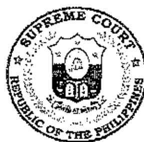

Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

DOMINGO A. PADSING, MARCIAL A. BACASEN, WENDELL D. NARCISO, and RUNDELL JAY M. SIDO,
Petitioners,

\- versus -

LEPANTO CONSOLIDATED MINING COMPANY and BRYAN U. YAP,
Respondents.

G.R. No. 235358

Present:

LEONEN, *J.*,
Chairperson,
CARANDANG,
ZALAMEDA,
ROSARIO, and
J. LOPEZ,* *JJ.*

Promulgated:

August 4, 2021

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DECISION

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the Decision[2] dated August 30, 2016 and the Resolution[3] dated September 20, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 129016 and 129345. The CA reversed the Decision[4] dated May 22, 2012 and Resolution[5] dated December 28, 2012 of

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* Designated as additional Member per Special Order No. 2834 dated July 15, 2021.

1 *Rollo*, pp. 25-65.

2 Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Noel J. Tijam (Former Member of this Court) and Francisco P. Acosta; id. at 10-19.

3 Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Priscilla J. Baltazar-Padilla (Former Member of this Court) and Jhosep Y. Lopez (now a Member of this Court); id. at 20-21.

4 Penned by Commissioner Nieves E. Vivar-De Castro with the concurrence of Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra; id. at 221-240.

5 Penned by Commissioner Joseph Gerard E. Mabilog, with the concurrence of Commissioner Isabel G. Panganiban-Ortiguerra and the dissenting opinion of Commissioner Nieves E. Vivar-De Castro; id. at 283-291.

the National Labor Relations Commission (NLRC), ruling that Domingo A. Padsing (Padsing), Marcial A. Bacasen (Bacasen), Wendell D. Narciso (Narciso), and Rundell Jay M. Sido (Sido) (collectively, petitioners) were illegally dismissed by Lepanto Consolidated Mining Company after they were found guilty of committing highgrading.

Facts of the Case

Petitioners were employees of respondent Lepanto Consolidated Mining Company (Lepanto) in its underground mine at Lepanto, Mankayan, Benguet. They were assigned as miner, pipe personnel, and muckers, respectively. On March 31, 2011, they were on duty for the first shift (11 p.m. to 7 a.m.). Padsing was assigned at 209-4M4, 950 level, Bacasen was assigned at all panels of 950 level. Meanwhile, Sido was a mucker at roadway of 950 level while Narciso was at 2092-4M3, 950 level.[6]

Around 4:00 a.m. of April 1, 2011, Padsing was in the process of drilling holes and inserting anfo[7] powder and dynamites in his area for blasting. Upon finishing the preparations, he instructed his mucker, Ricky Almos (Almos), to inform the nearby panels that they will be igniting the dynamites in their work area. When Almos left, Bacasen arrived at the area to inform Padsing that he was sent by Engineer Eric De Guzman (Engr. De Guzman), their Shift Boss, to disconnect some pipelines located in Padsing's workplace, that might be affected by the blasting.[8]

Thereafter, Sido also arrived at the area. According to Sido, he was also sent by Engr. De Guzman to look for workers in the 950 level who might be in need of the blow pipes. Padsing informed him that they no longer needed the blow pipes since they were ready for blasting. When Sido was about to leave, Bacasen asked for his help in disconnecting the pipe lines, to which Sido acceded. Padsing and Sido helped Bacasen in disconnecting the two water and two air pipe lines in the area.[9]

While disconnecting the pipe lines, Narciso arrived and asked for an extra rock bolt that he could borrow. Padsing replied that there was none. When Narciso was about to leave, Samuel Rosito (Rosito), their capataz, arrived at the area and was surprised to see them crowded in one workplace. He angrily asked what Bacasen, Sido, and Narciso were doing at the area. Bacasen explained that he was instructed to remove the pipe lines that might be affected by the blasting and said that he asked for the help of Sido and Padsing in removing the same. Meanwhile, Narciso explained that he just arrived at the area to borrow some rock bolt.[10]

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6 Id. at 223-224.
7 Ammunition nitrate fuel oil.
8 *Rollo*, p. 223.
9 Id. at 224.
10 Id. at 224-225.

Thereafter, Rosito informed them to immediately finish the disconnection of the pipe lines and get back to their own workplaces. Rosito and Narciso left the area while Padsing, Bacasen, and Sido continued to disconnect the pipe lines. When they were about to remove the second air pipeline, somebody, who was later known as security guard Renato Asusano (Asusano), suddenly grabbed the hand of Sido. Another person, who was later identified as security guard Glen Laceste (Laceste), asked for their chapa numbers. Another guard, Benny Bugtong (Bugtong), was with them.[11]

The security guards frisked them but found nothing. Thereafter, Asusano picked something from the ground and held up a cellophane of anfo powder with contents that allegedly belonged to them. They denied the accusation against them. The security guards ordered them to go out and explain themselves to the Security Investigation Division but they refused to go.[12]

