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FIRST DIVISION

[G.R. No. 73680. July 10, 1986]

DANILO O. ALMOITE, *petitioner, vs.* **PACIFIC ARCHITECTS & ENGINEERS, INC., RESOURCE MANAGEMENT INTERNATIONAL INC. AND/OR DONALD A. JONES AND THE NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NOT VIOLATED WHEN THE PARTY WAS GIVEN THE OPPORTUNITY TO BE HEARD.**— It is not denial of the right to be heard but denial of the opportunity to be heard that constitutes violation of due process of law. In this case, the petitioner was given not only the opportunity to be heard, which he forfeited in the proceedings before the labor arbiter, but also the right to be heard, which he actually exercised through his various representations before the NLRC.

2. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION; UPHELD ON APPEAL.**— The petitioner must also fail on the merits because he has not proved that his dismissal was illegal. By contrast, the private respondent has satisfactorily established the legal basis for his removal, to wit, loss of confidence in him because of incompetence and dishonesty, as found by the labor arbiter and affirmed by the National Labor Relations Commission. Conformably to established jurisprudence, we accept such findings in the absence of a showing that they were reached arbitrarily or with grave abuse of discretion by the respondent labor body.

3. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETRENCHMENT; MANAGEMENT HAS THE RIGHT TO CHOOSE WHOM TO LAY-OFF.**— As for retrenchment, which is another justification raised by the private respondent, it is settled that where there is need for reduction of the work force, management has the right to choose whom to lay off, depending on the work still required to be done and the qualities of the workers to be retained. The project having been practically completed, and considering the loss of

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confidence in the petitioner, his dismissal for economic reasons by the private respondent cannot be declared unlawful.

APPEARANCES OF COUNSEL

Chavez Hechanova & Lim Law Office for petitioner.

D E C I S I O N

CRUZ, *J.*:

The petitioner is before us to challenge his alleged illegal dismissal by the private respondent. He invokes due process and claims the absence of a valid cause for his removal. The decision of the National Labor Relations Commission sustaining the private respondent is the subject of this review.[1]

The private respondent is a firm hired by the Ministry of Public Works and Highways to oversee various government construction projects. On April 25, 1983, it employed the petitioner to supervise construction of the Zamboanga Area Shop Project, at P4,000.00 a month. On August 4, 1983, he was given a 50% raise in salary and assigned a wider area of supervision, including the Zamboanga City area. On August 24, 1983, a new resident engineer was assigned to the Zamboanga Area Shop Project and asked to report to the petitioner for instruction and training. On June 26, 1984, the services of this engineer were terminated and taken over by the petitioner. On July 30, 1984, owing to complaints of the Ministry of Public Works and Highways of certain construction defects in the said project, the petitioner was relieved as senior resident engineer thereof. On August 3, 1984, he explained his side regarding the said defects. On August 8, 1984, he filed a report dated August 2, 1984, concerning his findings on the construction defects. On August 15, 1984, he was formally notified of the termination of his services effective August 31, 1984.[2] The

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[1] *Rollo*, pp. 36-41.

[2] *Ibid.*, pp. 3-5, 44, 64.

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petitioner then filed a complaint for illegal dismissal which was decided against him by the labor arbiter and later by the NLRC.

We reject outright as clearly untenable the petitioner's claim that he was denied due process.

His allegation is that the decision of the labor arbiter was rendered one day before the position paper in support of the complaint was received, the implication being that the said decision was reached without considering the petitioner's arguments.[3] There is also the suggestion that the position paper was filed on time.

