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.*

SYLLABUS

LABOR LAW AND SOCIAL LEGISLATION; EMPLOYMENT; DISMISSAL; TOO HARSH A PENALTY FOR ABSENCES INCURRED BY A MARINE ENGINEER ON FOUR DIFFERENT OCCASIONS OVER A PERIOD OF FOUR YEARS; SEPARATION PAY IN LIEU OF REINSTATEMENT, PROPER. - Private respondent, as a marine engineer, was an important member of the crew of a vessel. On no other employer is a greater duty imposed of minimizing absences among crew members than on common carriers. The law requires them to exercise extraordinary diligence in the transportation of passengers and vigilance over goods. The question in this case is whether, considering the fact that the absences of private respondent occurred on four different occasions over a period of four years from 1980 to 1984 and that he had been with the company for eight years, dismissal would not be too drastic a penalty to impose. We think the NLRC rightly invoked the words of Justice Fernando *inAlmira v. B.F. Goodrich Phils. Inc.* that 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 the laws 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. Our cases after *Goodrich* have been faithful to the spirit of that decision, by paying tribute to the right of employees to security of tenure while recognizing the right of employers to impose discipline.

APPEARANCES OF COUNSEL

Santos T. Gil for petitioners.
Public attorneys Office for private respondent.

D E C I S I O N

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 drivers 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 has been brought about by the filing of this case;

3. To pay complainant his service incentive leave for three (3) years counted back from November *15,* 1984; and

4. To pay attorneys fees equivalent to ten (10) percent of all the above monetary awards.

On appeal, the National Labor Relations Commission modified the decision of the Labor Arbiter (1) by ordering that the award of backwages be computed by taking private respondents monthly salary at the time of his dismissal in December, 1984 and multiplying it by 36 months and (2) by deleting the award of attorneys fees on the ground that private respondent was represented by the Public Attorneys Office.

Hence this petition. It is contended that private respondents absences without excuse cannot be taken lightly in the shipping industry, because vessels have to be provided with a full complement to assure safety of the ship when it sails.

The contention is correct. Private respondent, as a marine engineer, was an important member of the crew of a vessel. On no other employer is a greater duty imposed of minimizing absences among crew members than on common carriers. The law requires them to exercise extraordinary diligence in the transportation of passengers and vigilance over goods.[1] The question in this case, however, is whether, considering the fact that the absences of private respondent occurred on four different occasions over a period of four years from 1980 to 1984 and that he had been with the company for eight years, dismissal would not be too drastic a penalty to impose. We think the NLRC rightly invoked the words of Justice, later Chief Justice, Fernando *inAlmira v. B.F. Goodrich Phils. Inc.*[2] that 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 the laws 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.[3]

Our cases after *Goodrich* have been faithful to the spirit of that decision, by paying tribute to the right of employees to security of tenure while recognizing the right of employers to impose discipline. In *Pepsi Cola v. NLRC,*[4] an employee filed a leave of absence for one day after he suffered stomachache. Upon the advice of the doctor he took a rest for 25 days without prior leave. When he reported for work, he was told he had been dismissed for being absent without leave. It was held that while he was at fault, the employee could not be dismissed. He was ordered reinstated but he was denied backwages.

In *Villadolid v. Inciong*,[5] an employee asked for a five-day leave starting December 30, 1978. On January *5,* 1979 he did not return to work but instead asked for 15 days sick leave on the ground that he was suffering from influenza. After that he asked for 30 more days. This time his request was denied. When he reported for work he was refused admission. It was held that while the employees absences were unauthorized, the absences did not amount to gross neglect of duty or abandonment of work, which requires a deliberate refusal to resume employment. There must be a clear showing in terms of specific circumstances that the worker did not intend to report for work. But as the employee had been AWOL, no error was committed in ordering his reinstatement without backwages.

In the case at bar, the deletion of the award of backwages - leaving only the payment to private respondent of separation pay in lieu of reinstatement - would not only be in accordance with our decisions but with the demands of justice for all concerned - for the employee no less than for the employer.

WHEREFORE, the decision of the National Labor Relations Commission is SET ASIDE and another one is ENTERED, ordering petitioners to pay private respondent separation pay at the rate of one (1) month salary for every year of service in lieu of reinstatement.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and *Torres, Jr., JJ.,* concur.

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[1] CIVIL CODE, Art. 1733.

[2] 58 SCRA 120 (1974).

[3] *Id.* at 131.

[4] G.R. No. 100686, August *15,* 1995.

[5] 121 SCRA 205 (1983).