

## **SECOND DIVISION**

**[ G.R. No. 122866, June 19, 1997 ]**

**MELVA NATH, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SHANGRI-LA HOTEL MANILA AND AL WYMAN, RESPONDENTS.**

### **D E C I S I O N**

**PUNO, J.:**

On June 1, 1992, petitioner MELVA NATH started to work for private respondent SHANGRI-LA HOTEL MANILA as Director of Rooms for probationary period of not more than six (6) months.

On September 4, 1992, Friday, Resident Manager Gerard Sintes met with Nath for their regular weekly meeting. Since Nath's performance was due for evaluation on September 11, Sintes apprised Nath of her poor work performance and non-compliance of company rules. Nath neither disputed Sintes' findings nor justified her alleged acts and omissions.

On September 7, Monday, Nath called up the hotel and left word that she was ill and could not report for work. That afternoon, Personnel Manager Teresa Lalin returned Nath's call to remind the latter that a medical certificate ought to be submitted by her. Nath informed Lalin she would report for work on September 9, Wednesday.

Nath did not report on September 9. Lalin and Sales Director Gami Holazo visited Nath at her residence. They relayed General Manager Al Wymann's message requiring Nath to report for work and reminded Nath of her scheduled evaluation on September 11.

On September 10, 1992, Nath sent a letter to Lalin dated September 9, to quote"

"Thank you for taking the trouble to discuss things with me. I appreciate your concern and admire your efforts at trying to work things out in this rather difficult situation.

"I would be happy to consider returning to work. You will understand, however, that this would depend upon my performance evaluation - I feel that the whole exercise becomes academic if my output is evaluated as anything less than satisfactory. Thus I would very much appreciate a copy of my official performance evaluation prior to my return.

"Enclosed are copies of most of the work I have accomplished in what effectively amounts to 2 ½ months on the job. I hope you will appreciate that what I have produced is quite substantial especially in light of the

fact that I was without a secretary for one month and without a computer for about two.”<sup>[1]</sup>

On September 14, 1992, the hotel dismissed Nath. The letter of dismissal reads:

“Our records show that you have been absent for work since last 08 ( sic-should be 07) September 1992 (Monday) up to the present for a total of seven (7) working days. You called me last 08 (sic-should be 07) September 1992 to advise the Hotel that you were sick and will be reporting on Wednesday, 10 (sic-should be 09) September 1992.

“By 10 (sic- should be 09) September 1992, you again called me to say that you will instead report on Thursday, 11 (sic-should be 10) September 1992.

“From 11 (sic-should be 10) September 1992 up to the present date, you still have not reported for work. Furthermore, you have not advised us in any manner for a total of four (4) working days now regarding your status and the probable date you intend to report for work.

“In view of the above and considering that you are still under probationary status as Director of Rooms, I regret to advise you that your employment with Shangri-La Hotel Manila is hereby dismissed effective immediately.”<sup>[2]</sup>

Consequently, Nath filed a complaint for illegal dismissal. Labor Arbiter Ramon Valentin C. Reyes sustained Nath, thus:

“IN THE LIGHT THEREFORE OF THE FOREGOING, a decision is hereby rendered declaring the dismissal of complainant as illegal, and thereby ordering respondent Shangri-la Hotel Manila to reinstate complainant to her former position without loss of seniority rights and other privileges, and further to pay complainant:

- (a) Full backwages counted from September 14, 1992 up to and until she shall be actually reinstated;
- (b) Moral damages of Seventy Five Thousand (P75,000) pesos and exemplary damages of Fifty Thousand (P50,000) Pesos;
- (c) Attorney’s fees equivalent to ten percent (10%) of the amount to be recovered.”<sup>[3]</sup>

Said decision was, however, set aside by public respondent NATIONAL LABOR RELATIONS COMMISSION (Second Division):

“WHEREFORE and in the light of the foregoing, the appealed decision is hereby set aside and a new one is entered dismissing the complaint for lack of merit. Respondent Shangri-la Hotel Manila, however, is ordered to pay complainant her salaries and other related benefits for which she is entitled by reason of her payroll reinstatement for the remaining three

(3) months of her probationary period, unless respondent has already done so. Respondent is further ordered to pay the sum of one thousand (P1,000.00) pesos by way of penalty for respondent's non-compliance with due process."<sup>[4]</sup>

Hence, this petition for certiorari which sets forth the following grounds:

**RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN UPHOLDING THE LEGALITY OF PETITIONER'S DISMISSAL DESPITE THE FACT THAT:**

**A. THERE WAS NO DUE PROCESS AND PETITIONER'S ALLEGED SUBSTANDARD WORK PERFORMANCE WAS NEVER CITED AS A GROUND FOR TERMINATION NOR RAISED AS AN ISSUE; and**

**B.THERE WAS NO CLEAR, INDEPENDENT, AND SATISFACTORY EVIDENCE TO PROVE THAT PETITIONER'S WORK PERFORMANCE WAS SUBSTANDARD.**

There is no merit to the petition.

Undoubtedly, petitioner was dismissed without due process of law. In this regard, the rules implementing Batas Pambansa Blg. 130 provided:

"SEC. 2. *Notice of Dismissal*.--- Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

"SEC. 6. *Decision to dismiss*.--- The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor."

The rules require the employer to furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) Notice which apprises the employee of the particular acts or omission for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him.<sup>[5]</sup> In the instant case, private respondents have failed to furnish petitioner with the first of the required two (2) notice and to state plainly the reasons for the dismissal in the termination letter. Failure to comply with the requirements taints the dismissal with illegality.<sup>[6]</sup>

Be that as it may, private respondent can dismiss petitioner for just cause. Article 281 of the Labor Code provides:

"ART. 281. *Probationary employment*.-- Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to