Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MUSAHAMAT WORKERS LABOR UNION-1-ALU,
Petitioner,

- versus -

MUSAHAMAT FARMS, INC. FARM 1,
Respondent.

G.R. No. 240184

Present:

CAGUIOA, *J., Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

Promulgated:

July 6, 2022

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DECISION

CAGUIOA, *J.:*

The Case

This is a Petition for Review on Certiorari[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated January 22, 2018 and Resolution[3] dated May 31, 2018 in CA-G.R. SP No. 07812-MIN rendered by the Court of Appeals (CA), Twenty-First Division.

The assailed Decision and Resolution of the CA reversed the Decision[4] dated September 28, 2016 of the Voluntary Arbitrator which found as illegal the termination of Ernesto Suril, Jr.[5] (Ernesto), Elvin Suril[6]

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1 *Rollo*, pp. 11-29.
2 Id. at 30-39. Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon concurring.
3 Id. at 47-48.
4 CA *rollo*, pp. 33-42. Penned by Voluntary Arbitrator Napoleon U. Trillanes, Jr.
5 Also Ernesto Surel, Jr. in some parts of the *rollo*.
6 Also Elvin Surel in some parts of the *rollo*.

(Elvin), Jhonel Suril[7] (Jhonel), Nanding Abana (Nanding), and Nonito Cabillon[8] (Nonito).

The Facts

Ernesto, Elvin, Jhonel, Nanding, and Nonito (hereinafter to be collectively referred to as the watchmen) were hired as watchmen by respondent Musahamat Farms, Inc. Farm 1 (respondent), a corporation based in Davao City which is engaged in the plantation and exportation of Cavendish bananas.[9]

On February 14, 2016, Anthony R. Pablo (Anthony), the Security Officer of respondent, announced that all watchmen would be reassigned to farm operations effective the following day. The watchmen allegedly raised their voices in protest, questioned the management's decision on their reassignment, and insisted that "they are children of the landowners who leased their farms to [respondent]; hence, they should not be farm workers"[10] or assigned to do production work.[11]

On February 15, 2016, respondent received a report that several banana bunches were chopped down in Block 6A and Block 7A of HKJ 2 Farm. Respondent thereafter initiated an investigation. While it was ongoing, respondent issued to the watchmen on March 3, 2016 a notice that they were to be preventively suspended for 15 days[12] or from March 8, 2016 to March 24, 2016.[13]

On March 22, 2016, a grievance meeting was scheduled between respondent and the watchmen, but only Ernesto attended the same.[14]

On March 23, 2016, respondent issued another notice to the watchmen of an additional 15-day preventive suspension, effective on March 26, 2016 up to April 13, 2016.[15]

On April 12, 2016, after the investigation had been concluded, respondent issued to the watchmen a notice of termination. The termination was made effective on April 14, 2016.[16] This notwithstanding, a second grievance conference was still held on April 15, 2016 where the parties ultimately agreed to elevate their issues to a third party for resolution.[17]

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7 Also Jhonel Surel and Jhony Suril in some parts of the *rollo*.
8 Also Nonito Cabellon in some parts of the *rollo*; Nonito also appears as "Monito" in some parts of the *rollo*.
9 *Rollo*, pp. 31-32.
10 Id. at 32.
11 Id. at 35.
12 Id. at 32-33.
13 Id. at 53-56.
14 Id. at 33.
15 Id.
16 Id.
17 Id. at 67.

The watchmen claimed that they were not afforded with due process of law and that respondent relied on mere hearsay evidence in terminating their employment. Respondent disagreed and maintained that the watchmen's dismissal was legal.[18]

The Voluntary Arbitrator ruled in favor of the watchmen and declared their dismissal illegal. The Voluntary Arbitrator found that respondent was not able to discharge its burden to prove by substantial evidence the allegations of serious misconduct and loss of trust and confidence against the watchmen on the basis of mere affidavits of witnesses who allegedly overheard them plan the attack, but whose credibility and personal acquaintances with the watchmen were not established and proved.[19]

Specifically, as well, the Voluntary Arbitrator was unconvinced with the claim of one of the witnesses, Ranel Alauya (Ranel) that on February 19, 2016, through a meeting in respondent's office premises, he was able to positively identify the watchmen to be the persons he saw in the afternoon of February 14, 2016 in Lawigan Beach Resort who were talking angrily and loudly and plotting about chopping down the banana trees.[20]

The Voluntary Arbitrator also found the notices of preventive suspension sent to the watchmen as inadequate to satisfy the twin notice requirements under the law. He ruled that these notices never charged the watchmen of any offense but simply informed them of their preventive suspension because of an ongoing investigation related to the February 15, 2016 incident.[21] The enumeration of the charges against the watchmen was only reflected in the termination letter, thereby depriving the watchmen the opportunity to be heard and to raise their defenses against these charges levelled against them.[22]

Hence, the Voluntary Arbitrator ordered respondent to:

> 1. Reinstate the complainants to their present assignment; farm operations without loss of seniority rights and to pay their back wages and other benefits from the date of their termination until actual reinstatement.
>
> 2. Pay the Attorney's fee of ten (10%) percent or whatever amount they maybe received (sic) from the respondent.
>
> However, if reinstatement is no longer possible[,] the respondent is mandated to pay each of the complainants the following[:]

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18 CA *rollo*, pp. 34-35.
19 Id. at 40-41.
20 Id. at 41.
21 Id. at 38.
22 Id. at 39.

a. Back wages reckoned from April 15, 2016 up to the finality of this decision;

b. Separation pay of one month salary per year of service, with a fraction of at least six (6) months considered as one whole year and such computation will be reckoned from the date Musahamat [F]arm Incorporated started its farm operation in the place where the said complainants were assigned;

c. Nominal damages of thirty thousand pesos (₱30,000.00)[; and]

d. Attorney's fee equivalent to ten (10%) percent of the total award given to the complainants.[23]

Respondent moved for reconsideration of the above decision, but the same was denied. It then filed a Petition for Review before the CA under Rule 43.

The CA in its assailed Decision[24] reversed the ruling of the Voluntary Arbitrator.

Notably, contrary to the finding of the Voluntary Arbitrator, the CA found that the alleged meeting on February 19, 2016 really took place. The CA weighed this finding and that of the testimony of another witness, Florentino Avenido (Florentino), who allegedly heard as well that the watchmen were planning on cutting down the banana trees.[25] The CA held that these testimonies may be used as circumstantial evidence to establish the fact in issue and which, when taken together with other pieces of evidence like the watchmen's reaction after the announcement, may lead to the reasonable conclusion that they, indeed, committed the act.[26]

The CA further held that respondent substantially complied with the procedural requirements of the termination. Although the first letter (notice of preventive suspension) was not worded as to apprise the watchmen of the particular acts for which their dismissal was sought, the CA took note of the alleged meeting or conference on February 19, 2016 where Ranel categorically and specifically testified against the watchmen and to no one else. The CA concluded that even before the letter was issued to the watchmen, they already knew that they were the suspects in the banana-cutting incident. Hence, they were already informed of the acts levelled against them.[27]

Moreover, according to the CA, respondent called for a grievance meeting to specifically give the watchmen an opportunity to explain their

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23 Id. at 41-42.
24 Supra note 2.
25 *Rollo*, pp. 32, 35 and 38.
26 Id. at 35.
27 Id. at 37-38.

side. After said meeting, respondent did not terminate the watchmen just yet, but issued another notice of preventive suspension to them. It was only on April 12, 2016, after a thorough investigation, that the watchmen were finally terminated. The termination letter contained respondent's decision to dismiss them due to the offense they had committed.[28]

The decretal portion of the CA Decision reads:

> WHEREFORE, the instant Petition for Review is GRANTED. The Decision of the Voluntary Arbitrator dated September 28, 2016 is hereby REVERSED and SET ASIDE. The dismissal of private respondents Ernesto Suril, Jr., Elvin Suril, Nonito Cabillon, Jhonel Suril and Nanding Abana were valid and legal.
>
> SO ORDERED.[29]

The Issues

The essential issues in this case are: (1) whether the dismissal of the watchmen was for a just and valid cause; and (2) whether due process of law was observed in their dismissal.