A few minutes after, Rosito arrived when he heard them having a commotion and asked what was going on. The petitioners (except Narciso) told him that Asusano was accusing them of owning the cellophane and that they were told to go out with him. Rosito told the security guards to leave the miners so they can return to work but the guards insisted to bring the petitioners (except Narciso) to their office. Rosito then acceded and told them to just go with the guards and explain themselves since the guards found nothing on them. Padsing, Sido, and Bacasen went with the guards but Narciso did not because he was no longer there when the guards arrived.[13]

Upon arrival at the office, Asusano reported the incident and submitted the seized evidence. To the surprise of petitioners, he submitted a white sando bag cellophane and not the cellophane of anfo powder that he initially showed to them. Padsing questioned the same but he was ignored.[14]

This was corroborated by Bacasen, Sido, and Narciso. Further, petitioners submitted the affidavits of Rosito,[15] their capataz, John Omanag (Omanag),[16] the lead miner of Narciso, and Manuel Balais (Balais),[17] the lead miner of Sido, to further prove their respective testimonies.

Rosito testified that he was the assigned capataz at the 950 level. He saw the petitioners at the workplace of Padsing and asked them why they were there. Upon learning that they were disconnecting the pipe lines, he told Padsing to proceed with the blasting after the disconnection. He then left the area. At the entrance of the 209-4M4 950 level, Rosito saw the security guards hiding. When Narciso was about to exit, Asusano stopped and frisked him. Rosito called out the guards but they ignored him. When

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[11] Id. at 130-131, 134-135, 138.
[12] Id. at 131 and 135.
[13] Id. at 126-127, 131, and 135.
[14] Id. at 127.
[15] Id. at 140-141.
[16] Id. at 142.
[17] Id. at 143.

they found nothing on Narciso, they let him go. Then, Asusano, Laceste, and Bugtong entered the panel 209-4M4, 950 level. Rosito followed them and upon reaching the workplace, he saw the guards and the workers and heard that Padsing, Sido, and Bacasen were being accused of highgrading by the security guards.[18]

Rosito further added that from the entrance of 209-4M4, 950 level, the guards could not have seen the inside of the panel because there is a curve to pass by before they could reach the exact workplace of Padsing.[19]

Omanag corroborated the testimony of Narciso. He testified that he ordered Narciso to go at 209-4M4, 950 level to borrow some extra rock bolt. However, Narciso told him that they did not have the extra rock bolt and that they were seen by their capataz Rosito thereat. Also, Narciso mentioned that he was frisked by the security guards but they found nothing on him. Omanag said that he was with Narciso until the end of their shift.[20]

Lastly, Balais corroborated the testimony of Sido. Engr. De Guzman instructed Sido to bring the blow pipes to the other panels at 950 level and look for workers who might be in need of the blow pipe.[21]

Petitioners Padsing, Sido, and Bacasen were suspended on April 1, 2011 while Narciso still reported for work. However, on April 2, he was also preventively suspended by Lepanto.

On the other hand, the security guards submitted a joint affidavit, narrating their own version of facts. According to them, they were on duty as mine security patrols of the underground mine on April 1, 2011 from 11:00 p.m. to 7:00 a.m. of April 2, 2011. Around 4:00 p.m. during their shift, they came upon two unidentified miners sitting at the entrance of 207. Asusano instructed Laceste to guard the unidentified miners while he, Bugtong, and Quintin Pagtoc (Pagtoc) continued to patrol the area. They heard pounding sounds emanating from 209-4M4, 950 level so they cautiously approached its entrance. They peeped inside and saw four miners busy washing, picking, selecting, and examining stone ores from the roadway.[22]

They identified Sido, Padsing, and Narciso as the miners passing their selected stone ores to Bacasen, who was gathering and placing the said ores on top of a cellophane sheet. Thereafter, Narciso left and walked toward the 209 entrance, where he saw the security guards. They frisked him but found nothing in his possession. Consequently, they rushed inside to confiscate the stone ores being collected by the other miners.[23]

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18 Id. at 140-141.
19 Id.
20 Id. at 140.
21 Id. at 143.
22 Id. at 163.
23 Id.

Upon arriving at 209-4M4, they frisked Padsing, Sido, and Bacasen and they were able to collect the stone ores they collected. He then informed the three of their violation and invited them to the security investigation office.[24]

They submitted the seized stone ores for assaying, which yielded an assay of 18,335.68881 g/t gold with an estimated value of ₱6,106.00. The incident was blottered at the Philippine National Police-Mankayan, Benguet.[25]

A Notice to Explain[26] dated April 1, 2011 was given to the petitioners informing them of the charges of Serious Misconduct, Highgrading, and Breach of Trust and Confidence. They were directed to submit a written explanation on the abovementioned charges. A hearing/conference was set on April 13, 2011 at the legal office conference room of Lepanto to which they were instructed to attend.[27]

On April 13, 2011, the petitioners and the security guards appeared during the hearing. The petitioners submitted their affidavits to prove that they did not commit the charges against them. On the other hand, the security guards submitted a joint affidavit narrating the incident.[28]

On April 25, 2011, Lepanto issued a Notice of Termination[29] against the petitioners ruling that, upon investigation, Lepanto found substantial evidence to hold that petitioners were guilty of the charges against them. Lepanto ruled that petitioners committed the act of highgrading, which constitutes the offenses of serious misconduct and loss of trust and confidence that are sufficient grounds for termination. As a result, they were terminated from work effective immediately.[30]

Aggrieved, petitioners filed a complaint for illegal dismissal[31] before the Department of Labor and Employment Regional Arbitration Branch, Cordillera Administrative Region.

