Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROGEL ORTIZ, Petitioner,	**G.R. No. 183399**
	Present:
- versus -	VELASCO, JR., *J.*, *Chairperson*, BERSAMIN, REYES, JARDELEZA, and TIJAM, *JJ.*
DHL PHILIPPINES CORPORATION, ET AL., Respondents.	Promulgated: March 20, 2017

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RESOLUTION

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Rogel Ortiz (petitioner), assailing the Decision[2] dated October 27, 2006 and Resolution[3] dated December 13, 2007 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 00180, which affirmed with modification the ruling of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000499-2000.

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1 *Rollo*, pp. 10-30.

2 Penned by Associate Justice Romeo F. Barza, with Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla concurring; id. at 33-47.

3 Id. at 49-50.

Factual Antecedents

In September 1989, the petitioner was hired by DHL Philippines Corporation (DHL) as Courier/Driver at the Mactan Business Center in Cebu. In 1991, he was promoted to the position of Customs Representative and occupied the said position until 1995 when he was assigned at the Ramos Business Center (RBC). Thereafter, he held the position of a Manifest Clerk up to the time of his termination.[4]

As a Manifest Clerk, the petitioner was specifically tasked to prepare manifest documents of the cargo before the same is forwarded to its destination. He was made to work from 11:00 a.m. until 8:00 p.m., with one-hour meal break and a 15-minute coffee break. On ordinary days, he and the other manifest clerks took charge of the office business from 6:00 p.m. to 8:00 p.m. since their Branch Supervisor, Marivic Jubay (Jubay) leaves by 6:00 p.m.[5]

On March 2, 1999, a little past 7:00 p.m., Jubay dropped by the RBC and found out that the petitioner was not there. She inquired from his co-employees of his whereabouts but nobody knew where he was. She waited until the petitioner returned to the office at 8:55 p.m. to punch out his time card. She then asked him where he went and he told her that he had his tires fixed at a vulcanizing shop. She reprimanded the petitioner and told him to exercise more diligence at work. On the following day, however, the petitioner did not report for work.[6]

On March 19, 1999, at around 6:00 p.m., the RBC Branch Manager, Ramon Tamondong (Tamondong), looked for the petitioner but he was not in his workplace and his co-employees would not know where he was. Tamondong then asked the security guard if he knew where the petitioner could be and the former answered that he went home to watch a Philippine Basketball Association (PBA) game. Thus, Tamondong called Jubay and directed her to investigate the matter. Jubay immediately called the office but the petitioner was still nowhere to be found. On the following day, Jubay found out that the petitioner punched out his time card 8:46 p.m. on the previous day.[7]

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4 Id. at 109.
5 Id. at 82.
6 Id.
7 Id. at 82-83.

On March 25, 1999, the petitioner received a memorandum[8] from Jubay, directing him to explain why he had left his post during office hours on March 19, 1999. Instead of showing repentance and admitting his faults, he arrogantly hurled invectives at his supervisor in front of his co-employees.[9] On the following day, he submitted his written explanation,[10] wherein he claimed that he only took his 15-minute break since he has yet to avail of the same that day. During the investigation, however, his officemates revealed that he had been regularly leaving the office before his shift ends, just right after their supervisor leaves the office, especially on Tuesdays and Thursdays, and whenever his brother-in-law, who plays for a PBA team, has a scheduled game. In those days, he would call from his residence and ask the security guard or his co-employee, Hubert Enad to punch out his time card. Due to these allegations, Jubay elevated the matter for further investigation to the Human Resources Manager for Visayas and Mindanao. The investigation conducted only confirmed the fact that the petitioner had been leaving the office early two to three times a week to practice basketball or watch PBA games. The security guards likewise disclosed that this practice had been going on for almost two years already. Upon learning that the security guards testified against him, he threatened to retaliate by making them lose their employment and revoke their agency's license.[11]

