



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

MA. CECILIA P. NGO,
Petitioner,

G.R. No. 248890

- versus -

Present:

FORTUNE MEDICARE, INC.
and DR. ALFONSO SAHAGUN,
Respondents.

LEONEN, S.A.J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

Promulgated:

JAN 11 2023

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DECISION

KHO, JR., J.:

Assailed in this Petition for Review on *Certiorari*¹ are the Decision² dated May 2, 2019 and the Resolution³ dated July 26, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 154726 reversing and setting aside the National Labor Relations Commission's (NLRC) Decision⁴ dated November 27, 2017 in NLRC NCR Case No. 02-01776-17 which affirmed the Labor

¹ Rollo, pp. 9-45.

² Id. at 50-58. Penned by Associate Justice Danton Q. Bueser with Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos, concurring.

³ Id. at 60-61.

⁴ Id. at 96-115. Penned by Commissioner Grace E. Maniquiz-Tan with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap, concurring.

Arbiter's (LA) Decision⁵ dated May 26, 2017 in NLRC LAC Case No. 08-002592-17, which declared that petitioner Ma. Cecilia P. Ngo (petitioner) was illegally dismissed by respondent Fortune Medicare, Inc. (Medicare).

The Facts

This case arose from a complaint for illegal dismissal filed by petitioner against Medicare and its President, Dr. Alfonso Sahagun (Dr. Sahagun; collectively, respondents) before the NLRC. Petitioner alleged that she was one of the auditors assigned to the Central Audit of ALC Group of Companies. She stated that although she was employed by Medicare, her payroll was initially under Fortune Life Insurance, a sister company of the former. Petitioner added that she was hired by Medicare in September 2002 initially as an Accounting Manager, and less than five (5) years thereafter, she was promoted to Assistant Vice President (AVP) for Accounting of Medicare until her dismissal.⁶

Petitioner claimed that sometime in December 2015, Geronimo V. Francisco (Francisco), Medicare's former President, asked her to represent the finance team in a management meeting. Francisco allegedly directed petitioner to include in her presentation the report of Vilma D. Cruz (Cruz), the AVP for Credit and Collection, regarding Medicare's collection efficiency, to which petitioner acceded. Petitioner contended that she only had a few minutes prior to the meeting to go over the report prepared by Cruz, and thus, she had no time to confirm the veracity of its contents.⁷

The contents of Cruz's report were later found by Medicare to be allegedly incorrect during an independent audit, resulting in an internal audit of Medicare's operations. Thereafter, petitioner received a letter dated January 6, 2016⁸ informing her that she would be on preventive suspension effective January 6, 2016 until February 6, 2016 pending the investigation and audit of the company accounts.⁹

On February 1, 2016, petitioner received another letter¹⁰ dated January 29, 2016 from Medicare, directing petitioner to explain in writing why she should not be disciplined and dismissed.¹¹ The letter stated the following allegations against petitioner:

- 1) Missing disbursement vouchers, cleared FMI checks, deposit slips for service fees, liquidation of official cash advances in the total of 841

⁵ Id. at 82-94. Penned by Labor Arbiter Julia Cecily Coching Sosito.

⁶ Id. at 12.

⁷ Id.

⁸ Id. at 63

⁹ Id. at 12-13

¹⁰ Id. at 64.

¹¹ Id. at 13.

documents of selected expenses paid to executives and officers[,] including you[,] of the company in the total amount of Twenty Five Million Two Hundred Forty Two Thousand plus.

2) You claimed and reported 99% collection efficiency but no money were being traced from the cash flow of the company of the reported collections. And in the ageing of receivables you attached in the Financial Statement you executed and submitted as of September 30, 2015 there are various accounts posted as negative balance (credit) resulting to an apparent decrease in your receivables as compared to year 2014.

3) No accompanying notes to financial statement submitted for September 30, 2015 to explain the details, the figures and the presentation of your financial statements as of September 30, 2015.

4) No updated reconciliation of all company bank accounts.¹²

Petitioner was given five (5) days from notice to comply.