Ruling of the Labor Arbiter

On December 29, 2011, the Labor Arbiter (LA) rendered a Decision,[32] dismissing the complaint against respondent and ruling that there was a just cause for the termination of the petitioners. The dispositive portion of the Decision reads:

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[24] Id. at 163-164.
[25] Id. at 164.
[26] Id. at 145.
[27] Id. at 164.
[28] Id.
[29] Id. at 146-147.
[30] Id. at 164.
[31] Id. at 71-74.
[32] Penned by Labor Arbiter Monroe C. Tabingan; id. at 162-167.

q

> **WHEREFORE,** judgment is hereby rendered **DISMISSING** the instant complaint for lack of merit.
>
> **SO ORDERED.**[33] (Emphasis in the original)

The LA gave credence to the version of facts proffered by the witnesses of respondent, the apprehending security guards. It observed that the affidavits of the petitioners and their witnesses contained statements so harmonious and fitting with one another raising suspicion that such statements were a product of a well thought of and manufactured story. Such perfect dovetailing of their testimonies cast doubt on the credibility of the witnesses and the veracity of their defense.

The LA ruled that the testimonies of the security guards duly established that the petitioners committed the act of highgrading. Such act constitutes a serious misconduct, willful violation of company rules and regulations, and willful breach of trust and confidence of the employer. Thus, respondent had a lawful and valid cause in terminating the employment of the petitioners. The LA also took note of the past infractions of the petitioners, which further justify their legal termination. Lastly, it found that the respondent duly complied with the mandated procedures and requirements for a valid dismissal of an erring employee.

Aggrieved, the petitioners filed an appeal before the NLRC.

Ruling of the National Labor Relations Commission

On May 22, 2012, the NLRC reversed and set aside the decision of the LA and issued a Decision,[34] finding that the petitioners were illegally dismissed by the respondent, to wit:

> **WHEREFORE,** finding merit in the Appeal, the Decision of the Labor Arbiter dated December 29, 2011 is hereby REVERSED and ASIDE *(sic)*. A new judgment is entered finding merit in the Complaint for illegal dismissal. Accordingly, Respondent-Lepanto Consolidated Mining Company is hereby ordered to pay the Complainants their backwages from the date of their dismissal on April 25, 2011 up to the date of the promulgation of this Decision by the Commission, computed as follows:
>
> 1. Wendell Narciso (P508/day)
>
> a. Basic Pay
> 4/25/11 – 5/15/12
> P508 x 26 x 12.70 = P167,741.60
>
> b. 13th month pay
> P167,741.60/12 = P 13,978.47

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[33] Id. at 167.

[34] Supra note 4.

c. SILP
P508 x 5/12 x 12.70 = P 2,688.17
P184,408.24

2. Marcial Bakasen (P508/day)
a. Basic Pay
4/25/11 – 5/15/12
P508 x 26 x 12.70 = P167,741.60

b. 13th month pay
P167,741.60/12 = P 13,978.47

c. SILP
P508 x 5/12 x 12.70 = P 2,688.17
P184,408.24

3. Rundell Jay Sido (P483.40/day)
a. Basic pay
4/25/11 – 5/15/12
P483.40 x 26 x 12.70 = P 159,618.68

b. 13th month pay
P159,618.68/12 = P 13,301.56

c. SILP
P483.40 x 5/12 x 12.70 = P 2,558.00
P175,478.24

4. Domingo Padsing (P514/day)
a. Basic pay
4/25/11 – 5/15/12
P514 x 26 x 12.70 = P 169,722.80

b. 13th month pay
P169,722.80/12 = P 14,143.57

c. SILP
P514 x 5/12 x 12.70 = P 2,719.92
P186,586.29

In lieu of reinstatement, the Complainants should be paid separation pay equivalent to one month for every year of service from the time they became regular employee of the Respondent-Company, computed as follows:

1. Wendell Narciso
   8/1/04 – 5/15/12
   P508 x 26 x 8 years = **P105,664.00**

2. Marcial Bakasen
   6/20/01 – 5/15/12
   P508 x 26 x 11 years = **P145,288.00**

3. Rundell Jay Sido
   6/23/05 – 5/15/12

P483.40 x 26 x 7 years = **P87,978.80**

4. Domingo Padsing
   8/1/04 – 5/15/12
   P514 x 26 x 8 years = **P106,912.00**

SO ORDERED.[35] (Emphasis in the original)

The NLRC ruled that mere concurrence in the testimonies of petitioners and their witnesses does not put their credibility into question. If the LA wanted to determine their credibility, it could have easily conducted clarificatory questions on the witnesses. Upon review of the records, NLRC gave credence to the version of the petitioners that it is highly improbable for the security guards to see them committing highgrading because there was a curve that one needs to pass through before reaching their workplace. Further, the underground mine was dark and one needs to point a cap lamp to a certain area to see the same.

