

SECOND DIVISION

[G.R. No. 96685, February 15, 1999]

**CARLOS A. GOTHONG LINES, INC., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION, AND ADOLFO LAURON,
RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This special civil action for *certiorari* seeks to annul the Decision^[1] of the National Labor Relations Commission, Fourth Division, Cebu City, dated August 7, 1990, which affirmed with modification the judgment of the Labor Arbiter; and the Resolution^[2] dated November 29, 1990, which denied petitioner's motion for reconsideration.

Immediately prior to the controversy, private respondent, Adolfo Lauron, was employed as a watchman with a monthly salary of P1,600, on board *M/V Don Benjamin* owned by petitioner Carlos A. Gothong Lines, Inc.

On April 4, 1987, while the vessel was cruising the waters of Cebu and Cagayan, a fire occurred in the cabin of private respondent, burning his pillow and his blanket. The Chief Engineer's cabin was also set on fire.

On April 6, 1987, private respondent was ordered to disembark for purposes of the investigation to be conducted in connection with the incident.

There was no investigation held until the middle of May, 1987. Thereafter, private respondent was informed that he had been dismissed from his employment.

Consequently, on May 28, 1987, private respondent filed an illegal dismissal case with the Department of Labor and Employment, Regional Arbitration, Branch VII, Cebu City. Private respondent filed an amended complaint to include reinstatement with backwages, damages, attorney's fees, and other incidental pay (overtime, proportional 13th month pay).

On May 2, 1989, Labor Arbiter Alhambra Llenos-Alfara rendered a decision,^[3] the dispositive portion of which states:

"Wherefore premises considered, judgment is hereby rendered ordering respondent to pay herein complainant the sum of Forty Five Thousand Nine Hundred Forty One Pesos and Thirty One Centavos (P45,941.31) corresponding to his backwages covering the period April 7, 1987 to May 15, 1989 at the rate of P1,600.00, his 13th month pay for the same period in the sum of P4,047.87, and the amount of P20,490.00 corresponding to his separation pay for the period 1962 to May 15, 1989,

all in the total sum of P71,024.18."

All other claims are hereby denied for lack of legal and/or factual basis.

SO ORDERED."^[4]

Petitioner appealed to the National Labor Relations Commission (NLRC) which modified the decision of the Labor Arbiter, the dispositive portion of which reads:

"WHEREFORE, the decision of the Labor Arbiter is hereby modified as follows: Respondent is hereby ordered to pay complainant his backwages from date of dismissal on April 4, 1987 up to finality of judgment but limited to three (3) years, and in lieu of reinstatement, separation pay equivalent to one-month pay for every year of service computed from 1962 up to April 4, 1987 less the amount of P5,430.00 as indicated above.

All other aspect of the decision is hereby AFFIRMED.

SO ORDERED"^[5]

Petitioner filed a motion for reconsideration of the NLRC decision, which was denied for lack of merit.

Hence, this petition.

Petitioner advanced the following assignment of errors committed by the public respondent NLRC:

I. ERROR WAS COMMITTED IN DETERMINING THAT NO INVESTIGATION WAS CONDUCTED AND THAT HE [ADOLFO LAURON] WAS DENIED DUE PROCESS.

II. ERROR WAS COMMITTED IN GRANTING FULL BACKWAGES AS WELL AS IN COMPUTING THE SAME, ASSUMING THAT PETITIONER IS LIABLE.

The basic issue to be considered in this petition is whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the decision of the Labor Arbiter that private respondent was illegally dismissed. Secondly, we must also resolve whether or not the NLRC erred in granting the monetary awards to private respondent.

Petitioner states that as a common carrier, it is bound to carry the passengers and cargoes safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person with due regard for all circumstances. Consequently, when a fire occurred, it is bound to conduct a fact-finding investigation to elicit the truth behind the incident. Hence, the private respondent's refusal to submit to such investigation is a willful defiance of an order of the employer, which is a sufficient cause for dismissal governed by Article 282 (a)^[6] of the Labor Code.

On the other hand, private respondent alleges that as a result of the fire, he was

ordered to disembark on the pretext that he would be investigated. However, no investigation was ever conducted, so that private respondent was forced to approach the personnel manager and the house counsel, only to be told that it was already the desire of management to dismiss him from work.

After considering the evidence of the parties, the Labor Arbiter gave more credence to the version of the private respondent over that of petitioner. In view of the Labor Arbiter's findings, the NLRC ruled on appeal that the dismissal of the private respondent was indeed effected without regard to substantive and procedural due process.

Given the circumstances of this case and after considering the record with the memoranda of the parties, it is our view that the petition at bar cannot prosper. We are in accord with the decision reached by the NLRC, modifying the Labor Arbiter's own.

Settled is the rule that the requisites of a valid dismissal are: (1) the dismissal must be for any of the causes provided for under Article 282 of the Labor Code, and (2) only after the employee has been notified in writing and given the opportunity to be heard and defend himself, as required under Sections 2^[7] and 5,^[8] Rule XIV, Book V of the Rules and Regulations Implementing the Labor Code.^[9]

Furthermore, even in a case involving willful disobedience of the employer's lawful orders as a just cause for the dismissal of an employee, at least two requisites must concur: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by "a wrongful and perverse attitude;" (2) the order allegedly violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.^[10]

In this case, there was no showing that private respondent's actuation was marked by any perverse attitude to defy the order of his employer requiring him to submit to an investigation. In fact, when he was ordered to disembark, he willfully obeyed and then waited for the aforesaid investigation.

Moreover, petitioner admitted that the memorandum given by its Assistant Vice President for Human Resources was addressed to Capt. Victor Bayotas, directing the latter to inform the private respondent of an investigation. But the investigation was merely fact-finding. The memorandum was not an order directly concerning the alleged dismissal.^[11] Apart from this memorandum, there was no notice addressed directly to the private respondent informing him of his dismissal from employment. As held in *Pampanga II Electric Cooperative, Inc. vs. National Labor Relations Commission*,^[12] two written notices must be given to an employee before he may be dismissed. The first notice must apprise him of particular acts or omissions for which his dismissal is sought. The second notice, after hearing, is that of dismissal itself. Moreover, even if in the case at bar private respondent allegedly abandoned his job, as claimed by the petitioner, these notices must be served at the worker's last known address as required by the rules.^[13]

As an alternative ground for the dismissal, petitioner contends it is beyond dispute that private respondent was subsequently charged with having committed the crime