Republic of the Philippines
Supreme Court
Manila

SPECIAL THIRD DIVISION

JOY M. VILLARICO, Petitioner, - versus - **D.M. CONSUNJI, INC. and MADELINE B. GACUTAN,** Respondents.	**G.R. No. 255602** **Present:** LEONEN, *SAJ.*, *Chairperson*, ZALAMEDA, ROSARIO, LOPEZ, J., and KHO, JR., *JJ.* **Promulgated:** MAR 03 2025 MicPDcBatt

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RESOLUTION

LOPEZ, J., *J.*:

This Court resolves the Motion for Partial Reconsideration[1] filed by Joy M. Villarico (Villarico) and the Motion for Partial Reconsideration[2] filed by D.M. Consunji, Inc. (DMCI) and Madeline B. Gacutan (DMCI et al.), both assailing this Court's Decision,[3] which declared that Villarico was validly dismissed from service, but nevertheless ordered DMCI to pay him his service incentive leave pay and 13th month pay.

Villarico was first hired by DMCI as a laborer on November 8, 2007. He was assigned to different projects throughout the years, the last of which was as a crane operator at the Ninoy Aquino International Airport (NAIA)

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1 *Rollo*, pp. 385–393. Dated May 31, 2022.

2 *Id.* at 395–401. Dated May 23, 2022.

3 *Id.* at 369–384. The August 4, 2021 Decision in G.R. No. 255602 was penned by Associate Justice Rosmari D. Carandang (ret.) and concurred in by Associate Justices Marvic M.V.F. Leonen (now Senior Associate Justice), Rodil V. Zalameda, Ricardo R. Rosario, and Jhosep Y. Lopez of the Third Division, Supreme Court, Manila.

Expressway Project in March 2016. On March 30, 2016, Villarico was informed by DMCI that he was being suspended for four days due to a violation of company policy.[4]

When Villarico returned to work, he was asked by the site administrator, Miguelito Chua (Chua), to sign a document similar to a notice of explanation, but he refused. He was then told by Chua that he will be considered absent without leave for four days and that his termination will be sent to him via courier. This prompted Villarico to seek assistance from the National Labor Relations Commission (NLRC), leading to a series of conciliation conferences between him and DMCI et al. In the meantime, DMCI placed Villarico on floating status for two months. Subsequently, Villarico was required by DMCI to undergo a medical examination. When he failed the drug test component, he was told to return for confirmatory testing after one month. Villarico complied.[5]

Villarico alleged that he returned several times to DMCI as instructed, but he was never informed of the result of his confirmatory testing. Thus, he finally filed a Complaint for illegal dismissal and payment of monetary benefits against DMCI et al.[6]

DMCI et al. countered that Villarico is a project employee whose employment contract expired upon the termination of the project. After the expiration of the NAIA Expressway Project, they issued a notice of termination to Villarico. DMCI also filed an Employees' Termination Report with the Department of Labor and Employment.[7]

DMCI et al. further averred that on June 1, 2016, Villarico applied anew as a crane operator. He was, however, declared unfit to work since he tested positive for the use of prohibited drugs during his preemployment medical examination. Villarico also tested positive in the confirmatory test. Pursuant to DMCI's employee handbook, the use of controlled substances is prohibited and punishable by dismissal.[8]

In its Decision,[9] the labor arbiter dismissed the Complaint of Villarico. It found that Villarico was a project employee whose employment was for a predetermined duration. According to the labor arbiter, there was no illegal dismissal since Villarico was not dismissed in the first place, but that his

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4 *Id.* at 370.
5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.* at 370–371.
9 *Id.* at 284–296. The July 3, 2017 Decision in NLRC NCR Case No. 08-10535-16 was penned by Labor Arbiter Thomas T. Que, Jr. of the National Labor Relations Commission, Quezon City.

contract simply expired. In any case, since Villarico also admittedly failed the drug test, DMCI had a valid reason in not rehiring him.[10]

