Republic of the Philippines
Supreme Court
Manila



**THIRD DIVISION**

**FIRST GLORY PHILIPPINES, INC.,**
Petitioner,

**- versus -**

**BRIAN L. LUMANTAO, STEVE J. PETARCO, ROY P. CABATINGAN, and ZYZAN T. LADRAZO,**
Respondents.

**G.R. No. 237166**

Present:

PERALTA, *J.*,
*Chairperson,*
LEONEN,
A. REYES, JR.,
HERNANDO, and
CARANDANG,* *JJ.*

Promulgated:

March 6, 2019

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# DECISION

**REYES, A., JR., *J.*:**

Challenged before this Court *via* this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated April 27, 2017 and the Resolution[3] dated November 20, 2017 of the Court of Appeals (CA) Twentieth Division, in CA-G.R. CEB-SP No. 08992, which reversed the Decision[4] dated September 30, 2014 of the National Labor Relations Commission (NLRC) Seventh Division, in NLRC Case No. VAC-06-000309-2014 insofar as it held that Brian L. Lumantao (Lumantao), Steve J. Petarco (Petarco), Roy P. Cabatingan (Cabatingan), and Zyzan T. Ladrazo (Ladrazo) (collectively referred to as the respondents) were dismissed for just cause.

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* Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

1 *Rollo*, pp. 43-71.

2 Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez concurring; id. at 8-30.

3 Id. at 33-38.

4 Penned by Commissioner Julie C. Rendoque, with Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Jose G. Gutierrez concurring; id. at 571-579A.

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## The Antecedent Facts

Petitioner First Glory Philippines, Inc. (FGPI) is a duly organized corporation engaged in the business of manufacturing and exporting garments.[5] The respondents are all former employees of FGPI as sewers. Aside from being former employees, the respondents are also officers and/or members of the FGPI Employees' Union – ALU-TUCP (the Union). Lumantao, Cabatingan, and Petarco are the Union's President, Vice-President, and Board Member, respectively, while Ladrazo is a member of the same.[6]

On August 16, 2013, FGPI issued a document termed "Memoranda" to the respondents, ascribing several offenses against them. The Memoranda also directed the respondents to submit their respective written explanations within five (5) days from receipt of the same, as well as to appear in an investigation to be conducted by FGPI's Human Resources department on August 24, 2013.[7]

Specifically, the Memoranda contained allegations that Cabatingan, Petarco, and Ladrazo manipulated and improperly used FGPI's Radio Frequency Identification System (RFID) by making it record a high but erroneous performance efficiency rating for them. Lumantao was also allegedly given an unsatisfactory rating for his failure to achieve the required level of performance efficiency.[8] All of these alleged acts and omissions were deemed violative of FGPI's Code of Conduct, as well as the directives on the proper use of the RFID, which, as consistently asserted by FGPI, the respondents were previously and consistently apprised with and were thus well-aware of.

In order to prevent any impairment to the investigation, FGPI placed the respondents under preventive suspension for a period of thirty (30) days, beginning August 16, 2013. However, despite receipt of the Memoranda, none of the respondents submitted a written explanation nor did any of them attend the scheduled investigation.[9]

Instead, the Union filed a Notice of Strike on August 22, 2013 before the National Conciliation and Mediation Board (NCMB). The Union claimed that in suspending the respondents, FGPI committed unfair labor practice and union busting as the Memoranda was issued to the respondents two (2) days after the new issuance of the Union's charter certificate.[10]

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5 Id. at 46.
6 Id. at 9.
7 Id. at 10.
8 Id. Note: The RFID records the time a sewer employee starts working, the time he or she takes a break, and his or her output at every stage or level of the production process.
9 Id. at 12.
10 Id. at 10.

On September 4, 2013, during the NCMB conciliation proceedings, FGPI gave the respondents another opportunity to submit their respective written explanations, while also scheduling another investigation on September 11, 2013 to hear the respondents' sides. However, the respondents once again failed to submit any written explanation nor attend the second investigation.

