

THIRD DIVISION

[G.R. NO. 157202, March 28, 2007]

**PHILIPPINE LONG DISTANCE AND TELEPHONE COMPANY, INC.,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,
RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on *Certiorari* filed by Philippine Long Distance and Telephone Company, Inc. (petitioner) seeking to annul the Decision^[1] dated July 31, 2002 and the Resolution^[2] dated February 7, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 51060.

Amparo Balbastro (private respondent) was employed by petitioner in 1978 as its telephone operator until her questioned dismissal from employment on October 5, 1989. She was dismissed by petitioner for her absences without authorized leave due to unconfirmed sick leave on June 28 to July 14, 1989, which constituted her third offense^[3] punishable by dismissal under petitioner's rules and regulations.^[4]

On October 28, 1991, private respondent filed a Complaint^[5] with the Labor Arbiter against petitioner and its President, Antonio Cojuangco, for illegal dismissal, non-payment of salary wage, premium pay for rest day, 13th month pay, and damages. In her position paper, she alleged that she was dismissed on the ground of unconfirmed sick leave despite her presentation of medical certificates from her attending physicians which were not considered by petitioner's medical doctors; and that she has four minor children and it was not her intention to habitually absent herself without reason considering that her loss of job which was based only on opinions of petitioner's doctors had caused her great deprivation and moral suffering. She prayed for reinstatement, backwages, and damages.

Petitioner filed its position paper with Motion to Dismiss^[6] alleging that private respondent's habitual and unjustified absences was a just and valid cause for her termination under its rules and regulations; and that her record of unauthorized absences for 1989 showed the following:

First unauthorized absences, from March 19 to 29, 1989. Private respondent absented herself from work for nine days excluding rest days on March 23 to 24, 1989 without notice to petitioner. She gave marital problem as the reason for her absence. She was penalized with 18 days suspension for violating petitioner's rules and regulations regarding absences.

Second unauthorized absences, from June 11 to 13, 1989. Private respondent called in sick from Tanauan, Batangas on June 5 that she was suffering from

gastroenteritis. She absented herself from June 5 to 13, 1989. On June 14, 1989, she presented herself to petitioner's doctor, Dr. Melissa Musngi and submitted a medical certificate where it was stated that she was under treatment from June 5 to 8, 1989 of gastroenteritis. Dr. Musngi confirmed private respondent's sick leave from June 5 to 10, 1989 but did not confirm her absences from June 11 to 13, 1989 because her medical certificate covered only the period from June 5 to 8, 1989. Furthermore, petitioner reasons out that if she really had such illness, certain normal logical medical procedures should have been taken, such as stool examinations and hospitalization; and she bore no post-illness manifestations of gastroenteritis. Private respondent's unconfirmed leave of absence was considered by petitioner unauthorized due to her patent abuse of sick leave privileges and treated it as her second offense and was penalized with 15 days suspension.

Third unauthorized absences, from June 28 to July 14, 1989. On June 25, 1989, private respondent made a sick call that she had sore eyes and absented herself from June 25 to July 14, 1989. On July 3, 1989, she was outvisited at her given address in Makati but was not found home. On July 15, 1989, she reported for work and presented herself to the clinic for confirmation. She had her medical certificate issued by her attending physician showing that she had been under his professional treatment from June 25 to July 12, 1989 for systemic viral infection. Petitioner's doctor, Dr. Benito Dungo, confirmed her sick leave from June 25 to 27, 1989 but did not confirm as to the rest of the dates when she was absent from work. When asked to explain, private respondent said that she had a viral infection during the said period; and that she was in Tanauan, Batangas during the said dates so she was not found in Makati when outvisited. Petitioner's doctor did not confirm her leave of absence from June 28 to July 14, 1989 on the ground that such illness did not warrant a very long time of rest; certain laboratory examinations should have been conducted by her attending physician; and there was patent abuse of her sick leave privileges.

While private respondent's third leave of absence was being deliberated upon, she absented herself from August 6 to 12, 1989. She called in sick on August 6, 1989 informing her supervisor that she had a fever. The medical certificate issued by her attending physician showed that she was under treatment from August 7 to 10, 1989 for influenza. Petitioner's doctor, Dr. Eduardo Co, confirmed private respondent's leave of absence from August 6 to 8, 1989 but did not confirm the rest because her absences from August 9 to 12, 1989 were not covered by a medical certificate; her illness did not warrant prolonged absence; and it was medically impossible for her to contract the same illness which she contracted the previous month since it is a medical fact that there is no such thing as an immediately recurrent viral infection.

In view of her repeated absences without authorized leave for the third time, petitioner terminated private respondent's service effective October 5, 1989.

The Labor Arbiter conducted a hearing where private respondent testified on her behalf, while petitioner presented the three medical doctors who did not confirm portions of private respondent's leave of absence, and its Employee Relations and Service Department Manager.

On May 30, 1994, the Labor Arbiter issued its Decision,^[7] the dispositive portion of which reads:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent Philippine Long Distance [and] Telephone Co. to reinstate the complainant to her former position as telephone operator with all the rights, privileges and benefits appertaining thereto, including seniority, plus backwages equivalent to one (1) year salary in the sum of P78,000.00 (P6,500.00/mo. x 12 mos.).

SO ORDERED.^[8]

The Labor Arbiter held that private respondent's first incident of absence from March 19 to 29, 1989 were unauthorized but not as to the other succeeding absences. It found that private respondent, on her first day of absence, called in sick and when she reported for work, she went to petitioner's clinic for check-up and submitted her medical certificates, thus she complied with the standard requirements on matters of sick leave; that petitioner's doctors did not confirm some portions of private respondent's leave of absence based merely on their medical opinions; that such justification was not warranted under Department Order No. ADM-79-02 wherein absences due to illness were considered unauthorized and without pay when the attending doctor's signature is forged, there is alteration as to the date and contents of the medical certificate, the certificate is false as to the facts alleged therein, the doctor issuing the medical certificate is not qualified to attend to the illness, there are falsities and misrepresentations, and when there is patent abuse of sick leave privileges; and that these circumstances were not proven in this case.

The Labor Arbiter gave more credence to the doctor who actually attended to private respondent rather than to the medical opinion of petitioner's doctors. It concluded that petitioner's doctors should have coordinated with private respondent's attending physicians to settle any doubts as to the medical certificates.

Petitioner filed its appeal with the National Labor Relations Commission (NLRC).^[9] On January 19, 1996, the NLRC issued a Resolution^[10] affirming the decision of the Labor Arbiter.

The NLRC found that company practice allows leave of absence due to sickness if supported by a medical certificate issued by the attending physician; that a difference in opinion by the Medical Director from that of the attending physician should not prejudice private respondent since the Medical Director can consider absences unauthorized only in cases of forgery and patent abuse of sick leave privileges which were not proven in this case; that if the Medical Director entertained doubts as to the medical certificate, he should have asked the attending physician to submit himself for cross-examination and then present an independent physician for an expert opinion on the matter.

Petitioner's Motion for Reconsideration was denied in a Resolution^[11] dated March 14, 1996.

Undaunted, petitioner filed with us a Petition for *Certiorari* with prayer for the issuance of a Temporary Restraining Order (TRO). A TRO was issued to enjoin the enforcement of the NLRC Resolution until further orders.^[12]

In a Resolution dated December 7, 1998,^[13] we referred the petition to

the CA in accordance with the *St. Martin Funeral Home v. National Labor Relations Commission*^[14] ruling.

On July 31, 2002, the CA issued its assailed Decision which dismissed the petition and affirmed the NLRC Decision. The CA held that as long as the medical certificate presented did not fall under any of the infirmities set forth in petitioner's rules and regulations, the unconfirmed leave should be treated merely as absence without leave and was not subject to disciplinary action; that petitioner may not rely on the previous absences of respondents in 1978 and 1982 to show abuse of sick leave privileges because petitioner had acknowledged that respondent had already been penalized with suspension, and those absences were committed beyond the three-year period mentioned in their rules and regulations; that in its desire to clothe private respondent's dismissal with a semblance of legality, petitioner points to private respondent's fourth unauthorized leave of absence committed in August 1989 while the third unauthorized leave of absence was being deliberated upon; and that the notice of dismissal referred only to her third unauthorized leave, thus she could not be faulted for an infraction for which she was not charged.

Petitioner's Motion for Reconsideration was denied in a Resolution dated February 7, 2003.

