

## **FIRST DIVISION**

**[ G. R. No. 129329, July 31, 2001 ]**

**ESTER M. ASUNCION, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, SECOND DIVISION, MABINI MEDICAL  
CLINIC AND DR. WILFRIDO JUCO, RESPONDENTS.**

### **D E C I S I O N**

**KAPUNAN, J.:**

In her petition filed before this Court, Ester Asuncion prays that the Decision, dated November 29, 1996, and the Resolution, dated February 20, 1997, of the public respondent National Labor Relations Commission, Second Division, in NLRC CA. 011188 which reversed the Decision of the Labor Arbiter, dated May 15, 1996 be set aside.

The antecedents of this case are as follows:

On August 16, 1993, petitioner Ester M. Asuncion was employed as an accountant/bookkeeper by the respondent Mabini Medical Clinic. Sometime in May 1994, certain officials of the NCR-Industrial Relations Division of the Department of Labor and Employment conducted a routine inspection of the premises of the respondent company and discovered upon the disclosure of the petitioner of (documents) violations of the labor standards law such as the non-coverage from the SSS of the employees. Consequently, respondent Company was made to correct these violations.

On August 9, 1994, the private respondent, Medical Director Wilfrido Juco, issued a memorandum to petitioner charging her with the following offenses:

1. Chronic Absentism (sic) - You have incurred since Aug. 1993 up to the present 35 absences and 23 half-days.
2. Habitual tardiness - You have late (sic) for 108 times. As shown on the record book.
3. Loitering and wasting of company time - on several occasions and witnessed by several employees.
4. Getting salary of an absent employee without acknowledging or signing for it.
5. Disobedience and insubordination - continued refusal to sign memos given to you.<sup>[1]</sup>

Petitioner was required to explain within two (2) days why she should not be terminated based on the above charges.

Three days later, in the morning of August 12, 1994, petitioner submitted her response to the memorandum. On the same day, respondent Dr. Juco, through a letter dated August 12, 1994, dismissed the petitioner on the ground of disobedience of lawful orders and for her failure to submit her reply within the two-day period.

This prompted petitioner to file a case for illegal termination before the NLRC.

In a Decision, dated May 15, 1996, Labor Arbiter Manuel Caday rendered judgment declaring that the petitioner was illegally dismissed. The Labor Arbiter found that the private respondents were unable to prove the allegation of chronic absenteeism as it failed to present in evidence the time cards, logbooks or record book which complainant signed recording her time in reporting for work. These documents, according to the Labor Arbiter, were in the possession of the private respondents. In fact, the record book was mentioned in the notice of termination. Hence, the non-presentation of these documents gives rise to the presumption that these documents were intentionally suppressed since they would be adverse to private respondent's claim. Moreover, the Labor Arbiter ruled that the petitioner's absences were with the conformity of the private respondents as both parties had agreed beforehand that petitioner would not report to work on Saturdays. The handwritten listing of the days when complainant was absent from work or late in reporting for work and even the computerized print-out, do not suffice to prove that petitioner's absences were unauthorized as they could easily be manufactured.<sup>[2]</sup> Accordingly, the dispositive portion of the decision states, to wit:

WHEREFORE, Premises Considered, judgment is hereby rendered declaring the dismissal of the complainant as illegal and ordering the respondent company to immediately reinstate her to her former position without loss of seniority rights and to pay the complainant's backwages and other benefits, as follows:

- 1) P73,500.00 representing backwages as of the date of this decision until she is actually reinstated in the service;
- 2) P20,000.00 by way of moral damages and another P20,000.00 representing exemplary damages; and
- 3) 10% of the recoverable award in this case representing attorney's fees.

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

On appeal, public respondent NLRC rendered the assailed decision which set aside the Labor Arbiter's ruling. Insofar as finding the private respondents as having failed to present evidence relative to petitioner's absences and tardiness, the NLRC agrees with the Labor Arbiter. However, the NLRC ruled that petitioner had admitted the tardiness and absences though offering justifications for the infractions. The decretal portion of the assailed decision reads:

WHEREFORE, premises considered, the appealed decision is hereby VACATED and SET ASIDE and a NEW ONE entered dismissing the

complaint for illegal dismissal for lack of merit.

