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[G.R. No. 152048, April 07, 2009]

FELIX B. PEREZ AND AMANTE G. DORIA, PETITIONERS, VS. PHILIPPINE TELEGRAPH AND TELEPHONE COMPANY AND JOSE LUIS SANTIAGO, RESPONDENTS.

D E C I S I O N

CORONA, J.:

Petitioners Felix B. Perez and Amante G. Doria were employed by respondent Philippine Telegraph and Telephone Company (PT&T) as shipping clerk and supervisor, respectively, in PT&T's Shipping Section, Materials Management Group.

Acting on an alleged unsigned letter regarding anomalous transactions at the Shipping Section, respondents formed a special audit team to investigate the matter. It was discovered that the Shipping Section jacked up the value of the freight costs for goods shipped and that the duplicates of the shipping documents allegedly showed traces of tampering, alteration and superimposition.

On September 3, 1993, petitioners were placed on preventive suspension for 30 days for their alleged involvement in the anomaly.[1] Their suspension was extended for 15 days twice: first on October 3, 1993[2] and second on October 18, 1993.[3]

On October 29, 1993, a memorandum with the following tenor was issued by respondents:

> In line with the recommendation of the AVP-Audit as presented in his report of October 15, 1993 (copy attached) and the subsequent filing of criminal charges against the parties mentioned therein, [Mr. Felix Perez and Mr. Amante Doria are] *hereby dismissed from the service for having falsified company documents*.[4] (emphasis supplied)

On November 9, 1993, petitioners filed a complaint for illegal suspension and illegal dismissal.[5] They alleged that they were dismissed on November 8, 1993, the date they received the above-mentioned memorandum.

The labor arbiter found that the 30-day extension of petitioners' suspension and their subsequent dismissal were both illegal. He ordered respondents to pay petitioners their salaries during their 30-day illegal suspension, as well as to reinstate them with backwages and 13th month pay.

The National Labor Relations Commission (NLRC) reversed the decision of the labor arbiter. It ruled that petitioners were dismissed for just cause, that they were accorded due process and that they were illegally suspended for only 15 days (without stating the reason for the reduction of the period of petitioners' illegal

suspension).[6]

Petitioners appealed to the Court of Appeals (CA). In its January 29, 2002 decision,[7] the CA affirmed the NLRC decision insofar as petitioners' illegal suspension for 15 days and dismissal for just cause were concerned. However, it found that petitioners were dismissed without due process.

Petitioners now seek a reversal of the CA decision. They contend that there was no just cause for their dismissal, that they were not accorded due process and that they were illegally suspended for 30 days.

We rule in favor of petitioners.

RESPONDENTS FAILED TO PROVE JUST CAUSE AND TO OBSERVE DUE PROCESS

The CA, in upholding the NLRC's decision, reasoned that there was sufficient basis for respondents to lose their confidence in petitioners[8] for allegedly tampering with the shipping documents. Respondents emphasized the importance of a shipping order or request, as it was the basis of their liability to a cargo forwarder.[9]

We disagree.

Without undermining the importance of a shipping order or request, we find respondents' evidence insufficient to clearly and convincingly establish the facts from which the loss of confidence resulted.[10] Other than their bare allegations and the fact that such documents came into petitioners' hands at some point, respondents should have provided evidence of petitioners' functions, the extent of their duties, the procedure in the handling and approval of shipping requests and the fact that no personnel other than petitioners were involved. There was, therefore, a patent paucity of proof connecting petitioners to the alleged tampering of shipping documents.

The alterations on the shipping documents could not reasonably be attributed to petitioners because it was never proven that petitioners alone had control of or access to these documents. Unless duly proved or sufficiently substantiated otherwise, impartial tribunals should not rely only on the statement of the employer that it has lost confidence in its employee.[11]

Willful breach by the employee of the trust reposed in him by his employer or duly authorized representative is a just cause for termination.[12] However, in *General Bank and Trust Co. v. CA,*[13] we said:

> [L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

The burden of proof rests on the employer to establish that the dismissal is for cause in view of the security of tenure that employees enjoy under the Constitution

and the Labor Code. The employer's evidence must clearly and convincingly show the facts on which the loss of confidence in the employee may be fairly made to rest.[14] It must be adequately proven by substantial evidence.[15] Respondents failed to discharge this burden.

Respondents' illegal act of dismissing petitioners was aggravated by their failure to observe due process. To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.[16]

Petitioners were neither apprised of the charges against them nor given a chance to defend themselves. They were simply and arbitrarily separated from work and served notices of termination in total disregard of their rights to due process and security of tenure. The labor arbiter and the CA correctly found that respondents failed to comply with the two-notice requirement for terminating employees.

Petitioners likewise contended that due process was not observed in the absence of a *hearing* in which they could have explained their side and refuted the evidence against them.

There is no need for a hearing or conference. We note a marked difference in the standards of due process to be followed as prescribed in the Labor Code and its implementing rules. The Labor Code, on one hand, provides that an employer must provide the employee *ample opportunity to be heard and to defend himself* with the assistance of his representative if he so desires:

> ART. 277. *Miscellaneous provisions*. — x x x
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter **ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires** in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (emphasis supplied)

The omnibus rules implementing the Labor Code, on the other hand, *require a hearing and conference* during which the employee concerned is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him:[17]

Section 2. *Security of Tenure*. — x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.**

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (emphasis supplied)

Which one should be followed? Is a hearing (or conference) mandatory in cases involving the dismissal of an employee? Can the apparent conflict between the law and its IRR be reconciled?

At the outset, we reaffirm the time-honored doctrine that, in case of conflict, the law prevails over the administrative regulations implementing it.[18] The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute.[19] As such, it cannot amend the law either by abridging or expanding its scope.[20]

Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient."[21] In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).

Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very*

nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."[22]

The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.

Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed *"substantially,"* not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.*

An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy.[23] *"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.*[24] Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.

This Court has consistently ruled that the due process requirement in cases of termination of employment does not require an actual or formal hearing. Thus, we categorically declared in *Skipper's United Pacific, Inc. v. Maguad*:[25]

> **The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed**. (emphasis supplied)

In *Autobus Workers' Union v. NLRC*,[26] we ruled:

> The twin requirements of notice and hearing constitute the essential elements of due process. Due process of law simply means giving opportunity to be heard before judgment is rendered. In fact, **there is no violation of due process even if no hearing was conducted, where the party was given a chance to explain his side of the controversy**. What is frowned upon is the denial of the opportunity to be heard.
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> **A formal trial-type hearing is not even essential to due process. It is enough that the parties are given a fair and reasonable**