



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ENCHANTED KINGDOM, INC.,  
Petitioner,

G.R. No. 209559

Present:

- versus -

CARPIO, J., *Chairperson*,  
DEL CASTILLO,  
PEREZ,\*  
MENDOZA, and  
LEONEN, JJ.

MIGUEL J. VERZO,  
Respondent.

Promulgated:

09 DEC 2015

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DECISION

**MENDOZA, J.:**

Before this Court is a petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner Enchanted Kingdom, Inc. (*Enchanted*), assailing the March 26, 2013 Decision<sup>2</sup> and the October 11, 2013 Resolution<sup>3</sup> of the Court of Appeals (*CA*) in CA-G.R. SP No. 118075. Through the assailed dispositions, the *CA reversed* the September 27, 2010<sup>4</sup> and November 30, 2010<sup>5</sup> Resolutions of the National Labor Relations Commission (*NLRC*), concurring in the finding of the Labor Arbiter (*LA*), that the complaint for illegal dismissal, damages and attorney's fees filed by respondent Miguel J. Verzo (*Verzo*) against Enchanted was without merit.<sup>6</sup>

\* Per Special Order No. 2301, dated December 1, 2015.

<sup>1</sup> *Rollo*, pp. 3-55.

<sup>2</sup> Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan-Castillo and Amy C. Lazaro-Javier, concurring; id. at 28-42.

<sup>3</sup> Id. at 44-47.

<sup>4</sup> Id. at 239-244.

<sup>5</sup> Id. at 288-289.

<sup>6</sup> Decision, dated June 8, 2010, penned by Labor Arbiter Napoleon V. Fernando. Id. at 181-183.

### *Position of Enchanted*

On August 19, 2009, Verzo was hired by Enchanted to work as Section Head – Mechanical & Instrumentation Maintenance (*SH-MIM*) for its theme park in Sta. Rosa City, Laguna, for a period of six (6) months on probationary status. He was tasked to conduct “mechanical and structural system assessments,” as well as to inspect and evaluate the “conditions, operations and maintenance requirements of rides, facilities and buildings to ensure compliance with applicable codes, regulations and standards.”<sup>7</sup> He was also provided with a detailed list<sup>8</sup> of responsibilities that he should fulfill.

During the probationary period, Enchanted assessed Verzo’s performance as not up to par. On January 26, 2010, Robert M. Schoefield (*Schoefield*), one of Verzo’s fellow section heads, made his recommendation to Rizalito M. Velesrubio (*Velesrubio*), Verzo’s immediate supervisor, that he should not be considered for regularization. In his memorandum,<sup>9</sup> Schoefield noted the following: Verzo failed to take action to replace the faucets in the lavatories of the park and to ensure that the proximity brackets of one of the rides were properly installed; he mishandled the operation of the park’s submersible pump, which resulted in the overflow of the sludge from Enchanted’s sewage treatment plant towards the parking entrance; he once reported that the ZORB Ball pond had sufficient water for its operation, but the following day, one of Enchanted’s patrons got injured due to the pond’s low water level; and he often used company time browsing the internet for his personal use.

Schoefield’s evaluation was shared by another section head, Jun Montemayor (*Montemayor*). In his memorandum,<sup>10</sup> addressed to Velesrubio, Montemayor made the following observations<sup>11</sup>:

1. His performance was more of a “rank and file” rather than that of a Section Head because even if there was a need for him to start or there was urgent work to attend, he would still go home or take his “lunchtime.”
2. He had no initiative or even if he was called for certain activities, project or work, he would disappear or would not involve himself at all.

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<sup>7</sup> Id. at 58-59.

<sup>8</sup> Id. at 60-63.

<sup>9</sup> Id. at 197.

<sup>10</sup> Id. at 198.

<sup>11</sup> Id. at 193 (paraphrased).

3. In several instances, he was observed using company computers during office hours, searching for motorcycle models and clubs which were all not related to his work, as he admitted during their meeting.
4. He was very slow in making decisions or very slow to act resulting in delayed results or “no result” at all.
5. Punctuality was also a concern. Oftentimes, he would report at 9:00 o’clock in the morning, affecting productivity.
6. He was afraid of giving orders/instruction to his subordinates.

