Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NICANOR F. MALCABA, CHRISTIAN C. NEPOMUCENO, and LAURA MAE FATIMA F. PALIT-ANG, Petitioners,	**G.R. No. 209085** Present: VELASCO, JR., *J., Chairperson,* BERSAMIN, LEONEN, MARTIRES, and GESMUNDO, *JJ.*
-versus-	
PROHEALTH PHARMA PHILIPPINES, INC., GENEROSO R. DEL CASTILLO, JR., AND DANTE M. BUSTO, Respondents.	**Promulgated:** June 6, 2018

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DECISION

LEONEN, *J.*:

This case involves fundamental principles in labor cases.

First, in appeals of illegal dismissal cases, employers are strictly mandated to file an appeal bond to perfect their appeals. Substantial compliance, however, may merit liberality in its application.

Second, before any labor tribunal takes cognizance of termination disputes, it must first have jurisdiction over the action. The Labor Arbiter

and the National Labor Relations Commission only exercise jurisdiction over termination disputes between an employer and an employee. They do not exercise jurisdiction over termination disputes between a corporation and a corporate officer.

Third, while this Court recognizes the inherent right of employers to discipline their employees, the penalties imposed must be commensurate to the infractions committed. Dismissal of employees for minor and negligible offenses may be considered as illegal dismissal.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals February 19, 2013 Decision[2] and September 10, 2013 Resolution[3] in CA-G.R. SP No. 119093, which reversed the judgments of the Labor Arbiter and of the National Labor Relations Commission. The Court of Appeals found that Nicanor F. Malcaba (Malcaba), a corporate officer, should have questioned his dismissal before the Regional Trial Court, not before the Labor Arbiter. It likewise held that Christian C. Nepomuceno (Nepomuceno) and Laura Mae Fatima F. Palit-Ang (Palit-Ang) were validly dismissed from service for loss of trust and confidence, and insubordination, respectively.

ProHealth Pharma Philippines, Inc. (ProHealth) is a corporation engaged in the sale of pharmaceutical products and health food on a wholesale and retail basis. Generoso Del Castillo (Del Castillo) is the Chair of the Board of Directors and Chief Executive Officer while Dante Busto (Busto) is the Executive Vice President. Malcaba, Tomas Adona, Jr. (Adona), Nepomuceno, and Palit-Ang were employed as its President, Marketing Manager, Business Manager, and Finance Officer, respectively.[4]

Malcaba had been employed with ProHealth since it started in 1997. He was one of its incorporators together with Del Castillo and Busto, and they were all members of the Board of Directors in 2004. He held 1,000,000 shares in the corporation. He was initially the Vice President for Sales then became President in 2005.[5]

Malcaba alleged that Del Castillo did acts that made his job difficult. He asked to take a leave on October 23, 2007. When he attempted to return on November 5, 2007, Del Castillo insisted that he had already resigned and

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1 *Rollo*, pp. 10–74.

2 Id. at 76–101. The Decision was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

3 Id. at 103–104. The Resolution was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

4 Id. at 144, NLRC Decision.

5 Id. at 150, NLRC Decision.

had his things removed from his office. He attested that he was paid a lower salary in December 2007 and his benefits were withheld.[6] On January 7, 2008, Malcaba tendered his resignation effective February 1, 2008.[7]

Nepomuceno, for his part, alleged that he was initially hired as a medical representative in 1999 but was eventually promoted to District Business Manager for South Luzon. On March 24, 2008, he applied for vacation leave for the dates April 24, 25, and 28, 2008, which Busto approved. When he left for Malaysia on April 23, 2008, ProHealth sent him a Memorandum dated April 24, 2008 asking him to explain his absence. He replied through email that he tried to call ProHealth to inform them that his flight was on April 22, 2008 at 9:00 p.m. and not on April 23, 2008 but was unable to connect on the phone. He tried to explain again on May 2, 2008 and requested for a personal dialogue with Del Castillo.[8]

On May 7, 2008, Nepomuceno was given a notice of termination, which was effective May 5, 2008, on the ground of fraud and willful breach of trust.[9]

Palit-Ang, on the other hand, was hired to join ProHealth's audit team in 2007. She was later promoted to Finance Officer.[10] On November 26, 2007, Del Castillo instructed Palit-Ang to give ₱3,000.00 from the training funds to Johnmer Gamboa (Gamboa), a District Business Manager, to serve as cash advance.[11]

On November 27, 2007, Busto issued a show cause memorandum for Palit-Ang's failure to release the cash advance. Palit-Ang was also relieved of her duties and reassigned to the Office of the Personnel and Administration Manager.[12]

In her explanation, Palit-Ang alleged that when Gamboa saw that she was busy receiving cash sales from another District Business Manager, he told her that he would just return the next day to collect his cash advance.[13] When he told her that the cash advance was for car repairs, Palit-Ang told him to get the cash from his revolving fund, which she would reimburse after the repairs were done. Del Castillo was dissatisfied with her explanation and transferred her to another office.[14]

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6 Id. at 79.
7 Id. at 108.
8 Id. at 80.
9 Id.
10 Id. at 81.
11 Id. at 82.
12 Id.
13 Id.
14 Id. at 83.

On December 3, 2007, Palit-Ang was invited to a fact-finding investigation,[15] which was held on December 10, 2007, where Palit-Ang was again asked to explain her actions.[16]

On December 17, 2007, she was handed a notice of termination effective December 31, 2007, for disobeying the order of ProHealth's highest official.[17]

Malcaba, Nepomuceno, Palit-Ang, and Adona separately filed Complaints[18] before the Labor Arbiter for illegal dismissal, nonpayment of salaries and 13th month pay, damages, and attorney's fees.

The Labor Arbiter found that Malcaba was constructively dismissed. He found that ProHealth never controverted the allegation that Del Castillo made it difficult for Malcaba to effectively fulfill his duties. He likewise ruled that ProHealth's insistence that Malcaba's leave of absence in October 2007 was an act of resignation was false since Malcaba continued to perform his duties as President through December 2007.[19]

The Labor Arbiter declared that Nepomuceno's failure to state the actual date of his flight was an excusable mistake on his part, considering that this was his first infraction in his nine (9) years of service. He noted that no administrative proceedings were conducted before Nepomuceno's dismissal, thereby violating his right to due process.[20]

Palit-Ang's dismissal was also found to have been illegal as delay in complying with a lawful order was not tantamount to disobedience. The Labor Arbiter further noted that delay in giving a cash advance for car maintenance would not have affected the company's operations. He declared that Palit-Ang's dismissal was too harsh of a penalty.[21]

The dispositive portion of the Labor Arbiter's April 5, 2009 Decision[22] read:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants were illegally dismissed by respondents.

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15 Id. at 82.
16 Id. at 22.
17 Id. at 82.
18 Id. at 171–174. Malcaba filed a Complaint while Adona, Nepomuceno, and Palit-Ang filed one Grievance Form.
19 Id. at 311–312, Labor Arbiter Decision.
20 Id. at 313–314, Labor Arbiter Decision.
21 Id. at 314.
22 Id. at 294–320. The Decision, docketed as NLRC NCR CASE NO. 08-12090-08, was penned by Labor Arbiter Fedriel S. Panganiban of the National Labor Relations Commission, Quezon City.

Accordingly, respondents are directed solidarily to pay complainants the following:

1. Complainant Nicanor F. Malcaba:

   a. Separation pay of P1,800,000.00;
   b. Full backwages from the time of his illegal dismissal [o]n 11 November 2007 until the finality of this decision, which as of this date amounts to P2,810,795.40;
   c. 13th month pay for the years 2007 and 2008 amounting to P126,625.00;

2. Complainant Christian C. Nepomuceno:

   a. Separation pay of P190,000.00;
   b. Full backwages from the time of his illegal dismissal [i]n May 2007 until the finality of this decision, which as of this date amounts to P568,827.45;
   c. 13th month pay for 2008 amounting to P6,333.33;

3. Complainant Laura Mae Fatima F. Palit-Ang:

   a. Separation pay of P30,000.00;
   b. Full backwages from the time of her illegal dismissal on 1 January 2008 until the finality of this decision, which as of [t]his date amounts to P266,694.63;
   c. 13th month pay for 2008 of P18,000.00; and

4. Complainant Tomas C. Adona, Jr.:

   a. Separation pay of P75,000.00;
   b. Full backwages from time of his illegal dismissal [i]n June 2007 until the finality of this decision, which as of this date amounts to P609,832.37;
   c. 13th month pay for 2008 of P10,416.66.

Complainants are further awarded moral damages of Php100,000.00 each and exemplary damages of Php100,000.00 each.

Finally, respondents are assessed the sum equivalent to ten percent (10%) of the total monetary award as and for attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.[23]

ProHealth appealed to the National Labor Relations Commission.[24] On September 29, 2010, the National Labor Relations Commission rendered its Decision,[25] affirming the Labor Arbiter's April 5, 2009 Decision with

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23 Id. at 318–320, Labor Arbiter Decision.

24 Id. at 322–361.

25 Id. at 143–167. The Decision, docketed as NLRC LAC NO. 08-002162-09, was penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.

modifications. The dispositive portion of this Decision read:

> WHEREFORE, premises considered, the appeal is partially granted. The assailed Decision is modified in that: a) complainant Adona is declared to have voluntarily resigned and is entitled only to his 13th month pay; b) the award of moral and, exemplary damages in favor of complainants Nepomuceno and Palit-Ang are deleted; and c) respondents del Castillo and Busto are held jointly and severally liable with ProHealth for the claims of complainant Malcaba.
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> All dispositions not affected by the modifications stay.
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> SO ORDERED.[26]

ProHealth moved for reconsideration[27] but was denied by the National Labor Relations Commission in its January 31, 2011 Resolution.[28] Thus, ProHealth, Del Castillo, and Busto filed a Petition for Certiorari[29] before the Court of Appeals.

On February 19, 2013, the Court of Appeals rendered its Decision[30] reversing and setting aside the National Labor Relations Commission September 29, 2010 Decision.

On the procedural issues, the Court of Appeals found that ProHealth substantially complied with the requirement of an appeal bond despite it not appearing in the records of the surety company since ProHealth believed in good faith that the bond it secured was genuine.[31]

On the substantive issues, the Court of Appeals held that there was no employer-employee relationship between Malcaba and ProHealth since he was a corporate officer. Thus, he should have filed his complaint with the Regional Trial Court, not with the Labor Arbiter, since his dismissal from service was an intra-corporate dispute.[32]

The Court of Appeals likewise concluded that ProHealth was justified in dismissing Nepomuceno and Palit-Ang since both were given opportunities to fully explain their sides.[33] It found that Nepomuceno's failure to diligently check the true schedule of his flight abroad and his

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26 Id. at 166.
27 Id. at 362–379.
28 Id. at 168–170. The Resolution was penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.
29 Id. at 105–142.
30 Id. at 76–101.
31 Id. at 86.
32 Id. at 87–90.
33 Id. at 95.

subsequent lack of effort to inform his superiors were enough for his employer to lose its trust and confidence in him.[34] It likewise found that Palit-Ang displayed "arrogance and hostility" when she defied the lawful orders of the company's highest ranking officer; thus, her insubordination was just cause to terminate her services.[35]

While the Court of Appeals ordered the return of the amounts given to Malcaba, it allowed Nepomuceno and Palit-Ang to keep the amounts given considering that even if the finding of illegal dismissal were reversed on appeal, the employer was still obliged to reinstate and pay the wages of a dismissed employee during the period of appeal.[36] The dispositive portion of the Court of Appeals February 19, 2013 Decision read:

> WHEREFORE, premises considered, it is hereby ruled:
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> (a) that the September 29, 2010 Decision and January 31, 2011 Resolution of the National Labor Relations Commission are REVERSED and SET ASIDE for being issued with grave abuse of discretion;
>
> (b) that Our Decision is without prejudice to Mr. Nicanor F. Malcaba's available recourse for relief through the appropriate remedy in the proper forum;
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> (c) that all the amounts released in favor of Mr. Nicanor F. Malcaba amounting to Four Million Nine Hundred Thirty[-]Seven Thousand Four Hundred Twenty pesos and 40/100 (₱4,937,420.[40]) be RETURNED to herein petitioners;
>
> (d) that NO REFUND will be ordered by this Court against Mr. Christian Nepomuceno and Ms. Laura Mae Fatima Palit-Ang.
>
> SO ORDERED.[37]

Malcaba, Nepomuceno, and Palit-Ang moved for reconsideration but were denied in a Resolution[38] dated September 10, 2013. Hence, this Petition[39] was filed before this Court.

Petitioners argue that the Court of Appeals should have dismissed outright the Petition for Certiorari since respondents failed to post a genuine appeal bond before the National Labor Relations Commission. They allege that when Sheriff Ramon Nonato P. Dayao attempted to enforce the judgment award against the appeal bond, he was informed that the appeal

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34 Id. at 91–92.
35 Id. at 93.
36 Id. at 96–100.
37 Id. at 100–101.
38 Id. at 103–104.
39 Id. at 10–74. The Comment (*rollo*, pp. 632–647) was filed on March 21, 2014 while the Reply (*rollo*, pp. 662–681) was filed on July 24, 2014.

bond procured by respondents did not appear in the records of Alpha Insurance and Surety Company, Inc. (Alpha Insurance). They also claim that respondents were notified by the National Labor Relations Commission four (4) times that their appeal bond was not genuine, showing that respondents did not comply with the requirement in good faith.[40]

Petitioners contend that petitioner Malcaba properly filed his Complaint before the Labor Arbiter since he was an employee of respondent ProHealth, albeit a high-ranking one. They argue that respondents merely alleged that petitioner Malcaba is a corporate officer but failed to substantiate this allegation.[41] They maintain that petitioner Malcaba did not resign on September 24, 2007 considering that the General Information Sheet for 2007 submitted on October 11, 2007 listed him as respondent ProHealth's President. They submit that respondent Del Castillo's action took a toll on petitioner Malcaba's well-being; hence, the latter merely took a leave of absence and returned to work in November 2007. They claim that respondents made it difficult for petitioner Malcaba to continue his work upon his return, resulting in his resignation in January 2008. Thus, they argue that petitioner Malcaba was constructively dismissed.[42]

Petitioners likewise argue that petitioners Nepomuceno and Palit-Ang were illegally dismissed. They claim that petitioner Nepomuceno committed an "honest and negligible mistake"[43] that should not have warranted dismissal considering his loyal service for nine (9) years. They contend that petitioner Nepomuceno's absence did not injure respondent ProHealth's business since he turned over all pending work to a reliever before he left and even surpassed his sales quota for the month.[44] They likewise claim that his dismissal was done in violation of his right to due process since he was not given any opportunity to explain his side and was only given a notice of termination two (2) days after he was actually dismissed.[45]

Petitioners maintain that petitioner Palit-Ang believed in good faith that Gamboa would just claim his cash advance the day after he tried to claim it and that there was nothing in her actions that would prove that she intended to disobey or defy respondent Del Castillo's instructions. They insist that delay in complying with orders is not tantamount to disobedience and would not constitute just cause for petitioner Palit-Ang's dismissal. They likewise submit that while petitioner Palit-Ang was subjected to a fact-finding investigation, respondents failed to inform her of her right to be

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40 Id. at 29–34.
41 Id. at 36–45.
42 Id. at 46–54.
43 Id. at 55.
44 Id. at 55–57.
45 Id. at 57–59.

assisted by counsel.[46]

Respondents, on the other hand, counter that a liberal application of the procedural rules was necessary in their case since they acted in good faith in posting their appeal bond.[47] They likewise contend that the issue should have already been considered moot since petitioners "were able to garnish and collect the amounts allegedly due to them."[48]

Respondents likewise insist that petitioner Malcaba was a corporate officer considering that he was not only an incorporator and stockholder, but also an elected Director and President of respondent ProHealth.[49] They also point out that he filed his labor complaint seven (7) months after his resignation and that his voluntary resignation already disproves his claim of constructive dismissal.[50]

Respondents argue that they were justified in dismissing petitioners Nepomuceno and Palit-Ang. They contend that petitioner Nepomuceno's abandonment of his duties at a critical sales period and his failure to immediately advise his superiors of his whereabouts was ground for respondents to lose their trust and confidence in him.[51] They likewise maintain that petitioner Palit-Ang was correctly found by the Court of Appeals to have defied the lawful instructions of respondent Del Castillo and illustrated her "grave disrespect towards authority."[52]

From the arguments and allegations of the parties, it is clear that this case involves three (3) different illegal dismissal complaints, with three (3) different complainants in three (3) different factual situations during three (3) different time periods. The only commonality is that they involve the same respondents.

While this Court commends the economy by which the National Labor Relations Commission resolved these cases, the three (3) complaints should have been resolved separately since the three (3) petitioners raise vastly different substantive issues. This leaves this Court with the predicament of having to resolve three (3) different cases of illegal dismissal in one (1) Petition for Review. Thus, each petitioner's case will have to be resolved separately within this Decision. This Court's ruling over one (1) petitioner may not necessarily affect the other co-petitioners. The National Labor Relations Commission's zeal for economy and convenience should

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46 Id. at 60–63.
47 Id. at 633–635.
48 Id. at 635.
49 Id. at 636–637.
50 Id. at 641.
51 Id. at 642–643.
52 Id. at 643–644.

never prejudice the individual rights of each party. The National Labor Relations Commission should know the rule that joinder of parties[53] or causes of action[54] applies suppletorily in appeals[55] and for good reason.[56]

Petitioners raise the common procedural issue of whether or not respondents failed to perfect their appeal when it was discovered that their appeal bond was a forged bond, which this Court will address before proceeding with the substantive issues. The substantive issues raised, however, are dependent on the factual circumstances applicable to each petitioner. This Court tackles these substantive issues in order:

First, whether or not the Labor Arbiter and National Labor Relations Commission had jurisdiction over petitioner Nicanor F. Malcaba's termination dispute considering the allegation that he was a corporate officer, and not a mere employee;

Second, whether or not petitioner Christian C. Nepomuceno was validly dismissed for willful breach of trust when he failed to inform respondents ProHealth Pharma Philippines, Inc., Generoso R. Del Castillo, Jr., and Dante M. Busto of the actual dates of his vacation leave; and

Finally, whether or not petitioner Laura Mae Fatima F. Palit-Ang was validly dismissed for willful disobedience when she failed to immediately comply with an order of her superior.

I

Appeal is not a matter of right.[57] Courts and tribunals have the discretion whether to give due course to an appeal or to dismiss it outright. The perfection of an appeal is, thus, jurisdictional. Non-compliance with the manner in which to file an appeal renders the judgment final and executory.[58]

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53 RULES OF COURT, Rule 3, sec. 6.

54 RULES OF COURT, Rule 2, sec. 5.

55 2011 NLRC RULES OF PROCEDURE, Rule I, sec. 3 provides:
Section 3. SUPPLETORY APPLICATION OF THE RULES OF COURT. — In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Rules of Court of the Philippines may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

56 *See Republic v. Hernandez*, 323 Phil. 606 (1996) [Per J. Regalado, Second Division] where this Court discussed the rationale for the procedural rule on joinder of parties and causes of action.

57 *See Colby Construction and Management Corporation v. National Labor Relations Commission*, 564 Phil. 145 (2007) [Per J. Chico-Nazario, Third Division].

58 *See Navarro v. National Labor Relations Commission*, 383 Phil. 765 (2000) [Per J. Quisumbing, Third Division].

In labor cases, an appeal by an employer is perfected only by filing a bond equivalent to the monetary award. Thus, Article 229 [223][59] of the Labor Code provides:

> Article 229. [223] Appeal.
> . . . .
>
> In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

This requirement is again repeated in the 2011 National Labor Relations Commission Rules of Procedure:

> Section 4. Requisites for Perfection of Appeal. — (a) The appeal shall be:
> . . . .
> (5) accompanied by:
> . . . .
> (ii) posting of a cash or surety bond as provided in Section 6 of this Rule[.]
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> . . . .
> Section 6. Bond. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in the amount to the monetary award, exclusive of damages and attorney's fees.
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> In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission and shall be accompanied by original or certified true copies of the following:
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> > (a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case;
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> > (b) an indemnity agreement between the employer-appellant and bonding company;
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> > (c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security; and,
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> > (d) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.
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> The Commission through the Chairman may on justifiable grounds blacklist an accredited bonding company.

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[59] As amended by Rep. Act No. 6715, sec. 12.

> A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.
>
> The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.
>
> Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.
>
> No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.
>
> The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.[60]

The purpose of requiring an appeal bond is "to guarantee the payment of valid and legal claims against the employer."[61] It is a measure of financial security granted to an illegally dismissed employee since the resolution of the employer's appeal may take an indeterminable amount of time. In particular:

> The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.[62]

Procedural rules require that the appeal bond filed be "genuine." An appeal bond determined by the National Labor Relations Commission to be "irregular or not genuine" shall cause the immediate dismissal of the appeal.[63]

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60 2011 NLRC RULES OF PROCEDURE, Rule 6, secs. 3 and 6. Section 6 was amended by NLRC En Banc Res. No. 14–15 (2015).

61 *Navarro v. National Labor Relations Commission*, 383 Phil. 765, 774 (2000) [Per J. Quisumbing, Third Division].

62 *Viron Garments Manufacturing v. National Labor Relations Commission*, G.R. No. 97357, March 18, 1992, 207 SCRA 339, 342 [Per J. Griño-Aquino, First Division].

63 2011 NLRC RULES OF PROCEDURE, Rule 6, sec. 6, as amended by NLRC En Banc Res. No. 14–15 (2015).

In this case, petitioners allege that respondents' appeal should not have been given due course by the National Labor Relations Commission since the appeal bond they filed "[did] not appear in the records of [Alpha Insurance]"[64] and was, therefore, not genuine. As evidence, they presented a certification from Alpha Insurance, which read:

> This is to certify that the bond being presented by MR. JOSEPH D. DE JESUS is allegedly a Surety Bond filed with the NATIONAL LABOR RELATIONS COMMISSION, identified as Bond No. G(16)00358/2009 on an alleged case NLRC NCR Case No. 08-12090-08, is a faked and forged bond, and it was not issued by ALPHA INSURANCE & SURETY COMPANY, INC.[65]

This Court in *Navarro v. National Labor Relations Commission*[66] found that an employer failed to perfect its appeal as it submitted an appeal bond that was "bogus[,] having been issued by an officer no longer connected for a long time with the bonding company."[67] The mere fictitiousness of the bond, however, was not the only factor taken into consideration. This Court likewise took note of the employer's failure to sufficiently explain this irregularity and its failure to file the bond within the reglementary period.

In *Quiambao v. National Labor Relations Commission*,[68] this Court held that the mandatory and jurisdictional requirement of the filing of an appeal bond could be relaxed if there was substantial compliance. *Quiambao* proceeded to outline situations that could be considered as substantial compliance, such as late payment, failure of the Labor Arbiter to state the exact amount of money judgment due, and reliance on a notice of judgment that failed to state that a bond must first be filed in order to appeal.[69] *Rosewood Processing v. National Labor Relations Commission*[70] likewise enumerated other instances where there would be a liberal application of the procedural rules:

> Some of these cases include: (a) counsel's reliance on the footnote of the notice of the decision of the labor arbiter that the aggrieved party may appeal . . . within ten (10) working days; (b) fundamental consideration of substantial justice; (c) prevention of miscarriage of justice or of unjust enrichment, as where the tardy appeal is from a decision granting separation pay which was already granted in an earlier final decision; and

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64 *Rollo*, p. 30.
65 Id. at 468.
66 383 Phil. 765 (2000) [Per J. Quisumbing, Third Division].
67 Id. at 776.
68 324 Phil. 455 (1996) [Per J. Mendoza, Second Division].
69 Id. at 462–463 *citing Rada v. NLRC*, 282 Phil. 80 (1992) [Per J. Regalado, Second Division]; *Blancaflor v. NLRC*, 291-A Phil. 398 (1993) [Per J. Regalado, Second Division]; and *Your Bus Lines, et al. v. NLRC*, 268 Phil. 169 (1990) [Per J. Gancayco, First Division].
70 352 Phil. 1013 (1998) [Per J. Panganiban, First Division].

