

SECOND DIVISION

[G.R. No. 122178, February 25, 1999]

**DANILO DIMABAYAO, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, ISLAND BISCUIT INC. AND CHENG
SUY EH, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

DANILO DIMABAYAO seeks to set aside through this petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure the 15 March 1995 Decision and 23 June 1995 Resolution of the National Labor Relations Commission (NLRC) which modified the Decision of the Labor Arbiter finding private respondents guilty of having illegally dismissed petitioner from their employ.

Private respondent Island Biscuit, Inc., is engaged in the manufacture of biscuits with private respondent Cheng Suy Eh as its General Manager. On 5 April 1983 it employed petitioner with the specific task of operating the roller, cutting biscuits, sorting out rejects, mashing flour and feeding the flour mass into its thinning machine.

On 30 July 1992, while petitioner was assigned to sort out rejects, with prior permission first obtained from his checker, he went to the comfort room to answer the call of nature and relieve himself, afterwhich he returned to his work place. But private respondent Cheng Suy Eh was unhappy seeing petitioner away from his work station and immediately demanded from him a written explanation allegedly for abandoning his work. As a matter of policy, respondent company discourages its employees from going to the comfort room during working hours for sanitary or hygienic purposes as the company is engaged in the food business.^[1]

The following day, 31 July 1992, Marcela Lok, respondent company's Personnel Manager, handed petitioner a letter asking him to explain in writing why he left his work station on 17 and 30 July 1992. Petitioner verbally explained that he never left his station on 17 July while on 30 July he only went to the comfort room for a short while to answer the call of nature.^[2] Believing that this denial was enough he did not anymore submit any written explanation. But, for his inability to submit a written explanation, petitioner was suspended for fifteen (15) days which he contested before the Arbitration Branch of the NLRC.

On 20 October 1992 petitioner requested a fellow worker to replace him in his work station so he could go to the comfort room to relieve himself. Again private respondent Cheng Suy Eh noticed petitioner's brief absence and so, upon his return, his manager berated him again and required him to submit once more a written explanation for allegedly abandoning his work. Petitioner complied.

Finding petitioner's explanation not satisfactory, respondent company through its Personnel Officer Marcela Lok served petitioner a notice of termination.

Petitioner thereafter amended his complaint before the NLRC to include illegal dismissal among his causes of action in view of his termination from the service.

On 21 September 1994 the Labor Arbiter declared the suspension of petitioner valid and legal not because he left his production area to relieve himself but for his utter disregard of the directive of the manager to submit his written explanation. His dismissal however was found illegal, but because of the strained relationship between the parties, the Labor Arbiter further held that reinstatement was no longer feasible and thereafter awarded petitioner a limited back wages for six (6) months without reinstatement. Thus private respondents were in addition required to pay petitioner service incentive leave pay of P615.00, proportionate thirteenth month pay of P2,132.00, separation pay of P14,391.00, and 10% attorney's fees of P3,632.60.^[3]

On 15 March 1995 the NLRC reversed the decision of the Labor Arbiter but sustained the grant of separation pay as a measure of compassion taking into consideration petitioner's length of service in the company,^[4] and on 23 June 1995 denied petitioner's motion for reconsideration.

The crucial issue to be resolved is whether the NLRC acted with grave abuse of discretion in upholding the legality of petitioner's dismissal.

As the NLRC decision itself indicates, the dismissal of petitioner was based on Art. 282 (a) and (b) of the Labor Code which provides:

Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employer of his duties.

As early as *Batangas Laguna Tayabas Bus Company v. Court of Appeals*,^[5] and recently, in *Gold City Integrated Port Services, Inc. v. National Labor Relations Commission*,^[6] we ruled that:

Willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful being characterized by a 'wrongful and perverse attitude;' and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

The assailed NLRC decision^[7] held -

Complainant's termination was certainly for a valid cause. He violated for several times the company rules which prohibit the leaving of one's post during working hours and without proper authorization. Complainant was a habitual violator of company regulations. As can be gleaned from the