

THIRD DIVISION

[G.R. No. 116175, October 28, 1996]

**PEDRO V. SOLIS, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND PHILEX MINING CORPORATION,
RESPONDENTS.**

R E S O L U T I O N

FRANCISCO, J.:

This case involves illegal dismissal.

Petitioner, Pedro Solis was employed since August of 1972 as an underground miner by private respondent **Philex**. Due to constant exposure to the elements in the mining area, Solis became ill and was medically diagnosed sometime in 1983 to be afflicted with "Koch's infection, exudative type, minimal (R)".^[1] The examining physicians^[2] recommended that Solis be assigned to surface work to facilitate his speedy recovery from the illness.^[3] This recommendation, including the intercession of petitioner's union on October 1990, that Solis be reassigned temporarily to surface work, were not heeded by **Philex**.^[4] The illness of Solis aggravated.^[5] In his medical check-up at the Baguio General Hospital and Medical Center, on March 21, 1991, Solis was diagnosed to be suffering from:

- Koch's pulmonary bronchiectasis (PTB) commonly known as tuberculosis,
- Bronchial, asthma, and
- Arthralgia, right shoulder^[6]

and was declared "unfit to continue working for underground mine".^[7] Solis was accordingly dismissed by Philex from service on April 5, 1991, and given the amount of P55,121.85 as "separation pay".^[8]

After his dismissal from service, Solis submitted himself for medical examination in another hospital, the Baguio Filipino Chinese Hospital, which issued a medical certificate declaring him physically fit.^[9] Armed with this new medical certificate, he went back to **Philex** demanding reinstatement, but to no avail. On May 6, 1991, Solis sued **Philex** for illegal dismissal. In its position paper, **Philex** alleged that the dismissal is valid since Solis was suffering from contagious diseases.^[10] The Labor Arbiter found that Solis' dismissal was illegal and ordered **Philex** to reinstate him backwages.^[11] Philex appealed to the NLRC which also ruled that Solis was illegally dismissed, albeit it disallowed reinstatement in view of the alleged voluntary acceptance by Solis of his "separation pay".^[12]

Petitioner Solis now comes to us on *certiorari* alleging that the NLRC committed grave abuse of discretion in setting aside the Labor Arbiter's decision ordering his

reinstatement. Philex in its comment counters that the instant petition should be dismissed for the failure of Solis to seek reconsideration of the NLRC ruling before filing this petition and reiterated that Solis' dismissal was for a valid cause. The Office of the Solicitor General for its part disputes the NLRC ruling and prays for the reinstatement of Solis.

First, on the procedural lapse. Under Sec. 1 of Rule 65, a petition for *certiorari* will lie if there is "no plain, speedy and adequate remedy in the ordinary course of law". A motion for reconsideration of an assailed decision is deemed a plain and adequate remedy provided by law.^[13] In this case, Solis failed to file any motion for reconsideration before elevating the case to the court; hence, ordinarily this petition should have been dismissed outright. However, such procedural technicality, if strictly adhered to, may cause injustice to an employee with a valid claim. To prevent this miscarriage of justice, we deemed it necessary to gloss over petitioner's failure to move for reconsideration^[14] and rule, instead, on the more important issued attendant in this case, *viz.*:^[15] (1) whether or not Solis was dismissed for a valid cause, and (2) whether or not Solis was estopped from demanding reinstatement due to his acceptance of the "separation pay".

Proceeding to the merits of the case.

It is **Philex's** contention that the dismissal of Solis is in accordance with Article 284 of the Labor Code. Solis was allegedly afflicted with tuberculosis, a contagious disease, which poses danger not only to himself but also to his fellow employees. This argument raises a factual issue contrary to the findings of the Labor Arbiter and the NLRC on appeal. It is a settled rule that this Court gives due deference to the factual findings of the Labor arbiter especially when supported by substantial evidence.^[16] In the case at bench, no cogent reason appears from the records that would justify our departure from the factual findings below.

Be that as it may, Article 284 of the Labor Code provides:

"Disease as ground for termination. -- An employer may terminate the services of an employee who has been found to be suffering from *any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees*: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year."

The implementing rule states:

"Disease as a ground for dismissal. -- Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there *is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment*. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask