Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

INTEGRATED SUPERVISORS UNION-APSOTEU-TUCP and EMMANUEL BALTAZAR, Petitioners,	**G.R. No. 243864**
- versus -	Present: LEONEN,* *Acting Chief Justice*, LAZARO-JAVIER,** LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*
LAPANDAY FOODS CORPORATION, Respondent.	Promulgated: JUN 26 2023

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D E C I S I O N

KHO, JR., *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated September 25, 2017 and the Resolution[3] dated November 29, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 07637-MIN, which reversed and set aside the Decision[4] dated August 5, 2016 of the Voluntary Arbitrator (VA) of the National Conciliation and Mediation Board finding petitioner Emmanuel Baltazar (Baltazar) to have been illegally dismissed and ordering respondent Lapanday Foods Corporation (LFC) to pay Baltazar his separation pay.

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* Acting Chief Justice per Special Order No. 2989 dated June 24, 2023.
** Working Chairperson per Special Order No. 2993 dated June 26, 2023.
1 *Rollo*, pp. 11–56.
2 *Id.* at 58–75. Penned by Associate Justice Louis P. Acosta with Associate Justices Oscar V. Badelles and Ronaldo B. Martin, concurring.
3 *Id.* at 76–77. Penned by Associate Justice Oscar V. Badelles with Associate Justices Edgardo T. Lloren and Walter S. Ong, concurring.
4 *Id.* at 159–169. Penned by Voluntary Arbitrator Art O. Tan.

The Facts

LFC is a domestic corporation engaged in the production of bananas in the Philippines. Baltazar worked as LFC's Protection Crop Supervisor assigned to its Delta Plantation Operations in Kapalong, Davao del Norte.[5]

On March 21, 2015, Baltazar supervised the eradication of 3 Moko cases – with Moko being a widespread bacterial disease in bananas. Three days later, or on March 24, 2015, Baltazar received a Show Cause Memo[6] directing him to submit a written explanation in connection with a report received by LFC on March 21, 2015 involving alleged pilferage of chemicals owned by LFC. The memo states that the act constitutes a violation of LFC's Employee Discipline Code on Serious Violations in relation to Honesty and Confidence[7] and Article 282[8] (now Article 296) (a) and (c) of the Labor Code. The same memo informed Baltazar that he was placed on a 30-day preventive suspension and that an administrative investigation would be held on April 15, 2015 at 10:00 a.m.[9]

In a letter[10] dated March 30, 2015, Baltazar responded to said memo, denying having stolen any chemical in a white container and asserting that the only white container that was dropped off at his residence was his allocation of gasoline. Baltazar also averred that from the time he went to his boarding house for breakfast up until the time he returned for lunch, he did not see a white container with chemicals. He likewise denied wearing a blue helmet, as alleged by the security guard when the latter said that they tried to chase Baltazar, who reportedly rode a motorcycle.[11]

On even date, an administrative hearing was held. While Baltazar did not attend the said hearing, petitioner Integrated Supervisors Union-APSOTEU-TUCP's (the Union) president and representative appeared on his behalf.

On April 25, 2015, the Union requested for a grievance hearing but such was not acted upon. Thus, on May 2, 2015, the Union submitted its

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5 *Id.* at 160–161.

6 *Id.* at 119–120.

7 B.1.1 Serious Violations in relation to Honesty and Confidence:
a) Robbery, theft, estafa, fraud and other forms of swindling, malversation and deception committed against the Company, its officers and employees, customers, visitors and other third party. (*Id.* at 153.)

8 Art. 297. [282] Termination by Employer. – An employer may terminate an employment for any of the following causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
x x x x
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
x x x x

9 *Rollo*, pp. 59–62.

10 *Id.* at 122–123.

