CHANROBLES PUBLISHING COMPANY

SUPREME COURT
FIRST DIVISION

RENE P. VALIAO,
***Petitioner*,**

-versus-

G.R. No. 146621
July 30, 2004

HON. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION-FOURTH DIVISION (Cebu City), WEST NEGROS COLLEGE,
***Respondents*.**
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D E C I S I O N

QUISUMBING, *J.*:

For Review on Certiorari is the Decision[1] dated August 22, 2000 of the Court of Appeals in CA-G.R. SP No. 55133, and its Resolution[2] dated November 22, 2000 denying the motion for reconsideration. The Court of Appeals dismissed the petition for certiorari filed by petitioner and affirmed the Resolution dated July 7, 1999 of the National Labor Relations Commission (NLRC)-Fourth Division in NLRC Case No. V-000134-98 (RAB Case No. 06-01-10026-95), which sustained the Decision of Labor Arbiter Benjamin E. Pelaez, directing private respondent West Negros College (WNC) to pay petitioner

Rene P. Valiao's salary during the period of his preventive suspension and attorney's fees, while dismissing all other claims.

The facts, as culled from records, are as follows:

> On February 5, 1990, petitioner Rene Valiao was appointed by private respondent West Negros College (WNC) as Student Affairs Office (SAO) Director, with a starting salary of P2,800 per month. On May 14, 1990, he was assigned as Acting Director, Alumni Affairs Office.
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> On July 29, 1990, petitioner was transferred to a staff position and designated as Records Chief at the Registrar's Office but was again re-assigned as a typist on June 24, 1991.
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> The latest re-assignment was due to his tardiness and absences, as reflected in the summary of tardiness and absences report, which showed him to have been absent or late for work from a minimum of seven (7) to a maximum of seventy-five (75) minutes for the period March to October 31, 1991, and to have reported late almost every day for the period November to December 1991.
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> Copies of his tardiness/absences reports were furnished petitioner, along with memoranda requiring him to explain but his explanations were either unacceptable or unsatisfactory. Subsequent reports also showed that he did not change his habits resulting in tardiness and absences. He was even caught one time manipulating the bundy clock, thus necessitating another memorandum to him asking him to explain his dishonest actuations in accomplishing the daily attendance logbook and in using the bundy clock.
>
> On December 10, 1991, petitioner received a suspension order without pay for fifteen (15) days effective January 1, 1992, because of dishonesty in reporting his actual attendance. After serving the suspension, the petitioner reported back to office on January 16, 1992.

On June 15, 1992, another adverse report on tardiness and absences from the Registrar was made against the petitioner prompting WNC to send him another memorandum with an attached tardiness and absences report, calling his attention on his tardiness and absences for the period February to April 1992.

On June 20, 1992, petitioner sent a letter of appeal and explained his side to the new college president, Suzette Arbolario-Agustin, who gave petitioner another chance. The petitioner was then appointed as Information Assistant effective immediately. However, the petitioner did not immediately assume the post of Information Assistant prompting the President of private respondent WNC to call his attention. When the petitioner finally assumed his post, he was allowed a part-time teaching job in the same school to augment his income.

Sometime in December 1992, WNC won a case against the officials of the union before the NLRC. Petitioner was ordered to prepare a media blitz of this victory but the petitioner did not comply with the order on the ground that such a press release would only worsen the already aggravated situation and strained relations between WNC management and the union officials.

When petitioner reported for work on the first day of January 1993, he was relieved from his post and transferred to the College of Liberal Arts as Records Evaluator. Not for long, the Dean of the Liberal Arts sent a letter to the Human Resources Manager complaining about the petitioner's poor performance and habitual absenteeism, as shown in the daily absence reports.

On January 18, 1993, petitioner was again absent from work without permission or notice to his immediate superior. It turned out that he went to Bacolod City and on January 28, 1993, the petitioner was one of those arrested during a raid in the house of one "Toto Ruiz," a suspected drug pusher and was brought to the Bacolod Police Station along with four (4) other

suspects. Upon further search and investigation by the Narcotics Control Division, the petitioner was found possessing two (2) suspected marijuana roaches (butts) which were placed inside his left shoe. The event was widely publicized, focusing on petitioner's position as an Economics teacher of WNC, and considering further that one of his fellow suspects was a member of the Philippine Army, who was caught with an unlicensed firearm, a tooter and other "shabu" paraphernalia. The petitioner and other suspects were then charged with violation of the Dangerous Drugs Act of 1972 (Republic Act No. 6425, as amended).

