

## FIRST DIVISION

[ G.R. NO. 165282, October 05, 2005 ]

**ELECTRO SYSTEM INDUSTRIES CORPORATION, PETITIONER, VS.  
NATIONAL LABOR RELATIONS COMMISSION AND NOEL  
BALTAZAR A. SUMACULUB, RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari assails the May 12, 2004 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 69572, declaring that petitioner Electro System Industries Corporation did not comply with the statutory due process requirements in terminating the employment of private respondent Noel Baltazar A. Sumaculub. Likewise questioned is the September 13, 2004 Resolution<sup>[2]</sup> denying petitioner's motion for reconsideration.

The antecedent facts show that on March 17, 1994, private respondent was employed as driver of petitioner with a monthly salary of P5,700.00. During said employment, he figured in three vehicular accidents by reason of negligence. Specifically, while private respondent was driving a company car on April 18, 1997, he hit a motorcross bike driven by Gilbert Peña; on December 13, 1997, he bumped the rear portion of a Toyota Corolla car driven by Amelia Flores; and on August 7, 1998, he crashed into a Kalayaan Flyover post in Makati, Metro Manila. Petitioner thus incurred expenses in settling the damages caused by said mishaps.

On August 10, 1998, private respondent was dismissed by petitioner for repeated violation of company rules against reckless driving of company vehicles.<sup>[3]</sup> The former filed an illegal termination case before the Labor Arbiter which declared that the dismissal of private respondent is invalid.<sup>[4]</sup> Said decision was affirmed by the National Labor Relations Commission (NLRC).<sup>[5]</sup>

On appeal, the Court of Appeals ruled that the termination of private respondent is valid because there exists a just cause to dismiss him from employment. However, it declared that petitioner failed to comply with the requisite statutory due process in terminating private respondent. Hence, petitioner was ordered to pay backwages from the date of the dismissal until finality of the decision. The decretal portion thereof, reads:

WHEREFORE, the petition is partly GRANTED, declaring that there is just cause for the private respondent's dismissal. However, since such dismissal is rendered ineffectual, the private respondent is entitled to, and petitioner is DIRECTED to pay him, backwages from the time of the latter's termination until the finality of this decision.

Let this case be REMANDED to the Labor Arbiter for computation of the

backwages.

SO ORDERED.<sup>[6]</sup>

Petitioner's motion for reconsideration was denied in a resolution dated September 13, 2004.<sup>[7]</sup>

Hence, the instant petition.

The issue to be resolved is whether petitioner observed the twin notice rule in dismissing private respondent.

The procedure for terminating an employee is found in Book VI, Rule I, Section 2(d), of the Omnibus Rules Implementing the Labor Code:

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(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.

(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 dismissing an employee, the employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him.<sup>[8]</sup> In *Tan v. NLRC*,<sup>[9]</sup> it was held that the first notice must state that dismissal is sought for the act or omission charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules.

Also, in *Maquiling v. Philippine Tuberculosis Society, Inc.*,<sup>[10]</sup> it was stressed that the first notice must inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to his dismissal. Such notice must not only contain a plain statement of the charges of malfeasance or misfeasance but must categorically state the effect on his employment if the charges are proven to be true. The rationale for this rule was explained by the Court as follows:

This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for