

SECOND DIVISION

[G.R. No. 125031, January 24, 2000]

**PERMEX INC. AND/OR JANE (JEAN) PUNZALAN, PERSONNEL
MANAGER AND EDGAR LIM, MANAGER, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION AND EMMANUEL
FILOTEO, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This special civil action for certiorari impugns the Resolution of the National Labor Relations Commission, Fifth Division, dated March 14, 1996, which reversed the decision of the Labor Arbiter in NLRC Case No. RAB-09-09-00259-94, as well as its Resolution, dated April 17, 1996, denying the motion for reconsideration.

Petitioner, Permex Producer and Exporter Corporation (hereinafter Permex), is a company engaged in the business of canning tuna and sardines, both for export and domestic consumption. Its office and factory are both located in Zamboanga City.

Co-petitioners Edgar Lim and Jean Punzalan^[1] are its Manager and Personnel Manager, respectively.

Private respondent Emmanuel Filoteo, an employee of Permex, was terminated by petitioners allegedly for flagrantly and deliberately violating company rules and regulations. More specifically, he was dismissed allegedly for falsifying his daily time record.

The pertinent facts, as found by both the NLRC and the Labor Arbiter, are as follows:

Permex initially hired Emmanuel Filoteo on October 1, 1990, as a mechanic. Eventually, Filoteo was promoted to water treatment operator, a position he held until his termination on August 29, 1994. As water treatment operator, Filoteo did not have a fixed working schedule. His hours of work were dependent upon the company's shifting production schedules.

On July 31, 1994, Filoteo was scheduled for the night shift from 7:00 p.m. to 7:00 a.m. the following day. That night he reported for work together with his co-workers, Felix Pelayo and Manuel Manzan. They logged in at the main gate and guardhouse of the petitioner's factory. Filoteo entered his time-in at 8:45 p.m. and since he was scheduled to work until 7:00 a.m. the next day, he wrote 7:00 a.m. in his scheduled time-out. This practice of indicating the time out at the moment they time in, was customarily done by most workers for convenience and practicality since at the end of their work shift, they were often tired and in a hurry to catch the available service vehicle for their trip home, so they often forgot to log out. There were times also when the Log Book was brought to the Office of the Personnel

Manager and they could not enter their time out. The company had tolerated the practice.

On the evening of July 31, 1994, at around 9:20 p.m., Filoteo, together with Pelayo, went to see the Assistant Production Manager to inquire if "butchering" of fish would be done that evening so they could start operating the boiler. They were advised to wait from 9:30 p.m. to 10:00 p.m. for confirmation.

At or about 10:00 p.m., Filoteo and Pelayo went back to the Assistant Production Manager's office. There they were informed that there would be no "butchering" of tuna that night. Filoteo then sought permission to go home, which was granted. Filoteo then hurriedly got his things and dashed off to the exit gate to catch the service jeep provided by Permex.

The next day, August 1, 1994, Filoteo reported for work as usual. He then remembered that he had to make a re-entry in his daily time record for the previous day. He proceeded to the Office of the Personnel Manager to retime his DTR entry. Later, he received a memorandum from the Assistant Personnel Officer asking him to explain, in writing, the entry he made in his DTR. Filoteo complied and submitted his written explanation that same evening. Sdaamiso

On August 8, 1994, Filoteo was suspended indefinitely. His explanation was found unsatisfactory. He was dismissed from employment on August 23, 1994.

The dismissal arose from Filoteo's alleged violation of Article 2 of the company rules and regulations. The offense charged was entering in his DTR that he had worked from 8:45 p.m. of July 31, 1994 to 7:00 a.m. of August 1, 1994, when in fact he had worked only up to 10:00 p.m.

On September 5, 1994, Filoteo filed a complaint for illegal dismissal with claims for separation pay, damages, and attorney's fees with the Labor Arbiter. His complaint was docketed as NLRC Case No. RAB 09-09-00259-94.

On June 9, 1995, the Labor Arbiter dismissed the complaint for lack of merit. The decretal portion of the decision reads:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered dismissing the complaint for lack of merit. However, for violation of compliance of (sic) procedural due process, the respondent is hereby ordered thru its Authorized Officer to pay complainant P1,000.00 by way of indemnity pay. Furthermore, complainant's claims for damages and attorney's fees be dismissed for lack of merit.

"SO ORDERED."^[2]

Filoteo appealed to the NLRC. Finding merit therein, the Commission's Fifth Division promulgated its resolution, reversing and setting aside the Labor Arbiter's decision, by disposing as follows:

"WHEREFORE, the decision appealed from, is Vacated and Set Aside and a new one entered declaring the complainant to have been illegally dismissed by respondent company. Accordingly, respondent Permex, Inc.,

through its corporate officers, is hereby ordered and directed to pay complainant, Emmanuel Filoteo, separation pay at the rate of one (1) month salary for every year of service or in the equivalent of four (4) months separation pay and backwages effective August 23, 1994 up to the promulgation of this decision, inclusive of fringe benefits, if any. Further, respondent company is ordered to pay complainant moral and exemplary damages in the sum of P10,000.00 and P5,000.00, respectively, as well as attorney's fees equivalent to ten (10%) percent of the total monetary award after computation thereof at the execution stage.

"SO ORDERED."^[3]

On April 3, 1996, petitioners filed a motion for reconsideration. It was denied for lack of merit by the NLRC in a resolution dated April 17, 1996.

Hence, the present petition, assigning the following errors:

I

PUBLIC RESPONDENT'S RESOLUTIONS ARE CONTRARY TO THE EVIDENCE ON RECORD AND ADMITTED FACTS.

II

PUBLIC RESPONDENT ERRED WHEN IT RULED THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED.

III

PUBLIC RESPONDENT ERRED WHEN IT AWARDED PRIVATE RESPONDENT SEPARATION PAY, BACKWAGES, DAMAGES AND ATTORNEY'S FEES SANS FACTUAL AND LEGAL BASIS.

We will now consider these assigned errors to resolve the principal issue of whether or not private respondent was illegally terminated from his employment.

Note that, firstly, petitioners seek a reversal of the public respondent's findings of the facts. But as the Court has repeatedly ruled the findings of facts of the NLRC, particularly where the NLRC and the Labor Arbiter are in agreement, are deemed binding and conclusive upon the Court.^[4] For the Court is not a trier of facts.^[5] Second, resort to judicial review of the decisions of the NLRC in a special civil action for certiorari under Rule 65 of the Rules of Court, is limited only to the question generally of grave abuse of discretion amounting to lack or excess of jurisdiction.^[6] Thirdly, in this case, the NLRC's factual findings are supported by the evidence on record. We are therefore constrained not to disturb said findings of fact.

Whether private respondent was illegally dismissed or not is governed by Article 282 of the Labor Code.^[7] To constitute a valid dismissal from employment, two requisites must concur: (a) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and (b) the employee must be afforded an opportunity to be heard and defend himself.^[8] This means that an employer can