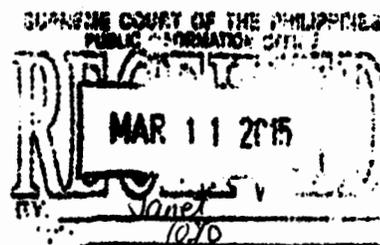




Republic of the Philippines  
Supreme Court  
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **February 18, 2015**, which reads as follows:

**“G.R. No. 195555 (*Wilfredo F. Salandanan vs. Pepsi Cola Products Phils., Inc. and/or Gocco Group of Companies*).** – The instant case is a petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner Wilfredo F. Salandanan (Salandanan), seeking to impugn the Decision<sup>2</sup> dated July 22, 2010 and Resolution<sup>3</sup> dated January 31, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 109372.

The facts are undisputed:

Salandanan was employed as a yardman of respondent Pepsi Cola Products Phils. Inc.’s (PCPPI) Sta. Mesa plant since July 1982 until it closed down on February 5, 2005. PCPPI gave its Sta. Mesa plant employees the option of either accepting a separation package or transferring to PCPPI’s Muntinlupa plant. Salandanan opted to transfer to PCPPI’s Muntinlupa plant and was set to report for work on March 15, 2005.<sup>4</sup>

However, Salandanan failed to report for work on said date due to an accidental burn on his left leg by boiling water. He obtained an official leave of absence on March 10, 2005 until March 31, 2005.<sup>5</sup>

On April 1, 2005, Salandanan yet again failed to report to work due to severe bodily pain caused by acute arthritis and/or rheumatism in his left arm and right leg, which allegedly immobilized him. On April 11, 2005, Salandanan went to the company clinic. The head nurse, Eden Mercado, who was then present, advised him to avail of the annual physical examination at South Superhighway Medical Center. On May 5, 2005,

<sup>1</sup> *Rollo*, pp. 14-31.

<sup>2</sup> Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Danton Q. Bueser concurring; *id.* at 33-44.

<sup>3</sup> *Id.* at 46-47.

<sup>4</sup> *Id.* at 16.

<sup>5</sup> *Id.* at 17.

Salandanan reported to the company clinic and was given a "Fit to Work" status.<sup>6</sup>

On May 18, 2005, Salandanan was sent a notice of specific charge, order to explain and administrative investigation about his alleged "absence without leave (AWOL)." On May 19, 2005, Salandanan explained in a letter the reason why he was not able to report for work from April 1, 2005 to May 5, 2005 without a leave of absence. After the administrative investigation conducted on June 6, 2005, PCPPI terminated the employment of Salandanan through a Notice of Dismissal dated July 11, 2005. The grounds for Salandanan's dismissal were violations of the Company Rules and Regulations which provided for the penalty of dismissal for continuous AWOL of employees for 12 or more working days and Article 282 of the Labor Code.<sup>7</sup> Said termination was made effective July 30, 2005.<sup>8</sup>

On March 21, 2006, Salandanan filed a case for illegal dismissal and for payment of 13<sup>th</sup> month pay.<sup>9</sup> In a Decision<sup>10</sup> dated November 30, 2006, the Labor Arbiter (LA) ruled that there was a valid ground to proceed against Salandanan for violating the company rules and regulations particularly with respect to attendance and for which reason, the penalty of dismissal was imposed against him. Nonetheless, as the infraction committed does not involve moral turpitude, the LA held that Salandanan should be awarded his separation pay by way of financial assistance, computed as follows:

From July 1982 up to July 2005 at ₱14,000.00  
per month divided by 2 x 23 years..... ₱161,000.00<sup>11</sup>

On appeal before the National Labor Relations Commission (NLRC), the decision of the LA was reversed and PCPPI was ordered to reinstate Salandanan to his former position with payment of full backwages.<sup>12</sup>

On a subsequent Motion for Reconsideration,<sup>13</sup> the NLRC set aside its earlier decision and affirmed the decision of the LA, as PCPPI had adequately shown that Salandanan had a propensity to be absent from work even prior to the subject AWOL from April 1, 2005 to May 5, 2005.<sup>14</sup>

<sup>6</sup> Id. at 17-18.  
<sup>7</sup> Id. at 18.  
<sup>8</sup> Id. at 36.  
<sup>9</sup> Id.  
<sup>10</sup> Issued by Labor Arbiter Jose G. De Vera; id. at 116-118.  
<sup>11</sup> Id. at 118.  
<sup>12</sup> Id. at 130-135.  
<sup>13</sup> Id. at 136-146.  
<sup>14</sup> Id. at 169-173.

