

THIRD DIVISION

[G.R. No. 94237, February 26, 1997]

**BUILDING CARE CORPORATION, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION, FIRST DIVISION, AND
ROGELIO RODIL, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

In dismissing this petition, the Court reiterates the well-entrenched doctrine that (1) a motion for reconsideration, as a rule, is an indispensable pre-condition to the filing of a petition for certiorari, and (2) findings of facts of the National Labor Relations Commission (NLRC), affirming those of the Labor Arbiter, are binding upon the Supreme Court.

This petition for certiorari under Rule 65 of the Rules of Court seeks to annul the Decision^[1] promulgated on May 9, 1990 of the First Division^[2] of public respondent in NLRC Case No. NCR-00-04-01605-88 which affirmed the decision of Labor Arbiter Quintin C. Mendoza. The dispositive portion of the affirmed decision of the labor arbiter reads:^[3]

"WHEREFORE, decision is hereby rendered for the complainant declaring his suspension and dismissal illegal and ordering the respondent to reinstate him plus backwages from time his (sic) dismissal at the adjusted rate under R.A. 6640 and retaining whatever seniority rights in the job he has (sic) plus his legal holidays pay of P1,178.00 and differential pay of P369.40 and attorney's fees of not more than ten (10%) of the total award."

The Facts

The facts as found by public respondent are as follows:^[4]

"Complainant (herein private respondent) alleged that his wages, 13th month pay and service incentive leave pay were unpaid; that he was not paid for work rendered during legal holidays; that on February 11, 1988, he was suspended for one week by his supervisor, H. Silvestre, for no apparent reason; that the suspension was illegal because of the absence of just cause and respondent's (herein petitioner) non-compliance with the requirements of due process; that thereafter, he was not given any assignment, despite repeated follow-ups, summarized as follows:

Date
2-19-88

Person Approached
Supervisor H. Silvestre

Result
Required complainant

		to return (on) 2-20-88
2-20-88	FEBTC	Worked for one pay (should be day); no time card & pay
2-23-88	Mr. Adriatico	Referred to Silvestre not given work
2-23-88	Mr. Barbosa, FEBTC	Told to go home; promise(d) to talk to Silvestre
2-26-88	Supervisor Ms. Carol	Told to return the following day
2-27-88	Supervisors Silvestre/Ms. Carol	Not given work
2-29-88	Silvestre	Not given work
3-04-88	Supervisors Silvestre, Viray, Melanie	No results
3-23-88	Silvestre	No results
3-25-88	Ms. Malig	Promised to ask supervisors what happened
3-28&29-88	Ms. Malig	Told supervisors not around
4-04-88	Ms. Malig	Informed he would no longer be given Work

Respondent contended that complainant was paid his wages and holiday pay in accordance with law; that it was unable to comply with R.A. 6640 immediately because of its client's delay in approving the adjusted contract rates; that it was ready to pay complainant P369.40 representing salary differentials from December 14, 1987 to February 11, 1988; that on February 9, 1988, FEBTC complained that complainant's area of responsibility was improperly cleaned; that complainant was twice instructed to report to respondent's night shift supervisor, but on both times, he failed to do so; that because of such defiance, he was verbally warned that drastic disciplinary action would be taken against him should he persist in failing to report as directed; that on February 11, 1988, the assistant supervisor erroneously noted on the logbook that complainant was being suspended; that the suspension was not carried out as complainant was allowed to work the following day, as shown by his daily time record; that he was advised to report to respondent's office the following day; that, instead, complainant took a long absence without leave starting on February 12, 1988; that he showed up at respondent's office only on March 28, 1988; that he was required to submit a written

explanation of his long absence without leave, frequent absences in the post and deteriorating performance; that complainant wrote that he failed to report because his supervisor suspended him for no apparent reason; that he was told that an investigation of his alleged suspension would be conducted and, in view of the forthcoming non-working holidays, advised to report on April 4, 1988; that, in the meantime, respondent's supervisor reported that FEBTC had indicated that it would no longer accept complainant; that complainant was advised of FEBTC's decision on April 4, 1988; that for humanitarian reasons, complainant was advised that he was going to be temporarily assigned as reliever at respondent's office while there was no available post in its other clients; that complainant requested for a week-long leave, allegedly because he had to bring his family to Quezon Province; that complainant again failed to report for work on April 18, 1988; that he was sent a letter advising him to report to respondent's office; that he never went back to respondent's office; but instead, filed the instant case.

Complainant maintained that he did his work properly; that he was absent from January 18-22 (1988) because he was sick, and he duly advised respondent of his sickness; that he was absent from February 1-8 (1988) because he had to take care of his wife who was sick, as shown by her medical certificate; that he was absent again for one week starting February 12, 1988 because he was illegally suspended; that thereafter, he was never given another assignment, contrary to respondent's untruthful averments; that he was denied due process of law by respondent; that respondent may have sent him a letter after April 4, 1988, but it was too late because he had already instituted the instant case.

Respondent submitted the affidavits of Wendel Viray, Hernani Silvestre and Germel Villamor, its over-all Supervisor and janitor, respectively, stating that instead of implementing the suspension, complainant was transferred from the night shift to the day shift; that complainant requested to be returned to the night shift, but his request was not granted; that he was given a chance to work at respondent's office, but he failed to report there as instructed."(Citations omitted)

Hence, on April 19, 1988, private respondent filed with the Arbitration Branch of the NLRC a complaint for illegal dismissal, underpayment and non-payment of legal holiday pay against petitioner. At the initial hearing, private respondent was offered reinstatement, but he insisted on being paid his backwages because of his alleged unjustified dismissal. Petitioner did not agree. Thus, after the parties submitted their respective position papers and other documentary evidence, the Labor Arbiter issued a decision in favor of private respondent.^[5]

The Issue

Petitioner raises single issue in its petition, to wit:^[6]

"With all due respects to the Hon. National Labor Relations Commission, First Division, petitioner submits that in affirming the decision of the Hon.