The investigation thus proceeded despite the lack of response from the respondents. Using the Investigation Reports[11] as basis, FGPI severed the respondents' employment with the company due to their respective violations:

> *Lumantao:*
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> Repetitive violations of company policies
> RE: Job Performance Standard (failed to pass the 70% efficiency grade 23 times from January to June 2013)
> RE: Time Management (16 days unapproved absences, 17 approved absences, undertime for 10 times, and tardiness for 39 times, from January to July 2013)
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> *Petarco:*
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> Manipulation and/or improper use of the RFID System in violation of the RFID directives, specifically No. 4 of the General Provisions, committed last August 13, 2013. (2 instances)
>
> *Cabatingan:*
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> Manipulation and/or improper use of the RFID System in violation of the RFID directives, specifically No. 4 of the General Provisions, committed last August 12, 2013. (8 instances)
>
> *Ladrazo:*
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> Manipulation and/or improper use of the RFID System in violation of the RFID directives, specifically No. 4 of the General Provisions, committed last August 13, 2013. (2 instances)[12] (Citations omitted)

Respondents received the notice severing their employment on September 13, 2013. Due to what transpired, the Union withdrew its case before the NCMB, and instead the respondents filed complaints for unfair labor practice, union busting, and illegal dismissal against FGPI before the Regional Arbitration Branch of the NLRC in Cebu City.

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11 Id. at 13.
12 Id. at 11-12.

On April 25, 2014, the Labor Arbiter (LA) issued a Decision[13] dismissing the respondents' complaints for lack of merit; the dispositive portion stating, to wit:

> WHEREFORE, judgment is hereby rendered DISMISSING the instant cases for lack of merit.
>
> SO ORDERED.[14]

After carefully considering the facts on record, the LA held that the respondents were dismissed validly for just cause and after observance of the requisite due process. In ruling upon the same, the LA found as merely speculative the respondents' allegations that they had been unfairly singled out due to their union activities.[15] For the LA, the fact that the respondents were either officers or members of the Union did not prevent them from being adjudged guilty of having committed violations of company policies, rules, and regulations, especially when they had committed prior offenses for which they were accordingly meted with penalties.[16] Respondents were also given more than one opportunity to explain their side and rebut the allegations against them, yet they failed to do so.

On appeal, the NLRC affirmed the decision of the LA *in toto*. The dispositive portion of the Decision[17] dated September 30, 2014 reads, to wit:

> WHEREFORE, premises considered, the Decision of the [LA] dated 25 April 2014 is, hereby, AFFIRMED.
>
> SO ORDERED.[18]

The NLRC likewise denied the respondents' Motion for Reconsideration in the assailed Resolution dated October 31, 2014.[19]

Aggrieved, the respondents subsequently filed a Petition for *Certiorari*[20] dated December 29, 2014 before the CA, alleging grave abuse of discretion on the part of the NLRC.

In its Decision[21] dated April 27, 2017, the CA reversed and set aside the decision of the NLRC. While sustaining the findings of fact of the lower court that there was no unfair labor practice nor union busting, and that

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13 Rendered by LA Milagros B. Bunagan-Cabatingan; id. at 483-499.
14 Id. at 499.
15 Id. at 48.
16 Id.
17 Id. at 571-579A.
18 Id. at 579A.
19 Id. at 115.
20 Id. at 580-605.
21 Id. at 110-131.

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procedural due process was indeed followed by FGPI,[22] the CA held that the respondents were illegally dismissed due in main part to FGPI's failure to prove that the outright dismissal of the respondents was not commensurate to their alleged offenses and also due to the lack of evidence. The dispositive portion of the decision reads, to wit:

> WHEREFORE, the petition is GRANTED. The Decision dated September 30, 2014, and the Resolution dated October 31, 2014, of the NLRC, 7th Division, Cebu City, in NLRC Case No. VAC-06-000309-2014, are REVERSED and SET ASIDE.
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> [Respondents'] dismissal is declared illegal for want of just cause. Accordingly, private respondent FGPI is ORDERED:
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> 1. To PAY [respondents] separation pay in lieu of reinstatement equivalent to one (1) month pay for every year of service, computed up to the finality of this Decision;
> 2. To PAY [respondents] full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time [respondents] were illegally dismissed on September 13, 2013 up to the finality of this Decision;
> 3. To PAY [respondents] attorney's fees equivalent to 10% of the total monetary awards; and
> 4. To PAY legal interest of 6% per annum on the total monetary awards computed from the finality of this decision until full payment.
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> The [LA] is ORDERED to compute the total monetary benefits awarded to the [respondents] in accordance with this Decision.
>
> SO ORDERED.[23]

FGPI's Motion for Partial Reconsideration[24] was likewise denied by the CA in a Resolution[25] promulgated on November 20, 2017. Hence, this Petition for Review on *Certiorari*, to which the respondents filed a Comment[26] on October 2, 2018.

