SUPREME COURT
SECOND DIVISION

ARSENIO V. VILLA,
***Petitioner*,**

-versus-

G.R. No. 131552
February 19, 1999

NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), OCEAN-LINK CONTAINER TERMINAL CENTER, BENJAMIN S. TAN and VICTORIA ACORDA,
***Respondents*.**
x----------x

D E C I S I O N

PUNO, *J.*:

This is a Petition for Certiorari to set aside the July 4, 1997 Decision and the September 22, 1997 Resolution of public respondent National Labor Relations Commission (First Division) which deleted the awards of reinstatement and backwages including attorney's fees made by the Labor Arbiter in favor of petitioner Arsenio V. Villa.

First, we fastrack the facts which are well established. Private respondent Ocean Link Container Terminal Center Inc., is a private corporation engaged in the warehousing, shipping and delivery of

goods. Private respondent Benjamin Chua is its President while private respondent Victoria Acorda is its general manager.

Petitioner was absorbed by respondent company from his previous employer when the company was sold to the respondents. Petitioner's services from 1991 up to May 1, 1993 was continued by the respondent company. From May 1, 1993, petitioner served as a checker in the warehouse of respondent company and his latest salary was P135.00 a day.

On June 22, 1994, petitioner met an accident while in the course of performing his job. His left hand was pinned down by a crane and resulted in the deformity and total disability of his middle finger. He was given a month of sick leave which he extended for another month as his hand had not completely healed. Later, he discovered that respondent company terminated his services on August 27, 1994. Petitioner filed a complaint for illegal dismissal, underpayment of wages, non-payment of overtime, 13th month pay, differentials, and attorney's fees against the private respondents.

In his Position Paper, petitioner alleged:

> "Complainant has to report for work for the respondent company from Monday to Saturday with Sunday being his rest day. His schedule of work was from 8:00 in the morning to 7:00 in the evening from Monday to Friday. On Saturday the schedule of work of the complainant is from 8:00 to 12:00 noon only. From Monday to Friday, he renders of (sic) at least two hours of overtime daily but complainant was not paid such overtime services that he rendered from the respondent company.
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> At the time that he was terminated from the respondent company, his basic pay was only P135.00 which was below the minimum basic pay which was pegged already at P145.00 upon the effectivity of Wage Order NCR No. 03 on April 1, 1994. Prior this rate, the basic pay of the complainant was also below the minimum basic pay as provided for by the former Wage Codes. He usually gets his salary every 15th of the month or he was paid his salary twice per month."

In answer, respondent company alleged:

> "Respondent started to engage in its present business of CY-CFS services only on May 01, 1993 and that complainant was employed by the respondents only on May 01, 1993, as temporary employee and legally terminated on August 29, 1994;
>
> Hence, no employer-employee relationship existed between the complainant and the respondents herein when complainant allegedly rendered overtime work;
>
> x x x

Complainant's claim for underpayment of wages is anchored on WO-NCR-03 which mandated the payment of P10.00 effective April 01, 1994.

That respondents are engaged in the operation of container yard - container freight station (CY-CFS) business. The 90% to 95% of its income is derived from its CFS services operation. That without its CFS services, respondent corporation cannot viably operate.

That sometime in (sic) March 06, 1994, Customs Commissioner Parayno issued Customs Memorandum Order (CMO) 6-94. That CMO 6-94 bans the CFS operations of off-dock warehouses effective immediately. That aside from the fact that CMO 6-94 was abruptly and hastily implemented, the same was grossly prejudicial and detrimental to CY-CFS operators.

That respondent corporation was adversely affected by the implementation of CMO-6-94. That since respondent corporation is only on its 10th month operation, it cannot viably continue operating while CMO 6-94 remains effective unless drastic and radical remedial measures are undertaken.

The least drastic and radical remedial measure that the respondent corporation can unilaterally undertake was to retrench 75% of its employees and the worst is outright closing shop.

However, cognizant of the seriousness of the problem and predicament of the respondent corporation, the employees themselves acted to help save the corporation from closing shop.

