

THIRD DIVISION

[G.R. No. 113911. January 23, 1998]

VINTA MARITIME CO., INC. and ELKANO SHIP MANAGEMENT, INC., *petitioners*, vs. NATIONAL LABOR RELATIONS COMMISSION and LEONIDES C. BASCONCILLO, *respondents*.

DECISION

PANGANIBAN, J.:

To justify an employees dismissal, the employer has the burden of proving the presence of just cause and due process. An illegally dismissed worker whose employment is for a fixed period is entitled to payment of his salaries corresponding to the unexpired portion of his contract.

The Case

These rules of long standing are invoked by the Court in resolving this special civil action for certiorari under Rule 65 of the Rules of Court seeking the reversal of the Decision dated September 13, 1993 and the Resolution dated November 23, 1993 of the National Labor Relations Commission in NLRC CA No. 000309 [POEA Case No. (M) 87-05-327].

On April 20, 1987, Leonides C. Basconcillo, herein private respondent, filed a complaint^[1] with the Philippine Overseas Employment Administration (POEA) Workers Assistance and Adjudication Office for illegal dismissal against Vinta Maritime Co., Inc. and Elkano Ship Management, Inc., herein petitioners. In their answer,^{iii[2]} petitioners alleged that private respondent was dismissed for his gross negligence and incompetent performance as chief engineer of the *M/V Boracay*, as exemplified by the following recorded incidents:

3.1.a. During a maneuver of the Vessel, [private respondent] closed off the operating air valve to the bridge control system despite the large sign on the valve itself-DO NOT CLOSE.

3.1.b. During a standby period, there was a loss of the main sea water pressure because the suction strainer was blocked by ice. [Private respondents] failure to change over the sea suctions resulted in the overheating of the main engine and the auxiliaries, which forced the Vessel to stop.

3.1.c. In another instance, complainant assured that the fuel situation of the Vessel was in order. But when the fuel figures were verified, it was discovered that there were only five (5) tons of fuel left before the next bunkering, leaving thus, no margin for safety.

Because of this, an unscheduled bunkering operation in Oslo had to be done, contrary to instructions.

3.1.d. As part of the safety procedures in the Vessel, it is necessary that all items of safety equipment be tested every week and a report entered in the engine room logbook. [Private respondent] was instructed and under duty to test the engine room fire alarms by activating each one individually with a heat or smoke source depending on its type. It was, however, discovered later that [private respondent] miserably failed to do this xxx.

3.1.e. [Private respondent] as [c]hief [e]ngineer miserably failed to instill discipline among the engine room personnel who are under his direct supervision, causing unrest among them and lack of respect for him and resulting in the disruption of the smooth operations of the Vessel.

3.2. Contrary to [private respondents] allegations, he was given fair warning and enough opportunity to explain his side in the foregoing incidents, not to mention all the chances given to him to improve his substandard work performance before he was dismissed. Because of his gross negligence and his failure to perform the duties for which he was hired, [petitioners] had no other choice than to terminate his services for cause pursuant to managements prerogative to terminate an employee because of gross and habitual neglect of his duties (Article 283, Labor Code).

Private respondent rebutted these allegations in his position paper, stating: (1) it would be childish for an experienced chief engineer to close the operating air valve to the bridge; a low level of starting air is caused by excessive and continuous use thereof during maneuvering, and such malfunction is due to the pilots error; (2) the loss of main water pressure due to the formation of ice on the suction strainer occurred because the sea water inlet was clogged; private respondent, who was at the engine room, contacted the master of the vessel, who was then asleep, to stop the engine and change the sea valve to activate the sea water pressure; during the same incident, it was also found that the other valve did not fully open by remote control; (3) private respondent denied that the fuel figures reached only five tons as demonstrated by the low-level alarm which, while set at ten cubic meters, did not set off even until the next bunkering of the ship; it was Peter Robinson, the ship superintendent, who panicked and caused the unscheduled bunkering operation in Oslo; (4) private respondent conducted safety equipment-testing religiously, but admitted that in one instance he did not test the equipment with a heat or smoke source, upon Robinsons advice that the alarm would upset the pilot and the crew who were then resting; (5) private respondent denied that there was unrest among the engine personnel, averring that on the contrary, they cooperated and signed the guidelines which the former issued to them; and (6) he denied having been given a chance to explain his side regarding the mentioned incidents, the truth being that he was surprised when he was told of his dismissal.ⁱⁱⁱ[3] Petitioners filed their position paper and supporting documents which however failed to rebut private respondents allegations.^{iv}[4]

