Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

UNIVERSITY OF THE CORDILLERAS, DR. RICARDO PAMA, DR. CLEOFAS M. BASAEN, DR. MIRIAM A. JANEO, *
Petitioners,

-*versus* -

BENEDICTO F. LACANARIA,
Respondent.

G.R. No. 223665

Present:

PERLAS-BERNABE, *SAJ.*, *Chairperson*,
HERNANDO,
INTING,
GAERLAN, and
DIMAAMPAO, *JJ.*

Promulgated:

SEP 27 2021

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DECISION

HERNANDO, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court challenging the March 18, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 124276.

The CA reversed and set aside the October 21, 2011[3] and January 10, 2012[4] Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000542-11(8) / NLRC CN RAB-CAR-06-0306-10, which

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* The National Labor Relations Commission is deleted as petitioner pursuant to Section 4, Rule 45 of the Rules of Court.

1 *Rollo*, pp. 9-48.

2 Id. at 50-65; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Jhosep Y. Lopez (now a member of this Court).

3 Id. at 67-72; penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Alex A. Lopez; Commissioner Pablo C. Espiritu, Jr., on leave.

4 Id. at 74-75; penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Alex A. Lopez; Commissioner Pablo C. Espiritu, Jr., took no part.

affirmed the Executive Labor Arbiter's (ELA) December 30, 2010 Decision[5] dismissing the complaint for illegal dismissal filed by herein respondent Benedicto F. Lacanaria (Lacanaria).

The Antecedents:

Petitioner University of the Cordilleras employed respondent Lacanaria as an Instructor-Associate Professor at the College of Teacher Education (CTE)[6] in June 2005.

On February 25, 2010, during a scheduled creative presentation for Lacanaria's class, one of his students, Rafael Flores (Flores), did not join in the dance portion of their group number, although he participated in the singing and acting parts. Apparently, Flores had a persistent cough but he attended the class since an absence would yield a grade of zero for the performance. Because Flores did not join in the dance segment, Lacanaria instructed him to still dance to be fair to the whole group. However, while Flores was dancing, his knees suddenly gave out which caused him to fall to the floor close to the wall. His groupmates assisted him by giving him a drink and helping him cool down. Lacanaria did not pay much attention to what happened and instead instructed the next group to perform.

Since he did not feel well, Flores requested from Lacanaria to permit him to proceed to the clinic. However, the professor told him, "*umupo ka muna dyan, hindi ka pa naman mamamatay.*" Regardless, Flores repeated his request. Lacanaria eventually allowed him to go to the clinic with a classmate but instructed him to return after his consultation. As the doctor was not yet around, the clinic's nurse told Flores to eat lunch first and return later. Instead, Flores headed home and was eventually brought to the Notre Dame Hospital where he was diagnosed[7] to have "costochondritis and upper respiratory tract infection."[8] Flores returned to school and sought Lacanaria to report what had happened to him. However, when Lacanaria saw Flores at the stairs, the former said "*tae mo!*" and then left.[9]

Because of what transpired, Flores filed a written complaint[10] dated March 3, 2010 addressed to the Dean of CTE, along with his notarized Complaint-Affidavit[11] dated March 5, 2010. Flores' classmates also executed a Joint Affidavit[12] dated March 5, 2010 wherein they corroborated Flores' allegations. Flores' classmates asserted that they were surprised when Lacanaria instructed them to return to their seats for the next presenters in spite of Flores' collapse, an instance which they considered to be serious.

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5 Id. at 79-89; penned by Executive Labor Arbiter Vito C. Bose.
6 See CA *rollo*, pp. 101, 263-265, 383-384, 385-386.
7 CA *rollo*, p. 125.
8 *Rollo*, p. 51.
9 Id.
10 CA *rollo*, p. 119.
11 Id. at 120-122.
12 Id. at 277-278.

They added that after Flores left, Lacanaria addressed the class and said, "*Wala naman ako nababalitaan na namamatay sa ubo. Sa TB meron.*" They averred that Lacanaria believed that Flores was just acting. Unconvinced, Lacanaria then dismissed the incident so that they can proceed with the class discussion. Similarly, another classmate of Flores who took a video of the class presentations, Lianne Ortil, stated in her Affidavit[13] dated March 5, 2010 that Flores suddenly fell to the ground in the middle of the dance routine.

On March 11, 2010, the University issued to Lacanaria a Charge Sheet with Notice of Investigation[14] (Charge Sheet) for serious misconduct and violation of the Code of Ethics for Professional Teachers, indicating the corresponding penalties if found guilty. He was directed to file an answer within five days from receipt thereof and that he will be informed of the date of investigation wherein he will have the right to be assisted by counsel, to confront the witness against him, and to present his evidence.

The Dean of CTE forwarded a letter[15] dated March 16, 2010 to the Vice President (VP) for Academic Affairs stating that Lacanaria was verbally reprimanded sometime in June 2008 due to his students' claim that he usually delivers "green jokes" in his classes. Furthermore, a written reprimand was issued to him on December 22, 2009, through a letter/notice to explain[16] dated December 21, 2009. The Dean of CTE instructed Lacanaria to explain why he should not be dealt with administratively for uttering "green jokes" in class based on Student-Course-Teacher (SCT) Evaluations.[17] Apparently, Lacanaria refused to receive the notice, and even questioned the Dean of CTE if he was being charged. Lacanaria supposedly only responded on January 4, 2010.[18]

In any case, Lacanaria filed his Answer[19] dated March 17, 2010 wherein he denied the charges against him. He explained that he noticed Flores coughing but he was not aware that the student had difficulty breathing, and that he believed it was common on students who smoked a lot. He averred that he did not see anyone falling or collapsing but he observed Flores going to the corner to sit down and subsequently being assisted by his classmates. Lacanaria said that he found nothing alarming and that Flores was merely covering up his failure to do his part in the performance. He asserted that when Flores requested to go to the clinic, he thought that nothing was wrong. He even stated that the student should not have attended the class if he was really sick.

Lacanaria further explained that he said "*tae mo!*" with no malice and reasoned that it was not a humiliating statement. He added that he did not notice that Flores attempted to talk to him about what happened. Nevertheless,

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[13] Id. at 124.
[14] Id. at 117.
[15] Id. at 308.
[16] Id. at 307.
[17] Id. at 158-210.
[18] See CA *rollo*, p. 406.
[19] CA *rollo*, pp. 129-131.

he asked why he was not placed under preventive suspension and stated that he enclosed his letter[20] dated March 12, 2010 signifying his intent to resign.

In a Notice[21] dated March 26, 2010, Atty. Abel Mamaril was appointed as the third member of the hearing committee.

Thereafter, the Grievance Committee of the University commenced its proceedings. The Grievance Committee issued a Notice of Hearing[22] dated March 26, 2010 for the March 30, 2010 hearing (but this was released less than five days before the scheduled hearing). The petitioners averred that aside from this notice, they informed Lacanaria of the March 30, 2010 hearing through a text message on March 27, 2010.[23]

After the March 30, 2010 hearing, the Grievance Committee released an Order[24] (also contained in the Minutes[25]) stating that while Lacanaria failed to attend the hearing, it nevertheless asked clarificatory questions from Flores. Likewise, it resolved to inform Lacanaria of the next hearing on April 7, 2010 through registered mail, wherein his failure to attend would constitute as a waiver of his right to present his evidence. Thus, it issued a Notice of Hearing[26] for the April 7, 2010 investigation via registered mail[27] on March 31, 2010. Supposedly, Lacanaria received the notice only on April 7, 2010.[28] The Minutes[29] of the meeting on April 7, 2010 indicated that Lacanaria again failed to appear, resulting in his waiver of his right to present his evidence.