11 *Id.*

Investigation Report[12] dated April 25, 2015 finding no illegal loading of chemicals because there were designated persons for each task – from record preparation/keeping, chemical mixing, loading and unloading of chemicals, up to the application of chemicals on the Moko cases. According to the Union's Investigation Committee, the weekly accomplishment report showed that there was no shortage of chemicals and materials.[13] The investigation also revealed a lack of proper communication between the security guard on duty and the crop protection supervisor or any evidence that the white container carried chemicals and not Baltazar's monthly gasoline allocation.[14]

In another Investigation Report[15] dated April 28, 2015 conducted by LFC's investigation committee, it was recommended that Baltazar's employment with LFC be terminated due to his negligence, to wit:

> In this case at hand, there were several instances whe[n] Mr. Emanuel [sic] Baltazar, [sic] was negligent in his duties. To enumerate:
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> 1. As a Supervisor[,] you should know the implication of dishonesty, fraud, and deception are serious offense[s] committed against the Company.
> 2. As a Supervisor[,] you showed willful disobedience by [sic] the Company's lawful orders.
> 3. As a Supervisor[,] you failed to follow Standard Operating Procedures (SOP).
>
> It is therefore recommended that the penalty to be imposed on Mr. Emanuel [sic] Baltazar, is TERMINATION.[16]

LFC's Investigation Report, the report of Elpedio F. Maestrado, Jr.,[17] and the sworn statements of Jhonyl Comision[18] (Jhonyl), Ernie C. Salarza (Salarza),[19] and Argie O. Julio[20] led LFC to conclude that Baltazar was guilty of stealing one Biocit chemical (with a volume of 25 liters) placed in a white container. From the testimonies of Jhonyl and the security guards, Baltazar was positively identified as the person who instructed Jhonyl to unload the container with chemicals last March 21, 2015.[21]

Again, on May 27, 2015, the Union requested a follow-up grievance hearing on May 30, 2015.[22] This request was also unheeded. Instead, a Notice of Sanction[23] dated June 19, 2015 was sent to Baltazar informing him of

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12 A copy of which is not attached to the instant Petition.
13 *Rollo*, pp. 14–15.
14 *Id.* at 23–25.
15 *Id.* at 124–126.
16 *Id.* at 126.
17 LFC's North Security Supervisor.
18 Referred to as "Jhonyl V. Commision," "Jhonyl Commission" or "Jonel Comision" in some parts of the *rollo*.
19 LFC's Chief Security Officer.
20 LFC's Security Guard.
21 *Rollo*, pp. 125–126.
22 *Id.* at 197.
23 *Id.* at 154–158.

LFC's decision to terminate his employment based on a decision issued by LFC's investigating committee. The committee's decision[24] – which is different from LFC's Investigation Report dated April 28, 2015 – narrated how a tip was received by a chief security officer (i.e., Salarza) about an on-going operation to steal a container of chemicals, prompting security personnel (i.e., Julio, and later, Salarza) to monitor Baltazar's movements from the latter's residence. The decision disclosed that the security guards' attempts to chase Baltazar while the latter purportedly possessed the stolen container were unsuccessful. Despite the committee's finding that Baltazar was not caught in possession of the stolen chemicals, the committee took Baltazar's absence during the administrative hearing as a sign of his guilt – especially since the Union's representatives disclosed that "Baltazar chose to defy the order for the reason that 'he is afraid that he will be handcuffed and sent to jail.'"[25] The committee also considered as *indicia* of guilt Baltazar's act of seeking employment elsewhere and his failure to report to LFC's office despite instructions to do so.[26]

Aggrieved, the Union and Baltazar (collectively, petitioners) submitted the case for voluntary arbitration.[27]

The NCMB Ruling

In a Decision[28] dated August 5, 2016, the VA found merit in petitioners' complaint. Accordingly, it held Baltazar to have been illegally dismissed from employment, thereby ordering LFC to pay him "separation pay computed at one (1) month salary per every year of service reckoned from the date of his regular employment until his termination on June 19, 2015."[29] No award for backwages was made.