> (d) special circumstances of the case combined with its legal merits or the amount and the issue involved.[71]

Thus, while the procedural rules strictly require the employer to submit a genuine bond, an appeal could still be perfected if there was substantial compliance with the requirement.

In this instance, the National Labor Relations Commission certified that respondents filed a security deposit in the amount of ₱6,512,524.84 under Security Bank check no. 0000045245,[72] showing that the premium for the appeal bond was duly paid and that there was willingness to post it.[73] Respondents likewise attached documents proving that Alpha Insurance was a legitimate and accredited bonding company.[74]

Despite their failure to collect on the appeal bond, petitioners do not deny that they were eventually able to garnish the amount from respondents' bank deposits.[75] This fulfills the purpose of the bond, that is, "to guarantee the payment of valid and legal claims against the employer[.]"[76] Respondents are considered to have substantially complied with the requirements on the posting of an appeal bond.

II

Under the Labor Code, the Labor Arbiter exercises original and exclusive jurisdiction over termination disputes between an employer and an employee while the National Labor Relations Commission exercises exclusive appellate jurisdiction over these cases:

> Article 224. [217] Jurisdiction of the Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:
> . . .
>
> (2) Termination disputes;
> . . .

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71 Id. at 1029 *citing Philippine Airlines, Inc. vs. National Labor Relations Commission*, 328 Phil. 814 (1996) [Per J. Francisco, Third Division].

72 *Rollo*, pp. 570–571.

73 *See Garcia v. KJ Commercial*, 683 Phil. 376 (2012) [Per J. Carpio, Second Division].

74 *Rollo*, pp. 572–582.

75 Id. at 665.

76 *Navarro v. National Labor Relations Commission*, 383 Phil. 765, 774 (2000) [Per J. Quisumbing, Third Division].

> (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.[77]

The presumption under this provision is that the parties have an employer-employee relationship. Otherwise, the case would be cognizable in different tribunals even if the action involves a termination dispute.

Petitioner Malcaba alleges that the Court of Appeals erred in dismissing his complaint for lack of jurisdiction, insisting that he was an employee of respondent, not a corporate officer.

At the time of his alleged dismissal, petitioner Malcaba was the President of respondent corporation. Strangely, this same petitioner disputes this position as respondents' bare assertion,[78] yet he also insists that his name appears as President in the corporation's General Information Sheet for 2007.[79]

Under Section 25 of the Corporation Code,[80] the President of a corporation is considered a corporate officer. The dismissal of a corporate officer is considered an intra-corporate dispute, not a labor dispute. Thus, in *Tabang v. National Labor Relations Commission*:[81]

> A corporate officer's dismissal is always a corporate act, or an intra-corporate controversy, and the nature is not altered by the reason or wisdom with which the Board of Directors may have in taking such action. Also, an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.[82]

Further, in *Matling Industrial and Commercial Corporation v. Coros*,[83] this Court stated that jurisdiction over intra-corporate disputes involving the illegal dismissal of corporate officers was with the Regional Trial Court, not with the Labor Arbiter:

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77 LABOR CODE, art. 224 [217] as amended by Rep. Act No. 6715, sec. 9.

78 *Rollo*, p. 38.

79 Id. at 46–47. Petitioner Malcaba argued that his name still appeared in the 2007 GIS to dispute respondents' claim that he had already resigned in 2007.

80 CORP. CODE, sec. 25 states:
Section 25. Corporate officers, quorum. — Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

81 334 Phil. 424 (1997) [Per J. Regalado, Third Division].

82 Id. at 430, *citing Fortune Cement Corporation vs. NLRC, et al.*, 271 Phil. 268 (1991) [Per J. Griño-Aquino, First Division] and *SEC, et al. vs. Court of Appeals, et al.*, 278 Phil. 141 (1991) [Per J. Padilla, Second Division].

83 647 Phil. 324 (2010) [Per J. Bersamin, Third Division].

> Where the complaint for illegal dismissal concerns a corporate officer, however, the controversy falls under the jurisdiction of the Securities and Exchange Commission (SEC), because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association. Such controversy, among others, is known as an intra-corporate dispute.
>
> Effective on August 8, 2000, upon the passage of Republic Act No. 8799, otherwise known as The Securities Regulation Code, the SEC's jurisdiction over all intra-corporate disputes was transferred to the RTC, pursuant to Section 5.2 of RA No. 8799, to wit:
>
> > 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.[84]

The mere designation as a high-ranking employee, however, is not enough to consider one as a corporate officer. In *Tabang*, this Court discussed the distinction between an employee and a corporate officer, regardless of designation:

> The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.
>
> It has been held that an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On

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[84] *Matling Industrial and Commercial Corporation v. Coros*, 647 Phil. 324, 339_ (2010) [Per J. Bersamin, Third Division] *citing* Pres. Decree No. 902-A, sec. 5.

> the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.[85]

The clear weight of jurisprudence clarifies that to be considered a corporate officer, *first*, the office must be created by the charter of the corporation, and *second*, the officer must be elected by the board of directors or by the stockholders.