The employees suggested that instead of retrenching employees, the employees shall go on voluntary leave on rotation basis and that employees agreed that the payment of the P10.00 mandated by WO-NCR-03 be temporarily suspended. These remedial measures were observed while CMO 6-94 remains effective. In fact, some employees reported for work without pay even if it is supposed to be their turn to be on voluntary leave."

In its Comment to petitioner's Position Paper, respondent company alleged:

> "Complainant applied for employment as messenger/collector of respondent corporation only on April 16, 1993; that complainant was admitted by respondent corporation as temporary employee on May 01, 1993;
>
> Complainant received his appointment as permanent employee on January 25, 1994 effective January 1, 1994;
>
> Complainant was terminated for cause or violation of company rules and regulations."

On September 29, 1995, Labor Arbiter Pablo C. Espiritu decided in favor of the petitioner. We quote the rationale of the Decision, viz:

> "x x x
>
> There being no due process of law and coupled without an existing cause for his dismissal, complainant is entitled to full backwages from the time of his dismissal till complainant is reinstated to his former position as warehouse checker.
>
> Regarding complainant's monetary claims, this Arbitration Branch finds that complainant cannot hold Respondent liable for non-payment of labor standard benefits which accrued prior

to the acquisition of the business by the Respondents. When complainant was absorbed in Respondent corporation the latter did not also absorbed (sic) the liabilities of the defunct corporation. In any event, complainant is merely entitled to his monetary claims from May 1, 1993 till his dismissal.

The fact that he was receiving only P135.00/day at the time of his dismissal shows that he was underpaid in his wages in the amount of P100/day counted from the effectivity of NCR-Wage Order 03 which took effect on April 1, 1994. Respondents for their part failed to adduce evidence that complainant has been paid the Minimum Wage of P145.00/day. In fact they even admitted that they entered into an agreement with the employees that the implementation of Wage Order 03 be deferred until such time that the company can cope up with effects of Customs Memorandum Order No. 6-94.

Although there may be a covenant between the parties for the deferment of the implementation of the said Wage Order, complainant is still entitled to receive his wage differentials because any agreement contrary to law is null and void. Hence, complainant is entitled to receive underpayment of wages from April 1, 1994 to August 17, 1994. Likewise, he is entitled to receive 13th-month pay differentials for the years covering May 1, 1993 to August 17, 1994 considering that Respondent failed to adduce evidence that complainant was paid his 13th-month pay.

For reasons earlier discussed, complainant's claims for 2 hours overtime which accrued prior to the acquisition of the corporation by the Respondents, the latter cannot be held liable since there was no employer-employee relationship between the complainant and respondents at that time. Hence, for lack of basis his overtime pay cannot be granted.

However, considering that complainant was forced to employ the services of counsel in order to prosecute his claims against his employer and assisted him in the preparation of pleadings and incurred expenses for his appearance in this proceedings, complainant is entitled to receive reasonable attorney's fees.

WHEREFORE, premises considered, judgment is hereby rendered finding Respondent corporation guilty of illegal dismissal and concomitantly Respondent, Ocean Link Container Terminal Center, Inc., is hereby ordered to pay complainant full backwages in the amount of P43,355.00 from the time of his dismissal till reinstatement (computed till promulgation only). Respondent is also ordered to reinstate complainant to his former position as warehouse checker without loss of seniority rights, privileges and benefits. The order of reinstatement is final and executory.

Respondent corporation is further ordered to pay complainant wage differentials under Wage Order NCR 03 in the total amount of P1,180.00 and 13th-month pay differentials in the amount of P3,372.25.

Respondent corporation is further ordered to pay complainant attorney's fees based on 10% of the total judgment award in the amount of P4,790.72. All other claims of the complainant are disallowed for lack of merit.

SO ORDERED."

