

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
EN BANC**

**WENPHIL CORPORATION,  
*Petitioner,***

***-versus-***

**G.R. No. 80587  
February 8, 1989**

**NATIONAL LABOR RELATIONS  
COMMISSION AND ROBERTO  
MALLARE,  
*Respondents.***

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**D E C I S I O N**

**GANCAYCO, J.:**

**SEPARATE OPINIONS:**

***MELENCIO-HERRERA, J., concurring and dissenting.:***

***PADILLA, J., concurring and dissenting.:***

***CORTES, J., concurring and dissenting.:***

Once again the dismissal of an employee without affording him due process is brought to the attention of this Court by this petition.

Private respondent was hired by petitioner on January 18, 1984 as a crew member at its Cubao Branch. He thereafter became the assistant

head of the Backroom department of the same branch. At about 2:30 P.M. on May 20, 1985 private respondent had an altercation with a co-employee, Job Barrameda, as a result of which he and Barrameda were suspended on the following morning and in the afternoon of the same day a memorandum was issued by the Operations Manager advising private respondent of his dismissal from the service in accordance with their Personnel Manual. The notice of dismissal was served on private respondent on May 25, 1985.

Thus private respondent filed a complaint against petitioner for unfair labor practice, illegal suspension and illegal dismissal. After submitting their respective position papers to the Labor Arbiter and as the hearing could not be conducted due to repeated absence of counsel for respondent, the case was submitted for resolution. Thereafter a decision was rendered by the Labor Arbiter on December 3, 1986 dismissing the complaint for lack of merit.

Private respondent appealed to the National Labor Relations Commission (NLRC) wherein in due course a decision was rendered on October 16, 1987 setting aside the appealed decision and ordering the reinstatement of private respondent to his former position without loss of seniority and other related benefits and one (1) year backwages without qualification and deduction.

Hence the herein Petition for *Certiorari* with Preliminary Injunction and/or Restraining Order wherein petitioner alleges that the public respondent NLRC committed a grave abuse of discretion in rendering its decision contrary to the evidence on record.

On December 2, 1987, the court issued a restraining order as prayed for in the petition enjoining the enforcement of the decision dated October 16, 1987 of public respondent NLRC upon petitioner posting a bond of P20,000.00.

The theory of the petitioner is that on the aforesaid date, May 20, 1985, when private respondent and Barrameda had a misunderstanding about tending the Salad Bar, private respondent slapped Barrameda's cap, stepped on his foot and picked up the ice scooper and brandished it against the latter. Marijo B. Kolimlim who was a management trainee tried to pacify private respondent but he

defied her so Kolimlim reported the incident to the assistant manager, Delilah C. Hermosura, who immediately asked private respondent to see her. Private respondent refused to see Hermosura and it took the security guard to bring him to her. Private respondent then shouted and uttered profane words instead of making an explanation before her. He stated the matter should be settled only by him and Barrameda. The following day Kolimlim and Hermosura submitted a report on the incident and recommended the imposition of the appropriate penalties on both. It was the store manager who issued a report meting out the penalty of suspension on the two until further notice in the following morning. Later that day the Operations Manager issued a memorandum advising Barrameda of one (1) week suspension and the dismissal of private respondent from the service.

The main thrust of the petition is that under the Personnel Manual of petitioner which had been read and understood by private respondent, private respondent waived his right to the investigation. It is provided therein that —

#### “INVESTIGATION”

If the offense is punishable with a penalty higher than suspension for fifteen (15) days, upon the request of the erring employee, there shall be convened an investigation board composed of the following:

1. The Parlor Manager or Supervisor on duty when the incident occurred.
2. The General Manager or the Assistant Manager.

The investigation board shall discuss the merits of the case and shall issue a ruling, which shall be final and conclusive.” (p. 3, Personnel Manual: Emphasis supplied).

From the foregoing it appears that an investigation shall only be conducted if the offense committed by the employee is punishable with the penalty higher than suspension of fifteen (15) days and the erring employee requests for an investigation of the incident. Petitioner alleges that private respondent not having asked for an

investigation he is thus deemed to have waived his right to the same. Petitioner avers that immediately after the incident when private respondent was asked to see Hermosura, he was defiant and showed that he was not interested to avail of an investigation.