The Court's Ruling

The Petition is partly meritorious.

The Court notes at the outset that in resolving the issue of whether the CA erred in ruling that the dismissal of the watchmen had validly met both procedural and substantive requirements, the Court is being called upon to re-examine the facts and evidence on record. The general rule is that the Court is not a trier of facts, but this is subject to well-recognized exceptions, one of which is when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the CA. In such case, departure from the settled rule is warranted and a review of the records and the evidence presented by the opposing parties shall be made in order to determine which findings should be preferred as more conformable with evidentiary facts.[30] This is the situation here, considering that the Voluntary Arbitrator and the CA came up with different conclusions as to whether the watchmen were validly dismissed.

Article 294[31] of Presidential Decree No. 442, also known as the Labor Code of the Philippines (Labor Code), as amended and renumbered, protects the employee's security of tenure by mandating that "[i]n cases of regular employment, the employer shall not terminate the services of an employee

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28 Id. at 38.
29 Id. at 39.
30 *Sy, et al. v. Neat, Inc., et al.*, 821 Phil. 751, 765-766 (2017).
31 Formerly Art. 279.

except for a just cause or when authorized by this Title." A lawful dismissal must meet both substantive and procedural requirements. The dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing.[32]

After a careful study of the records of the case, the Court finds that the dismissal of the watchmen failed to meet the substantive requirement of the law.

There was no just cause to terminate the watchmen

Respondent dismissed the watchmen on the grounds of serious misconduct and loss of trust and confidence. These grounds are among the just causes enumerated under Article 297[33] of the Labor Code for which an employer may validly terminate an employee.

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[34] To constitute a valid cause for the dismissal within the text and meaning of Article 297 of the Labor Code, the following elements of misconduct must concur: (a) it must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.[35]

Gambling during office hours, sexual intercourse within company premises, sexual harassment, sleeping while on duty, and contracting work in competition with the business of one's employer are among those considered as serious misconduct for which an employee's services may be terminated.[36]

On the other hand, in order for an employer to properly invoke the ground of loss of trust and confidence, the employer must satisfy two

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32 *Doctor, et al. v. NII Enterprises, et al.*, 821 Phil. 251, 264 (2017).

33 Formerly Art. 282 which provides:

> ARTICLE 297. [282] *Termination by Employer.* – An employer may terminate an employment for any of the following causes:
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> (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;
> (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.

34 *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan, et al.*, 815 Phil. 425, 435 (2017).

35 Id. at 436, citing *Imasen Philippine Manufacturing Corp. v. Alcon*, 746 Phil. 172, 181 (2014).

36 *Bravo v. Urios College, et al.*, 810 Phil. 603, 618 (2017).

conditions: (1) the employer must show that the employee concerned holds a position of trust and confidence; and (2) the employer must establish the existence of an act justifying the loss of trust and confidence.[37]

Additionally, to be a valid cause for dismissal, the act that betrays the employer's trust must be real, *i.e.,* founded on clearly established facts, and the employee's breach of the trust must be willful, *i.e.,* it was done intentionally, knowingly and purposely, without justifiable excuse. With respect to rank-and-file personnel, in particular, loss of trust and confidence, as a valid ground for dismissal, requires proof of involvement in the alleged events in question. Mere uncorroborated assertions and accusations by the employer will not be sufficient.[38]

Hence, in order to dismiss an employee on the grounds of serious misconduct or loss of trust and confidence, the wrongful act of the employee must be duly supported by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[39] It must be borne in mind that in the hierarchy of evidence, substantial evidence is the least demanding.[40] It only entails evidence to support a conclusion, "even if other minds, equally reasonable, might conceivably opine otherwise."[41]

Significantly, in illegal dismissal cases, the burden of proof is on the employer in proving the validity of the dismissal.[42] The Court finds that respondent has failed to discharge this burden.

