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[G.R. No. 69870. November 29, 1988]

NATIONAL SERVICE CORPORATION (NASECO) AND ARTURO L. PEREZ, *petitioners, vs.* **THE HONORABLE THIRD DIVISION, NATIONAL LABOR RELATIONS COMMISSION, MINISTRY OF LABOR AND EMPLOYMENT, MANILA AND EUGENIA C. CREDO,** *respondents.*

[G.R. No. 70295. November 29, 1988]

EUGENIA C. CREDO, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, NATIONAL SERVICES CORPORATION AND ARTURO L. PEREZ,** *respondents.*

SYLLABUS

1. LABOR LAW AND SOCIAL LEGISLATION; LABOR RELATIONS; DISMISSAL; NOTICE OF DISMISSAL TO EMPLOYEES BEFORE TERMINATION, REQUIRED.— The guidelines provided in Rule XIV, Book V, Implementing Rules and Regulations, particularly Sections 2, 5 and 6 mandate that the employer furnish an employee sought to be dismissed two (2) written notices of dismissal before a termination of employment can be legally effected. These are the notice which apprises the employee of the particular acts or omissions for which his dismissal is sought and the subsequent notice which informs the employee of the employer's decision to dismiss him.

2. ID.; ID.; ID.; DECISION TO DISMISS MAY ONLY BE ISSUED AFTER EMPLOYEE WAS AFFORDED DUE PROCESS.— A reading of the guidelines in consonance with the express provisions of law on protection to labor (which encompasses the right to security of tenure) and the broader dictates of procedural due process necessarily mandate that notice of the employer's decision to dismiss an employee, with reasons therefor, can only be issued after the employer has afforded

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the employee concerned ample opportunity to be heard and to defend himself.

3. **ID.; ID.; ID.; SEVERE PENALTY OF DISMISSAL, NOT WARRANTED IN CASE AT BAR.**— Besides, Credo's mere non-compliance with Lloren's memorandum regarding the entry procedures in the company's Statement of Billings Adjustment did not warrant the severe penalty of dismissal. As this Court has ruled: ". . . where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner."

4. **ID.; ID.; ID.; REINSTATEMENT AND BACKWAGES, PROPER IN CASE OF UNJUSTIFIED DISMISSAL.**— Considering that the acts or omissions for which Credo's employment was sought to be legally terminated were insufficiently proved, as to justify dismissal, reinstatement is proper for "absent the reason which gave rise to [the employee's] separation from employment, there is no intention on the part of the employer to dismiss the employee concerned." And, as a result of having been wrongfully dismissed, Credo is entitled to three (3) years of backwages without deduction and qualification.

5. **ID.; ID.; ID.; EXEMPLARY DAMAGES AWARDED IF DISMISSAL WAS EFFECTED IN A WANTON, FRAUDULENT, OPPRESSIVE OR MALEVOLENT MANNER.**— While Credo's dismissal was effected without procedural fairness, an award of exemplary damages in her favor can only be justified if her dismissal was effected in a wanton, fraudulent, oppressive or malevolent manner.

6. **ID.; ID.; ID.; MORAL DAMAGES AWARDED AS DISMISSAL WAS EFFECTED WITHOUT DUE PROCESS.**— In view of the attendant circumstances in the case, *i.e.*, lack of due process in effecting her dismissal, it is reasonable to award her moral damages.

7. **ID.; ID.; ID.; ATTORNEY'S FEES AWARDED AS EMPLOYEE WAS COMPELLED TO LITIGATE.**— For having been compelled to litigate because of the unlawful actuations of NASECO, a reasonable award for attorney's fees in her favor is in order.

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8. **ID.; ID.; ID.; RULING IN *NATIONAL HOUSING CORPORATION VS. JUCO*, NOT GIVEN RETROACTIVE EFFECT.** — It would appear that, in the interest of justice, the holding in said case should not be given retroactive effect, that is, to cases that arose before its promulgation on 17 January 1985. To do otherwise would be oppressive to Credo and other employees similarly situated, because under the same 1973 Constitution but prior to the ruling in *National Housing Corporation vs. Juco*, this Court had recognized the applicability of the Labor Code to, and the authority of the NLRC to exercise jurisdiction over, disputes involving terms and conditions of employment in government-owned or controlled corporations, among them, the National Service Corporation (NASECO).