Eventually, the undated Report and Recommendation[30] by the Grievance Committee recommended the dismissal of Lacanaria and noted that the filing of his resignation after receipt of the Charge Sheet would not render the imposition of the penalty moot and academic.

In view of this, the VP for Administration issued a Notice of Decision[31] dated May 15, 2010, which stated that based on the decision of the Office of the President, Lacanaria is dismissed effective on the close of office hours on May 15, 2010. Lacanaria allegedly received the said notice on May 21, 2010.[32]

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20 Id. at 282.
21 Id. at 281.
22 Id. at 286.
23 Id. at 401.
24 Id. at 133 and 287.
25 Id. at 287.
26 Id. at 132.
27 Id. at 288.
28 Id. at 78; the records indicated the dates April 5 or 6, 2010, which is still less than five days before the scheduled hearing; CA *rollo*, p. 291.
29 CA *rollo*, p. 290.
30 Id. at. 109-116.
31 Id. at 108.
32 Id. at 135.

Curiously, in a letter[33] dated May 31, 2010, Lacanaria wrote the Dean of CTE signifying that he is formally withdrawing his intent to resign, considering that his resignation was not acted upon by the University. Furthermore, he questioned why he was not given a teaching load for the summer term of School Year (SY) 2009-2010 and the first semester of SY 2010-2011 even while there was still no final and executory decision yet regarding his case.

Lacanaria also filed a Motion for Reconsideration[34] dated May 31, 2010 questioning the findings of the Grievance Committee. He denied receipt of any notice regarding the March 30, 2010 hearing and claimed that the Charge Sheet failed to state the place, time and date of the investigation, contrary to Section 7 of the Faculty Manual. He emphasized that the ruling which ordered his dismissal came from the Office of the VP for Administration without any attached decision, and that the Report and Recommendation of the Grievance Committee cannot be considered as the decision of the President. Lacanaria averred that the President has yet to render a decision based on the recommendation of the Grievance Committee. Moreover, he opined that the Grievance Committee did not have the authority to make a finding that he violated the Code of Ethics for Professional Teachers. Hence, he sought the reversal of the verdict against him as well as his absolution from the charges, or in the alternative, to set aside the findings, reopen the case, and continue the investigation.

In a letter[35] dated June 7, 2010, the VP for Academics and Officer-In-Charge (OIC) of the Office of the Dean of CTE mentioned that on May 15, 2010, their Office approved the recommendation of the Grievance Committee to dismiss Lacanaria from employment. It further stated that Lacanaria's withdrawal of his letter of resignation had no bearing because he was validly dismissed. Ergo, he can no longer be given any teaching load.

In a letter[36] dated June 8, 2010 addressed to the Dean of CTE, Lacanaria followed up on his motion for reconsideration and his formal withdrawal of his intent to resign.

In a Notice[37] dated June 8, 2010, the President stated that the school issued a Notice[38] dated June 2, 2010 requiring the counsel of Flores to file a comment on Lacanaria's motion for reconsideration before the University can resolve the said motion. Flores' counsel asked for an extension[39] of time to submit a comment but none was filed.

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33 Id. at 134.
34 Id. at 135-145.
35 Id. at 147.
36 Id. at 146.
37 Id. at 148.
38 Id. at 149.
39 Id. at 150-151.

Relevantly, the University's President denied Lacanaria's motion for reconsideration in a Resolution[40] dated June 24, 2010 and stated that since Lacanaria did not take advantage of his opportunity to be heard, he can no longer question the ruling.

For this reason, Lacanaria filed a Complaint[41] on June 9, 2010 against herein petitioners for illegal dismissal, non-payment of 13th month pay for 2010 with prayer for reinstatement, payment of all money claims, full backwages, moral and exemplary damages, and attorney's fees before the Department of Labor and Employment. Mandatory conciliation conferences yielded no positive results.

In an Affidavit[42] dated September 20, 2010, the Dean of CTE reiterated that Lacanaria was verbally reprimanded in June 2008 for uttering "green jokes" and again reprimanded in writing in December 2009 which required him to explain his actions. The Dean asserted that since the University approved the recommendation of the Grievance Committee to dismiss Lacanaria on May 15, 2010, he can no longer be given a teaching load.

Also, in an Affidavit[43] dated September 20, 2010, the former OIC-Director of the Human Resource Department of the University averred that Lacanaria failed to attend the hearing despite receipt of the text message informing him of the date and place. Moreover, he stated that Lacanaria was informed of the creation of the Grievance Committee but he deliberately ignored all notices and proceedings.

Moreover –

> In his position paper,[44] Lacanaria alleged, among others, that the Charge Sheet with Notice of Investigation that was served on him did not contain any specific date of investigation, contrary to the requirements embodied in the Faculty Manual; that he never received a notice set on March 30, 2010; that he received the notice of the hearing set on April 7, 2010 only on the same day and was thus unable to prepare and hire a counsel of his own choice; that the Notice of Decision dated May 15, 2010 dismissing him from service was issued by the Office of the Vice President, instead of the President, as required under the Faculty Manual; and that he was not given a teaching load during the summer of school year (SY) 2009-2010 and the first semester of SY 2010-2011, even as the administrative case against him was still pending.[45]

On the other hand –

> In [petitioners'] position paper,[46] they maintain[ed] that Lacanaria was lawfully terminated after due process as he was found guilty of having uttered

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[40] Id. at 152-153.
[41] The Complaint filed before the DOLE was not attached in the records.
[42] CA *rollo*, p. 400.
[43] Id. at 401.
[44] Id. at 76-107.
[45] *Rollo*, p. 52.
[46] CA *rollo*, pp. 234-262.

foul, disparaging and malicious remarks against his student in violation of the law, the Faculty Manual and Code of Ethics of Professional Teachers. Petitioners also claimed that in conformity with the procedure for disciplinary cases, Lacanaria had chosen Mr. Abel Mamaril as member of the grievance committee; that while Lacanaria tendered his resignation on March 12, 2010 it was not accepted by the University and it continued with the administrative investigation of the case; that the Chairman of the Grievance Committee had sent on March 26, 2010 a notice to Lacanaria of the hearing on March 30, 2010 and that he was also informed through a text message on March 27 and 29, 2010; that a notice of the hearing on April 7, 2010 was sent to Lacanaria on March 31, 2010; that Lacanaria was guilty of serious misconduct in light of his callous and uncaring attitude toward his student in contravention of the University's philosophy of rearing the youth towards civic efficiency and the development of moral character; and that he violated the Code of Ethics of Professional Teachers, particularly Sections 2, 3 and 9 of Article VIII and Sections 1, 2 and 3 of Article XI thereof. Petitioners also alleged that Lacanaria was previously and seriously reprimanded twice for uttering green jokes in class, and that the totality of his offenses showed a pattern of offensive conduct, moral depravity and lack of empathy towards his students and lack of moral authority to teach in the University.[47]