Petitioner submitted her written explanation through a letter dated February 4, 2016.¹³ As to the allegation that she misplaced 841 audit documents, petitioner asserted that the Accounting Department, which she supervised, was audited regularly and that there were never any findings of missing documents.¹⁴ She also asserted that she was not the direct custodian of the allegedly missing 841 documents. She specified instead which of her subordinates were the actual custodians of the documents and offered to help locate such documents herself.¹⁵

As to the second assertion on the incorrect collection efficiency report, petitioner stated that it had been Cruz, the AVP for Credit and Collection, who had prepared the report, not her. She had only been directed by the former President of Medicare, Francisco, to present the report during the management meeting. She did not have enough time to check the veracity of the contents of the report as she was given a copy of it only when the management meeting was about to begin.¹⁶

Anent the third allegation on the financial statements lacking the necessary notes, petitioner argued that in accordance with company practice, financial statements submitted monthly do not require notes, unlike the financial statements at the end of the year.¹⁷

Finally, on the claim that there was no reconciliation of all company bank accounts, petitioner contended that the bank reconciliations were

¹² Id. at 64.

¹³ Id. at 184-190.

¹⁴ Id. at 250.

¹⁵ Id.

¹⁶ Id. at 251.

¹⁷ Id. at 252-253.

continuously updated under the supervision of her subordinate, Jenalyn Robedillo (Robedillo). Before petitioner's suspension, Robedillo already made a timeline as to when the update would be finished.¹⁸

Petitioner made a request in her letter of explanation for a breakdown or composition of the 841 documents. She also requested: (i) that she be provided with the name of the person who retrieved the files from the stockrooms of Medicare, and (ii) for confirmation whether the Accounting Supervisors and Treasury Manager/Treasury Head were informed of the missing documents since they were partly custodians of disbursement vouchers, cleared checks, deposit slips for service fees, and liquidation.¹⁹

Petitioner received another letter dated February 5, 2016²⁰ from Medicare, placing petitioner under another preventive suspension from February 7, 2016 until March 7, 2016. Medicare also invited petitioner to attend an administrative hearing on February 17, 2016 at 2:00 pm. The hearing was later moved to February 29, 2016 as petitioner could not attend the first date due to the burial of her brother.²¹

During the administrative hearing, Medicare showed petitioner general samples of the allegedly missing documents. Petitioner inquired as to whether there were any significant findings against her, and she was allegedly informed during the hearing by the Head of Central Audit, Domingo Recto, and Chief Finance Officer of Fortune Guarantee Insurance Co., Leonora Zafra (Zafra) that there were no significant findings.²² After the hearing, petitioner allegedly remained in communication with two of the executives who attended the meeting, Vice President for HRD, Victoria Nava, and Zafra, who, petitioner claimed, told her to return to work and to whom petitioner signified her willingness to do so as long as she received a return-to-work order.²³

Petitioner sent a letter to Medicare on March 7, 2016²⁴ inquiring whether her preventive suspension had ended. Subsequently, she received a letter dated March 9, 2016,²⁵ stating that she was still preventively suspended with pay pending final resolution of her case.

A week after receiving the letter dated March 9, 2016, petitioner alleged that she received a call from Ricardo Golpeo (Golpeo), a Board Member of Medicare. Claiming to act on behalf of the Board, the President, and other

¹⁸ Id. at 14.

¹⁹ Id.

²⁰ Id. at 72.

²¹ Id. at 15.

²² Id.

²³ Id. at 16-17.

²⁴ Id. at 75.

²⁵ Id. at 76.