After a series of memoranda and written explanations between the personalities involved, the petitioner was issued a notice of formal investigation to be conducted on May 4, 1999.[12] During the confrontation, the petitioner apologized for his ill behavior in front of his supervisor and admitted to all the charges against him. When he was informed that his infractions may warrant his dismissal, he pleaded that he be imposed with suspension instead. He was, thus, advised to write a letter to the management to appeal for a lesser penalty for his infractions, which he submitted on May 5, 1999.[13]

In a memorandum[14] dated May 15, 1999, the management of DHL denied the petitioner's plea for a lesser penalty for his infractions. The memorandum pointed out that the gravity of the infractions and the fact that the same had been continuously committed for a period of two years amount to grave dishonesty and serious misconduct which deserved no less than dismissal. On June 4, 1999, the petitioner received a

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8 Id. at 273.
9 Id. at 83.
10 Id. at 274.
11 Id. at 83-84.
12 Id. at 308.
13 Id. at 309-311.
14 Id. at 313.

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Notice of Dismissal[15] dated May 29, 1999. Sometime thereafter, he filed a case for unfair labor practice and illegal dismissal, with claims for the payment of indemnity, damages and costs of suit against DHL and its responsible officers.

On February 3, 2000, the Labor Arbiter (LA) rendered a Decision,[16] dismissing the complaint for lack of merit.

Ruling of the NLRC

On appeal, the NLRC, in its Decision[17] dated May 7, 2003, affirmed with modification the decision of the LA in that the petitioner should be awarded separation pay in view of his long service to DHL. It ratiocinated, thus:

> We find it strange that not a single complaint was made with respect to [the petitioner's] work performance. Indeed, respondent failed to show a single instance that a cargo was not dispatched on time because of [the petitioner's] failure to accomplish the necessary manifesting documents due to his going out of the office early. Indeed, we are inclined to believe [the petitioner's] allegation that he goes out early only when all his work had been accomplished or when there is no more work to be done. It is this circumstance that compels Us to mitigate [the petitioner's] offense. Indeed, where a penalty less punitive would suffice whatever misstep may have been committed by the worker ought not to be meted with a consequence so severe as dismissal without taking into consideration the worker's long and faithful years of service. x x x
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> x x x x
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> **WHEREFORE**, premises considered, the decision of the [LA] is **AFFIRMED** with **MODIFICATION** awarding [the petitioner] his separation pay computed at one month for every year of service.
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> SO ORDERED.[18]

The petitioner filed a motion for reconsideration, but the NLRC denied the same in a Resolution dated October 12, 2004.[19]

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15 Id. at 315.

16 Issued by LA Jose G. Gutierrez; id. at 332-344.

17 Issued by Commissioner Oscar S. Uy and concurred in by Commissioner Edgardo M. Enerlan; id. at 80-87.

18 Id. at 86-87.

19 Id. at 40.

Unyielding, the petitioner filed a Petition for *Certiorari*[20] with the CA, assailing the decision of the NLRC. He argued that the NLRC gravely abused its discretion in holding that his dismissal was with a valid cause and that he was accorded due process.

Ruling of the CA

Subsequently, on October 27, 2006, the CA rendered a Decision,[21] affirming with modification the decision of the NLRC. It affirmed the finding that there was no illegal dismissal but deleted the award for separation pay. It, however, found that the dismissal failed to observe the requirements of procedural due process and awarded the petitioner with nominal damages in the amount of ₱30,000.00. The dispositive portion of the decision reads as follows:

> WHEREFORE, premises considered, the assailed decision of the NLRC dated May 7, 2003 is hereby AFFIRMED with MODIFICATION. We affirm the finding of petitioner's dismissal to be with just cause, but no separation pay is awarded to petitioner. Respondent [DHL] (now known as Widewide World Express, Inc.) is ordered to pay petitioner the amount of Thirty Thousand Pesos (P30,000.00) as nominal damages for non-compliance with statutory due process. The resolution dated October 12, 2004 denying petitioner's motion for reconsideration on the decision dated May 7, 2003 for lack of merit is likewise AFFIRMED.
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> SO ORDERED.[22]

The petitioner filed a Motion for Partial Reconsideration,[23] but the CA denied the same in its Resolution[24] dated December 13, 2007. Thus, the filing of the instant petition.