Despite an unopposed motion for hearing^{v[5]} filed by private respondent, the POEA considered the case submitted for resolution by mutual agreement of the parties after submission of their respective position papers and supporting documents. In his decision dated March 9, 1990, POEA Administrator Tomas D. Achacoso ruled that private respondent was illegally dismissed. The dispositive portion of the decision reads as follows:^{vi[6]}

WHEREFORE, in view of the foregoing, respondents are hereby ordered to pay, jointly and severally, herein complainant the amount of SEVENTEEN THOUSAND EIGHT HUNDRED SEVENTY FIVE US DOLLARS (US\$17,875.00) or its peso equivalent at the time of actual payment, representing his salaries for the unexpired portion of his employment contract at US\$1,787.50 per month.

All other claims are hereby DISMISSED.

On appeal, the National Labor Relations Commission^{vii[7]} (Respondent Commission, for brevity) affirmed the POEA:^{viii[8]}

Accordingly, the decision of the POEA Administrator is hereby AFFIRMED *en toto*.

Respondent Commission denied the motion for reconsideration in the challenged Resolution:^{ix[9]}

After due consideration of the Motion for Reconsideration filed by respondents-appellants Vinta Maritime Co., Inc/ Elkano Ship Management, Inc. on October 22, 1993, from the Decision of September 13, 1993, the Commission (Second Division) RESOLVED to deny the same for lack of merit.

Hence, this petition.^{x[10]}

The Facts

The facts of this case are undisputed. The solicitor general relates the following circumstances leading to the complaint:^{xi[11]}

This case arose from a complaint for illegal dismissal by private respondent herein, Leonides O. Basconcillo, against petitioner companies, xxx Vinta Maritime Company, Incorporation and the El Kano Ship Management Incorporated, before the POEA Adjudication Office.

On February 13, 1987, private respondent, a licensed Marine Engineer since 1970, was hired as Chief Engineer for M.V. Boracay by the shipping company, xxx Vinta Maritime Company, Incorporated, thru its accredited manning agent, the Elkano Ship Management, Inc.

The crew contract for his employment was effective for a fixed duration of one (1) year, with a stipulated monthly basic pay of \$1,375.00 U.S. Dollars, and fixed overtime pay of \$402.50 U.S. Dollars a month, or a total of \$1,787.50 U.S. Dollars per month, with an additional 2 days leave a month. So on February 18, 1987, private respondent joined the vessel at the port of Rotterdam, the Netherlands, and assumed his duties and responsibilities as Chief Engineer.

On April 2, 1987, or barely three (3) months after boarding the vessel, private respondent was informed by Captain Jose B. Orquinaza, the ships Master, that he was relieved of his duties per recommendation of the Marine Superintendent, Mr. Peter Robinson, due to his poor performance (Annex G, Petition). He was in effect terminated from the service. This came after private respondent had a verbal altercation with Robinson, a British national, regarding the discipline or lack thereof of the Filipino crew under private respondents supervision. No inquiry or investigation, however, regarding his supposed incompetence or negligence was ever conducted; neither was private respondent furnished with a notice or memorandum regarding the cause of his dismissal.

Private respondent was made to disembark at the port of Oslo, Norway, and immediately repatriated to the country. Contrary to his perceived incompetence, private respondents Seamens Book contained the following entries:

Conduct - Very good

Ability - Very good

Remarks - Highly Recommended

(Annex F, p. 5, Petition)

Assignment of Errors

In their memorandum, petitioners submit that Respondent Commission gravely abused its discretion by:^{xii[12]}

- a. Rendering the assailed resolution and decisions without a full-blown trial on the merits, and
- b. Disregarding the evidence for the petitioners and ruling that the company illegally dismissed Basconcillo.

