

THIRD DIVISION

[G. R. NO. 150171, July 17, 2007]

**ACEBEDO OPTICAL AND MIGUEL ACEBEDO III, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION AND MELENCIA
ASEGURADO, RESPONDENTS.**

DECISION

CHICO-NAZARIO, J.:

The Case

For Review on *Certiorari*,^[1] under Rule 45 of the Rules of Court, as amended, is the *Decision*,^[2] dated 16 May 2001, of the Court of Appeals in CA-G.R. SP No. 59471, and its *Resolution* dated 19 September 2001, denying the Motion for Reconsideration of said decision. The Court of Appeals dismissed the petition for *certiorari*, filed by herein petitioners Acebedo Optical (Corporation) and Miguel Acebedo III (Acebedo) and affirmed *in toto* the *Resolution*,^[3] dated 17 November 1999, of the National Labor Relations Commission (NLRC)-First Division in NLRC NCR Case No. 00-01-00651-97, which, in turn, sustained the *Decision* dated 22 May 1998, of Labor Arbiter Emerson C. Tumanon directing herein petitioners to reinstate private respondent Melencia B. Asegurado to her former or equivalent position without loss of seniority rights, for illegally terminating the latter's employment from petitioner corporation; and ordering them to pay her full backwages, service incentive leaves and attorney's fees.

This case stemmed from a complaint for illegal dismissal with prayer for reinstatement and payment of full backwages and other benefits. Said grievance was filed by herein private respondent against herein petitioners on 22 January 1997 before the National Labor Relations Commission.

The facts of the case as synthesized from the records are as follows:

On 16 August 1991, petitioners engaged the services of private respondent as a packaging clerk responsible for the following tasks:

1. Receives (sic) product from supplier and sort them out;
2. Record incoming and outgoing deliveries to stock ledger and stock card;
3. Received (sic) requisition from branch retail outlets;
4. Select products from storage and place them inside the box, label the boxes and prepare the corresponding delivery receipts;
5. Make physical count at regular intervals and reconciles physical count with book records;
6. Other assignments as and when required by supervisor from time to time.^[4]

Initially, the private respondent's employment status was probationary. Six months later, or on 1 March 1992, however, she was *regularized*.

But before her employment status was made permanent, private respondent was given a *Memorandum*^[5] by petitioner Miguel Acebedo III, Operations Manager of petitioner corporation, reading as follows:

TO : MELENCIA BUTIL
FROM : THE OPERATIONS DEPARTMENT
SUBJECT : WRITTEN WARNING on
DATE : September 7, 1991

As per report of the Personnel Department on the Absences and Tardiness for the month of August, you were found to have 1 hr. & 34 mins. late (sic).

Be informed that habitual absences/tardiness is a grave violation of company policy.

This serves as your written warning.

[Signed]
MIGUEL R. ACEBEDO III
Operations Manager

The memorandum was to apprise her of her accumulated tardiness of one hour and a half for the month of August 1991; likewise, it served as a warning to her that habitual tardiness/absenteeism is considered a violation of company policy.

On 15 October 1992, private respondent received another memorandum^[6] essentially warning her that habitual tardiness was considered "a grave violation of Company Policy;"^[7] but without actually notifying her of the actual period of her alleged tardiness. According to said memorandum, it was to serve as private respondent's first written warning as well. A copy of the communication reads:

TO : MELENCIA BUTIL
FROM : THE PERSONNEL DEPARTMENT
SUBJECT : AS STATED
DATE : October 15, 1992

Be reminded that habitual tardiness is considered a grave violation of Company Policy and is subject to strict disciplinary action.

This will serve as your first written warning.

[Signed]
THE PERSONNEL DEPARTMENT

On 22 April 1994, a three-day suspension from work was imposed on private respondent on the ground of her being tardy twenty-six times within the period of January to March 1994. The suspension notice was served on her *via* a *Memorandum*^[8] dated the same day. It was averred that private respondent incurred twenty-six counts of tardiness within the above-specified months which number far exceeded the maximum allowable limit per month of only four times.^[9] The third *Memorandum* states:

TO : MELENCIA ASEGURADO

FROM : THE PERSONNEL DEPARTMENT

SUBJECT : TARDINESS, Suspension notice on

DATE : APRIL 22, 1994

The report on tardiness for the period January to March 1994, showed that you incurred lates (sic) twenty six (26) times (11, 7, 8) the said numbers exceeded the maximum limit of four times each month.

