

FIRST DIVISION

[G.R. No. 123520, June 26, 1998]

**NATIONAL SEMICONDUCTOR (HK) DISTRIBUTION, LTD.,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
(4TH DIVISION) AND EDGAR PHILIP C. SANTOS, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

The main issues to be resolved in this petition for certiorari are: *First*, who has the burden of proving a claim for night shift differential pay, the worker who claims not to have been paid night shift differentials, or the employer in custody of pertinent documents which would prove the fact of payment of the same? *Second*, were the requirements of due process substantially complied with in dismissing the worker?

Petitioner National Semiconductor (HK) Distribution, Ltd. (NSC for brevity), a foreign corporation licensed to do business in the Philippines, manufactures and assembles electronic parts for export with principal office at the Mactan Export Processing Zone, Mactan, Lapu-Lapu City. Private respondent Edgar Philip C. Santos was employed by NSC as a technician in its Special Products Group with a monthly salary of P5,501.00 assigned to the graveyard shift starting at ten o' clock in the evening until six o' clock in the morning.

On 8 January 1993 Santos did not report for work on his shift. He resumed his duties as night shift Technician Support only on 9 January 1993. However, at the end of his shift the following morning, he made two (2) entries in his daily time record (DTR) to make it appear that he worked on both the 8th and 9th of January 1993.

His immediate supervisor, Mr. Joel Limsiaco, unknown to private respondent Santos, received the report that there was no technician in the graveyard shift of 8 January 1993. Thus, Limsiaco checked the DTRs and found out that Santos indeed did not report for work on 8 January. But when he checked Santos' DTR again in the morning of 9 January 1993 he found the entry made by Santos for the day before.

Informal investigations were conducted by management. Santos was required in a memorandum to explain in writing within 48 hours from notice why no disciplinary action should be taken against him for dishonesty, falsifying daily time record (DTR) and violation of company rules and regulations.^[1] On 11 January 1993 Santos submitted his written explanation alleging that he was ill on the day he was absent. As regards the entry on 8 January, he alleged that it was merely due to oversight or carelessness on his part.^[2]

Finding Santos' explanation unsatisfactory, NSC dismissed him on 14 January 1993 on the ground of falsification of his DTR, which act was inimical to the company and constituted dishonesty and serious misconduct.^[3]

Thus, on 20 January 1993, Santos filed a complaint for illegal dismissal and non-payment of back wages, premium pay for holidays and rest days, night shift differential pay, allowances, separation pay, moral damages and attorney's fees.

Labor Arbiter Dominador A. Almirante found that Santos was dismissed on legal grounds although he was not afforded due process, hence, NSC was ordered to indemnify him P1,000.00. The Labor Arbiter likewise ordered the payment of P19,801.47 representing Santos' unpaid night shift differentials.^[4]

NSC appealed to the National Labor Relations Commission (NLRC). In its Decision of 29 September 1995 the NLRC affirmed the Labor Arbiter holding that his conclusions were sufficiently supported by the evidence and therefore must be respected by the appellate tribunal because the hearing officer was in a unique position to observe the demeanor of witnesses and to judge their credibility.^[5]

NSC imputes grave abuse of discretion to the NLRC in affirming the Labor Arbiter's award of night shift differentials and P1,000.00 indemnity for alleged violation of due process. It contends that the question of non-payment of night shift differentials was never raised as an issue nor pursued and proved by Santos in the proceedings before the Labor Arbiter; that Santos was already paid his night shift differentials, and any further payment to him would amount to unjust enrichment; and, that the P1,000.00 indemnity is totally unjustified as he was afforded ample opportunity to be heard.

We now resolve. A perusal of Santos' position paper filed before the Labor Arbiter reveals that the question of non-payment of night shift differentials was specifically raised as an issue in the proceedings below which was never abandoned by Santos as erroneously claimed by NSC thus -

I S S U E S

1. Did respondent National Semiconductor (HK) Distribution Ltd. illegally dismiss complainant Edgar Philip Santos?
2. *Is complainant Edgar Philip Santos entitled to recover unpaid salary, holiday pay, night shift differential, allowances, separation pay, retirement benefits and moral damages?*^[6]

And, in his prayer, Santos sought to be afforded the reliefs prayed for in his complaint.^[7]

The fact that Santos neglected to substantiate his claim for night shift differentials is not prejudicial to his cause. After all, the burden of proving payment rests on petitioner NSC. Santos' allegation of non-payment of this benefit, to which he is by law entitled, is a negative allegation which need not be supported by evidence unless it is an essential part of his cause of action. It must be noted that his main cause of action is his illegal dismissal, and the claim for night shift differential is but an incident of the protest against such dismissal. Thus, the burden of proving that payment of such benefit has been made rests upon the party who will suffer if no evidence at all is presented by either party.^[8] Moreover, in *Jimenez v. National Labor Relations Commission*,^[9] we declared -