Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROGELIO H. JALIT, SR.
Petitioner,

G.R. No. 238147

Present:

– *versus* –

GESMUNDO, *C.J.*, *Chairperson*
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., *JJ.*

CARGO SAFEWAY INC., KAMIUMA KISEN COMPANY LIMITED, and SHINME KISENSANGYO COMPANY LIMITED
Respondents.

Promulgated:

SEP 29 2021

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DECISION

LOPEZ, J., *J.*

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, seeking the reversal of the Decision[1] dated November 24, 2017 and Resolution[2] dated March 8, 2018 rendered by the Court of Appeals (*CA*) in C.A. G.R. SP No. 135137. The CA Decision and Resolution dismissed the petition for *certiorari*[3] under Rule 65 filed by

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1 Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Ramon A. Cruz and Maria Elisa Sempio-Diy concurring; *rollo*, pp. 37-48.

2 *Id.* at 49-50.

3 *Id.* at 51-69.

petitioner Rogelio H. Jalit, Sr. (*Jalit*) and affirmed the Decision[4] dated March 14, 2013, and the Resolution[5] dated February 26, 2014, both rendered by the National Labor Relations Commission (*NLRC*), which affirmed the Decision[6] dated October 22, 2012 rendered by the Labor Arbiter (*LA*). In the aforesaid Decision, the LA dismissed the complaint for illegal dismissal, non-payment of salary, and attorney's fees filed by Jalit for lack of merit, but ordered respondents Cargo Safeway Inc. (*Cargo Safeway*), Kamiuma Kisen Company Limited (*Kamiuma*) and Shinme Kisensangyo Company Limited (*Shinme*) (collectively, *respondents*), and Reynaldo D. Casareo to pay nominal damages in the amount of ₱30,000.00 for violating petitioner's right to due process in his dismissal from respondent Cargo Safeway.

The undisputed facts are as follows:

Cargo Safeway is a manning agency organized and existing under Philippine laws while Kamiuma and Shinme are its accredited foreign principals.[7]

On November 8, 2011, Jalit was hired by Cargo Safeway through a Contract of Employment whereby he will serve as Master of the vessel M/V Nord Setouchi for nine months, guaranteed with a basic salary of US$1,781.00, overtime pay of US$1,325.00 per month, leave pay of US$534.00 per week plus subsidy allowance of US$54.00/month.[8] Prior to the foregoing contract, Jalit was similarly engaged by Cargo Safeway as Master for M/V Atlantic Diana from May 11, 2009 to April 7, 2010, and September 26, 2010 to July 28, 2011.[9]

On January 11, 2012, Jalit was deployed at sea on board M/V Nord Setouchi. Then, on May 14, 2012, Jalit was notified by Cargo Safeway that he was among those crew members to be replaced and was ordered to disembark from the ship on May 18, 2012.[10] Thus, on the same day, Jalit called Shinme's office in Japan to ask for an explanation. In response, he received an e-mail from a certain Mr. Tanimizu of Shinme, who explained that his dismissal was due to a communication problem with the charterer, *viz.*:

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4 Penned by Presiding Commissioner Leonardo L. Leonida, with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap concurring; *id.* at. 76-86.

5 Penned by Presiding Commissioner Grace E. Maniquiz-Tan, with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap concurring; *id.* at 87-93.

6 Penned by Labor Arbiter Julia Cecily Coching Sosito; *id.* at 94-100.

7 As culled from the CA Decision dated November 24, 2017; *id.* at 37 and the Petition dated May 9, 2018; *id.* at 12-13.

8 *Id.* at 14-15; 37.

9 *Id.* at 14-15.

10 *Id* at 15-16; 37.

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> Good day capt,
>
> Thanks for your kind cooperation and performing the safety navigation under your command on board.
> We regret to inform you that we have received serious complain from the charterer via ship owner about the communication between ship and them. so, ship owner worry that happen another problem with chartere again. also their visiting in Denmark. Therefore, we will make your vacation together with other crew in Denmark.
>
> We hope to your kind cooperation and understanding on this matter.
>
> We will make next schedule in other ship asap.
>
> Thanks and Best regards,
> T. Tanimizu/Crew dept.[11]

In another e-mail dated May 14, 2012, Mr. Arikawa of Shinme further elaborated the reason behind Jalit's dismissal as follows:

> Good day Captain,
>
> Regarding your disembarkation at Aarhus, it is D/S Norden's request in mainly.
>
> Main reason is that response about below inquiry dated Apr/3 is too late. So D/S Norden can not decide next employment.
>
> They take this facts heavily.
>
> QTE
> Pls find attached copy of last message sent to Master, to which we have still not received a reply.
>
> In addition to this, Chrts have also inquired about the height from deck to the top of stanchions.
>
> Thanks in advance your urgent reply.
>
> Best Regards
>
> Camilla Engedal
>
> Handysize Chartering
>
> UNQTE

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11 *Id.* at 126; 167.

- PLS ADVISE HEIGHT FROM WATER LEVEL TO THE TOP OF STANCHIONS POSTS ON EACH HOLD UNDER FOLLOWING CONDITIONS:

1. LIGHT BALLAST
2. HEAVY BALLAST
3. HEAVY BALLAST + HOLD NO 5 LOADED WITH ABT 4800 MT OF UREA SF ABT 51

- PLS ADVISE WATERLINE TO TOP OF THE HATCH TOP IN FOLLOWING CONDITION:

1. IN LADEN
2. LIGHT BALLAST
3. HEAVY BALLAST. CONDITION

-THE HEIGHT FROM DECK TO TOP OF STANCHIONS

UNQUOTE

Certainly we noted your situation that you are attending authority in arrival at Brindisi.