Petitioner was asked to explain within 24 hours why he should not be terminated as a result of the raid and the charges against him for violation of Rep. Act No. 6425 as amended. Petitioner allegedly was not able to answer immediately since he was in jail and received said memorandum only on January 30, 1993, although his wife had earlier received the memorandum on January 28, 1993.

On January 29, 1993, the petitioner was dismissed for failure to answer said memorandum.

On February 1, 1993, the petitioner wrote to the President of WNC explaining his side and asking for due process. WNC cancelled its Notice of Termination dated January 29, 1993, and granted the petitioner's request. The petitioner was notified through a memorandum about the grant of his request and that a hearing would be conducted. He was then placed under preventive suspension and an investigation committee was organized to conduct the probe. On March 6, 1993, a notice of hearing/investigation was sent to the petitioner.

After the investigation attended by the petitioner and his counsel, with proceedings duly recorded, the investigation committee recommended the dismissal of petitioner. A notice of termination was then sent to petitioner informing him of his termination from the service for serious misconduct and gross and habitual neglect of duty. The petitioner received the notice

on March 25, 1993, but did not file a grievance concerning the notice of termination.

On January 19, 1995, petitioner filed a Complaint against WNC for illegal suspension, illegal dismissal, backwages, salary differential for salary increases and other benefits granted after his dismissal as well as for moral and exemplary damages and attorney's fees.

In its Answer, WNC alleged that petitioner was dismissed on charges of serious misconduct, and gross and willful neglect of duty. WNC said his dismissal was effected after due notice and prior hearing. It claimed also that since petitioner was terminated for a valid cause after a due hearing, the latter's claim for moral and exemplary damages, and attorney's fees had no basis in fact and in law.

After due proceedings, the Labor Arbiter rendered a decision, the decretal portion of which reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered DIRECTING respondent West Negros College to pay complainant Rene P. Valiao – (a) P3,300.00 as salary for the period of his preventive suspension, and (b) P330.00 as attorney's fees, or the total amount of THREE THOUSAND SIX HUNDRED THIRTY PESOS (P3,630.00).
>
> Further, all other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[3]

The Labor Arbiter found no justifiable reason to place the petitioner under preventive suspension as there was no serious or imminent threat to the life or property of his employer or co-workers.

However, the Labor Arbiter found the dismissal of the petitioner from WNC to be valid due to absenteeism and tardiness and after he was accorded the procedural due process

aspect of the law as reflected in the records showing that the petitioner was formally investigated and given the opportunity to refute the alleged findings by the management of WNC. The Labor Arbiter held that frequent absenteeism and tardiness of the petitioner constituted not only willful disobedience but also gross and habitual neglect of duties, which are valid grounds for termination of employment. He stressed that the petitioner's frequent absences without proper leave of absence was not only unfair to WNC and the petitioner's co-employees but also set an undesirable example to the employees under his supervision, considering that the petitioner was not a mere rank-and-file employee but one who owed more than the usual fealty to the organization.

On appeal to the NLRC, the latter affirmed the decision of the Labor Arbiter, sustained the latter's findings of facts, and made its own findings on the apprehension of the petitioner for possession of prohibited drugs. The decretal portion of the decision reads as follows:

> WHEREFORE, premises considered, the appeal is DISMISSED and the decision of the Executive Labor Arbiter is AFFIRMED in its entirety.
>
> SO ORDERED.[4]

Petitioner then filed a Petition for Certiorari under Rule 65 before the Court of Appeals but this was dismissed for lack of merit. The decretal portion of the decision reads as follows:

> WHEREFORE, the questioned Decision and Resolution dated December 11, 1998 and July 7, 1999, respectively, of public respondent National Labor Relations Commission are hereby AFFIRMED.
>
> SO ORDERED.[5]

The Court of Appeals held that the petitioner was validly dismissed for serious misconduct and gross habitual neglect of duties, which was aggravated by his arrest for violation of Rep.

