

THIRD DIVISION

[G.R. No. 121698, March 26, 1998]

**MALAYA SHIPPING SERVICES, INC., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION AND ROLANDO M. REY,
RESPONDENTS.**

D E C I S I O N

ROMERO, J.:

This petition for *certiorari* seeks to vacate the decision of the National Labor Relations Commission (NLRC) dated April 29, 1995, sustaining the Labor Arbiter's finding of illegal dismissal, as well as the resolution dated June 26, 1995, denying petitioner's motion for reconsideration.

Petitioner Malaya Shipping Services, Inc. is a corporation engaged in the business of repairing containers used for maritime transport and navigation. Respondent Rolando M. Rey, on the other hand, was employed as welder sometime in June 1983 and assigned at petitioner's Container Repair Department (CRD).

The petitioner's version follows:

On June 18, 1992, at around 2:00 p.m., respondent, who was supposedly on duty starting at 8:00 a.m., arrived at the company premises apparently under the influence of liquor. The security guard on duty, Bernido A. Marchan, sensing that respondent was intoxicated, refused the latter entry into the company premises. Respondent, however, was persistent and explained that his purpose was merely to procure his automated teller machine card (ATM) from the Accounting Department.

Witnessing the incident, CRD Head Mr. Edgardo M. del Rosario approached respondent and advised him to go home but this appeal was rejected. Uttering expletive remarks, he insisted vociferously that he be allowed entry to the compound. Hoping to appease him, del Rosario finally relented and even escorted him to the accounting office.

After obtaining his ATM card, respondent started to cry for no apparent reason. Upon seeing his predicament, employees tried to comfort him but this show of concern was, not only rebuffed, but worse, he hurled invectives at them. When respondent was led out of the office, he saw a co-worker, Mr. Arturo Ramirez, standing beside a delivery truck. Without warning he cursed Ramirez, saying "Putang ina mo Turing, walanghiya ka, pati Ate ko sinisilipan mo," and chased the latter with manifest intent to inflict injury upon him. Unable to get hold of Ramirez, he vented his ire on another fellow employee, Wilfredo Gregorio, who was able to dodge the blow thrown at him. Frustrated, respondent repeatedly kicked a parked delivery truck until the driver of said truck "got out and took a piece of wood with which to scare respondent."^[1] When apprised of the incident, two other co-workers, a certain Jonatas and Matic, tried to pacify the respondent but again, he screamed profanities, particularly at the former in this wise; "Putang ina mo matanda ka, sinungaling ka rin."

Consequently, petitioner's Finance and Administrative Manager, Mr. Engracio L. Sagcal, Jr., scheduled an investigation on July 13, 1992 for respondent to explain his behavior and why no disciplinary action should be imposed on him. Directed to attend the inquiry were del Rosario, Ramirez, Jonatas and Matic.

At the inquiry, respondent merely proffered self-serving denials. Forthwith, he was suspended for fifteen (15) days commencing on July 15, 1992. On the ground of serious misconduct, he was terminated from employment on August 6, 1992.

Respondent, in his position paper, argues that the cause for his dismissal was unsubstantiated and that he was denied the statutory rights of notice and hearing.

In the complaint for illegal dismissal against petitioner, Labor Arbiter Ramon Valentin C. Reyes rendered a decision dated April 15, 1994, the dispositive portion of which reads:

"WHEREFORE, premises all considered, judgment is hereby rendered declaring the dismissal illegal and ordering respondent to:

1. Pay complainant separation pay at 1/2 mo. for every year of service and backwages from the date of the termination to the date of decision;
2. Pay complainant his 13th month pay and accrued vacation leaves; and
3. Attorney's fees of 10% of the total monetary award.

The Research and Information Unit of this Commission is hereby directed to effect necessary computation which shall form part of this decision.

SO ORDERED."^[2]

On appeal, this decision was affirmed by the NLRC with the deletion, however, of the award of attorney's fees.

There is merit in the petition.

It must be underscored that the factual findings of quasi-judicial agencies like the NLRC are generally accorded, not only respect but, at times, finality if such are supported by substantial evidence.^[3] The rule will not apply, however, where the substantiality of the evidence requires a reversal or modification.^[4] This is one such case.

Undoubtedly, the labor arbiter and the NLRC accorded credence to respondent's rejoinder which essentially refuted petitioner's allegation that an investigation of the incident was conducted, thereby affording the former his right to due process. They alleged that the transcript^[5] taken during the investigation was unreliable for several reasons, namely: (1) the transcript did not bear the signature of the respondent; (2) the specific date on which the same took place was omitted; and (3) that while the claimed investigation was conducted on July 13, 1992, the affidavits^[6] of Marchan, del Rosario and Ramirez were executed only on November 9, 1992 or four months after the alleged inquiry. These contentions are specious.

In proceedings before the NLRC, there is nothing in the Labor Code or in its implementing rules and regulations which require the submission of affidavits in company investigations for infractions committed by its employees. On the contrary, they are not indispensable in such inquiries for what usually takes place therein is