Velesrubio agreed with the observations of Schoefield and Montemayor that Verzo was lax in the performance of his duties. In his memorandum<sup>12</sup> addressed to Nympha C. Maduli (*Maduli*), head of Enchanted’s Human Resources Department, Velesrubio reported that Verzo failed to check a problem with a lift for several days despite earlier instructions to him to fix it. Due to his failure, Velesrubio had no recourse but to check and undertake the repair of the lift himself with the assistance of other technicians.

Velesrubio added that, in another attraction, Verzo did not immediately comply with his instructions to check and repair a malfunctioning water pump for several weeks. The problem was only resolved when Velesrubio did a follow up on his instruction.<sup>13</sup>

According to Velesrubio, Verzo’s incompetence extended to his lack of the pertinent technical knowledge needed for the position. In one instance, Velesrubio instructed Verzo to check the expansion valve of the air-conditioning unit in one of the attractions. He was surprised, however, to find out that Verzo was unaware that the air-conditioning unit had an expansion valve.<sup>14</sup>

Taking all these into consideration, on February 3, 2010, Enchanted furnished Verzo a copy of the Cast Member Performance Appraisal<sup>15</sup> for Regularization which reported that he only obtained a score of 70 out of 100. Aside from indicating the numerical score, Enchanted’s evaluation of his

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<sup>12</sup> Id. at 199.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id. at 198.

performance contained the following notations under Supervisor's Over-All Assessment:

Lacking in supervisory skill;  
Incompetent technically;  
Lacking in initiative/sense of responsibility.<sup>16</sup>

On February 15, 2010, Enchanted formally informed Verzo that he did not qualify for regularization because his work performance for the past five (5) months "did not meet the requirements of the position of Section Head for Mechanical and Instrumentation Maintenance, xxx."<sup>17</sup>

### *Position of Verzo*

Believing that he was arbitrarily deprived of his employment, Verzo filed a complaint for illegal dismissal, damages and attorney's fees before the LA.

In his complaint, Verzo claimed that it was only after he was formally hired by Enchanted that he was informed of his probationary status. And even after despite being placed on a probationary status, he was not advised as to the standards required for his regularization.<sup>18</sup>

Notwithstanding the status of his employment, Verzo believed that he performed his job well.<sup>19</sup> Not only was he always punctual and regular in his attendance, but he was also respectful of his superiors and he maintained a good working relationship with his subordinates. In addition, during his tenure with Enchanted, he was able to introduce useful innovations in the maintenance procedures of the park.<sup>20</sup>

For Verzo, the controversy began on January 5, 2010, when Schoefield approached and told him that Enchanted had decided not to continue with his employment. While Velesrubio confirmed the news relayed by Schoefield, he refused to provide any explanation therefor. Instead, Velesrubio advised him to resign so that he could be provided with a certificate of employment that he could use in the future.<sup>21</sup>

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<sup>16</sup> Id. at 64.

<sup>17</sup> Id. at 66.

<sup>18</sup> Records, p. 129.

<sup>19</sup> Id.

<sup>20</sup> Id. at 130.

<sup>21</sup> Id. at 131.

Verzo asked Velesrubio several times to explain why he could not be considered for regularization, but to no avail. Verzo then approached Federico Juliano (*Juliano*), Enchanted's Executive Vice President for operations, to seek advice on his dilemma. Aside from telling Verzo that he apparently lacked control over the personnel under his supervision, Juliano did not give any explanation why Enchanted would not consider him for regularization and only advised him to just resign.<sup>22</sup>

It was only after Verzo submitted a letter,<sup>23</sup> dated January 26, 2010, to Velesrubio that the latter called for a meeting on that same day. Instead of discussing the reason why he could not be regularized, however, Velesrubio, together with Schoefield and Montemayor, proceeded to accuse him of imagined transgressions. Aside from the fact that it was the first time that he heard of such allegations, he was not given the chance to explain his side either.<sup>24</sup>