Further, NLRC gave credence to the testimony of Padsing that there was tampering of evidence. What the security guards showed to them was wrapped in anfo powder cellophane while what was submitted during the investigation was wrapped in a white sando bag cellophane. Likewise, Capataz Rosito, an unbiased witness, testified that there was no highgrading committed.

Aggrieved, respondents filed a Motion for Reconsideration (MR) of the NLRC decision. Respondents submitted the Affidavit of Engr. Eric De Guzman and photos of the underground mine as additional evidence. On December 28, 2012, the NLRC issued a Resolution denying the MR for lack of merit. However, NLRC Commissioner De Castro, the ponente of the NLRC decision, issued a Dissenting Opinion.[36]

Undaunted, the respondents filed a Petition for *Certiorari* under Rule 65 before the CA.

Ruling of the Court of Appeals

On August 30, 2016, the CA issued a Decision,[37] granting the petition of respondents and reinstating the LA decision dated December 29, 2011, *viz.*:

WHEREFORE, premises considered, We hereby:

(1) **GRANT** the Petition from Lepanto Consolidated Mining Company in CA-G.R. SP No. 129016; and
(2) **DENY** the Petition of Domingo Padsing, Marcial Bakasen, Wendell Narciso, Rundelly Jay M. Sido and

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[35] *Rollo*, pp. 237-240.
[36] Id. at 291-296.
[37] Supra note 2.

> Wendell Narciso (sic) in CA-G.R. SP No. 129345 for lack of merit.
>
> Accordingly, the Decision dated May 22, 2012 and Resolution dated December 28, 2012 of the NLRC are hereby **SET ASIDE** and the Decision dated December 29, 2011 of the Labor Arbiter, which dismissed the Complaint for Illegal Dismissal, is hereby **REINSTATED.**
>
> **SO ORDERED.**[38] (Emphasis in the original)

In reversing the NLRC decision, the CA found that there was substantial evidence to prove that petitioners committed the act of highgrading. The declaration of the security guards was more believable and credible than the testimonies of the petitioners. Likewise, the affidavit of Engr. De Guzman debunks the statements of the petitioners as to why they were at the workplace of Padsing. The lack of authorization from their supervisor to be somewhere outside their respective workplaces constitutes a violation of the company protocol and lends credence to the version of the respondents' version of the facts.

Further, the CA ruled that the past infractions of the petitioners may be considered as a justification for their dismissal from work since these infractions are similar to the present offense they were accused of.

Petitioners filed an MR[39] on November 5, 2016, which was denied in a Resolution[40] dated September 20, 2017.

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Issues

In their Petition dated November 18, 2017, petitioners raised the following issues:

> I
>
> WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND/OR ERRED IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSIONS [*sic*];
>
> II
>
> WHETHER OR NOT PETITIONERS SHOULD BE REINSTATED TO THEIR FORMER POSITIONS WITHOUT LOSS OF SENIORITY RIGHTS;

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[38] *Rollo*, pp. 18-19.

[39] Id. at 372-380.

[40] Supra note 3.

III
WHETHER OR NOT THE FAILURE OF PRIVATE RESPONDENT BRYAN U. YAP TO SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING IN THEIR PETITION FOR CERTIORARI WITH THE COURT OF APPEALS IS FATAL.[41]

Petitioners' Arguments

Petitioners argued that the CA erred in ruling that NLRC committed grave abuse of discretion. The NLRC arrived at its decision upon weighing the pieces of evidence submitted by both parties, hence there was no grave abuse of discretion. In granting the petition for certiorari of respondents, the CA looked into the sufficiency of evidence of the parties, which is not within the jurisdiction of a *certiorari* petition.

Further, petitioner averred that concomitant to their constitutional right to security of tenure, they must be reinstated to their former positions without loss of seniority rights. Their reinstatement would not be inimical to the interests of the employer but would work for its benefit because they are already trained and experienced miners. Lepanto would no longer need to train them as opposed to new miners. Further, there is no strained relations between them since petitioners did not come in contact with respondents. It is the supervisors and engineers of Lepanto who deal with petitioners on a daily basis.

Lastly, the failure of respondent Brian Yap to sign the verification and certificate of nonforum shopping in the petition for *certiorari* filed before the CA is crucial because it is a ground for dismissal of the petition. Thus, the CA should not have given credence to the same and upheld the decision of the NLRC.

Respondents' Comment

Respondents filed its Comment/Opposition[42] dated June 4, 2018. It argued that the CA did not err in granting their petition for *certiorari*. The NLRC committed grave abuse of discretion when it arbitrarily disregarded material evidence in arriving at its decision. Further, the CA did not err in holding that there was substantial evidence to find petitioners guilty of highgrading, which constitutes serious misconduct and willful breach of trust and confidence. The testimonies of Lepanto's witnesses duly established that the petitioners were caught in the act of committing highgrading. Petitioners' testimonies were also marred by their suspicious dovetailing.