The records show otherwise and suggest a deliberate attempt of the petitioner to mislead this Court. As early as December 17, 1984, the labor arbiter had given the parties the opportunity to file their respective position papers not later than January 7, 1985, or within an initial period of 21 days. On January 7, 1985, the labor arbiter, acting on the manifestation of the parties, granted the private respondent an additional five days to file its position paper and the petitioner five days to file his reply, although at that time he had not even filed his position paper. On January 22, 1985, the parties agreed to submit simultaneous position papers not later than February 10, 1985, to serve as the basis for the resolution of the case. On February 11, 1985, the private respondent asked for a 10-day extension and on February 12, 1985, the petitioner asked for a 15-day extension. The private respondent filed its position paper on February 22, 1985, but on February 26, 1985, the petitioner asked for still another extension, of five days, until March 4, 1985. The petitioner thus had the chance to present his side from December 18, 1984 to March 4, 1985,[4] or during a period of more than two-and-a-half months.

The petitioner did not meet even the final deadline on March 4, 1985. In the end, he did file his position paper, but only on

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[3] *Id.*, pp. 13-14.

[4] *Id.*, pp. 177-178.

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March 14, 1985, or ten days later.[5] He was already ten days late.

The petitioner is aware of all these and yet has the temerity now to claim that he has been deprived of the right to be heard. When it is considered that his position paper, although filed out of time, was nevertheless included in the records elevated to the National Labor Relations Commission, to which he had submitted his memorandum of appeal dated April 2, 1985, and his motion for reconsideration dated October 7, 1985, it is difficult to understand how he can honestly claim that he was not given his day in court.

It is not denial of the right to be heard but denial of the opportunity to be heard that constitutes violation of due process of law.[6] In this case, the petitioner was given not only the opportunity to be heard, which he forfeited in the proceedings before the labor arbiter, but also the right to be heard, which he actually exercised through his various representations before the NLRC.

The petitioner must also fail on the merits because he has not proved that his dismissal was illegal. By contrast, the private respondent has satisfactorily established the legal basis for his removal, to wit, loss of confidence in him because of incompetence and dishonesty, as found by the labor arbiter and affirmed by the National Labor Relations Commission. Conformably to established jurisprudence,[7] we accept such findings in the absence of a showing that they were reached

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[5] *Id.*, p. 178.

[6] *Gas Corp. of the Phil. v. Minister of Labor*, 76 OG 2528, Oct. 23, 1979; *Cornejo v. Secretary of Justice*, 57 SCRA 663; *Bermejo v. Barrios*, 31 SCRA 764; *Manuel v. Villena*, 37 SCRA 745; *Azul v. Castro*, 133 SCRA 271; *Pantranco v. NLRC*, 126 SCRA 526; *Mamerto v. Inciong*, 118 SCRA 265; *Maglasang v. Ople*, 63 SCRA 508; *Antipolo Highway Lines v. Inciong*, 64 SCRA 441; *St. Michael Security Service v. Inciong*, 85 SCRA 207.

[7] *Lepanto Consolidated Mining Co. v. CA*, 1 SCRA 1251; *Nevans v. CIR*, 23 SCRA 1321; *Galsim v. PNB*, 29 SCRA 293; *San Miguel Corp. v. NLRC*, 128 SCRA 180; *National Service Corp. v. Leogardo, Jr.*, 130 SCRA 502; *Villadolid v. Inciong*, 121 SCRA 205; *Monte de Piedad v. Minister of*

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arbitrarily or with grave abuse of discretion by the respondent labor body.

The petitioner makes much of the fact that he himself had complained about the construction defects and that it was because of his "expose" that he was eased out of his employment. Interestingly, this matter was even announced in the papers, at whose instance we do not venture to guess, clippings of which are annexed to the instant petition.[8] It appears from the record, however, that the petitioner's report concerning these defects was submitted after their discovery by the Ministry of Public Works and Highways and after he himself had already been asked to explain them. The report, which was dated August 2, 1984, was received by the private respondent on August 8, 1984.[9] This was 9 days after the petitioner had been relieved as senior resident engineer of the Zamboanga Shop Area Project precisely because of such defects.

There is also his claim that he could not be held responsible for the construction defects because much of the project was done when he was not the resident engineer thereof. The evidence shows, however, that he continued to be the supervisor of the Zamboanga Shop Area Project even after his promotion and that he visited the project two or three times a week until he actually took over again as resident engineer.[10] During that period he never called the attention of the private respondent to any defect in the project, either in the plans and specifications or in their execution.[11] It was only after his attention was called[12] that the petitioner himself pointed to these defects as if it was he who had made the discovery. He was a Johnny-come-lately,

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Labor, 122 SCRA 444; *PLDT v. NLRC*, 122 SCRA 618; *Dole Phil., Inc. v. NLRC*, 123 SCRA 673; *San Miguel Corp. v. Dep. Min. of Labor*, 126 SCRA 483.

[8] *Rollo*, pp. 80-81.

[9] *Ibid.*, p. 44.

[10] *Ibid.*, p. 45.

[11] *Id.*, pp. 45-46, 48.

[12] *Id.*, pp. 45-46, 48-49.

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and what is worse is that he assumed the posture of an idealistic crusader, possibly to deflect the blame from him. His conduct would have been more credible, and his motives less suspect, if he had acted a little earlier.

His tardy action on this matter would, in the words of the labor arbiter, "lend credence to the charge of Mr. George Loo (of Footstep Construction Co.) that Engr. Catis was asking P20,000.00 to be given to the petitioner and that petitioner had proposed to the former that they share on a 60-40 basis whatever savings generated from non-compliance of specs and plans."[13] It is significant that when questioned on this matter during the meeting called to investigate the defects on August 13, 1984, the petitioner refused to answer. And when, at the same meeting, he was asked why he called the contractor, Footstep, on August 8, 1984, before presenting his report of August 2, 1984, the petitioner's reply was simply "No Comment."[14]

In none of his pleadings does the petitioner explain his strange behavior on these serious charges during that meeting of August 13, 1984. And while it is true that he later denied them in his position paper and his motion for reconsideration, it still seems odd that he had not at least belied the charges when they were made, or, even better, expressed righteous indignation over them, instead of simply saying "No comment" as if he really had something to conceal. This is hardly the conduct of a person unjustly accused, particularly if his own personal integrity is impugned.

No less important are the warnings given to him by the private respondent for approving overstatements of accomplishment by the contractor,[15] on which there is no record of denial or justification from him. As a consequence of his acts, the contractors were able to collect payments not yet due or for work not yet done.

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[13] *Id.*, p. 50.

[14] *Id.*, pp. 44-45.

[15] *Id.*, p. 46.

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In any event, these factual findings made by the labor authorities support the claim of loss of confidence by the private respondent in the petitioner's competence and integrity. This is a sufficient ground for his dismissal. As for retrenchment, which is another justification raised by the private respondent, it is settled that where there is need for reduction of the work force, management has the right to choose whom to lay off, depending on the work still required to be done and the qualities of the workers to be retained.[16] The project having been practically completed, and considering the loss of confidence in the petitioner, his dismissal for economic reasons by the private respondent cannot be declared unlawful.

A little more candor from litigants can avoid the filing of baseless claims like this which take up much of the valuable time of the courts. It should be remembered that the speedy disposition of cases is the obligation and goal not only of the judicial and quasi-judicial bodies but of the citizenry as well for whom, after all, this guarantee is made. This constitutional objective[17] is better pursued and may be achieved in time with the particular cooperation of the suitors and their lawyers, who should be as specially concerned as the judiciary in the expeditious administration of justice.

WHEREFORE, this petition is dismissed, with costs against the petitioner.

SO ORDERED.

Abad Santos (Chairman), Yap, Narvasa, and *Melencio-Herrera, JJ.*, concur.

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[16] *Duay v. CIR*, 122 SCRA 834; *Special Events & Central Shipping Office Workers Union v. San Miguel Corp.*, 122 SCRA 557.

[17] Art. IV, Sec. 16, 1973 Constitution.