The labor arbiter dismissed Villarico's claim for payment of service incentive leave pay and 13th month pay, for failure to present evidence to refute the bank advisories submitted by DMCI as proof of payment to him. The labor arbiter also denied Villarico's prayer for damages and attorney's fees for lack of basis.[11]

In its Resolution,[12] the NLRC denied Villarico's appeal. It agreed with the labor arbiter's ruling that Villarico was a project employee whose contract of employment was for a predetermined duration. The NLRC likewise agreed with the labor arbiter that Villarico was not dismissed, as his contract only expired. It also held that DMCI's refusal to rehire him was valid since he was found positive for drug use. Finally, the NLRC affirmed the labor arbiter's dismissal of Villarico's claim for payment of monetary benefits.[13]

Villarico filed a Motion for Reconsideration, which was denied by the NLRC in a Resolution.[14] Villarico then filed a Petition for *Certiorari*[15] before the CA, ascribing grave abuse of discretion on the part of the NLRC in dismissing his appeal.

In its Decision,[16] the CA dismissed Villarico's Petition and affirmed *in toto* the ruling of the NLRC. Villarico's Motion for Reconsideration was denied by the CA in its Resolution,[17] prompting him to file a Petition for Review on *Certiorari*[18] before this Court.

Villarico argued that he was a regular employee since he was hired several times by DMCI from 2007 to 2016, or for a total of nine years. He pointed out that his appointments were immediately successive, or with no single day in between, implying a continuity of service rendered by him. Villarico also contended that he was dismissed by DMCI without prior notice

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10 *Id.* at 293–295.

11 *Id.* at 295–296.

12 *Id.* at 107–113. The August 30, 2017 Resolution in NLRC NCR Case No. 08-10535-16 was penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Commissioners Alex A. Lopez and Cecilio Alejandro C. Villanueva of the National Labor Relations Commission, Quezon City.

13 *Id.* at 111–112.

14 *Id.* at 114–115. The September 25, 2017 Resolution in NLRC NCR Case No. 08-10535-16 was penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Commissioners Alex A. Lopez and Cecilio Alejandro C. Villanueva of the National Labor Relations Commission, Quezon City.

15 *Id.* at 71–104.

16 *Id.* at 58–67. The August 28, 2020 Decision in CA-G.R. SP No. 153702 was penned by Associate Justice Carlito B. Calpatura and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy of the Sixth Division, Court of Appeals, Manila.

17 *Id.* at 69–70. The January 18, 2021 Resolution was penned by Associate Justice Carlito B. Calpatura and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy of the Former Sixth Division, Court of Appeals, Manila.

18 *Id.* at 18–56.

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and hearing, since he was terminated immediately after he was found positive for prohibited drugs.[19]

In this Court's Decision,[20] We partly granted the Petition. We held that Villarico was a regular employee since he was continuously and successively employed by DMCI for nine years, with barely any gaps in between his appointment. More, there is no doubt that Villarico's skills were necessary and desirable to the business of DMCI. This being so, the termination of his employment for the completion of the project he was assigned to was not proper.[21]

Nevertheless, this Court ruled that Villarico was not illegally dismissed since his service was terminated for a just cause. We noted that Villarico was not able to dispute that he was found positive for prohibited drugs. In this regard, the use of illegal drugs qualifies as a serious misconduct under Article 297[22] of the Labor Code. Since he was validly dismissed, Villarico was not entitled to backwages and separation pay in lieu of reinstatement.[23] While there was a valid ground for the dismissal of Villarico, however, DMCI did not observe the requirements of due process in terminating his employment. There was no evidence that Villarico was given the required two notices before he was dismissed. As such, this Court ruled that DMCI was liable to pay Villarico nominal damages in the amount of PHP 30,000.00,[24] pursuant to *Agabon v. National Labor Relations Commission.*[25]

On the matter of 13th month pay and service incentive leave pay, this Court held that the burden of proving payment falls upon DMCI et al. On this note, the bank advisories they submitted do not sufficiently prove payment of Villarico's 13th month pay and service incentive leave pay, as these do not establish that the account listed therein belonged to Villarico and that he received the amounts indicated therein. Hence, this Court granted Villarico's prayer for payment of his 13th month pay and service incentive leave pay for 2007 to 2016.[26] Finally, We held that Villarico is entitled to attorney's fees

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19 *Id.* at 25–39.

