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# THIRD DIVISION

# [ G.R. No. 119243, April 17, 1997 ]

## BREW MASTER INTERNATIONAL INC., PETITIONER, VS. NATIONAL FEDERATION OF LABOR UNIONS (NAFLU), ANTONIO D. ESTRADA AND HONORABLE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), RESPONDENTS.

## D E C I S I O N

**DAVIDE, JR., J.:**

This is a special civil action for *certiorari* seeking the reversal of the 7 October 1994 decision[1] of the National Labor Relations Commission (NLRC) in NLRC Case No. 00-06-04136-93 (CA No. L-007370-94), which modified the 11 July 1994 decision[2] of the Labor Arbiter by directing the reinstatement of private respondent Antonio D. Estrada, the complainant, without loss of seniority rights and benefits.

Private respondent National Federation of Labor Unions (NAFLU), a co-complainant in the labor case, is a labor union of which complainant is a member.

The factual and procedural antecedents are summarized in the decision of the Labor Arbiter which we quote verbatim:

> Complainant was first employed by respondent on 16 September 1991 as route helper with the latest daily wage of P119.00. From 19 April 1993 up to 19 May 1993, for a period of one (1) month, complainant went on absent without permission (AWOP). On 20 May 1993, respondent thru Mr. Rodolfo Valentin, sent a Memo to complainant, to wit:

"Please explain in writing within 24 hours of your receipt of this memo why no disciplinary action should be taken against you for the following offense:

You were absent since April 19, 1993 up to May 19, 1993.

For your strict compliance."

In answer to the aforesaid memo, complainant explained:

"Sa dahilan po na ako ay hindi nakapagpaalam sainyo [sic] dahil inuwi ko ang mga anak ko sa Samar dahil ang asawa ko ay lumayas at walang mag-aalaga sa mga anak ko. Kaya naman hindi ako naka long distance or telegrama dahil wala akong pera at ibinili ko ng gamot ay puro utang pa."

> Finding said explanation unsatisfactory, on 16 June 1993, respondent thru its Sales Manager, Mr. Henry A. Chongco issued a Notice of Termination which reads:

"We received your letter of explanation dated May 21, 1993 but we regret to inform you that we do not consider it valid. You are aware of the company Rules and Regulations that absence without permission for six (6) consecutive working days is considered abandonment of work.

In view of the foregoing, the company has decided to terminate your employment effective June 17, 1993 for abandonment of work."

Hence, this complaint.

> Complainants contend that individual complainant's dismissal was done without just cause; that it was not sufficiently established that individual complainant's absence from April 19, 1993 to June 16, 1993 are unjustified; that the penalty of dismissal for such violation is too severe; that in imposing such penalty, respondent should have taken into consideration complainant's length of service and as a first offender, a penalty less punitive will suffice such as suspension for a definite period, (Position Paper, complainants).
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> Upon the other hand, respondent contends that individual complainant was dismissed for cause allowed by the company Rules and Regulations and the Labor Code; that the act of complainant in absenting from work for one (1) month without official leave is deleterious to the business of respondent; that it will result to stoppage of production which will not only destructive to respondent's interests but also to the interest of its employees in general; that the dismissal of complainant from the service is legal, (Position Paper, respondent).[3]

The Labor Arbiter dismissed the complaint for lack of merit, citing the principle of managerial control, which recognizes the employer's prerogative to prescribe reasonable rules and regulations to govern the conduct of his employees. The principle allows the imposition of disciplinary measures which are necessary for the efficiency of both the employer and the employees. In complainant's case, he persisted in not reporting for work until 16 June 1993 notwithstanding his receipt of the memorandum requiring him to explain his absence without approval. The Labor Arbiter, relying on Shoemart, Inc. vs. NLRC,[4] thus concluded:

> Verily, it is crystal clear that individual complainant has indeed abandoned his work. The filing of the complaint on 25 June 1993 or almost two (2) months from the date complainant failed to report for work affirms the findings of this Office and therefore, under the law and jurisprudence which upholds the right of an employer to discharge an employee who incurs frequent, prolonged and unexplained absences as being grossly remiss in his duties to the employer and is therefore, dismissed for cause, (Shoemart, Inc. vs. NLRC, 176 SCRA 385). An employee is deemed to have abandoned his position or to have resigned from the same, whenever he has been absent therefrom without previous permission of the employer for three consecutive days or more. This justification is the obvious harm to employer's interest, resulting from [sic] the non-availability of the worker's services, (Supra). (underscoring supplied)[5]

and ruled that complainant's termination from his employment was "legal, the same with just or authorized cause and due process."[6]

Complainant appealed to the NLRC, alleging that the immediate filing of a complaint for illegal dismissal verily indicated that he never intended to abandon his work, then cited Policarpio v. Vicente Dy Sun, Jr.,[7] where the NLRC ruled that prolonged absence does not, by itself, necessarily mean abandonment. Accordingly, there must be a concurrence of intention and overt acts from which it can be inferred that the employee is no longer interested in working. Complainant likewise invoked compassion in the application of sanctions, as dismissal from employment brings untold hardship and sorrows on the dependents of the wage earners. In his case, a penalty less punitive than dismissal could have sufficed.

In the assailed decision[8] of 7 October 1994, the NLRC modified the Labor Arbiter's decision and held that complainant's dismissal was invalid for the following reasons:

> Complainant-appellant's prolonged absences, although unauthorized, may not amount to gross neglect or abandonment of work to warrant outright termination of employment. Dismissal is too severe a penalty. For one, the mere fact that complainant-appellant is a first offender must be considered in his favor. Besides, it is generally impossible for an employee to anticipate when he would be ill or compelled to attend to some family problems or emergency like in the case at bar.
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> Reliance on the ruling enunciated in the cited case of Shoemart Inc. vs. National Labor Relations, 176 SCRA 385, is quite misplaced because of the obvious dissimilarities of the attendant circumstances in the said case vis-a-vis those obtaining in the case at bar. Unlike in the aforecited Shoemart Case, herein complainant-appellant was not dismissed for unauthorized absences and eventually reinstated anterior to his second dismissal for the same offense nor was he given a second chance which he could have ignored.
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> Otherwise stated, the difference between the two cases greatly lies [in] the fact that complainant in the Shoemart Case in the language of the Supreme Court was "an inveterate absentee who does not deserve reinstatement" compared to herein complainant-appellant who is a first offender"[9]

The NLRC then decreed as follows:

> PREMISES CONSIDERED, and [sic] the Decision of the Labor Arbiter, dated 11 July 1994 is hereby MODIFIED, by directing the reinstatement of complainant-appellant to his former position without loss of seniority rights and other benefits, but without backwages. The other findings in the appealed decision stand AFFIRMED.[10]

Petitioner's motion for the reconsideration[11] was denied by the NLRC in its 7 December 1994 resolution.[12] Petitioner thus filed this special civil action contending that the NLRC committed grave abuse of discretion in ordering complainant's reinstatement, which in effect countenances the reinstatement of an employee who is found guilty of "excessive" absences without prior approval. It