The contention of petitioner is untenable. The incident happened on May 20, 1985 and right then and there as afore repeated on the following day private respondent was suspended in the morning and was dismissed from the service in the afternoon. He received an official notice of his termination four (4) days later.

The defiant attitude of private respondent immediately after the incident amounted to insubordination. Nevertheless his refusal to explain his side under the circumstances cannot be considered as a waiver of his right to an investigation.

Although in the Personnel Manual of the petitioner, it states that an erring employee must request for an investigation it does not thereby mean that petitioner is thereby relieved of the duty to conduct an investigation before dismissing private respondent. Indeed said provision of the Personnel Manual of petitioner which may effectively deprive its employees of the right to due process is clearly against the law and hence null and void. The security of tenure of a laborer or employee is enshrined in the Constitution, the Labor Code and other related laws.<sup>[1]</sup>

Under Section 1, Rule XIV of the Implementing Regulations of the Labor Code, it is provided that “No worker shall be dismissed except for just or authorized cause provided by law and after due process” Sections 2, 5, 6, and 7 of the same rules require that before an employer may dismiss an employee the latter must be given a written notice stating the particular act or omission constituting the grounds thereof; that the employee may answer the allegations within a reasonable period; that the employer shall afford him ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires; and that it is only then that the employer may dismiss the employee by notifying him of the decision in writing stating clearly the reasons therefor. Such dismissal is without prejudice to the right of the employee to contest its validity in the Regional Branch of the NLRC.

Petitioner insists that private respondent was afforded due process but he refused to avail of his right to the same; that when the matter was brought to the labor arbiter he was able to submit his position papers although the hearing cannot proceed due to the non-appearance of his counsel; and that the private respondent is guilty of serious misconduct in threatening or coercing a co-employee which is a ground for dismissal under Article 283 of the Labor Code.

The failure of petitioner to give private respondent the benefit of a hearing before he was dismissed constitutes an infringement of his constitutional right to due process of law and equal protection of the laws.<sup>[2]</sup> The standards of due process in judicial as well as administrative proceedings have long been established. In its bare minimum due process of law simply means giving notice and opportunity to be heard before judgment is rendered.<sup>[3]</sup>

The claim of petitioner that a formal investigation was not necessary because the incident which gave rise to the termination of private respondent was witnessed by his co-employees and supervisors is without merit. The basic requirement of due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.<sup>[4]</sup>

However, it is a matter of fact that when the private respondent filed a complaint against petitioner he was afforded the right to an investigation by the labor arbiter. He presented his position paper as did the petitioner. If no hearing was had, it was the fault of private respondent as his counsel failed to appear at the scheduled hearings. The labor arbiter concluded that the dismissal of private respondent was for just cause. He was found guilty of grave misconduct and insubordination. This is borne by the sworn statements of witnesses. The Court is bound by this finding of the labor arbiter.

By the same token, the conclusion of the public respondent NLRC on appeal that private respondent was not afforded due process before he was dismissed is binding on this Court. Indeed, it is well taken and supported by the records. However, it can not justify a ruling that private respondent should be reinstated with back wages as the public respondent NLRC so decreed. Although belatedly, private respondent

was afforded due process before the labor arbiter wherein the just cause of his dismissal had been established. With such finding, it would be arbitrary and unfair to order his reinstatement with back wages.

The Court holds that the policy of ordering the reinstatement to the service of an employee without loss of seniority and the payment of his wages during the period of his separation until his actual reinstatement but not exceeding three (3) years without qualification or deduction, when it appears he was not afforded due process, although his dismissal was found to be for just and authorized cause in an appropriate proceeding in the Ministry of Labor and Employment, should be re-examined. It will be highly prejudicial to the interests of the employer to impose on him the services of an employee who has been shown to be guilty of the charges that warranted his dismissal from employment. Indeed, it will demoralize the rank and file if the undeserving, if not undesirable, remains in the service.