On February 3, 2010, Verzo went to the office of Maduli to receive his performance appraisal. He was again advised to just resign in exchange for a certificate of employment. Maduli then showed him a copy of his performance appraisal and the memoranda submitted by Velesrubio, Schoefield and Montemayor which cited his shortcomings. Verzo then asked for time to answer the allegations in writing.<sup>25</sup>

To his surprise, before he was able to submit his written reply to the allegations hurled against him, Verzo received a letter, dated February 15, 2010, from Enchanted, informing him that he was being terminated for his failure to qualify for regularization.

### ***The Decision of the LA***

On June 8, 2010, the LA rendered its decision dismissing Verzo's complaint for lack of merit. The LA explained that his status being probationary, his employment was only temporary and, thus, could be terminated at any time. The LA stated that as long as the termination was made before the end of the six-month probationary period, Enchanted was well within its rights to sever the employer-employee relationship with Verzo.<sup>26</sup>

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<sup>22</sup> Id. at 132.

<sup>23</sup> Id. at 131-132.

<sup>24</sup> Id. at 72-73.

<sup>25</sup> Id. at 74-75.

<sup>26</sup> Id. at 183.

### ***The Decision of the NLRC***

On September 27, 2010, the NLRC issued a resolution denying Verzo's appeal for lack of merit. According to the NLRC, his contention that he was not furnished or shown a probationary contract so that he could have been advised of the standards for regularization was belied by the fact that he himself attached to his position paper his signed contract of employment informing him of his probationary status and the job description of his position at Enchanted.<sup>27</sup>

The NLRC opined that Verzo's position as SH-MIM was not highly technical as to require that his contract with Enchanted specify the reasonable standards for regularization. Assuming that it was required, the NLRC considered the fact that he signed his employment contract detailing the standards expected of him.<sup>28</sup> The NLRC stated that as a licensed engineer, Verzo had a better comprehension of things compared to an average worker. Thus, the NLRC found it incredible that he was unaware of what was professionally expected of him for his regularization.<sup>29</sup>

In concluding that Verzo was rightfully severed from his employment, the NLRC took into consideration the Cast Member Performance Appraisal for Regularization which showed that he failed to meet the qualifications or requirements set by Enchanted.<sup>30</sup> The NLRC concluded that Enchanted acted within its rights when it dismissed him, considering that his inability to perform his job concerned the very safety and security of Enchanted's patrons.<sup>31</sup>

Verzo sought reconsideration but his motion was denied.<sup>32</sup>

### ***The Decision of the CA***

The CA, in the assailed decision, *reversed* the findings of the NLRC and the LA. It was of the view that the probationary contract between the parties failed to set the standards that would gauge Verzo's fitness and qualification for regular employment. According to the CA, "the NLRC's supposition that Verzo may not be apprised of the standard for regularization – on the assumption that given his itinerary and education, he has wider

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<sup>27</sup> Id. at 242.

<sup>28</sup> Id. at 243.

<sup>29</sup> Id. at 242-243.

<sup>30</sup> Id. at 242.

<sup>31</sup> Id. at 243.

<sup>32</sup> Id. at 288-289.

comprehension of what is expected of him professionally – is misplaced.”<sup>33</sup> For said reason, the CA opined that he should be considered a regular employee of Enchanted.

The CA further stated that even if Verzo was considered a probationary employee, his termination was tainted with bad faith. The appellate court gave weight to the conversation between Velesrubio and Verzo prior to the release of the actual performance evaluation, where the former intimated to the latter that he would not be regularized and even advised him to resign. It also pointed out that the performance evaluation by Enchanted failed to specify the instances of Verzo’s unfitness and to indicate that the numerical rating of 70 out of 100, given by Enchanted, was unsatisfactory or poor or that it was below the rating required for regularization. The CA concluded that Enchanted’s dismissal of Verzo was arbitrary.<sup>34</sup>