The Courts Ruling

The petition is bereft of merit. The petitioners failed to prove the elements of a valid dismissal, namely: (1) just cause and (2) due process.

First Issue: *Trial is Not Indispensable in Administrative Due Process*

Petitioners claim that Respondent Commission gravely abused its discretion in upholding the POEAs decision, which was based on the position papers and documents submitted by the parties in view of a motion for trial which remained unacted upon. They insist that a hearing was an indispensable condition before a judgment could be rendered in this case. We do not agree. Although bound by law and practice to observe due process, administrative agencies exercising quasi-judicial powers are nonetheless free from the rigidity of certain procedural requirements. As applied to these proceedings, due process requires only an opportunity to explain ones side.^{xiii[13]}

In labor cases, this Court has consistently held that due process does not necessarily mean or require a hearing, but simply an opportunity or a right to be heard. The requirements of due process are deemed to have been satisfied when parties are given the opportunity to submit position papers.^{xiv[14]} The holding of an adversarial trial is discretionary on the labor arbiter and the parties cannot demand it as a matter of right.^{xv[15]} More often than not, a litigant may be heard more creditably through pleadings than through oral arguments. In administrative proceedings, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated with due process in its strict judicial sense.^{xvi[16]} Due process was designed to afford an opportunity to be heard, and an actual verbal hearing need not always be held.^{xvii[17]} The necessity of conducting a hearing is addressed to the sound discretion of the labor arbiter.

These rules equally apply to cases filed with the Philippine Overseas Employment Administration Adjudication Office. Section 6 of Rule III, Book VII of the POEA Rules and Regulations of 1991^{xviii[18]} categorically states that proceedings before a POEA hearing officer is non-litigious, although they are still subject to the requirements of due process.^{xix[19]} Under the POEA Rules in force^{xx[20]} at the time the complaint was filed, summary judgments in which the pleadings, affidavits and evidence submitted are sufficient to render a decision -- are allowed under Section 4.^{xxi[21]} Where the parties fail to agree on an amicable settlement and summary judgment is not appropriate, a judgment based on position papers may be resorted to under Section 5.^{xxii[22]} Where there are complicated factual issues involved which cannot be resolved through such means, the hearing officer may direct the parties to submit suggested written clarificatory questions to be propounded to the party concerned.^{xxiii[23]}

Applied to this particular case, it is undeniable that petitioners were given their chance to be heard. Their answer, position paper and supporting documents had become parts of the records and were considered accordingly by the POEA administrator and by the Respondent Commission in rendering their respective decisions.

Furthermore, petitioners did not deem it necessary to ask the POEA Adjudication Office to conduct a hearing. It was the private respondent who moved for a full-blown trial. Although they did not oppose the motion, they did not concur with it either. Their silence was not an assent to the motion or an argument showing its necessity. Rather, it was an

eloquent statement that the position paper they submitted sufficiently covered all the issues. On the other hand, private respondents Motion for Decision, dated November 10, 1989, indubitably shows his waiver of his earlier requested hearing.^{xxiv[24]} This motion was similarly unopposed by petitioners. So too, petitioners present insistence on the necessity of a hearing is weakened by the fact that their memorandum before this Court failed to specify the matters which would have required a hearing.

In all, the Court concurs with the POEA administrator and Respondent Commission that a verbal hearing was dispensable. Petitioners belated insistence is a veiled attempt to reopen an otherwise decided case. Aside from being late, this attempt is purely dilatory, designed to unnecessarily prolong the resolution of the case. The Court holds that petitioners were not denied due process. No grave abuse of discretion was committed by Respondent Commission.