The VA held that LFC's first notice (i.e., Show Cause Memo) was procedurally defective for failing to directly charge Baltazar of stealing. Neither did the Show Cause Memo specify the particulars of the incident, such as Baltazar's alleged participation thereto. It likewise failed to require Baltazar to explain why he should not be terminated for cause. If at all, the Show Cause Memo only mandated him to explain why he was purportedly involved in the theft of chemicals without indicating (a) the chemicals that were missing, (b) his involvement in the said pilferage, and (c) the value of the chemicals stolen. Aside from these inadequacies, the Show Cause Memo did not state that Baltazar's dismissal was being sought.[30]

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24 A copy of which is not attached to the instant Petition.
25 *Rollo*, p. 157.
26 *Id.*
27 Docketed as VA Case No. AC-354-RBCM-XI-LVA-02-01-04-2016.
28 *Rollo*, pp. 159–169.
29 *Id.* at 169.
30 *Rollo*, p. 167, citing *Lima Land, Inc. v. Cuevas*, 635 Phil. 36 (2010) [Per J. Peralta, Second Division].

In addition to the procedural flaw, the VA held that LFC failed to sufficiently establish a just cause for Baltazar's dismissal. "At the most, Baltazar's [sic] was merely suspected of having stolen company properties."[31] The VA emphasized that accusation cannot be a substitute for proof.[32]

Notwithstanding the finding of Baltazar's illegal dismissal, the VA directed LFC to pay Baltazar his separation pay in lieu of reinstatement. The VA ruled that reinstatement is not a viable option since LFC lost its trust in Baltazar.[33]

Aggrieved, LFC filed a Petition for Review[34] under Rule 43 of the Rules of Court. LFC averred that the first notice contained the acts imputed against Baltazar and that a full-blown investigation was conducted to determine his culpability. Since Baltazar was found to be the culprit in the pilferage of LFC's chemicals, he was validly dismissed. Hence, LFC prayed that the VA's Decision be reversed and the complaint filed by Baltazar be dismissed for lack of merit.[35]

The CA Ruling

In a Decision[36] dated September 25, 2017, the CA reversed and set aside the VA ruling, and accordingly, dismissed Baltazar's complaint for illegal dismissal.[37]

In finding the Petition meritorious, the CA held that LFC observed procedural due process, as enumerated in *Unilever Philippines, Inc. v. Rivera*,[38] to wit:

> To clarify, the following should be considered in terminating the services of employees:
>
> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the

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31 *Id.*
32 *Id.*
33 *Id.* at 168.
34 *Id.* at 170–193.
35 *Id.* at 181–187.
36 *Id.* at 58–75.
37 *Id.* at 75.
38 710 Phil. 124 (2013) [Per. J. Mendoza, Third Division].

> complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
>
> (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
>
> (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[39] (Emphasis in the original)

Applying the guidelines in *Unilever*, the CA held that the Show Cause Memo "contain[s] the specific causes or grounds for termination against Baltazar, namely the [sic] 'the pilferage of chemicals owned by the company' on 21 March 2015."[40] The CA refuted petitioners' allegation that Baltazar was not informed of the allegations against him because he was able to submit a written explanation answering the charges against him. Thus, Baltazar was aware of the said March 21, 2015 incident. In this regard, the CA declared that "[t]here is no requirement, whether in jurisprudence or under the provisions of the Labor Code, that the first written notice must contain the alleged participation of the employee in question, or the particular items alleged to have been stolen, much less the value thereof."[41]

On the substantive aspect of the Petition, the CA concluded that LFC sufficiently established a just cause for terminating Baltazar's employment. Baltazar's status as a managerial employee warranted his dismissal upon LFC's loss of trust and confidence in him. Without stating the specifics, the CA emphasized the requirement of a "reasonable ground" to lose an employer's confidence in a managerial employee.[42]

Undaunted, petitioners moved for reconsideration but the same was denied in a Resolution[43] dated November 29, 2018; hence, this Petition.

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39 *Id.* at 136–137, citing *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115–116 (2007) [Per J. Velasco, Jr., Second Division].

40 *Rollo*, p. 70.

41 *Id.* at 70.

42 *Id.* at 72–74.

43 *Id.* at 76–77.

The Issue Before the Court

The issue for the Court's resolution is whether the CA correctly found Baltazar to have been validly dismissed.