> Act No. 6425, as amended [the January 28, 1993 incident] and that he was afforded the twin requirements of notice and hearing and the opportunity to defend himself by the investigating committee. The appellate court noted that WNC had presented sufficient evidence to support petitioner's termination from employment after taking into consideration the totality of the infractions or the number of violations committed by petitioner during the period of employment and stressed that it properly exercised its management prerogative by observing due process. Finally, the Court of Appeals ruled that the NLRC correctly denied the claim for damages and attorney's fees for lack of evidentiary support.
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> Petitioner duly filed a Motion of Reconsideration, which was denied by the Court of Appeals.

Hence, this petition alleging that:

> A. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE DISMISSAL OF PETITIONER WAS VALID, DESPITE THE FACT THAT THERE IS CLEAR AND BLATANT VIOLATION OF THE BASIC CONSTITUTIONAL RIGHTS OF THE HEREIN PETITIONER BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS.
>
> B. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS IN (SIC) DISMISSING THE RELIEFS FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[6]

In our view, the only relevant issue for our resolution is whether or not the petitioner was validly dismissed from employment on the ground of serious misconduct and gross habitual neglect of duties, including habitual tardiness and absenteeism.

Petitioner claims that his outright dismissal from employment was not valid and too harsh and that he was not dismissed from employment because of tardiness or absences but because he was among those apprehended in a raid. Also, he was not accorded due

process because although his wife received the show cause notice, he did not have the proper mind to reply as he was in jail and was psychologically disturbed.

Considering the submissions of the parties as well as the records before us, we find the petition without merit. Petitioner's dismissal from employment is valid and justified.

For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause and (b) the employee must be afforded due process.[7]

Serious misconduct and habitual neglect of duties are among the just causes for terminating an employee under the Labor Code of the Philippines. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[8] The Labor Arbiter's findings that petitioner's habitual absenteeism and tardiness constitute gross and habitual neglect of duties that justified his termination of employment are sufficiently supported by evidence on record. Petitioner's repeated acts of absences without leave and his frequent tardiness reflect his indifferent attitude to and lack of motivation in his work. More importantly, his repeated and habitual infractions, committed despite several warnings, constitute gross misconduct unexpected from an employee of petitioner's stature. This Court has held that habitual absenteeism without leave constitute gross negligence and is sufficient to justify termination of an employee.[9]

However, petitioner claims that he was dismissed not for his tardiness or absences but for his arrest as a suspected drug user. His claim, however, is merely speculative. We find such contention devoid of basis. First, the decisions of the Labor Arbiter, the NLRC, and the Court of Appeals are indubitable. They show that indeed petitioner had incurred numerous and repeated absences without any leave. Moreover, he was not punctual in reporting for work. These unexplained absences and tardiness were reflected on the summary reports submitted by WNC before the labor arbiter, but petitioner failed to controvert said reports. Second, contrary to petitioner's assertion, the NLRC did not base its conclusions on the fact of the arrest of petitioner for violation of Rep. Act No. 6425 but on the

totality of the number of infractions incurred by the petitioner during the period of his employment in different positions he occupied at WNC. Thus:

> In the case of petitioner Valiao, his services were terminated by private respondent after having been found guilty of serious misconduct and gross habitual neglect of duty which was aggravated by the January 28, 1993 incident. In exercising such management prerogative, due process was properly observed. Private respondent presented sufficient evidence to support its act in terminating the services of petitioner. Private respondent took into consideration the totality of the infractions or the number of violations committed by petitioner during the period of employment. Furthermore, it hardly needs reminding that, in view of petitioner's position and responsibilities, he must demonstrate a scrupulous regard for rules and policies befitting those who would be role models for their young charges.[10] (Emphasis and italics supplied)

Indeed, even without the arrest incident, WNC had more than enough basis for terminating petitioner from employment. It bears stressing that petitioner's absences and tardiness were not isolated incidents but manifested a pattern of habituality. In one case, we held that where the records clearly show that the employee has not only been charged with the offense of highgrading but also has been warned 21 times for absences without official leave, these repeated acts of misconduct and willful breach of trust by an employee justify his dismissal and forfeiture of his right to security of tenure.[11] The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other.[12]

Needless to say, so irresponsible an employee like petitioner does not deserve a place in the workplace, and it is within the management's prerogative of WNC to terminate his employment. Even as the law is solicitous of the welfare of employees, it must also protect the rights

of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of those rights and prerogative is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[13]