Petitioner Malcaba was an incorporator of the corporation and a member of the Board of Directors.[86] Respondent corporation's By-Laws creates the office of the President. That foundational document also states that the President is elected by the Board of Directors:

> ARTICLE IV
> OFFICER
>
> Section 1. Election/Appointment — Immediately after their election, the Board of Directors shall formally organize by electing the President, the Vice President, the Treasurer, and the Secretary at said meeting.[87]

This case is similar to *Locsin v. Nissan Lease Philippines*:[88]

> Locsin was undeniably Chairman and President, and was elected to these positions by the Nissan board pursuant to its By-laws. As such, he was a corporate officer, not an employee. The CA reached this conclusion by relying on the submitted facts and on Presidential Decree 902-A, which defines corporate officers as "those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws." Likewise, Section 25 of Batas Pambansa Blg. 69, or the Corporation Code of the Philippines (*Corporation Code*) provides that corporate officers are the **president**, secretary, **treasurer** and such **other officers as may be provided for in the by-laws**.[89] (Emphasis in the original)

Petitioners cite *Prudential Bank and Trust Company v. Reyes*[90] as basis that even high-ranking officers may be considered regular employees,

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85 *Tabang v. National Labor Relations Commission*, 334 Phil. 424, 429 (1997) [Per J. Regalado, Third Division] *citing* 2 Fletcher Cyc. Corp., 1982 rev. ed., Sec. 2690, *as cited in* 1 R.N. LOPEZ, THE CORPORATION CODE OF THE PHILIPPINES ANNOTATED 423; CORP. CODE, sec. 25; SEC Opinion, dated March 25, 1983, Mr. Edison Alba; 1 J. CAMPOS, JR., THE CORPORATION CODE, COMMENTS, NOTES AND SELECTED CASES 383–384; 2 Fletcher Cyc. Corp., Ch. II, Sec. 266; and *Aldritt vs. Kansas Centennial Global Exposition, Inc.*, 189 Kan 649, 371 P2d 818, 424.

86 *Rollo*, p. 150.

87 Id. at 396.

88 648 Phil. 596 (2010) [Per J. Brion, Third Division].

89 Id. at 612.

90 404 Phil. 961 (2001) [Per J. Gonzaga-Reyes, Third Division].

not corporate officers.[91] *Prudential Bank*, however, is not applicable to this case.

In *Prudential Bank*, an employer was considered *estopped* from raising the argument of an intra-corporate dispute since this was only raised when the case was filed with this Court. This Court also noted that an employee *rose from the ranks* and was regularly performing tasks integral to the business of the employer throughout the length of her tenure, thus:

> It appears that private respondent was appointed Accounting Clerk by the Bank on July 14, 1963. From that position she rose to become supervisor. Then in 1982, she was appointed Assistant Vice-President which she occupied until her illegal dismissal on July 19, 1991. The bank's contention that she merely holds an elective position and that in effect she is not a regular employee is belied by the nature of her work and her length of service with the Bank. As earlier stated, she rose from the ranks and has been employed with the Bank since 1963 until the termination of her employment in 1991. As Assistant Vice President of the foreign department of the Bank, she is tasked, among others, to collect checks drawn against overseas banks payable in foreign currency and to ensure the collection of foreign bills or checks purchased, including the signing of transmittal letters covering the same. It has been stated that "the primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer.["] Additionally, "an employee is regular because of the nature of work and the length of service, not because of the mode or even the reason for hiring them." As Assistant Vice-President of the Foreign Department of the Bank she performs tasks integral to the operations of the bank and her length of service with the bank totaling 28 years speaks volumes of her status as a regular employee of the bank. In fine, as a regular employee, she is entitled to security of tenure; that is, her services may be terminated only for a just or authorized cause. This being in truth a case of illegal dismissal, it is no wonder then that the Bank endeavored to the very end to establish loss of trust and confidence and serious misconduct on the part of private respondent but, as will be discussed later, to no avail.[92]

An "Assistant Vice President" is not among the officers stated in Section 25 of the Corporation Code.[93] A corporation's President, however, is explicitly stated as a corporate officer.

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91 *Rollo*, p. 39.

92 *Prudential Bank and Trust Company v. Reyes*, 404 Phil. 961, 474 (2001) [Per J. Gonzaga-Reyes, Third Division], *citing Bernardo vs. NLRC*, 369 Phil. 443 (1999) [Per J. Panganiban, Third Division].

93 CORP. CODE, sec. 25 provides:
Section 25. Corporate officers, quorum. — Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

Finding that petitioner Malcaba is the President of respondent corporation and a corporate officer, any issue on his alleged dismissal is beyond the jurisdiction of the Labor Arbiter or the National Labor Relations Commission. Their adjudication on his money claims is void for lack of jurisdiction. As a matter of equity, petitioner Malcaba must, therefore, return all amounts received as judgment award pending final adjudication of his claims. This Court's dismissal of petitioner Malcaba's claims, however, is without prejudice to his filing of the appropriate case in the proper forum.

III

Article 294 [279] of the Labor Code provides that an employer may terminate the services of an employee only upon just or authorized causes.[94] Article 297 [282] enumerates the just causes for termination, among which is "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative[.]"

Loss of trust and confidence is a just cause to terminate either managerial employees or rank-and-file employees who regularly handle large amounts of money or property in the regular exercise of their functions.[95]

For an act to be considered a loss of trust and confidence, it must be *first*, work-related, and *second*, founded on clearly established facts:

> The complained act must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[96]

The breach of trust must likewise be *willful*, that is, "it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently."[97]

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94 LABOR CODE, art. 294 provides:
Article 294 [279]. Security of tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

95 *See Alvarez v. Golden Tri Bloc*, 718 Phil. 415 (2013) [Per J. Reyes, First Division].

96 *Alvarez v. Golden Tri Bloc*, 718 Phil. 415, 426 (2013) [Per J. Reyes, First Division] *citing Jerusalem v. Keppel Monte Bank*, 662 Phil. 676 (2011) [Per J. Del Castillo, First Division].

97 *Atlas Consolidated Mining and Development Corporation v. National Labor Relations Commission*, 352 Phil. 1088, 1097 (1998) [Per J. Puno, Second Division].