20 *Id.* at 369–384.

21 *Id.* 375–380.

22 Article 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[.]

23 *Rollo*, pp. 380–381.

24 *Id.* at 381.

25 485 Phil. 248, 291 (2004) [Per J. Ynares-Santiago, *En Banc*].

26 *Rollo*, p. 381.

under Article 2208[27] of the Civil Code, but not to moral and exemplary damages for lack of proof of bad faith on the part of DMCI et al.[28]

Hence, the present Motions for Partial Reconsideration filed by Villarico and DMCI et al.

In his Motion for Partial Reconsideration,[29] Villarico insists that he was illegally dismissed since DMCI et al. did not observe the twin-notice rule in terminating his employment. He avers that he could not have refuted DMCI et al.'s allegation that he tested positive for prohibited drug as he was immediately terminated without any notice.[30]

Meanwhile, in their Motion for Partial Reconsideration,[31] DMCI et al. argue that this Court erred in granting the claim of Villarico for the payment of 13th month pay and service incentive leave pay. They contend that since Villarico never questioned the admissibility of the bank advisories, he is deemed to have admitted payment of these monetary claims.[32] In any case, it was error to order the payment of Villarico's 13th month pay and service incentive leave pay from 2007 to 2016 since under Article 291 of the Labor Code, all money claims arising from employer-employee relationship shall be filed within three years from the time the cause of action accrued.[33]

In their Comment-Opposition[34] to Villarico's Motion for Partial Reconsideration, DMCI et al. assert that termination of employment on the ground of drug use is valid notwithstanding the employer's omission to observe the twin-notice rule under the Labor Code.[35]

On the other hand, Villarico, in his Comment[36] to DMCI et al.'s Motion for Partial Reconsideration, avers that DMCI et al. failed to raise new matters which have not been adequately discussed in this Court's Decision. Thus, there is no cogent or compelling reason for the modification or reversal of this Court's ruling which granted Villarico's 13th month pay and service incentive leave pay.[37]

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27 Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

. . . .

(8) In actions for indemnity under workmen's compensation and employer's liability laws[.]

28 *Rollo*, p. 382.

29 *Id.* at 385–393.

30 *Id.* at 387.

31 *Id.* at 395–401.

32 *Id.* at 397.

33 *Id.* at 399–400.

34 *Id.* at 412–415.

35 *Id.* at 413–414.

36 *Id.* at 404–409.

37 *Id.* at 405.

After a second look at the facts of this case, this Court resolves to deny the Motion for Partial Reconsideration of Villarico and partly grant the Motion for Partial Reconsideration of DMCI et al.

At the onset, Villarico's insistence that he was illegally dismissed since DMCI et al. failed to observe the twin-notice rule in his termination lacks merit. To be sure, it is not disputed that DMCI et al. failed to provide Villarico with the required two written notices: (1) a notice informing him of the particular act or omission for which his dismissal was sought, and (2) a notice informing him of his dismissal.[38] What the records show is that DMCI et al. simply dismissed Villarico for testing positive for prohibited drug.

