hinihintay ko po ang niliha hi Abreu para i quality pasensiya na po kung hindi ko po namalayan ang pagdaan ninyo dahil maingay po ang painting booth."[10]

Notwithstanding his foregoing reply, he was terminated.[11]

Feeling aggrieved, private respondent initially instituted on April 26, 1995 a criminal suit for Estafa, for alleged withholding of his salary, against the company President, Alejandro Dy Juanco.[12] Said complaint was dismissed on June 22, 1995 for improper forum.[13] He then filed on July 4, 1995 a complaint for illegal dismissal, praying for reinstatement to his position as quality control inspector.[14] On June 20, 1996, Labor Arbiter Ricardo C. Nora rendered his decision

upholding petitioner's position and declared that private respondent's dismissal is anchored on a valid and just cause and the latter's contention of denial of due process as devoid of merit.[15]

Private respondent then appealed the decision of the Labor Arbiter to the public respondent NLRC where it was assigned to the First Division. The NLRC reversed the decision of the Labor Arbiter and ordered herein petitioner to reinstate private respondent with full backwages less one-month pay.[16] Inasmuch as public respondent in its Order dated August 14, 1997 denied petitioner's motion for reconsideration,[17] petitioner now challenges the correctness of the NLRC's decision and order via the instant petition.

Petitioner anchors its petition on two (2) grounds, to wit:

> "1. THE NLRC GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT GAMIDO'S DISMISSAL WAS NOT ANCHORED ON A JUST AND VALID CAUSE.
>
> 2. THE NLRC GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT DISMISSAL WAS TOO HARSH A PENALTY FOR GAMIDO'S VIOLATION OF COMPANY RULE 15-b."[18]

The instant petition must fail.

First. Basically, the reason cited for the dismissal of private respondent is sleeping on the job in violation of Company Rule 15-b. Was the private respondent sleeping on the job or was he merely idle and, as he claimed, waiting for the next cylinder to be checked? Evidence on this score is material, for it is the be-all and end-all of petitioner's cause, in view of the gravity of the penalty of separation, as provided by the Company Rules and Regulation. In termination disputes, the burden of proof is always on the employer to prove that the dismissal was for a just and valid cause.[19] What is at stake here is not only the job itself of the employee but also his regular income therefrom which is the means of livelihood of his family.

A thorough review of the record discloses that, contrary to the findings of the Labor Arbiter, petitioner's claim that private

respondent slept on the job on February 10, 1995 was not substantiated by any convincing evidence other than the bare allegation of petitioner. The report[20] of Ronaldo M. Alvarez, Acting Quality Control Department Head of petitioner corporation, on the circumstances which ultimately served as basis for the termination of private respondent's employment, did not confirm the alleged violation by private respondent of the pertinent Company Rule 15-b. The report merely stated private respondent's denial and response to petitioner's allegation which he reiterated in his written reply.[21]

Second. Petitioner's reliance on the authorities[22] it cited that sleeping on the job is always a valid ground for dismissal, is misplaced. The authorities cited involved security guards whose duty necessitates that they be awake and watchful at all times inasmuch as their function, to use the words in Luzon Stevedoring Corp. vs. Court of Industrial Relations,[23] is "to protect the company from pilferage or loss." Accordingly, the doctrine laid down in those cases is not applicable to the case at bar.

Third. While an employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must be commensurate to the offense involved and to the degree of the infraction. In the case at bar, the dismissal meted out on private respondent for allegedly sleeping on the job, under the attendant circumstances, appears to be too harsh a penalty,[24] considering that he was being held liable for first time, after nine (9) long years of unblemished service, for an alleged offense which caused no prejudice to the employer, aside from absence of substantiation of the alleged offense. The authorities cited by petitioner are also irrelevant for the reason that there is no evidence on the depravity of conduct,[25] willfulness of the disobedience,[26] or conclusiveness of guilt on the part of private respondent.[27] Neither was it shown that private respondent's alleged negligence or neglect of duty, if any, was gross and habitual.[28] Thus, reinstatement is just and proper.

WHEREFORE, the Petition is hereby **DISMISSED**, and the challenged Decision and Order of public respondent NLRC are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing and Buena, *JJ.*, concur.

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[1] Penned by Commissioner Vicente S. E. Veloso and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Alberto R. Quimpo, Annex "A" of the Petition, Rollo, pp. 16-23.
[2] Annex "B" of the Petition, Id., pp. 24-26.
[3] Penned by Labor Arbiter Ricardo C. Nora, NLRC Regional Arbitration Branch-NCR Quezon City in Case No. NCR-00-07-04623-95, Id., pp. 33-40.
[4] Annex "G" of the Petition, Rollo, p. 31.
[5] Ibid.
[6] Annex "F" of the Petition, Id., p. 30.
[7] Report of Mr. Ronaldo M. Alvarez, Acting Quality Control Department Head on the circumstances surrounding the incident, Annex "C" of the Petition, Id., p. 27.
[8] Annex "D" of the Petition, Id., p. 28.
[9] Annex "J" of the Petition, Id., p. 47.
[10] Annex "E" of the Petition, Id., p. 29.
[11] See Note No. 6.
[12] Id., p. 80.
[13] Id., p. 81.
[14] Annex "G" of the Petition, Id., pp. 31-32.
[15] Annex "H" of the Petition, Id., pp. 33-40.
[16] See Note No. 1.
[17] See Note No. 2.
[18] Id., p. 6.
[19] Article 277, paragraph (b), Labor Code of the Philippines.
[20] See Note No. 7.
[21] See Note No. 10.
[22] A' Prime Security Services, Inc. vs. NLRC, 220 SCRA 142 (1993); Luzon Stevedoring Corp. vs. Court of Industrial Relations, 15 SCRA 660 (1965)
[23] 15 SCRA 660, 674 (1965).
[24] Bachiller vs. NLRC, 98 SCRA 393, 396 (1980).
[25] Stanford Microsystems Inc. vs. NLRC, 157 SCRA 410, 414 (1988)
[26] Villeno vs. NLRC, 251 SCRA 494, 497 (1995); San Miguel Corporation vs. Ubaldo, 218 SCRA 293, 300 (1993); Aguilar vs. NLRC, 216 SCRA 207, 212, 213 (1992); Lirag Textile Mills vs. Blanco, 109 SCRA 87, 96 (1981); Batangas

Laguna Tayabas Bus Co. vs. Court of Appeals, 71 SCRA 470, 477 (1976); Article 282, (a), Labor Code of the Philippines.

[27] Colgate-Palmolive Philippines vs. Ople, 163 SCRA 323, 331 (1988).

[28] Article 282, (b) Labor Code of the Philippines.