

## FIRST DIVISION

[ G.R. No. 146621, July 30, 2004 ]

**RENE P. VALIAO, PETITIONER, VS. HON. COURT OF APPEALS,  
NATIONAL LABOR RELATIONS COMMISSION-FOURTH DIVISION  
(CEBU CITY), WEST NEGROS COLLEGE, RESPONDENTS.**

### D E C I S I O N

**QUISUMBING, J.:**

For review on certiorari is the **Decision**<sup>[1]</sup> dated August 22, 2000 of the Court of Appeals in CA-G.R. SP No. 55133, and its **Resolution**<sup>[2]</sup> dated November 22, 2000 denying the motion for reconsideration. The Court of Appeals dismissed the petition for certiorari filed by petitioner and affirmed the Resolution dated July 7, 1999 of the National Labor Relations Commission (NLRC)-Fourth Division in NLRC Case No. V-000134-98 (RAB Case No. 06-01-10026-95), which sustained the Decision of Labor Arbiter Benjamin E. Pelaez, directing private respondent West Negros College (WNC) to pay petitioner Rene P. Valiao's salary during the period of his preventive suspension and attorney's fees, while dismissing all other claims.

The facts, as culled from records, are as follows:

On February 5, 1990, petitioner Rene Valiao was appointed by private respondent West Negros College (WNC) as Student Affairs Office (SAO) Director, with a starting salary of ₱2,800 per month. On May 14, 1990, he was assigned as Acting Director, Alumni Affairs Office.

On July 29, 1990, petitioner was transferred to a staff position and designated as Records Chief at the Registrar's Office but was again re-assigned as a typist on June 24, 1991.

The latest re-assignment was due to his tardiness and absences, as reflected in the summary of tardiness and absences report, which showed him to have been absent or late for work from a minimum of seven (7) to a maximum of seventy-five (75) minutes for the period March to October 31, 1991, and to have reported late almost every day for the period November to December 1991.

Copies of his tardiness/absences reports were furnished petitioner, along with memoranda requiring him to explain but his explanations were either unacceptable or unsatisfactory. Subsequent reports also showed that he did not change his habits resulting in tardiness and absences. He was even caught one time manipulating the bundy clock, thus necessitating another memorandum to him asking him to explain his dishonest actuations in accomplishing the daily attendance logbook and in using the bundy clock.

On December 10, 1991, petitioner received a suspension order without pay for

fifteen (15) days effective January 1, 1992, because of dishonesty in reporting his actual attendance. After serving the suspension, the petitioner reported back to office on January 16, 1992.

On June 15, 1992, another adverse report on tardiness and absences from the Registrar was made against the petitioner prompting WNC to send him another memorandum with an attached tardiness and absences report, calling his attention on his tardiness and absences for the period February to April 1992.

On June 20, 1992, petitioner sent a letter of appeal and explained his side to the new college president, Suzette Arbolario-Agustin, who gave petitioner another chance. The petitioner was then appointed as Information Assistant effective immediately. However, the petitioner did not immediately assume the post of Information Assistant prompting the President of private respondent WNC to call his attention. When the petitioner finally assumed his post, he was allowed a part-time teaching job in the same school to augment his income.

Sometime in December 1992, WNC won a case against the officials of the union before the NLRC. Petitioner was ordered to prepare a media blitz of this victory but the petitioner did not comply with the order on the ground that such a press release would only worsen the already aggravated situation and strained relations between WNC management and the union officials.

When petitioner reported for work on the first day of January 1993, he was relieved from his post and transferred to the College of Liberal Arts as Records Evaluator. Not for long, the Dean of the Liberal Arts sent a letter to the Human Resources Manager complaining about the petitioner's poor performance and habitual absenteeism, as shown in the daily absence reports.

On January 18, 1993, petitioner was again absent from work without permission or notice to his immediate superior. It turned out that he went to Bacolod City and on January 28, 1993, the petitioner was one of those arrested during a raid in the house of one "Toto Ruiz," a suspected drug pusher and was brought to the Bacolod Police Station along with four (4) other suspects. Upon further search and investigation by the Narcotics Control Division, the petitioner was found possessing two (2) suspected marijuana roaches (butts) which were placed inside his left shoe. The event was widely publicized, focusing on petitioner's position as an Economics teacher of WNC, and considering further that one of his fellow suspects was a member of the Philippine Army, who was caught with an unlicensed firearm, a tooter and other "*shabu*" paraphernalia. The petitioner and other suspects were then charged with violation of the Dangerous Drugs Act of 1972 (Republic Act No. 6425, as amended).

Petitioner was asked to explain within 24 hours why he should not be terminated as a result of the raid and the charges against him for violation of Rep. Act No. 6425 as amended. Petitioner allegedly was not able to answer immediately since he was in jail and received said memorandum only on January 30, 1993, although his wife had earlier received the memorandum on January 28, 1993.