Nevertheless, it has long been settled that where the dismissal of an employee was for a just cause but due process was not observed, the dismissal is upheld, subject to the liability of the employer for noncompliance with the procedural requirements of due process. In *Agabon v. National Labor Relations Commission*,[39] this Court discussed that:

> After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the *Serrano* doctrine and to follow *Wenphil* by holding that the dismissal was for just cause but imposing sanctions on the employer. Such sanctions, however, must be stiffer than that imposed in *Wenphil*. By doing so, this Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well.
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> The unfairness of declaring illegal or ineffectual dismissals for valid or authorized causes but not complying with statutory due process may have far-reaching consequences.
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> This would encourage frivolous suits, where even the most notorious violators of company policy are rewarded by invoking due process. This also creates absurd situations where there is a just or authorized cause for dismissal but a procedural infirmity invalidates the termination. . . .
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> The constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right, as in this case. Certainly, an employer should not be compelled to pay employees for work not actually performed and in fact abandoned.
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> The employer should not be compelled to continue employing a person who is admittedly guilty of misfeasance or malfeasance and whose continued employment is patently inimical to the employer. The law protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer.

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38 *Jose, Jr. v. Michaelmar Phils., Inc.*, 621 Phil. 107, 125 (2009) [Per J. Carpio, Second Division].

39 485 Phil. 248 (2004) [Per J. Ynares-Santiago, *En Banc*].

. . . .

> Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.
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> The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. *Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at [PHP]30,000.00*. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.[40] (Emphasis supplied, citations omitted)

Clearly, the established rule is that failure to observe the procedural due process in dismissing an employee on the ground of just cause does not render the dismissal invalid or ineffectual, but only subjects the employer to the payment of nominal damages in the amount of PHP 30,000.00.

Here, the dismissal of Villarico was for a just cause. To recall, he was dismissed by DMCI et al. since he tested positive for *tetrahydrocannabinol*, a dangerous drug under Republic Act No. 9165.[41] In Our Decision,[42] We held that Villarico did not present evidence to refute the medical result. This Court sees no reason to deviate from Our original finding. As it is, Villarico still failed to disprove that he tested positive for illegal drugs.

To reiterate, the use of illegal drugs qualifies as a serious misconduct, which is one of the just causes for termination under Article 297 of the Labor Code. Since Villarico was dismissed for a just cause, DMCI et al.'s failure to observe the twin-notice requirement entitles him to payment of nominal damages in the amount of PHP 30,000.00.

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40 *Id.* at 285–288.

41 The Comprehensive Dangerous Drugs Act (2002).

42 *Rollo*, pp. 269–284.

With respect to the award of service incentive leave pay and 13th month pay, this Court finds merit in DMCI et al.'s assertion that some of the claims of Villarico had already prescribed at the time he filed his Complaint pursuant to Article 291, now Article 306, of the Labor Code, which states:

> ART. 306. [291] Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred[.]

To recall, in his Complaint[43] for illegal dismissal with money claims, Villarico prayed for the payment of service incentive leave pay and 13th month pay, arguing that DMCI et al. never paid him these benefits during his entire employment. In Our Decision, We granted both prayers and, consequently, ordered DMCI to pay Villarico his 13th month pay and service incentive leave pay covering the years 2007, when he was first employed, to 2016, when he was dismissed from service.

Upon a careful review, this Court is convinced that the award for the payment of 13th month pay should be limited only to three years prior to the filing of Villarico's Complaint on August 30, 2016.

Claims for 13th month pay are incidental to employer-employee relations,[44] and are thus covered by the prescriptive period under Article 306 of the Labor Code. As an employee, Villarico is entitled to the payment of the annual 13th month pay under Presidential Decree No. 851,[45] as amended.[46] However, since he filed his Complaint only on August 30, 2016, only those 13th month pay not paid by DMCI et al. from 2014 to 2016 can be claimed.[47] All other claims for 13th month pay had already prescribed. This is the clear import of Article 306 of the Labor Code.

Contrary to DMCI et al.'s assertion, however, it cannot be said for the award of the service incentive leave pay. *In Auto Bus Transport Systems, Inc. v. Bautista*,[48] this Court said that the three-year prescriptive period to claim

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43 *Id.* at 117–118.