Second Issue: *Private Respondent Was Illegally Dismissed*

Where there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal. Verily, the burden is on the employer to prove that the termination was for a valid or authorized cause.^{xxv[25]} For an employees dismissal to be valid, (1) the dismissal must be for a valid cause and (2) the employee must be afforded due process.^{xxvi[26]} Article 282 of the Labor Code lists the following causes for termination of employment by the employer: (1) serious misconduct or willful disobedience of lawful orders in connection with his or her work, (2) gross and habitual neglect of duties, (3) fraud or willful breach of trust, (4) commission of a crime or an offense against the person of the employer or his immediate family member or representative, and (5) analogous cases.^{xxvii[27]}

The absence of a valid cause for termination in this case is patent. Petitioners allege that private respondent was dismissed because of his incompetence, enumerating incidents in proof thereof. However, this is contradicted by private respondents seamans book which states that his discharge was due to an emergency leave. Moreover, his alleged incompetence is belied by the remarks made by petitioners in the same book that private respondents services were highly recommended and that his conduct and ability were rated very good. Petitioners allegation that such remark and ratings were given to private respondent as an accommodation for future employment fails to persuade. The Court cannot consent to such an accommodation, even if the allegation were true, as it is a blatant misrepresentation. It cannot exculpate petitioners based on such (mis)representation. When petitioners issued the accommodation, they must have known its possible repercussions. They cannot be allowed to turn against their representation.

As correctly argued by the solicitor general in his comment, it was incumbent upon the petitioners to clearly establish that the discharge was for a just cause before they could legitimately terminate the private respondents services. However, they miserably failed in this respect.^{xxviii[28]} The alleged incidents of incompetence were unsupported by relevant and convincing evidence. The affidavits of Robinson and Capt. Jose B.

Orquinaza, who caused private respondents dismissal and recommendation, are highly suspicious and do not in any way prove that the alleged incidents showing private respondents incompetence were ever investigated and proven,^{xxix[29]} as they were sufficiently rebutted by the entries in the seamen's book.^{xxx[30]} Mere allegations are not synonymous with proof.

Further, the POEA administrator and the Respondent Commission have cleared the private respondent of such charges, noting that he sufficiently rebutted them. Petitioners, on the other hand, presented no adequate evidence or argument to tilt the weight of the evidence in their favor. Without factual basis are their contentions which are as follows: (1) private respondent had been inactive and unemployed for five years prior to his employment with petitioners; and (2) developments in ship technology, equipment and damage control measures, during the five years he was unemployed, gravely affected his expertise. Petitioners failed to specify these alleged advanced equipment and measures. Neither did they explain that the instances where private respondent allegedly endangered the ship and its crew involved any of these advanced equipment and measures. The Court sees no justification to depart from the well-settled rule that the factual findings of quasi-judicial agencies like the Respondent Commission, which have acquired expertise in the matters entrusted to their jurisdiction, are accorded by the Supreme Court not only respect but even finality if they are supported by substantial evidence, or that amount of relevant evidence which a reasonable mind would accept as adequate to justify a conclusion.^{xxxi[31]}

Petitioners, in our view, failed to rebut the following observations of the Respondent Commission:^{xxxii[32]}

After perusing the records of this case, we arrived at the conclusion that the Honorable POEA Administrator committed no reversible error in finding that the dismissal of the complainant herein was illegal and violative of the contract of employment. [Petitioners] allegation that [private respondent] was validly terminated because of inefficiency on the basis of their consultants report would not merit [o]ur judicial approval because of the following reasons:

First, it was [petitioners] themselves who hired and contracted the services of [private respondent], presumably after considering his years of experience and records of performance, otherwise, it would not have entered into a one year contract of employment with [private respondent]. It is highly unthinkable that [a] company like them would be so naive as to be hoodwink[ed] into hiring somebody who is not an expert and does not know anything. Not if [w]e are to consider that they ply international routes and capable of offering such princely benefits as they did to [private respondent].

Second, the report of their British consultant is suspect to being one made out of vengeance, what with the altercation that transpired between them immediately prior to the preparation of the report. xxxx But more importantly, the detailed report (See, p. 125 of *Rollo*), said consultant[s report] was to [o]ur mind substantially rebutted by complainant one after the other in his position paper dated October 2, 1987 (See, pp.

109 to 112 of *Rollo*). As such, the same could not have carried much weight. There is no question therefore that complainant was dismissed without any justifiable cause.