Thus in the present case, where the private respondent, who appears to be of violent temper, caused trouble during office hours and even defied his superiors as they tried to pacify him, should not be rewarded with re-employment and back wages. It may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe. Under the circumstances the dismissal of the private respondent for just cause should be maintained. He has no right to return to his former employer.

However, the petitioner must nevertheless be held to account for failure to extend to private respondent his right to an investigation before causing his dismissal. The rule is explicit as above discussed. The dismissal of an employee must be for just or authorized cause and after due process.<sup>[5]</sup> Petitioner committed an infraction of the second requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from employment. Considering the circumstances of this case petitioner must indemnify the private respondent the amount of P1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer.

**WHEREFORE**, the Petition is **GRANTED**. The questioned Decision of the public respondent NLRC dated October 16, 1987 for the reinstatement with back wages of private respondent is **REVERSED AND SET ASIDE**, and the decision of the labor arbiter dated December 3, 1986 dismissing the complaint is revived and affirmed, but with the modification that petitioner is ordered to indemnify private respondent in the amount of P1,000.00. The restraining order issued by this Court on December 2, 1987 is hereby made permanent and the bond posted by petitioner is cancelled. This decision is immediately executory.

**SO ORDERED.**

**Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Sarmiento, Griño-Aquino, Medialdea and Regalado, JJ., concur.**

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## **SEPARATE OPINIONS**

***MELENCIO-HERRERA, J., concurring and dissenting:***

I, too, share the majority view that private respondent is not entitled to reinstatement and backwages for having been terminated for cause.

Like Justice Cortes, however, it is my view that private respondent-employee has not been denied due process. But even if petitioner-employer had failed to comply with the requirements of investigation and hearing, I believe with Justice Padilla that it is not an indemnity that petitioner should be made to pay but rather separation pay in such amount as may be justified under the circumstances of the case, not out of right, but to cushion the impact of his loss of employment. In fact, this is the practice presently being followed by the National Labor Relations Commission.

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***PADILLA, J., concurring and dissenting:***

I concur with the majority opinion that (1) the private respondent (employee) is not entitled to reinstatement and backwages as it was clearly found by the Labor Arbiter that he was guilty of grave misconduct and insubordination and (2) the petitioner (employer) failed to comply with the requirements of administrative due process in not having given the employee, before his termination, the notice and hearing required by law.

I am of the view, however, that for the employer's omission he should be made to pay the separated employee a separation pay (instead of indemnity) in the amount of P1,000.00.

“Indemnity” may connote —

“The obligation of a person to make good any loss or damage another has incurred or may incur by acting at his request or for his benefit.

“That which is given to a person to prevent his suffering a damage. (Shurdut Mill Supply Co. vs. Central Azucarera del Danao, 44037-R, December 19, 1979;” Cited in Philippine Law Dictionary 3rd Ed., F.B. Moreno, p. 463).

While “separation pay” is pay given to an employee on the occasion of his separation from employment in order to assuage even a little the effects of loss of employment.

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***CORTES, J., concurring and dissenting:***

I concur with the majority that a case for illegal dismissal has not been established. However, my reading of the case reveals no denial of due process, hence there is no basis for the award of ONE

THOUSAND PESOS (P1,000.00) as indemnity in favor of private respondent. On the other hand, if the P1,000.00 is imposed as a sanction in the form of administrative penalty for failure of petitioner to comply strictly with duly promulgated regulations implementing the Labor Code, the amount if authorized, should form part of the public funds of the government.

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- [1] Section 18, Article II, and Section 3, Article XIII of the 1987 Constitution; Articles 280 and 283 of the Labor Code; and the Implementing Rules of the Labor Code.
- [2] BLTB Bus Co. vs. Court of Appeals, 71 SCRA 470.
- [3] Lopez vs. Director of Lands, 47 Phil. 23.
- [4] Lopez vs. Director of Lands, supra.
- [5] Section 1, Rule XIV, Implementing Regulations of the Labor Code.
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