Enchanted sought reconsideration, but was rebuffed.<sup>35</sup>

Hence, this petition with the following

#### **ASSIGNMENT OF ERRORS<sup>36</sup>**

**THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT, IN THAT IT SERIOUSLY ERRED IN NULLIFYING THE RESOLUTIONS OF THE NLRC WHICH UNIFORMLY FOUND RESPONDENT A PROBATIONARY EMPLOYEE WHO FAILED TO QUALIFY FOR REGULAR EMPLOYMENT, CONSIDERING THAT:**

- A) AT THE TIME OF ENGAGEMENT, RESPONDENT WAS INFORMED OF THE STANDARDS FOR HIS REGULARIZATION.**
- B) RESPONDENT’S PERFORMANCE WAS DULY EVALUATED BEFORE HE WAS DISMISSED FROM EMPLOYMENT FOR FAILING TO QUALIFY FOR REGULAR EMPLOYMENT.**
- C) RESPONDENT IS NOT ENTITLED TO REINSTATEMENT, BACKWAGES, MORAL DAMAGES, AND ATTORNEY’S FEES.**

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<sup>33</sup> Id. at 36-37.

<sup>34</sup> Id. at 38-39.

<sup>35</sup> Id. at 44-47.

<sup>36</sup> Id. at 8-9.

**D) FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION COINCIDING WITH THAT OF THE LABOR ARBITER ARE ACCORDED GREAT RESPECT, IF NOT FINALITY.**

Enchanted asserts that the CA committed a palpable error for failing to accord respect and finality to the findings of the LA and the NLRC that it validly terminated Verzo for failure to qualify for regular employment. The findings of the labor officials should have been respected by the CA.<sup>37</sup>

On the merits of the case, Enchanted insists that Verzo was apprised of his probationary status and the standards that were expected of him at the time of his employment. Its letter, dated August 26, 2009, specifically mentioned that he was being placed on probationary status from August 19, 2009 to February 18, 2010. The same letter was also accompanied by a Job Description of his position which detailed his duties and responsibilities. Enchanted also points out that both the probationary contract and Job Description were signed by Verzo to signify his conformity.<sup>38</sup> Enchanted argues that his dismissal was valid because he failed to adhere to the dictates of common sense that required him to act in accordance with his position as SH-MIM.<sup>39</sup> According to Enchanted, Verzo need not be informed of his specific duties and responsibilities because his job was self-descriptive.<sup>40</sup>

In further support of its position that Verzo's dismissal was valid, Enchanted asserts that the CA's conclusion, that he was being made to resign even before his evaluation, was entirely baseless. Enchanted insists that it conducted its evaluation of Verzo for regularization on January 26, 2010 after considering all the evidence it had on record. It only notified Verzo of its conclusion on February 15, 2010, or twenty (20) days after it had evaluated him.

**The Court's Ruling**

Well-settled is the rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave

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<sup>37</sup> Id. at 18-20.

<sup>38</sup> Id. at 9-15.

<sup>39</sup> Id. at 11-13.

<sup>40</sup> Id. at 13-14.

abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

In the case at bench, the factual findings of the LA and the NLRC differ from that of the CA. This divergence of positions between the CA on one hand, and the labor tribunals below constrains the Court to review and evaluate the evidence on record and determine whether Verzo was illegally dismissed.

Essentially, Enchanted questions the finding of the CA that it illegally dismissed Verzo, considering that it was simply exercising its prerogative to dismiss a probationary employee for failing to meet the reasonable standards it set at the time he was hired.

Verzo, on the other hand, contends that he was a regular employee of Enchanted because he was not apprised of his probationary status at the start of his employment and was not informed of the reasonable standards for his regularization. As a regular employee, Verzo claims that he could only be dismissed for cause and only after the twin requirements of notice and hearing had been complied with.

#### *Probationary Employment*

A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer. The word probationary, as used to describe the period of employment, implies the purpose of the term or period. While the employer observes the fitness, propriety and efficiency of a probationer, to ascertain whether he is qualified for permanent employment, the probationer, at the same time, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment.<sup>41</sup> The concept of probationary employment was, thus, introduced for the benefit of the employer to provide him with ample time to observe and determine whether

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<sup>41</sup> *Escorpizo v. University of Baguio*, 366 Phil. 166, 175-176 (1999).

a newly hired employee has the competence, ability and values necessary to achieve his objectives.

A probationary employee, like a regular employee, enjoys security of tenure. In cases of probationary employment, however, aside from just or authorized causes of termination, under Article 281 of the Labor Code, the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with the reasonable standards made known by the employer to the employee at the time of the engagement.<sup>42</sup> In summary, a probationary employee may be terminated for any of the following: (a) a just; or (b) an authorized cause; and (c) when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.<sup>43</sup>

Section 6(d), Rule I, Book VI of the Implementing Rules of the Labor Code provides that if the employer fails to inform the probationary employee of the reasonable standards on which his regularization would be based at the time of the engagement, then the said employee shall be deemed a regular employee. Thus:

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

In *Abbott Laboratories v. Alcaraz*,<sup>44</sup> the Court stated that when dealing with a probationary employee, the employer is made to comply with two (2) requirements: *first*, the employer must communicate the regularization standards to the probationary employee; and *second*, the employer must make such communication at the time of the probationary employee's engagement. If the employer fails to comply with either, the employee is deemed as a regular and not a probationary employee.

An exception to the foregoing rule is when the job is self-descriptive, as in the case of maids, cooks, drivers, or messengers.<sup>45</sup>

In *Aberdeen Court, Inc. v. Agustin*,<sup>46</sup> it has been held that the rule on notifying a probationary employee of the standards of regularization should not be used to exculpate an employee who acted in a manner contrary to basic knowledge and common sense in regard to which there was no need to

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<sup>42</sup> *Robinson's Galleria/Robinsons Supermarket Corporation v. Ranchez*, 655 Phil. 133, 139 (2011).

<sup>43</sup> *Id.*

<sup>44</sup> G.R. No. 192571, July 23, 2013, 701 SCRA 682.

<sup>45</sup> *Robinson's Galleria/Robinsons Supermarket Corporation v. Ranchez*, *supra* note 42.

<sup>46</sup> 495 Phil. 706, 716-717 (2005).

spell out a policy or standard to be met. In the same light, an employee's failure to perform the duties and responsibilities which had been clearly made known to him would constitute a justifiable basis for a probationary employee's non-regularization.

In the case at bench, the evidence is clear that when Verzo was first hired by Enchanted, he was placed on a probationary status. The letter, dated August 26, 2009, clearly reflects not only the agreement of both parties as to the probationary status of the employment and its duration, but also the fact that Enchanted informed Verzo of the standards for his regularization. Thus:

August 26, 2009

MR. MIGUEL J. VERZO  
B6 L15 San Lorenzo South Village  
Sta. Rosa, Laguna

Enchanted Kingdom, Inc. (Company) warmly welcomes you as one of its cast members effective August 19, 2009 under the terms and conditions set forth below:

1. The designation of your position in the Company shall be Section Head-Mechanical & Instrumentation Maintenance and you shall be reporting directly to the Head for Maintenance Mr. Rizalito M. Velesrubio. Your compensation package shall be as follows:

COMPENSATION: Monthly gross salary of ₱18,614.54 computed on a 13-month basis (annual gross compensation of ₱241,985.12), payable on the 15<sup>th</sup> and last day of every month.

BENEFITS: Aside from the Statutory Benefits, you will be entitled to the following benefits immediately upon hiring:

X X X X

In addition to the above, you will be entitled to the following benefits, **once regularized:**

X X X X

2. You will be on a **probationary status** from August 19, 2009 to February 18, 2010.

3. As Section Head for Mechanical & Instrumentation Maintenance, you shall be responsible for mechanical and structural system assessments and inspection to evaluate conditions, operations and maintenance requirements of rides, facilities and buildings to ensure compliance with applicable codes, regulations and standards. Please see attach Job Description for the details of your responsibilities.

x x x x

10. It is agreed and understood that there shall be no verbal agreement or understanding between the parties hereto affecting this contract and that no alteration or variation of the terms herein provided shall be binding upon either party unless in writing and signed by both parties.

x x x x

Very truly yours,

ENCHANTED KINGDOM, INC.