Petitioners contend that LFC refused to heed their respective requests to follow the grievance proceedings under the Collective Bargaining Agreement (CBA). Petitioners also refute LFC's assertion that the latter conducted an investigation, which fact can be seen from the Notice of Sanction. They insist that there was no proof showing that a gallon of Biocit chemicals was missing. Conversely, the Union conducted an investigation and issued a report dated April 25, 2015 ruling that there were no missing chemicals. The report likewise included excerpts of Jhonyl's testimony where he categorically stated that (a) there was no illegal loading of chemicals on March 21, 2015, (b) he did not know if the container unloaded to Baltazar's boarding house contained Biocit chemicals because Baltazar would often request that his gasoline allocation be delivered there, and (c) there was no reported shortage based on the weekly accomplishment report. Petitioners also reiterate their claim that the Show Cause Memo did not mention that Baltazar's dismissal was being sought and failed to state the infractions with specificity. Additionally, they aver that Baltazar is not a managerial employee because his salary is only slightly above minimum wage and he does not possess the powers to hire, transfer, suspend, or discipline employees. Therefore, petitioners prayed for Baltazar's reinstatement with an award of backwages from the time of his illegal dismissal until his actual reinstatement. Lastly, petitioners seek to have this Court award Baltazar moral and exemplary damages and attorney's fees because he was terminated in an oppressive manner.[44]

For its part, LFC insists that (a) the twin notices it sent Baltazar observed the required procedural due process, (b) the results of the investigation were based on Baltazar's written answer and the evidence on hand (i.e., sworn affidavits), and (c) Baltazar is a managerial employee given his assigned tasks.[45]

In its Reply,[46] petitioners asseverate, *inter alia*, that Baltazar was maliciously dismissed as evinced by LFC's unsubstantiated claim that a criminal case was filed against Baltazar and the blotter's belated execution on April 10, 2015 (days after the March 21, 2015 incident).

The Court's Ruling

The Petition is meritorious.

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44 *Id.* at 19–25, 39, and 49–50.
45 *Id.* at 689–696.
46 *Id.* at 700–705.

Before delving into the merits of the instant Petition, the Court first deals with the procedural matters related to this case and raised by petitioners.

A petition for review under Rule 45 of the Rules of Court is an appeal on pure questions of law; exceptions

At the outset, let it be said that while the instant Petition should generally entertain only questions of law, the case at bar falls under one of its exceptions – i.e., when the CA's factual findings contradict those of the quasi-judicial agency's. This principle was recently reiterated in *Mindanao International Container Terminal Services, Inc. v. Mindanao International Container Terminal Services, Inc. Labor-Union-Federation of Democratic Labor Organization*[47] where this Court, through Chief Justice Alexander G. Gesmundo, stated:

> . . . It is a fundamental rule that the Court, not being a trier of facts, is not duty-bound to review all over again the records of the case and make its own factual determination. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect as they are specialized to rule on matters falling within their jurisdiction especially when supported by substantial evidence.
>
> *Nevertheless, the rule against entertaining a question of fact is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the quasi-judicial agency.* In this case, there is evidently contradictory findings of fact between the CA and the AVA on whether the principle of equal pay for equal work was violated by petitioner. Thus, it is incumbent upon the Court to settle these conflicting findings with finality.[48] (Emphasis supplied. Citations omitted.)

The alleged violation of the grievance proceeding was properly brought before, and resolved by, the Voluntary Arbitrator following Article 274 of the Labor Code

Petitioners accuse LFC of violating the grievance proceeding under the CBA, which mandates that "all disciplinary measures involving a member of the union must undergo first a grievance proceedings [sic] wherein the hearings will be attended by the member concerned or he or she may be

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47 G.R. No. 245918, November 29, 2022 [Per C.J. Gesmundo, First Division].

48 *See id.*

represented by union officials or both of them may attend the hearings. But no hearings [sic] shall ensue without the presence of the union officials."[49] Petitioners contend that they – the Union and Baltazar – were not respectively notified of the Show Cause Memo and was the main reason why Baltazar was not able to attend the first hearing.

