Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NDC TAGUM FOUNDATION, INC., ANITA B. SOMOSO, and LIDA U. NATAVIO,
Petitioners,

- versus -

EVELYN B. SUMAKOTE,
Respondent.

G.R. No. 190644

Present:

SERENO, *CJ*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE and
CAGUIOA, *JJ.*

Promulgated:
JUN 13 2016

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DECISION

SERENO, *CJ:*

Before this Court is a Petition for Review on Certiorari assailing the Court of Appeals (CA) Decision[1] which affirmed the Resolution[2] issued by the National Labor Relations Commission (NLRC) dismissing the complaint for illegal dismissal filed by Evelyn B. Sumakote (respondent) against the NDC[3] Tagum Foundation; and Anita B. Somoso (Somoso) and Lida U. Natavio (Natavio), its President and Administrator, respectively. The CA, however, modified the NLRC ruling by awarding, in favor of respondent nominal damages in the amount of ₱30,000 for petitioners' noncompliance with the hearing requirement in dismissal cases.

ANTECEDENT FACTS

Respondent was a full-time nursing instructor at the College of Nursing of the NDC Tagum Foundation before she was appointed as its dean

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[1] *Rollo*, pp. 34-50. Decision dated 27 April 2009; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.
[2] *CA Rollo*, pp. 42-47; Resolution dated 25 July 2005; penned by Presiding Commissioner Salic B. Dumarpa with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan concurring.
[3] *Rollo*, p. 15; "NDC" is spelled out as "North Davao College" in paragraph 10.03 of the Petition for Review..

in 1996. Beginning 1999, she also operated a nursing review and caregiver training center while simultaneously working at the NDC Tagum Foundation.[4]

While respondent was still under contract with the NDC Tagum Foundation, the University of Mindanao (UM) engaged her services as consultant for the establishment of the UM's Nursing Department.[5] In February 2003, she was interviewed for deanship at the UM; and within that month, her appointment as full-time program head was approved by the president of the university. She was also listed as faculty member in the permit application it submitted to the Commission on Higher Education (CHED).[6]

In a letter dated 11 February 2003, Natavio advised respondent that her engagement with the UM was in conflict with the interests of the NDC Tagum Foundation, and that it was an act of disloyalty. Moreover, even her work attendance was already affected. She was then requested to formally declare her plan to leave the NDC Tagum Foundation, so it could appoint a new dean.[7]

Respondent did not respond to the letter. On April 2003, she declined the appointment at the UM, as she had decided to stay with the NDC Tagum Foundation.[8]

On 4 September 2003, respondent received another letter from Natavio requiring the former to explain why she should not be dismissed on the ground of neglect of duty because of her moonlighting activities. The letter also stated that respondent not only had poor work attendance, but also neglected to update the school curriculum.[9]

On the following day, respondent submitted a written explanation denying the charges of neglect. She contended that she had not received any compensation from the UM; therefore, her work there could not be considered as moonlighting. She also questioned the timing of the management's objection to her review and training center, considering that it had been operational since 1999.[10]

On 15 September 2003, petitioners placed respondent on preventive suspension for five days pending the outcome of the management's investigation of her supposed moonlighting activities and her reported attempts to pirate some of the school's instructors for transfer to the UM. In a letter of even date, Somoso notified respondent of the latter's preventive

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[4] Id. at 34-35.
[5] *CA Rollo*, p. 326.
[6] Id. at 407-409.
[7] Id. at 70.
[8] Id. at 67.
[9] Id. at 76.
[10] Id. at 77.

suspension and directed her to explain why she should not be dismissed based on the reports.[11]

The next day, respondent submitted a letter denying the latest allegation and seeking a clarification of her employment status. In addition, she prayed that the management's decision be made only after a proper investigation.[12] In a letter dated 17 September 2003, petitioners notified her of her dismissal from employment effective 18 September 2003.[13]

Upon a Complaint filed by respondent, the labor arbiter declared her dismissal illegal, ordering her reinstatement and the payment of back wages, as well as moral and exemplary damages.[14]

The NLRC reversed the arbiter's Decision. It ruled that respondent was dismissed for just cause because her moonlighting activities constituted dishonesty, serious misconduct, and gross neglect of duty.[15]

The CA, upon Petition for Certiorari filed by respondent, affirmed the findings of the NLRC that she had been dismissed for cause. The appellate court, however, found that she was not afforded the opportunity to be heard. In view of this failing, it ordered petitioners to pay her nominal damages in the amount of ₱30,000.[16]

Petitioners moved for the reconsideration of the award of nominal damages,[17] but the CA denied their motion.[18] Hence, this Petition.

