

## SECOND DIVISION

[ G.R. No. 117418, January 24, 1996 ]

**STELLAR INDUSTRIAL SERVICES, INC., PETITIONER, VS.  
NATIONAL LABOR RELATIONS COMMISSION AND ROBERTO H.  
PEPITO, RESPONDENTS.**

### D E C I S I O N

**REGALADO, J.:**

Imputing grave abuse of discretion by public respondent as its cause of concern in this special civil action for certiorari, petitioner Stellar Industrial Services, Inc. (Stellar) seeks the annulment of the decision,<sup>[1]</sup> dated May 31, 1994, of the National Labor Relations Commission in NLRC NCR CA No. 004326-93 and its resolution of July 21, 1994 denying petitioner's motion for reconsideration. Interestingly, this recourse is the culmination of petitioner's sustained corporate and legal efforts directed against a mere janitor who was formerly employed by it.

Stellar Industrial Services, Inc., an independent contractor engaged in the business of providing manpower services, employed private respondent Roberto H. Pepito as a janitor on January 27, 1975 and assigned the latter to work as such at the Maintenance Base Complex of the Philippine Airlines (MBC-PAL) in Pasay City. There, Pepito toiled for a decade and a half. According to petitioner, private respondent's years of service at MBC-PAL were marred by various infractions of company rules ranging from tardiness to gambling, but he was nevertheless retained as a janitor out of humanitarian consideration and to afford him an opportunity to reform.<sup>[2]</sup>

Stellar finally terminated private respondent's services on January 22, 1991 because of what it termed as Pepito's being "Absent Without Official Leave (AWOL)/Virtual Abandonment of Work -Absent from November 2 - December 10, 1990." Private respondent had insisted in a letter to petitioner dated December 2, 1990, to which was attached what purported to be a medical certificate, that during the period in question he was unable to report for work due to severe stomach pain and that, as he could hardly walk by reason thereof, he failed to file the corresponding official leave of absence.<sup>[3]</sup>

As petitioner disbelieved private respondent's explanation regarding his absences, the latter contested his severance from employment before the Arbitration Branch of the National Labor Relations Commission (NLRC) in Manila in a complaint docketed as NLRC NCR-00-03-01869-91 for illegal dismissal, illegal deduction and underpayment of wages under Wage Order NCR-001, with prayer for moral and exemplary damages and attorney's fees. While the labor arbiter was of the view that Pepito was not entitled to differential pay under said wage Order, or to moral and exemplary damages for lack of bad faith on the part of petitioner, he opined that private respondent had duly proved that his 39-day absence was justified on

account of illness and that he was illegally dismissed without just cause.<sup>[4]</sup>

Thus the decision rendered on December 28, 1992 by Labor Arbiter Manuel R. Caday decreed:

"WHEREFORE, judgment is hereby rendered declaring the dismissal of the complainant as illegal and ordering the respondent to immediately reinstate complainant to his former position as Utilityman, without loss of seniority rights and with full backwages and other rights and privileges appurtenant to his position until he is actually reinstated. As computed, the judgment award in favor of the complainant is stated hereunder:

<b>Backwages 1/27/91 - 12/27/92 at P118. 00</b>	P82,550.83
<b>per day</b>	
<b>Refund of amount illegally deducted (3 years)</b>	288.00
<b>Grand Total</b>	P82,838.83

The respondent is further ordered to pay the complainant reasonable attorney's fees equivalent to 10% of the amount recoverable by the complainant."<sup>[5]</sup>

As hereinbefore stated, said judgment of the labor arbiter was affirmed by respondent commission. Petitioner's subsequent motion for reconsideration was likewise rebuffed by the NLRC, hence the present remedial resort to this Court.

Petitioner contends that public respondent acted with grave abuse of discretion when it discussed and resolved the issue of abandonment which petitioner had not, at any time, raised before it for resolution. Further, petitioner considers it patently erroneous for public respondent to rule that the medical certificate adduced by Pepito sufficiently established the fact of sickness on his part which thereby justified his absences. Additionally, it claims that respondent commission gravely erred when it did not carefully examine the evidence, pointing out Pepito's errant behavior and conduct.<sup>[6]</sup>

Petitioner argues, moreover, that the award of back wages and attorney's fees was not justified considering that Pepito was validly dismissed due to serious misconduct on his part. Lastly, petitioner insists that the deductions it imposed upon and collected from Pepito's salary was authorized by a board resolution of Stellar Employees Association, of which private respondent was a member.<sup>[7]</sup> The Court, however, is unable to perceive or deduce facts constitutive of grave abuse of discretion in public respondent's disposition of the controversy which would suffice to overturn its affirmance of the labor arbiter's decision.

On the initial issue posed by petitioner, respondent commission should indeed have refrained from passing upon the matter of abandonment, much less from considering the same as the ground for petitioner's termination of private respondent's services. The records of the case indicate that Pepito's employment was cut short by Stellar due to his having violated a company rule which requires

the filing of an official leave of absence should an employee be unable to report for work, aside from the circumstance that Stellar did not find credible Pepito's explanation that he was then suffering from severe stomach and abdominal pains.

To be sure, public respondent may well have been misled by the fact that petitioner, in dismissing Pepito, labelled his violation as "Absent Without Official Leave (AWOL)/Virtual Abandonment."<sup>[8]</sup> Respondent NLRC should have noted that the matter of abandonment was never brought up as an issue before it and that Stellar never considered Pepito as having abandoned his job. As a matter of fact, private respondent was only considered by petitioner as absent until December 10, 1990.<sup>[9]</sup> Pepito was dismissed from work simply for going on leave without prior official approval and for failing to justify his absence. This is evident from the fact that petitioner did not assail Pepito's allegations that, at the start of his extended absence, he had informed Stellar, through telephone calls to his superior at MBC-PAL, that he could not report for work due to illness. Thus, while abandonment is indisputably a valid legal ground for terminating one's employment,<sup>[10]</sup> it was a non-issue in this dispute. Be that as it may, that misapprehension of the NLRC on this particular issue is not to be considered an abuse of discretion of such gravity as to constitute reversible error.

In the main, therefore, what is truly at issue here is whether or not serious misconduct for non-observance of company rules and regulations may be attributed to Pepito and, if so, whether or not the extreme penalty of dismissal meted to him by Stellar may be justified under the circumstances. We resolve both issues in the negative.

Stellar's company rules and regulations on the matter could not be any clearer, to wit:

"Absence Without Leave

Any employee who fails to report for work without any prior approval from his superior(s) shall be considered absent without leave.

In the case of an illness or emergency for an absence of not more than one (1) day, a telephone call or written note to the head office, during working hours, on the day of his absence, shall be sufficient to avoid being penalized.

In the case of an illness or an emergency for an absence of two (2) days or more, a telephone call to the head office, during regular working hours, on the first day of his absence, or a written note to the head office, (ex. telegram) within the first three (3) days of his absence, and the submission of the proper documents (ex. medical certificate) on the first day he reports after his absence shall be sufficient to avoid being penalized.

1st offense - three (3) days suspension

2nd offense - seven (7) days suspension