Ruling of the Executive Labor Arbiter (ELA):

In a Decision[48] dated December 30, 2010, the ELA dismissed the Complaint but granted Lacanaria's claim for 13th month pay.[49] The ELA held that Lacanaria was validly dismissed in light of his improper actions. As an instructor, he was expected to protect the welfare and interest of his students and instill upon them good values and morals. Lacanaria's actuations of disallowing Fleres to go to the clinic, dismissing his collapse as mere pretense, and uttering unpalatable and disparaging remarks, violated his oath as a professor and amounted to a serious misconduct.[50]

The ELA rejected Lacanaria's claim that his acts were mere errors in judgment.[51] He also failed to show proof that the video was a product of fabrication.[52] The University, as an employer, has the prerogative to run its business and discipline its employees, including the imposition of dismissal upon its erring instructors even if the Code of Ethics for Professional Teachers provides no penalty of dismissal in case of a violation of set ethical standards.[53] It was within the University's management prerogative to dismiss Lacanaria who was proven to be unworthy to perform his sworn oath of responsibility and professional standards as an educator.[54]

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47 *Rollo*, pp. 52-53.
48 Id. at 79-89.
49 *Rollo*, p. 89.
50 Id. at 81.
51 Id. at 82-83.
52 Id. at 83.
53 Id. at 84.
54 Id. at 84-85.

Moreover, the ELA found that Lacanaria was afforded due process since he was given a notice of the charge and he submitted his Answer thereto. The University also conducted hearings but Lacanaria failed to appear despite notice which constituted as a waiver to present his evidence. Thereafter, the Grievance Committee issued a report recommending Lacanaria's dismissal from employment. On May 21, 2010, Lacanaria received his notice of termination.[55]

The ELA stated that Lacanaria's offense cannot be taken lightly. As a professor, his position is imbued with public interest such that a commission of a serious misconduct, if not properly dealt with, may in the long run not just affect the business of the University but also the future of the youth.[56] Despite his years of service and lack of negative record prior to his dismissal, such does not call for the social justice application since his transgression reflects a lack of loyalty to the institution.[57]

The ELA noted that Lacanaria's infraction was not his first offense as he was previously reprimanded for uttering "green jokes" in the past. Thus, the entirety of his offenses shows a pattern of offensive conduct and lack of empathy towards his students which renders him unfit to teach.[58]

Since Lacanaria was validly dismissed, he is not entitled to reinstatement, backwages and damages.[59] Nonetheless, he can claim for 13th month pay since the University did not show proof of its payment. The dispositive portion of the ELA's Decision states:

> **WHEREFORE**, premises considered, a judgment is hereby rendered dismissing the complaint for lack of merit.
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> However, respondent [University] is ordered to pay complainant [Lacanaria] his proportionate 13th month pay for 2010 computed as follows:
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> **13th Month Pay: P25,000.00 x 6 months / 12 = P12,500.00**
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> Other claims are likewise dismissed for lack of basis.
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> **SO ORDERED.**[60]

Aggrieved, Lacanaria appealed[61] to the NLRC.

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55 Id. at 85.
56 Id. at 86.
57 Id. at 86-87.
58 Id. at 87.
59 Id. at 88.
60 Id. at 89.
61 *CA rollo*, pp. 417-472.

Ruling of the National Labor Relations Commission:

In a Resolution[62] dated October 21, 2011, the NLRC affirmed the dismissal of Lacanaria's complaint for lack of merit.[63] It held that the facts and evidence clearly established that Lacanaria committed acts of serious misconduct. Lacanaria knew that Flores was indisposed since he (Lacanaria) admitted noticing Flores' persistent cough. Notwithstanding this, he compelled Flores to perform, did nothing when the student collapsed, and casually told the next group to perform. Additionally, he prevented Flores' classmates from helping and initially refused to allow him to go to the clinic. His statements "*umupo ka muna dyan, hindi ka pa naman mamamatay*" and "*tae mo!*" showed his callousness and arrogance.[64]

The labor tribunal noted that Lacanaria's actions belied his excuse that the statements were not made out of impertinence. Besides, he believed that Flores was just pretending to be sick to excuse himself from the activity. Thus, the statements were made to insult Flores, which have no place in a professional and decent setting expected from a university.[65]

The NLRC ruled that the University observed due process requirements. Lacanaria was given the opportunity to present his defense when he submitted his Answer.[66] The University conducted hearings yet Lacanaria failed to appear, claiming that he was not notified. However, the records showed that notices were served on him by registered mail and through text messages.[67]

Lacanaria moved for a reconsideration.[68] However, the NLRC denied the motion in a Resolution[69] dated January 10, 2012.

Undeterred, Lacanaria elevated[70] the case to the CA.

Ruling of the Court of Appeals:

The CA, in its assailed March 18, 2016 Decision,[71] reversed and set aside the ruling of the NLRC. It found no basis for the conclusion that Lacanaria compelled Flores to join in the classroom activity.[72] Based on the video recording of the activity, Lacanaria could not be faulted for not reacting with alarm when Flores "collapsed" since the other students did not immediately

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62 *Rollo*, pp. 67-72.
63 Id. at 72.
64 Id. at 70.
65 Id. at 71.
66 Id.
67 CA *rollo*, pp. 133 and 287.
68 Id. at 509-515.
69 *Rollo*, pp. 74-75.
70 CA *rollo*, pp. 5-51.
71 *Rollo*, pp. 50-65.
72 Id. at 55-56.

rush to give him aid. Although Flores looked tired, he was not in dire need of medical attention especially when the clinic's nurse only gave him an over-the-counter medicine and instructed him to return when the doctor becomes available.[73] The CA noted that "from the time that Flores entered the class up to the time that he sang and acted with his group, and even until he was asked by Lacanaria to dance, he had not told Lacanaria that he had difficulty of breathing."[74] Thus, it would be unfair to place the responsibility upon Lacanaria to second-guess Flores' situation. Additionally, despite Lacanaria's personal suspicion that Flores was feigning his illness, the former was still concerned and willing to give the latter the benefit of the doubt by allowing the student to visit to the clinic.[75]

The appellate court ruled that Lacanaria's utterance of "*tae mo!,*" while vulgar, cannot serve as ground for his dismissal from employment.[76] Moreover, there was no legal or factual basis for the application of the totality of infractions rule, as there was no proof that Lacanaria had been admonished for similar acts of conduct, or was actually reprimanded for his green jokes. The supposed written reprimand was actually a notice to explain why he should not be dealt with administratively, and the act is not punishable under the Faculty Manual.[77] Likewise, there was no basis for a finding of violation of the Code of Ethics for Professional Teachers given that teachers at tertiary level institutions are not within the scope of the said Code. Hence, there was no just cause for Lacanaria's termination.[78]

Furthermore, the CA ruled that Lacanaria was not afforded due process.[79] It found that the lack of specificity in the first notice (Charge Sheet with Notice of Investigation) prevented Lacanaria from responding appropriately notwithstanding his filing of an Answer. The date, place, and time of investigation was not provided, and the exact provisions of the Code of Ethics for Professional Teachers he allegedly violated were not identified.[80]

