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THIRD DIVISION

[G.R. No. 138956, August 07, 2003]

LOADSTAR SHIPPING CO., INC. AND TEODORO G. BERNARDINO, PETITIONERS, VS. ROMEO MESANO, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Employers should respect and protect the rights of their employees, which include the right to labor.[1] Towards this end, due process must be observed in dismissing an employee because it affects not only his position but also his means of livelihood. [2]

At bar is a petition for review on certiorari seeking to nullify the Decision[3] dated March 11, 1999 and Resolution[4] dated June 4, 1999 of the Court of Appeals which set aside the decision dated November 11, 1996 of the National Labor Relations Commission (NLRC) and ordered petitioner Loadstar Shipping Company, Inc. to pay private respondent Romeo Mesano his separation pay (in lieu of reinstatement), full backwages and other monetary benefits.

The facts as borne by the records are:

Loadstar Shipping Co., Inc., petitioner, is a domestic corporation engaged in the operation of shipping vessels, which included the M/V Beaver.

On November 4, 1980, Romeo R. Mesano, respondent, was employed by petitioner as a seaman. Subsequently, he occupied the position of bosun/boatswin in charge of the care and custody of the entire vessel as well as its accessories and cargo.

On January 22, 1995, respondent brought out from the vessel M/V Beaver a colored television set and a telescope. This incident prompted petitioner company to conduct an investigation.

Immediately, respondent voluntarily submitted his written explanation asking for forgiveness. He explained that he intended to have the television repaired. However, when it could not be done, he returned the unit to the vessel.

On February 24, 1995, respondent asked from petitioner a disembarking clearance from his accountabilities. But what petitioner handed to respondent was a disembarkation order dated March 1, 1995 terminating his services effective February 28, 1995.

Feeling aggrieved, respondent filed with the Labor Arbiter a complaint for illegal dismissal against petitioner and Teodoro G. Bernardino, its president and/or general manager.

On April 23, 1996, the Labor Arbiter rendered a decision dismissing respondent's complaint for lack of merit.

On appeal, the NLRC affirmed the Arbiter's decision.

Consequently, on February 17, 1997, respondent filed with this Court a petition for certiorari under Rule 65 of the 1997 Rules of Procedure, as amended. In a Resolution dated November 25, 1998, this Court referred the petition to the Court of Appeals.

In due course, the Court of Appeals issued the assailed Decision[5] dated March 11, 1999, setting aside the decision of the NLRC, thus:

> "We find the Petition replete with merits.
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> "Section 1 of Rule XIV of the Implementation Regulations provides that no worker shall be dismissed except for a just or authorized cause provided by law and after due process.
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> "The two facets of this legal provision are: (a) the legality of the act of dismissal, that is dismissal under the grounds provided for under Article 283 (now 282) of the New Labor Code; and (b) legality in manner of dismissal (*Shoemart Inc. vs. NLRC*, G.R. No. 74225, August 11, 1989).
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> "Anent the first issue, the law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. (Section 13, BP 130; Section 2, Rule XIV, Book V, Rules and Regulations of the Labor Code, as amended). Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory, in the absence of which any judgment reached by management is void and inexistent.
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> "In the instant case, no written charge prior to the dismissal was ever furnished the petitioner. Respondent Loadstar tries to answer this by reasoning that, considering that petitioner submitted to respondent his handwritten explanation in which he categorically admitted his bringing down of the subject television set without prior permission from the company, then no notice was required.
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> "We cannot accept this contention. The law is clear. The High Court has repeatedly held that the two notice- requirement is mandatory. Moreover, the twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal (*Century Textile Mills, Inc., et al. vs. NLRC*, G.R. No. 77859, May 25, 1988).
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> "In the present case, there is no showing that petitioner was ever given ample opportunity to be heard between the time after his handwritten explanation dated February 15, 1995 was submitted and his

disembarkation order dated March 1, 1995. Respondent Loadstar insists that petitioner's handwritten explanation is a categorical admission of his guilt. We are not persuaded. A cursory reading of the said letter would show that, petitioner was merely explaining his actions, but did not categorically admit having stolen the item. In any case, the fact remains that no hearing was made to hear petitioner's side. Respondent Loadstar virtually made an assumption on the basis of petitioner's letter alone that considering the time and the manner in which the taking was made, then petitioner is guilty of stealing and, therefore, should be dismissed. No notice was ever given to inform petitioner that his dismissal is being sought and by which he could be apprised on the full consequence of his acts. And neither was a hearing conducted, in order that he be given an opportunity to refute the accusations leveled against him. `Ample opportunity' is meant every kind of assistance that management must accord to the employee to enable him to prepare adequately for his defense (*Diosdado Duffy vs. NLRC and Central Azucarera*, G.R. No. 84193, February 15, 1990).

"In this case, although the interregnum between the date of the notice of dismissal and the date of effectivity ostensibly provided the petitioner time within which to defend himself, there really was no hearing conducted, and hence no opportunity to defend himself.

"In a long line of decisions, the Supreme Court has ruled that not even consultations or conferences can be substituted for the actual observance of notice and hearing and neither is a notice of preventive suspension and investigation in relation thereto (*Pepsi Cola Bottling Co. vs. NLRC*, *supra*; *Norman de Vera vs. NLRC and Bank of the Philippine Islands, Inc*., G.R. No. 93070, August 9, 1991).

"With more reason then must we condemn its virtual absence in the case at bar.

"Anent the second issue, private respondent Loadstar posits that petitioner's act of taking the television without permission constitutes gross misconduct and a breach of trust of the confidence reposed on him which justified his dismissal.

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"In the case at bar, we note that the intention of the employee to steal the item has not been fully established considering the absence of any investigation and hearing conducted. Hence, considering that petitioner had no derogatory record in the 15 years he was in service with respondent Loadstar, it is therefore arbitrary to make an immediate conclusion on his guilt. More importantly, we agree with petitioner that the penalty of dismissal was too harsh. In *Gold City Integrated Port Services, Inc. vs. NLRC*, G.R. No. 86000, September 21, 1990, it was ruled that there must be reasonable proportionality between the offense and the penalty imposed therefor.

"Considering that the television, a minimal item at that, was immediately