44 *Republic v. National Labor Relations Commission*, 783 Phil. 62, 87 (2016) [Per J. Leonen, Second Division].

45 Section 1. Payment of 13-month Pay. All employers covered by Presidential Decree No. 851, hereinafter referred to as the "Decree", shall pay to all their employees receiving a basic salary of not more than P1,000 a month a thirteenth-month pay not later than December 24 of every year.

46 Section 1 of P.D. No. 851 was amended by Memorandum Order No. 28, s. 1986, issued by President Corazon C. Aquino, which reads:

> Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employees are hereby required to pay all their rank-and-file employees a 13th month pay not later than December 24 of every year.

47 *See also Upod v. Onon Trucking and Marketing Corporation*, G.R. No. 248299, July 14, 2021 [Per J. Lazaro-Javier, Second Division] and *Fernandez v. Kalookan Slaugherhouse, Inc.*, 854 Phil. 384, 399 (2019) [Per J. Caguioa, Second Division], where this Court limited the award of the 13th month pay to three years prior to the filing of the complaint.

48 497 Phil. 863 (2005) [Per J. Chico-Nazario, Second Division].

service incentive leave pay commences "from the time when the employer refuses to pay its monetary equivalent after demand of commutation or upon termination of the employee's services, as the case may be."[49] This Court said that this is owing to the nature of service incentive leave credits which the employee may choose to use within the year or commute to its monetary equivalent if not exhausted at the end of the year. If, on the other hand, the employee does not use or commute their service incentive leave, they are entitled to the commutation of their accrued service incentive leaves upon his resignation or separation from service.[50] This Court continued to state that:

> Correspondingly, it can be conscientiously deduced that the cause of action of an entitled employee to claim his service incentive leave pay accrues from the moment the employer refuses to remunerate its monetary equivalent if the employee did not make use of said leave credits but instead chose to avail of its commutation. Accordingly, if the employee wishes to accumulate his leave credits and opts for its commutation upon his resignation or separation from employment, his cause of action to claim the whole amount of his accumulated service incentive leave shall arise when the employer fails to pay such amount at the time of his resignation or separation from employment.[51]

In the present case, Villarico did not use his service incentive leaves, or demanded its commutation until his employment was terminated by DMCI et al. It was also not shown that DMCI et al. paid him his accumulated service incentive leave pay at the time of his dismissal. Thus, Villarico's cause of action to claim payment of his accrued service incentive leave pay arose only when DMCI et al. dismissed him from service and failed to pay his accumulated leave credits.

Since Villarico filed his Complaint for illegal dismissal on August 30, 2016, or barely two months since he was dismissed in June 2016, his claim for service incentive leave pay was filed within the three-year prescriptive period under Article 306 of the Labor Code. Consequently, he is entitled to payment of service incentive leave pay during the entire period of his employment, or from 2007 to 2016.

ACCORDINGLY, the Motion for Partial Reconsideration filed by Joy M. Villarico is **DENIED** with **FINALITY**. Meanwhile, the Motion for Partial Reconsideration filed by D.M. Consunji, Inc. and Madeline B. Gacutan is **PARTLY GRANTED**.

This Court's August 4, 2021 Decision is **AFFIRMED with MODIFICATION**. D.M. Consunji, Inc. is **ORDERED to PAY** Joy M. Villarico nominal damages in the amount of PHP 30,000.00, 13th month pay

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49 *Id.* at 877.
50 *Id.* at 876.
51 *Id.* at 877.

for the years 2014 to 2016, service incentive leave pay for the years 2007 to 2016, and attorney's fees equivalent to 10% of the total amount awarded. The total amount awarded is subject to a legal interest of 6% per annum from the finality of this Resolution until its full satisfaction.

Let entry of judgment be issued immediately.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

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

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution 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, Special Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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