The fact that 260 banana plants were cut down in the farm of respondent is undisputed. The incident was discovered in the early morning of February 15, 2016. Nobody actually witnessed what happened and respondent merely relied on circumstantial evidence in ascribing fault to the watchmen and dismissing them.

The concept of circumstantial evidence finds usual application in criminal cases, where Section 4, Rule 133 of the Revised Rules of Evidence[43] provides that conviction based on the same would suffice if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. But considering again that the quantum of evidence required in labor cases is mere

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37 *Distribution & Control Products, Inc./Tiamsic v. Santos*, 813 Phil. 423, 434 (2017).

38 Id. at 434.

39 See *JR Hauling Services, et al. v. Solamo, et al.,* G.R. No. 214294, September 30, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66692>.

40 Id.

41 Id. Citation omitted.

42 *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66695>.

43 A.M. No. 19-08-15-SC, entitled "2019 PROPOSED AMENDMENTS TO THE REVISED RULES ON EVIDENCE," dated October 8, 2019 and took effect on May 1, 2020.

substantial evidence and is lower than that of proof beyond reasonable doubt or moral certainty required in criminal cases, there is no reason why the concept of circumstantial evidence should be inapplicable in labor cases.

Circumstantial evidence is "proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience."[44] Here, respondent relied on the sworn affidavits of three witnesses to establish circumstantial evidence against the watchmen. These affidavits, however, lack credibility and conclusiveness.

In his sworn statement dated July 19, 2016, the Security Officer of respondent, Anthony, testified on the outbursts of the watchmen when they were informed in the morning of February 14, 2016 about their reassignment to farm operations effective the next day. Anthony described them to be visibly angry about the reassignment, questioning the decision of the management, and insisting that as children of the landowners, they should not work as farmhands. Anthony also testified that on February 19, 2016, a conference was held at HKJ 2 Farm which was attended by the management representatives of respondent and the watchmen. During the said conference, Ranel appeared and pinpointed the watchmen as the same persons he saw and heard plotting about cutting down the banana plants on the evening of February 14, 2016 in Lawigan Beach.[45]

For his part, Ranel testified in his sworn affidavit[46] about purportedly overhearing the watchmen on the night of February 14, 2016 talking in the vernacular: "*Demonyo ning Musahamat kay* [*w*]*atchman ta ug* [*l*]*andowner pa jud human ibalhin ta nila sa production. Pamutlon nato unyang gabii ang mga saging sa Musahamat para makabalo sila* [*unsa ang*] *epekto mawad-an ug watchman ilang sagingan* (Musahamat is evil, for we are [w]atchmen and also [l]andowners[,] yet they transferred us to production. We are going to cut down their banana trees later tonight so they will know the effect of losing watchmen in their banana plantation.)"[47] He further testified that on February 19, 2016, through his conversation with the operation manager of the security agency of respondent, he learned about the chopping incident. Ranel then allegedly recounted what he saw and heard on February 14, 2016 and consequently, he was invited to the company premises to attend a meeting between the management and all the watchmen. It was there where he allegedly positively identified the herein watchmen.[48]

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44 *People v. ZZZ*, G.R. No. 228828, July 24, 2019, 910 SCRA 325, 340. Citations omitted.
45 *Rollo*, pp. 91-92.
46 Id. at 98-99.
47 Id. at 82. Italics supplied; italics in the original omitted.
48 Id. at 98-99.

Another witness, Florentino, corroborated Ranel's testimony on overhearing the watchmen on February 14, 2016 in Lawigan Beach.[49] Florentino's testimony translated into: "Musahamat Management is really evil for transferring us to production[. W]e are going to retaliate, we will cut down their trees later."[50]

It bears pointing out, however, how glaring it is that the above testimonies of the three witnesses were only reduced into affidavits on the same day, July 19, 2016, when the hearing before the Voluntary Arbitrator was apparently underway. While there is nothing wrong with this *per se,* for as long as the facts and issues in the affidavits were discussed during the investigation and submitted to the management before the decision to dismiss the watchmen was made,[51] this was not the case here, as will be explained below.