The notice of termination (Notice of Decision dated May 15, 2010) was issued by the VP for Administration instead of the President, supposedly on the basis of the decision of the Office of the President. However, there was no proof that the President actually issued a decision to that effect.[81] In a letter dated June 7, 2010, the petitioners informed Lacanaria that the Office of the VP for Academics/Office of the Dean, CTE approved the recommendation of dismissal by the Grievance Committee. However, it was still not the decision of the President. It was only after Lacanaria filed a Motion for Reconsideration that the President affirmed the Report and Recommendation

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73 Id. at 56-57.
74 Id. at 57.
75 Id.
76 Id. at 57-58.
77 Id. at 58.
78 Id. at 59.
79 Id.
80 Id. at 60.
81 Id.

of the Grievance Committee in a Resolution dated June 24, 2010.[82] Since this contravened the Faculty Manual, the second notice could not have been effectively issued as required by law.[83]

Moreover, the appellate court found that there is no evidence that Lacanaria received, whether in writing or by text, the notice of hearing conducted on March 30, 2010. Without due notice, Lacanaria was deprived of his right to confront the accuser, examine the evidence, and raise his defenses. Additionally, the Chairman of the Grievance Committee selected and appointed the third member of the hearing committee when such choice should have been given to Lacanaria.[84]

It noted that as early as March 2010, Lacanaria was considered dismissed since he was not given any teaching load for the summer of SY 2009-2010 and the first semester of SY 2010-2011 while the administrative case was still pending.[85] While the petitioners cited Section 4 of the Collective Bargaining Agreement regarding the University's prerogative to reduce teaching load, such power may only be exercised for good cause and valid reason with respect to security of tenure. The pendency of Lacanaria's case is not a valid reason for the reduction of his teaching load as he was not even placed under preventive suspension.[86]

The CA held that the petitioners' refusal to give Lacanaria a teaching load before the hearings and before he was notified of his dismissal is tantamount to a taking of his property right (to one's employment or profession) without due process.[87] Hence, as Lacanaria's dismissal was unjust, he is entitled to reinstatement with full backwages, including 13th month pay, as a matter of right.[88] Likewise, moral and exemplary damages, as well as attorney's fees, should be awarded since his dismissal was attended with bad faith and done arbitrarily.[89] The dispositive portion of the CA's Decision reads:

> ***WHEREFORE***, the petition is **GRANTED** and the questioned Resolutions dated October 21, 2011 and January 10, 2012 of the National Labor Relations Commission (NLRC) Third Division, in NLRC Case No. RAB-CAR 06-0306-10 entitled "*Benedicto F. Lacanaria v. University of the Cordilleras, Dr. Ricardo P. Pama, President, Cleofas M. Basaen, V-P for Academics, Dr. Leonarda R. Aguinalde, V-P for Administration; and Dr. Miriam A. Janeo, Dean*" are hereby **REVERSED** and **SET ASIDE**.
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> Judgment is hereby **RENDERED** ordering respondent University to:

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82 Id. at 61.
83 Id. at 60.
84 Id. at 61.
85 Id. at 62.
86 Id.
87 Id.
88 Id. at 63.
89 Id.

1. Reinstate Lacanaria to his former position in the respondent University, without loss of seniority rights and with backwages, including 13th month pay, from the time of his illegal dismissal up to actual reinstatement;

2. Pay Lacanaria moral damages of Php 50,000.00 and exemplary damages of Php 20,000.00[;]

3. Pay Lacanaria attorney's fees equivalent to ten percent [(10%)] of the total monetary award.

The monetary awards herein granted shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until full satisfaction thereof.

Let this case be **REMANDED** to the NLRC for the proper implementation of this Decision.

SO ORDERED.[90]

After receipt of the unfavorable judgment, the petitioners herein filed the instant Petition for Review on *Certiorari*[91] before the Court and raised the following -

Issues:

(A)

WHETHER OR NOT THERE IS A SUBSTANTIAL EVIDENCE TO DISMISS [RESPONDENT] ON THE GROUND OF SERIOUS MISCONDUCT AND CONDUCT UNBECOMING OF AN ACADEMICIAN, AS ESTABLISHED BY [RESPONDENT'S] OWN ADMISSION OF HIS INFRACTIONS AND SUPPORTED BY THE UNCONTROVERTED DOCUMENTARY AND TESTIMONIAL EVIDENCE PRESENTED IN THE PROCEEDINGS A QUO.

(B)

WHETHER OR NOT THE DISMISSAL IS TAINTED WITH PROCEDURAL DEFECT WHEN [RESPONDENT] FAILED TO STRICTLY ADHERE TO ITS FACULTY MANUAL, SPECIFICALLY PERTAINING TO THE DATE, PLACE AND TIME OF INVESTIGATION.

(C)

WHETHER OR NOT [RESPONDENT] IS ENTITLED TO REINSTATEMENT, MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEE.[92]

Thus, the main issue is whether Lacanaria was validly dismissed by the petitioners.

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90 Id. at 64.
91 Id. at 9-48.
92 Id. at 20-21.

The Petition:

The petitioners maintain that the University validly dismissed Lacanaria on the ground of serious misconduct and conduct unbecoming of an academician as established by substantial evidence.[93] They aver that Flores was forced to attend and engage in the activity even when he was sick, given that non-participation would warrant a grade of zero for the subject requirement.[94] They assert that Flores' groupmates tried to assist him but were prevented by Lacanaria when the professor instructed them to return to their seats and to give way to the next presenters.[95] They opine that the casual attention given by the clinic's nurse should not serve as basis to conclude that Flores did not need medical attention as he was even rushed to the hospital on the same day. The statements issued by Lacanaria to Flores were foul and not at par with the standard expected from a professor.[96] In fact, Lacanaria himself admitted that he noticed Flores' persistent cough yet he still callously ignored it and compelled him to participate in the presentation.[97]

They posit that the NLRC and ELA did not err in applying the totality of infractions rule, as it is not necessary that the oral and written reprimands directed at Lacanaria should be in the nature of sanctions or of a notice to explain. What is important is that Lacanaria's attention was repeatedly called due to his delivery of "green jokes" and discriminatory words in his classes.[98] They argue that there is substantial proof that Lacanaria is guilty of conduct unbecoming of an academician because his remarks did not exude professionalism and decency expected from a university professor.[99] As such, the provisions of the Code of Ethics for Professional Teachers, specifically Article VIII, Sections 2, 3, and 9, as well as Article XI, Sections 1-3, can be applied.[100] The petitioners assert that as an employer, the University is granted by law the prerogative on how to conduct its business, discipline its employees, and protect its interests subject to the general principles of good faith, fair play and substantial justice.[101]

Moreover, they aver that there was substantial compliance with due process when Lacanaria was given notice and hearing, notwithstanding the failure to strictly adhere to the Faculty Manual pertaining to the date, place, and time of the investigation.[102] They emphasize that the notices and memoranda sent to Lacanaria were all sufficient in form and substance, and that he was given the opportunity to be heard since he was able to submit his

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[93] Id. at 21-23.
[94] Id. at 25.
[95] Id. at 25-26.
[96] Id. at 26.
[97] Id. at 27.
[98] Id. at 29-31.
[99] Id. at 32-34.
[100] Id. at 34-35.
[101] Id. at 35-36.
[102] Id. at 36-37.