Notably, however, petitioners failed to attach the CBA to support their argument, following Section 4 (d),[50] Rule 45 of the Rules of Court. In any case, the above-quoted portion of the CBA did not require the Union to be furnished a copy of the Show Cause Memo. As for Baltazar, LFC averred that Baltazar was given a Show Cause Memo but that the latter refused to sign the same to acknowledge its receipt. Thus, two witnesses signed the Show Cause Memo to attest to Baltazar's refusal to sign. Despite LFC's refutation (in its Petition to the CA), petitioners never contradicted the same.

Assuming *arguendo* that LFC did not observe the CBA's grievance procedure, Article 274 (formerly Article 261) of the Labor Code provides that "[t]he Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article." This was complied with when petitioners themselves filed a complaint for illegal dismissal with the National Conciliation and Mediation Board, leading to the VA's Decision dated August 5, 2016.

The Show Cause Memo failed to observe procedural due process.

One of the main issues for this Court's resolution is determining whether LFC observed the twin notice rule in dismissing Baltazar. In this regard, Section 2 (I), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides for the required standard of procedural due process accorded to employees who stand to be terminated from work, to wit:

> 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 [now Article 297] of the Labor Code:

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[49] *Rollo*, p. 19.

[50] Section 4. *Contents of petition.* – The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and ***shall... (d) be accompanied by*** a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and ***such material portions of the record as would support the petition***... (Emphasis supplied)

> (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;
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> (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.

In *Puncia v. Toyota Shaw/Pasig, Inc.*,[51] the Court, through Justice (and eventual Senior Associate Justice) Estela M. Perlas-Bernabe, reiterated the refinements made to the foregoing standards, *viz.*:

> To clarify, the following should be considered in terminating the services of employees:
>
> (1) **The first written notice to be served on the employees should contain the specific causes or grounds for termination against them**, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. **Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice.** Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
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> (2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
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> (3) **After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been**

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[51] 788 Phil. 464 (2016) [Per J. Perlas-Bernabe, First Division].

> **established to justify the severance of their employment.**[52] (Emphases and underscoring in the original)

As gleaned from above, the first written notice must specify the grounds for an employee's termination to give the employee a reasonable opportunity to prepare adequately for his/her defense. While the guide above prescribed a five-calendar-day preparatory period, the same was created "to give the employees an opportunity to study the accusation against them" and to "intelligently prepare their explanation and defenses."[53] Thus, "the notice should contain a *detailed narration of the facts and circumstances* that will serve as basis for the charge against the employees. *A general description of the charge will not suffice.*"

Undisputedly, the Show Cause Memo gave a one-sentence statement regarding Baltazar's alleged infraction, *viz.*:

> This is in connection with a recently received report that on March 21, 2015 you were allegedly involved in the pilferage of chemicals owned by the company.
>
> In view thereof, you are hereby directed to submit, within five (5) days from receipt of this notice, a written explanation why you should not be cited, and sanctioned, for the violation of the company's Employee Discipline Code, to wit:
>
> > **B.1.1. Serious violations in relation to Honesty and Confidence:** a) Robbery, theft, estafa and other forms of swindling, malversation and deception committed against the Company, its officers and employees, customers, visitors and other third part[ies].
>
> Further, the charges against [you] may also be violative of the provisions of the Labor Code of the Philippines, specifically, Article 282 (a) & (c), as follows:
>
> > a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.
> > c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.
>
> Failure to submit an explanation within the period allowed shall be deemed as waiver on your part to participate in the investigation.
>
> Due to the seriousness of the allegations against you, and considering your position in the company, you are hereby placed on preventive suspension for thirty (30) days effective immediately. You are directed to turnover files and other office properties in your possession to the designated personnel or custodian and you are barred access to company premises until further orders or instructions from management.

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[52] *Id.* at 480–481, citing *Unilever Philippines, Inc. v. Rivera*, 710 Phil. 124, 136–137 (2013) [Per J. Mendoza, Third Division].