## The Issue

The petition raises the singular issue of whether or not the CA erred in ruling that the respondents were not afforded substantive due process, and thus, that illegal dismissal was attendant in this case.

## Ruling of the Court

The petition is partly meritorious.

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22 Id. at 26-28.
23 Id. at 29-30.
24 Id. at 679-713.
25 Id. at 33-38.
26 Id. at 612-671.

At the onset, it is settled that this Court is not a trier of facts, and this applies with greater force in labor cases.[27] Corollary thereto, the Court has held in a number of cases that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.

In this case, the Court affords respect to the factual findings of both the LA and the NLRC, especially as both administrative bodies were one in their assessment of the facts and evidence appurtenant to the case.

However, for purposes of taking a second glance at the facts at hand in order to come to a proper determination of the rights and liabilities of the parties, the Court recognizes that while generally only questions of law may be entertained, the rule admits of certain exceptions, to wit:[28] 1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioner's main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Considering that the findings of fact and conclusions of law of the LA and the NLRC differ from those of the CA, and pursuant to the action of the Supreme Court in the case of *Noblado, et al. v. Alfonso*[29] wherein the Court took another look at the records of the case due to the CA therein overturning the factual findings of the lower courts, the Court finds it necessary to review the facts and evidence at hand in order to arrive at a just determination of the case and the attendant liabilities.

In its assailed decision, the CA reversed the ruling of the lower courts that the respondents were validly dismissed for cause, rationalizing thus:

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27 *Noblado, et al. v. Alfonso*, 773 Phil. 271, 279-280 (2015).

28 Id. at 280.

29 773 Phil. 271 (2015).

> The want of reliable evidence on record on the RFID Directives casts serious doubt as to the factual basis of the charge of violation thereof by petitioners. Without a copy of the RFID Directives, there is no gauge by which to determine whether or not petitioners committed violations thereof. The inevitable conclusion, therefore, is that there is no just cause for the termination of petitioners.[30]

The justification proffered by the CA for this conclusion was that FGPI failed to present the specific copy of the RFID Directives or the provisions chronicling the offenses of the respondents, supposedly embodied in the FGPI's Code of Conduct. After a review of the records, the Court finds this reason unsound and insufficient to reverse the factual findings of the LA as well as the NLRC. It is untrue that there was no gauge by which to determine whether or not respondents committed violations against FGPI, and the Court agrees with both adjudicatory bodies in finding that the provisions and directives referred to in the Memoranda issued by FGPI are more than sufficient.

To note, the LA, which had the opportunity to observe the parties as well as examine the evidence presented, ruled thus:

> Evidently, complainants were dismissed for just cause for having violated not only respondent corporation's Code of Conduct, but also the Radio Frequency Identification (RFID) Directives, under No. 4 of the General Provisions which states that "Any employee who altered, manipulated and/or improperly used the system or its device shall be a ground for termination without prejudice to payment of actual cost of damage suffered by the company."[31]

Likewise, for the NLRC, there was also no infirmity in the presentation of evidence substantiating the grounds, particularly as to the issue of the alteration of the RFID. In fact, the NLRC found that it was the respondents who had consistently failed to counter the allegations of FGPI, even when given the opportunity to do so. To reiterate:

> On the second issue, We also sustain the [LA's] finding that complainants were dismissed for just causes. The records of this case show that the grounds upon which complainants' termination from employment was predicated are substantiated by documentary evidence culled from [FGPI's] file. The, (sic) August 16, 2013, Memorandum served upon herein complainants will show that they were charged to have committed the following offenses provided for under Company rules:
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> x x x x
>
> [Complainants] posit that the pieces of documentary evidence submitted by [FGPI] are all self-serving. Unfortunately, complainants did not present countervailing evidence to disprove the data contained in the

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30 *Rollo*, p. 24.