9. **CONSTITUTIONAL LAW; CIVIL SERVICE; SUBSIDIARIES OF GOVERNMENT OWNED OR CONTROLLED CORPORATIONS NOT INCLUDED IN THE AMBIT OF CIVIL SERVICE.** — Thus, the situations sought to be avoided by the 1973 Constitution and expressed by the Court in the *National Housing Corporation* case in the following manner appear relegated to relative insignificance by the 1987 Constitutional provision that the Civil Service embraces government-owned or controlled corporations *with original charter*; and, therefore, by clear implication, the Civil Service does *not* include government-owned or controlled corporations which are organized as subsidiaries of government-owned or controlled corporations under the general corporation law.

APPEARANCES OF COUNSEL

The Chief Legal Counsel for respondents NASECO and Arturo L. Perez.

Melchor R. Flores for petitioner Eugenia C. Credo.

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DECISION

PADILLA, *J.*:

Consolidated special civil actions for *certiorari* seeking to review the decision* of the Third Division, National Labor Relations Commission in Case No. 11-4944-83 dated 28 November 1984 and its resolution dated 16 January 1985 denying motions for reconsideration of said decision.

Eugenia C. Credo was an employee of the National Service Corporation (NASECO), a domestic corporation which provides security guards as well as messengerial, janitorial and other similar manpower services to the Philippine National Bank (PNB) and its agencies. She was first employed with NASECO as a lady guard on 18 July 1975. Through the years, she was promoted to Clerk Typist, then Personnel Clerk until she became Chief of Property and Records, on 10 March 1980.[1]

Sometime before 7 November 1983, Credo was administratively charged by Sisinio S. Lloren, Manager of Finance and Special Project and Evaluation Department of NASECO, stemming from her non-compliance with Lloren's memorandum, dated 11 October 1983, regarding certain entry procedures in the company's Statement of Billings Adjustment. Said charges alleged that Credo "did not comply with Lloren's instructions to place some corrections/additional remarks in the Statement of Billings Adjustment; and when [Credo] was called by Lloren to his office — to explain further the said instructions, [Credo] showed resentment and behaved in a scandalous manner by shouting and uttering remarks of disrespect in the presence of her co-employees."[2]

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* Signed by Guillermo C. Medina, Presiding Commissioner, Gabriel M. Gatchalian and Miguel B. Varela, Commissioners; the last one concurring in the result.

[1] *Rollo* (G.R. No. 69870), p. 122.

[2] *Ibid.*, p. 123.

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On 7 November 1983, Credo was called to meet Arturo L. Perez, then Acting General Manager of NASECO, to explain her side before Perez and NASECO's Committee on Personnel Affairs in connection with the administrative charges filed against her. After said meeting, on the same date, Credo was placed on "Forced Leave" status for 15 days, effective 8 November 1983.[3]

Before the expiration of said 15-day leave, or on 18 November 1983, Credo filed a complaint, docketed as Case No. 11-4944-83, with the Arbitration Branch, National Capital Region, Ministry of Labor and Employment, Manila, against NASECO for placing her on forced leave, without due process.[4]

Likewise, while Credo was on forced leave, or on 22 November 1983, NASECO's Committee on Personnel Affairs deliberated and evaluated a number of past acts of misconduct or infractions attributed to her.[5] As a result of this deliberation, said committee resolved:

"1. That, respondent [Credo] committed the following offenses in the Code of Discipline, *viz*:

OFFENSE vs. Company Interest & Policies.

No. 3 — Any discourteous act to customer, officer and employee of client company or officer of the Corporation.

OFFENSE vs. Public Moral

No. 7 — Exhibit marked discourtesy in the course of official duties or use of profane or insulting language to any superior officer.

OFFENSE vs. Authority

No. 3 — Failure to comply with any lawful order or any instructions of a superior officer."

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[3] *Ibid.*

[4] *Ibid.*, p. 22.

[5] *Ibid.*, p. 62.