[53] *Id.*

> There will be an administrative investigation of your case on 15 April 2015 at 10AM at the DPO Conference Room. You may bring your counsel to this hearing should you so desire.
>
> Please be reminded that failure on you[r] part to submit the required written explanation within the period given and failure on your part to attend the investigation mentioned in the immediately preceding paragraph shall be construed as a waiver on your part to adduce evidence for and in your behalf and the company shall proceed with the investigation and accordingly decide the matters raised herein based solely on the evidence at hand.
>
> For your guidance and compliance.[54]

The first statement of the Show Cause Memo is nowhere near a detailed narration of facts, as required in the guidelines. As correctly observed by the VA, the memo did not specify Baltazar's particular involvement in the alleged pilferage. Neither was there any disclosure on the events allegedly reported to management, the item that was supposedly stolen, and its value or amount. The memo failed to specify the time of day and merely estimated it to the entire day of March 21, 2015. Clearly, this was not the type of notice that would enable one to sufficiently prepare their explanation or defense. If at all, the memo almost amounts to a fishing expedition. This Court has consistently maintained that the first notice must apprise the employee of the ***particular*** acts or omissions for which the employee's dismissal is sought[55] – with the Court emphasizing that "the first notice must state that dismissal is sought for the act or omissions charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules."[56] Here, not only was there a paucity of details but there was no statement in the memo that Baltazar's dismissal was sought for.

At this juncture, it is well to clarify that LFC's contention that Baltazar was fully aware of the incident, as gleaned from his written explanation,[57] does not cure the defect. The accusations against an employee must formally come from the employer, lest the Court allow an employee to engage in conjectures and surmises.

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54 *Rollo*, pp. 119–120.

55 *See Cornworld Breeding Systems Corporation v. Court of Appeals*, G.R. No. 204075, August 17, 2022 [Per J. Hernando, First Division].

56 *Electro System Industries Corporation v. National Labor Relations Commission*, 509 Phil. 187, 190 (2005) [Per J. Ynares-Santiago, First Division].

57 *Rollo*, p. 693.

The evidence presented by LFC fell short of substantial evidence required to validly dismiss Baltazar

In *Musahamat Workers Labor Union-1-ALU v. Musamahat Farms, Inc. Farm 1*,[58] this Court, through Justice Benjamin S. Caguioa, reiterated the oft-cited principle relating to the quantum of evidence needed in illegal dismissal cases:

> [I]n 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.* It must be borne in mind that in the hierarchy of evidence, substantial evidence is the least demanding. *It only entails evidence to support a conclusion, "even if other minds, equally reasonable, might conceivably opine otherwise."*[59] (Emphasis supplied)

Given the above-mentioned metric, the Notice of Sanction informing Baltazar of his dismissal and the basis thereof – i.e., the investigation committee's decision – lacks evidentiary support to reasonably support the conclusion that Baltazar stole Biocit chemicals on March 21, 2015. Too many unanswered questions arise leading one to significantly doubt Baltazar's culpability in the alleged incident: *First*, who was Salarza's alleged informant and why was there no statement from the said informant? *Second*, if Salarza was truly informed as early as 7:45 a.m. of an on-going attempt to steal Biocit chemicals and the delivery of the stolen item to Baltazar's boarding house – coupled with management's directive to Salarza two years prior the incident to monitor any anomalies relating to the eradication of Moko and Panama diseases – why did Salarza wait until 5:00 p.m. to arrive at Baltazar's boarding house? *Third*, if security guard Julio was instructed to intercept Baltazar and confirm the theft of one container of Biocit chemicals as early as 9:00 a.m., why did he have to wait for Salarza to arrive at 5:00 p.m., considering that Baltazar left his boarding house at 3:30 p.m. (thus giving Baltazar an opportunity to dispose or move the stolen chemicals)? *Fourth*, if Julio was directed to monitor Baltazar's whereabouts, why did he not follow Baltazar when the latter left at 3:30 p.m. and merely waited for him to go back to the boarding house?

More importantly, the evidence presented by LFC and the pleadings filed by the parties never explained why Baltazar's defense (i.e., the container brought to his place by Comision was Baltazar's allocation of gasoline) was unacceptable. Note, too, that LFC never questioned nor refuted Baltazar's entitlement to 40L of gasoline every month. There was also an absence of any

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[58] G.R. No. 240184, July 6, 2022 [Per J. Caguioa, Third Division].

