

## THIRD DIVISION

[ G.R. No. 103209, July 28, 1997 ]

**APOLONIO BONDOC AND GENUINE LABOR ORGANIZATION OF WORKERS IN HOTEL, RESTAURANT AND ALLIED INDUSTRIES (GLOWHRAIN)-SILAHIS INTERNATIONAL CHAPTER, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND SILAHIS INTERNATIONAL HOTEL, INC., RESPONDENTS.**

### D E C I S I O N

#### FRANCISCO, J.:

On September 27, 1990, petitioner GLOWHRAIN, a legitimate labor organization and exclusive bargaining agent of the rank-and-file employees of private respondent Silahis International Hotel (SILAHIS), filed a notice of strike against the latter for alleged harassment, arbitrary transfer of employee and illegal suspension and termination of petitioner Bondoc, a hotel employee and union officer. Conciliation proceedings before the National Conciliation and Mediation Board (NCMB) were conducted without success. To avert the strike, the dispute was certified for compulsory arbitration by the Department of Labor and Employment (DOLE) to public respondent National Labor Relations Commission (NLRC)<sup>[1]</sup> where the parties submitted position papers, reply and evidences.

After hearing, the NLRC rendered judgment<sup>[2]</sup> the dispositive portion of which reads:

“WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered, declaring the dismissal of Apolonio Bondoc valid and legal, and consequently dismissing his complaint for lack of merit; however, let Bondoc’s earned payroll reinstatement, as directed in the Order, dated October 31, 1990, of the Secretary of Labor and Employment, be treated as financial assistance and deemed cancelled as of the promulgation of this Decision.

SO ORDERED.”<sup>[3]</sup>

Failing in their motion for reconsideration,<sup>[4]</sup> petitioners filed this petition for certiorari under Rule 65 imputing grave abuse of discretion to the NLRC in ruling that petitioner Bondoc was dismissed for cause and with due process.<sup>[5]</sup>

The antecedents, as found by the NLRC, are as follows:<sup>[6]</sup>

“[O]n four separate occasions from August 20, 1990 to August 23, 1990, head waiter Bondoc accosted his female co-employee Vima Valenzuela and threatened her with bodily harm, aside from hurling at her slanderous statements and invectives, thus subjecting her to

harassments (sic) and vexations. First, on August 20, 1990 at around 5:00 A.M. while Valenzuela was reading a newspaper after duty, Bondoc approached her and threatened to oust her from the company, warning that her days were numbered, and even throwing a crumpled paper at her. Second, at around 9:50 A.M. of the same day, Bondoc again approached Valenzuela while she was about to punch her time card and shouted invectives at her, threatening her with physical harm and saying her days were numbered. This kind of harassment was repeated moments later. For the third time, on August 21, 1990 Bondoc continued to harass with threats Valenzuela who was then at the PAGCOR canteen in the presence of her co-employees and hotel guests. Fourth incident, on August 23, 1990, while Valenzuela was at the canteen taking her break with a co-employee, Bondoc appeared and bullied her, uttering "Bilang na ang araw mo. Mag-ingat ka paglabas mo sa Silahis."

"The affidavit of Valenzuela was corroborated by the sworn statements of her co-employees, namely, Agnes Bonifacio and Christine Alegao (Annexes "3", "4", and "5", Silahis Position Paper) and these declarations under oath were not denied by Bondoc.

"The record moreover reveals that Valenzuela became the object of Bondoc's ire after she reported to her assistant managers an incident regarding the supposedly unauthorized bringing of food by a waiter to the union office where Bondoc was then waiting.

"Valenzuela reported the threats to the police and the series of incidents to hotel management. Silahis, through its personnel manager, issued an office memorandum, dated September 3, 1990 (Annex "6"), charging Bondoc with violation of company rules and asking him to submit his written explanation for the imputed offenses. Instead of submitting an explanation, he merely indicated by way of marginal note that he was receiving the memo "under protest" and referred to an incident report of August 20, 1990. Thereafter, Silahis conducted its own investigation and, on September 6, 1990, preventively suspended Bondoc (Annex "6")."

On October 4, 1990, SILAHIS issued a memorandum whereby petitioner Bondoc's services were terminated effective October 6, 1990. Claiming that he was illegally dismissed, petitioner Bondoc sought the help of petitioner GLOWHRAIN. This labor dispute is among the grounds that led to the strike earlier mentioned.

In dismissal cases, there must be observance of (1) the procedural requirement that the employee was accorded due process - basic of which is the opportunity to be heard and (2) the substantive requirement that the dismissal is for a cause provided in the Labor Code.<sup>[7]</sup> The employer has the burden of proving that both requirements are satisfied.<sup>[8]</sup>

Anent the procedural requirement, Rule XIV, Book V, of the Omnibus Rules Implementing the Labor Code outlines the procedure for termination of employment, to wit:

"Sec. 1. *Security of tenure and due process.* - No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

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

x x x x

"Sec. 5. *Answer and hearing.* - The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representatives, if he so desires.

"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.

"Sec. 7. *Right to contest dismissal.* - Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.

x x x x

"Sec. 11. *Report on dismissal.* - The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the dates of commencement and termination of employment, the positions last held by them and such other information as may be required by the Ministry (Department) for policy guidance and statistical purposes." (Underscoring supplied).

SILAHIS failed to furnish petitioner Bondoc either of the required notices, which are:

- (a) a notice containing a statement of the particular acts or omissions for which his dismissal is sought, and
- (b) after affording the employee an opportunity to be heard, another notice informing the latter of the employer's decision to dismiss him.<sup>[9]</sup>

Contrary to SILAHIS' claim, its September 3, 1990 memorandum which reads:

"SILAHIS INTERNATIONAL HOTEL

Memorandum

TO : MR. APOLONIO BONDOC

F & B Casino - A/Headwaiter

FROM : Personnel Manager

DATE : September 3, 1990

RE : POLICE REPORT

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On the attached written report of the W.P.D. Police Station No. 7, please explain within 24 hours after receipt of this memorandum, why no disciplinary action should be taken against you for having violated Rule No. V "Disturbing Peace & Order", Section 2, page 41 of our Employee's Handbook RE: "Threat or Inflicting Bodily Harm" - Threatening or intimidating another with bodily harm or does something illegal or immoral to another employee or his family in connection with his job, or against guest/s.

Grave Threats (4 counts) and slander to co-employee with infliction upon the employee's honor is a violation of Company Rules & Regulations.

Please submit your written explanation, failure on your part to comply with (sic) is giving up your right to be heard, and Management has the right to take necessary legal action.

For your strict compliance.

(Sgd.)

(Sgd.)

TEDDY M. JIMENEZ

REYNALDO DE LOS REYES

Personnel Manager

Casino Service Manager

x x x x x x x x",<sup>[10]</sup>

is not substantial compliance with the first kind of notice. The memorandum does not state with particularity the acts and omission for which petitioner is being charged. The statement therein directing petitioner Bondoc to explain "why no disciplinary action should be taken against you for having violated Rule No. V 'Disturbing Peace and Order', Section 2" of the Employee's Handbook is couched in too-general terms, without any narration whatsoever as to how petitioner Bondoc committed said infractions. It thus cannot be said that petitioner Bondoc was informed with particularity of the acts and omissions for which he is being charged.

Neither can SILAHIS' October 4, 1990 memorandum be considered compliance with the second required notice. That memorandum, reading:

"TO : MR. APOLONIO BONDOC

F & B Casino Headwaiter

FROM : MANAGEMENT

DATE : October 4, 1990

RE : TERMINATION

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