

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**WORLDWIDE PAPERMILLS, INC.
and/or HONORIO POBLADOR, III,
*Petitioner,***

-versus-

**G.R. No. 113081
May 12, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION and EDWIN P. SABUYA,
*Respondents.***

X-----X

D E C I S I O N

PADILLA, J.:

Petitioners Worldwide Papermills, Inc. (WPI) and/or Honorio Poblador, III have filed this Petition for *Certiorari* under Rule 65 of the Rules of Court seeking the modification of the Decision and Resolution of respondent National Labor Relations Commission (NLRC) dated 14 July 1993 and 24 November 1993 respectively in NLRC NCR CA No. 003368-92.

The challenged Decision^[*] reversed and set aside the Decision of Labor Arbiter Manuel R. Caday in the case docketed as NLRC NCR-00-09-05668-91,^[1] the decretal part of the NLRC decision reading thus:

“WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE.”

“The respondents is hereby ordered to indemnify the complainant the amount of P1,000.00 for its failure to fully comply with the requirements of due process and to pay him separation pay equivalent to one month salary for every year of service for equitable reasons.”

“SO ORDERED.”^[2]

As contained in the Comment of the Solicitor General, the undisputed facts of the case are as follows:

“Private respondent was employed by petitioner as a packer on July 8, 1982 until his services were terminated on September 28, 1991.

“It appears that private respondent incurred excessive unexcused absences from 1986 to 1989, as summarized in a memorandum dated January 22, 1990 prepared and signed by the personnel/administrative officer of petitioner, thus:

‘In 1986, he incurred a total of 46 days without pay including AWOL but excluding 30 days VL & SL given to him. The following year, 1987, he accumulated about 17.5 days leave without pay including AWOL after exhausting the 30 days VL/SL with pay. Followed by 1988, in which after exhausting the 30 days leave with pay, he again accumulated 60 days leave without pay, 12 days of which AWOL. Finally, 1989 he acquired a total of 26 days leave without pay including 3 days AWOL after exhausting the 30 days leave with pay. (Please refer to attached breakdown of absences.)

Disciplined for unofficial leaves, in 1986, he was admonished, (1) month. In 1987, he was admonished, warned sternly, and suspended for one (1) week. While in 1988 for AWOL he was admonished, warned sternly and suspended for one (1) month. On Nov. 11, he was warned sternly for excessive leave without pay. Finally in 1989, he got

an admonition and consequently warned sternly for AWOL. (Please refer to attached breakdown of DAM.)

Sabuya was counselled several times to improve his attendance. On April 11, 1988, he promised not to absent himself, yet, no compliance. Due to having incurred 12 days AWOL in 1988, he was supposed to be terminated based on our rule, but due to his asking reconsideration and intervention of R. Brusola, Union President he was only suspended for one (1) month. A promissory note to this effect was executed by Sabuya and witnessed by R. Brusola, stressing among others to improve his attendance in 1989; once he exceeds the VL & SL granted by the company, he accepts to be terminated; and the next time he is declared AWOL he accepts the DA of termination. (Please see attached notes for references.)

To summarize it all, no improvement up to this date. In 1989 he has exceeded the required VL & SL given by the company and aggravated by the fact that he was disciplined for AWOL twice already for that same year. The undersigned also called the attention of R. Brusola of this in fact he even talked to Sabuya several times to improve his attendance but to no avail.' (Annex "C", Petition)

On February 2, 1990, private respondent wrote petitioner a letter promising to mend his ways after the personnel officer of petitioner recommended his dismissal due to his numerous absences.

Private respondents, however, again incurred absences without official leave on January 2, February 20, June 1, 2 and 3, 1991. He was consequently suspended effective June 24, 1991. For the third time, private respondents was suspended for two weeks effective July 22, 1991 up to August 4, 1991 when he incurred absences on July 5 and 8, 1991.

A week after he had served his latest suspension, private respondents applied for sick leave covering the period August 12-18, 1991. On August 15, 1991, Ms. Belinda Luna, the company nurse, paid private respondent a home visit. However, he was not there. Neither was anybody at home, though the radio was on Ms. Luna learned from private respondent's son that his father was moonlighting as a pedicab driver at Bayanan, Muntinlupa, market.

After petitioner was informed of the incident, private respondent's applications for sick leave was disapproved. Then, on Aug. 29, 1991, petitioner issued a memorandum to private respondent requiring him to explain within twenty-four (24) hours from receipt why no disciplinary action should be imposed upon him for his excessive absences without official leave.

In compliance therewith, private respondent gave his answer, thus:

‘SIR, ETO LANG PO ANG MASASAGOT KO SA AKING EXPLANATION SA LOOB NG SIYAM NA TAON PAGIGING MANGAGAWA NG KOMPANYANG ITO GINANAP KO NG TAMA AT NAAAYON SA REGULASYON ANG AKING PAGTATRABAHO. MALIBAN SA DI INAASAHANG MAHIGPIT NA DAHILAN SA SANHI NG MINSANG PAGPALYA KO SA PAGPASOK.’