Answer.[103] They contend that there was no basis for the reinstatement and monetary awards adjudged by the CA.[104]

On the other hand, Lacanaria argues that the points raised by petitioners are purely questions of fact which are not within the purview of a Rule 45 petition.[105] He maintains that the CA rightly determined that the NLRC abused its discretion when it held that he was justly dismissed.[106] Moreover, he avers that the CA correctly ruled that he was not given due process.[107] He points out that the ruling of the CA was based solely on the records of the case, some of which were submitted by the petitioners themselves, *i.e.*, the video recording and affidavit of Flores including the Faculty Manual.[108]

The petitioners reply that there are compelling reasons for the Court to resolve questions of fact, as when the CA misapprehended facts and made conflicting findings with that of administrative agencies.[109] They state that the remarks were made by a university professor who is expected to display more professionalism and decency in dealing with students.[110] In relation to the totality of infractions rule, they point out that Lacanaria admitted to have uttered "green jokes" in class and that he was reprimanded in oral and written form (which he refused to accept to the point of questioning the authority of the Dean to do so).[111] They add that the Faculty Manual, although it did not address utterance of malicious jokes, states that the list of offenses as ground for disciplinary action are in addition to other valid causes provided by labor laws, rules and regulations.[112] Moreover, they insist that findings of fact by the ELA are accorded respect especially when it is supported by evidence on record.[113]

Our Ruling

The petition is meritorious.

It is settled that a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law and not of fact.[114] However, "when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the [CA],"[115] then "it becomes imperative that we reexamine the facts to arrive at the correct conclusion."[116]

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[103] Id. at 39-41.
[104] Id. at 41-45.
[105] Id. at 109.
[106] Id. at 110.
[107] Id. at 113.
[108] Id. at 115.
[109] Id. at 124.
[110] Id. at 128-129.
[111] Id. at 130.
[112] Id. at 130-131.
[113] Id. at 133.
[114] RULES OF COURT, Rule 45, § 1.
[115] *Claret School of Quezon City v. Sinday*, G.R. No. 226338, October 9, 2019, citing *Convoy Marketing Corporation v. Albia*, 770 Phil. 654 (2014).
[116] Id.

Since there are conflicting findings by the ELA, the NLRC, and the CA,[117] the Court's judicial review of the instant case may extend to questions of fact. Thus, there is a need to determine if the University dismissed Lacanaria in accordance with existing labor laws, rules and regulations based on the facts presented, and more importantly, with due process.

Due Process Under the Labor Code:

There are two aspects to due process under the Labor Code: "**first**, substantive – the valid and authorized causes of termination of employment under the Labor Code; and **second**, procedural – the manner of dismissal."[118]

Substantive Due Process:

According to Article 294 of the Labor Code, as renumbered,[119] an employer may only dismiss an employee upon just or authorized causes and has the burden to prove that the dismissal was valid. "If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified, and, therefore, illegal."[120] To release the employer from this burden, substantial evidence must be presented which is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,"[121] and "not based on mere surmises and conjectures."[122]

Just Cause:
Serious Misconduct

In the case at bench, the University maintained that it dismissed Lacanaria based on a just cause pursuant to Article 297 [282] (a) of the Labor Code[123] since he committed a serious misconduct. According to jurisprudence:

> Misconduct involves the transgression of some established and definite rule or action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. For misconduct to be serious and therefore a valid ground for dismissal, it must be *(a)* of grave and aggravated character and not merely trivial or unimportant, *(b)* connected with the work of the employee such that the latter has become unfit to continue

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[117] *Ramil v. Stoneleaf, Inc.*, G.R. No. 222416, June 17, 2020, citing *Republic v. Heirs of Eladio Santiago*, 808 Phil. 1, 9 (2017).

[118] *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108-119, 114 (2007).

[119] *Roxas v. Baliwag Transit, Inc.*, G.R. No. 231859, February 19, 2020, citing Department Advisory No. 01, Series of 2015, dated July 21, 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED."

[120] Id., citing *Maersk-Filipinas Crewing, Inc. v. Avestruz*, 754 Phil. 307, 318 (2015).

[121] RULES OF COURT, Rule 133, § 5.

[122] *Roxas v. Baliwag Transit, Inc.*, supra at 119.

[123] LABOR CODE, Art. 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;

x x x x

working for the employer, and *(c)* performed with wrongful intent.[124]

The following instances demonstrated how Lacanaria's misconduct amounted to something grave and not merely trivial, considering his position as a professor: (a) he acknowledged that Flores had a persistent cough during the class but shrugged it off; (b) he did not act when Flores' legs gave out and prevented the other students from helping him; (c) he dismissed Flores' condition as an act of pretension, showing that he had no intent to ascertain the well-being of his student; (d) he uttered "*maupo ka muna dyan, hindi ka pa naman mamamatay*" which reeked of insensitivity and lack of empathy; (e) he did not immediately allow Flores to go to the clinic despite prior knowledge of Flores' cough; (f) he replied "*tae mo!*" when Flores tried to explain what happened, which showed tastelessness and unprofessionalism; (g) he blamed Flores for attending his class despite knowing that students would normally opt to attend and perform in order not to get a failing grade in spite of sickness; (h) he downplayed Flores' condition in his Answer, stating that the clinic's nurse only gave Flores a tablet and asked him to go back later since the doctor was unavailable, also notwithstanding the issuance of a medical certificate by the hospital which properly diagnosed Flores with an illness connected to his cough; and (i) his comments regarding the video clip exhibited his uncaring attitude and thoughtlessness even though Flores likely needed medical attention at the time.

Indisputably, the incident was associated with Lacanaria's work as a professor. His actuations clearly showed him unfit to continue working for the University, considering his daily interaction with the students. He acted with wrongful intent and not mere error of judgment since his statements were tainted with mockery and insult. He consciously uttered those words with full knowledge that he was conversing with a student whom he exercises authority over. Hence, he failed to display professionalism and decency in dealing with his students.

The seriousness of Flores' cough or even his alleged pretension of being severely ill are not the real issues but the utterance of remarks unbecoming of an educator. It was not proper to speak to a student in such a manner, especially in a classroom setting or even within the school grounds where it is clear that Lacanaria was acting in his capacity as a professor. In all angles, no matter how one looks at it, Lacanaria's statements could not be said as having been uttered "without malice" or "without wrongful intent."[125] Lacanaria's acts demonstrated that he did not approve of Flores or the latter's performance, or how the student portrayed himself at the time. There was a tinge of anger and dissatisfaction in his wordings, which an educated adult like him should have been able to control when communicating with a student. If he was not convinced by Flores' reasons, then he (Lacanaria) should have

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[124] *Roxas v. Baliwag Transit, Inc.*, supra note 119, citing *Ting Trucking v. Makilan*, 787 Phil. 651, 661-662 (2016).

[125] See *Adamson University Faculty v. Adamson University*, G.R. No. 227070, March 9, 2020.

given the student the chance to explain in private instead of humiliating him in front of the class. Worse, Lacanaria subsequently offended Flores by uttering unpalatable words by the stairs later that same day. He was not even incited or prodded to engage in an argument. Thence, he should have known that there would be repercussions.

