

THIRD DIVISION

[G.R. No. 109714, December 15, 1997]

**BETTER BUILDINGS, INC., WILLIAM WARNE AND LEDA
BEAVERFORD, PETITIONERS, VS. THE NATIONAL LABOR
RELATIONS COMMISSION, HALIM YSMAEL AND ELISEO
FELICIANO, RESPONDENTS.
D E C I S I O N**

ROMERO, J.:

This petition for certiorari with prayer for the issuance of a temporary restraining order and/or injunction seeks to annul the decision of public respondent National Labor Relations Commission (NLRC) dated March 3, 1989^[1] and resolution dated December 18, 1992,² directing petitioner Better Building, Inc. to reinstate private respondents Halim Ysmael and Eliseo Feliciano to their former positions without loss of seniority rights and benefits and to pay them backwages.

Private respondent Halim Ysmael (Ysmael) was hired as a Sales Manager by petitioner Better Building, Inc. (BBI) on March 16, 1985. In addition to his monthly salary, he was given the free use of the company car, free gasoline and commission from sales. Private respondent Eliseo Feliciano (Feliciano), on the other hand, was employed as Chief Supervisor by the petitioner since January 1966.

On May 3, 1988, petitioner, through its Assistant General Manager, Leda A. Beverford, showed to private respondents a memorandum regarding their termination from employment effective the same day, to wit:

"MEMO TO : Guard On Duty

FROM : The Asst. General Manager

DATE : May 03, 1988

SUBJECT : TERMINATION OF EMPLOYMENT OF MR.
HALIM YSMAEL &
MR. ELISEO FELICIANO

--

Please be advised that Mr. Halim Ysmael and Mr. Eliseo Feliciano have been terminated from their employment with our company as of the end of office hours today May 3, 1988.

For the above reason they are not allowed to enter our premises.

For your strict compliance.

LEDA A. BEVERFORD”

Unable to accept petitioner’s drastic action, on May 6, 1988, private respondents filed a complaint against BBI for illegal dismissal.³

On March 3, 1989, Labor Arbiter Daisy G. Cauton-Barcelona rendered a decision, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby ordered declaring that the complainants dismissal is illegal as discussed above hence, ordering the respondents to reinstate them to their former positions with full backwages and without loss of seniority and other benefits.

Ordering further to pay the complainants their salary differentials computed from November 1, 1986 up to the time of actual reinstatement.

And, to pay complainant Halim Ysmael moral and exemplary damages in the amount of P100,000 and P50,000 respectively.

With costs and attorneys fees against the respondents.

SO ORDERED.”⁴

Except for the reduction of the damages awarded by the Labor Arbiter, the said decision was affirmed by the NLRC,⁵ to wit:

“**WHEREFORE**, premises considered, the decision appealed from is hereby modified insofar as the awards of moral and exemplary damages are concerned which are reduced to P50,000 and P20,000 respectively.

In all other respects, the decision of the Labor Arbiter below is affirmed.

SO ORDERED.”

Petitioner, not satisfied with the decision, has filed the instant petition for certiorari alleging that the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction when it rendered the decision of March 3, 1989 and the resolution of December 11, 1992.

On September 4, 1996, this Court resolved to dismiss the case against private respondent Ysmael by virtue of the compromise agreement entered into between him and the petitioner.⁶ Hence, the resolution of this case will only affect private respondent Feliciano.

Petitioner argues that the private respondent was validly dismissed for engaging in the same line of business as that of his employer (petitioner). Thus, his act of engaging in a business in direct competition with his employer was, not only an act

of disloyalty, but more specifically a willful breach of trust and confidence.

In termination of employment cases, we have consistently held that two requisites must concur to constitute a valid dismissal: (a) the dismissal must be for any of the causes expressed in Art. 282 of the Labor Code, and (b) the employee must be accorded due process, the elements of which are the opportunity to be heard and defend himself.⁷

First, on the substantive aspect, petitioner contends that private respondent was dismissed from his employment for engaging in business in direct competition with its line of service.⁸ Hence, said conduct constitutes a willful breach of trust which is justifiable cause for termination of employment.⁹

We sustain BBI.

Deeply entrenched in our jurisprudence is the doctrine that an employer can terminate the services of an employee only for valid and just causes which must be supported by clear and convincing evidence.¹⁰ The employer has the burden of proving that the dismissal was indeed for a valid and just cause.¹¹

In the case at bar, petitioner has clearly established private respondent's culpability by convincing evidence. First, it was never disputed that private respondent established another corporation, Reachout General Services, engaged in the maintenance/janitorial service, the same line of business as that of petitioner. In this regard, private respondent failed to adduce substantial evidence to disprove this allegation.

Second, as Chief Supervisor of the petitioner, it was his duty to promote and offer the services of the petitioner to prospective clients; however, instead of so doing, private respondent offered the services of his own company to various clients, to the detriment of the petitioner. Notably, private respondent even had the temerity to induce two of BBI's prominent clients, namely the United States Embassy and San Miguel Corporation, to transfer their respective service contracts to Reachout General Services, his own corporation.

Third, private respondent's disloyalty became more conspicuous when he hired as the employees of Reachout General Services the former employees of the petitioner. Clearly, this act has undercut petitioner's business.

Finally, we cannot help but notice that in all the pleadings submitted by the private respondent, he never discussed nor refuted the charge against him by the petitioner. By his silence, we conclude that he was indeed guilty of disloyalty to his employer. In fact, the records are devoid of any evidence to controvert the evidence presented by the petitioner regarding his alleged disloyalty. Such omission only strengthens the petitioner's claim.

While we find that private respondent was dismissed for cause, the same was, however, effected without the requirements of due process.

In this jurisdiction, we have consistently ruled that in terminating an employee, it is essential that the twin requirements of notice and hearing must be observed.¹² The written notice apprises the employee of the particular acts or omissions for which his

dismissal is sought and at the same informs the employee concerned of the employer's decision to dismiss him.

In the case at bar, the record is bereft of any showing that private respondent was given notice of the charge against him. Nor was he ever given the opportunity under the circumstances to answer the charge; his termination was quick, swift and sudden.

Interestingly, when this issue was brought up, all the petitioner could state in its Reply was:

"Even if there was a notice to explain and notice of termination given to the private respondents, the petitioner was already convinced at that time that the private respondents were already engaged in disloyal acts. The result would be the same - dismissal."¹³

Evidently, the decision to dismiss respondent was merely based on the fact that petitioner was already convinced at the time that the private respondents were engaged in disloyal acts. As regards the procedural aspect, the failure to observe the twin requirements of notice and hearing taints the dismissal with illegality.

In fine, we find that there was basis for petitioner's loss of trust and confidence in private respondent. For an employer cannot be compelled to retain in his service an employee who is guilty of acts inimical to its interest.¹⁴ A company has the right to dismiss its employees as a measure of protection.¹⁵ Corollarily, proof beyond reasonable doubt of an employee's misconduct is not required in dismissing an employee on the ground of loss of trust and confidence.¹⁶ The quantum of proof required, being only substantial evidence,¹⁷ we are convinced that there was an actual breach of trust committed by private respondent which was ample basis for petitioner's loss of trust and confidence in him. We, therefore, hold that private respondent's dismissal was for a just and valid cause. However, the manner of terminating his employment was done in complete disregard of the necessary procedural safeguards. A man's job being a property right duly protected by our laws, for depriving private respondent the right to defend himself, petitioner is liable for damages consistent with Article 32 of the Civil Code, which provides:

"ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

x x x x x x x x x

(6) The right against deprivation of property without due process of law;

x x x x x x x x x."

In this regard, the damages shall be in the form of nominal damages¹⁸ for the award is not for the purpose of penalizing the petitioner but to vindicate or recognize private respondent's right to procedural due process which was violated by the petitioner.

WHEREFORE, in view of the foregoing, the assailed decision of the **NLRC** and its accompanying resolution are hereby **SET ASIDE** and **ANNULLED**. However, for failure to observe procedural due process in effecting the dismissal, petitioner shall pay to the private respondent P5,000.00 as nominal damages. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, and Francisco, JJ., concur.
Panganiban, J., see concurring and dissenting opinion.

[1] Annex "A" of the Petition, Rollo, pp. 26-37.

[2] Annex "B" of the Petition, Rollo, pp. 38-43.

[3] Annex "F" of the Petition, Rollo, pp. 63-66.

[4] Rollo, p. 37.

[5] *Ibid.*, p. 48.

[6] *Id.*, p. 181.

[7] *Oania v. NLRC*, 244 SCRA 688 (1995); *AHSI Philippines, Inc. v. Court of Appeals*, 257 SCRA 319 (1996); *Ranises v. NLRC*, 261 SCRA 371 (1996).

[8] *Ibid.*, pp. 10-18.

[9] Art. 282 (c) of Labor Code.

[10] *PLDT v. NLRC*, G.R. No. 99030, July 31, 1997.

[11] *Molave Tours Corporation v. NLRC*, 250 SCRA 325 (1995); *Pacific Timber Export Corporation v. NLRC*, 224 SCRA 860 (1993).

[12] *Wallem Maritime Service, Inc. v. NLRC*, 263 SCRA 174 (1996); *Marcelo v. NLRC*, 240 SCRA 782 (1995).

[13] Rollo, p. 154.

[14] *San Miguel Corp. v. Deputy Minister of Labor and Employment*, 145 SCRA 196 (1986).

[15] *Dole Philippines, Inc. v. NLRC*, 123 SCRA 673 (1983).

[16] *Vallende v. NLRC*, 245 SCRA 662 (1995).

[17] *Villarama v. NLRC*, 236 SCRA 287 (1994).