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> "2. That, Management has already given due consideration to respondent's [Credo] scandalous actuations for several times in the past. Records also show that she was reprimanded for some offense and did not question it. Management at this juncture, has already met its maximum tolerance point so it has decided to put an end to respondent's [Credo] being an undesirable employee."[6]

The committee recommended Credo's termination, with forfeiture of benefits.[7]

On 1 December 1983, Credo was called again to the office of Perez to be informed that she was being charged with certain offenses. Notably, these offenses were those which NASECO's Committee on Personnel Affairs already resolved, on 22 November 1983 to have been committed by Credo.

In Perez's office, and in the presence of NASECO's Committee on Personnel Affairs, Credo was made to explain her side in connection with the charges filed against her; however, due to her failure to do so,[8] she was handed a Notice of Termination, dated 24 November 1983, and made effective 1 December 1983.[9]

Hence, on 6 December 1983, Credo filed a supplemental complaint for illegal dismissal in Case No. 11-4944-83, alleging absence of just or authorized cause for her dismissal and lack of opportunity to be heard.[10]

After both parties had submitted their respective position papers, affidavits and other documentary evidence in support of their claims and defenses, on 9 May 1984, the labor arbiter rendered a decision: 1) dismissing Credo's complaint, and 2) directing NASECO to pay Credo separation pay equivalent to one half month's pay for every year of service.[11]

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[6] *Ibid.*, p. 63.

[7] *Ibid.*

[8] *Ibid.*, p. 66.

[9] *Ibid.*, p. 65.

[10] *Ibid.*, p. 25.

[11] *Ibid.*, p. 104.

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Both parties appealed to respondent National Labor Relations Commission (NLRC) which, on 28 November 1984, rendered a decision: 1) directing NASECO to reinstate Credo to her former position, or substantially equivalent position, with six (6) months' backwages and without loss of seniority rights and other privileges appertaining thereto, and 2) dismissing Credo's claim for attorney's fees, moral and exemplary damages. As a consequence, both parties filed their respective motions for reconsideration,[12] which the NLRC denied in a resolution of 16 January 1985.[13]

Hence, the present recourse by both parties.

In G.R. No. 68970, petitioners challenge as grave abuse of discretion the dispositive portion of the 28 November 1984 decision which ordered Credo's reinstatement with backwages.[14] Petitioners contend that in arriving at said questioned order, the NLRC acted with grave abuse of discretion in finding that: 1) petitioners violated the requirements mandated by law on termination, 2) petitioners failed in the burden of proving that the termination of Credo was for a valid or authorized cause, 3) the alleged infractions committed by Credo were not proven or, even if proved, could be considered to have been condoned by petitioners, and 4) the termination of Credo was not for a valid or authorized cause.[15]

On the other hand, in G.R. No. 70295, petitioner Credo challenges as grave abuse of discretion the dispositive portion of the 28 November 1984 decision which dismissed her claim for attorney's fees, moral and exemplary damages and limited her right to backwages to only six (6) months.[16]

As guidelines for employers in the exercise of their power to dismiss employees for just causes, the law provides that:

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[12] *Ibid.*, p. 126.

[13] *Ibid.*, p. 148.

[14] *Ibid.*, p. 8.

[15] *Ibid.*

[16] *Rollo* (G.R. No. 70295), p. 8.

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"Section 2. Notice of dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. xxx

"Section 5. Answer and Hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

"Section 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor."[17]

These guidelines mandate that the employer furnish an employee sought to be dismissed two (2) written notices of dismissal before a termination of employment can be legally effected. These are the notice which apprises the employee of the particular acts or omissions for which his dismissal is sought and the subsequent notice which informs the employee of the employer's decision to dismiss him.

Likewise, a reading of the guidelines in consonance with the express provisions of law on protection to labor[18] (which encompasses the right to security of tenure) and the broader dictates of procedural due process necessarily mandate that notice of the employer's decision to dismiss an employee, with reasons therefor, can only be issued after the employer has afforded the employee concerned ample opportunity to be heard and to defend himself.