31 Id. at 497-498.

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> said documents. It bears noting that complainants were given ample opportunity to answer and explain their side on the accusation against them, as contained in the x x x August 16, 2013 x x x memorandum but they did not. On their failure to submit an answer/explanation, they explained that they no longer filed an answer considering that they had already filed a notice of strike with the NCMB. Unfortunately for complainants the explanation they gave is far from convincing. Even granting that they had already filed a notice of strike with the NCMB, it did not preclude them from filing an answer to [FGPI's] memorandum. As a matter of fact, they were still given an opportunity to file an answer, even as the conciliation proceedings before the NCMB was ongoing. If complainants really believed that the charges against them, which caused their suspension for thirty days, were without basis, then it was with more reason that they should have been prompted to vindicate themselves by proving the [FGPI] wrong. x x x.
>
> x x x As regards the rest of the complainants, they alleged, along with Lumantao and Pacances that the RFID system is not reflective of their actual situation, citing in particular, their so called "non-productive time (machine trouble, set-up, break time, etc.) which, allegedly consumes a substantial amount of their time, thereby, in effect, decreasing their efficiency rate.["] The [FGPI], however, [was] quick to rebut the complainants['] assertions, presenting in evidence machine copies of the standard cards (personal necessity card, machine repair card, machine set-up card, wait maintenance card), which they could insert in the reader of the RFID depending on the actual situation that they are in, such that, the time spent or consumed for non-productive activities could not be counted into their working time. As regards the alleged discrimination, where they [said] that they were the only ones subjected to such performance review and scrutiny, complainants also failed to persuade Us. [FGPI] categorically stated in [its] pleadings the names of employees who were alleged to have been meted with disciplinary sanctions by [FGPI], along with them (e.g. manipulation of RFID System), but complainants did not refute the truthfulness of [FGPI's] claim that these employee (sic) were also subjected to disciplinary action. From the facts availing, We find that [FGPI's] act of terminating [complainants] from employment is based on valid grounds, as provided for under the Company policies and the rules governing the use and operation of the RFID System.[32] (Citations omitted)

Not only did the LA and the NLRC fail to find any infirmity in the presentation of the evidence, the Court finds that the respondents never even brought out the question of the same in any of their pleadings, such as the respondents' Position Paper[33] or Petition for *Certiorari*.[34] In actuality, the respondents never questioned the actual existence of the Company's rules or directives on the matter, only the implementation of such[35] and its alleged use to discriminate respondents as "oppressive to labor."[36]

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32 Id. at 576-578.
33 Id. at 440-451.
34 Id. at 580-605.
35 Id. at 589, 592.
36 Id. at 595.

While this in itself does not automatically indicate grave abuse of discretion on the part of the CA, it does indicate that even the respondents themselves concede the presence of the rules and regulations and the possibility that the same may be violated, lending credence to the belief that the respondents were well apprised of the rules and regulations that they were supposed to follow.

The absence of the actual Code of Discipline or the RFID Directives is not fatal, especially as the relevant provisions therein are properly cited in the Memoranda sent to the respondents, informing them of the allegations against them. The *Acebedo Optical v. NLRC*[37] case relied on by the CA actually highlights that the non-presentation of the authenticated copy of the company rules, while ideal and considered the best evidence, is not fatal, but only "casts skepticism on the factual basis of the charge of violation thereof."[38]

In this case, while there is no doubt as regards the factual basis of the charge being levied against the respondents which, as constantly reiterated, was never questioned by the respondents, the Court believes that there is no infirmity in the non-presentation. Indeed, the concurrence of the LA and the NLRC, among others, removes any doubt in this Court's mind as to the existence of the rules and the RFID Directives.

Notwithstanding the correct appreciation of the LA and the NLRC, a perusal of the documents and evidence at hand convinces this Court that the proof of valid dismissal has been properly substantiated. Respondents, save for Lumantao, were proven to have committed fraudulent acts which rendered them unfit to continue employment with FGPI.

Fraud as a just ground for dismissal is provided under paragraph (d) of Article 297 (formerly 282) of the Labor Code.[39] Thus: (d) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. The following are thus the requisites in order to validate this ground: **First**, there must be an act, omission, or concealment; **second**, the act, omission or concealment involves a breach of legal duty, trust, or confidence justly reposed; **third**, it must be committed against the employer or his/her representative; and **fourth**, it must be in connection with the employee's work.