Petitioner Nepomuceno alleges that he was illegally dismissed merely for his failure to inform his superiors of the actual dates of his vacation leave. Respondents, however, contend that as District Business Manager, petitioner Nepomuceno lost the corporation's trust and confidence by failing to report for work during a crucial sales period.

As found by the National Labor Relations Commission, petitioner Nepomuceno had filed for leave, which was approved, for April 24, 25, and 28, 2008 to go on vacation in Malaysia. However, he left for Malaysia on the evening of April 22, 2008, and thus, failed to report for work on April 23, 2008.

Petitioner Nepomuceno claims that he only knew that his flight was for the evening of April 22, 2008 on the day of his flight. Respondents, however, insist that he "deliberately concealed the actual date of departure as he knows that he would be out of the country on a crucial period of sales generation and bookings . . . [and] therefore knew that his application for leave would be denied."[98] Otherwise stated, respondents contend that his dismissal was a valid exercise of their management prerogative to discipline and dismiss managerial employees unworthy of their trust and confidence.

The concept of a management prerogative was already passed upon by this Court in *San Miguel Brewery Sales Force Union v. Ople*:[99]

> Except as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work. . . .
>
> Every business enterprise endeavors to increase its profits. In the process, it may adopt or devise means designed towards that goal. In *Abott Laboratories vs. NLRC*, . . . We ruled:
>
> > . . . Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.
>
> So long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the

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98 *Rollo*, p. 158.

99 252 Phil. 27 (1989) [Per J. Griño-Aquino, First Division].

> purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them.[100]

While an employer is free to regulate all aspects of employment, the exercise of management prerogatives must be in good faith and must not defeat or circumvent the rights of its employees.

In industries that mainly rely on sales, employers are free to discipline errant employees who deliberately fail to report for work during a crucial sales period. It would have been reasonable for respondents to discipline petitioner Nepomuceno had he been a problematic employee who unceremoniously refused to do his work.

However, as found by the Labor Arbiter and the National Labor Relations Commission, petitioner Nepomuceno turned over all of his pending work to a reliever before he left for Malaysia. He was able to reach his sales quota and surpass his sales target even before taking his vacation leave. Respondents did not suffer any financial damage as a result of his absence. This was also petitioner Nepomuceno's first infraction in his nine (9) years of service with respondents.[101] None of these circumstances constitutes a *willful* breach of trust on his part. The penalty of dismissal, thus, was too severe for this kind of infraction.

The manner of petitioner Nepomuceno's dismissal was likewise suspicious. In all cases of employment termination, the employee must be granted due process. The manner by which this is accomplished is stated in Book V, Rule XXIII, Section 2 of the Rules Implementing the Labor Code:

> Section 2. Standard of due process: requirements of notice.
>
> — In all cases of termination of employment, the following standards of due process shall be substantially observed.
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

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[100] Id. at 30–31, *citing NLU vs. Insular La Yebana Co.*, 112 Phil. 821 (1961) [Per J. Labrador, En Banc]; *Republic Savings Bank vs. CIR*, 128 Phil. 230 (1967) [Per J. Castro, En Banc]; PERFECTO V. HERNANDEZ, LABOR RELATIONS LAW 44 (1985); *Abbott Laboratories vs. NLRC*, 238 Phil. 699 (1987) [Per J. Gutierrez, Jr., Third Division]; *LVN Pictures Workers vs. LVN*, 146 Phil. 153 (1970) [Per J. Castro, Second Division]; *Phil. American Embroideries vs. Embroidery and Garment Workers*, 136 Phil. 36 (1969) [Per J. Makalintal, En Banc]; and *Phil. Refining Co. vs. Garcia*, 124 Phil. 698 (1966) [Per J. J.B.L. Reyes, En Banc].

[101] *Rollo*, p. 159.

> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

Here, petitioner Nepomuceno received a memorandum on April 23, 2008, asking him to explain why no administrative investigation should be held against him. He submitted an explanation on the same day and another explanation on May 2, 2008. On May 7, 2008, he was given his notice of termination, which had already taken effect two (2) days earlier, or on May 5, 2008.[102]

It is true that "[t]he essence of due process is simply an opportunity to be heard."[103] Petitioner Nepomuceno had two (2) opportunities within which to explain his actions. This would have been sufficient to satisfy the requirement. The delay in handing him his notice of termination, however, appears to have been an afterthought. While strictly not a violation of procedural due process, respondents should have been more circumspect in complying with the due process requirements under the law.

Considering that petitioner Nepomuceno's dismissal was done without just cause, he is entitled to reinstatement and full backwages.[104] If reinstatement is not possible due to strained relations between the parties, he shall be awarded separation pay at the rate of one (1) month for every year of service.[105]

IV

Under Article 297 [282] of the Labor Code, an employer may terminate the services of an employee who commits willful disobedience of the lawful orders of the employer:

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[102] Id. at 157.

[103] *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, G.R. No. 71499, July 19, 1989, 175 SCRA 437, 440 [Per J. Griño-Aquino, First Division] *citing Bermejo vs. Barrios*, 142 Phil. 655 (1970) [Per J. Zaldivar, First Division].

[104] LABOR CODE, art. 294 provides:
Article 294. [279] Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. *An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.* (Emphasis supplied)

[105] *See De Vera v. National Labor Relations Commission*, 269 Phil. 653 (1990) [Per J. Cruz, First Division].

> Article 297. [282] Termination by Employer. — An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work[.]

For disobedience to be considered as just cause for termination, two (2) requisites must concur: *first*, "the employee's assailed conduct must have been wilful or intentional," and *second*, "the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he [or she] had been engaged to discharge."[106] For disobedience to be willful, it must be "characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination."[107]

The conduct complained of must also constitute "harmful behavior against the business interest or person of his [or her] employer."[108] Thus, it is implied in every case of willful disobedience that "the erring employee obtains undue advantage detrimental to the business interest of the employer."[109]

Petitioner Palit-Ang, as Finance Officer, was instructed by respondent Del Castillo to give a cash advance of ₱3,000.00 to District Branch Manager Gamboa on November 26, 2007. This order was reasonable, lawful, made known to petitioner Palit-Ang, and pertains to her duties.[110] What is left to be determined, therefore, is whether petitioner Palit-Ang intentionally and willfully violated it as to amount to insubordination.