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Executives, Golpeo asked petitioner to reconsider working again with Medicare and invited her for a meeting to finalize petitioner's return to work.²⁶

Petitioner averred that she met with Dr. Sahagun and Golpeo sometime in March 2016 wherein Dr. Sahagun requested that petitioner return to work. To entice petitioner to return, she was allegedly promised her choice of location for her office and a salary adjustment. Petitioner inquired whether the request for her to return to work was with the permission of Medicare's owner. According to petitioner, Dr. Sahagun confirmed that it was. Prior to the termination of the meeting, it was agreed that petitioner was scheduled to return to work on March 22, 2016. Dr. Sahagun then promised that she would be sent a return-to-work order on March 18 or March 21, 2016.²⁷

However, on March 23, 2016, petitioner was surprised to receive a notice of termination²⁸ dated March 22, 2016 informing her of her termination from the service effective March 23, 2016, due to the following grounds:

- a. Knowingly misleading the late chairman Emeritus Antonio L. Cabangon Chua and Company by reporting a 99% overall collection efficiency;
- b. Missing disbursement vouchers, cleared FMI checks, deposit slips for services fees, liquidation of official cash advances in the total of 841 documents of selected expenses paid to executives and officers of the company in the total amount of Twenty Five Million Two Hundred Forty Thousand plus;
- c. Failure to monitor and account the cash advances;
- d. No updated bank reconciliations of all company bank accounts.²⁹

Medicare stated in the notice of termination that these infractions justified the loss of confidence of the company in petitioner, and made her unfit to remain in their employ,³⁰ to wit:

Under the law, your position being one of responsibility reposed with trust and confidence, the acts you intentionally committed and omitted are very much inimical to the interests of the company thereby justifying **loss of confidence of the company** in you. These also very well show your utter disregard of your duties and your inability to abide by the reasonable company policies and thus, your unfitness to remain in the employ of the company. All said, the company is terminating your service for the above stated just causes effective March 23, 2016.³¹ (Emphases and underscoring supplied)

Upon receipt of the notice for termination, petitioner asked for her retirement pay as she was three (3) months away from being qualified for

²⁶ Id. at 16.

²⁷ Id. at 16-17.

²⁸ Id. at 77-79

²⁹ Id. 17

³⁰ Id. at 79

³¹ Id. at 79

retirement and had been employed by Medicare for almost twenty (20) years. Petitioner also requested for her certificate of employment. However, Medicare denied her request for retirement pay. Petitioner was thus constrained to file the instant complaint for illegal dismissal. Petitioner contended that she had given sufficient explanations to refute the allegations against her, and that one of the grounds for her termination (*i.e.*, failure to monitor and account the cash advances) was not included in the notice to explain, thus depriving her of her right to procedural due process.³²

Respondents, on their part, averred that petitioner was legally dismissed. Whatever assurances petitioner received that she would return to work should not be given weight as it was given to her during the pendency of the administrative hearing, prior to the conclusion of her case.³³ The external audit conducted on Medicare revealed an “unprecedented distressful financial condition” which caused the company to investigate its accounts and undergo a massive retrenchment of its employees. Respondents averred that petitioner must answer for the mishandling of the documents and release of unsubstantiated financial information in relation to collection efficiency and aging of receivables. According to respondents, petitioner’s denial shows the willful intent on her part to commit the infractions.³⁴

The LA Ruling

In a Decision³⁵ dated May 26, 2017, the LA found that petitioner had been illegally dismissed by Medicare, and accordingly, declared her to be entitled to her money claims for backwages, separation pay, salary during the suspension period, retirement benefits, and attorney’s fees. The LA, however, absolved Dr. Sahagun. The monetary award was computed by the LA as follows:³⁶

COMPUTATION OF COMPLAINANT’S MONETARY AWARD AS
PER DECISION OF HON. LABOR ARBITER JULIA CECILY C.
SOSITO

AWARDS: Backwages, separation pay, salary during the suspension period, retirement benefits and attorney’s fees

Employment:	June 24, 1996
Salary:	P60,000.00
Dismissed:	Mar. 23, 2016
Decided:	Mar. 26, 2017

³² Id. at 18-19.

³³ Id. at 86.

³⁴ Id. at 105-106

³⁵ Id. at 82-94.