The Court finds that the foregoing elements are attendant to the case at bar. The respondents, save for Lumantao, committed clear acts that involved a breach of trust and confidence by directly deceiving their

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37 554 Phil. 524 (2007).

38 Id. at 545.

39 Department Order No. 147-15, Series of 2015, Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as Amended.

employer by making it seem that they worked with greater speed and efficiency than they actually did. Once again, the Court sees no reason to disturb the findings of fact of the lower tribunals that there was a clear discrepancy between the time goals purportedly accomplished by the respondents –except Lumantao– and the regular time goals, as recorded.

Crucially, the fraud committed by respondents Cabatingan, Petarco, and Ladrazo is work-related and renders them unfit to work for FGPI. While the CA found that the penalty of dismissal was far from being fair and reasonable, and that FGPI failed to show any instance when any of the respondents actually received unwarranted advantage due to the altered efficiency rating,[40] the Court finds that it is the act of misleading FGPI which shows the respondents' inability to continue working for it, and which gave them undue advantages in terms of their reputation in FGPI and thus their treatment by peer and superior alike. Once again, the acts of fraud were uncontroverted by the respondents, who do not even deny the discrepancies, but only questioned the validity of the system and exclaimed that the system itself was "oppressive in labor."[41] This seems to this Court to be a flimsy justification posited on the part of the respondents, especially because the RFID System is a valid management prerogative to which the respondents likewise were unable to pinpoint any abuse or instance of bad faith in the implementation thereof.

Thus, the Court holds that the CA committed grave abuse of discretion in reversing the findings of the lower courts based on the non-presentation of the actual provisions or the Directives. The Court finds it appropriate to rely on the findings of the lower courts, as the tribunals first tasked to receive the evidence at hand, instead of affirming the CA's reversal of the rulings based solely on the advocated lack of documentary evidence, especially when it is clear that the respondents liable for fraud were justly charged and are guilty of the commission of the alleged acts which constitute palpable attempts at deceiving their employer and making it seem as if they were efficient at the workplace when in fact they were not.

However, the Court cannot rule the same in the case of Lumantao. While the Court's view differs with the logic of the CA that the dismissal of respondents Cabatingan, Petarco, and Ladrazo was illegal and not commensurate to their violations, the Court agrees with the finding of the CA that meting the supreme penalty of dismissal is not proportionate to the offenses committed by Lumantao.

In finding that Lumantao's dismissal was not proportionate to his offense, the CA held thus:

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40 *Rollo*, p. 25.

41 Id. at 595.

For purposes of assessing the employees' performance output, FGPI has set 70% as the passing grade as determined through the RFID System. Employees whose output fall (sic) below the passing percentage are subjected to the prescribed disciplinary measures.

Lumantao failed to comply with the required 70% efficiency rating for five (5) consecutive days in January 2013, and in February 2013. Although there were other days where he failed to achieve a passing grade, they were not for a consecutive period of 5 days and, hence, these instances were not punishable per company rules.

Under the circumstances, We find that the outright dismissal of Lumantao is grossly disproportionate to the two (2) instances when he failed to comply with FGPI's Inter-Office Memorandum No. 010-002. Based on the same Inter-Office Memorandum, a 7-day suspension for his second violation would have sufficed.

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Concomitantly, on the measure of applicable penalties, Article V, Chapter One (General Guidelines) of the same Code of Conduct, provides:

ARTICLE V. PENALTIES

SECTION 1. KINDS OF PENALTIES

The type of penalty which will be imposed will depend on the gravity of the offense.

The following are the types of penalties:

TYPE "A" PENALTY

First Violation : Verbal Warning/Written Warning
Second Violation : Three (3) working days suspension
Third Violation : Seven (7) working days suspension
Fourth Violation : Fifteen (15) working days suspension
Fifth Violation : Separation

TYPE "B" PENALTY

First Violation : Three (3) working days suspension
Second Violation : Seven (7) working days suspension
Third Violation : Fifteen (15) working days suspension
Fourth Violation : Separation

TYPE "C" PENALTY

First Violation : Seven (7) working days suspension
Second Violation : Fifteen (15) working days suspension
Third Violation : Separation