ISSUE

The lone issue to be resolved is whether the CA erred in holding that respondent was not given the opportunity to be heard and to present her defense prior to her dismissal.

COURT RULING

We DENY the Petition.

Dismissals have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process.[19]

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[11] Id. at 79.
[12] Id. at 80.
[13] Id. at 81.
[14] Id. at 64.
[15] Id. at 42-47.
[16] *Rollo*, pp. 48-50.
[17] Id. at 51-61.
[18] Id. at 62-64.
[19] *Lopez v. Alturas Group of Companies*, 663 Phil. 121 (2011), citing *Tirazona v. Court of Appeals*, 572 Phil. 334 (2008).

In this case, it is not disputed that respondent was terminated from employment for just cause under Article 282 of the Labor Code. The only question to be determined is whether the procedural due process requirements for a valid dismissal were complied with. This is a factual issue. Ordinarily, We do not allow this kind of question to be threshed out in a Rule 45 petition. The divergence between the factual findings of the NLRC and those of the CA, however, constrain Us to revisit the evidence on record.[20]

Book VI, Rule I, Section 2 of the Omnibus Rules Implementing the Labor Code, provides:

> SECTION 2. Security of tenure.– (a) In cases of regular employment, the employer shall not terminate the service of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.
>
> x x x x
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> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
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> For termination of employment based on just causes as defined in Article 282 of the Labor Code:
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> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
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> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

In *King of Kings Transport v. Mamac*,[21] this Court elaborated on the above-quoted procedural requirements as follows:

> (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to

[20] *Castillo v. Prudentialife Plans, Inc.*, G.R. No. 196142, 26 March 2014.
[21] 553 Phil. 108 (2007).

> enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
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> (2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given an opportunity to (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, the conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
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> (3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[22]

In this case, petitioners argue that respondent was given four notices, referring to the letters dated 11 February 2003, 4 September 2003, 15 September 2003, and 17 September 2003. They claim that all these letters afforded her the opportunity to explain her side and, therefore, she was given ample opportunity to be heard.

We do not agree.

The first letter sent by petitioners did not ask respondent to submit an explanation. It appears, rather, that they had already decided to find a replacement for her and that they were only waiting for the confirmation of her transfer to the UM:

> In this connection, we feel that it would be best if you would just concentrate working with the University of Mindanao full-time. And we shall highly appreciate it if you can formally advise us of your plans to separate from us so that we will assign somebody in[sic] your position as dean of the College of Nursing.
>
> May we hear from you in writing within three (3) days from your receipt of this letter so we can also prepare as what we have to do for the good of school[sic].[23]

It is settled that a full adversarial hearing or conference is not required.[24] All that is required is a fair and reasonable opportunity for the

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[22] Id. at 115-116.
[23] *CA Rollo*, p. 70.
[24] *Toyota Alabang v. Games*, G.R. No. 206612, 17 August 2015.

employee to explain the controversy at hand.[25] Yet, even if we consider the letter dated 4 September 2003 as the first notice, there would still be a breach of the procedural due process requirement. The breach occurred when petitioners did not call a hearing or conference during which respondent could have presented her defense.[26] Instead, they placed her right away under preventive suspension for five (5) days. Then they dismissed her from employment while she was still serving her preventive suspension.

Clearly, the alleged opportunities given for her to explain her side, through the letters dated 4 and 15 September 2003, fell short of the minimum standard of what constitutes an opportunity to be heard in administrative proceedings, i.e., a fair and reasonable chance to defend oneself against the bases cited for one's dismissal.

Somoso and Natavio now lament that they should not have been impleaded in this case. They claim that because they were not the actual employers of respondent, they are entitled to attorney's fees.[27]

Suffice it to say that attorney's fees are not awarded where, as in this case, no sufficient showing of bad faith is reflected in a party's persistence in pursuing a case other than an erroneous conviction of the righteousness of the complaint. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.[28]

Finally, in line with prevailing jurisprudence,[29] legal interest at the rate of 6% per annum is imposed on the nominal damages awarded from the finality of this Decision until full payment.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals Decision dated 27 April 2009 is **AFFIRMED with MODIFICATION** in that legal interest at the rate of 6% per annum is imposed on the award of damages from the finality of this Decision until full payment.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[25] *Concepcion v. Minex Import Corp./Minerama Corp.*, 679 Phil. 491 (2012).
[26] *Agullano v. Christian Publishing*, 588 Phil. 43 (2008).
[27] *Rollo*, p. 90.
[28] *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil. 499 (1999).
[29] *G.J.T. Rebuilders Machine Shop v. Ambos*, G.R. No. 174184, 28 January 2015, citing *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 703 SCRA 439, 458.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice