

SECOND DIVISION

[G.R. No. 118860, July 17, 1997]

**ROLINDA B. PONO, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, RAFAELITO I. CASTILLO, AND
SANDOZ PHILS., INC., RESPONDENTS.**

DECISION

ROMERO, J.:

Petitioner Rolinda B. Pono seeks the annulment of the decision of the National Labor Relations Commission dated August 31, 1994, affirming the August 27, 1993 decision of Labor Arbiter Benigno C. Villarente, Jr. which, in turn, dismissed petitioner's complaint for illegal dismissal, as well as the NLRC's resolution of November 9, 1994, denying petitioner's motion for reconsideration for lack of merit.

This case arose from complaint filed by Pono against herein private respondents Sandoz Phils., Inc. (Sandoz) and Rafaelito I. Castillo for illegal dismissal, unfair labor practices, separation pay and damages.

Pono averred that she was employed by Sandoz as medical representative, with the primary task of conferring with doctors to update them about Sandoz' various medical products. Sometime on May 18, 1992, she was asked by Castillo, her immediate supervisor, to report to his office and explain her alleged incompetence in the performance of her work. At said meeting, Castillo confronted Pono concerning her alleged infraction of company policies. It was then that Castillo started to physically take advantage of Pono by touching different parts of her body. Aghast at her supervisor's action, Pono resisted his advances.

Unable to consummate his prurient desires, Castillo warned Pono not to inform anybody about the incident; otherwise, her continued employment in the company would be placed in jeopardy.

Fearful lest she should lose her job which she apparently valued more than her dignity, Pono decided to remain silent and maintained a façade of normalcy for the next five months. On October 5, 1992, however, she was again asked by Castillo to report to his office ostensibly to discuss company matters and policies.

Apprehensive that the so-called conference was another ploy of Castillo for sexually harassing her Pono decided to divulge the May 18, 1992 incident to her closest co-workers. Thereafter, along with two co-workers, she informed Sandoz National Sales Manager Godofredo Ruiz of the incident.

Subsequently, Mr. Ruiz called a meeting on October 6, 1992 to give a chance to Castillo to explain his side on the matter. As expected, Castillo denied the incident of May 18, 1992. Ruiz then asked Pono not to resign until after she has completely

paid the amortizations on the company car assigned to her. Undecided, Pono asked for a reasonable time to consider the same. Two days later, however, Ruiz withdrew the offer; whereupon, Castillo asked Pono to explain her inefficiencies in her work, which the latter did through a handwritten statement dated October 14, 1992. After five days, her services were formally terminated. With no recourse left, Pono filed the instant labor case, as well as the necessary criminal charges before the Prosecutor's Office of Makati.

Private respondents' reconstruction of the events was expectedly at variance with Pono's. They claimed that she was one of seven medical representatives under Castillo's supervision. Castillo's version is as follows. Having observed that Pono had been violating several company policies, she was asked to comment on her alleged infractions, such as absences in certain itineraries, discrepancies in her work report and non-liquidation of cash advances. During the meeting, she admitted that her failure to comply with her duties was due to personal problems and asked for some understanding so she could put her life in order.

Castillo advised Pono to "clean her backyard and follow company policies." Notwithstanding the advice, Pono's work still fell short of company standards. Hence, on October 5, 1992, he requested her personally report to him so they could discuss matters concerning her work performance. Aware that she could no longer offer a reasonable justification of her continued inefficiency, Pono decided to fabricate her attempted rape story.

To add credence to her story, Pono went to Godofredo Ruiz to narrate the attempted rape allegedly committed by Castillo, and at the same time offered to resign from her job effective April 1993, at which time she would already be entitled to purchase the company car she was then using at 50% of its appraised value. Unfortunately, her request was denied by the company.

Pono, on the other hand, offered no plausible explanation as to her shortcomings. Instead, she accused Castillo of harassing her and threatened to take legal action against him to stave off her dismissal. Making good her threat, she filed charges for unfair labor practice and sexual harassment against private respondents.

After considering the evidence and arguments of the parties, the Labor Arbiter dismissed the complaint for lack of merit. As stated at the outset, this decision was affirmed by the NLRC on appeal. It found that the infractions of company policies committed by Pono warranted the penalty of dismissal.

Pono is now before this Court contending that the NLRC acted with grave abuse of discretion and/or acted without or in excess of jurisdiction in affirming the decision of the Labor Arbiter.

Before proceeding any further, it must be borne in mind that the issue of whether or not there is a valid dismissal of an employee is a question of fact, the determination of which is the statutory function of the NLRC.^[1] It is almost trite to state that factual findings of the NLRC are generally accorded, not only respect but also finality, provided that its decisions are supported by substantial evidence and devoid of any unfairness or arbitrariness.^[2]

Pono contends that the NLRC erred when it deliberately disregarded her complaint for sexual harassment against Castillo. The Court takes cognizance of the fact that a criminal complaint for attempted rape or acts of lasciviousness filed by Pono against Castillo before the Prosecutors Office in Makati was eventually dismissed due to lack of merit, which dismissal was affirmed by the Department of Justice.^[3] Indisputably, an investigating fiscal is under no obligation to file a criminal information where he is not convinced that he has the quantum of evidence at hand to support the averments.^[4]

Thus, the determination of the persons to be prosecuted rests primarily with the prosecutor who is vested with quasi-judicial discretion in the discharge of this function.^[5] The courts should give credence, in the absence of a clear showing of arbitrariness, to the findings and determination of probable cause by prosecutors in a preliminary investigation.^[6]

With respect to the legality of Pono's dismissal, we have consistently held that, to validate a dismissal, the employer must show that (1) there was sufficient or just cause therefor and that (2) due process was observed.^[7]

Bearing these standards in mind, we find that while Pono was dismissed for cause, the same disregarded the requirements of due process.

Well settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees.^[8] It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be affected: (a) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (b) the second informs the employee of the employer's decision to dismiss him.^[9]

The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.^[10]

In the case at bar, Pono was duly notified of the charges against her. The records reveal that on October 5, 1992, she was asked to explain why were some discrepancies in her reported calls and the actual signatures of the doctors in the call cards."^[11] In another notice^[12] dated October 12, 1992, she was apprised of an apparent forgery in the signatures of a certain Dra. Melissa Bilgeria, and was asked to explain her side within 72 hours from receipt thereof.

An examination of the records, however, reveals that no hearing was ever conducted by Sandoz before Pono was dismissed. The meeting called by Ruiz on October 5, 1992, is not the hearing contemplating by law since it was merely for the purpose of informing Pono about her questionable "work report," and to serve Pono a written notice detailing her infractions in her "worksheet". In fact, barely two weeks later, she was summarily dismissed. While it may be true that Pono was allowed to explain her side at this meeting, it is undisputed that no hearing was actually conducted before her employment was terminated.