However, respondents Mabini Medical Clinic and Dr. Wilfrido Juco are jointly and solidarily ordered to pay complainant Ester Asuncion the equivalent of her three (3) months salary for and as a penalty for respondents' non-observance of complainant's right to due process.

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

Petitioner filed a motion for reconsideration which the public respondent denied in its Resolution, dated February 19, 1997. Hence, petitioner through a petition for certiorari under Rule 65 of the Rules of Court seeks recourse to this Court and raises the following issue:

THE PUBLIC RESPONDENT ERRED IN FINDING THAT THE PETITIONER WAS DISMISSED BY THE PRIVATE RESPONDENT FOR A JUST OR AUTHORIZED CAUSE.

The petition is impressed with merit.

Although, it is a legal tenet that factual findings of administrative bodies are entitled to great weight and respect, we are constrained to take a second look at the facts before us because of the diversity in the opinions of the Labor Arbiter and the NLRC.

<sup>[5]</sup> A disharmony between the factual findings of the Labor Arbiter and those of the NLRC opens the door to a review thereof by this Court.<sup>[6]</sup>

It bears stressing that a worker's employment is property in the constitutional sense. He cannot be deprived of his work without due process. In order for the dismissal to be valid, not only must it be based on just cause supported by clear and convincing evidence,<sup>[7]</sup> the employee must also be given an opportunity to be heard and defend himself.<sup>[8]</sup> It is the employer who has the burden of proving that the dismissal was with just or authorized cause.<sup>[9]</sup> The failure of the employer to discharge this burden means that the dismissal is not justified and that the employee is entitled to reinstatement and backwages.<sup>[10]</sup>

In the case at bar, there is a paucity of evidence to establish the charges of absenteeism and tardiness. We note that the employer company submitted mere handwritten listing and computer print-outs. The handwritten listing was not signed by the one who made the same. As regards the print-outs, while the listing was computer generated, the entries of time and other annotations were again handwritten and unsigned.<sup>[11]</sup>

We find that the handwritten listing and unsigned computer print-outs were unauthenticated and, hence, unreliable. Mere self-serving evidence of which the listing and print-outs are of that nature should be rejected as evidence without any rational probative value even in administrative proceedings. For this reason, we find the findings of the Labor Arbiter to be correct. On this point, the Labor Arbiter ruled, to wit:

x x x In the instant case, while the Notice of Termination served on the complainant clearly mentions the record book upon which her tardiness

(and absences) was based, the respondent (company) failed to establish (through) any of these documents and the handwritten listing, notwithstanding, of (sic) the days when complainant was absent from work or late in reporting for work and even the computerized print-outs, do not suffice to prove the complainant's absences were unauthorized as they could easily be manufactured. x x x<sup>[12]</sup>

In *IBM Philippines, Inc. v. NLRC*,<sup>[13]</sup> this Court clarified that the liberality of procedure in administrative actions is not absolute and does not justify the total disregard of certain fundamental rules of evidence. Such that evidence without any rational probative value may not be made the basis of order or decision of administrative bodies. The Court's ratiocination in that case is relevant to the propriety of rejecting the unsigned handwritten listings and computer print-outs submitted by private respondents which we quote, to wit:

However, the liberality of procedure in administrative actions is subject to limitations imposed by basic requirements of due process. As this Court said in *Ang Tibay v. CIR*, the provision for flexibility in administrative procedure "does not go so far as to justify orders without a basis in evidence having rational probative value." More specifically, as held in *Uichico v. NLRC*:

"It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. The Statement of Profit and Losses submitted by Crispa, Inc. to prove its alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, are nothing but self-serving documents which ought to be treated as a mere scrap of paper devoid of any probative value."

The computer print-outs, which constitute the only evidence of petitioners, afford no assurance of their authenticity because they are unsigned. The decisions of this Court, while adhering to a liberal view in the conduct of proceedings before administrative agencies, have nonetheless consistently required some proof of authenticity or reliability as condition for the admission of documents.

In *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*,<sup>[14]</sup> this Court held as incompetent unsigned daily time records presented to prove that the employee was neglectful of his duties:

Indeed, the DTRs annexed to the present petition would tend to establish private respondent's neglectful attitude towards his work duties as shown by repeated and habitual absences and tardiness and propensity for working undertime for the year 1992. But the problem with these DTRs is that they are neither originals nor certified true copies. They are plain