But Norden and Owner did not understand your situation.

And it is possible to attend or inspection from D/S Norden because of Aarhus in Denmark is D/S Norden's own country.

So Owner also requests your disembarkation take into account Norden's impression.

In additional, in exchange of the email with us, your response is sometimes to express doubt.

Then we are sustained various pressure from Norden and Owner. Therefore we have no other choice decision of your disembarkation. We must apologize for not keep your situation and pride.

So I think you mind is very tired and you need refresh time at home town with your family and necessary to change your mind.
If you have good vacation, you will become more good commander as great captain.
Sorry again to cause such result by our inadequency.

Thanks and Best Regards

K. Arikawa
Shinme Kisensangyo Co., Ltd.[12]

Jalit was thus immediately dismissed as Master of M/V Nord Setouchi by the respondents, due to his delayed response to the charterer's request for information regarding the vessel *via* e-mail on April 3, 2012.

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12 *Id.* at 127-128; 166.

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With the foregoing, Jalit was repatriated on May 21, 2012.[13]

Thereafter, on June 11, 2012, Jalit filed a complaint for illegal dismissal with claims for damages against respondents before the LA, docketed as NLRC LAC No. 11-001030-12.[14]

Jalit believed that his dismissal was illegal considering that during the time he received an inquiry from the charterer: (1) respondents knew that he and the crew were preparing to arrive in Brindisi, Italy and that the ship had to be maneuvered as it already reached its state port limit as reflected in the ship's log book; (2) as Master of the vessel, Jalit was attending to Italian government authorities at the port, as acknowledged by Mr. Arikawa himself in the aforementioned e-mail dated May 14, 2012; (3) Jalit referred the charterer's request for information to Shinme, since height measurements and aerial draft restrictions of the vessel are information readily available to the ship owner and its agents as evidenced by Shinme's e-mail dated April 4, 2012 in response to Jalit's inquiry.[15]

Meanwhile, respondents averred that as Master of M/V Nord Setouchi: (1) Jalit was given instructions through e-mails, which he unreasonably failed to follow; (2) Jalit had difficulty managing International Ship Management Code (*ISM Code/ISPS*) which has been brought to his attention; (3) Jalit continuously failed to address queries of shipowners and respondents; and (4) Jalit's refusal to respond to queries of the ship owner and respondents caused setbacks in its operations, all of which prompted respondents to lose confidence with him as Master or Captain of the vessel.[16] Furthermore, instead of refuting or rebutting the allegations of the shipowner, Jalit is said to have conceded to the decision of the shipowner and voluntarily agreed to be relieved of his duties.[17] Thus, respondents were surprised to discover that Jalit filed a labor complaint against them.[18]

After the parties failed to arrive at an amicable settlement during conciliation or mediation conferences, Labor Arbiter Julia Cecily Coching Sosito rendered the Decision[19] dated October 22, 2012, which dismissed Jalit's complaint for lack of substantial basis. However, Jalit was awarded nominal damages in the amount of ₱30,000.00 for respondent's violation of the twin requirements of notice and hearing.[20] According to the LA, Jalit's actuations manifested incompetence, indecisiveness and inefficiency, making

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13 *Id.* at 19.
14 *Id.* at 13; 37.
15 As culled from the Petition dated May 9, 2018; *id.* at 17-18.
16 As culled from the Comment dated October 2, 2018; *id.* at 246.
17 *Id.* at 247.
18 *Id.* at 247-248.
19 *Id.* at 94-100.
20 *Id.*

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him unfit to continue serving as Master of the vessel.[21] Since he is a managerial employee, Jalit's failure to comply with the instructions of the shipowner and to respond to their queries constitutes neglect of duty, causing respondents to lose their trust and confidence in him.[22] Thus, while respondents violated Jalit's right to procedural due process, the same did not render the latter's dismissal illegal or ineffectual.[23]

Jalit appealed the LA's decision before the NLRC, which was raffled to the Fifth Division and docketed as NLRC NCR Case No. 06-08832-12(OFW-M). After due proceedings, the NLRC rendered a Decision[24] dated March 14, 2013, denying Jalit's appeal. The NLRC found that "the delay and unsureness of the answers of [Jalit] to the queries of the charterer led to losses and non-operation and idleness of the vessel upon arrival at the next port, as no sub-contractor was engaged for the loading of new cargoes upon down-loading its current cargoes."[25] Thus, by acting indecisively, Jalit placed in jeopardy the business interest and goodwill of the vessel owners and charterer, enough to constitute as just cause for his dismissal on the ground of loss of confidence.[26] The NLRC also ruled that the data asked of Jalit were reasonable, made known to him and part of his duties as Captain of the vessel he navigates and that it is universal knowledge of Maritime Officers that continuous maritime operation, i.e. loading and unloading, is the lifeline of the industry.[27]

Jalit then filed the Motion for Reconsideration,[28] dated May 10, 2013 which the NLRC denied in its Resolution[29] dated February 26, 2014, finding Jalit to have failed not only in giving an accurate calculation, but also in giving a quick response on matters required of him, resulting in the loss of confidence of respondents.[30]

