

SECOND DIVISION

[G.R. No. 97204, April 25, 1996]

**MICHAEL INC. AND JUANITO CAMBANGAY, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION AND JOSE P.
NAVARRO, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for certiorari to annul the decision of the NLRC in NLRC-RAB-VII-0021-85 which affirmed with modification a decision rendered by the Labor Arbiter in favor of private respondent Jose P. Navarro.

Private respondent was employed in 1977 in petitioner shipping company as a marine engineer. His monthly pay was P950.00. On November 12, 1984, he was dismissed after he had failed to board his ship, the M/V Alexia, as a result of which the vessel sailed without him. This was not the first time that he was left behind by his vessel. Thrice before, on June 6, 1980, May 9, 1982 and July 31, 1984, he also failed to show up at the pier, in each case his excuse being that he had a stomachache. The fourth time, his excuse was that there was no transportation available because of a jeepney driver's strike.

Private respondent filed a complaint for illegal dismissal and payment of service incentive leave, 13th month pay and COLA differentials.

On March 21, 1989 the Labor Arbiter gave judgment for private respondent, holding that the failure of private respondent to board petitioners' vessel on the four (4) occasions, although habitual, was not so gross as to merit dismissal under Art. 282 of the Labor Code. He thought that suspension would have sufficed as punishment, considering that private respondent had already been with the company for eight (8) years.

In addition, the Labor Arbiter found that private respondent had not been given written notice of the act or omission constituting the ground for his dismissal and heard. He was merely told to submit his written explanation, and later he was served a notice of dismissal.

Accordingly, the Labor Arbiter ordered petitioner -

1. To pay complainant backwages for three (3) years counted back from November 15, 1984 without qualifications and deductions;
2. To pay complainant separation pay equivalent to one (1) month pay for every year of service from February 10, 1977 to November 15, 1984 in lieu of reinstatement considering that antagonism between the parties