TYPE "D" PENALTY

First Violation : Separation

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> From January to July 2013, Lumantao incurred 16 days of unapproved absences, 17 days of approved but excessive absences, 10 instances of undertime, and 39 times of tardiness.
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> Based on FGPI's Code of Conduct, infractions on tardiness, undertime and absences do not warrant the immediate imposition of the supreme penalty of dismissal at the first instance. There is likewise no evidence on record showing that Lumantao incurred ten (10) consecutive absences without leave, which would have justified the imposition of the type "D" penalty of dismissal.
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> In immediately dismissing Lumantao, FGPI failed to follow the progression of disciplinary measures prescribed in Section 1, Article V of its Code of Conduct. FGPI failed to show that it imposed the less severe penalties first before imposing the ultimate penalty of dismissal. Where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe as dismissal. Hence, We find Lumantao's dismissal to be unwarranted under the circumstances.[42] (Citations omitted)

FGPI cited Lumantao's failure to pass the 70% job performance standard, his repetitive violations of company policies, as well as his poor time management[43] as the grounds for his termination of employment. According to the Investigation Report, the FGPI found that "Lumantao's numerous unauthorized and unjustified absences, absences beyond the allowed number, several tardiness and undertimes clearly show a habitual pattern of negligence in the performance of his duties[,]"[44] and that the "same is gross considering that he has consistently failed to meet the company's efficiency rating of 70%."[45] In Lumantao's Notice of Termination[46] dated September 13, 2013, FGPI stated that "[Lumantao's] above-mentioned numerous unauthorized, unjustified and excessive absences, undertimes, and tardiness which resulted in poor work performance or inefficiency constitute gross and habitual neglect of duties which under Article 282 of the Labor Code is also punishable with termination."[47]

Accordingly, Article 296 (formerly 282) of the Labor Code allows an employer to dismiss an employee for gross and habitual neglect of duties.[48] Particularly, jurisprudence provides that poor performance or unsatisfactory work may fall under gross and habitual neglect of duties under Article 296 (b) of the Code or may constitute gross inefficiency.

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42 Id. at 84-89.
43 Id. at 78.
44 Id. at 258.
45 Id.
46 Id. at 295.
47 Id.
48 LABOR CODE OF THE PHILIPPINES, *Presidential Decree No. 442*, as amended, Article 282.

In *Buiser, et al. v. Hon. Leogardo, etc., et al.*,[49] the Court ruled that failure to reach a standard set by an employer or other work goals may be considered a ground for the dismissal of an employee. This management prerogative of requiring standards can be availed of so long as they are exercised in good faith for the advancement of the employer's interest.[50]

However, sufficient proof of the allegedly inefficient work done by an employee needs to be produced before dismissal may be deemed valid. Such proof can be gleaned from several requisites, expressly stated in *Sameer Overseas Placement Agency, Inc. v. Cabiles*.[51] In that case, the requisites were held to be: 1) the employer must have set standards of conduct and workmanship against which the employee will be judged; 2) the standards of conduct and workmanship must have been communicated to the employee; and 3) the communication was made at a reasonable time prior to the employee's performance assessment.[52]

These requisites are wanting in Lumantao's case. While FGPI properly set standards of conduct and workmanship, the evidence is lacking to show that these standards were duly communicated to the respondent, especially during the times he had already alleged to be guilty of poor performance. There is no record that Lumantao was even warned about his work, or apprised as to what he had to do to improve the same. In fact, in Lumantao's 201 File, there was no mention of his failure to achieve the requisite performance standard, shown by FGPI in its petition. To wit:[53]

| Date | Offenses | Penalties |
|---|---|---|
| May 05, 2009 | Failure to carry assigned duties | Verbal Warning |
| May 24, 2011 | AWOL | Written Warning |
| September 17, 2011 | Excessive Tardiness | Written Warning |
| November 7, 2011 | AWOL | 3 days suspension |
| April 2, 2012 | AWOL | Written Warning |
| May 24, 2012 | AWOL | 3 days suspension |
| August 2012 | Excessive Tardiness | Written Warning |
| January 2013 | Excessive Tardiness | Written Warning |

49 216 Phil. 144 (1984).
50 Id. at 152.
51 740 Phil. 403 (2014).
52 Id. at 424.
53 *Rollo*, pp. 67-68.

A perusal of Lumantao's file shows that there is not even a record of the supposed failure to meet the performance standards, lending credence to the assertion that FGPI failed to properly apprise Lumantao regarding the same. As such, this takes away from the sincerity of FGPI in informing Lumantao about his supposed failing grade, and in helping him reach an acceptable standard, as well as FGPI's allegation that Lumantao was previously dismissed for prior offenses he committed.