Respondent company appealed to the public respondent NLRC. It invoked the following grounds:

"ASSIGNMENT OF ERRORS

1 THE HONORABLE ARBITER ERRED IN FINDING THAT COMPLAINANT WAS DISMISSED ON AUGUST 17, 1994;

2 THE HONORABLE LABOR ARBITER ERRED IN NOT FINDING THAT COMPLAINANT WAS DISMISSED FOR CAUSE BY THE RESPONDENT CORPORATION IN (SIC) AUGUST 29, 1994;

3 THE HONORABLE LABOR ARBITER ERRED IN FINDING THAT THE RESPONDENT CORPORATION FAILED TO COMPLY WITH THE MANDATORY REQUIREMENTS OF

NOTICE AND HEARING BEFORE ORDERING THE DISMISSAL OF COMPLAINANT; and

4 THE HONORABLE LABOR ARBITER ERRED IN FINDING RESPONDENT CORPORATION LIABLE TO PAY BACKWAGES; WAGE DIFFERENTIALS UNDER WAGE ORDER NCR 03; 13TH-MONTH PAY DIFFERENTIAL AND ATTORNEY'S FEES."

In its Memorandum of Appeal, respondent company argued:

"The assigned errors raised herein being interrelated to each other and/or necessarily connected to one another, the same are hereby jointly argued and discussed.

The complainant alleged that while still on a sick leave, his employment with the respondent company was terminated on AUGUST 27, 1994 (page 4, Position Paper For the Complainant). On the other hand, Respondents alleged that complainant's employment was legally terminated on AUGUST 29, 1994 (page 1, Position Paper of respondents).

Surprisingly, the Appealed Decision, with all due respect, ruled and declared that complainant was suddenly dismissed by the respondents on August 17, 1994 by way of alleged Memorandum dated 17 August 1994 wherein the respondent corporation's security guard was ordered not to allow the complainant to enter the company premises (page 5, Appealed Decision). Further, the Appealed Decision ruled and declared, that, in terminating complainant's employment, the Respondent Corporation failed to comply with the mandatory requirements of notice and hearing (page 5, Appealed Decision).

Respondent Corporation respectfully submits that the findings in the Appealed Decision that complainant was suddenly dismissed on August 17, 1994 has no basis in fact. Necessarily, the findings in the Appealed Decision that Respondent Corporation failed to comply with the mandatory requirements of notice and hearing when Respondent Corporation allegedly

ordered the dismissal of Complainant on August 17, 1994 has no basis in fact.

The truth of the matter is, on August 25, 1994 complainant was required to explain in writing why his services should not be terminated for repeated and open violations of the Company Code of Conduct (Annex '2'). That complainant refused to receive the Memorandum (Annex '2') and complainant did not bother to explain, as directed in the Memorandum (Annex '2') why his services should not be terminated.

That, in view of the failure and/or refusal of the complainant to explain his position/side in writing, the Respondent Corporation was left with no other alternative but to terminate for cause the employment of the complainant effective August 29, 1994 (Annex '3').

The date of termination of complainant's employment is very significant because if complainant's employment was indeed terminated on August 17, 1994 as ruled and declared in the Appealed Decision, then the Appealed Decision is not in error in its findings of facts and the Decision would have been in order.

However, contrary to the findings in the Appealed Decision, complainant's employment was terminated for cause on August 29, 1994 and upon due notice.

Since the monetary award in favor of the complainant was anchored on the wrongful and baseless findings that complainant's employment was terminated on August 17, 1994 without notice and hearing, necessarily the monetary award has also no basis in fact and in law.

That with respect to the award for the 13th-month pay differential, complainant himself in one of the hearings admitted to have received said 13th month pay. "

As aforestated, public respondent NLRC modified the Decision of the Labor Arbiter by deleting the awards of reinstatement and backwages including attorney's fees. It ratiocinated, viz:

"An evaluative review of the case as borne out by the record reveals that the cause for complainant's dismissal was due to repeated violation of company rules.

The case of Batangas Transportation Co. vs. Bagong Pagkakaisa ng mga Employees and Laborers of the BT Co., No. L-1706, March 10, 1949, is instructive, thus: 'Success of industries and public service is the foundation upon which just wages may be paid. There can be no success without efficiency. There cannot be efficiency without discipline. Consequently, when employees and laborers violate the rule of discipline, they jeopardize not only the interest of the employer but also their own. In violating the rules of discipline, they aim at killing the hen that lays the golden egg. Laborers who trample down the rules set for an efficient service are in effect parties to a conspiracy, not only against capital but also against labor. The highest interest of society and of the individuals demand that we should insist in requiring everybody to do his duty. That demand is addressed not only to employer but also to employees.'