³⁶ Id. at 95

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A. Backwages

from	to	mos.	actual	13 th month pay	basic	
3/23/2016	5/26/2017	14.10	60,000.00	70,500.00	846,000.00	916,500.00

B. Separation Pay (60,000 x 21 years)	1,260,000.00
C. Salary for suspension period (1/16/2016 to 3/22/2016) 60,000.00 x 2.2 months	132,000.00
D. Retirement Benefits (60,000.00/26 days x 22.5 x 21 yrs.)	<u>1,090,384.61</u>
	3,398,884.61
10% Attorney's Fees	<u>339,888.46</u>
Total Award	<u>3,738,773.07</u>

The LA ruled that respondents failed to provide clear and convincing evidence to support the basis of loss and trust and confidence in petitioner, while petitioner was able to sufficiently explain her side against the accusations of respondents. Thus, reasonable grounds for loss of trust and confidence were not established. Additionally, the LA opined that since petitioner had not prayed to be reinstated and instead prayed for retirement benefits, she is entitled to separation pay in lieu of reinstatement.³⁷

Aggrieved, respondents filed an appeal before the NLRC.

The NLRC Ruling

In a Decision³⁸ dated November 27, 2017, the NLRC affirmed the LA's ruling, stating that there was no sufficient cause to justify the loss of trust and confidence of Medicare on petitioner. However, the NLRC deleted the award of salary during petitioner's preventive suspension and her retirement pay, as she had committed minor infractions.

The NLRC ruled that it is clear that the 841 documents demanded from petitioner were not in her custody and that if her help was truly needed to recover the documents, she should not have been preventively suspended since she would need to be on location to do so. Further, the NLRC ruled that Medicare failed to specify precisely which documents they were asking for from petitioner, belying the accusation.³⁹

The NLRC thus ruled that no hard evidence was produced to support the finding that petitioner was guilty of the allegations against her; and pointed out that the preparation of the credit and collection report and review of Medicare's collection efficiency were not within petitioner's responsibilities as AVP for Accounting. Monitoring Medicare's collection efficiency, and preparing reports in connection thereto, is the duty of the Credit and

³⁷ Id. at 92.

³⁸ Id. at 96-115.

³⁹ Id. at 100.

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Collection Department, which had prepared the supposed fraudulent report in this case. This is not disputed by Medicare. Further, the NLRC stated that there is nothing in the record to indicate whether Medicare verified the credit and collection report with its Credit and Collection Department.⁴⁰

The NLRC further held that petitioner sufficiently refuted the allegation in Medicare's letter dated January 29, 2016 that there were no notes on the Financial Statements for September 30, 2015, as it was company practice to only include notes in the year-end financial statements. Further, at the time of her suspension, the bank reconciliations were already underway. The NLRC added that petitioner was given no chance to explain the new allegations (*i.e.*, failure to monitor and account for cash advances) posed against her in her notice of termination.⁴¹ In any case, the NLRC opined that there was "no single proof adduced by respondent to prove the basis of such allegations."⁴²

Respondents moved for reconsideration, which the NLRC denied in a Resolution⁴³ dated December 29, 2017. Aggrieved, they filed a Petition for *Certiorari*⁴⁴ before the CA.

The CA Ruling

In a Decision⁴⁵ dated May 2, 2019, the CA reversed and set aside the Decision dated November 27, 2017 and the Resolution dated December 29, 2017 of the NLRC, and held that there was no illegal dismissal.

The CA ruled that the requisites to allow an employer to terminate the services of an employee for loss of trust and confidence under Article 282 (c) (now Article 297 [c]) of the Labor Code were met in this case. The CA held that petitioner, as AVP for Accounting, held a position of trust and confidence within Medicare. She was thus required to maintain the company's financial records, and direct and coordinate the daily activities of the accounting staff. The accounting department, which petitioner was in charge of, was tasked with cash management and the maintenance of organized and detailed records and files to document the company's financial transactions.⁴⁶

The CA disagreed with the NLRC by stating that petitioner had not sufficiently countered the allegations made against her. The CA ruled that, contrary to the findings of the NLRC, there was indeed evidence of the fiscal inadequacy of Medicare. Medicare was able to present Audited Financial

⁴⁰ Id. at 111.

⁴¹ Id. at 110-112.

⁴² Id. at 113.

⁴³ Id. at 119-123.

⁴⁴ Id. at 124-136.

⁴⁵ Id. at 50-58.

⁴⁶ Id. at 54.

Statements (AFS) showing that they had been operating at a loss since 2015 and 2016. In 2017, this loss even translated in a retrenchment program for its employees.⁴⁷ In sum, the CA concluded that the grounds for her termination are within the scope of petitioner's duties.

Petitioner moved for reconsideration on June 6, 2019. The CA denied the motion in a Resolution⁴⁸ dated July 26, 2019. Hence this Petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in declaring that the NLRC acted with grave abuse of discretion warranting the re-evaluation of the evidence by the CA.

The Court's Ruling

The Petition is meritorious.

"It must be stressed that to justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered 'grave,' discretion must be exercised in a despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."⁴⁹

Thus, case law instructs that "[i]n labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."⁵⁰

Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC when the latter tribunal declared petitioner to have been illegally dismissed by

⁴⁷ Id. at 55-57.

⁴⁸ Id. at 60-61.

⁴⁹ *Jolo's Kiddie Carts v. Caballa*, 821 Phil. 1101, 1109 (2017) [Per J. Perlas-Bernabe, Second Division], citing *Gadia v. Sykes Asia, Inc.*, 752 Phil. 413, 420 (2015) [Per J. Perlas-Bernabe, First Division].

⁵⁰ Id. at 1109-1110, citing *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, 809 Phil. 212, 220 (2017) [Per J. Perlas-Bernabe, First Division].

Medicare. As will be explained hereunder, the NLRC's finding of illegal dismissal is in accord with the evidence on record, as well as settled legal principles of labor law.

To recall, petitioner's employment was terminated on the ground of loss of confidence. The requisites for the existence of the ground of loss of trust and confidence under Article 297 (c) (formerly Article 282 [c]) of the Labor Code, are as follows: (a) the employee concerned holds a position of trust and confidence; and (b) they perform an act that would justify such loss of trust and confidence.⁵¹ The loss of trust must relate to the employee's performance of duties, and the breach of trust must be willful and without justifiable excuse.⁵² The burden of proof is on the employer to show that the requisites for this ground exist.⁵³

Anent the first requisite, case law enumerates two classes of positions of trust. The first class consists of managerial employees, which refers to those 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. The second class consists of those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.⁵⁴

Here, it is not disputed that petitioner is an employee who held a position of trust and confidence. As the former AVP for Accounting of Medicare, petitioner's primary duties consisted of the management of the accounting department thereof.

As regards the second requisite, the rule in the case of managerial employees is that it is enough that "there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders them unworthy of the trust and confidence demanded by their position."⁵⁵ However, while proof beyond reasonable doubt is not necessary to dismiss managerial employees based on loss of trust and confidence, "the dismissal must have reasonable basis and must not be based on the mere whims or caprices of the employer."⁵⁶ In the instant case, the Court finds that Medicare failed to provide reasonable

⁵¹ *Aluag v. BIR Multi-Purpose Cooperative*, 822 Phil. 476, 488-489 (2017) [Per J. Perlas-Bernabe, Second Division].

⁵² *Cadavas v. Court of Appeals*, 850 Phil. 234, 250 (2019) [Per J. Peralta, Third Division].

⁵³ *Pardillo v. Bandojo*, 850 Phil. 875, 888 (2019) [Per J. Caguioa, Second Division], citing Article 292 (formerly 277) of the Labor Code.

⁵⁴ *Casco v. National Labor Relations Commission*, 826 Phil. 284, 289 (2018) [Per J. Bersamin, Third Division], citing *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628 (2008) [Per J. Reyes, R.T., Third Division].

⁵⁵ *University of Manila v. Pinera*, 859 Phil. 710, 720 (2019) [Per J. Reyes Jr., Second Division], citing *Caoile v. National Labor Relations Commission*, 359 Phil. 399, 406 (1998) [Per J. Quisimbing, First Division].

⁵⁶ *Pardillo v. Bandojo*, supra note 53.

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grounds to believe that petitioner is responsible for the purported conduct attributed to her that served as basis for her termination.

The CA incorrectly ruled that the proof of dismal fiscal adequacy indicates negligence on the part of Medicare's accounting staff. The audit reports for the years 2015 and 2016 and the retrenchment order for the year 2017 only sufficiently prove Medicare indeed suffered from dismal fiscal adequacy. However, it does not establish, in any way whatsoever, any reasonable ground to believe that Medicare's losses were due to the fault of petitioner.

In this relation, Medicare's assertion that petitioner misled management by reporting that the company's collection efficiency was at 99% cannot be given any merit. As aptly pointed out by the NLRC, it is not disputed that another office was in charge of the preparation of the report on the company's collection efficiency and that petitioner was merely requested by Medicare's former president to present the same. There is a separate Credit and Collection Department, independent from the Accounting Department, that is responsible for determining the company's collection efficiency.⁵⁷ The veracity of the contents of the report are therefore not within the purview of petitioner's responsibilities. Further, there is nothing on record that indicates that the Credit and Collection Department was made to answer why its data on collection efficiency was inaccurate. There is also no indication and no showing in Medicare's AFS for the years 2015 and 2016 of an inconsistency between the company's records with the financial statements prepared by its accounting department.

Moreover, the Court notes that Medicare's claim that petitioner should have known that the credit and collection report showing 99% collection efficiency was incorrect as she should have seen that the company was already operating at a loss in 2015,⁵⁸ is equally untenable. As correctly ruled by the NLRC, assessing whether receivables are still fully collectible is not within petitioner's or the Accounting Department's responsibilities. Further, per the independent auditor's notes on Medicare's 2015 and 2016 AFS, Medicare's management believed that all outstanding receivables were fully collectible⁵⁹ after reviewing the same financial statements and documents petitioner had access to.⁶⁰ It is therefore unreasonable to expect petitioner to discover the receivables were not in fact recoverable especially given that she had no time to evaluate the report before she was instructed by Medicare's former president to present it during the management meeting.

With regard to the allegation that petitioner misplaced 841 accounting or financial documents, the Court agrees with the NLRC that Medicare's

⁵⁷ *Rollo*, p. 111.

⁵⁸ *Id.* at 221.

⁵⁹ *Id.* at 293.

⁶⁰ *Id.* at 277.

failure to provide the specific details on the allegedly missing documents belies the accusation. It bears stressing that case law consistently instructs that the burden of proof is with the employer to establish that there was reasonable basis for the dismissal.⁶¹ Here, it was not even clear that the purported misconduct existed. Verily, Medicare failed to furnish a list of the allegedly missing documents to both the LA and NLRC. As the NLRC ruled, the failure to produce such a list even on appeal puts into question the truth of this accusation.

Even if the Court were to believe Medicare's assertion that petitioner was given the opportunity to search for the documents and petitioner refused, it seems counterintuitive not to enlist the help of the actual custodians of the documents, petitioner's staff, and instead have the company's Audit Head and his staffers search the Accounting Department's stockroom. This is especially true considering that petitioner specified which of her staff members were the actual custodians of each type of document. Petitioner also offered to help in the search in her letter of explanation. In any case, it was noted by the independent auditor in Medicare's AFS that there were "sufficient and appropriate" audit evidence to provide basis for their audit opinion.⁶² Nothing in the independent auditor's report indicates that there were any significant gaps in Medicare's audit documents as to prevent its management from inferring the actual financial state of the company.

Anent the claim that petitioner should have included notes in the September 30, 2015 Financial Statements, the Court finds that petitioner has sufficiently explained her side. Petitioner's assertion that it had been company practice to only include notes on the year-end financial statements was not disputed by Medicare. It was thus unreasonable to expect petitioner to have performed a task that she was not obliged to do and use the same as basis for loss of trust and confidence in her. Similarly, petitioner sufficiently explained that the reconciliation for the company's bank accounts was already underway at the time of her suspension, and that it was only delayed as the accounting department was understaffed. Petitioner's contention that she informed the Division Head in charge of the Accounting Department regarding this matter is not disputed.⁶³

On the matter of the new ground in petitioner's notice of termination, NLRC correctly ruled that petitioner was not afforded the opportunity to reply to the additional allegation regarding the cash advances. The Court has laid down guidelines for procedural due process in terminating an employee. In relation to the first written notice served on employees, it must contain the specific causes or grounds for termination against them, and a directive that

⁶¹ *Pardillo v. Bandojo*, supra note 53.

⁶² *Rollo*, p. 260.

⁶³ *Id.* at 254.

the employees are given the opportunity to submit their written explanation within a reasonable period.⁶⁴

In this regard, Medicare insists that this ground was in fact included in the first notice when it asked for the “liquidation of official cash advances,” as part of the alleged 841 missing documents. In the notice for termination, however, the allegation was not only that petitioner could not locate these documents, but that she allowed employees to continuously avail of cash advances although their previous advances had not yet been liquidated.⁶⁵ While the failure to locate the documents representing said advances was indicated in the first written notice, petitioner’s alleged act of continuously allowing Medicare employees to avail of cash advances although their previous advances had not yet been liquidated, was not specifically provided for, contrary to the requirements of procedural due process.

Furthermore, Medicare claimed in the notice for termination that petitioner blamed her subordinates for allowing the cash advances when a reading of her letter of explanation reveals nothing of the sort. However, records show that petitioner simply specified which employee was the actual custodian of the checks and liquidation reports for cash advances. In doing so, she was addressing the allegation that such documents were misplaced. She could not have been laying the blame on her subordinate for allowing cash advances when this had not even been alleged under the first written notice, in violation of petitioner’s right to procedural due process.

Based on the established facts, petitioner committed only minor infractions at best, and there were no grounds for her preventive suspension. An employer may place a worker under preventive suspension only if his or her continued employment poses a serious and imminent threat to the life or property of the employer or of his/her co-workers.⁶⁶ There is no indication that any of petitioner’s actions could result in a serious or imminent threat to the life or property of Medicare or its employees. Hence, the preventive suspension was invalid.⁶⁷ Where it is determined that there is no sufficient basis to justify an employee’s preventive suspension, the latter is entitled to the payment of salaries during the time of preventive suspension.⁶⁸ As such, the NLRC’s award should be modified to award petitioner her salary during her preventive suspension period.

⁶⁴ *Distribution & Control Products, Inc., v. Jeffrey E. Santos*, 813 Phil. 423, 436 (2017) [Per C.J. Peralta, Second Division], citing *Unilever Philippines, Inc. v. Rivera*, 710 Phil. 124, 136 (2013) [Per J. Mendoza, Third Division].

⁶⁵ *Rollo*, p. 258.

⁶⁶ *Every Nation Language Institute (ENLI) and Ralph Martin Ligon v. Maria Minellie Dela Cruz*, G.R. No. 225100, February 19, 2020 [Per J. Reyes, Jr., First Division].

⁶⁷ *Trade and Investment Development Corporation of the Philippines v. Manalang-Demigilio*, 695 Phil. 152, 165 (2012) [Per J. Bersamin, *En Banc*].

⁶⁸ *Gatbonton v. National Labor Relations Commission*, 515 Phil. 387, 393 (2006) [Per J. Austria-Martinez, First Division].

On the other hand, while the petitioner's actions do not *per se* justify the deletion of her retirement benefits, since all employees are entitled to retirement pay including those who have committed minor infractions which do not warrant dismissal,⁶⁹ petitioner is still not entitled to retirement benefits. Medicare does not deny that petitioner would have been qualified for retirement three (3) months after she was dismissed. However, petitioner did not present the Retirement Plan, and it does not appear on the record. Hence, it is not clear whether the retirement petitioner seeks under the company's policy is a mandatory retirement or one which did not require the approval of management.⁷⁰ While petitioner prayed for retirement benefits, whether or not this means she would or could have availed of retirement under Medicare's policy, is speculative. Likewise, petitioner has not reached the compulsory age of retirement⁷¹ under the Labor Code,⁷² hence, she cannot be awarded retirement benefits on this basis. The NLRC's deletion of petitioner's retirement benefits was, therefore, proper.

As to the award of backwages, case law provides that "[b]ackwages are awarded as remuneration for the employee's lost income from the erring employer due to illegal dismissal."⁷³ As petitioner was illegally dismissed, she is entitled to backwages. As she was forced to litigate and incur expenses to protect her rights and interests, she is also entitled to an award of attorney's fees.⁷⁴

Finally, with regard to separation pay, case law instructs that where reinstatement is no longer possible, the Court should award separation pay,⁷⁵ which shall be equivalent to one month salary for every year of service until the finality of this Decision.⁷⁶ Here, petitioner did not pray for reinstatement and only sought payment of money claims, hence, an award of separation pay is proper.⁷⁷ In any case, petitioner's reinstatement is neither practical nor feasible, as it has been six (6) years since petitioner's dismissal and the relationship between petitioner and Medicare has become strained. Since petitioner will be awarded separation pay in lieu of reinstatement, her backwages shall be computed from the time of her dismissal until the finality of the decision ordering separation pay, or this Decision.⁷⁸

⁶⁹ *De La Salle Araneta University v. Juanito C. Bernardo*, 805 Phil. 580, 597 (2017) [Per J. Leonardo-De Castro, First Division] citing: Article 302 of the Labor Code

⁷⁰ *Rollo*, p. 114.

⁷¹ *Id.* at 62. In her company ID, petitioner's birthdate is specified as: September 21, 1974.

⁷² Compulsory retirement age is sixty-five (65) years of age under Article 302 of the Labor Code.

⁷³ *Dumapis v. Lepanto Consolidated Mining Company*, G.R. No. 204060, September 15, 2020 [Per J. Lazaro-Javier, *En Banc*].

⁷⁴ *Tangga-an v. Philippine Transmarine Carriers, Inc.*, 706 Phil. 339, 354 (2013) [Per J. Del Castillo, Second Division].

⁷⁵ *Genuino Agro-Industrial Development Corporation v. Romano*, 863 Phil. 360, 379 (2019) [Per J. Reyes, Jr., Second Division].

⁷⁶ *Id.* at 59.

⁷⁷ *ICT Marketing Service, Inc. (now known as Sykes Marketing Services, Inc.) v. Mariphil L. Sales*, 769 Phil. 498, 524 (2015) [Per J. Del Castillo, Second Division].

⁷⁸ *Genuino Agro-Industrial Development Corporation v. Romano*, *supra*.

Atilo

ACCORDINGLY, the Petition is **GRANTED**. The Decision dated May 2, 2019 and the Resolution dated July 26, 2019 of the Court of Appeals in CA-G.R. SP No. 154726 are hereby **REVERSED** and **SET ASIDE**. The Decision dated November 27, 2017 of the National Labor Relations Commission in NLRC NCR Case No. 02-01776-17 is hereby **REINSTATED** with **MODIFICATION**. Respondent Fortune Medicare, Inc. is **ORDERED** to immediately pay petitioner Ma. Cecilia P. Ngo the following:

- (1) Backwages computed from March 23, 2016, the date of her illegal dismissal, up to the finality of this Decision, plus six percent (6%) interest per annum from March 23, 2016 until fully paid;
- (2) Separation pay equivalent to one (1) month salary for every year of service until the finality of this Decision;
- (3) Salary during the Suspension Period (January 6, 2016 to March 22, 2016);
- (4) Ten percent (10%) Attorney's Fees; and
- (5) Legal interest of six percent (6%) per annum for (2), (3) and (4) from the finality of this Decision until fully paid.

Finally, the case is **REMANDED FOR EXECUTION** to the Labor Arbiter, who is hereby **ORDERED** to prepare a revised comprehensive computation of the monetary awards based on the foregoing and cause its implementation, with utmost dispatch.

SO ORDERED.


ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:


MARVIC M. V. F. LEONEN
Senior Associate Justice
Division Chairperson


AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice


JHOSEP LOPEZ
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

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