Ruling of the Court

The petitioner argues that the CA gravely erred in ruling for his dismissal without a valid ground and in disregard of procedural due process. He contends that the CA erred in affirming his dismissal notwithstanding the lack of evidence, aside from his written admission of his infractions which was obtained through fraud and deception specifically by making him believe that this would help him merit the lesser penalty of suspension for 30 days.

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20 Id. at 88-103.
21 Id. at 33-47.
22 Id. at 46-47.
23 Id. at 51-71.
24 Id. at 49-50.

The appeal lacks merit.

It is well settled that a valid dismissal necessitates compliance with substantive and procedural requirements. Specifically, in *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC, et al.*,[25] the Court emphasized that (a) there should be just and valid cause as provided under Article 282 of the Labor Code, and (b) the employee be afforded an opportunity to be heard and to defend himself.[26]

After a careful examination of the facts and the records of this case, the Court finds that the petitioner's dismissal was founded on acts constituting serious misconduct and grave dishonesty which are grounds for a valid dismissal. In particular, he repeatedly committed the following serious violations of company policies, to wit:

> 1) Grave dishonesty and fraud by allowing/asking someone to punch out your timecard for a period of two years[;]
> 2) Deliberate disregard/disobedience of company rule by frequently leaving work area prior to scheduled dismissal time without permission[;]
> 3) Disrespect to immediate superior by uttering offensive and lewd remarks and[/]or misbehavior during confrontation last March 25, 1999[; and]
> 4) Threatening the two security guards on duty last April 9, 1999 and warning them against testifying about violations incurred which constitute an offense against persons[.][27]

The truthfulness of the charges against the petitioner was well established by the joint affidavits executed by his co-employees and corroborated by documentary evidence presented by DHL. For instance, the Joint Affidavit[28] of Ernesto Genotiva and Flaviano Siaton Retada, Jr., security guards of the company, attested to the fact that it had been the petitioner's habit to leave the office early especially every Tuesdays, Thursdays and Fridays, and ask a co-employee to punch out his timecard. And indeed, an examination of the petitioner's timecard for the past two years disclosed the fact that on the mentioned days of the week, the petitioner punched out way past the end of his duty. Even then, he never submitted any request for overtime pay to the Accounting Department even when he punched out beyond his schedule.[29]

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25 611 Phil. 570 (2009).
26 Id. at 579.
27 *Rollo*, p. 315.
28 Id. at 276-277.
29 Id. at 217.

Apart from the foregoing, the petitioner readily admitted to the infractions he committed during the investigation conducted by the company. In his letter[30] dated April 20, 1999, he admitted to going out of the office to play basketball and asking the security guard to punch out his card for him albeit with the excuse that he leaves only after he performed all his tasks. In the same letter, he admitted having uttered words to his supervisor and apologized for the same. He likewise admitted during the formal investigation held on May 4, 1999, to threatening the security guards and explained that he was under the influence of alcohol at that time.[31] Further, right after the formal investigation, he wrote a letter to the management admitting his faults and undertook never to commit the same infractions again.[32] Unfortunately for him, the management of DHL imposed the penalty of dismissal as stated in the company manual, stressing that the totality and the gravity of the offenses he committed do not merit consideration.[33]

Clearly then, the petitioner's dismissal was based on valid causes and the CA was correct in affirming the same.

The Court also agrees with the CA that the petitioner was not afforded procedural due process in the process of his termination which warrants the grant of ₱30,000.00 in nominal damages.

In *New Puerto Commercial, et al. v. Lopez, et al.*,[34] the Court discussed the two facets of procedural due process, to wit:

> [P]rocedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted. x x x.[35] (Citation omitted)

In *King of Kings Transport, Inc. v. Mamac*,[36] the twin requirements of notice and hearing were further clarified, thus:

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30 Id. at 306.
31 Id. at 309.
32 Id. at 311.
33 Id. at 313.
34 639 Phil. 437 (2010).
35 Id. at 445.
36 553 Phil. 108 (2007).