The pernicious effects of gambling cannot be gainsaid. Such form of vice is contagious and destructive to man's life. Thus, the rules of the respondent prohibiting the same is morally rooted. The object of which is to save degeneration of moral values and prevents its evil effect from spreading among its employees.

Necessarily, complainant's repeated violation of such rule resulted in willful disobedience of company policy which justify his dismissal (Gold City Integrated Part Services vs. NLRC, 189 SCRA 811).

In GTE Corporation vs. Sanchez, 197 SCRA 452 — it was held that deliberate disregard or disobedience of rule and defiance of management authority by the employee cannot be countenanced, until and after the rules or orders imposed by the employer are declared to be illegal and improper by competent authority. Even the refusal of complainant to explain in writing why he should not be terminated for violation of the

respondent's code of conduct, relative to the gambling incident on August 25, 1994, comes within the prohibition of the foregoing doctrinal pronouncement.

Said observation finds support in the case of Northern Motors Inc. vs. NLRC, G.R. No. L-10022, January 31, 1958 when the Supreme Court stamped its approval on the dismissal of an employee for willful violation of rules and regulations of the company designed for the safety of the laborers themselves. (See also Soco vs. Mercantile Corporation, G.R. 53364-65, March 16, 1987)

The case of Patricio Dimalanta vs. Secretary of Labor, G.R. 83854, May 24, 1989, is even more in point. In said case, the Supreme Court considered serious misconduct within the purview of Article 282 of the Labor Code, the act of gambling within the company premises being prohibited and penalized with dismissal by the company rules. This is exactly what happened in this particular case.

To condone such conduct will erode the discipline that an employer would uniformly apply so that it can expect compliance to the same rules and regulations by its other employees. (Soco vs. Mercantile Corporation, supra).

Consequently, the observation earlier mentioned that complainant's dismissal was for a just and valid cause, makes the awards of reinstatement and full backwages unwarranted.

With respect to the other monetary awards however, the record is bereft of evidence that could serve as a basis for the denial of such entitlements. To that extent, we find the Arbiter's findings to be in order. Thus, guided by the decisional rules found in the case of Union of Filipino Workers (UFW) vs. NLRC, et al., G.R. No. 98111, April 7, 1993, and Delfin Palagpag vs. NLRC, G.R. No. 96646, February 8, 1993, said finding being supported by substantial evidence must not be disturbed. (See also Reyes vs. Phil. Duplicators, Inc., and NLRC, L-J 4996, November 17, 1981).

> Wherefore, in view thereof, the appealed decision is hereby modified deleting the awards of reinstatement and backwages including attorney's fees.
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> In all other respects, the assailed decision is affirmed.
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> SO ORDERED."

Petitioner filed a Motion for Reconsideration where among others, he contended:

> "With due respect also to the Honorable National Labor Relations Commission (First Division) there was no mention about this alleged gambling of the complainant either in the Position Paper of the Respondents or in the Respondent's Comment to Complainant's Position Paper. It was only on appeal that the issue of alleged gambling of the complainant was raised. In various Decision (sic) of the Supreme Court, it has been held that the finding of facts of the Labor Arbiter who conducted the actual trial and hearing of the case wherein the parties usually were required to the (sic) present have greater weight than the findings of the Honorable National Labor Relations Commission, with due respect, who determine (sic) the fact of the particular case on the various pleadings of the opposing parties. Since the issue of gambling was raised only by the respondents when the appeal was made, it should not have been given any weight at all in the determination of the case by the Honorable National Labor Relations Commission."

In its Resolution of September 22, 1997, the public respondent denied petitioner's Motion for Reconsideration.

In this petition for certiorari, petitioner contends:

> "I. THE HONORABLE PUBLIC RESPONDENT COMMISSION (FIRST DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT MODIFIED THE DECISION OF HONORABLE LABOR ARBITER PABLO ESPIRITU JR. DATED SEPTEMBER 29, 1995 DECLARING THE DISMISSAL

OF THE COMPLAINT VALID AND LEGAL AND DELETING AWARDS OF BACKWAGES, REINSTATEMENT AND ATTORNEY'S FEES IN TOTAL DISREGARD OF THE FINDING OF THE HONORABLE LABOR ARBITER.

II. THE HONORABLE PUBLIC RESPONDENT (FIRST DIVISION) ERRED IN DISMISSING THE MOTION FOR RECONSIDERATION ON ITS DECISION PROMULGATED ON JULY 4, 1997 WITH SUCH DENIAL AMOUNTING TO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION."

We find merit in the appeal.

The key issues are: (1) whether the public respondent NLRC gravely abused its discretion when it admitted Annex "2" attached to respondent company's Memorandum of Appeal to prove that petitioner was dismissed for cause and with due process, which evidence was not presented by the private respondent before the Labor Arbiter; and (2) assuming that the said evidence was properly admitted, whether it proved that petitioner was legally dismissed.

On the first issue, we hold that public respondent NLRC gravely abused its discretion when it admitted Annex "2" of respondent company's Memorandum of Appeal. Annex "2" purportedly shows that on August 25, 1994, petitioner was required to explain in writing why his services should not be terminated for "repeated and open violations of our Company Code of Conduct, the most recent of which was the gambling incident this afternoon, 25 August 1994." It is true that our ruling case law is that proceedings in quasi-judicial agencies like the NLRC should not be strictly governed by technical rules of procedure. This case law is in accord with Article 221 of the Labor Code which provides:

"ARTICLE 221. Technical rules not binding and prior resort to amicable settlement. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all

> reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.
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> x x x

A close examination of the aforequoted provision will show that its purpose is to avoid denial of due process. It allows the relaxation of our rules of procedure if their strict enforcement will bring about failure of justice. It does not, however, sanction the reasonless violation of our procedural rules which were promulgated precisely to achieve order in the dispensation of justice. In the case at bar, private respondent cannot claim that it would be denied due process if its Annex "2" is not allowed admission. The records will show that the primary issue before the Labor Arbiter was whether or not the petitioner was legally dismissed. To meet this issue, all that private respondent needed to do was to attach this Annex "2" to its Comment to the Position Paper of the petitioner where it already alleged that petitioner ". . . was terminated for cause or violation of company rules and regulations." Private respondent chose not to substantiate this allegation. All the while, the proof of the allegation, Annex "2", was in its possession and it offers no excuse for its non-submission to the Labor Arbiter. Private respondent does not have any right to present evidence at any stage of the proceedings as it may wish. To recognize that absolute right is to recognize caprice and to promote disorder. Private respondent company should demonstrate due diligence in the exercise of its rights before it can demand due process. Due process cannot be accorded to a negligent litigant if it will result in injustice to the other litigant who has been diligent in observing the rules of litigation. There is another reason why the public respondent acted unfairly when it admitted Annex "2". The records do not indubitably show whether the public respondent NLRC gave the petitioner a clear chance to rebut Annex "2". That was the least that should have been done by the public respondent NLRC considering the lateness of the submission of Annex "2," considering further that it alleged a very

critical fact, and considering finally that it concerns a worker whose right to social justice is an immutable polestar in our Constitution. The end result of the act of the public respondent is a Decision characterized by an imbalance of rights — over due process was given to the private respondent employer and under due process to the petitioner employee with the latter losing his most valuable right as a worker, the right to security of tenure.

On the second issue, we hold that even if Annex "2" was properly admitted by the public respondent, still it did not prove that petitioner was legally dismissed. At best, Annex "2," is a cipher as an evidence. It speaks of "repeated and open violations of our Company Code of Conduct" and yet does not specify these violations. It speaks of a "gambling incident," yet it does not even tell the kind of gambling done by petitioner. Indeed, in its Comment to the Petition at bar, private respondent confessed its lack of knowledge when it stated "although respondents failed to make mention of the particular gambling activity engaged in by petitioner, we venture to take a guess that this may probably involve either cards or mental games like chess."[1] Petitioner's end of employment cannot depend on a guessing game.

IN VIEW WHEREOF, the petition is **GRANTED**. The assailed decision and resolution of public respondent are hereby set aside, and the decision of the labor arbiter is reinstated, subject to the modification that backwages are to be computed from the time petitioner was dismissed up to his reinstatement.

Costs against private respondents.

SO ORDERED.

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

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[1] Records, p. 87.