[Sgd.]

MA. CRISTINA O. DE LEON

Head – HRMAS

I hereby acknowledge receipt of the original of this letter and agree to all the terms and conditions stated herein.

[Sgd.] September 2, 2009

MIGUEL J. VERZO

[Emphases and Underscoring Supplied]

Clearly from the above, Enchanted informed Verzo that he was being placed on probation. Aside from the probationary nature of his employment, the agreement of the parties specifically showed: the duration of such status; the benefits to which he was entitled once regularized; and most importantly, the standard with which he must comply in order to be regularized. To deserve regularization, he must be able to conduct “mechanical and structural system assessments,” as well as inspect and evaluate the “conditions, operations and maintenance requirements of rides, facilities and buildings to ensure compliance with applicable codes, regulations and standards.” A detailed enumeration of his specific duties accompanied this letter of employment to ensure that he was made aware and informed of his duties and responsibilities.

Verzo makes much noise of the fact that the letter was not served upon him immediately at the very start of his employment on August 19, 2009. Suffice it to state that Enchanted was able to substantially comply with the requirement of the law in apprising him of the standards for his regularization. Verily, the purpose of the law in requiring that an employee

be notified of the standards for his regularization during his probationary employment is to simply afford him due process, so that the employee will be aware that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors.<sup>47</sup>

Moreover, while it may be argued that ideally employers should immediately inform a probationary employee of the standards for his regularization from day one, strict compliance thereof is not required. The true test of compliance with the requirements of the law is, of course, one of reasonableness. As long as the probationary employee is given a reasonable time and opportunity to be made fully aware of what is expected of him during the early phases of the probationary period, the requirement of the law has been satisfied.

At any rate, a total of only fourteen (14) days had just lapsed when Verzo officially received the letter containing what he already knew – that he was still a probationary employee. It is ludicrous to think that Enchanted conjured this up as an afterthought to justify his termination before probationary period would be over.

At any rate, contrary to the findings of the CA, the Court finds that Enchanted had basis when it decided not to continue with the services of Verzo as SH-MIM.

*First*, while the CA leaned heavily on the fact that the performance evaluation given by Enchanted did not specify the instances of Verzo's unfitness, it should be pointed out that Verzo himself admitted that the performance evaluation he received on February 3, 2010 was accompanied by the respective reports of Schoefield, Montemayor and Velesrubio.<sup>48</sup> As earlier stated, these reports detailed the reasons why Verzo failed to meet the standards set by Enchanted and compromised the safety of its patrons.

*Second*, granting that Verzo was not informed of his specific duties and responsibilities, nonetheless, his dismissal was valid because he failed to adhere to the dictates of common sense which required that he act in accordance with the necessary work ethics and basic skills required by his position as SH-MIM *and* by his profession as licensed engineer.

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<sup>47</sup> *Philippine Daily Inquirer v. Magtibay*, 555 Phil. 326, 336 (2007).

<sup>48</sup> *Rollo*, p. 867.

*Third*, while the CA considered the fact that Velesrubio advised Verzo to resign because he was not going to be regularized even before his performance appraisal, the Court finds that such should not be taken as an indication of bad faith on the part of Enchanted. For this Court, the same could only be Velesrubio's own opinion of Verzo, because he was the one supervising his performance. Whether Enchanted had decided to discontinue Verzo's employment cannot, at that point, be said to have been a foregone conclusion.

Contrary to Verzo's theory that Velesrubio conspired with Enchanted to oust him from his position, the Court gives credence to the reports made by Verzo's very own colleagues, Schoefield and Montemayor. As against Verzo's self-serving theory, Schoefield and Montemayor clearly detailed the reasons why Verzo lacked the required competence of a SH-MIM. The reasons in their reports were numerous and spelled out with particulars, unlikely products of fabrication.