Firstly, the affidavits of Anthony, Ranel, and Florentino were the only affidavits on record, yet none of these was conspicuously discussed or, at the very least, adverted to in the notices of preventive suspension, which simply read in verbatim:

> **March 03, 2016**
>
> x x x x
>
> Based on the incident happened Last February 15, 2016 of slashing of bearing fruits at Block 6A and 7A right after in effect of man power alignment movement of all company guard (watchmen) transfer to direct farm operation.
>
> With the ongoing investigation of the case you are hereby noticed for PREVENTIVE SUSPENSION for 15 Days effective March 8 to 24, 2016.
>
> Hoping for your kind cooperation and presence every conference/investigation needed.
>
> x x x x
>
> **March 23, 2016**
>
> x x x x
>
> With the ongoing investigation of the case last February 15, 2016 slashing incident.
>
> You are hereby noticed for another days of PREVENTIVE SUSPENSION for 15 Regular working Days effective March 26 to April 13, 2016.

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49 Id. at 100.

50 Id. at 83. Italics omitted.

51 See *Muaje-Tuazon v. Wenphil Corp.*, 540 Phil. 516, 521 (2006).

> Hoping for your kind cooperation and presence every conference/investigation needed.[52]

Likewise, given the date when they were all similarly executed, July 19, 2016, none of these affidavits could possibly be the one categorically referred to in the notices of termination sent to the watchmen on April 12, 2016. These notices read in verbatim:

> x x x x
>
> Based on the incident happened last February 15, 2016 fall down of bearing fruits at Block 6A and 7A right after in effect of man power alignment movement of all company guard (watchmen) transfer to direct farm operation. **A sworn affidavit of witness identified you as prime suspect planning for retaliation to MUSAHAMAT FARMS INC (HKJ2) for re aligning of assignment to Engineering.**
>
> Therefore, the offense you committed against the Company Policy for grieve malicious mischief, damaged to property and industrial sabotage, Management had decided to discontinue your employment as Irrigation Crew effective April 14, 2016.
>
> x x x x[53] (Emphasis supplied)

The notices of termination ostensibly speak of an affidavit of a certain unnamed witness that was then **already** sworn to and duly executed. This purported sworn affidavit and the observations of Anthony about the watchmen's demeanor about their new assignment were the only pieces of circumstantial evidence respondent had against the watchmen at the time that they were terminated.

More importantly, the credibility of the sworn affidavits is questionable.

Even assuming *arguendo* that Ranel and Florentino heard a plot to chop down the trees, there was no substantial evidence that it was the watchmen whom they overheard on the night of February 14, 2016. As sharply observed by the Voluntary Arbitrator, Ranel and Florentino do not personally know the watchmen and were unfamiliar with them.[54] Indeed, the circumstances of their acquaintances with the watchmen were nowhere alleged or established. Respondent, in its Comment,[55] merely made a bare and conclusory statement that "it is neither unlikely nor unquestionable that Ranel x x x knows the faces and names of the five dismissed employees."[56] The CA, even as it overturned the findings of the Voluntary Arbitrator,

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52 *Rollo*, pp. 53-60.
53 Id. at 61-65.
54 CA *rollo*, pp. 40-41.
55 *Rollo*, pp. 74-90.
56 Id. at 85.

failed to address the matter and simply accorded weight and credence to the testimonies of Ranel and Florentino. Obviously, the CA arrived at a different conclusion too, because unlike with the Voluntary Arbitrator, it found that the February 19, 2016 meeting or conference between the parties really happened.

To be sure, the existence of the February 19, 2016 meeting is crucial since this was when Ranel supposedly positively identified the watchmen as the ones he overheard plotting on the night of February 14, 2016. In other words, the existence of the said meeting would tie any loose ends as regards what he and Florentino allegedly heard and who he saw on February 14, 2016. Without any explanation or reason, the CA found that the said meeting took place; the Voluntary Arbitrator, on the other hand, found otherwise. The Court is more inclined to agree with the latter.

The Court affirms the apt observation of the Voluntary Arbitrator that the alleged existence of the February 19, 2016 meeting was not supported by any document, such as a letter inviting the watchmen to attend the same, an attendance sheet, or any minutes.[57] What are only left to prove the claim are the mere **belatedly submitted** affidavits of Ranel and Anthony.

Equally important, the Court finds a patent inconsistency between the alleged February 19, 2016 meeting and how the events of the case played out.

Under pain of repetition, during the said conference, Ranel allegedly positively identified the watchmen as the persons he saw and overheard talking angrily and plotting on cutting down respondent's banana plants on the evening of February 14, 2016 in one of the cottages in Lawigan Beach. Yet, it does not escape the Court's attention that at both the grievance meetings in March and April 2016, the watchmen adamantly wanted to face or be confronted with the purported witnesses of respondent. During the first grievance meeting on March 22, 2016, Anthony informed the watchmen that there was a lead by a witness who pinned them as suspects in the whole incident. Petitioner, on behalf of the watchmen, then suggested that the witness be presented so the case can be resolved.[58] This was an odd exchange if the claims of Ranel and Anthony were true that a previous meeting and identification of the watchmen really took place beforehand, or on February 19, 2016. Rather, there is no indication at all in the minutes of the March 22, 2016 meeting[59] that Ranel or anybody else had already positively and openly identified the watchmen then.

Similarly, during the second grievance meeting held on April 15, 2016, petitioner again asked for the presentation of the alleged witnesses of

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57 CA *rollo*, p. 41.
58 *Rollo*, p. 43.
59 Id. at 66.

respondent against the watchmen. The representative of respondent merely replied with "as per top management to not present witnesses and or affidavit to this meeting and opt to present them [in] other venue."[60] Again, the minutes of this April 15, 2016 meeting[61] reveal no mention of the purported open and positive identification made by Ranel during the conference on February 19, 2016.

The only conclusion to all of the foregoing is that either the meeting on February 19, 2016 was imaginary, or that even if it indeed happened, Ranel could not have then positively and openly identified the watchmen. If it were otherwise, there should have been no reason why Ranel should still remain anonymous during the subsequent grievance meetings, or why the crucial positive identification he allegedly made was not even brought up. It would have been easy or natural to remind petitioner when it was requesting that witnesses be presented, that Ranel had, in fact, already come forward on February 19, 2016. Simply put, there was no logical explanation why Ranel continued to be anonymous during these grievance meetings when his participation in the entire matter was very critical.

Given the significance or materiality of the February 19, 2016 meeting as regards the supposed positive identification made by Ranel against the watchmen on that day, this cannot be divorced from the rest of his affidavit with respect to what he had allegedly overheard on February 14, 2016. Finding that such part about the February 19, 2016 meeting is false leads to a finding of falsity in the entire testimony of Ranel, owing to the doctrine of *falsus in uno, falsus in omnibus* (false in part, false in everything). While the maxim is not an absolute rule of law and is in fact rarely applied in modern jurisprudence, Ranel's credibility has been severely tarnished by said portion of his testimony. Thus, the Court should likewise take with a grain of salt the part of his testimony on overhearing the watchmen about their plot, which aims to establish the circumstantial evidence against them.[62]

In the same vein, the part in Anthony's testimony which corroborates the February 19, 2016 meeting and the identification made by Ranel of the watchmen should also be disbelieved. What would be then left from his testimony would be his account of the angry demeanor of the watchmen when apprised of their reassignment. While this may stand as motive against the watchmen, it is, however, weak and insufficient to stand, on its own, as proof of their culpability.

Neither would Florentino's testimony suffice as another circumstance to link the watchmen to the chopping incident as it also relies heavily on the questionable February 19, 2016 meeting. In criminal cases, it is essential that

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60 Id. at 67.

61 Id.

62 See *People v. Batin*, 564 Phil. 249, 261 (2007).

the circumstantial evidence presented must constitute an **unbroken chain**, which leads one to a **fair and reasonable conclusion** pointing to the accused, to the exclusion of others, as the guilty person.[63] This principle finds relevance in non-criminal cases as well.

In light of the foregoing, with neither direct nor circumstantial evidence to establish substantial evidence against the watchmen, the charges against them for serious misconduct or loss of trust and confidence crumble.