> (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 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 the 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, this 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.[37] (Citations omitted and emphasis in the original)

Based on the records, the petitioner received three notices before he was given the notice of his termination. The first notice[38] dated March 25, 1999 given to the petitioner reads as follows:

> Please be informed that last March 19, 1999, you left your post during working hours without anybody's knowledge. This is not the first time that you deviated our company policy regarding the above subject matter.

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37 Id. at 115-116.

38 *Rollo*, p. 273.

> In connection to this, you are instructed to give your **written explanation on the above matter within 24 hours upon receipt of this memo**. (Emphasis ours)

Sometime thereafter, the petitioner was given a second notice[39] on April 16, 1999 which pertinently states:

> We were informed that you sometimes leave your work area on Tuesdays or Thursdays to play basketball during office hours in the process you do not go back to the office and asked someone to punched out for you which is a deviation from offenses against company's interest.
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> Also during the process of investigation on leaving work area during office hours, [y]ou uttered words to your Supervisor in front of your co-employees after being asked by your Supervisor some questions. This is categorize as offenses against person or having to be disrespectful to your Supervisor.
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> We are giving you 48 hours to reply on this matters, [w]hy we should not impose the required disciplinary actions for the things you have done against the company. Failure to comply would mean you waive your right to be heard.

The third notice[40] on April 30, 1999 for formal investigation was rather short and vague. It reads, thus:

> Please be informed that there will be a formal investigation to be conducted on 04 MAY 1999 at 9:00 A.M. at the HR Conference Room **concerning your offenses currently investigated**. You may bring along with you a lawyer or representative who may assist you in the investigation. (Emphasis ours)

None of the three notices satisfied the requirements of the law. In the first notice, the allegations against the petitioner were vague and did not make any reference to the company policy violated by the latter nor to any of the grounds for termination in Article 282 of the Labor Code. Apart from this, the notice did not give the petitioner a reasonable opportunity to prepare his explanation as he was only given practically a day or 24 hours to respond to the same.

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39 Id. at 303.

40 Id. at 308.

In the same way, the second notice lacked the particularity required by the law. It does not contain a detailed narration of the incidents being alluded to, leaving the petitioner guessing on the particulars of the charges against him. The general description of the charges is not a sufficient compliance with the law.

The same can be said of the third notice as it is completely wanting of the essential details required of a proper notice. There were no details of the charges against the accused, the notice merely stating that the formal investigation concerns the "*offenses for which the petitioner is currently being investigated.*" What these offenses are, however, can hardly be gathered with particularity from the two earlier notices given to the petitioner. It is even doubtful whether this notice was ever given to the petitioner at all since the copy of the same submitted in evidence by DHL contained a notation, "REFUSED TO SIGN (6/30/99)", thereby giving the impression that the petitioner was supposedly served a copy of the notice but refused to sign on June 30, 1999, while the formal investigation was held on May 4, 1999.

Undoubtedly, there was a considerable lapse by DHL in observing the procedural due process requirements of the law in terminating employment. In such a case, the ruling in *Agabon v. NLRC*[41] is instructive. It was held that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the validity of the dismissal shall be upheld but the employer shall be ordered to pay nominal damages in the amount of ₱30,000.00.[42]

Therefore, in view of the foregoing, the Court upholds the validity of the petitioner's dismissal but imposes DHL with nominal damages in the amount of ₱30,000.00 for failure to abide by the statutory standards of procedural due process.

WHEREFORE, the Decision dated October 27, 2006 and Resolution dated December 13, 2007 of the Court of Appeals in CA-G.R. CEB-SP No. 00180 are **AFFIRMED**.

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41 485 Phil. 248 (2004).
42 Id. at 287-288.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL G. TIJAM
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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