On January 29, 1993, the petitioner was dismissed for failure to answer said memorandum.

On February 1, 1993, the petitioner wrote to the President of WNC explaining his side and asking for due process. WNC cancelled its Notice of Termination dated January 29, 1993, and granted the petitioner's request. The petitioner was notified through a memorandum about the grant of his request and that a hearing would be conducted. He was then placed under preventive suspension and an investigation committee was organized to conduct the probe. On March 6, 1993, a notice of hearing/investigation was sent to the petitioner.

After the investigation attended by the petitioner and his counsel, with proceedings duly recorded, the investigation committee recommended the dismissal of petitioner. A notice of termination was then sent to petitioner informing him of his termination from the service for serious misconduct and gross and habitual neglect of duty. The petitioner received the notice on March 25, 1993, but did not file a grievance concerning the notice of termination.

On January 19, 1995, petitioner filed a Complaint against WNC for illegal suspension, illegal dismissal, backwages, salary differential for salary increases and other benefits granted after his dismissal as well as for moral and exemplary damages and attorney's fees.

In its Answer, WNC alleged that petitioner was dismissed on charges of serious misconduct, and gross and willful neglect of duty. WNC said his dismissal was effected after due notice and prior hearing. It claimed also that since petitioner was terminated for a valid cause after a due hearing, the latter's claim for moral and exemplary damages, and attorney's fees had no basis in fact and in law.

After due proceedings, the Labor Arbiter rendered a decision, the decretal portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered DIRECTING respondent West Negros College to pay complainant Rene P. Valiao – (a) ₱3,300.00 as salary for the period of his preventive suspension, and (b) ₱330.00 as attorney's fees, or the total amount of THREE THOUSAND SIX HUNDRED THIRTY PESOS (₱3,630.00).

Further, all other claims are DISMISSED for lack of merit.

SO ORDERED.<sup>[3]</sup>

The Labor Arbiter found no justifiable reason to place the petitioner under preventive suspension as there was no serious or imminent threat to the life or property of his employer or co-workers.

However, the Labor Arbiter found the dismissal of the petitioner from WNC to be valid due to absenteeism and tardiness and after he was accorded the procedural due process aspect of the law as reflected in the records showing that the petitioner was formally investigated and given the opportunity to refute the alleged findings by the management of WNC. The Labor Arbiter held that frequent absenteeism and tardiness of the petitioner constituted not only willful disobedience but also gross and habitual neglect of duties, which are valid grounds for termination of employment. He stressed that the petitioner's frequent absences without proper leave of absence was not only unfair to WNC and the petitioner's co-employees but

also set an undesirable example to the employees under his supervision, considering that the petitioner was not a mere rank-and-file employee but one who owed more than the usual fealty to the organization.

On appeal to the NLRC, the latter affirmed the decision of the Labor Arbiter, sustained the latter's findings of facts, and made its own findings on the apprehension of the petitioner for possession of prohibited drugs. The decretal portion of the decision reads as follows:

WHEREFORE, premises considered, the appeal is DISMISSED and the decision of the Executive Labor Arbiter is AFFIRMED in its entirety.

SO ORDERED.<sup>[4]</sup>

Petitioner then filed a Petition for *Certiorari* under Rule 65 before the Court of Appeals but this was dismissed for lack of merit. The decretal portion of the decision reads as follows:

WHEREFORE, the questioned Decision and Resolution dated December 11, 1998 and July 7, 1999, respectively, of public respondent National Labor Relations Commission are hereby AFFIRMED.

SO ORDERED.<sup>[5]</sup>

The Court of Appeals held that the petitioner was validly dismissed for serious misconduct and gross habitual neglect of duties, which was aggravated by his arrest for violation of Rep. Act No. 6425, as amended [the January 28, 1993 incident] and that he was afforded the twin requirements of notice and hearing and the opportunity to defend himself by the investigating committee. The appellate court noted that WNC had presented sufficient evidence to support petitioner's termination from employment after taking into consideration the totality of the infractions or the number of violations committed by petitioner during the period of employment and stressed that it properly exercised its management prerogative by observing due process. Finally, the Court of Appeals ruled that the NLRC correctly denied the claim for damages and attorney's fees for lack of evidentiary support.

Petitioner duly filed a Motion of Reconsideration, which was denied by the Court of Appeals.

Hence, this petition alleging that:

- A. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE DISMISSAL OF PETITIONER WAS VALID, DESPITE THE FACT THAT THERE IS CLEAR AND BLATANT VIOLATION OF THE BASIC CONSTITUTIONAL RIGHTS OF THE HEREIN PETITIONER BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS.
- B. THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS IN (SIC) DISMISSING THE RELIEFS FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.<sup>[6]</sup>