Still, petitioner claims that he was not afforded due process so that his dismissal from employment should be declared invalid. This contention deserves scant consideration. The Court of Appeals held that "the records reveal that petitioner was afforded the twin requirements of notice and hearing and was likewise given the opportunity to defend himself before the investigating committee." We find no reason to set aside these factual findings of the Court of Appeals as they are supported by evidence on record. Besides, we may not review the appellate court's findings of fact in an appeal via certiorari,[14] since as a rule, the Supreme Court's review is limited to errors of law allegedly committed by the appellate court.[15] Judicial review of labor cases does not go as far as to evaluate the sufficiency of evidence upon which the Labor Arbiter and National Labor Relations Commission based their determinations.[16]

In this case, petitioner was asked to explain his several absences and tardiness on many occasions. A notice to explain was sent to him regarding the arrest incident wherein he was able to reply. An investigation committee was formed by WNC to investigate the arrest incident and the absences and tardiness of petitioner. It must be emphasized that proceedings of the committee were duly recorded, and petitioner actively participated therein by answering the various questions interposed by the panel members. Finally, a notice of his termination was sent to petitioner, although he claims to have received it late as he was in jail. It is an undeniable fact, however, that his wife had actually received the notice in his house earlier, even before petitioner's termination and this matter was later communicated to him.

At any rate, petitioner was given enough opportunity to be heard, and his dismissal was based on valid grounds. The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal

or trial-type hearing is not at all times and in all instances essential, as the due process requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice and hearing.[17]

Finally, the Labor Arbiter found that petitioner is entitled to salary differentials for the period of his preventive suspension, as there is no sufficient basis shown to justify his preventive suspension. During the pendency of the investigation, the employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to life or property of the employer or of his co-workers.[18] But in this case, there is no indication that petitioner posed a serious threat to the life and property of the employer or his co-employees. Neither was it shown that he was in such a position to unduly influence the outcome of the investigation. Hence, his preventive suspension could not be justified, and the payment of his salary differentials is in order.

However, the award of attorney's fees to him cannot be sustained, in view of our findings that petitioner was validly dismissed from employment. Said award lacks legal basis and could not be granted properly in this case.

WHEREFORE, the assailed Decision dated August 22, 2000 and Resolution dated November 22, 2000 of the Court of Appeals in CA-G.R. SP No. 55133 are **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees is deleted. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., *C.J., (Chairman)*, Ynares-Santiago, Carpio, and Azcuna, *JJ.*, concur.

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[1] Rollo, pp. 23-31. Penned by Associate Justice Remedios A. Salazar Fernando, with Associate Justices Fermin A. Martin, Jr., and Salvador J. Valdez, Jr. concurring.

[2] Id. at 45-46.

[3] Id. at 26.
[4] Id. at 64.
[5] Id. at 31.
[6] Id. at 14.
[7] Sy vs. Court of Appeals, G.R. No. 142293, 27 February 2003, 398 SCRA 301, 310.
[8] JGB and Associates, Inc. vs. NLRC, G.R. No. 109390, 7 March 1996, 254 SCRA 457, 463.
[9] Club Filipino, Inc. vs. Sebastian, G.R. No. 85490, 23 July 1992, 211 SCRA 717, 721.
[10] Rollo, pp. 30-31.
[11] Palagpag vs. NLRC, G.R. No. 96646, 8 February 1993, 218 SCRA 510, 515.
[12] National Service Corporation vs. Leogardo, Jr., No. L-64296, 20 July 1984, 130 SCRA 502, 509.
[13] Maya Farms Employees Organization vs. NLRC, G.R. No. 106256, 28 December 1994, 239 SCRA 508, 515.
[14] Arriola vs. Mahilum, G.R. No. 123490, 9 August 2000, 337 SCRA 464, 469.
[15] Industrial Insurance Company, Inc. vs. Bondad, G.R. No. 136722, 12 April 2000, 330 SCRA 706, 713.
[16] Damasco vs. NLRC, G.R. Nos. 115755 & 116101, 4 December 2000, 346 SCRA 714, 722.
[17] See Stayfast Philippines Corp. vs. NLRC, G.R. No. 81480, 9 February 1993, 218 SCRA 596, 601.
[18] Section 8, Rule XXIII, Book V, Rules and Regulations Implementing the Labor Code, as amended by Dept. Order No. 9, Series of 1997.

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