On September 21, 1991, petitioner terminated the employment of private respondent. Thus, on September 30, 1991, the latter filed a complaint for illegal dismissal, praying for reinstatement and payment of backwages. The case was docketed as NLRC NCR Case No 00-09-05668-91 and it was raffled to Labor Arbiter Manuel R. Caday.^[3]

On 28 May 1991, Labor Arbiter Caday rendered a decision finding the dismissal of private respondent illegal, and ordered his reinstatement without loss of seniority rights and privileges, with full backwages. The dispositive part of the aforesaid decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of the complainant as illegal and ordering the respondent to immediately reinstate him to his former position as a Packer without loss of seniority rights and privileges and with full backwages amounting to Twenty Seven Thousand Two Hundred Sixty Four (P27,264.00) Pesos as of the date of this decision until he is actually reinstated.

SO ORDERED.”^[4]

In holding that private respondent was illegally dismissed, Labor Arbiter Caday found that not only were petitioners remiss in according private respondent the due process requirements of notice and hearing, but, more importantly, petitioners offered no just cause for his dismissal. Substantiating his finding that petitioners had no just cause for terminating the services of Sabuya, Labor Arbiter Caday made the following findings:

“After a careful scrutiny of the evidence adduced in the record, there is no doubt that complainant has indeed, incurred numerous absences from 1986 to 1989, for which he had been already sufficiently punished by the respondent. We cannot tack these infractions to his absences for the year 1991 otherwise, complainant would be penalized twice for offences for which the respondent has already imposed the appropriate disciplinary action. For complainant’s absences on January 2, February 20, June 1, 2, 3, July 5 and 8, 1991 he applied for sick leave of absence without pay but this was disapproved by the respondent on the ground that complainant was only malingering.

X X X

Moreover, it has not been disputed that respondent’s policy with respect to employee’s leave is to grant 15 days vacation leave with pay, 10 days sick leave with pay and, 10 days sick leave with pay and 5 days emergency leave with pay. As admitted by the respondent, for the year 1991, complainant had only incurred a total of 12 days absences hence, he could have applied his absences to his leave credits for the year 1991. However, respondents opted to dismiss him from the service without valid cause and due process of law.”^[5]

And to show that private respondents was denied his constitutional right to due process, Labor Arbiter Caday made the following observations:

“Complainant was not investigated for this infraction and yet respondent took this against him when respondent finally

arrived at a decision imposing the supreme industrial penalty of dismissal to the complainant.”^[6]

Aggrieved, petitioners appealed the Labor Arbiter’s Decision to the NLRC. On 14 July 1993, respondents NLRC rendered its decision reversing Labor Arbiter Caday’s decision by ruling that private respondent was dismissed for just cause. However, due to petitioners’ failure to observe the requirements of due process in dismissing private respondent, respondent NLRC ordered petitioners to indemnify private respondent the amount of one thousand pesos (P1,000.00). Petitioners were also ordered to pay private respondent separation pay equivalent to one (1) month salary for every year of service, for equitable reasons.

In reversing Labor Arbiter Caday’s decision and thereby upholding as a just cause for dismissal private respondent’s excessive unauthorized absences, respondent NLRC held:

“Not only had complainant been, for years, repeatedly admonished, warned and suspended for incurring excessive unauthorized absences. He had even twice acknowledged the gravity of his offense by promising in writing not to object to the severance of his employment should he again exceed his allowed number of leaves. Worst, he was not at home, but was reportedly out driving a pedicab when the company nurse paid him a visit after he filed an application for sick leave. Under the circumstances, the respondent was entirely justified in disapproving the complainant’s application for sick leave and in not crediting his absences from August 12, 1991 to August 18, 1991 against his allowed leaves. And, having already shown compassion by imposing numerous lighter penalties against the complainant for his repeated unauthorized absences, the respondent should not now be penalized for having been merciful by denying him the right to finally impose the penalty of dismissal against the former. In this case, the complainant’s uncontrollable habit of frequently absenting himself from work is, under the circumstances, already tantamount to acts inimical to the interest of the employer, which is a valid ground for dismissal (SMC vs. Deputy Minister of Labor, 145 SCRA 196, cited in Piedad vs. Lanao del Norte Electric Cooperative, Inc.

153 SCRA 501) Besides, it has been held that dismissal is not unjustified where the employee in question admitted the gravity of his offense (Mendoza vs. NLRC 195 SCRA 606).”^[7] [Emphasis supplied]

But in ordering petitioners to indemnify private respondent, respondent NLRC ruled:

“Thus it is clear, from the evidence on record, that there was a partial compliance with the requirements of due process because the respondent gave the complainant a written notice requiring him to explain why no disciplinary action should be taken against him for his excessive unauthorized absences and another written notice informing him of his dismissal and of the reason therefor. For its failure to give the complainant the benefit of a hearing, the respondent may be ordered to indemnify him the amount of one thousand pesos (P1,000.00). (Mabaylan vs. NLRC, 203 SCRA 570; Wenphil Corp. vs. NLRC, 170 SCRA 61)”^[8]

Finally, in proceeding to grant separation pay to private respondent, respondent NLRC made the following observations:

“Furthermore, considering that the complainant’s dismissal was not due to serious misconduct or for other grounds reflecting on his moral character, an award of separation pay equivalent to one month salary for every year of service may be granted for equitable reasons. (PLDT vs. NLRC, 64 SCRA 671).”^[9]

Petitioners’ motion for reconsideration was denied by respondent NLRC in a resolution dated 24 November 1993.

Hence, this petition.

Petitioners assign the following as errors committed by respondent NLRC:

I

“RESPONDENT NLRC SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT AWARDED RESPONDENT SABUYA SEPARATION PAY NOTWITHSTANDING ITS FINDING THAT THE NUMEROUS AND FREQUENT ABSENCES CONSTITUTED ACTS INIMICAL TO THE INTEREST OF PETITIONER WPMI.

II

THE AWARD OF SEPARATION PAY EQUIVALENT TO ONE (1) MONTH PAY FOR EVERY YEAR OF SERVICE IS INEQUITABLE UNDER RELEVANT JURISPRUDENCE.”

Even if private respondent has not assailed the decision of respondent NLRC sustaining his dismissal, the Court still has the authority and discretion to review the NLRC’s decision in regard to the validity of such dismissal.

Article 282 of the Labor Code provides the grounds for which an employer may validly dismiss an employee, among which is gross and habitual neglect by the employee of his duties.

In the case at bench, it is undisputed that respondent Edwin P. Sabuya had within a span of almost six (6) years been repeatedly admonished, warned and suspended for incurring excessive unauthorized absences. Worse, he was not at home but was out driving a pedicab to earn extra income when the company nurse visited his residence after he filed an application for sick leave. Such conduct of respondents Edwin P. Sabuya undoubtedly constitutes gross and habitual neglect of duties.

In *Philippines Geothermal, Inc. vs. NLRC*,^[10] the Court stated thus:

“While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one’s source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of

an employee who has been shown to be a gross liability to the employer. The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer. It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interest of management but never should the scale be so tilted if the result is an injustice to the employer. *Justicia nemini neganda est* (Justice is to be denied to none).” (Citations omitted)

Our decision in *Filipino, Inc. vs. The Honorable Minister Blas F. Ople, et al.*^[11] does not preclude private respondent’s dismissal for, unlike in *Filipino*, respondent Edwin P. Sabuya was given notice that the next time he again exceeds his allowed vacation and sick leaves, or goes on absence without official leave, he would be terminated from employment. Private respondent did not heed the warning. His dismissal from employment is, therefore, justified.

On the issue of separation pay, we ruled also in *Philippine Geothermal, Inc.*^[12] that separation pay of one-half (1/2) month salary for every year of service is equitable, even if the employee’s termination of employment is justified.

Finally, on the issue of violation of private respondent’s right to procedural due process, it is clear that the right was violated when no hearing was conducted prior to dismissal.

In *Wenphil Corporation vs. NLRC*^[13] the Court ordered an employer to pay P1,000.00 to an employee who was denied due process prior to dismissal. It should be stressed however that the Court did not intend to fix a value or price on such right of an employee, for rights, specially the right to due process, cannot be translated in monetary value. The amount awarded in such cases was intended to serve as a penalty to the employer who violated an employee’s right as well as to serve as an example for other employers inclined to violate their employees rights. Considering the importance of said right to

procedural due process, petitioners should indemnify private respondent the amount of Five Thousand(P5,000.00).

WHEREFORE, the Decision of respondent NLRC is **MODIFIED** to read as follows:

The dismissal of private respondent Edwin P. Sabuya is, under the circumstances of this case, declared valid and justified.

Petitioners are hereby ordered, for humanitarian reasons, to pay respondent Edwin P. Sabuya separation pay equivalent to one-half (1/2) month salary for every year of service and to indemnify him the amount of Five Thousand Pesos (P5,000.00) for failure of petitioners to fully comply with the requirements of procedural due process.

SO ORDERED.

Davide, Jr., Bellosillo, Quiason and Kapunan, JJ., concur.

-
- [*] Penned by Commissioner Bartolome S. Carale, with the concurrence of Commissioner Vicente Veloso and Alberto Quimpo.
[1] Edwin Sabuya vs. Worldwide Papermills, Inc. and/or Honorio Poblador III.
[2] Rollo, p. 14.
[3] Rollo, pp. 132-135.
[4] Rollo, pp. 60-61.
[5] Rollo, pp. 56-58.
[6] Rollo, p. 57.
[7] Rollo, pp. 12-13.
[8] Rollo, pp. 47-48.
[9] Rollo, p. 48.
[10] G.R. No. 106370, 8 September 1994, 236 SCRA 371.
[11] G.G. No. 72129, 7 February 1990, 182 SCRA 1.
[12] Supra.
[13] G.R. No. 80587, 8 February 1989, 170 SCRA 69.