There being no illegal dismissal, the claim for reinstatement must be dismissed. Even if there is a finding of illegal dismissal, petitioners can no longer claim reinstatement because of the strained relations between the

[41] *Rollo*, pp. 50-51.
[42] Id. at 400-417.

employer and the employees. It will be inimical to the interests of Lepanto to reinstate petitioners because of the serious doubts in their honesty at work.

Lastly, the impleading of Brian Yap as a respondent is a case of misjoinder of a party since he is not an indispensable party to the suit. A corporation has a distinct and separate personality from its officers and Yap cannot be held solidarily liable for the termination of the petitioners absent any showing that their dismissal was attended by malice or bad faith.

Petitioners' Reply

In their Reply[43] dated July 18, 2019, petitioners reiterated their arguments in their Petition for Review.

Ruling of the Court

The petition is meritorious.

Settled is the rule that this Court is not a trier of facts and a petition for review on *certiorari* reviews only questions of law. "Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which the labor officials' findings rest. As such, the findings of facts and conclusion of [the labor tribunals] are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence."[44]

However, if the findings of fact of the LA and the NLRC are conflicting, the reviewing court may delve into the records and examine the sufficiency of the evidence, such as in this case. The LA and the CA both found that there was no illegal dismissal of the petitioners and dismissed their complaint for lack of merit while the NLRC held that there was no just or authorized cause for the termination of the petitioners, hence they were unjustly dismissed by Lepanto.

On the issue of whether the CA erred in granting the petition for *certiorari* despite the absence of grave abuse of discretion on the part of the NLRC, the Court rules that the CA did not err in considering the sufficiency of the evidence to arrive at its Decision.

While it is settled that in a special civil action for *certiorari* under Rule 65, the issues are limited to errors of jurisdiction or grave abuse of discretion; "the CA[, in labor cases elevated to it via petition for *certiorari*,] is empowered to evaluate the materiality and significance of the evidence alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC in relation to all other evidence on record."[45] The CA can grant

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[43] Id. at 453-468.

[44] *Acebedo Optical v. National Labor Relations Commission,* 554 Phil. 524, 541 (2007).

[45] *Univac Development, Inc. v. Soriano,* 711 Phil. 516, 525 (2013).

this prerogative writ: "[(1)] when the factual findings complained of are not supported by the evidence on record; [(2)] when it is necessary to prevent a substantial wrong or to do substantial justice; [(3)] when the findings of the NLRC contradict those of the LA; and [(4)] when necessary to arrive at a just decision of the case."[46] To make this finding, the CA necessarily has to view the evidence if only to determine if the NLRC ruling had basis in evidence, such as in this case.

To determine whether NLRC committed grave abuse of discretion, the CA necessarily has the power to review the factual findings and evidence submitted by the parties. Hence, the CA did not err in reviewing the sufficiency of the evidence since the factual findings of the LA and NLRC are in conflict with each other.

This Court, in turn, has the same authority to look through the factual findings of both the CA and the NLRC in the event of their divergence. Therefore, We are not precluded from reviewing the factual issues when there are conflicting findings by the LA, the NLRC, and the CA.

After a judicious review of the records, the Court rules that the CA erred in reversing the decision of the NLRC upon finding that there is no substantial evidence to support the termination of the petitioners.

According to the LA and CA, the testimonies of the security guards and of Engr. De Guzman were sufficient evidence to establish that petitioners committed the act of highgrading, which constitutes serious misconduct and willful breach of trust and confidence, which, in turn, are valid grounds for dismissal. The LA, as affirmed by the CA, found the testimonies of the petitioners and their witnesses suspicious and fabricated because of their perfect dovetailing. This allegedly cast doubt on their veracity and the credibility of the witnesses.

However, We rule that the joint affidavit of the apprehending security guards and the affidavit of Engr. De Guzman were not substantial enough to warrant the dismissal of the petitioners. Upon scrutiny of the evidence on record, the Court found that Lepanto failed to prove by substantial evidence that petitioners committed the act of highgrading.

In *Agusan del Norte Electric Cooperative, Inc. v. Cagampang,*[47] the Court discussed the burden and quantum of proof needed in illegal dismissal proceedings, to wit:

> In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal was illegal. The employer's case succeeds or fails

46 Id.

47 589 Phil. 306 (2008).

> on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. [48]

Upon a perusal of the joint affidavit, the Court finds that the statements of the security guards were inconsistent in material points and uncorroborated, which cast doubts on their veracity and truthfulness. Further, the affidavit of Engr. De Guzman did not belie the defenses proffered by the petitioners.

The security guards stated that they reported for duty on the first shift of April 1, 2011, which runs from 11:00 p.m. to 7:00 a.m. of the next day (April 2, 2011). This was stated in their joint affidavits and in all the other pleadings submitted before the LA, NLRC, and CA. However, in the Notice to Explain, Lepanto indicated that the incident happened around 4:00 a.m. April 1. Hence, the testimony of the guards was inconsistent with the charge against the petitioners. The date of the commission of the offense is a material point in this case because the charge solely relies on the testimony of the guards. How could have they mistaken the date when it was committed if they were really sure that the petitioners perpetrated the act of highgrading?