Due process, the second element for a valid dismissal, requires notice and hearing.^{xxxiii[33]} Before the employee can be dismissed under Article 282, the Code requires the service of a written notice containing a statement of the cause(s) of termination and giving said employee ample opportunity to be heard and to defend himself. A notice of termination in writing is further required if the employees dismissal is decided upon.^{xxxiv[34]} The employer must furnish the worker with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought and (2) subsequent notice which informs the employee of the employers decision to dismiss him. The twin requirements of notice and hearing constitute the essential elements of due process, and neither of these elements can be eliminated without running afoul of the constitutional guaranty.^{xxxv[35]}

Using these legal criteria, we hold that private respondent was illegally dismissed. No notice was ever given to him prior to his dismissal. This fact alone disproves petitioners allegation that private respondent was given fair warning and enough opportunity to explain his side [regarding] the incidents that led to his dismissal. These requisites cannot be replaced as they are not mere technicalities, but requirements of due process to which every employee is entitled to ensure that the employers prerogative to dismiss is not exercised arbitrarily.^{xxxvi[36]}

Illegally dismissed workers are entitled to the payment of their salaries corresponding to the unexpired portion of their employment where the employment is for a definite period.^{xxxvii[37]} Conformably, the administrator and the Respondent Commission properly awarded private respondent salaries for the period beginning April 9, 1987, the date of his illegal dismissal, until February 18, 1988, the expiration of his contract.

WHEREFORE, the petition is hereby *DISMISSED*. The challenged Decision and Resolution are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

^{i[1]} *Rollo*, pp. 36-39.

^{ii[2]} *Ibid.*, pp. 40-44.

iii[3] *Id.*, pp. 50-55.

iv[4] *Id.*, pp. 58-65.

v[5] *Id.*, pp. 74-75.

vi[6] *Id.*, p. 75.

vii[7] The second division of the respondent commission was composed of Comms. Rogelio I. Rayala, ponente; Edna Bonto-Perez, presiding commissioner; and Domingo Zapanta.

viii[8] *Rollo*, p. 29.

ix[9] *Ibid.*, p. 24.

x[10] The case was deemed submitted for resolution after the Court in its Resolution dated March 4, 1996 granted private respondents motion for leave to admit his delayed memorandum, and thereafter noted said memorandum.

xi[11] *Rollo*, pp. 330-331.

xii[12] *Rollo*, p. 304.

xiii[13] *Alliance of Democratic Free Labor Organization vs. Laguesma*, 254 SCRA 565, 572-573, March 11, 1996, per Panganiban, J.

xiv[14] *Pepsi Cola Distributors of the Philippines, Inc. vs. National Labor Relations Commission*, 247 SCRA 386, 394, August 15, 1995; and *Salonga vs. National Labor Relations Commission*, 254 SCRA 111, 114-115, February 23, 1996.

xv[15] *Salonga vs. NLRC*, *ibid.*

xvi[16] *Concerned Officials of the Metropolitan Waterworks and Sewerage System vs. Vasquez*, 240 SCRA 502, 518, January 25, 1995, per Vitug, J.

xvii[17] *Pamantasan ng Lungsod ng Maynila vs. Civil Service Commission*, 241 SCRA 506, 516, February 21, 1995, per Vitug, J.

xviii[18] POEA Rules and Regulations of 1991 was signed on May 31, 1991 by Secretary of Labor and Employment Ruben D. Torres.

xix[19] Section 6. Nature of proceedings. The proceedings before the Hearing Officer shall be non-litigious in nature, subject to the requirements of due process. The technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto.