Even if the Code of Ethics for Professional Teachers would not apply because Lacanaria taught in the tertiary level, the fact remains that his actions were inappropriate. The University's Faculty Manual states that the teachers are required to "treat students with respect and with due regard to their dignity,"[126] and that they should "recognize that, to assure itself of a continuing adequate enrolment, [the University] must deliver quality, courteous, and dedicated service to its students."[127] The same manual states that "[f]aculty members should take measures to ensure the safety and [well-being] of students during class sessions and class-related activities."[128] As previously explained, Lacanaria did not possess traits exuding the tenets of the University. In fact, common and basic decorum requires that he acts with respect towards his students or any other person. Yet, for reasons only known to him, he exhibited the contrary.

Relevantly, the Manual of Regulations for Private Higher Education states that:

> **Section 121.** ***Causes of Terminating Employment.*** In addition to the just causes enumerated in the Labor Code, the employment of personnel in a higher education institution, may be terminated for any of the causes as follows:
>
> 1) Grave misconduct, such as, but not limited to, giving of grades to a student in a subject not based solely on scholastic performance; failure to maintain confidentiality of school records; contracting loans from students or parents; use of cruel punishment, insubordination;
>
> x x x x
>
> 10) other causes analogous to the foregoing as may be provided for in the policies and regulation of the Commission or of the institution, or in a collective bargaining agreement.[129]

Lacanaria is a professional, equipped with a higher degree of learning compared to others. He even received accolades and recognition for his professional achievements. Thus, as a University professor, he was expected to adhere to a greater standard and exemplify traits which would not place the school in a damaging light. More importantly, he should be able to inspire instead of antagonize his students. As aptly explained by *Manalo v. Ateneo de Naga University*:[130]

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[126] CA *rollo*, p. 390.
[127] Id. at 391.
[128] Id. at 399.
[129] Manual of Regulations for Private Higher Education, November 24, 2008.
[130] 772 Phil. 366 (2015).

> 'Every profession is defined by the knowledge, skills, *attitude and ethics of those in the profession.*' In purporting one's self as a professional, a person does more than merely make a statement as to an activity that preoccupies him or her – an occupation – which may serve as a means for earning a living, that is, a livelihood. Rather, he or she proclaims or professes to count himself or herself among a select class of learned, trained, competent, and proficient individuals adhering to an established and commonly held set of standards:
>
> > 'Profession' derives from the Latin word 'profiteor,' to profess, which can also have the connotation of making a formal commitment in the sense of taking a monastic oath. This root might suggest that a professional is someone who claims to possess knowledge of something and has a commitment to a particular code or set of values, both of which are fairly well-accepted characteristics of professions.
>
> Persons claiming themselves to be professionals hold themselves to others and to society itself as being faithful to benchmarks of quality. Being a professional is, thus, a matter of credibility and trustworthiness. Accordingly, ethics and values are as inherent to professions as are training and technical competence. Standards of integrity can never be divorced from standards of workmanship, technique, and operation.
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> x x x x
>
> Professionals educate students and open their eyes to what it means to be lawyers, teachers, doctors, nurses or engineers, not only by theory, but even by the very examples of their lives.[131] (Citations omitted)

Indeed, "[t]eachers are duly licensed professionals who must not only be competent in the practice of their noble profession, but must also possess dignity and a reputation with high moral values."[132] Unfortunately, Lacanaria fell short of this expectation. He even tried to reason his way out of the mess he created himself, which only made it more apparent that he has a propensity (or a habit) to speak in a disrespectful manner towards his students, as evidenced by the SCT Evaluations.

Totality of Infractions Rule

Due to his shameful behavior, the ELA and the NLRC additionally considered the principle of "totality of infractions" in ruling that Lacanaria was validly dismissed. Such rule is explained in this manner:

> **The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee.** The offenses committed by [employee] should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that [the employee] was penalized for his previous infractions, this

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[131] Id. at 384-387 (2015).

[132] *Pat-og, Sr. v. Civil Service Commission*, 710 Phil. 501-518, 517 (2013).

> does not and should not mean that his employment record would be wiped clean of his infractions. After all, **the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty.** Despite the sanctions imposed upon [the employee], he continued to commit misconduct and exhibit undesirable behavior xxx. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[133] (Emphasis supplied)

Hence, "the totality of an employee's infractions is considered and weighed in determining the imposable sanction for the current infraction."[134] Considering that Lacanaria committed a serious misconduct, there is no impediment which bars the Court from taking into account his previous offenses. It is undisputed that Lacanaria has been warned in the past, verbally and in writing, as regards his delivery of "green jokes" in class.[135] The University issued a notice to him regarding this issue, and he subsequently answered with a written explanation. Unsurprisingly, this past infraction is related to his inappropriate statements, or that which involved his conversations with his students. Even if uttering "green jokes" is not listed in the Faculty Manual as punishable by reprimand or any penalty, the University is not precluded from considering this past transgression given the nature of the profession (education of the youth). While the University was not able to show that Lacanaria was specifically penalized for these previous infractions, there is no denying that these instances formed part of his employee record.

Similarly, Lacanaria's Answer to the charge demonstrated that although he admitted to saying the insensitive statements, he showed no remorse for doing so and even justified that the words were spoken with no ill intent. Hence, he reinforced the accusation that he acted unprofessionally towards his student, Flores. "They contradict a professor's responsibility of giving primacy to the students' interests and respecting the institution in which he teaches. In the interest of self-preservation, [he] refused to answer for his own mistake; instead, he played the victim and sought to find fault in a student who had no ill motive against him."[136] Simply put, the totality of his offenses revealed that Lacanaria has a penchant for impertinent behavior which renders him unsuitable for employment in the University which is responsible for the education and rearing of the youth.

Management Prerogative

Even though Lacanaria was not actually punished for his past infractions,[137] the penalty of dismissal imposed upon him is still valid, given

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[133] *Villanueva v. Ganco Resort and Recreation*, G.R. No. 227175, January 8, 2020, citing *Merin v. NLRC*, 590 Phil. 596, 602-603 (2008).

[134] Id., citing *Aplicador v. Moriroku Philippines*, G.R. No. 233133, October 17, 2018; *Sy v. Banana Peel*, 821 Phil. 751, 766-767 (2017).

[135] *See: Herma Shipping and Transport Corp. v. Cordero*, G.R. Nos. 244144 & 244210, January 27, 2020.

[136] *Adamson University Faculty v. Adamson University*, supra note 125.

[137] See *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 381 (2017).

the serious misconduct he committed this time around. Thus, as a measure of protection,[138] it is within the management prerogative of the University to dismiss Lacanaria because it cannot be compelled to retain an employee who acts contrary to its vision and interests.[139]

As such, "[w]hen professionals and educators violate the ethical standards of the profession to which they belong and for which they train students, education institutions employing them are justified in relieving them of their teaching posts and in taking other appropriate precautionary or punitive measures."[140] Based on Our assessment, the University exercised its management prerogative in good faith and without malice,[141] with no blatant attempt to completely defeat Lacanaria's rights as an employee, since it endeavored to substantially comply with the requirements of due process.