In the case at bar, NASECO did not comply with these guidelines in effecting Credo's dismissal. Although she was apprised and "given the chance to explain her side" of the charges filed against her, this chance was given so perfunctorily, thus rendering illusory Credo's right to security of tenure. That Credo was not given ample opportunity to be heard and to defend herself is

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[17] Rule XIV, Book V, Implementing Rules and Regulations.

[18] Constitution (1973), Art. II, Sec. 9; Constitution (1987), Art. II, Sec. 18; Labor Code, Art. III.

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evident from the fact that the compliance with the injunction to apprise her of the charges filed against her and to afford her a chance to prepare for her defense was dispensed in only a day. This is not effective compliance with the legal requirements aforementioned.

The fact also that the Notice of Termination of Credo's employment (or the decision to dismiss her) was dated 24 November 1983 and made effective 1 December 1983 shows that NASECO was already bent on terminating her services when she was informed on 1 December 1983 of the charges against her, and that any hearing which NASECO thought of affording her after 24 November 1983 would merely be *pro forma* or an exercise in futility.

Besides, Credo's mere non-compliance with Lloren's memorandum regarding the entry procedures in the company's Statement of Billings Adjustment did not warrant the severe penalty of dismissal. The NLRC correctly held that:

"xxx, on the charge of gross discourtesy, the CPA found in its Report, dated 22 November 1983 that, 'In the process of her testimony/ explanations she again exhibited a conduct unbecoming in front of NASECO Officers and argued to Mr. S. S. Lloren in a sarcastic and discourteous manner, notwithstanding, the fact that she was inside the office of the Acctg. General Manager.' Let it be noted, however, that the Report did not even describe how the so called 'conduct unbecoming' or 'discourteous manner' was done by complainant. Anent the 'sarcastic' argument of complainant, the purported transcript[19] of the meeting held on 7 November 1983 does not indicate any sarcasm on the part of complainant. At the most, complainant may have sounded insistent or emphatic about her work being more complete than the work of Ms. de Castro, yet, the complaining officer signed the work of Ms. de Castro and did not sign hers.

"As to the charge of insubordination, it may be conceded, albeit unclear, that complainant failed 'to place some corrections/additional remarks in the Statement of Billings Adjustments' as instructed. However, under the circumstances obtaining, where complainant strongly felt that she was being discriminated against by her superior

[19] *Rollo* (G.R. No. 69870), pp. 57-59.

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in relation to other employees, we are of the considered view and so hold, that a reprimand would have sufficed for the infraction, but certainly not termination from services.[20]

As this Court has ruled:

"xxx where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner."[21]

Of course, in justifying Credo's termination of employment, NASECO claims as additional lawful causes for dismissal Credo's previous and repeated acts of insubordination, discourtesy and sarcasm towards her superior officers, alleged to have been committed from 1980 to July 1983.[22]

If such acts of misconduct were indeed committed by Credo, they are deemed to have been condoned by NASECO. For instance, sometime in 1980, when Credo allegedly "reacted in a scandalous manner and raised her voice" in a discussion with NASECO's Acting head of the Personnel Administration,[23] no disciplinary measure was taken or meted against her. Nor was she even reprimanded when she allegedly talked "in a shouting or yelling manner with the Acting Manager of NASECO's Building Maintenance and Services Department in 1980,[24] or when she allegedly "shouted" at NASECO's Corporate Auditor "in front of his subordinates displaying arrogance and unruly behavior" in 1980, or when she allegedly shouted at NASECO's Internal Control Consultant in 1981.[25] But then, in sharp contrast to NASECO's penchant for ignoring the aforesaid acts of

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[20] *Ibid.*, p. 125.

[21] *Almira vs. B.F. Goodrich Philippine, Inc.*, 58 SCRA 120.

[22] *Rollo* (G.R. No. 69870), pp. 2-5.

[23] *Ibid.*, p. 13.

[24] *Ibid.*

[25] *Ibid.*

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misconduct, when Credo committed frequent tardiness in August and September 1983, she was reprimanded.[26]

Even if the allegations of improper conduct (discourtesy to superiors) were satisfactorily proven, NASECO's condonation thereof is gleaned from the fact that on 4 October 1983, Credo was given a salary adjustment for having performed in the job "at least [satisfactorily],"[27] and she was then rated "Very Satisfactory"[28] as regards job performance, particularly in terms of quality of work, quantity of work, dependability, cooperation, resourcefulness and attendance.

Considering that the acts or omissions for which Credo's employment was sought to be legally terminated were insufficiently proved, as to justify dismissal, reinstatement is proper. For "absent the reason which gave rise to [the employee's] separation from employment, there is no intention on the part of the employer to dismiss the employee concerned."[29] And, as a result of having been wrongfully dismissed, Credo is entitled to three (3) years of backwages without deduction and qualification.[30]

However, while Credo's dismissal was effected without procedural fairness, an award of exemplary damages in her favor can only be justified if her dismissal was effected in a wanton, fraudulent, oppressive or malevolent manner.[31] A judicious examination of the record manifests no such conduct on the part of management. However, in view of the attendant circumstances in the case, *i.e.*, lack of due process in effecting her dismissal, it is reasonable to award her moral damages. And, for having been compelled to litigate because of the unlawful actuations of NASECO, a reasonable award for attorney's fees in her favor is in order.

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[26] *Ibid.*

[27] *Ibid.*, p. 91.

[28] *Ibid.*, p. 78.

[29] *Pepito vs. Secretary of Labor*, 98 SCRA 454.

[30] *Ibid.*

[31] Civil Code, Art. 2232.

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In NASECO's comment[32] in G.R. No. 70295, it is belatedly argued that the NLRC has no jurisdiction to order Credo's reinstatement. NASECO claims that, as a government corporation (by virtue of its being a subsidiary of the National Investment and Development Corporation (NIDC), a subsidiary wholly owned by the Philippine National Bank (PNB), which in turn is a government owned corporation), the terms and conditions of employment of its employees are governed by the Civil Service Law, rules and regulations. In support of this argument, NASECO cites *National Housing Corporation vs. Juco*,[33] where this Court held that "There should no longer be any question at this time that employees of government-owned or controlled corporations are governed by the civil service law and civil service rules and regulations."

It would appear that, in the interest of justice, the holding in said case should not be given retroactive effect, that is, to cases that arose before its promulgation on 17 January 1985. To do otherwise would be oppressive to Credo and other employees similarly situated, because under the same 1973 Constitution but prior to the ruling in *National Housing Corporation vs. Juco*, this Court had recognized the applicability of the Labor Code to, and the authority of the NLRC to exercise jurisdiction over, disputes involving terms and conditions of employment in government-owned or controlled corporations, among them, the National Service Corporation (NASECO).[34]

Furthermore, in the matter of coverage by the civil service of government-owned or controlled corporations, the 1987 Constitution starkly varies from the 1973 Constitution, upon which *National Housing Corporation vs. Juco* is based. Under the 1973 Constitution, it was provided that:

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[32] *Rollo* (G.R. No. 70295), p. 125.

[33] 134 SCRA 172.

[34] *Philippine Air Line, Inc. vs. NLRC*, 124 SCRA 583; *Philippine Air Lines, Inc. vs. NLRC*, 126 SCRA 223 and *National Service Corporation vs. Leogardo, Jr.*, 130 SCRA 502.

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"The civil service embraces every branch, agency, subdivision, and instrumentality of the Government, including every government-owned or controlled corporation. xxx"[35]

On the other hand, the 1987 Constitution provides that:

"The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations *with original charter*."[36] (Italics supplied)

Thus, the situations sought to be avoided by the 1973 Constitution and expressed by the Court in the *National Housing Corporation* case in the following manner —

"The infirmity of the respondents' position lies in its permitting a circumvention or emasculation of Section 1, Article XII-B of the Constitution. It would be possible for a regular ministry of government to create a host of subsidiary corporations under the Corporation Code funded by a willing legislature. A government-owned corporation could create several subsidiary corporations. These subsidiary corporations would enjoy the best of two worlds. Their officials and employees would be privileged individuals, free from the strict accountability required by the Civil Service Decree and the regulations of the Commission on Audit. Their incomes would not be subject to the competitive restrains of the open market nor to the terms and conditions of civil service employment. Conceivably, all government-owned or controlled corporations could be created, no longer by special charters, but through incorporations under the general law. The Constitutional amendment including such corporations in the embrace of the civil service would cease to have application. Certainly, such a situation cannot be allowed to exist."[37]

appear relegated to relative insignificance by the 1987 Constitutional provision that the Civil Service embraces government-owned or controlled corporations *with original charter*; and, therefore, by clear implication, the Civil Service

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[35] Constitution, 1973, Art. II-B, Sec. I(1).