Further, in the minutes of the hearing/conference held by Lepanto, it was only Asusano who narrated the incidents that transpired. His testimony was not corroborated by the other security guards since their testimonies were no longer presented. Moreover, Lepanto did not submit the analysis report of the assayed stone ores allegedly taken from the petitioners. Neither did Lepanto submit the seized stone ores nor the police blotter as reported with the Philippine National Police-Mankayan, Benguet. These pieces of evidence would have supported the joint affidavit of the Security Guards. Their nonpresentation means that the testimony of Asusano is uncorroborated despite being the sole basis for the accusation against the petitioners.

Jurisprudence has established that in labor cases, "[u]nsubstantiated suspicions, accusations, and conclusions of the employer are not sufficient to justify an employee's dismissal.[49] The employer must prove by substantial evidence the facts and incidents upon which the accusations are made."[50]

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48 Id. at 313, citing *PLDT v. Tiamson*, 511 Phil. 384, 394-395 (2005) (citations omitted).
49 *Landtex Industries v. Court of Appeals*, 556 Phil. 466, 487 (2007).
50 Id.

In *Phil. Associated Smelting and Refining Corp. (PASAR) v. NLRC*,[51] We ruled that the mere conduct of an investigation and the statements of the company's security guard are not enough to establish the validity of the charge of wrongdoing against the dismissed employees. "It is not enough for an employer who wishes to dismiss an employee to charge [them] with x x x wrongdoing. The validity of the charge must be established in a manner consistent with due process. x x x A suspicion or belief no matter how sincerely felt cannot substitute for factual findings carefully established through an orderly procedure."[52]

To belie the claims of the petitioner, the CA gave credence to the affidavit of Engr. De Guzman, which was submitted by Lepanto as evidence in their MR before the NLRC. While the affidavit, though belatedly submitted, may be admitted in evidence since rules of procedure are not controlling in labor proceedings, the same cannot be given probative value.

This Court has time and again held that admissibility of evidence is different from its probative value.

In *Lepanto Consolidated Mining Co. v. Dumapis*,[53] the Court discussed that "[a]dmissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence."[54] An evidence is given probative value if it attests to the fact being established.

The affidavit of Engr. De Guzman was offered in evidence to prove that he did not give the instructions to Bacasen and Sido, thereby opposing the defenses of the petitioner. However, upon review of the affidavit, the Court finds that there was no categorical denial of giving the instructions. The Affidavit is reproduced, to wit:

> Ques – Did you report for work on March 31, 2011, if so what was your shift and where did you report for work?
> Ans – Yes, with shift from 11:00 P.M. to 7:00 A.M. the following day to cover my shift for April 1, 2011, at the 950 level underground mine.
>
> Ques – What particular work places at 950 level were you assigned during your shift this April 1, 2011?
> Ans – I was tasked to supervise my men working at 4M RAMP, 2091 4M4, 2092 4M3 upper, 2092 4N1, 209 4M4, 207 4M4 west, 207 4M4 East, 2092 4M3 lower, 2223 5M3 and 210 J Repair bay (proposed) all at 950 level underground.

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[51] 256 Phil. 311 (1989).
[52] Id. at 317.
[53] 584 Phil. 100 (2008).
[54] Id. at 110 (citations omitted).

Ques – Are there assigned men to those enumerated work places?
Ans – Yes.

Ques – Where are the assigned work places of Messrs. RUNDEL JAY SIDO, MARCIAL BACASEN, DOMINGO PADSING and WENDELL NARCISO during your shift this date?
Ans – Mr. PADSING was assigned at 209, 4M4, Mr. SIDO was assigned at 210 J proposed Repair bay, Mr. NARCISO was assigned at 2092, 4N1 and Mr. BACASEN was assigned as Air and Water maintenance in all work places at 950 level depending on the work places that needs his services.

Ques – Where were you at about 4:00 A.M. this date during shift?
Ans – I was at the junction of 210 J and 204 Ramp, 950 level underground. (Near at the Transfer Chute)

Ques – What are you doing at the said junction?
Ans – I just came from 2223 5M3 then went to the said junction to supervise the operator mucking ores at the Transfer chute.

Ques – Who were the operators you are supervising?
Ans – They were Messrs. OPLAS and GAMMA.

Ques – Were you informed about the apprehension of your men Messrs. SIDO, BACASEN, PADSING and NARCISO at 209, 4M4?
Ans – Yes, I was informed by SG PAGTO while I was at 210 J after I went to check the LHD No. 61 that was mucking ore at 2223 5M3 by Mr. OPLAS as he was a little bit delayed.

Ques – Who is the workmate of Mr. PADSING at 209 4M4?
Ans – He is Mr. AMLOS.

Ques – How far is the 210J from 209, 4M4?
Ans – Too far and located upper level.[55]

Nothing from his affidavit shows that he did not give the instructions to Bacasen and Sido. The CA concluded that since around 4:00 a.m., Engr. De Guzman was in another workplace, he could not have given the instruction to Bacasen and Sido. Such conclusion is flimsy and groundless. Just because Engr. De Guzman was in another workplace does not mean that he did not meet Bacasen and Sido and gave out the instructions to them. As mentioned in the Affidavit, Engr. De Guzman is in charge of the 950 level, including the workplace of Sido at 210 J Repair Bay. As a matter of fact, he was at the junction of 210 J and 204 Ramp, thereby supporting the claim of

[55] *Rollo*, p. 277.

Sido that he was instructed by Engr. De Guzman to look for other workers who might be in need of the blow pipes. This claim is further corroborated by the testimony of Balais, the lead miner of Sido, that Engr. De Guzman gave the instruction to Sido.

Meanwhile, Bacasen was in charge of the pipe lines in the 950 level, the area of supervision of Engr. De Guzman. Being the pipe personnel on duty, it was with Bacasen that Engr. De Guzman would deploy the task of disconnecting pipe lines that might be affected by blasting. Had Engr. De Guzman not given the said instruction to Bacasen to proceed to 209, 4M4 to disconnect the pipe lines, he could have categorically denied the same in his affidavit, which he did not. Thereby leading to the presumption that such instruction was indeed given to Bacasen.

Hence, the Affidavit of Engr. De Guzman cannot be considered as substantial to support the illegal dismissal of the petitioners. It lacks the probative weight to establish that petitioners committed the act of highgrading.

As to the supposed dovetailing of the testimonies of the petitioners, the Court agrees with the finding of the NLRC, as quoted hereunder:

> The fact that the testimonies of the complainants and their witnesses have dovetailed does not put their credibility in question. Said testimonies should not have been discarded simply because they dovetailed on principal points. If only to test the credibility of the said complainants and their witnesses, the Labor Arbiter could have readily conducted clarificatory questions.[56]

While the Court warns on perfect dovetailing of testimonies, the evidence must still be considered on whether it is able to substantiate the fact being established. Further, in labor proceedings, the Labor Arbiter is not restricted by the procedural rules in conducting the trial to determine whether there was an illegal dismissal. The LA must thoroughly evaluate the evidence submitted, and when there are ambiguous matters, it may avail of a clarificatory hearing. This tool is provided in order that the LA may arrive at a just and informed decision. However, in this case, the LA erred in solely considering the affidavit of the security guards without giving credence to the testimony of the petitioners and their witnesses.

The evidence of Lepanto contains inconsistency and is uncorroborated while the evidence of petitioners appears doubtful because of its perfect dovetailing. Thus, the Court is put into a position wherein the pieces of evidence are evenly balanced and it has to make a determination which side is more convincing. However, in labor cases, when doubt exists, the doubt must be resolved in favor of labor.

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56 Id. at 232.

> [I]t is a well-settled doctrine that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule that in controversies between a laborer and [their employer], doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail themselves of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor.[57]

Even if the equipoise doctrine is not applied, the Court is still inclined to rule in favor of the petitioners. The duties assigned to them as miner, pipe personnel, and muckers constrain them to drill, pound, and remove stone ores from the underground mine. What they were doing when the security guards saw them were acts well within the area of their assigned duties.

Lepanto failed to rebut the unlikelihood of peeping through the entrance of 209, 4M4 to see the workplace of Padsing since there is a curved path prior to going inside. It also failed to explain how the security guards saw the petitioners doing the act of highgrading when the underground mine was naturally dark and cap lamps are needed to lighten the area. It also failed to present the seized stone ores or even just a photo of them and the analysis report showing that the stone ores are of high-grade material to substantiate the accusation of highgrading.

Moreover, the testimonies of petitioners' witnesses further bolster their defense. Rosito, Omanag, and Balais are independent witnesses. It is highly unlikely that they would testify against Lepanto, who is their employer and the source of their livelihood, if their testimonies were only fabricated. These witnesses will not sacrifice their main source of living with the possibility of going against their employer, if their testimonies were not actually true.

While the past infractions of the petitioners can be considered in imposing the penalty, it cannot be made as basis or ground for their dismissal. There being no substantial evidence to support their valid dismissal, their track record cannot be made as the sole basis to justify their termination. As duly found by the Court, Lepanto failed to prove through substantial evidence that petitioners committed the act of highgrading. The sole testimony of Asusano, uncorroborated and inconsistent with the charge, cannot be considered as substantial to prove that petitioners were guilty of highgrading. Hence, there was no just or authorized cause for their termination.

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[57] Supra note 53 at 117.

While the Court notes that Lepanto complied with the twin-notice rule, the dismissal is still considered illegal if there was no substantive due process provided to the employees. The twin-notice rule only complies with the procedural due process provided under the Labor Code. Without a just or authorized cause for termination, the dismissal of the petitioners is considered invalid.

> Settled is the rule that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to [their] full backwages, inclusive of allowances and to [their] other benefits or their monetary equivalent computed from the time [their] compensation was withheld up to the time of actual reinstatement. If reinstatement is not possible, however, the award of separation pay is proper.[58]

Petitioners pray for reinstatement while Lepanto submits that reinstatement is no longer feasible due to the strained relations between the parties and for the interests of both the employer and employee. Meanwhile, the NLRC justified the award of separation pay by concluding that reinstatement is no longer in the best interests of the parties.

This Court has time and again ruled that it is only when reinstatement is not possible that the award of separation pay is given. Jurisprudence has laid down the instances when separation pay is made an alternative relief in lieu of reinstatement, to wit: "(a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and the employee."[59]

In the instant case, the Court rules that reinstatement is proper upon finding that the above-mentioned instances are wanting. Arguments of the petitioners in their petition for review are well-taken. Further, the Court deems reinstatement as proper based on equitable grounds and to promote the protection accorded by the Constitution to the workers' right to security of tenure.

While the case was instituted in May 2011, or about 10 years from today, the Court considers reinstatement as practical and feasible due to the continued operations of Lepanto in Benguet. As pointed out by the petitioners, Lepanto has even expanded its operations by opening a new mine called Far South East gold mine. Hence, Lepanto is still in need of miners, pipe personnel, and muckers such as petitioners with the

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58 *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 524 (2015).

59 *Abaria v. National Labor Relations Commission*, 678 Phil. 64, 100 (2011).

continuance and expansion of its business. Reinstatement will serve both the interests of the petitioners and Lepanto since petitioners, who have the skill and expertise in underground mining, will continue to have an employment and a source of livelihood while Lepanto will have workers who have experience and familiarity with the industry and need not be trained anew. Also, as aptly pointed out by the petitioners, there is no strained relations between the employer and the employee.

While the doctrine of strained relations may be applied so as to liberate the employee from working in what could be a highly oppressive work environment and the employer from maintaining a worker it could no longer trust, the fact of strained relations must be duly proven and established through substantial evidence. Reinstatement is the general rule, while award of separation pay is the exception. It is incumbent upon the employer to show that the relationship with the employee has become strained as a result of the controversy. In *Advan Motor v. Veneracion*,[60] the Court explained:

> As we have held, "[s]trained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone" so as to deprive an illegally dismissed employee of [their] means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.[61]

In this case, Lepanto has failed to show by substantial evidence the existence of strained relations between it and the petitioners. Reinstatement cannot be barred, especially when the employee has not indicated an aversion to returning to work or when the employer has not duly established that there was loss of trust and confidence on the employee. Petitioners' intent and willingness to be reinstated have been evident since they filed their complaint with the LA. Even up to this date, they are praying for their reinstatement.

This Court will not loosely apply the doctrine of strained relations so as to deprive the petitioners of their main source of livelihood. Petitioners are experienced miners, pipe personnel, and muckers who have been accustomed to the nature of their work. Mining is a specialized industry and employment opportunities are limited as opposed to other industries. It will be difficult for the petitioners to look for another job to which they are

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60 G.R. No. 190944, December 13, 2017.

61 Id.

experienced and familiar with since they have been longtime miners. Hence, in view of the lack of strained relations and to uphold their Constitutional right to security of tenure, the Court rules that petitioners should be reinstated.

Hence, Lepanto is ordered to reinstate petitioners to their former positions without loss of their seniority rights and other privileges within 15 days from the receipt of this Decision. Further, Lepanto is ordered to pay petitioners their backwages, inclusive of allowances and other benefits they may be entitled to, computed from the time of their illegal dismissal on April 25, 2011 until their actual reinstatement.

Finally, since petitioners were compelled to litigate to protect their rights and interests, attorney's fees of 10% of the monetary award is likewise awarded. The monetary grants shall be subject to legal interest of 12% *per annum* from April 25, 2011 until June 30, 2013 and then to legal interest of 6% *per annum* from July 1, 2013 until paid in full.

WHEREFORE, the instant petition is **GRANTED**. The Decision dated August 30, 2016 and the Resolution dated September 20, 2017 of the Court of Appeals in CA-G.R. SP No. 129016 and 129345 are **REVERSED** and **SET ASIDE.** Respondent Lepanto Consolidated Mining Company is **DIRECTED** to reinstate petitioners to their former positions without loss of seniority rights and other privileges within fifteen (15) days from the receipt of this Decision. Further, respondent Lepanto Consolidated Mining Company is **ORDERED** to pay petitioners their backwages, inclusive of allowances and other benefits they are entitled to, computed from the time they were illegally dismissed on April 25, 2011 until their actual reinstatement and to pay attorney's fees in the amount of 10% of the monetary award.

Let this case be **REMANDED** to the Labor Arbiter for a detailed computation of the monetary awards.

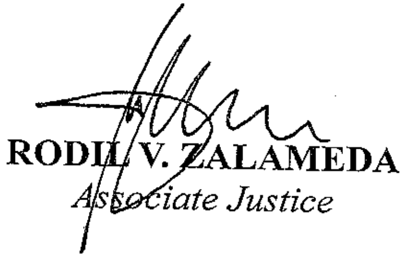
All monetary awards shall earn interest at the legal rate of twelve percent (12%) *per annum* from April 25, 2011 up to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until full satisfaction.

SO ORDERED.

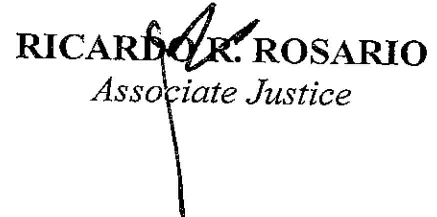
ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
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.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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.

ALEXANDER G. GESMUNDO
Chief Justice