

SECOND DIVISION

[G.R. No. 109362, May 15, 1996]

**CELIA A. FLORES, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND PHILIPPINE PUBLIC SCHOOL
TEACHERS ASSOCIATION, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to annul the decision, dated December 29, 1992, of the National Labor Relations Commission (Second Division), reversing the Labor Arbiter's decision which found petitioner to have been illegally dismissed, but ordering, private respondent to pay petitioner separation pay at the rate of one-half month's salary for every year of service. The present petition also seeks to annul the NLRC's resolution of February 10, 1993, denying, petitioner's motion for reconsideration for having been filed beyond the reglementary period.

The facts are as follows:

Petitioner Celia Flores was hired as a casual employee by private respondent Philippine Public School Teachers Association (PPSTA) in 1973. On August 6, 1976 she was made a regular employee.

On September 3, 1990 she was dismissed upon recommendation of an investigating committee. It appears that, on February 20, 1990, at around 8:35 a.m., petitioner engaged a fellow employee, Lamberto Jamlang, in a brawl on the 4th floor of the PPSTA Administration Building in full view of other employees and visitors. Her antagonist was also dismissed upon recommendation of the committee.

In dismissing petitioner, the private respondent also took into account petitioner's past misconduct. Its memorandum to petitioner, dated August 31, 1990, stated:

An examination of your employment record with the PPSTA show that your involvement in the above-described incident is not the first time you have committed acts of misconduct or offenses and/or have been involved in disruptive controversies with your co-workers in the Association. It reveals that barely a week after you were extended a regular appointment, your chief in the Premium Accounts Department, Mrs. Esperanza Chavarria, complained to the General Manager, Mr. Santos P. Pascual, that you refused to "accept the responsibilities and duties assigned to you." In 1977 alone, you were disciplinarily charged six (6) times by the different chiefs of the departments you worked with. Four (4) of those charges were filed in the month of March. All of these charges involve (a) misconduct (b) violation of rules and regulations (c) tardiness and absenteeism. On 29 March 1977, you were suspended for

fifteen (15) days without pay for the same reasons just mentioned. Sometime in February 1978 you were again the subject of an administrative investigation for misconduct for slapping another employee while under the influence of liquor. Finally, on 16 December 1986 you were dismissed due to (a) misconduct, (b) willful breach of trust or loss of confidence, (c) crime against the employer or his authorized representative and (d) causes analogous to the foregoing. You were only temporarily reinstated pending further investigation pursuant to a compromise agreement to settle the strike staged by some PPSTA employees.

The Board consider[s] the aforementioned series of acts of misconduct which you have committed against the Association as serious enough to warrant the immediate termination of your services and is convinced that your continued employment by the PPSTA has become prejudicial to the interests of the Association. Therefore, to protect the rights and interests of the PPSTA against employees like you who show patent disregard of its rules and policies, the Board, by resolution, decided to dismiss you from its service and bar you from entering the premises of the Association without proper authorization from the Board effective upon receipt of this memorandum.

As regards your complaint against Mr. Jamlang, the Board consider[s] it as moot and academic by its decision to terminate also his employment.

Petitioner filed a complaint for illegal dismissal. She alleged that her involvement in the February 20, 1990 incident was not a valid ground for the termination of her employment because there was no finding that she started the fight. She contended that neither could her alleged past misconduct be used as ground for her dismissal because she had not been informed of the charges against her nor given the opportunity to answer them. Petitioner claimed that her dismissal was actually due to her union activities, having been president of the union from 1985 up to the time of her dismissal on September 3, 1990.

Private respondent denied the charge, maintaining that petitioner's continued employment was inimical to its interest.

The Labor Arbiter declared petitioner's dismissal illegal but dismissed her complaint for unfair labor practice. The dispositive portion of his decision reads:^[1]

ACCORDINGLY, respondent is hereby declared guilty of illegal dismissal and is hereby ordered to reinstate complainant immediately upon receipt of this decision to her former position or to the payroll without loss of seniority rights and other benefits and with full backwages counted from the time of her dismissal up to her reinstatement.

The charge of unfair labor practice is hereby dismissed for want of merit.

On appeal, the NLRC reversed but awarded separation pay to petitioner, as follows:

WHEREFORE, premises considered, the assailed decision insofar as declaring complainant's dismissal illegal is hereby reversed and set aside and in lieu thereof a new one is hereby entered declaring the dismissal valid and justified. However, respondent is hereby ordered to pay complainant her separation pay equivalent to one-half (1/2) month salary for every year of service and a fraction of 6 months considered as one whole year. The finding that respondent is not guilty of unfair labor practice is affirmed.

SO ORDERED.

On January 27, 1993 petitioner moved for reconsideration. Her motion was, however, denied on the ground that the motion had been filed out of time. Hence, this petition, petitioner alleging, that the NLRC gravely abused its discretion in dismissing her complaint.

The petition has no merit.

First. Rule VII, § 14 of the NLRC Rules of Procedure provides that motions for reconsideration must be filed within ten (10) calendar days from receipt of the order, resolution or decision of the NLRC. The registry return card in this case shows that a copy of the decision of the NLRC was served on petitioner's counsel on January 15, 1992. Since she filed a motion for reconsideration only on January 27, 1992, it is clear that her motion was filed out of time, with the result that the decision of the NLRC became final and executory.

Petitioner's counsel claims that the decision was actually delivered to "somebody unknown and not a member of [his] legal staff" and that it was received by counsel after it was left at the door of his office on January 18, 1992. The fact, however, is that the decision was sent by registered mail to counsel at his office address. The presumption is that the decision was delivered to a person in his office, who was duly authorized to receive papers for him, in the absence of proof to the contrary.^[3] Petitioner has not presented evidence to overcome this presumption of regularity in the performance of official duty. We therefore hold that the decision of the NLRC became final and executory on January 25, 1992.^[4]

Second. We have nevertheless gone over the records of the case to see if, in holding that petitioner's dismissal was for cause, the NLRC did not gravely abuse its discretion. We have found no basis for holding that it did. If the NLRC committed an error at all, it was committed in favor of petitioner. We are referring to the award of separation pay to her. Since private respondent has not questioned the decision of the NLRC, we can not review this part of its decision.

Petitioner's dismissal was anchored on two grounds: first, violations of office rules and regulations consisting of tardiness and absenteeism, insubordination and misconduct, and second, brawling with another employee in the employer's premises on February 20, 1990.