[36] Constitution (1987), Art. IX-B, Sec. 2(1).

[37] 134 SCRA 182-183.

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does *not* include government-owned or controlled corporations which are organized as subsidiaries of government-owned or controlled corporations, under the general corporation law.

The proceedings in the 1986 Constitutional Commission also shed light on the Constitutional intent and meaning in the use of the phrase "with original charter." Thus—

"THE PRESIDING OFFICER (Mr. Trenas). Commissioner Romulo is recognized.

MR. ROMULO. I beg the indulgence of the Committee. I was reading the wrong provision.

I refer to Section 1, subparagraph 1 which reads:

> The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations.

My query: Is Philippine Airlines covered by this provision?

MR. FOZ. Will the Commissioner please state his previous question?

MR. ROMULO. The phrase on line 4 of Section 1, subparagraph 1, under the Civil Service Commission, says: "including government-owned or controlled corporations." Does that include a corporation, like the Philippine Airlines which is government-owned or controlled?

MR. FOZ. I would like to throw a question to the Commissioner. Is the Philippine Airlines controlled by the government in the sense that the majority of stocks are owned by the government?

MR. ROMULO. It is owned by the GSIS. So, this is what we might call a tertiary corporation. The GSIS is owned by the government. Would this be covered because the provision says "including government-owned or controlled corporations."

MR. FOZ. The Philippine Airlines was established as a private corporation. Later on, the government, through the GSIS, acquired the controlling stocks. Is that not the correct situation?

MR. ROMULO. That is true as Commissioner Ople is about to explain. There was apparently a Supreme Court decision that destroyed that distinction between a government-owned corporation created

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under the Corporation Law and a government-owned corporation created by its own charter.

MR. FOZ. Yes, we recall the Supreme Court decision in the case of *NHA vs. Juco* to the effect that all government corporations irrespective of the manner of creation, whether by special charter or by the private Corporation Law, are deemed to be covered by the civil service because of the wide-embracing definition made in this section of the existing 1973 Constitution. But we recall the response to the question of Commissioner Ople that our intendment in this provision is just to give a general description of the civil service. We are not here to make any declaration as to whether employees of government-owned or controlled corporations are barred from the operation of laws, such as the Labor Code of the Philippines.

MR. ROMULO. Yes.

MR. OPLE. May I be recognized, Mr. Presiding Officer, since my name has been mentioned by both sides.

MR. ROMULO. I yield part of my time.

THE PRESIDING OFFICER (Mr. Trenas). Commissioner Ople is recognized.

MR. OPLE. In connection with the coverage of the Civil Service Law in Section 1(1), may I volunteer some information that may be helpful both to the interpellator and to the Committee. Following the proclamation of martial law on September 21, 1972, this issue of the coverage of the Labor Code of the Philippines and of the Civil Service Law almost immediately arose. I am, in particular, referring to the period following the coming into force and effect of the Constitution of 1973, where the Article on the Civil Service was supposed to take immediate force and effect. In the case of LUZTEVECO, there was a strike at the time. This was a government-controlled and government-owned corporation. I think it was owned by the PNOC with just the minuscule private shares left. So, the Secretary of Justice at that time, Secretary Abad Santos, and myself sat down, and the result of that meeting was an opinion of the Secretary of Justice — which became binding immediately on the government — that government corporations with original charters, such as the GSIS, were covered by the Civil Service Law and corporations spun off from the GSIS, which we called second generation corporations functioning as private subsidiaries, were covered by the Labor Code. Samples of such second generation corporations were the Philippine