If only to stress the point, Schoefield's report cited an incident where, Verzo, after being instructed to check the water level of one of the pools, reported back that the pool had sufficient water for its operation. It was found out the following day that one of Enchanted's patrons got injured due to the pool's low water level. Verzo also mishandled the operation of the park's submersible pump causing sludge to overflow up to the entrance of the parking area. On more than one occasion, Verzo failed to take action to replace equipment needed for the proper operation of the park's facilities.

These observations were corroborated by Montemayor, who recounted that he was slow to make decisions, was often seen using company computers for personal interests, and was often late to report for work. With these, it is clear that Velesrubio was correct in not recommending the regularization of Verzo because he evidently lacked the basic standard of competence, prudence and due diligence.

On punctuality, in the recent case of *Carvajal v. Luzon Development Bank*,<sup>49</sup> the Court has emphasized that:

Punctuality is a reasonable standard imposed on every employee, whether in government or private sector. As a matter of fact, habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee. Assuming that petitioner was not apprised of the standards concomitant to her job, it is but common sense that she must abide by the work hours imposed by the bank.

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<sup>49</sup> 692 Phil. 273 (2012).

*Notice and Hearing Not Required*

Whether or not Verzo was afforded the opportunity to explain his side is of no consequence. Under Section 2 Rule I, Book VI of the Implementing Rules of the Labor Code:

Section 2. Security of tenure. (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

(b) The foregoing shall also apply in cases of probationary employment; Provided however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.

xxx

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

xxx

If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, **it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination.**

[Emphasis Supplied]

In *Philippine Daily Inquirer v. Magtibay*,<sup>50</sup> the Court stressed that notice and hearing are not required in case a probationary employee is not retained for failure to comply with the reasonable standards set by his employer. Thus:

Unlike under the first ground for the valid termination of probationary employment which is for cause, **the second ground does not require notice and hearing.** Due process of law for this second ground consists of making the reasonable standards expected of the employee **during his probationary period** known to him at the time of his probationary employment. By the very nature of a probationary employment, the employee knows from the very start that he will be under close observation and his performance of

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<sup>50</sup> *Supra* note 47.

his assigned duties and functions would be under continuous scrutiny by his superiors. **It is in apprising him of the standards against which his performance shall be continuously assessed where due process regarding the second ground lies**, and not in notice and hearing as in the case of the first ground.<sup>51</sup>

[Emphases and Underscoring Supplied]

Considering that Verzo failed to meet the reasonable standards set out by it, Enchanted cannot be compelled to regularize Verzo. Enchanted, being engaged in the business of providing entertainment and amusement with mechanical rides and facilities, is not duty-bound to retain an employee who is clearly unfit. With his attitude, inefficiency and incompetency, it is most likely that an accident would occur for which Enchanted, an amusement enterprise which caters mostly to children, could be sued for damages.

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play.<sup>52</sup>

**WHEREFORE**, the March 26, 2013 Decision and the October 11, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 118075 are hereby **REVERSED** and **SET ASIDE**.

The complaint filed by respondent Miguel J. Verzo for illegal dismissal, damages and attorney's fees is **DISMISSED** for lack of merit.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

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<sup>51</sup> Id. at 336.

<sup>52</sup> *Mercury Drug Corporation v. National Labor Relations Commission*, G.R. No. 75662, September 15, 1989, 177 SCRA 580, 586-587.

**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**MARIANO C. DEL CASTILLO**  
Associate Justice



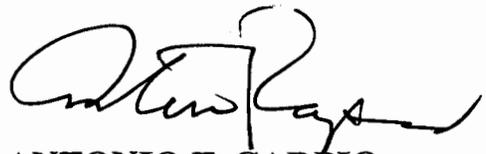
**JOSE PORTUGAL PEREZ**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice

**ATTESTATION**

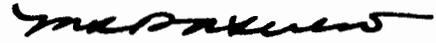
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

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