Due process of law was observed in terminating the watchmen

In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing.[64] As for the notice requirement, the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him/her. As for the requirement of a hearing, this is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[65]

It is undisputed that what were given to the watchmen prior to the notice of their termination were two separate notices of their preventive suspension. Respondent claimed that the first notice of preventive suspension served as the first written notice under the law. The CA agreed that this would suffice, especially since previously or on February 19, 2016, a witness already came forth against the watchmen and thus, they could no longer feign ignorance about the accusations against them.

The Court finds that there was substantial compliance with the twin notice requirements under the law.

Firstly, the reliance of the CA on the February 19, 2016 meeting is, as demonstrated by the earlier discussion, misplaced. To reiterate, the fact that a conference between the management representatives and the watchmen did occur on such date is highly doubtful. The minutes of the grievance conferences show that said meeting was never tackled in any way. However, the first notice of preventive suspension in this case substantially complies with the purpose of the first notice in cases of illegal dismissal.

Indeed, the Court instructs that 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

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63 *Franco v. People,* 780 Phil. 36, 44 (2016)
64 *Distribution & Control Products, Inc./Tiamsic v. Santos,* supra note 37, at 436.
65 Id.

submit their written explanation within a reasonable period. 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. Lastly, the notice should also specifically mention which company rules, if any, are violated and/or which among the grounds under the Labor Code is being charged against the employees.[66]

However, it must be underscored that the primordial purpose of the first notice is to sufficiently apprise the employee of the acts complained of and to enable the employee to prepare his/her defense.[67] Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code[68] from which the foregoing requisites are lifted expressly provides that they be "**substantially**" observed. Substantial, as opposed to strict, compliance should therefore suffice.

Here, while lacking in particularity, the notice of preventive suspension has nonetheless served the primordial purpose of a first notice. It was not couched in general terms but, rather, clearly provided that the watchmen were being preventively suspended during the investigation relative to the chopping incident on February 15, 2016. The notice further stated or alluded to the reassignment made which preceded the incident and which only involved the herein watchmen. As such, there was hardly any room for confusion as to which the preventive suspension was about. Given the gravity of the act involved in this case, any reasonable employee would likewise easily grasp that his/her employment as a watchman was on the line.

Moreover, albeit not evidenced by a written notice, it is undisputed that two grievance meetings were thereafter conducted. The minutes show that the alleged involvement of the watchmen in the chopping incident was discussed therein. During the first grievance meeting, in particular, the

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66 See *Unilever Philippines, Inc. v. Rivera,* 710 Phil. 124, 136 (2013).

67 *Genuino v. National Labor Relations Commission,* 564 Phil. 315, 327 (2007).

68 As amended by DOLE Department Order No. 009-97 entitled "AMENDING THE RULES IMPLEMENTING BOOK V OF THE LABOR CODE AS AMENDED," approved on May 1, 1997. Section 2, Rule XXIII provides:

> SECTION 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 of the Labor Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

management informed the watchmen about a lead from a witness implicating them to the chopping incident. The watchmen, in turn, demanded that the witness and other evidence against them be presented or bared. The management rejected the demand and opted to present their evidence in another venue, which eventually happened.

Verily, the watchmen were accorded the opportunity to be heard. The failure to confront the witnesses against them was not fatal as confrontation of witnesses is required only in adversarial criminal prosecutions, and not in company investigations for the administrative liability of the employee.[69] The chance afforded to the watchmen, although limited, is a clear opportunity to be heard on the issue at hand.[70] What the law abhors and prohibits is the absolute absence of the opportunity to be heard.[71]

The watchmen are entitled to separation pay and backwages

An illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances and other benefits or their monetary equivalent.[72] In case the reinstatement is no longer possible, however, an award of separation pay, in lieu of reinstatement, will be justified.[73] The Court has ruled that reinstatement is no longer possible: (a) when the former position of the illegally dismissed employee no longer exists; or (b) when the employer's business has closed down; or (c) when the employer-employee relationship has already been strained as to render the reinstatement impossible. The Court likewise considered reinstatement to be non-feasible because a "considerable time" has lapsed between the dismissal and the resolution of the case,[74] and when the employee himself/herself does not want to be reinstated.