It is one of the fundamental duties of any employee to follow rules and regulations of the company, and (sic) one of the most basic is the observance of official time. Your 201 file kept two (2) written warnings on tardiness.

This time, you are given a three (3) days suspension without pay effective May 10, 11 & 12, 1994.

Please be advised to manage your time very well to avoid future offenses.

[Signed]
LUTZ PENAFLOIDA
Acting Head – Personnel

On 28 February 1995, private respondent was served a fourth *Memorandum*.^[10] For having incurred twenty-one counts of tardiness for the months of [*unreadable*] to December 1994, the latter was meted another suspension, this time for seven days, or four days longer than the first. More specifically, it provides:

TO : MELENCIA ASEGURADO

FROM : THE PERSONNEL DEPARTMENT

SUBJECT : TARDINESS, Suspension notice of

DATE : February 28, 1995

The report on tardiness for the period of [unreadable] to December 1994, (sic) showed that you incurred lates (sic) twenty-one (21) times (3, 9, 9), the said number exceeded the maximum limit of four times each month.

Despite of (sic) previous notices and suspension, you still failed to meet the company's policy on attendance. Since the company is implementing [unreadable] Disciplinary Measures for this kind of infraction, you are hereby given seven (7) days suspension which will [unreadable] effective on March 6, 9, 14, 16, 21, 23 & 27, 1995.

Please adhere to the policy [unreadable] failure to improve on this aspect will result in severe penalties.

For your guidance.
[Signed]
LUTZ PENAFLOIDA
Personnel Manager

On 22 May 1995, private respondent filed an application for an indefinite leave of absence. In a *Memorandum*^[11] dated 26 May 1995, petitioner corporation's Head of Personnel denied said application, viz:

TO : MELENCIA B. ASEGURADO

FROM : THE PERSONNEL DEPARTMENT

SUBJECT : STATEMENT OF CHARGE

DATE : May 26, 1995.

Be informed that the indefinite leave of absence which you have filed last May 22, 1995 is not approved, this nature of leave is not being considered in our prescribed policy. Be reminded also that you have accumulated a total of fourteen (14) days absence for this month alone.

Although, (sic) we understood (sic) your reason (no babysitter), we are also concerned about the smooth flow of work in your section. Since you went on leave, some GSD staff took turn (sic) in doing your function. Due

to this situation, I am worried that this would led (sic) to confusion, error and delay because there's nobody who is completely in charged (sic) in monitoring their activities.

I am giving you up to the end of the month to sort out your personal problem. Failure to go back to work on June 01, 1995 would make your extended leave of absence unauthorized (sic). This would constitutes (sic) a valid ground for the termination of your services.

For your guidance.

[Signed]
LUTZ PENAFLOIDA
Personnel – Head

On 29 August 1995, private respondent was suspended for the third time, this time for thirteen days. The reason given for the imposition of such penalty was the employee's failure "to meet the company policy on tardiness." The *Memorandum*^[12] reads in full:

TO : MS. MELENCIA ASEGURADO – PACKAGING CLERK

FROM : THE PERSONNEL DEPARTMENT

SUBJECT : SUSPENSION, Notice of

DATE : August 29, 1995

Based on the Tardiness Report, you have accumulated a total of 17 lates for the quarter (April – June).

As per company policy, Head Office employees are limited only to four (4) lates per month or a total of twelve (12) per quarter.

The said policy is being implemented to control excessive lateness and to prevent time being wasted for non-performance.

Despite of (sic) previous warnings and/or suspension given, (March 1995) you still failed to meet the company policy on Tardiness.

You are hereby given a (sic) 13 days suspension which will take effect on Sept. 6, 7, 11, 12, 13, 14, 18, 19, 20, 21, 25, 26 & 27, 1995.

Be advised to observe the said policy accordingly. Future offense will be treated with more severe penalty.

For your guidance.