Hence, petitioner filed the instant Petition for Review on *Certiorari* alleging the following grounds:

I

WITH ALL DUE RESPECT, THE HONORABLE COURT FAILED TO CONSIDER THAT THE PETITION HEREIN DOES NOT MERELY INQUIRE UPON THE RELATIVE WEIGHT OF THE EVIDENCE PRESENTED BY THE PARTIES, BUT IS ANCHORED ON MANIFESTLY ERRONEOUS CONCLUSIONS ON THE PART OF THE NLRC ARISING FROM GROSS MISAPPREHENSION OF THE FACTS OBTAINING IN THE CASE. AMONG OTHERS, IT WAS GRAVE ERROR TO CONCLUDE THAT THERE WAS NO PATENT ABUSE OF THE SICK LEAVE PRIVILEGE ON THE PART OF THE PRIVATE RESPONDENT BECAUSE THE MEDICAL CERTIFICATES SHE PRESENTED WERE NOT FALSE, FORGED, OR ALTERED TOTALLY DISREGARDING THE FACT THAT "ABUSE OF SICK LEAVE PRIVILEGE" IS A CAUSE SEPARATELY ENUMERATED UNDER THE RULES AS A GROUND FOR DISCIPLINARY ACTION.

II

WITH ALL DUE RESPECT, THE HONORABLE COURT FAILED TO CONSIDER THAT THE CONCLUSIONS OF THE NLRC ARE BEREFT OF ANY LEGAL OR FACTUAL BASES AS THERE WERE LEGALLY NO MEDICAL CERTIFICATES TO SPEAK OF, AND THE EXISTENCE THEREOF ARE PURE AND SIMPLE HEARSAY, HENCE COULD NOT BE VALIDLY RELIED UPON OR INVOKED BY THE PRIVATE RESPONDENT TO SUPPORT HER DEFENSE EVEN SUPPOSING TECHNICAL RULES ON EVIDENCE COULD BE RELAXED IN LABOR PROCEEDINGS. ^[15]

Petitioner argues that the NLRC's conclusions that private respondent had not committed a patent abuse of sick leave privileges and that her dismissal was illegal are utterly without any factual or legal basis; that the NLRC's conclusion that the dismissal was illegal was merely based: (1) on the evidence of private respondent; (2) on medical certificates which are clearly hearsay and of no probative value whatsoever; and (3) on medical certificates which, even supposing could be considered, simply failed to cover the period of the leave requested and set forth implausible diagnoses.

Petitioner claims that the CA as well as the NLRC failed to resolve the issue of whether or not the medical certificate should be given any credence at all; that it had presented four witnesses which included their three medical doctors who were subjected to cross-examinations, and yet credence was given to private respondent's hearsay evidence consisting merely of a medical certificate by the latter's attending physician who was not even presented to testify; that since the content of the medical certificate had been rebutted and refuted by petitioner's witnesses, the burden of evidence is shifted to private respondent to show that the medical certificate she submitted was competent, proper, and sound which she failed to do.

Petitioner further claims that the CA erred in not finding that private respondent committed a patent abuse of sick leave privileges which does not arise solely from forgery or alteration of the medical certificate, but on the fact that an employee had frequently and incorrigibly absented herself and then applied for sick leave with absolute impunity armed with medical certificates which not only failed to cover the entire length of the leave but also with implausible diagnoses; that excluding private respondent's unauthorized absences in 1989, she had accumulated 93 days of sick leave from January to July 1989 and 115 days of sick leave in 1988, thus, how can the conclusion be drawn that there was no patent abuse of sick leave privileges; and that her unauthorized absence for which she was terminated all occurred in 1989, thus, the CA erred in saying that petitioner may not rely on the previous absences of respondent in 1978 and 1982 to justify private respondent's dismissal.

We find the petition meritorious. Private respondent was validly dismissed by petitioner. It must be borne in mind that the basic principle in termination cases is that the burden of proof rests upon the employer to show that the dismissal is for just and valid cause and failure to do so would necessarily mean that the dismissal was not justified and, therefore, was illegal.^[16] For dismissal to be valid, the evidence must be substantial and not arbitrary and must be founded on clearly established facts.^[17] We find that petitioner had discharged this burden.

Under petitioner's Department Order No. ADM-79-02, for the absence due to an alleged illness to be considered unauthorized, without pay, and subject to disciplinary action, it must be shown that the medical certificate is forged, altered as to the date and contents, false as to the facts stated therein, issued by a doctor not qualified to attend to the patient's illness, and there is patent abuse of sick leave privileges. The penalty for three offenses of unauthorized absences committed within the three-year period is dismissal.

Private respondent's unconfirmed absences from June 28 to July 14, 1989 is the crucial period in this particular case.