

FIRST DIVISION

[G.R. No. 114129, October 24, 1996]

**MANILA ELECTRIC COMPANY, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSIONS AND JEREMIAS G. CORTEZ,
RESPONDENTS.**

D E C I S I O N

HERMOSISIMA, JR., J.:

This is a petition for certiorari with a prayer for temporary restraining order to set aside the Resolution of the First Division of the National Labor Relations Commission (NLRC) dated September 30, 1993 (which reversed the Decision dated August 13, 1991 of the Labor Arbiter Cresencio R. Iniego), and its Order dated December 29, 1993 (which denied petitioner's motion for reconsideration).

Private respondent Jeremias C. Cortez, Jr. was employed on probationary status by petitioner Manila Electric Company (Meralco) on September 15, 1975 as a lineman driver. Six months later, he was regularized as a 3rd class lineman-driver assigned at petitioner's North Distribution Division. In 1977, and until the time of his dismissal, he worked as 1st class lineman-driver whose duties and responsibilities among others, includes the maintenance of Meralco's distribution facilities (electric lines) by responding to customer's complaints of power failure, interruptions, line trippings and other line troubles.

Characteristics, however, of private respondent's service with petitioner is his perennial suspension from work, viz:

Date of Memorandum Penalty Meted/Description

- a. May 25, 1977 - Suspension of five (5) working days without pay for violation of Company Code on Employee Discipline, i.e., 'drinking of alcoholic beverages during working time xxx.'
- b. March 28, 1984- Suspension of three (3) working days without pay for failure or refusal to report to J.F. cotton Hospital [where petitioner maintains a medical clinic] as instructed by a company physician, while on sick leave.
- C. June 13, 1984 - Suspension of ten (10) working days without pay for unauthorized extension of sick leave.
- d. June 5, 1987 - Suspension of three (3) working days without pay for failure or refusal to report to J.F. Cotton Hospital [where petitioner maintains a medical clinic] as instructed by a company physician, while on sick leave.

[Private respondents failed to report for work from Sept. 18, 1986 to Nov. 10, 1986].

e. December 16, 1988 - Preventive suspension for failure to submit the required Medical Certificate within 48 hours from the first date of the sick leave.

[Private respondent failed to report for work from Nov. 28, 1988 to the time such Memorandum was issued on December 16, 1988].

f. February 22, 1989 - After formal administrative investigation, suspension of five (5) working days without pay for unauthorized absences on November 28, 1988 to December 2, 1988. Absences from December 2, 1988. Absences from December 9-19, 1988 were charged to private respondent's vacation leave credits for the calendar year 1989.

g. May 30, 1989 - Suspension of ten (10) working days without pay for unauthorized absences from May 17-19 1989, with warning that penalty of dismissal will be imposed upon commission of similar offense in the future.^[1]

Due to his numerous infractions, private respondent was administratively investigated for violation of Meralco's Code on Employee Discipline, particularly his repeated and unabated absence from work without prior notice his superior specifically from August 2 to September 19, 1989.

After such administrative investigation was conducted by petitioner, it concluded that private respondent was found to have grossly neglected his duties by not attending to his work as lineman from Aug. 2, 1989 to September 19, 1989 without notice to his superiors.

In a letter dated January 19, 1990, private respondent was notified of the investigation result and consequent termination of his services effective January 19, 1990, viz:

"Mr. Jeremias C. Cortez, Jr.
16 E Jacinto Street
Malabon, Metro Manila

Dear Mr. Cortez:

Official findings of formal administrative investigation duly conducted by the Company's Legal Services Department established the following:

1. You incurred unauthorized and unexcused absences from work starting August 2, 1989 up to September 9, 1989. On September 20, 1989, you were allowed to return to work but without prejudice to the outcome of an administrative investigation. By your unauthorized and unexcused absences from work, you have grossly violated Section 4, par. (e) of the Company Code on Employee Discipline which prescribes (u)nauthorized and unexcused absences from work which exceed five (5) consecutive working days penalized therein with dismissal of the erring employees

from the service and employ of the Company.

x x x

x x x

x x x

The foregoing instances plus your series of violations of the sick leave policy clearly show your gross and habitual neglect of duties and responsibilities in the Company, a condition which is patently inimical to the interest of the Company as a public utility vested vital public interest.

x x x

x x x

x x x

Based on the foregoing, and considering your series of violations of the Company Code on Employees Discipline, Management is constrained to dismiss you for causes from the service and employ of the Company, as you are hereby so dismissed effective January 19, 1990, with forfeiture of all rights and privileges.

Truly yours,

For E.L. Sapang, Jr.
Assistant Vice President
Personnel Management
Department"[2]

On March 7, 1990, private respondent filed a complaint for illegal dismissal against petitioner. After both parties submitted their position papers and the documentary evidence attached thereto, the case was submitted for resolution.

On August 13, 1991, the Labor Arbiter rendered a Decision dismissing the case for lack of merit. The Labor Arbiter ratiocinated thus:

"When complainant therefore, in patent violation of respondent's clear and express rules intended to insure discipline and integrity among its employees, deliberately, habitually, and without prior authorization, and despite warning, did not report for work from August 1, 1989 to September 19, 1989, complainant committed serious misconduct and gross neglect of duty. In doing so, complainant can [be] validly dismissed. For as held by the Supreme Court, 'dismissal for violation of the Company's Rules and Regulations is a dismissal for cause.' (Peter Paul v. C.I.R., G.R. No. L- 10130, September 1957; NMI v. NLU, 102 Phil 958).

x x x

x x x

x x x

Considering the above, we find the complainant's dismissal from the service as lawful exercise by respondent of its prerogative to discipline errant employee.

WHEREFORE, the instant case should be as it is hereby dismissed for lack of merit."[3]

Aggrieved with the decision of the Labor Arbiter, private respondent elevated his case on appeal to public respondent.

On September 30, 1993, the NLRC set aside the decision of the Labor Arbiter and ordered petitioner to reinstate respondent with backwages.^[4]

Petitioner then filed a Motion for Reconsideration which was denied.

Hence, this petition.

The crux of the present controversy is whether or not private respondent's dismissal from the service was illegal.

A perusal of the records shows that there is a divergence of views between the Labor Arbiter and the NLRC regarding the validity of the dismissal of respondent by petitioner. Although, it is a legal tenet that factual findings of administrative bodies are entitled to great weight and respect, we are constrained to take a second look at the facts before us because of the diversity in the opinions of the Labor Arbiter and the NLRC.

Petitioner alleges that there was grave abuse of discretion on the part of the NLRC when it reversed the decision of the Labor Arbiter on the following grounds: (a) that petitioner admitted in its Position Paper (Annex "12") that private respondent "went into hiding as he was engaged in a trouble with a neighbor" and (b) that in the said decision, the Labor Arbiter relied not so much on complainant's absences from August 1 to September 19, 1989 which was the subject of the investigation, but on complainant's previous infractions.

Article 283 of the Labor Code enumerates the just causes for termination. Among such causes are the following:

"a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employers or representatives in connection with his work.

b) Gross and habitual neglect by the employee of his duties.

xxx xxx xxx."

This cause includes gross inefficiency, negligence and carelessness. Such just causes is derived from the right of the employer to select and engage his employees. For indeed, regulation of manpower by the company clearly falls within the ambit of management prerogative. This court had defined a valid exercise of management prerogative as one which covers: hiring work assignment, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and the discipline, dismissal and recall of workers. Except as provided for, or limited by, special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment.^[5]

Moreover, this Court has upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and