When Gamboa went to collect the money from petitioner Palit-Ang, he was told to return the next day as she was still busy. When petitioner Palit-Ang found out that the money was to be used for a car tune-up, she suggested to Gamboa to just get the money from his mobilization fund and that she just would reimburse it after.[111] The Court of Appeals found that these circumstances characterized petitioner Palit-Ang's "arrogance and hostility,"[112] in failing to comply with respondent Del Castillo's order, and thus, warranted her dismissal.

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106 *Gold City Integrated Port Services v. National Labor Relations Commission*, 267 Phil. 863, 872 (1990) [Per J. Feliciano, Third Division] *citing Batangas Laguna Tayabas Bus Company v. Court of Appeals*, 163 Phil. 494 (1976) [Per J. Martin, First Division].

107 *Batangas Laguna Tayabas Bus Company v. Court of Appeals*, 163 Phil. 494, 502 (1976) [Per J. Martin, First Division] *citing* 35 Am. Jur., p. 478.

108 *Dongon v. Rapid Movers and Forwarders*, 716 Phil. 533, 544 (2013) [Per J. Bersamin, First Division] *citing* the Separate Opinion of J. Tinga in *Agabon v. National Labor Relations Commission*, 485 Phil. 248 (2004) [Per J. Ynares-Santiago, En Banc].

109 Id.

110 *Rollo*, p. 19.

111 Id. at 164.

112 Id. at 93.

On the contrary, there was no ill will between Gamboa and petitioner Palit-Ang. Petitioner Palit-Ang's failure to immediately give the money to Gamboa was not the result of a perverse mental attitude but was merely because she was busy at the time. Neither did she profit from her failure to immediately give the cash advance for the car tune-up nor did respondents suffer financial damage by her failure to comply. The severe penalty of dismissal was not commensurate to her infraction. In *Dongon v. Rapid Movers and Forwarders*:[113]

> To us, dismissal should only be a last resort, a penalty to be meted only after all the relevant circumstances have been appreciated and evaluated with the goal of ensuring that the ground for dismissal was not only serious but true. The cause of termination, to be lawful, must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This requirement is in keeping with the spirit of our Constitution and laws to lean over backwards in favor of the working class, and with the mandate that every doubt must be resolved in their favor.
>
> Although we recognize the inherent right of the employer to discipline its employees, we should still ensure that the employer exercises the prerogative to discipline humanely and considerately, and that the sanction imposed is commensurate to the offense involved and to the degree of the infraction. The discipline exacted by the employer should further consider the employee's length of service and the number of infractions during his employment. The employer should never forget that always at stake in disciplining its employee are not only his position but also his livelihood, and that he may also have a family entirely dependent on his earnings.[114]

Petitioner Palit-Ang likewise assails the failure of respondents to inform her of her right to counsel when she was being investigated for her infraction. As previously discussed, "[t]he essence of due process is simply an opportunity to be heard,"[115] not that the employee must be accompanied by counsel at all times. A hearing was conducted and she was furnished a notice of termination explaining the grounds for her dismissal.[116] She was not denied due process.

Petitioner Palit-Ang, nonetheless, is considered to have been illegally dismissed, her penalty not having been proportionate to the infraction

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[113] 716 Phil. 533 (2013) [Per J. Bersamin, First Division].

[114] Id. at 545–546 *citing Hongkong and Shanghai Banking Corp. v. National Labor Relations Commission*, 328 Phil. 1156 (1996) [Per J. Panganiban, Third Division]; *Coca-Cola Bottlers Phils., Inc. v. Daniel*, 499 Phil. 491 (2005) [Per J. Panganiban, Third Division]; *Pioneer Texturizing Corp. v. National Labor Relations Commission*, 345 Phil. 1057 (1997) [Per J. Francisco, En Banc]; and *Almira v. B.F. Goodrich Philippines, Inc.*, 157 Phil. 110 (1974) [Per J. Fernando, Second Division].

[115] *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, G.R. No. 71499, July 19, 1989, 175 SCRA 437, 440 [Per J. Griño-Aquino, First Division] citing *Bermejo vs. Barrios*, 142 Phil. 655 (1970) [Per J. Zaldivar, First Division].

[116] *Rollo*, p. 165.

committed. Thus, she is entitled to reinstatement and full backwages.[117] If reinstatement is not possible due to strained relations between the parties, she shall be awarded separation pay at the rate of one (1) month for every year of service.[118]

WHEREFORE, the Petition is **PARTIALLY GRANTED**. Petitioner Christian C. Nepomuceno and petitioner Laura Mae Fatima F. Palit-Ang are **DECLARED** to have been illegally dismissed. They are, therefore, entitled to reinstatement without loss of seniority rights, or in lieu thereof, separation pay; and the payment of backwages from the filing of their Complaints until finality of this Decision.

The Court of Appeals February 19, 2013 Decision and September 10, 2013 Resolution in CA-G.R. SP No. 119093, finding that the National Labor Relations Commission had no jurisdiction to adjudicate petitioner Nicanor F. Malcaba's claims is **SUSTAINED**. Petitioner Malcaba is further ordered to **RETURN** the amount of ₱4,937,420.40 to respondents for having been erroneously awarded. This shall be without prejudice to the filing of petitioner Malcaba's claims in the proper forum.

This case is hereby **REMANDED** to the Labor Arbiter for the proper computation of petitioners Christian C. Nepomuceno's and Laura Mae Fatima F. Palit-Ang's money claims.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[117] LABOR CODE, art. 294 provides:
Article 294. [279] Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. *An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.* (Emphasis supplied)

[118] *See De Vera v. National Labor Relations Commission*, 269 Phil. 653 (1990) [Per J. Cruz, First Division].

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 23 2018