The Hearing Officer may avail himself of all reasonable means to ascertain the facts of the case, including ocular inspection, where appropriate, and examination of informed persons.

xx[20] Minister of Labor and Employment Blas F. Ople and POEA Administrator Patricia A. Sto. Tomas signed on May 21, 1985 the POEA Rules and Regulations.

xxi[21] Section 4. Summary Judgment. If on the basis of the pleadings/evidence on record, the Hearing Officer finds that there is sufficient ground to render judgment, he shall consider the case submitted for decision. (Now Section 3, Rule III, Book VII, POEA Rules and Regulations of 1991.)

xxii[22] Section 5. Judgment Based on Position Paper. Whenever summary judgment is not appropriate, the Hearing Officer shall direct the parties to the case to simultaneously submit their position papers and/or memoranda within fifteen (15) calendar days from notice after which the case shall be deemed submitted for decision. (Now Sections 4, Rule III, Book VII, POEA Rules and Regulations of 1991.)

xxiii[23] Section 6. Investigation Procedure. Where the Hearing Officer finds that there are complicated factual issues involved which cannot be resolved through position papers and/or memoranda, he shall conduct investigation by requiring the parties to submit affidavits. He may, if necessary, direct the parties to appear before him to answer clarificatory questions. For this purpose, he may allow the parties to submit suggested written clarificatory questions which he may propound to the parties concerned. (Now Section 5, Rule III, Book VIII, POEA Rules and Regulations of 1991.)

xxiv[24] Records, pp. 142-142.

xxv[25] *Shoppers Gain Supermart vs. National Labor Relations Commission*, 259 SCRA 411, 422, July 26, 1996; *AHS/Philippines, Inc. vs. Court of Appeals*, 257 SCRA 319, 331, June 14, 1996; *JGB and Associates, Inc. vs. National Labor Relations Commission*, 254 SCRA 457, 462-463, March 7, 1996; and *Valiant Machinery and Metal Corporation vs. National Labor Relations Commission*, 252 SCRA 369, 377, January 25, 1996.

xxvi[26] *AHS/Philippines, Inc. vs. C.A.*, *ibid.*, p. 329; *Pizza Hut/Progressive Development Corporation vs. National Labor Relations Commission*, 252 SCRA 531, 535, January 29, 1996.

xxvii[27] *AHS/Philippines vs. C.A.*, *Id.*, p. 329; and *Lim vs. National Labor Relations Commission*, 259 SCRA 485, 496, July 26, 1996.

xxviii[28] *Rollo*, pp. 164-168.

xxix[29] *Reyes & Lim Company, Inc. vs. National Labor Relations Commission*, 201 SCRA 772, 776-778, September 25, 1991, per Medialdea, J.

xxx[30] *Hellenic Philippine Shipping, Inc. vs. Siete*, 195 SCRA 179, 183-184, March 13, 1991, per Cruz, J.

xxxi[31] *Falguera vs. Linsangan*, 251 SCRA 364, 373, December 14, 1995; *Saballa vs. National Labor Relations Commission*, 260 SCRA 697, 706, August 22, 1996; *Philippine Telegraph & Telephone Corporation (PT&T) vs. National Labor Relations Commission*, 251 SCRA 21, 28, December 7, 1995;

Sebuguero vs. National Labor Relations Commission, 248 SCRA 532, 544, September 27, 1995; and Catatista vs. National Labor Relations Commission, 247 SCRA 46, 55-56, August 3, 1995.

xxxii[32] *Rollo*, pp. 27-29.

xxxiii[33] *Geslani vs. National Labor Relations Commission*, 253 SCRA 612, 622, February 14, 1996, per Padilla, J.

xxxiv[34] The Labor Code, prior to R.A. 6715, provides:

Article 277. Miscellaneous provisions.

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However, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Ministry of Labor and Employment. xxxx.

Rule XIV of the Omnibus Rules Implementing the Code provides:

SEC.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. xxxx.

SEC.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 representatives, if he so desires.

SEC. 6. Decision to dismiss. The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

xxxv[35] *Jones vs. National Labor Relations Commission*, 250 SCRA 668, 674-675, December 6, 1995; *Cocoland Development Corp vs. National Labor Relations Commission*, 259 SCRA 51, 61-62, July 17, 1996; and *Midas Touch vs. National Labor Relations Commission*, 259 SCRA 652, 658-659, July 29, 1996.

xxxvi[36] *JGB and Associates, Inc. vs. NLRC*, *supra*, p. 466.

xxxvii[37] *Better Buildings, Inc. vs. NLRC*, G.R. No. 109714, December 15, 1997, pp. 6-7, per Romero, J.