

SECOND DIVISION

[G.R. No. 171023, December 18, 2009]

ARSENIO S. QUIAMBAO, PETITIONER, VS. MANILA ELECTRIC COMPANY, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

The liberality of the law can never be extended to the unworthy and undeserving. In several instances, the policy of social justice has compelled this Court to accord financial assistance in the form of separation pay to a legally terminated employee. This liberality, however, is not without limitations. Thus, when the manner and circumstances by which the employee committed the act constituting the ground for his dismissal show his perversity or depravity, no sympathy or mercy of the law can be invoked.

This petition for review on *certiorari*^[1] assails the Decision^[2] dated October 28, 2005 and Resolution^[3] dated January 12, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 85332, which reversed the February 4, 2004 Decision^[4] of the National Labor Relations Commission (NLRC) awarding petitioner Arsenio S. Quiambao separation pay in the amount of P126,875.00.

Factual Antecedents

On July 16, 1986, petitioner was employed as branch teller by respondent Manila Electric Company. He was assigned at respondent's Mandaluyong office and was responsible for the handling and processing of payments made by respondent's customers.

It appears from his employment records, however, that petitioner has repeatedly violated the Company Code of Employee Discipline and has exhibited poor performance in the latter part of his employment. Thus:

EMPLOYEE'S PROFILE

A. INFRACTIONS -

Nature	DATE		ACTION TAKEN
	FROM	TO	
1. Excessive absences	11/11/99	11/24/99	10-day suspension
2. Excessive absences	10/19/99	10/25/99	5-day suspension
3. Excessive absences	07/27/99	07/29/99	3-day

			suspension
4. Assaulting others with bodily harm over work matters	02/17/99	02/17/99	Reprimand
5. Excessive tardiness	02/08/99	02/08/99	Reprimand
6. Excessive tardiness	10/06/97	10/06/97	Reprimand
7. Simple Absence	03/11/97	03/11/97	Reprimand
8. Excessive tardiness	06/14/96	06/14/96	Reprimand
9. Excessive tardiness	09/03/92	09/03/92	Reprimand

B. PERFORMANCE RATING

His merit ratings from 1995 to 1999 are as follows:

YEAR	RATING
1999	Poor
1998	Needs Improvement
1997	Needs Improvement
1996	Satisfactory
1995	Satisfactory ^[5]

On March 10, 2000, a Notice of Investigation^[6] was served upon petitioner for his unauthorized and unexcused absences on November 10, 25, 26, 29, 1999; December 1, 2, 14, 15, 16, 17, 20, 21, 22, 2000; and from February 17, 2000 up to the date of such notification letter. Petitioner was likewise required to appear at the investigation and to present his evidence in support of his defense. However, despite receipt of such notice, petitioner did not participate in the investigation. Consequently, in a Memorandum^[7] dated March 21, 2000, the legal department recommended petitioner's dismissal from employment due to excessive, unauthorized, and unexcused absences, which constitute (i) abandonment of work under the provisions of the Company Code of Employee Discipline (ii) and gross and habitual neglect of duty under Article 282 of the Labor Code of the Philippines. Through a Notice of Dismissal^[8] dated March 28, 2000, petitioner's employment was terminated effective March 29, 2000.

Proceedings before the Labor Arbiter

On July 3, 2001, petitioner filed a complaint before the Arbitration Branch of the NLRC against respondent assailing the legality of his dismissal. While petitioner did not dispute his absences, he nonetheless averred that the same were incurred with the corresponding approved application for leave of absence. He also claimed that he was denied due process.

On November 29, 2002, the Labor Arbiter rendered a Decision^[9] dismissing petitioner's complaint for lack of merit. The Labor Arbiter ruled that no evidence was presented to prove that the absences of petitioner were authorized; that petitioner was deprived of due process; and that petitioner's habitual absenteeism without leave did not violate the company's rules and regulations which justified his

termination on the ground of gross and habitual neglect of duties under Article 282(b) of the Labor Code.

Proceedings before the NLRC

Petitioner appealed to the NLRC which affirmed the legality of his dismissal due to habitual absenteeism. Nonetheless, the NLRC awarded separation pay in favor of petitioner citing the case of *Philippine Geothermal, Inc. v. National Labor Relations Commission*.^[10] The dispositive portion of the NLRC Decision reads:

WHEREFORE, the decision appealed from is hereby MODIFIED to the extent that the respondent is hereby ordered to pay the complainant separation pay amounting to P126,875.00 (P18,125.00 x 14 yrs./2 = P126,875.00).

SO ORDERED.^[11]

Respondent filed a Motion for Reconsideration^[12] impugning the grant of separation pay, which motion was denied by the NLRC in a

Resolution^[13] dated May 20, 2004.

Proceedings before the Court of Appeals

Aggrieved, respondent filed with the CA a petition for *certiorari*. On October 28, 2005, the CA nullified the NLRC's Decision and reinstated the Labor Arbiter's Decision dismissing the complaint. It ruled that the award of separation pay is neither justified nor warranted under the circumstances. Thus:

We find, then, that the award of separation pay was capricious, whimsical, and unwarranted, both for the award being without factual and legal basis and for ignoring that the valid cause of dismissal was serious misconduct on the part of the employee.

Respondent Quiambao was dismissed for excessive unauthorized absences. His dismissal was, in fact, upheld by both the Labor Arbiter and the NLRC. We should agree with their determination.

But we should hold here further that Quiambao committed a serious misconduct that merited no consideration or compassion. He was guilty not of mere absenteeism only, for such absences, unexcused and habitual, reflected worse than inefficiency, but a gross and habitual neglect of duty bordering on dishonesty. He had no compelling reason to be absent from work, substantially prejudicing his employer, which was a public utility whose distribution of electricity to its customers within its franchise area was a service that was very vital and of utmost necessity to the lives of all its customers. The responsibility required of the petitioner's employees was, in fact, publicly imposed by the petitioner in its *Company Code On Employee Discipline*, aforequoted, whereby it gave