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Airlines, the Manila Hotel and the Hyatt. And that demarcation worked very well. In fact, all of these companies I have mentioned as examples, except for the Manila Hotel, had collective bargaining agreements. In the Philippine Airlines, there were, in fact, three collective bargaining agreements; one, for the ground people or the PALIA; one, for the flight attendants or the PASAC; and one for the pilots of the ALPAC. How then could a corporation like that be covered by the Civil Service law? But, as the Chairman of the Committee pointed out, the Supreme Court decision in the case of *NHA vs. Juco* unrobed the whole thing. Accordingly, the Philippine Airlines, the Manila Hotel and the Hyatt are now considered under that decision covered by the Civil Service Law. I also recall that in the emergency meeting of the Cabinet convened for this purpose at the initiative of the Chairman of the Reorganization Commission, Armand Fabella, they agreed to allow the CBAs to lapse before applying the full force and effect of the Supreme Court decision. So, we were in the awkward situation when the new government took over. I can agree with Commissioner Romulo when he said that this is a problem which I am not exactly sure we should address in the deliberations on the Civil Service Law or whether we should be content with what the Chairman said — that Section 1 (1) of the Article on the Civil Service is just a general description of the coverage of the Civil Service and no more.

Thank you, Mr. Presiding Officer.

MR. ROMULO. Mr. Presiding Officer, for the moment, I would be satisfied if the Committee puts on records that it is not their intent by this provision and the phrase "including government-owned or controlled corporations" to cover such companies as the Philippine Airlines.

MR. FOZ. Personally, that is my view. As a matter of fact, when this draft was made, my proposal was really to eliminate, to drop from the provision, the phrase "including government-owned or controlled corporations."

MR. ROMULO. Would the Committee indicate that that is the intent of this provision?

MR. MONSOD. Mr. Presiding Officer, I do not think the Committee can make such a statement in the face of an absolute exclusion of government-owned or controlled corporations. However, this does not preclude the Civil Service Law to prescribe different

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rules and procedures, including emoluments for employees of proprietary corporations, taking into consideration the nature of their operations. So, it is a general coverage but it does not preclude a distinction of the rules between the two types of enterprises.

MR. FOZ. In other words, it is something that should be left to the legislature to decide. As I said before, this is just a general description and we are not making any declaration whatsoever.

MR. MONSOD. Perhaps if Commissioner Romulo would like a definitive understanding of the coverage and the Gentleman wants to exclude government-owned or controlled corporations like Philippine Airlines, then the recourse is to offer an amendment as to the coverage, if the Commissioner does not accept the explanation that there could be a distinction of the rules, including salaries and emoluments.

MR. ROMULO. So as not to delay the proceedings, I will reserve my right to submit such an amendment.

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THE PRESIDING OFFICE (Mr. Trenas) Commissioner Romulo is recognized.

MR. ROMULO. On page 2, line 5, I suggest the following amendment after "corporations": Add a comma (,) and the phrase EXCEPT THOSE EXERCISING PROPRIETARY FUNCTIONS.

THE PRESIDING OFFICER (Mr. Trenas). What does the Committee say?

SUSPENSION OF SESSION

MR. MONSOD. May we have a suspension of the session?

THE PRESIDING OFFICER (Mr. Trenas). The session is suspended.

It was 7:16 p.m.

RESUMPTION OF SESSION

At 7:21 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Trenas). The session is resumed.

Commissioner Romulo is recognized.

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MR. ROMULO. Mr. Presiding Officer, I am amending my original proposed amendment to now read as follows: "including government-owned or controlled corporations WITH ORIGINAL CHARTERS." The purpose of this amendment is to indicate that government corporations such as the GSIS and SSS, which have original charters, fall within the ambit of the civil service. However, corporations which are subsidiaries of these chartered agencies such as the Philippine Airlines, Manila Hotel and Hyatt are excluded from the coverage of the civil service.

THE PRESIDING OFFICER (Mr. Trenas). What does the Committee say?

MR. FOZ. Just one question, Mr. Presiding Officer. By the term "original charters," what exactly do we mean?

MR. ROMULO. We mean that they were created by law, by an act of Congress, or by special law.

MR. FOZ. And not under the general corporation law.