Salandanán elevated the matter before the CA.<sup>15</sup> In its Decision<sup>16</sup> dated July 22, 2010, the CA affirmed the decision of the LA and the Resolution of the NLRC, upholding the legality of Salandanán's dismissal. The CA, in support of its decision, ratiocinated the following:

Despite the knowledge of Salandanán of the proper procedure in filing official leaves and the consequence of not filing such, he opted not to do so and chose to become AWOL. He averred that he went to the company clinic on April 11, 2005, but never even bothered to inform the personnel department nor his immediate superior/supervisor that he is still unable to work. He purposely did not file any leave of absence even just for a single day of the period (April 01 to May 05, 2005) for which he was charged with unauthorized absences. Not even on the very day (April 11, 2005) that he was purportedly at the company clinic did he do so. Thus, he was subjected to administrative charge and met the penalty of dismissal.

Corroborant to the foregoing, (albeit the crucial point in the determination of the validity of his dismissal in this case is his unauthorized absences from April 01 to May 05, 2005) records of Salandanán's attendance from January to December 2004 show that he had been absent from his work for most of the time.

From the foregoing, it is indubitable that there is a cause to validly dismiss Salandanán from employment. x x x.<sup>17</sup> (Citation omitted)

The CA also noted that PCPPI complied not only with substantial due process but also with the requirements of procedural process, to wit: a) on May 18, 2005, Salandanán was served and notified of the administrative charge; b) Salandanán, on May 19, 2005, responded with his explanation letter; c) hearing and investigation of the administrative charge was conducted on June 6, 2005; and d) the issuance of a Notice of Dismissal effective July 30, 2005 where the findings and penalty imposed on Salandanán were discussed. This was served to him on July 11, 2005. Thus, Salandanán was clearly afforded with due process regarding the required notice and hearing.<sup>18</sup>

A Motion for Reconsideration<sup>19</sup> was filed by Salandanán seeking a reversal of the CA decision. In a Resolution<sup>20</sup> dated January 31, 2011, the CA denied such motion.

After a careful examination of the records of the case, the Court resolves to **DENY** the petition for failure of Salandanán to show reversible error in the challenged decision so as to warrant the exercise of the Court's appellate jurisdiction. It is emphasized that the LA, NLRC and the CA all

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<sup>15</sup> Id. at 176-195.

<sup>16</sup> Id. at 33-34.

<sup>17</sup> Id. at 40.

<sup>18</sup> Id. at 41-42.

<sup>19</sup> Id. at 48-51.

<sup>20</sup> Id. at 46-47.

arrived with the deduction that Salandanan was validly terminated from employment based on the facts and records of the case.

In *Bani Rural Bank, Inc. v. De Guzman*,<sup>21</sup> the Court held:

“In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**”<sup>22</sup> (Emphasis in the original)

The Court finds that the CA is correct in denying the petition for *certiorari* for no grave abuse of discretion can be attributed to the NLRC and the LA in deciding the instant case. “Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment amounting to or equivalent to lack of jurisdiction. There is grave abuse of discretion when the power is exercised in an arbitrary or despotic manner by reason of ‘passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.’”<sup>23</sup>

**WHEREFORE**, the Court adopts the findings of facts and the conclusions of law arrived at in the Decision of the Court of Appeals finding that Wilfredo F. Salandanan was legally dismissed from employment. The Decision dated July 22, 2010 of the Court of Appeals in CA-G.R. SP No. 109372 is hereby **AFFIRMED in toto.**” (Jardeleza, J., on official leave; Del Castillo, J., designated acting member per Special Order No. 1934 dated February 11, 2015.)

Very truly yours,

  
WILFREDO V. LAPITAN  
Division Clerk of Court  
8/2/15

<sup>21</sup> G.R. No. 170904, November 13, 2013, 709 SCRA 330.

<sup>22</sup> Id. at 346, citing *Montoya v. Transmed Manila Corp./Mr. Ellena, et al.*, 613 Phil. 696, 707 (2009).

<sup>23</sup> Id. at 347.

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