Expertise of Labor Tribunals

Moreover, We note that both the ELA and the NLRC held that there was just cause in terminating Lacanaria's employment. Since the ELA had the opportunity to meet and mediate the parties, and the NLRC had the occasion to exercise its proficiency in labor matters, the Court believes that their finding as to the just cause for his dismissal should be affirmed. Indeed, "[w]ell-settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality and bind this Court when supported by substantial evidence,[142] as in the case at bar."

However, the Court notes that Lacanaria's dismissal, although attended with just cause, is marked with several procedural due process errors.

Procedural Due Process

To comply with procedural due process and validly dismiss an employee, the employer is required to follow the two-notice rule. In general, "[f]irst, an initial notice must be given to the employee, stating the specific grounds or causes for the dismissal. It must direct the submission of a written explanation answering the charges. Second, after considering the employee's answer, an employer must give another notice providing the findings and reason for termination."[143] To elaborate, *King of Kings Transport, Inc. v. Mamac*[144] is instructive, *viz.*:

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[138] *Iso, Jr. v. Salcon Power Corp.*, G.R. No. 219059, February 12, 2020, citing *Supra Multi-Services, Inc., et. al. v. Labitigan*, 792 Phil. 356 (2016).

[139] Id.

[140] *Manalo v. Ateneo de Naga University*, supra note 130.

[141] *East Cam Tech Corp. v. Fernandez*, G.R. No. 222289, June 8, 2020, citing *Aliling v. Feliciano*, 686 Phil. 889-923 (2012).

[142] *Publico v. Cerro, Jr.*, G.R. No. 227300, June 10, 2019, citing *C. Planas Commercial v. NLRC (Second Division)*, 511 Phil. 232 (2005).

[143] *Claret School of Quezon City v. Sinday*, supra note 115, citing *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108 (2007).

[144] *King of Kings Transport, Inc. v. Mamac*, supra note 118.

Art. 277 of the Labor Code provides the manner of termination of employment, thus:

> Art. 277. *Miscellaneous Provisions.* – ...
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

Accordingly, the implementing rule of the aforesaid provision states:

> SEC. 2. Standards 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 [297] of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[145]
>
> In case of termination, the foregoing notices shall be served on the employee's last known address.[146]

To clarify, the following should be considered in terminating the services of employees:

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[145] Id. at 115, citing that the same provision is also found in Section 2 (d) of Rule I of Book VI of the Omnibus Rules Implementing the Labor Code.

[146] Id., citing the Omnibus Rules Implementing the Labor Code, Book V, Rule XXIII.

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. 'Reasonable opportunity' under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense.[147] This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[148] (Emphasis supplied)

The Charge Sheet with Notice of Investigation charged Lacanaria with serious misconduct and a violation of the Code of Ethics for Professional Teachers then enumerated the imposable penalties without however specifying which provisions were violated.[149] Nonetheless, he was purportedly provided with a copy of Flores' Complaint and other documents which supplemented the details and reason for the charges. Relevantly, the Charge Sheet did not inform Lacanaria of the date, time and place of the hearing, even if the grievance procedure of the University requires it.

Chapter XI (Faculty Relations), Section 7 of the University's Faculty Manual outlines the procedure concerning grievances against a member of the faculty, the pertinent provisions of which are as follows:

SECTION 7. **Grievance Procedure where the Penalty is Dismissal from Employment or Suspension of Seven (7) Days or more.** – Any grievance by the UNIVERSITY against an employee warranting dismissal from employment

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[147] Id., citing *Ruffy v. National Labor Relations Commission*, 261 Phil. 476 (1990).
[148] Id. at 116.
[149] *Villanueva v. Ganco Resort and Recreation*, supra note 133.

> or suspension of seven (7) days or more shall be resolved in accordance with the grievance procedure as follows:
>
> Step 1. (a). The erring employee shall be served with a charge sheet and notice of investigation. The charge sheet and notice shall: (1) state the place[,] time and date of the investigation, which shall not be earlier than five (5) days from the date of receipt thereof by the employee;
>
> x x x x
>
> Step 2. The investigation shall be conducted by the Grievance Committee, which shall submit its findings and recommendations to the President of the UNIVERSITY within ten (10) days after the completion of its investigation.
>
> Step 3. Based on the recommendations of the Grievance Committee, the President shall decide the case of the respondent-employee within ten (10) days from the date such recommendation is submitted to his office.[150] (Emphasis supplied)

It is clear from the University's own grievance procedure that an investigation should be conducted and that the respondent-employee should be informed of the particulars of the hearing. However, Lacanaria did not receive any formal written notice for the March 30, 2010 hearing; thus, he did not attend the said session. Although the University alleged that a text message was sent to Lacanaria to notify him of the scheduled hearing, it did not present substantial proof that he received it. All the same, Lacanaria denied receipt of the text message.[151]

As for the April 7, 2010 hearing, Lacanaria was again not able to attend since he allegedly received the notice on the same day it was scheduled. Although the University sent the notice by registered mail on March 31, 2010, there was no guarantee that it would reach Lacanaria before the hearing, considering the recognized delay in the delivery of registered mails. Furthermore, the University's grievance procedure dictates that the employee should receive a notice of the investigation at least five days before the scheduled hearing so that he could prepare his defense with the corresponding evidence. Regrettably, he received the notice late and not even five days before the hearing, and it did not state that failure to appear would constitute as a waiver of his right to present his defense or evidence.

Nonetheless, it is settled that "actual hearing or conference is not a condition *sine qua non* for procedural due process in labor cases because the provisions of the Labor Code prevail over its implementing rules."[152] To expound, *CMP Federal Security Agency, Inc. v. Reyes, Sr.*[153] cites the Court *En Banc*'s pronouncement in *Maula v. Ximex Delivery Express, Inc.*,[154] as

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[150] CA *rollo*, p. 396.
[151] Id. at 315.
[152] *CMP Federal Security Agency, Inc. v. Reyes, Sr.*, G.R. No. 223082, June 26, 2019, citing *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 383-385 (2017) which cited *Perez v. Phil. Telegraph and Telephone Company*, 602 Phil. 522, 537-542 (2009).
[153] *CMP Federal Security Agency, Inc. v. Reyes, Sr.*, G.R. No. 223082, June 26, 2019.
[154] *Maula v. Ximex Delivery Express, Inc.*, supra note 152.

follows:

> x x x The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pre-termination confrontation between the employer and the employee. **The 'ample opportunity to be heard' standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolute interpretation is overly restrictive.** *The 'very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.'*
>
> The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.
>
> **Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed 'substantially,' not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.***
>
> An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.
>
> A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. ***'To be heard' does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.*** Therefore, while the phrase 'ample opportunity to be heard' may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal 'trial-type' hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.
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> x x x x
>
> In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:
>
> (a) 'ample opportunity to be heard' means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in hearing, conference or some other fair, just and reasonable way.

> (b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.
>
> (c) the 'ample opportunity to be heard' standard in the Labor Code prevails over the 'hearing or conference' requirement in the implementing rules and regulations.[155] (Emphasis supplied).

In the case at bench, it may be said that Lacanaria was given the opportunity to be heard since he was able to file his Answer to Flores' Complaint as well as a Motion for Reconsideration on the decision terminating him from employment. Presumably, too, the Grievance Committee, although it was only able to ask clarificatory questions from Flores (which is a logical consequence since Lacanaria was not able to attend the hearings), nonetheless considered the affidavits submitted by Flores and his classmates, and even Lacanaria's Answer. However, it should be emphasized that after receipt of the Notice of Decision (or Termination), Lacanaria filed a Motion for Reconsideration to ask for a reinvestigation (which is equivalent to a request for a hearing) so that he can present his side. This is considering that he was not able to attend the previous hearings as he was not duly informed of the schedule. While the April 7, 2010 hearing was meant for him to present his side, Lacanaria unfortunately belatedly received the notice and was not able to prepare or attend at all. Furthermore, the University's own grievance procedure provides that an investigation should be conducted anyway.

In the same vein, Lacanaria pointed out that the Report and Recommendation of the Grievance Committee was undated. Moreover, the Notice of Decision (or Termination) was signed by the VP for Administration and not the President, even if the University's grievance procedure states that the President should issue the Notice. A perusal of a copy of the Report and Recommendation, however, revealed that there is a notation which indicated that the report was approved, although it is unclear by whom. Since the VP for Administration issued the Notice of Decision (or Termination), there is reason to believe that she had the authority to issue the same, especially when the President did not expressly recall or revoke it. Moreover, when Lacanaria filed his Motion for Reconsideration, that time the President denied it. By doing so, the President rectified the earlier lapse in the signatory (and appropriate office which should issue) for the Notice of Decision (or Termination). In other words, the President ratified the issuance of the said notice by the VP for Administration in behalf of the Office of the President and the University.[156]

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[155] *CMP Federal Security Agency, Inc. v. Reyes, Sr.*, supra note 153, citing *Maula v. Ximex Delivery Express, Inc.*, supra note 152.

[156] *Cf. Philippine Institute for Development Studies v. Commission on Audit*, G.R. No. 212022, August 20, 2019, citing *Lacson-Magallanes Company, Inc. v. Pano and the Executive Secretary Pano*, 129 Phil. 123 (1967).

Intent to Resign and Preventive Suspension

Notably, Lacanaria submitted a letter signifying his intent to resign but withdrew it later on. Incidentally, the University did not show that he committed acts which could be interpreted as a surrender of his post as a professor. In line with this, jurisprudence teaches that "the intent to relinquish must concur with the overt act of relinquishment. The acts of the employee before and after the alleged resignation must be considered in determining whether the employee concerned, in fact, intended to terminate his employment."[157] Since Lacanaria withdrew his resignation letter and did not perform acts which would signify his resolve, he cannot be considered as resigned. Besides, the University chose not to act upon his intent to resign since it clearly stated that the same would not have any bearing on the outcome of the investigation.

Regardless, the Court notes that Lacanaria was not given any teaching load for the summer term of SY 2009-2010, as well as the first semester of SY 2010-2011. Undoubtedly, these terms cover the duration of the investigation from the time that Flores filed his Complaint before the University in March 2010 until Lacanaria's termination in June 2010.

With regard to the teaching load, the Faculty Manual states that "[i]t is the sole prerogative of the UNIVERSITY to determine the load of faculty members. The UNIVERSITY may reduce loads of any faculty member, whether probationary or permanent, on full time or part time. However, permanent full time faculty members shall be given priority in the distribution of teaching assignments."[158] In this case, Lacanaria's load was not merely reduced. He was not given any load at all which the University did not dispute. Curiously, he was not placed under preventive suspension which could have explained why he was not given any teaching load during the duration of the investigation of his case. It appears that he was, in essence, preventively suspended without the appropriate or required notice.

Pursuant to Section 8, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended,[159] the employer may place an employee under preventive suspension. "Preventive suspension is not a penalty but a disciplinary measure to protect life or property of the employer or the co-workers pending investigation of any alleged infraction committed by the employee.[160] Thus, it is justified only when the employee's continued employment poses a serious and imminent threat to the employer's or co-

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[157] *Pascual v. Sitel Philippines Corp.*, G.R. No. 240484, March 9, 2020 citing *Panasonic v. Peckson*, G.R. No. 206316, March 20, 2019.

[158] CA *rollo*, p. 389.

[159] Section 8. *Preventive suspension.* – The employer may place the worker concerned under preventive suspension only if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

[160] *Every Nation Language Institute v. Dela Cruz*, G.R. No. 225100, February 19, 2020 citing *Gatbonton v. National Labor Relations Commission*, 515 Phil. 387, 398 (2006).

workers' life or property. When justified, the preventively suspended employee is not entitled to the payment of his salaries and benefits for the period of suspension."[161]

On one hand, it did not appear that Lacanaria's presence would pose a threat or danger to the University, its personnel or its students, even if he entered the school's premises. Hence, there would not have been a need for his preventive suspension. Even so, there was no allegation that he was barred from entering the premises. On the other hand, though, the University probably deemed it best not to assign Lacanaria a teaching load so that he would not have any reason to enter the school premises and to teach, given that his infractions were related to his interactions with the students. Nevertheless, the University did not issue any document placing him under preventive suspension. Without a doubt, such official action should have undergone due process standards. On this score, too, Lacanaria was not afforded proper notice.

The foregoing observations, then, comprise the procedural due process lapses of the University. Accordingly, Lacanaria must be compensated on account thereof, notwithstanding the finding of a just cause for his dismissal.

Monetary Awards

Based on the discussion, although there was a just cause in terminating Lacanaria's employment, the University did not follow the requirements of procedural due process. Ergo, "[c]onsidering that a valid cause for [Lacanaria's] dismissal exists but the requirements of procedural due process were not observed, the award of nominal damages in the amount of ₱30,000.00 is in order."[162] However, the declaration of reinstatement, as well as the award of damages and attorney's fees in favor of Lacanaria, should be set aside given that his termination was attended with a just cause.[163] In any case, a legal interest of six percent (6%) per *annum* should be imposed on the monetary award from the finality of this Decision until fully paid.[164]

WHEREFORE, the instant petition is hereby **GRANTED**. The assailed Decision dated March 18, 2016 rendered by the Court of Appeals in CA-G.R. SP No. 124276 is **REVERSED and SET ASIDE**. Respondent Benedicto F. Lacanaria is **DECLARED** to have been dismissed for just cause but the petitioner University of the Cordilleras failed to observe the rudiments of procedural due process and is ordered to pay respondent ₱30,000.00 as nominal damages, subject to the legal interest rate of six percent (6%) per *annum* from the finality of this Decision until full payment.

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[161] Id.

[162] *Villanueva v. Ganco Resort and Recreation*, supra note 133, citing *Libcap Marketing Corp. v. Baquial*, 737 Phil. 349, 361 (2014) and *Better Buildings, Inc. v. National Labor Relations Commission*, 347 Phil. 521, 531 (1997); *Agabon v. National Labor Relations Commission*, 485 Phil. 248-367 (2004).

[163] *See: Adamson University Faculty v. Adamson University*, supra note 125.

[164] *Villanueva v. Ganco Resort and Recreation, Inc.*, supra note 133.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I hereby 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