MR. ROMULO. That is correct. Mr. Presiding Officer.

MR. FOZ. With that understanding and clarification, the Committee accepts the amendment.

MR. NATIVIDAD. Mr. Presiding Officer, so those created by the general corporation law are out.

MR. ROMULO. That is correct."[38]

On the premise that it is the 1987 Constitution that governs the instant case because it is the Constitution in place at the time of decision thereof, the NLRC has jurisdiction to accord relief to the parties. As an admitted subsidiary of the NIDC, in turn a subsidiary of the PNB, the NASECO is a government-owned or controlled corporation without original charter.

Dr. Jorge Bocobo, in his Cult of Legalism, cited by Mr. Justice Perfecto in his concurring opinion in *Gomez vs. Government Insurance Board* (L-602, March 31, 1947, 44 O. G. No. 8, pp. 2687, 2694; also published in 78 Phil. 221) on the effectivity of the principle of social justice embodied in the 1935 Constitution, said:

[38] Record of the Constitutional Commission, Vol. I, pp. 583-585.

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"Certainly, this principle of social justice in our Constitution as generously conceived and so tersely phrased, was not included in the fundamental law as a mere popular gesture. It was meant to (be) a vital, articulate, compelling principle of public policy. It should be observed in the interpretation not only of future legislation, but also of all laws already existing on November 15, 1935. It was intended to change the spirit of our laws, present and future. Thus, all the laws which on the great historic event when the Commonwealth of the Philippines was born, were susceptible of two interpretations — strict or liberal, against or in favor of social justice, now have to be construed broadly in order to promote and achieve social justice. This may seem novel to our friends, the advocates of legalism, but it is the only way to give life and significance to the above-quoted principle of the Constitution. If it was not designed to apply to these existing laws, then it would be necessary to wait for generations until all our codes and all our statutes shall have been completely changed by removing every provision inimical to social justice, before the policy of social justice can become really effective. That would be an absurd conclusion. It is more reasonable to hold that this constitutional principle applies to all legislation in force on November 15, 1935, and all laws thereafter passed."

WHEREFORE, in view of the foregoing, the challenged decision of the NLRC is AFFIRMED with modifications. Petitioners in G.R. No. 69870, who are the private respondents in G.R. No. 70295, are ordered to: 1) reinstate Eugenia C. Credo to her former position at the time of her termination, or if such reinstatement is not possible, to place her in a substantially equivalent position, with three (3) years backwages, from 1 December 1983, without qualification or deduction, and without loss of seniority rights and other privileges appertaining thereto, and 2) pay Eugenia C. Credo ₱5,000.00 for moral damages and ₱5,000.00 for attorney's fees.

If reinstatement in any event is no longer possible because of supervening events, petitioners in G.R. No. 69870, who are the private respondents in G.R. No. 70295 are ordered to pay Eugenia C. Credo, in addition to her backwages and damages as above described, separation pay equivalent to one-half month's salary for every year of service, to be computed on her monthly salary at the time of her termination on 1 December 1983.

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SO ORDERED.

Fernan, C.J., Melencio-Herrera, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and *Regalado, JJ.*, concur.

Gutierrez, Jr., J., concurs in the result.

Cruz, J., see separate concurrence.

Narvasa, J., on leave.

CRUZ, *J.*, *concurring*:

While concurring with Mr. Justice Padilla's well-researched *ponencia*, I have to express once again my disappointment over still another avoidable ambiguity in the 1987 Constitution.

It is clear now from the debates of the Constitutional Commission that the government-owned or controlled corporations included in the Civil Service are those with *legislative* charters. Excluded are its subsidiaries organized under the Corporation Code.

If that was the intention, the logical thing, I should imagine, would have been to simply say so. This would have avoided the suggestion that there are corporations with *duplicate* charters as distinguished from those with original charters.

All charters are *original* regardless of source unless they are *amended*. That is the acceptable distinction. Under the provision, however, the charter is still and always original even if amended as long it was granted by the legislature.

It would have been clearer, I think, to say "including government owned or controlled corporations with *legislative* charters." Why this thought did not occur to the Constitutional Commission places one — again — in needless puzzlement.