As mentioned, the Court has almost invariably upheld an employer's management prerogative to dismiss an employee for gross negligence and carelessness so long as it is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[54] The Court finds lack of good faith and absence of valid cause on the part of FGPI in this regard, so as to properly state that Lumantao was illegally dismissed.

As for the allegations of tardiness, the Court agrees with the reasoning of the CA that, according to FGPI's own Code of Conduct, Lumantao's infractions on tardiness, undertime, and absences do not warrant the immediate imposition of dismissal at the first instance, and that there is a lack of evidence of record showing that Lumantao's absences justified the imposition of the type "D" penalty of dismissal.[55] It must especially be noted that FGPI even admitted in its petition that its own Code of Conduct contains a "loophole" which only punishes the accumulation of consecutive absences by employees, and thus Lumantao's accumulated absences without official leave of 16 days and absences of 17 days from January to July 2013 are not *per se* punishable with the supreme penalty of dismissal.[56] Thus, this Court must rely on the provisions on discipline themselves, and FGPI only has itself to blame that there is an infirmity in its own rules. Lumantao's security of tenure must not be prejudiced by the fault of the Company.

If the Court had previously relied on FGPI's guidelines to find that the other respondents were validly dismissed, so must this Court do the same in this instance. Thus, the finding of the CA that FGPI failed to follow its own disciplinary measures with respect to Lumantao must stand.

Based on the foregoing, while the Court holds that the CA committed grave abuse of discretion in rendering the assailed decision and reversing the previous findings of the lower courts, and finding that the employment of respondents Cabatingan, Petarco, and Ladrazo was terminated for just cause, the Court finds that the CA did not err in finding that Lumantao was illegally dismissed.

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54 *San Miguel Corporation v. Layoc, Jr.*, 562 Phil. 670, 687 (2007).
55 *Rollo*, p. 21.
56 Id. at 65.

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**WHEREFORE**, the Decision dated April 27, 2017 and Resolution dated November 20, 2017 of the Court of Appeals Twentieth Division in CA-G.R. CEB-SP No. 08992 are **AFFIRMED WITH MODIFICATION**.

With regard to respondents Roy P. Cabatingan, Steve J. Petarco, and Zyzan Ladrazo, the Decision dated April 25, 2014 of the Labor Arbiter, as affirmed by the National Labor Relations Commission in its Decision dated September 30, 2014 finding that the aforementioned respondents were dismissed for just cause, is **REINSTATED**. The decision of the Court of Appeals stating that they were illegally dismissed is **REVERSED** and **SET ASIDE.**

With regard to respondent Brian L. Lumantao, the decision of the Court of Appeals that his dismissal is illegal for want of cause is **AFFIRMED**. Accordingly, petitioner First Glory Philippines, Inc. is **ORDERED**:

1. To pay respondent Lumantao separation pay in lieu of reinstatement equivalent to one (1) month pay for every year of service, computed up to the finality of this Decision;

2. To pay respondent Lumantao full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time respondent Lumantao was illegally dismissed on September 13, 2013 up to the finality of this Decision;

3. To pay respondent Lumantao attorney's fees equivalent to 10% of the total monetary awards; and

4. To pay legal interest of six percent (6%) *per annum* on the total monetary award computed from the date of finality of this Decision until full payment.

Let this case be **REMANDED** to the Labor Arbiter for computation, within thirty (30) days from the receipt of this Decision, of respondent Lumantao's separation pay, backwages, and ten percent (10%) of the total sum as and for attorney's fees as stated above; and for immediate execution.

**SO ORDERED.**

**ANDRES B. REYES, JR.**
Associate Justice

**WE CONCUR:**

**DIOSDADO M. PERALTA**
Associate Justice
Chairperson

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

**RAMON PAUL L. HERNANDO**
Associate Justice

**ROSMARI D. CARANDANG**
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.

**DIOSDADO M. PERALTA**
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.

**LUCAS P. BERSAMIN**
Chief Justice

CERTIFIED TRUE COPY

**WILFREDO V. LAPITAN**
**Division Clerk of Court**
**Third Division**

JUL 24 2019