Aggrieved, Jalit filed a Petition for *Certiorari* Under Rule 65 of the Rules of Court before the CA, which was denied in a Decision,[31] dated November 24, 2017. The CA reasoned that the question of whether Jalit was dismissed for just cause is a question of fact that is beyond the scope of a petition for *certiorari* under Rule 65.[32] According finality to the findings of the LA and NLRC, the CA ruled that the mere existence of a basis for believing that a managerial employee has breached the trust of his employer

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21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.* at 76-86.
25 *Id.* at 83-84.
26 *Id.*
27 *Id.* at 85.
28 *Id.* at 216-221.
29 *Id.* at 87-93.
30 *Id.* at 91.
31 *Id.* at 37-48.
32 *Id.* at 46.

would suffice for his dismissal.[33] The pertinent portion of the said decision succinctly reads:

> This Court affirms the NLRC in holding that [Jalit] was not only dismissed on the basis of his failure to respond to the technical queries of the charterer regarding measurements/computations for the vessel cranes, but also due to the resulting damage caused by his delay, if not failure to respond. It was found that due to the delayed information, private respondents failed to sub-charter the vessel, which resulted in loss of income for the shipowner. Thus, there was some basis for the loss of confidence reposed on the petitioner considering that the incident gave room to doubt his competence and knowledge as commander of the vessel.
>
> This Court also affirms the award of nominal damages in the amount of [₱]30,000.00 in favor of [Jalit]. It is settled that although an employer may legally dismiss an employee for a just cause, the non-observance of the requirements of due process before effecting the dismissal leaves the employer liable for nominal damages.
>
> **WHEREFORE**, the petition for certiorari is **DISMISSED**.
>
> **SO ORDERED**.[34] (Emphasis in the original)

Thereafter, Jalit filed his Motion for Reconsideration,[35] dated December 21, 2017, which was subsequently denied in the Resolution[36] dated March 8, 2018.

Hence, the instant petition.

Issues

I

Whether the CA committed an error in upholding the validity of petitioner's dismissal based on loss of trust and confidence

II

Whether the CA erroneously disregarded the rule that loss of confidence should not be simulated and used as a subterfuge for improper causes; and

III

Whether the CA erred in denying petitioner's monetary claims including moral and exemplary damages and attorney's fees

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33 *Id.* at 47.
34 *Id.* at 47-48.
35 *Id.* at 70-75.
36 *Id.* at 49-50.

Our Ruling

Foremost, the present petition seeks the review of the CA's denial of the Special Civil Action for *Certiorari* Under Rule 65, after the CA found that no grave abuse of discretion amounting to lack or excess of jurisdiction attended the rulings of the NLRC.

Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.[37]

The foregoing rule however, is not ironclad and admits of exceptions, which were enumerated in the case of *Teekay Shipping Philippines, Inc. v. Ramoga* as follows:[38]

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x;
> (2) When the inference made is manifestly mistaken, absurd or impossible x x x;
> (3) Where there is a grave abuse of discretion x x x;
> (4) When the judgment is based on a misapprehension of facts x x x;
> (5) When the findings of fact are conflicting x x x;
> (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee x x x;
> (7) The findings of the Court of Appeals are contrary to those of the trial court x x x;
> (8) When the findings of fact are conclusions without citation of specific evidence on which they are based x x x;
> (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents x x x; and
> (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record x x x[39] (Emphasis omitted)

This Court is also cognizant of the rule that factual findings of labor administrative officials that are supported by substantial evidence are accorded great respect and finality, absent a showing that they arbitrarily disregarded or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[40] Further, the findings of the

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37 *Fuji Television Network Inc. v. Espiritu*, 749 Phil. 388, 416 (2014), citing *Meralco Industrial Engineering Services Corp v. National Labor Relations Commission*, 572 Phil. 94, 117 (2008).

38 824 Phil. 35 (2018).

39 *Id.* at 40-41.

40 *"J" Marketing Corp. v. Taran*, 607 Phil. 414, 424 (2009).

lower tribunals such as the NLRC, when affirmed by the CA, are no longer to be disturbed, and are even accorded finality, unless the case falls under any of the exceptions that would necessitate this Court's review.[41]

While jurisprudence has provided several exceptions to these rules, exceptions must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case. In any event, even in such cases, this Court retains full discretion on whether to review the factual findings of the CA.[42]

In the present petition, it is alleged that the CA failed to point to any evidence of "fraud or willful breach" on the part of petitioner to constitute loss of confidence that would justify his dismissal from service.[43] According to Jalit, the ruling of the CA is inconsistent with the NLRC's finding that when M/V Nord Setouchi arrived in Italy, he was attending to port authorities. Thus, his delay in responding to the charterer's e-mail is justifiable, and therefore, cannot be considered as a willful breach of the trust reposed in him.[44] Furthermore, petitioner asserts that his termination was merely based on the respondents' worry and pressure from the charterer, out of suspicions and speculations that communication problems may arise again in the future by citing an e-mail he received from Shinme.[45]

After a judicious review of the records, as well as the respective allegations and defenses of the parties, this Court is constrained to reverse the findings and conclusion of the CA.

Fraud or willful breach not proven by respondents

Article 297[46] of the Labor Code provides just causes for the termination of an employee:

> Article 297. 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;
>
> (b) Gross and habitual neglect by the employee of his duties;

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41 *Raza v. Daikoku Electronics Phils, Inc.*, 765 Phil. 61, 76 (2015).
42 *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).
43 *Rollo*, p. 21.
44 *Id.* at 23.
45 *Id.* at 27-28.
46 As renumbered by DOLE Advisory No. 1, Series of 2015 (formerly Article 282).

> (c) **Fraud or willful breach** by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

To properly invoke the fraud or willful breach of trust as a just cause for termination, two conditions should concur, namely, (1) the employee concerned must be holding a position of trust and confidence and (2) there must be an act that would justify the loss of trust and confidence.[47]

As to the first condition, employees holding a position of trust and confidence are further classified into two classes: (1) managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and (2) fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property.[48]

In *Inter-Orient Maritime Enterprises, Inc. v. NLRC*,[49] this Court made it clear that a master or a captain of a vessel is a confidential and managerial employee, by virtue of the management and fiduciary functions and responsibility given to him, *viz.*:

> The captain of a vessel is a confidential and managerial employee within the meaning of the above doctrine. A master or captain, for purposes of maritime commerce, is one who has command of a vessel. A captain commonly performs three (3) distinct roles: (1) he is a general agent of the shipowner; (2) he is also commander and technical director of the vessel; and (3) he is a representative of the country under whose flag he navigates. Of these roles, by far the most important is the role performed by the captain as commander of the vessel; for such role (which, to our mind, is analogous to that of "Chief Executive Officer" [CEO] of a present-day corporate enterprise) has to do with the operation and preservation of the vessel during its voyage and the protection of the passengers (if any) and crew and cargo. In his role as general agent of the shipowner, the captain has authority to sign bills of lading, carry goods aboard and deal with the freight earned, agree upon rates and decide whether to take cargo. The ship captain, as agent of the shipowner, has legal authority to enter into contracts with respect to the vessel and the trading of the vessel, subject to applicable

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47 *SM Development Corp., Joann Hizon, Atty. Mena Ojeda Jr., and Rosaline Qua v. Teodore Gilbert Ang*, G.R. No. 220434, July 22, 2019.

48 *Philippine Plaza Holdings, Inc. v. Episcope*, 705 Phil. 210, 217 (2013).

49 305 Phil. 286 (1994).

> limitations established by statute, contract or instructions and regulations of the shipowner. To the captain is committed the governance, care and management of the vessel. Clearly, the captain is vested with both management and fiduciary functions.[50] (Citations omitted)

Thus, there is no question that as the Master or Captain of the vessel M/V Nord Setouchi, Jalit was a managerial employee of respondents, occupying a position of trust and confidence.

Anent the second condition requiring the presence of an act that would justify the loss of trust and confidence, employers are generally allowed a wider latitude of discretion in terminating the services of employees who perform functions which, by their nature, require the employer's full trust and confidence. It is thus sufficient that there lies some basis for believing that the employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.[51]

Nonetheless, it should be borne in mind that substantial evidence is still required in order to support a finding that an employer's trust and confidence accorded to its employee had been breached. As explained by this Court in the case of *Lopez v. Alturas Group of Companies and/or Uy*,[52] willful breach of trust reposed in the employee must rest on substantial evidence and not on the mere whims or caprices or suspicions of the employer, thus:

> x x x the language of Article 282(c) [now, Article 296 (c)]of the Labor Code states that the loss of trust and confidence **must be based on willful breach of the trust reposed in the employee by his employer**. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. **Moreover, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions** otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, **the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility**, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized.[53] (Emphasis and underscoring in the original)

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50 *Id.* at 296-297.
51 *Supra* note 48, at 218.
52 663 Phil. 121 (2011).
53 *Id.* at 128.

In the case of *Fujitsu Computer Products Corp. of the Phils. v. Court of Appeals*,[54] this Court warned against upholding a dismissal grounded on speculative inferences of loss of trust and confidence owing to the subjective nature of the matter. Instead, the same must be based on clearly established facts, thus:

> x x x in termination cases, the employer bears the *onus* of proving that the dismissal was for just cause. Indeed, **a condemnation of dishonesty and disloyalty cannot arise from suspicions spawned by speculative inferences. Because of its subjective nature, this Court has been very scrutinizing in cases of dismissal based on loss of trust and confidence because the same can easily be concocted by an abusive employer. Thus, when the breach of trust or loss of confidence theorized upon is not borne by clearly established facts, as in this case, such dismissal on the ground of loss of confidence cannot be allowed.** Moreover, the fact that one is a managerial employee does not by itself exclude him from the protection of the constitutional guarantee of security of tenure.[55] (Citations omitted; emphasis and underscoring supplied)

Considering that the fact of Jalit's dismissal is undisputed, the burden of proof is on the employer to clearly establish facts that the dismissal was for a just or authorized cause.[56] To declare Jalit's dismissal as legal, respondents must demonstrate by substantial evidence that he committed willful breach of trust resulting in the alleged loss of trust and confidence in him, which unfortunately, this Court finds wanting.

To recall, respondents presented the Hand Over Note given by Jalit to Captain Alexander C. Casas, the captain that replaced him, with attached Cabin Inventory; Certificate- Master's Job Transfer; Internal Audit and various e-mails before the NLRC.[57]

Admittedly a standard procedure,[58] the Hand Over Note with the attached Cabin Inventory only shows that Jalit provided Captain Casas a guide to his responsibilities and a list of inventory of the things assigned to him, as Captain Casas was set to take over his duties and functions as Master of M/V Nord Setouchi. Meanwhile, the Certificate - Master's Job Transfer only included a list of reports and a checklist of documents. The same was described by respondents simply as certification that both "Jalit and [Captain] Casas certified mutually to transfer the Master's job and responsibility in the condition of the vessel provided in said certificate and attached certificate

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54 494 Phil. 697 (2005).
55 *Id.* at 723.
56 *Id.*
57 *Rollo*, pp. 166-173; 194-201.
58 As culled from the Comment dated October 2, 2018; *id.* at 247.

list/inspection list."[59] While respondents argue that Jalit conceded to the decision of the shipowner and voluntarily agreed to be relieved of his duties,[60] the same has not been established substantially by these pieces of evidence. The evidence that Jalit voluntarily turned over documents and records to Captain Casas does not negate the fact that he was dismissed by the respondents, much less prove that there was just cause for doing so. If at all, the turn-over only meant that a change in command of the vessel took place.

Additionally, an Internal Audit conducted on June 7, 2012 was submitted by respondents to show the problems encountered by Captain Casas when he took over as Master of M/V Nord Setouchi.[61] This Court must however be careful not to give too much weight and credence to this document since the Internal Audit was made on June 7, 2012, or more than three weeks from the dismissal of Jalit from Cargo Safeway. Thus, assuming *arguendo* that the mistakes and deficiencies found by the auditor in this report are indeed attributable to Jalit, it still deserves scant consideration considering that it could not have form part of the reasons for respondents' decision to dismiss Jalit on May 14, 2012, or long before the audit was even conducted.

At this juncture, it should not be amiss to peruse the series of e-mails dated April 3, 4, and May 14, 2012 provided by respondents.[62] To recall, respondents referred to these e-mails in their allegations that as Master of M/V Nord Setouchi: (1) Jalit was given instructions through e-mails, which he unreasonably failed to follow; (2) Jalit had difficulty managing the ISM Code/ISPS which has been brought to his attention; (3) Jalit continuously failed to address queries of the shipowners and respondents; and (4) Jalit's refusal to respond to queries of the ship owner and respondents caused setbacks in its operations.[63] A scrutiny of these e-mails however reveals that respondents' alleged loss of confidence in Jalit, ultimately resulting in his dismissal, is hinged on a single incident alone – when charterer D/S Norden sent an e-mail to request for confirmation of the aerial draft on April 3, 2012.

The records would show the following e-mail correspondence between Jalit, Shinme and charterer D/S Norden during the subject incident on April 3 and 4, 2012:

1. E-mail dated April 3, 2012, 14:19 from Norden to Nord Setouchi (Jalit)[64]

   Good day again,

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59 *Id.* at 247; and Respondents' Position Paper dated September 17, 2012; *id.* at 157.
60 *Id.* at 247.
61 *Rollo*, pp. 200-201.
62 *Id.* at 166-167; 194-199.
63 As culled from the Comment dated October 2, 2018; *id.* at 246.
64 *Id.* at 197.

Clarification received from Chrts to the diagram:
'Vessel cranes must guarantee aerial draft of 20.3 meters, as shown in the enclosed diagram'

Pls confirm.

Best Regards

2. E-mail dated April 3, 2012, 15:09 from Norden to Jalit[65]

Good day Captain,

Pls be advised that we are currently looking at your next employment - in this respect, could we pls ask you to confirm that you vsl can comply with the restrictions as per the attached diagram.

Appreciate your soonest response.
Thanks in advance.

Best Regards

Camilla Engedal
Handysize Chartering

3. E-mail dated April 3, 2012, 21:21 from Jalit to Shinme[66]

dear sir,

good day, pls below msg is fm charterer norden, he ask me to confirm about vessel crane must guarantee aerial draft 20.3 mtrs as shown in the diagram attached below. for possible next employment.
in my calculation please help me.
as per shown is the diagram are "¥:

A = IS 0.30 CM

B = IS 7.30 MTRS

C = IS 7.90 MTRS

D = IS 4.80 MTRS DECK LINE AND HIGH & LOW WATER

TOTAL 20.30 MTRS

SAMPLE ON LETTER 'D'

DEPTH MOULDED = 13.60M

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65 *Id.* at 196.
66 *Id.* at 197.

MINUS = 9.80M MAX SUMMER DRAFT

WATER DECK LINE 3.80M

HIGH/LOW TIDE 1.00M

TOTAL 4.80M

NOTE: CHARTERER CALL US IN TELEPHONE TO CONFIRM THE CRANE AERIAL DRAFT DIAGRAM AS PER ATTACHED, SO PLEASE HELP ME IF MY CALCULATION IS OK.

x x x x

4. E-mail dated April 4, 2012, 7:44, from Shinme to Jalit[67]

Good day Captain

Sorry for the late reply to your query about aerial draft.

Attached such guidance received from Imabari shipyard for your information.

Air draft (Water line to Hook) No. 4 crane is 18.39m and No. 3 is 19.94m so Charterers will understand if you provided these figures along with attachment, i think.

as you know well, other factor is depending on the position of the Hopper on the quay (i.e. outreach of ship's crane) and also high and low water level of quay.

Hoping for your understanding to the above.

Best regards
y. koyama

5. E-mail dated April 4, 2012, 15:41, from Jalit to Norden[68]

PLS FIND BELOW MY NEW CALCULATION. . VERY SORRY FOR INCONVENIENT VESSEL ARRIVED ATTENDING AUTHORITY

TKS/BRGDS
MASTER

---

67 *Id.* at 215.
68 *Id.* at 194-195.

- PLS ADVISE HEIGHT FROM WATER LEVEL TO THE TOP OF STANCHIONS POSTS ON EACH HOLD UNDER FOLLOWING CONDITIONS:

1. LIGHT BALLAST DRAFT F:4.18/M: 4.87/A: 5.55

1: 17.42m
2: 17.08
3. 16.73
4. 16.39
5. 16.05

2. HEAVY BALLAST WITH NOLD No. 3 BALLAST:DRAFT F:7.21/M: 7.11/A: 7.01

1) 14.40
2) 14.35
3) 14.50
4) 14.54
5) 15.58

3. HEAVY BALLAST + HOLD NO 5 LOADED WITH ABT 4800 MT OF UREA SF ABT 51

1) 15.84
2) 14.54
3) 13.24
4) 11.94
5) 10.64

- PLS ADVISE WATERLINE TO TOP OF THE HATCH TOP IN FOLLOWING CONDITION:

1. IN LADEN

1 - 5) 5.25 EVEN KEEL MAXIMUM DRAFT OF 9.80m

2. LIGHT BALLAST DRAFT F:4.18/M: 4.87/A: 5.55

1) 10.87
2) 10.52
3) 10.18
4) 9.84
5) 9.50

3.HEAVY BALLAST CONDITION WITH NOLD NO. 3 BALLAST:DRAFT F:7.21/M: 7.11/A: 7.02

1) 7.84
2) 7.89
3) 7.94
4) 7.99
5) 8.03

x x x x

6. E-mail dated April 4, 2012, 16:26, from Norden to Jalit[69]

Good day Captain,

Thanks for your below revised info, however please be advised that Charterers have just failed the vessel on subs as info was received too late.

Hence, your vessel currently remains uncommitted upon completion of current voyage.

Best Regards

Camilla Engedal

Handysize Chartering

x x x x

7. E-mail dated April 4, 2012, 21:16, from Norden to Shinme[70]

(Japanese characters)

Pls find attached copy of last message sent to Master, to which we have still not received a reply. In addition to this, Chrts have also enquired about the height from deck to top of stanchions.

Thanks in advance your urgent reply.

Best Regards
Camilla Engedal
Handysize Chartering

(Japanese characters)
- PLS ADVISE HEIGHT FROM WATER LEVEL TO THE TOP OF STANCHIONS POSTS ON EACH HOLD UNDER FOLLOWING CONDITIONS:
1. LIGHT BALLAST
2. HEAVY BALLAST
3. HEAVY BALLAST + HOLD NO 5 LOADED WITH ABT 4800 MT OF UREA SF ABT 51

- PLS ADVISE WATERLINE TO TOP OF THE HATCH TOP IN FOLLOWING CONDITION:
1. IN LADEN
2. LIGHT BALLAST
3. HEAVY BALLAST. CONDITION

-THE HEIGHT FROM DECK TO TOP OF STANCHIONS

(Japanese characters)

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69 *Id.* at 194.
70 *Id.* at 183-184; 198.

8. E-mail dated April 4, 2012, 22:26, from Norden to Shinme[71]

(Japanese characters)
THE HEIGHT FROM DECK TO TOP OF STANCHIONS
THE HEIGHT FROM DECK TO TOP OF THE HATCH TOP
(Japanese characters)"

From these e-mails, it can be surmised that Jalit took at least two actions from the time the charterer sent its enquiry on April 3, 2012 at 2:19 pm: (1) Jalit sent an e-mail to Shinme to seek help with his calculations on April 3, 2012 at 9:21 p.m.;[72] and (2) Jalit provided the charterer his calculation in an e-mail dated April 4, 2012, sent at 3:41 p.m.[73]

Strangely, despite responding to Jalit's calculations by sending another e-mail on April 4, 2012 at 4:26 p.m. informing Jalit that the "info[rmation] was received too late,"[74] the charterer sent an e-mail to Shinme later that day at 9:16 p.m. to report that it has "still not received a reply" from Jalit regarding its request for calculations.[75] This e-mail of the charterer served as the basis for respondents' decision to dismiss Jalit, as explained by Shinme's representatives, Messrs. Tanimizu and Arikawa, in the e-mails dated May 14, 2012.[76]

The e-mails dated April 4, 2012 at 3:41 p.m.,[77] 4:26 p.m.[78] and 9:16 p.m.[79] tell this Court that respondents have been well-aware that Jalit responded to the query of its charterer, albeit allegedly late. Thus, respondents' allegation that there was "unjustifiable refusal to comply with the instructions of ship owner and respond to the queries of ship owner"[80] which led to their loss of confidence in Jalit, is certainly untenable.

Considering the evidence respondents provided, it has not been sufficiently established that Jalit was given instructions through e-mails, which he unreasonably failed to follow.[81] The claim that Jalit had difficulty managing ISM Code/ISPS which has been brought to his attention is also unfounded.[82] Further, there is no convincing evidence to show that Jalit continuously failed to address the queries of the shipowners and respondents

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71 *Id.*
72 *Id.* at 197.
73 *Id.* at 194-195.
74 *Id.* at 194.
75 *Id.* at 183-184, 198.
76 *Id.* at 126-128, 166-167.
77 *Id.* at 194-195.
78 *Id.* at 194.
79 *Id.* at 198.
80 *Id.* at 246.
81 As culled from the Comment dated October 2, 2018; *id.*
82 *Id.*

which caused setbacks in its operations.[83] The records simply do not bear any evidence to show any damages suffered and business opportunities lost by respondents as a consequence of Jalit's actions, in order to substantiate their allegations of Jalit's "incompetence, indecisiveness and inefficiency" and justify respondents' expectations of a more prompt response from Jalit.[84]

On the contrary, Jalit was able to prove by substantial evidence that his delayed response to the charterer's query was justifiable under the following circumstances: (1) respondents knew that Jalit and his crew were preparing to arrive in Brindisi, Italy and that the ship had to be maneuvered as it already reached its state port limit as reflected in the ship's log book;[85] (2) as Master of the vessel, Jalit was attending to Italian government authorities at the port, a fact that was acknowledged by Shinme in its e-mail dated May 14, 2012;[86] (3) Jalit relayed the charterer's request for information to Shinme, since height measurements and aerial draft restrictions of the vessel are information readily available to the ship owner and its agents as evidenced by Shinme's e-mail dated April 4, 2012 in response to Jalit's inquiry.[87]

It bears emphasis that respondents do not dispute that Jalit had to attend to Italian government authorities, as the Master of M/V Nord Setouchi, during the alleged incident that prompted his dismissal. This was even acknowledged by no less than Mr. Tanimizu of Shinme in his e-mail to Jalit on May 14, 2012, wherein he stated, "Certainly, we noted your situation that you are attending authority in arrival at Brindisi."[88] While attending to his other duties does not necessarily excuse him from the due performance of his duty to respond to the charterer, it sufficiently disproves that the alleged breach of trust was willfully done by Jalit, as respondents make it appear.

Case law states that a breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[89] Thus, even assuming that respondents were able to prove delay in Jalit's task of providing needed information to D/S Norden, the same would still hardly qualify as an act intentionally, knowingly, and purposely done and without any justifiable excuse. This Court thus believes that rather than outrightly dismissing Jalit from his employment, respondents should have at least given Jalit some leeway considering the circumstances.

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83 *Id.*
84 *Id.* at 258.
85 *Id.* at 129-131.
86 *Id.* at 127-128.
87 *Id.* at 17-18; 215.
88 *Id.* at 127.
89 See *Lopez v. Alturas Group of Companies*, *supra* note 52, at 128.

This Court is reminded of the well-settled guidelines in the application of the doctrine of loss of confidence as enumerated in the case of *Fujitsu Computer Products Corp. of the Philippines v. Court of Appeals*:[90]

> The Court had the occasion to reiterate *in Nokom v. National Labor Relations Commission* the guidelines for the application of the doctrine of loss of confidence -
>
> a. loss of confidence should not be simulated;
>
> b. it should not be used as a subterfuge for causes which are improper, illegal or unjustified;
>
> c. it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and
> d. it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.
>
> x x x x
>
> The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay-off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employee's position, but his very livelihood. The Constitution does not condone wrongdoing by the employee; nevertheless, it urges a moderation of the sanction that may be applied to him. **Where a penalty less punitive would suffice, whatever missteps may have been committed by the worker ought not be visited with a consequence so severe as dismissal from employment. Indeed, the consistent rule is 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. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause.**[91] (Emphasis and underscoring supplied)

This Court has also ruled in *Ranises v. NLRC*:[92]

> While it is true that loss of trust or breach of confidence is a valid ground for dismissing an employee, **such loss or breach of trust must have some basis. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal.** Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature. Thus, **there must be an actual breach of duty committed by the employee and the same must be supported by substantial evidence.**

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90 *Supra* note 54.
91 *Id.* at 718-728.
92 330 Phil. 936 (1996).

> Consequent therefore to respondent employer's failure to discharge the burden of substantiating its charges of breach of trust against petitioner, there is no just cause for the latter's dismissal. Hence, his termination from employment is illegal.[93] (Citations omitted; emphasis supplied)

Given the evidence presented by both parties, this Court deems respondents to have failed in discharging the burden of proving by substantial evidence, loss of confidence due to fraud or willful breach of trust committed by Jalit. He was therefore illegally dismissed from service by respondents.

Grave abuse of discretion attended the NLRC rulings

Grave abuse of discretion is defined in *Maribelle Z. Neri v. Ryan Roy Yu*[94] as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[95] Grave abuse of discretion refers not merely to palpable errors of jurisdiction, or to violations of the Constitution, the law and jurisprudence; it refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.[96]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions reached are not supported by substantial evidence or are in total disregard of evidence material to or even decisive of the controversy; when it is necessary to prevent a substantial wrong or to do substantial justice; and when necessary to arrive at a just decision of the case.[97]

In this regard, this Court finds that the CA erred in not finding grave abuse of discretion when the NLRC haphazardly concluded that the facts borne by the e-mails "emphasized inadequacy, shallowness and lack of adeptness of [Jalit] on the matters that should be within his competence and province as Captain of the vessel."[98] The NLRC's reliance in the e-mail dated April 3, 2012 at 9:21 p.m. (wherein Jalit sent Shinme his calculations and asked the latter for help) and the e-mail dated April 4, 2012 at 3:00 p.m. (wherein Jalit submitted his "new" calculation to the charterer)[99] to justify the foregoing conclusion, is indubitably misplaced. The substantial evidence required in labor disputes entails more than a mere scintilla of evidence.[100] Without a doubt, these e-mails miserably fail to convince a reasonable mind that Jalit was supposedly incompetent at his job.

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93 *Id.* at 946.
94 G.R. No. 230831, September 05, 2018.
95 *Id.*
96 *Id.*
97 See *E. Ganzon Inc. v. Ando*, 806 Phil. 58, 65 (2017).
98 *Rollo*, p. 81.
99 *Id.* at 80-81.
100 *Distribution & Control Products, Inc./Tiamsic v. Santos*, 813 Phil. 423, 433 (2017).

Further, the NLRC gravely abused its discretion when it hastily concluded that "the loss of trust and confidence by the ship owner and charterer stemmed from [Jalit's] disobedience to their order to immediately answer the queries relative to heights and spaces for storage and accommodations of cargoes by the next subcharterer,"[101] when no such order was even presented in the first place. This Court bears in mind that the findings of the NLRC were made in the face of undisputed evidence that Jalit in fact consulted Shinme regarding the calculations requested of him, and that Jalit was able to respond to the charterer's e-mail to provide his calculations.

This Court therefore disagrees with the CA and finds that the NLRC acted arbitrarily, whimsically and capriciously as to amount to grave abuse of its discretion in declaring the legality of the dismissal of Jalit.

Award of damages is proper in illegal dismissal cases

Generally, Article 294[102] of the Labor Code entitles an employee who is unjustly dismissed from work to reinstatement without loss of seniority rights and other privileges, and to his full backwages inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. If reinstatement is not feasible, the payment of full backwages shall be made from the date of dismissal until finality of judgment.[103]

Verily, in *Tangga-an v. Phil. Transmarine Carriers, Inc.*,[104] this Court, citing *Marsaman Manning Agency, Inc. v. National Labor Relations Commission*,[105] ruled that when the illegally dismissed employee's employment contract has a term of less than one year, he shall be entitled to recovery of salaries representing the unexpired portion of his employment contract. This includes all his corresponding monthly vacation leave pay and tonnage bonuses which are expressly provided and guaranteed in his employment contract as part of his monthly salary and benefit package and were not made contingent.[106]

Since reinstatement is no longer viable in view of the length of time that had elapsed from the expiration of Jalit's contract with Shinme, this Court taking instruction from *Tangga-an v. Phil. Transmarine Carriers, Inc.*, believes that the award of backwages worth US$14,776.00 computed at

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101 *Rollo*, p. 85.
102 As renumbered by DOLE Advisory No. 1, Series of 2015 (formerly Article 279).
103 *Sanoh Fulton Phils., Inc. v. Bernardo*, 716 Phil. 318, 391 (2013).
104 706 Phil. 339, 350 (2013).
105 371 Phil. 827, 839 (1999).
106 *Supra* note 103, at 351.

[(US$1,781.00 basic salary + US$1,325.00 monthly overtime pay + US$534.00 monthly leave pay + US$54.00 monthly subsistence allowance per month)[107] x 4 months corresponding to the unexpired portion of Jalit's contract] is proper. On this note, this Court finds no merit in the alleged new salary scale presented by Jalit[108] as this evidence, on its face, does not establish that the same amended his employment contract with respondents.

Anent Jalit's claim for damages, the rule is that moral damages are awarded to an illegally dismissed or suspended employee when the employer acted in bad faith or fraud, or in such manner that is oppressive to labor, or contrary to morals, good customs or public policy.[109] In the instant petition, it is this Court's opinion that the presumption of good faith on the part of respondents has not been overcome by evidence to the contrary. While Jalit had been illegally dismissed, there is no evidence that it was done by respondents in an oppressive or malevolent manner. Thus, moral and exemplary damages are not warranted under the circumstances.

Finally, as to attorney's fees, the ruling in *Alva v. High Capacity Security Force, Inc.*[110] instructs that the withholding of wages need not be coupled with malice or bad faith to warrant the grant of attorney's fees under Article 111 of the Labor Code. All that is required is that the lawful wages were not paid without justification, thereby compelling the employee to litigate.[111] Since Jalit's salary was unlawfully withheld from him, brought about by his illegal dismissal, this Court hereby awards 10% attorney's fees in the amount of US$1,477.60 in his favor.

Pursuant to the ruling of this Court in the case of *Nacar v. Gallery Frames*,[112] the monetary awards should be subject to a six percent (6%) interest *per annum* from the finality of this Decision until full payment.

WHEREFORE, the instant petition is **GRANTED**. The Decision of the Court of Appeals dated November 24, 2017 and the Resolution dated March 8, 2018 in C.A. G.R. SP No. 135137 are **REVERSED** and **SET ASIDE**. Respondents Cargo Safeway Inc., Kamiuma Kisen Company Limited and Shinme Kisensangyo Company Limited are liable to pay petitioner Rogelio H. Jalit, Sr. the amount of US$14,776.00 as backwages and US$1,477.60 as attorney's fees. The monetary awards are further subject to six percent (6%) interest *per annum* from the finality of this Decision until full payment.

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107 As culled from the OFW Information; *id.* at 115; Contract of Employment; *rollo* p. 116; and Seafarer's Employment Contract; *id.* at 117.

108 *Id.* at 15; 120.

109 *Leo's Restaurant & Bar Cafe v. Densing*, 797 Phil. 743, 761 (2016).

110 820 Phil. 677 (2017).

111 *Id.* at 689.

112 716 Phil. 267, 283 (2013), as cited in *Monsanto Philippines, Inc. v. National Labor Relations Commission, et al.*, G.R. No. 230609-10, August 27, 2020

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SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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