[59] *Id.*, citing *JR Hauling Services v. Solamo*, 886 Phil. 842, 858–859 2020 [Per J. Hernando, Second Division].

documentary evidence to prove that the three containers loaded to the van were Biocit chemicals only. Even the Affidavit[60] of Jhonyl did not state what the contents of the three containers he loaded to the van were. There was no basis to assume that by "chemical," it only pertained to Biocit. If only to state the obvious, gasoline is also a chemical. On top of this, LFC did not attempt to refute Baltazar's perennial claim that the weekly accomplishment report shows that there was no missing chemical.

In all, the circumstances fail to inspire a reasonable belief that Baltazar committed any theft of Biocit chemicals in the morning of March 21, 2015. Consequently, there is no need to differentiate Baltazar's status as managerial or rank-and-file in determining the grounds for loss of trust and confidence. Even if this Court were to assume, for the sake of argument, that Baltazar's supervisory status was akin to a managerial employee – again, there is not enough basis to believe that Baltazar *willfully breached* the trust reposed in him. Suffice it to state that suspicion is not equivalent to belief.[61]

While substantial evidence, in the hierarchy, is the "least demanding," labor tribunals and appellate courts must be reminded of this Court's ruling in *Lima Land, Inc. v. Cuevas*,[62] through Chief Justice Diosdado M. Peralta, particularly:

> It must be noted that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause and failure to do so would mean that the dismissal is not justified. This

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60 *Rollo*, pp. 128–129.

61 *See Lima Land, Inc., supra* note 30, at 48–50, where this Court elaborated:

> It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient 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 him unworthy of the trust and confidence demanded of his position.
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> . . . .
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> Stated differently, the loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach. 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. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence. Moreover, the burden of proof required in labor cases must be amply discharged.

62 G.R. No. 169523, June 16, 2010 [Per J. Peralta, Second Division].

> is in consonance with the guarantee of security of tenure in the Constitution and elaborated in the Labor Code. *A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer.* The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.
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> . . . .
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> As a final note, 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, his very breadbasket. *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. Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.*[63] (Emphasis supplied)

In sum, the Court rules that Baltazar was illegally dismissed from his employment.

Monetary awards due to Baltazar

It is jurisprudentially settled that "[t]he twin reliefs that should be given to an illegally dismissed employee are full backwages and reinstatement."[64] An illegally dismissed employee is entitled to backwages because it "restore[s] the lost income of an employee and is computed from the time compensation was withheld up to actual reinstatement."[65] Here, the VA did not award Baltazar backwages despite a finding of the latter's illegal dismissal. The lack of an award of backwages also led petitioners to pray for such relief in the instant petition. Therefore, this Court modifies the VA's ruling insofar the imposition of backwages is concerned.

Anent reinstatement, an illegally dismissed employee is generally granted such relief. Nevertheless, this Court in *Claudia's Kitchen, Inc. v. Tanguin*,[66] through Justice Jose C. Mendoza, enumerated the instances when separation pay may be awarded to an illegally dismissed employee in lieu of reinstatement, to wit:

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63 *Id.* at 57 and 53–54; citations omitted.

64 *Angono Medica Hospital, Inc. v. Agabin*, 892 Phil. 89, 102 (2020) [Per J. Hernando, Third Division], citing *Peak Ventures Corp. v. Heirs of Villareal*, 747 Phil. 320, 323 (2014) [Per J. Del Castillo, Second Division].

65 *Id.* at 102.

66 811 Phil. 784 (2017) [Per J. Mendoza, Second Division].

> In sum, separation pay is only awarded to a dismissed employee in the following instances: 1) in case of closure of establishment under Article 298 [formerly Article 283] of the Labor Code; 2) in case of termination due to disease or sickness under Article 299 [formerly Article 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character; 4) where the dismissed employee's position is no longer available; ***5) when the continued relationship between the employer and the employee is no longer viable due to the strained relations between them***; or 6) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved. In all of these cases, the grant of separation pay presupposes that the employee to whom it was given was dismissed from employment, whether legally or illegally. In fine, as a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by his employer.[67] (Emphasis supplied)

The Court went on to explicate the reason behind what we call the "doctrine of strained relations," *viz.*:

> Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.
>
> Strained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone.[68]

While LFC failed to sufficiently prove theft of its chemicals and Baltazar's alleged participation thereto, this Court is not unmindful of the frayed relationship between LFC and Baltazar caused by the purported incident. Their strained relations were also found by the VA.[69] Note, too, that the CA recognized LFC's loss of trust and confidence in Baltazar.[70] Thus, it is only appropriate to award Baltazar separation pay in lieu of reinstatement to release LFC from the obligation of maintaining an employee it could no longer trust. Case law provides that the computation of separation pay should be "equivalent to one month salary for every year of service and should not go beyond the date an employee is deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible."[71] As to backwages, the same shall be computed from the time of

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67 *Id.* at 799; citations omitted.
68 *Id.* at 800; citations omitted.
69 *Rollo*, p. 168.
70 *Id.* at 72–73.
71 *Genuino Agro-Industrial Development Corporation v. Romano*, 863 Phil. 360, 381 (2019) [Per J. J. Reyes, Jr., Second Division].

dismissal until the finality of the decision ordering separation pay in cases when there is an order of separation pay in lieu of reinstatement.[72]

Given the circumstances mentioned above and in consonance with *Claudia's Kitchen, Inc.*, payment of backwages and separation pay, in lieu of reinstatement, is proper.

Notably, petitioners prayed for moral damages, exemplary damages, and attorney's fees. This has been petitioners' prayer since its Position Paper before the VA and in its Comment to the CA. Unfortunately, there was no explanation as to why they are entitled to the same. The VA, who decided in favor of petitioners, did not award them moral and exemplary damages. As this Court is not a trier of facts, there is no basis to grant the same.

However, petitioners may be awarded attorney's fees despite the lack of bad faith in dismissing Baltazar. As thoroughly explained by Justice Arturo D. Brion in *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*,[73] Article 111 of the Labor Code, "is an exception to the declared policy of strict construction in the award of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages."[74] In *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*,[75] the Court, through Justice Alicia Austria-Martinez, awarded attorney's fees because the respondent therein incurred legal expenses after being forced to file an action for recovery of his lawful wages. Similarly, Baltazar was forced to litigate to prove the illegality of his dismissal despite insufficiency of evidence to prove a supposed willful breach of the trust and confidence reposed in him. Therefore, this Court finds an award of 10% attorney's fees proper.

Lastly, and pursuant to prevailing jurisprudence,[76] the Court finds it appropriate to impose legal interest on all monetary awards due to Baltazar at the rate of 6% per annum from finality of this ruling until full payment.

ACCORDINGLY, the instant Petition is **GRANTED**. The Decision dated September 25, 2017 and the Resolution dated November 29, 2018 of the Court of Appeals in CA G.R. SP No. 07637-MIN are hereby **REVERSED** and **SET ASIDE**. The Decision dated August 5, 2016 of the Voluntary Arbitrator of the National Conciliation and Mediation Board is hereby **REINSTATED with MODIFICATION** in that petitioner Emmanuel

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72 *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 102 (2013) [Per J. Brion, Second Division].
73 676 Phil. 262 (2011) [Per J. Brion, Second Division].
74 *Id.* at 275.
75 540 Phil. 65 (2006) [Per J. Austria-Martinez, First Division].
76 *See Lara's Gifts and Decors, Inc. v. Midtown Industrial Sales*, G.R. No. 225433, September 20, 2022 [Per Acting C.J. Leonen, *En Banc*].

Baltazar is awarded backwages reckoned from the date of his termination on June 19, 2015 until finality of this Decision, in addition to separation pay computed at one month salary per year of service reckoned from the date of his regular employment until the finality of this Decision, and 10% attorney's fees. The monetary awards shall earn legal interest at 6% per annum from the finality of this Decision until fully paid.

SO ORDERED.

ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Acting Chief Justice

AMY C. LAZARO-JAVIER
Associate Justice
Working Chairperson

MARIO M. LOPEZ
Associate Justice

JHOSEP Y. 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.

MARVIC M.V.F. LEONEN
Acting Chief Justice