Insofar as strained employer-employee relationships are concerned, the Court in *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*[75] has discussed the limitations and qualifications of the exception in this wise:

> x x x If in the wisdom of the Court, there may be a ground or grounds for non-application of the above-cited provision, this should be by way of exception, such as when the reinstatement may be inadmissible due to ensuing strained relations between the employer and the employee.

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69 *Muaje-Tuazon v. Wenphil Corp.*, supra note 51, at 525.
70 See *AMA Computer College-East Rizal, et al. v. Ignacio*, 608 Phil. 436, 457 (2009).
71 Id. at 457.
72 *Manila Jockey Club, Inc v. Trajano*, 712 Phil. 254, 273 (2013).
73 Id. at 273.
74 Id. at 273-274.
75 283 Phil. 649 (1992).

> In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.
>
> A few examples will suffice to illustrate the Court's application of the above principle: where the employee is a Vice-President for Marketing and as such, enjoys the full trust and confidence of top management; or is the Officer-In-Charge of the extension office of the bank where he works; or is an organizer of a union who was in a position to sabotage the union's efforts to organize the workers in commercial and industrial establishments; or is a warehouseman of a non-profit organization whose primary purpose is to facilitate and maximize voluntary gifts by foreign individuals and organizations to the Philippines; or is a manager of its Energy Equipment Sales.
>
> Obviously, the principle of "strained relations" cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.
>
> Besides, no strained relations should arise from a valid and legal act of asserting one's right; otherwise, an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.[76]

To be sure, the doctrine of strained relations may be invoked only against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement.[77] The watchmen certainly held positions of trust and confidence, where greater trust was placed by management and from whom greater fidelity to duty was correspondingly expected.[78] It cannot be gainsaid that in the normal and routine exercise of their functions, a watchman regularly handles the delicate matter of caring for and protecting the property and assets of his/her employer.[79] This is all the more true in this case where the watchmen were tasked to guard a huge banana plantation.

Finally, the watchmen are also entitled to backwages and other benefits from the time of their dismissal until finality of this judgment. The basis for the payment of backwages is different from the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing

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76 Id. at 660-662. Citations omitted.

77 *Dimabayao v. NLRC*, 363 Phil. 279, 287 (1999).

78 *Belarso v. Quality House, Inc*, G.R. No. 209983, November 10, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67685>.

79 See id. See also *JR Hauling Services, et al. v. Solamo, et al.*, supra note 39.

separation pay is usually the length of the employee's past service, while that for backwages is the actual period when the employee was unlawfully prevented from working.[80]

WHEREFORE, the Petition for Review on Certiorari is **PARTIALLY GRANTED**. The Decision dated January 22, 2018 of the Court of Appeals, Twenty-First Division and its Resolution dated May 31, 2018 in CA-G.R. SP No. 07812-MIN are **REVERSED and SET ASIDE** insofar as they hold that Ernesto Suril, Jr., Elvin Suril, Jhonel Suril, Nanding Abana, and Nonito Cabillon were validly dismissed. The Decision of the Voluntary Arbitrator dated September 28, 2016 is **REINSTATED** to the extent that respondent is **ORDERED** to **PAY** Ernesto Suril, Jr., Elvin Suril, Jhonel Suril, Nanding Abana, and Nonito Cabillon:

a. **FULL BACKWAGES**, inclusive of allowances and other benefits or their monetary equivalent, computed from April 14, 2016, or from the time that their compensation was withheld from them, until finality of this judgment; and

b. **SEPARATION PAY** in lieu of reinstatement at one-month salary for every year of service, with a fraction of at least six (6) months considered as one whole year computed from the date of hiring until finality of this judgment.

The monetary award shall earn legal interest of six percent (6%) *per annum* from the date of finality of this Decision until full satisfaction of the award.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[80] *Genuino Agro-Industrial Development Corporation v. Romano, et al.*, G.R. No. 204782, September 18, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65763>.

WE CONCUR:

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice