Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SUPRA MULTI-SERVICES, INC., JESUS TAMBUNTING, JR., AND RITA CLAIRE T. DABU,
Petitioners,

- *versus*-

LANIE M. LABITIGAN,
Respondent.

G.R. No. 192297

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:

AUG 03 2016

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioners Supra Multi-Services, Inc. (SMSI), Jesus S. Tambunting, Jr. (Tambunting), and Rita Claire T. Dabu (Dabu), seeking, among other reliefs, the modification of the Decision[1] dated February 22, 2010 of the Court of Appeals in CA-G.R. SP No. 103847 insofar as it awarded separation pay to respondent Lanie M. Labitigan based on its finding that although respondent committed a breach of petitioners' trust, the termination of respondent's employment was too harsh a punishment.

I
FACTUAL ANTECEDENTS

Petitioner SMSI is a domestic corporation engaged in furnishing its clients with manpower, such as janitors, drivers, messengers, and maintenance personnel. Petitioners Tambunting and Dabu are the President and Vice-President for Administration, respectively, of petitioner SMSI.

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1 *Rollo*, pp. 55-68; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Marlene Gonzales-Sison and Michael P. Elbinias concurring.

Respondent was hired as a rank and file employee of petitioner SMSI on March 13, 1994. When respondent's employment was terminated on December 21, 2005, she was holding the position of Accounting Supervisor with a monthly salary of ₱13,000.00.

On June 15, 2006, respondent filed before the Labor Arbiter a complaint for illegal dismissal against petitioners, seeking reinstatement and payment of backwages, overtime pay, holiday pay, premium pay for holiday and rest day, separation pay, unused leave pay, damages, and attorney's fees. Her complaint was docketed as NLRC-NCR Case No. 00-06-05066-06.

Respondent's Allegations

In support of her complaint, respondent alleged that she was a simple rank and file employee who was elevated to the position of a supervisor but still performed only clerical work and did not exercise any discretion on how to run the financial affairs of the company. Respondent admitted to being responsible for preparing the payroll of the employees of petitioner SMSI.

During the course of respondent's employment, Wage Order No. NCR-09 took effect on November 5, 2001 providing an Emergency Cost of Living Allowance (ECOLA) in the amount of ₱30.00 per day to private sector workers and employees in the National Capital Region (NCR) earning minimum wage. Based on Wage Order No. NCR-09, respondent granted herself ECOLA in the pro-rated amount of ₱14.67 per day beginning November 2002. When Wage Order No. NCR-10 took effect on July 10, 2004, granting additional ECOLA of ₱20.00 per day, respondent accordingly increased her ECOLA to ₱24.67 per day. In granting herself pro-rated ECOLA, respondent reasoned that Wage Order Nos. NCR-09 and NCR-10 granted ECOLA not only to minimum wage earners, but also to other workers and employees who would suffer from wage distortion because of the application of the ECOLA, such as herself. Said Wage Orders prescribed a formula precisely to resolve wage distortion, which respondent applied to her salary and to the salaries of others similarly situated.

Respondent averred that her grant to herself of pro-rated ECOLA under Wage Order Nos. NCR-09 and NCR-10 was with the knowledge and conformity of petitioners. Petitioner Tambunting himself approved and signed the payroll, and any unauthorized padding or undeserved compensation in the payroll could not have escaped him.

However, on August 22, 2005, a Notice of Personnel Action[2] was issued to respondent noting an "[e]rror in granting proportionate ECOLA W.O. NCR 9" and cancelling respondent's daily allowance of ₱24.67. Respondent claimed that she immediately took exception to the Notice and

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2 Id. at 84.

sought audience with petitioner Tambunting, who promised to look into the matter. For the next four months or until December 12, 2005, "[n]o one protested against the status quo, including the fact that [respondent] continued to receive the miniscule sum of ₱24.67 per day as ECOLA[.]"[3]

Respondent reproached petitioners for being cruel and malicious in suddenly issuing Memo 11-673[4] dated December 12, 2005, which gave respondent the following directive:

> This refers to the **NOTICE OF PERSONNEL ACTION** dated August 22, 2005 approved and noted by the President.
>
> Please explain and answer in writing within 24 hours upon receipt of this memo why there shall be no administrative action taken against you for the following:
>
> 1. **INSUBORDINATION.** You continued to give yourself the proportionate ECOLA despite its cancellation per **Notice of Personnel Action** noted and approved by the President on August 22, 2005. In so doing, you manifested gross disrespect to the decision of the President and the whole HR Department.
>
> 2. **DISHONESTY.** Despite of being aware of the fact that only the minimum wage earners and those whose basic salary are distorted as a result of addition of ECOLA, you continually give yourself the questioned proportionate ECOLA. You are the [company's] existing payroll master and you are very much aware of that rule. In fact, you are applying such rule to all other operation personnel making your case an exception to the rule.
>
> This is for your information and compliance.

Respondent pointed out that petitioners' malice became even more evident when on the very next day, December 13, 2005, she was no longer allowed to enter the premises of petitioner SMSI. Petitioners hurriedly issued Memo 12-675[5] also on December 13, 2005, which instructed respondent thus:

> This refers to your refusal to receive the **Memo 11-673** dated December 12, 2005.
>
> Because of the gravity of the offense, you are then being placed on preventive suspension effective December 14, 2005 while under investigation for *Insubordination* and *Dishonesty*.
>
> However, you are required to come to office when you are needed by reasons of such investigation.

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3 CA *rollo*, p. 45.
4 *Rollo*, p. 93.
5 Id. at 95.

This is for your information and compliance.

Petitioners followed up with Memo 12-687[6] dated December 14, 2005 to respondent which dictated that:

> This refers to your **Memo 12-675** dated December 13, 2005.
>
> 1. Your preventive suspension is within 30 days.
>
> 2. You are required to report to office on December 19, 2005 (Monday) at 3 pm for a preliminary Administrative Hearing.
>
> 3. You are instructed to bring anybody with you on your side. It could be your husband and/or your son. Should you prefer to bring a legal counsel please inform us a day before the abovementioned schedule.
>
> This is for your information and compliance.
>
> We trust that you will give the matter your most favorable cooperation and attention.

Respondent attended the administrative hearing on December 19, 2005, accompanied by her son. During the hearing, petitioner Dabu repeatedly berated and insulted respondent.

On December 20, 2005, petitioners issued Memo 12-692,[7] a Notice of Termination, which informed respondent that:

> After due consideration of all the circumstances, grounds have been established to justify your termination.
>
> 1. You willfully disobey the lawful orders of your employer.
> 2. Willfull breach of the trust reposed in you by the management.
>
> In view of the above and by your admission of your disobedience and dishonesty during the administrative hearing, you had violated the Company Implementing Rules and Regulations on **Article V – Section 25** which states that: *Act of dishonesty to the company shall be penalized with termination for the first offense.*
>
> Your services with the corporation are then being terminated effective at the close of the business hours on December 21, 2005.
>
> This is for your information.

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6 Id. at 96.

7 Id. at 112.

Respondent received a copy of Memo 12-692 dated December 20, 2005 on December 21, 2005. That same day, respondent went to the office of petitioner SMSI to retrieve her personal belongings, which included an amount of less than ₱100.00 tucked in her drawer, but she was refused entry. It was only the next day, on December 22, 2005, that respondent was allowed to take her personal belongings.

It was apparent to respondent that petitioners Tambunting and Dabu had resolved to dismiss her because she was supposedly "highly paid" and petitioner SMSI would not have to give separation pay for her considerable tenure of 12 years. Respondent's unceremonious dismissal was already a foregone conclusion, so respondent was never really accorded a chance to defend herself.

Respondent lastly professed that she could not afford to return three years of ECOLA. Being the breadwinner for a family with five children, which included a special child with Down Syndrome, respondent was living hand-to-mouth.

Petitioners' Allegations

Petitioners conceded that respondent was initially hired as a rank and file employee, who eventually became the Accounting Supervisor of petitioner SMSI. Given the absence of an Accounting Manager, respondent agreed, in a memorandum[8] dated February 12, 2001 addressed to petitioner Tambunting, to accept the responsibilities of said position provided that petitioner SMSI would hire an accounting assistant to assume some of respondent's current responsibilities; respondent would receive a monthly allowance of ₱1,000.00 beginning February 2001; and respondent would undergo training for three months under a Ms. Vilma Roda. For taking over the responsibilities of Accounting Manager, respondent's monthly salary was increased from ₱8,193.42 to ₱12,000.00 beginning June 2001.[9] By 2005, respondent was receiving a monthly salary of ₱13,000.00 as Accounting Supervisor.

According to petitioners, respondent's position as Accounting Supervisor was reposed with trust and confidence, and among her duties and responsibilities were as follows:

1. Manages accounting functions and preparation of reports and statistics detailing financial results;

2. Checks, verifies, and approves payroll entries;

3. In charge of preparation of admin payroll;

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8 Id. at 80.
9 Id. at 81.

4. Checks and verifies daily check disbursements;

5. Contacts delinquent account holders by telephone or in writing and requests payments to bring the account current;

6. Assists the messenger/collector in personally collecting client's check payments[;]

7. Oversees financial and accounting system controls and standards and ensures timely financial and statistical reports for management and/or Board of Directors' use;

8. Performs routine banking transaction;

9. Handles cash and cash accounts; and,

10. Performs all accounting and finance functions and other related tasks as required.[10]

Petitioners contended that they discovered only in August 2005 that respondent was receiving ECOLA, even when she was not entitled to the same under Wage Order Nos. NCR-09 and NCR-10. Respondent willfully and deliberately ignored and disobeyed the Notice of Personnel Action dated August 22, 2005 cancelling the payment of her daily ECOLA of ₱24.67 beginning the payroll for August 16, 2005. Respondent continued to grant/give herself ECOLA in the payroll from August 16, 2005 to December 15, 2005.

Consequently, petitioner SMSI, through its HR Department, issued Memo 11-673 dated December 12, 2005 requiring respondent to explain in writing within 24 hours why no administrative action should be taken against her for insubordination and dishonesty. Respondent, though, refused to receive her copy of said Memo when served on December 13, 2005, as witnessed by Melanie M. Bollosa (Bollosa), Accounting Assistant of petitioner SMSI.[11] Petitioner SMSI next issued Memo 12-675 dated December 13, 2005 (placing respondent under preventive suspension starting December 14, 2005) and Memo 12-687 dated December 14, 2005 (fixing respondent's preventive suspension at 30 days and advising respondent to attend the administrative hearing on December 19, 2005), copies of which were received by respondent on December 14, 2005 and December 15, 2005, respectively.

During the administrative hearing on December 19, 2005, attended by respondent with her son, respondent was unable to justify her grant/payment of ECOLA to herself and refusal to obey the order of petitioner SMSI to stop the same. It was likewise discovered that (1) respondent availed herself of cash advances from petitioner SMSI, which she was supposed to pay by periodically deducting certain amounts from her salary, but since she was

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10 Id. at 18-19.

11 Id. at 93-94.

not making such deductions, the accumulated cash advances already amounted to ₱64,173.83; and (2) her employment record with petitioner SMSI, spanning several years, was riddled with previous acts of insubordination and dishonesty.

As a result, petitioner SMSI issued Memo 12-692 dated December 20, 2005 terminating respondent's services effective at the close of business hours on December 21, 2005.

Labor Arbiter's Ruling

After an exchange of pleadings, the Labor Arbiter rendered her Decision[12] on February 19, 2007, in respondent's favor. The Labor Arbiter found:

> At bar, the issue boils down to whether or not the act of [respondent] in continuously receiving her ECOLA after she was informed that she is not entitled to receive ECOLA sometime in August 2005 constitutes dishonesty so as to warrant her termination.
>
> x x x x
>
> While it is true that ECOLA is being enjoyed by minimum wage earners, the provisions of the Wage Orders are not absolute since the Orders expressly provide certain exceptions as when it would result in wage distortion.
>
> It appears from the records that [respondent] merely applied the procedure prescribed by Article 124 of the Labor Code and for which she received not the entire amount but the pro-rated share of the mandated amount. This of course does not constitute payroll padding as alleged by [petitioners].
>
> [Respondent] had aptly brought this matter up with management but this issue of Wage distortion was never settled by the [petitioners]. If indeed it were true that [respondent] was an Account Supervisor or an Accounting Manager for that matter, there must be wage level that distinguishes her position as such from a mere rank and file minimum wage earner. This is to avoid a situation where a supervisor would be receiving the same wage level as that of the supervisees.
>
> The [petitioners] have not discussed this matter of wage distortion in their pleadings but had focused their arguments mainly on the alleged non-entitlement of [respondent] to ECOLA and her refusal to receive the notice requiring her to explain.
>
> [Petitioners] had also resuscitated infractions whose penalty had been aptly served. We find this as totally irrelevant at bar. While we note certain demeanor of [respondent] as inappropriate like her refusal to acknowledge receipt of the memorandum being served upon her, this nevertheless, is not sufficient to warrant her termination. Such demeanor

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12 Id. at 115-124; penned by Labor Arbiter Daisy G. Cauton-Barcelona.

> is understandable as she was already placed under preventive suspension. The penalty of dismissal is too harsh given the attendant circumstances that this issue of ECOLA is an open matter.
>
> Records also show that her alleged illegally collected ECOLA has been settled upon her termination and upon the release of her final salary on December 19, 2005. It being the case, we find that paying her separation pay in lieu of reinstatement would be the most practicable relief under the circumstances. (Citation omitted.)

In the end, the Labor Arbiter decreed:

> ***WHEREFORE***, prescinding from the foregoing considerations, the [petitioners] are hereby ordered to pay the [respondent] her separation pay at the rate of one (1) month salary for every year of service computed from date of hire up to date hereof or the total amount of *ONE HUNDRED SIXTY-NINE THOUSAND (₱169,000.00) Pesos.*[13]

Ruling of the NLRC

Petitioners filed an appeal before the National Labor Relations Commission (NLRC), which was docketed as NLRC LAC No. 08-002292-07.

In a Resolution[14] dated September 24, 2007, the NLRC initially dismissed petitioners' appeal for failing to submit a certificate of non-forum shopping as required by Rule VI, Section 4 of the NLRC New Rules of Procedure.

Petitioners moved for reconsideration of the dismissal of their appeal, attributing their failure to submit the certificate of non-forum shopping to the inadvertence of their staff and finally submitting the required certificate.

The NLRC, in its Decision[15] dated January 31, 2008, reconsidered its Resolution dated September 24, 2007 and gave due course to petitioners' appeal.

In the same Decision, the NLRC overturned the Labor Arbiter and adjudged that petitioners had sufficient cause to dismiss respondent. Pertinent portions of the NLRC Decision are reproduced below:

> We find reversible error.
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> [Respondent's] justification for entitlement to proportionate share of ECOLA under Wage Order Nos. 9 and 10 is to prevent wage distortion.

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13 Id. at 123-124.

14 Id. at 125-127; penned by Presiding Commissioner Lourdes C. Javier with Commissioners Tito F. Genilo and Gregorio O. Bilog III concurring.

15 Id. at 71-77.

We are not convinced.

Records show that there are other employees of [petitioners] who, like [respondent], received more than the minimum wage. Yet, these other employees did not receive proportionate share of ECOLA. [Respondent's] attention on this matter was called by [petitioners] in a memorandum dated December 12, 2005 x x x.

x x x x

The fact, that other personnel of [petitioners] receiving more than the minimum wage were not paid ECOLA, was admitted by [respondent] during the administrative hearing conducted by [petitioners] on December 19, 2005 x x x. Pertinent portion of the findings in said hearing reads:

> "*4. That in one of the inquiry of the Accounting Manager one time asking why some of the employees have no E-COLA, that the respondent (complainant) answered quickly with "Kasi ma'am, hindi po sila minimum, above minimum napo", which was questioned by the committee member. If only the minimum wage earners were entitled to the E-COLA, why did the respondent (complainant) gave herself a corresponding E-COLA? That the respondent (complainant) answered with "because it was given to me as a result of distortion". That should be applied to all employees at her level in terms of rates since she is a payroll master.*"

As correctly argued by [petitioners], if indeed there was wage distortion then [respondent], being in charge of the payroll, should have applied proportionately the ECOLA to affected employees. But she did not. Other employees of [petitioners] who were paid more than the minimum wage and/or with the same salary rate with [respondent] were not given ECOLA x x x. As it appears it was only [respondent] who received proportionate ECOLA from among the employees of [petitioners] who are receiving more than the minimum wage. Clearly, there was a breach of trust committed by [respondent] that would warrant her termination from the service. It is to be stressed that [respondent's] position as Accounting Supervisor involves trust and confidence for it deals with [petitioners'] finances. One aspect of which is the preparation of [petitioners'] payroll for their employees.

All told, we find that [petitioners] had sufficient cause to dismiss [respondent] on ground of loss of trust and confidence.[16]

The NLRC ruled thus:

WHEREFORE, premises considered, the Decision dated February 19, 2007 is hereby SET ASIDE and a new one entered DISMISSING the complaint for lack of merit.[17]

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16 Id. at 75-76.

17 Id. at 77.

In a Resolution[18] dated March 27, 2008, the NLRC denied respondent's Verified Motion for Reconsideration.

Ruling of the Court of Appeals

Respondent then sought recourse from the Court of Appeals through a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 103847. Respondent attributes grave abuse of discretion on the part of the NLRC for (1) giving due course to petitioners' appeal notwithstanding its jurisdictional defects; and (2) reversing the Labor Arbiter's finding that respondent was illegally dismissed.

The Court of Appeals promulgated its Decision on February 22, 2010.

On the alleged jurisdictional defects of petitioners' Memorandum of Appeal before the NLRC, the Court of Appeals held that the last day of the 10-day period for petitioners to file their appeal before the NLRC fell on May 6, 2007, Sunday, so the Memorandum of Appeal petitioners filed the next working day, May 7, 2007, Monday, was still timely filed; that the posting by petitioners of a supersedeas bond with their appeal on May 7, 2007 was plain from the records; and that the NLRC was correct in reconsidering its previous dismissal of the appeal given the subsequent submission by petitioners of their certificate of non-forum shopping, and the policies that labor cases must be decided according to justice and equity and the substantial merits of the controversy and that technical rules of procedure may be relaxed in labor cases to serve the demands of substantial justice.

As to whether or not respondent was illegally dismissed, the Court of Appeals concluded that petitioners complied with the requirements for procedural due process in dismissing respondent:

> The minimum requirement of due process in termination proceedings consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side on the alleged offense or misconduct, which led to the management's decision to terminate. To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*, (i) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (ii) a subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him. These requirements were substantially complied with in the present case.
>
> The memorandum dated December 12, 2005 of [petitioners'] HR manager sufficiently apprised [respondent] of the particular acts or omissions for which she was charged of "insubordination" and "dishonesty." In the same memorandum, she was directed to submit her explanation within twenty-four (24) hours from notice thereof. However,

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[18] Id. at 78-79.

> [respondent] refused to receive the memorandum. Thus, in a memorandum dated December 13, 2005, [respondent] was placed under preventive suspension effective December 14, 2005 while under investigation for insubordination and dishonesty. An administrative hearing was conducted on December 19, 2005. In a memorandum dated December 20, 2005, [respondent] was informed of [petitioners'] decision to dismiss her. x x x.[19] (Citations omitted.)

As for substantive due process, while the Court of Appeals agreed with the NLRC that the requisites for a valid dismissal of respondent on the ground of loss of trust and confidence were present in this case, it determined that the penalty of dismissal was too harsh under the circumstances. According to the appellate court:

> Article 282(c) of the Labor Code, as amended, allows an employer to terminate the services of an employee for loss of trust and confidence. There are two (2) requisites for a valid dismissal on the ground of loss of trust and confidence. The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Settled is the rule that in order to determine whether an employee holds a position of trust and confidence, what should be considered is not the job title but the actual work that the employee performs. The second requisite is that there must be an act that would justify the loss of trust and confidence.
>
> The aforementioned requisites are present in this case. [Respondent] occupied the position of accounting supervisor at the time of her dismissal from employment. The duties of [respondent] as an accounting supervisor included, among others, checking and verifying of payroll entries encoded by the payroll clerk, preparation of administrative payroll, overseeing financial and accounting system controls and standards and performance of all accounting and finance functions as required by the company. As correctly pointed out by public respondent NLRC, [respondent's] "position as Accounting Supervisor involves trust and confidence for it deals with [petitioners'] finances." Public respondent NLRC considered [respondent] to have breached [petitioners'] trust because it appears it was only complainant ([respondent]) who received proportionate ECOLA from among the employees of [petitioners] who are receiving more than the minimum wage. x x x.
>
> x x x x
>
> There was, therefore, reasonable basis to sanction [respondent] for allowing herself to receive a proportionate ECOLA, while other similarly-situated employees did not. However, the penalty of dismissal is too harsh under the circumstances. It is undisputed that (i) [respondent] had worked for [petitioners] for more than eleven (11) years and (ii) her erroneously collected ECOLA had been deducted from her final salary when she was dismissed from employment on December 21, 2005. Hornbook is the doctrine that infractions committed by an employee should merit only the corresponding penalty demanded by the circumstances. The penalty must

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19 Id. at 63-64.

be commensurate with the act, conduct or omission imputed to the employee.[20] (Citations omitted.)

The Court of Appeals then proceeded to award respondent with separation pay in lieu of reinstatement, but denied her backwages and damages. Citing *Victory Liner, Inc. v. Race*,[21] the appellate court rationalized:

> Anent [respondent's] claim that she is entitled to backwages, separation pay and damages, worth mentioning are the basic provisions of Article 279 of the Labor Code, as amended, that an illegally dismissed employee shall be entitled to reinstatement, backwages inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Based on this provision, an illegally dismissed employee shall be entitled to reinstatement and full backwages. In the event that reinstatement is no longer possible, then payment of separation pay may be ordered in its stead.
>
> Significantly, however, the Supreme Court has qualified and/or limited the application of Article 279 of the Labor Code on the award of backwages. In *Victory Liner, Inc. vs. Pablo Race*, the Supreme Court pointed out several cases wherein the award of backwages was limited to a certain number of years, or no award was given at all. Thus:
>
> > In *San Miguel Corporation v. Javate, Jr.*, we affirmed the consistent findings and conclusions of the Labor Arbiter, National Labor Relations Commission (NLRC), and Court of Appeals that the employee was illegally dismissed since he was still fit to resume his work; but the employer's liability was mitigated by its evident good faith in terminating the employee's services based on the terms of its Health, Welfare and Retirement Plan. Hence, the employee was ordered reinstated to his former position without loss of seniority and other privileges appertaining to him prior to his dismissal, but the award of backwages was limited to only one year considering the mitigating circumstance of good faith attributed to the employer.
> >
> > In another case, *Dolores v. National Labor Relations Commission*, the employee was terminated for her continuous absence without permission. Although we found that the employee was indeed guilty of breach of trust and violation of company rules, we still declared the employee's dismissal illegal as it was too severe a penalty considering that she had served the employer company for 21 years, it was her first offense, and her leave to study the French language would ultimately benefit the employer who no longer had to spend for translation services. Even so, other than ordering the employee's reinstatement, we awarded the said employee backwages limited to a period

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20 Id. at 61-63.

21 593 Phil. 606 (2008).

of two years, given that the employer acted without malice or bad faith in terminating the employee's services.

While in the aforementioned cases of illegal dismissal, we ordered the employee's reinstatement, but awarded only limited backwages in recognition of the employer's good faith, there were also instances when we only required the employer to reinstate the dismissed employee without any award for backwages at all.

The employee in *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*, was found guilty of breach of trust for stealing high-grade stones from his employer. However, taking into account the employee's 23 years of previously unblemished service to his employer and absent any showing that his continued employment would result in the employer's oppression or self-destruction, we considered the employee's dismissal a drastic punishment. We deemed that the ends of social and compassionate justice would be served by ordering the employee reinstated but without backwages in view of the employer's obvious good faith.

Similarly, in *San Miguel Corporation v. Secretary of Labor*, the employee was dismissed after he was caught buying from his co-workers medicines that were given gratis to them by the employer company, and re-selling said medicines, in subversion of the employer's efforts to give medical benefits to its workers. We likewise found in this case that the employee's dismissal was too drastic a punishment in light of his voluntary confession that he committed trafficking of company-supplied medicines out of necessity, as well as his promise not to repeat the same mistake. We ordered the employee's reinstatement but without backwages, again, in consideration of the employer's good faith in dismissing him.

Reference may also be made to the case of *Manila Electric Company v. National Labor Relations Commission*, wherein the employee was found responsible for the irregularities in the installation of electrical connections to a residence, for which reason, his services were terminated by the employer's company. We, however, affirmed the findings of the NLRC and the Labor Arbiter that the employee should not have been dismissed considering his 20 years of service to the employer without any previous derogatory record and his being awarded in the past two commendations for honesty. We thus ruled that the employee's reinstatement is proper, without backwages, bearing in mind the employer's good faith in terminating his services.

In sum, while the Court holds that [respondent] committed breach of trust for continuously granting proportionate ECOLA to herself despite [petitioners'] previous order for its discontinuance, the same did not merit

> the ultimate penalty of dismissal considering that she had worked for the company for more than eleven (11) years and [petitioners] had deducted the amount from her last salary. Hence, the labor arbiter's award of separation pay (since strained relations do not warrant reinstatement) to [respondent] is correct. Notably, even the labor arbiter did not award backwages to [respondent]. The Court sees no cogent reason to rule differently, inasmuch as [respondent's] dismissal was apparently done in good faith by [petitioners] after they had lost their trust in [respondent] and the latter was afforded ample opportunity to explain her side.
>
> [Respondent's] further prayer for damages has no basis under the circumstances. An employer may only be held liable for damages if the attendant facts show that it was oppressive to labor or done in a manner contrary to morals, good customs and public policy.[22] (Citations omitted.)

The dispositive portion of the judgment of the Court of Appeals reads:

> WHEREFORE, the petition is partly granted. The Decision dated January 31, 2008 and Resolution dated March 27, 2008 of the public respondent NLRC are modified and [petitioners] are ordered to pay separation pay to [respondent], as previously determined by the labor arbiter, without the award of backwages.[23]

Petitioners' Motion for Partial Reconsideration was denied by the Court of Appeals in its Resolution[24] dated May 13, 2010.

II
RULING OF THE COURT

Hence, the Petition at bar in which petitioners assign a couple of errors on the part of the Court of Appeals, *viz.*:

> I.
>
> THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT'S COMMISSION OF BREACH OF TRUST DID NOT MERIT THE ULTIMATE PENALTY OF DISMISSAL.
>
> II.
>
> THE HONORABLE COURT OF APPEALS ERRED IN AWARDING SEPARATION PAY TO RESPONDENT.[25]

Petitioners seek the following reliefs from the Court:

> PRESCINDING THEREFROM, it most respectfully prayed of this Honorable Court that judgment be rendered, as follows:

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22 *Rollo*, pp. 64-67.
23 Id. at 67.
24 Id. at 70.
25 Id. at 26-27.

> 1. to **MODIFY** the Honorable Court of Appeals' Decision dated February 22, 2010 and Resolution dated May 13, 2010 only in so far as granting [respondent] separation pay.
>
> 2. to **AFFIRM** *en toto* the National Labor Relations Commission Decision dated January 31, 2008 and the Resolution dated May 27, 2008 of DISMISSING the complaint for utter lack of merit.
>
> 3. to Order respondent to pay [petitioners] the total amount of the ECOLA from 2001 up to July 2005, which she illegally credited to herself.
>
> 4. to Order respondent to pay [petitioners] the total amount of Php. 64,173.83 plus interest, which is her outstanding cash advances.
>
> 5. to Order respondent to pay [petitioners] moral damages in the amount of Php100,000.00 and exemplary damages in the amount of Php50,000.00
>
> Other relief just and equitable is likewise prayed for.[26]

The instant Petition is partly meritorious.

For a valid dismissal of an employee, it is fundamental that the employer observe both substantive and procedural due process – the termination of employment must be based on a just or authorized cause and the dismissal can only be effected, after due notice and hearing.[27] Petitioners' compliance with procedural due process in dismissing respondent is no longer being challenged in the present Petition; the issues for review of the Court herein essentially involve substantive due process.

Under Article 282(c) of the Labor Code, as amended, an employer may terminate an employment for, among other just causes, fraud or willful breach by the employee of the trust reposed in him/her by his/her employer or duly authorized representative. In *Etcuban, Jr. v. Sulpicio Lines, Inc.*,[28] the Court expounded on this particular just cause for dismissal of an employee:

> Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination. Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.

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26 Id. at 43.

27 *Sang-an v. Equator Knights Detective and Security Agency, Inc.*, 703 Phil. 492, 502-503 (2013).

28 489 Phil. 483, 496-497 (2005).

> The degree of proof required in labor cases is not as stringent as in other types of cases. It must be noted, however, that recent decisions of this Court have 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 by his position.**
>
> In the present case, the petitioner is not an ordinary rank and file employee. The petitioner's work is of such nature as to require a substantial amount of trust and confidence on the part of the employer. Being the Chief Purser, he occupied a highly sensitive and critical position and may thus be dismissed on the ground of loss of trust and confidence. One of the many duties of the petitioner included the preparation and filling up passage tickets, and indicating the amounts therein before being given to the passengers. More importantly, he handled the personnel funds of the MV Surigao Princess. Clearly, the petitioner's position involves a high degree of responsibility requiring trust and confidence. The position carried with it the duty to observe proper company procedures in the fulfillment of his job, as it relates closely to the financial interests of the company. (Emphasis supplied, citations omitted.)

Respondent, as Accounting Supervisor, was occupying a managerial position. The Court is not persuaded by respondent's assertion that even as Accounting Supervisor, she was still just a mere rank and file employee performing the same clerical functions she had since her hiring in 1994. In her own memorandum dated February 12, 2001 to petitioner Tambunting, respondent accepted the responsibilities of an Accounting Manager. Respondent underwent training for three months, received additional compensation, and was assigned an accounting assistant to help her out with her responsibilities. As Accounting Supervisor, respondent was entrusted with the custody and management of one of the most delicate matters of any business, that is, the financial resources of petitioner SMSI. Respondent also exercised discretion in the preparation of the payroll of the employees of petitioner SMSI, evident from the fact that it was by her own judgment call that she granted and paid herself pro-rated ECOLA since November 2002.

The Court of Appeals actually affirmed the finding of the NLRC that respondent committed a breach of trust and confidence, and there is no cogent reason for the Court to disturb the same.

It was not disputed that respondent was earning more than minimum wage, so she was not one of the intended beneficiaries of ECOLA under Wage Order Nos. NCR-09 and NCR-10. Respondent though insisted that Wage Order Nos. NCR-09 and NCR-10 granted her the right to a pro-rated share of the ECOLA on the ground of wage distortion.

"Wage distortion" was defined under Rule I, Section 2(w) of the Rules Implementing Wage Order No. NCR-09 and Rule I, Section 2(x) of the Rules Implementing Wage Order No. NCR-10, as follows:

> "Wage Distortion" refers to a situation where an increase in the prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

Section 14 of Wage Order No. NCR-09 covered situations wherein wage distortions result from the application of the ECOLA:

> Section 14. Where the application of the emergency cost of living allowance prescribed in this Order results in distortions in the wage structure within the establishment, the wage distortion may be resolved using the following formula:

$$\frac{\text{Minimum Wage Under WO-NCR-08}}{\text{Present Salary}} \times \text{Amount of ECOLA in WO-NCR-09} = \text{Amount of ECOLA due to distortion}$$

Section 13 of Wage Order No. NCR-10 no longer reproduced the formula for resolving wage distortions, but required instead the application of the procedure for resolving wage distortions under Article 124 of the Labor Code,[29] as amended:

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[29] Art. 124. *Standards/Criteria for Minimum Wage Fixing.* – x x x
x x x x

Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from the wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective agreements or recognized labor unions, the employer and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in prescribed wage rates pursuant to the provisions of law or Wage Order.

As used herein, a wage distortion shall mean a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively

> Section 13. Where the application of the emergency cost of living allowance prescribed in this Order results in distortions in the wage structure within the establishment, the distortion as corrected shall be paid as ECOLA in accordance with the procedure provided for under Article 124 of the Labor Code of the Philippines, as amended.

The NLRC and the Court of Appeals were correct in not giving much credence to respondent's claim of wage distortion, based on their observation that respondent was the only employee of petitioner SMSI earning more than minimum wage who was receiving ECOLA.

The Court additionally points out that other than respondent's bare allegation of wage distortion, there is an absolute dearth of proof to corroborate the same. It is an age-old rule that the one who alleges a fact has the burden of proving it and the proof should be clear, positive, and convincing. Mere allegation is not evidence.[30] By its definition, wage distortion is quantifiable, and it may be established by presentation of the employee groups, wage structure, and the computation showing how the application of the ECOLA eliminated or severely contracted the difference in wage or salary rates among the groups. As Accounting Supervisor who was in charge of preparation of the payroll of the employees of petitioner SMSI for more than a decade, respondent had knowledge of and access to all these relevant information and was capable of illustrating, even just by approximation, how she suffered from wage distortion because of the application of the ECOLA, which would have entitled her to pro-rated ECOLA under Section 14 of Wage Order No. NCR-09. However, respondent, apart from her insistence on the presence of wage distortion, was remarkably silent on any other detail concerning the purported wage distortion. It bears to stress further that the formula for computing pro-rated ECOLA in case of wage distortions was not reproduced in Wage Order No. NCR-10. Consequently, from the effectivity date of Wage Order No. NCR-10 on July 10, 2004, respondent's unilateral grant of pro-rated ECOLA to herself became even more evidently baseless.

Even assuming that respondent acted in good faith in granting herself ECOLA since November 2002, petitioners already explicitly ordered the cancellation of respondent's ECOLA through the Notice of Personnel Action dated August 22, 2005. Yet, in defiance of said Notice, respondent still continued to grant and pay herself ECOLA until December 15, 2005. Respondent averred that she immediately took up the matter of said Notice with petitioner Tambunting who promised to look into it, but again, respondent's averment was unsubstantiated and lacked details which would have lent it some credibility. Granting once more that respondent's

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obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

30 *Noblejas v. Italian Maritime Academy Phils., Inc.*, G.R. No. 207888, June 9, 2014, 725 SCRA 570, 579.

encounter with petitioner Tambunting was true, the Notice of Personnel Action dated August 22, 2005 was not officially recalled or reversed and, therefore, said Notice subsisted. The more prudent course of action for respondent was to comply with the Notice for the meantime. After being expressly ordered in the Notice to cancel her ECOLA, respondent could no longer claim good faith in continuing to grant herself said allowance.

Respondent herself referred to the amount of daily ECOLA she was receiving as "miniscule," but given that she had been receiving the unwarranted ECOLA since November 2002, it had already accumulated to a substantial amount. And regardless of the amount involved, it is apparent that respondent took advantage of her position as Accounting Supervisor in granting herself ECOLA even when she was not entitled to the same and after already being ordered to stop doing so, which constituted breach of trust. Willful breach of trust is one of the just causes under Article 282(c) of the Labor Code, as amended, for the employer to terminate the services of an employee.

Nevertheless, the Court of Appeals, after affirming the finding of the NLRC that respondent committed breach of trust, still declared that the penalty of dismissal was too harsh considering that respondent worked for petitioner SMSI for almost 12 years and the total amount of ECOLA respondent granted herself was already deducted from her last salary. For the same reasons, the appellate court awarded respondent only separation pay for her illegal dismissal, and not backwages.

The Court disagrees with the appellate court.

The law is plain and clear: willful breach of trust is a just cause for termination of employment. Necessarily, a finding of breach of trust on the part of respondent in the present case already justified her dismissal from service by petitioners. An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer. A company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel occupying positions of responsibility.[31] Together with petitioners' compliance with procedural due process, there is no other logical conclusion than that respondent's dismissal was valid.

In view of the valid dismissal from service of respondent, then she is not entitled to backwages, as well as separation pay in lieu of reinstatement. The award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under Article 279 of the Labor Code, as amended, and as held in a catena of cases, the employee who is dismissed without just

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31 *Santos v. San Miguel Corporation*, 447 Phil. 264, 276-277 (2003).

cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof.[32]

Of particular significance to the case at bar are the following pronouncements of the Court in *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa-Katipunan*[33]:

> We find no justification for the award of separation pay to Capor. This award is a deviation from established law and jurisprudence.
>
> The law is clear. Separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause, such as serious misconduct.
>
> Jurisprudence has classified theft of company property as a serious misconduct and denied the award of separation pay to the erring employee. We see no reason why the same should not be similarly applied in the case of Capor. She attempted to steal the property of her long-time employer. For committing such misconduct, she is definitely not entitled to an award of separation pay.
>
> It is true that there have been instances when the Court awarded financial assistance to employees who were terminated for just causes, on grounds of equity and social justice. The same, however, has been curbed and rationalized in *Philippine Long Distance Telephone Company v. National Labor Relations Commission.* In that case, we recognized the harsh realities faced by employees that forced them, despite their good intentions, to violate company policies, for which the employer can rightfully terminate their employment. For these instances, the award of financial assistance was allowed. But, in clear and unmistakable language, we also held that the award of financial assistance shall not be given to validly terminated employees, whose offenses are iniquitous or reflective of some depravity in their moral character. **When the employee commits an act of dishonesty, depravity, or iniquity, the grant of financial assistance is misplaced compassion. It is tantamount not only to condoning a patently illegal or dishonest act, but an endorsement thereof. It will be an insult to all the laborers who, despite their economic difficulties, strive to maintain good values and moral conduct.**
>
> In fact, in the recent case of *Toyota Motors Philippines, Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, we ruled that separation pay shall not be granted to all employees who are dismissed on any of the four grounds provided in Article 282 of the Labor Code. Such ruling was reiterated and further explained in *Central Philippines Bandag Retreaders, Inc. v. Diasnes*:
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> > To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation

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[32] *Macasero v. Southern Industrial Gases Philippines*, 597 Phil. 494, 501 (2009).
[33] 629 Phil. 247, 257-261 (2010).

> pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family – grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.

We are not persuaded by Capor's argument that despite the finding of theft, she should still be granted separation pay in light of her long years of service with petitioners. We held in *Central Pangasinan Electric Cooperative, Inc. v. National Labor Relations Commission* that:

> Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity x x x. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. If an employee's length of service is to be regarded as justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to clean its ranks of undesirables.

Indeed, length of service and a previously clean employment record cannot simply erase the gravity of the betrayal exhibited by a malfeasant employee. Length of service is not a bargaining chip that can simply be stacked against the employer. After all, an employer-employee relationship is symbiotic where both parties benefit from mutual loyalty and dedicated service. If an employer had treated his employee well, has accorded him fairness and adequate compensation as determined by law, it is only fair to expect a long-time employee to return such fairness with at least some respect and honesty. Thus, **it may be said that betrayal by a long-time employee is more insulting and odious for a fair employer.** As stated in another case:

> x x x The fact that [the employer] did not suffer pecuniary damage will not obliterate respondent's betrayal of trust and confidence reposed by petitioner. Neither would his length of service justify his dishonesty or mitigate his liability. **His length of service even aggravates his offense. He should have been more loyal**

> **to petitioner company from which he derived his family bread and butter for seventeen years.**
>
> **While we sympathize with Capor's plight, being of retirement age and having served petitioners for 39 years, we cannot award any financial assistance in her favor because it is not only against the law but also a retrogressive public policy.** We have already explained the folly of granting financial assistance in the guise of compassion in the following pronouncements:
>
> > x x x Certainly, a dishonest employee cannot be rewarded with separation pay or any financial benefit after his culpability is established in two decisions by competent labor tribunals, which decisions appear to be well-supported by evidence. To hold otherwise, even in the name of compassion, would be to send a wrong signal not only that "crime pays" but also that one can enrich himself at the expense of another in the name of social justice. And courts as well as quasi-judicial entities will be overrun by petitioners mouthing dubious pleas for misplaced social justice. Indeed, before there can be an occasion for compassion and mercy, there must first be justice for all. Otherwise, employees will be encouraged to steal and misappropriate in the expectation that eventually, in the name of social justice and compassion, they will not be penalized but instead financially rewarded. Verily, a contrary holding will merely encourage lawlessness, dishonesty, and duplicity. These are not the values that society cherishes; these are the habits that it abhors. (Emphases supplied, citations omitted.)

Hence, respondent's length of service of 11 years at petitioner SMSI did not mitigate, but even aggravated her offense, demonstrating, in addition to her insubordination and dishonesty, her lack of loyalty. It is likewise worthy to note that respondent, through her years of employment, was charged with the commission of several other transgressions, to wit: failing to regularly deduct from her salary the payment for her cash advances which already amounted to ₱64,173.83; leaving unused bank checks unattended on her desk even though she was provided a safe/vault in which she was supposed to keep all pertinent bank documents; leaving the safe/vault unlocked; failing to submit reports on time; instructing other people to punch in her time card several times; failing to hand over the office keys to the guard on duty as company rules prescribed; and having shortages in the payroll. These administrative charges of previous acts of dishonesty or negligence form part of respondent's employment record and which the petitioners could also very well consider in finally deciding to impose upon respondent the ultimate penalty of dismissal for her latest infraction.

Also contrary to the ruling of the Court of Appeals, petitioners are not divested of their right to terminate the employment of respondent just because the amount of ECOLA which respondent unlawfully granted herself for three years was eventually deducted from her last salary. It was only

proper that petitioners recover from respondent what did not rightfully pertain to the latter, otherwise, respondent would have unjustly enriched herself at petitioners' expense; but said recovery by petitioners still would not erase the fact that respondent willfully breached petitioners' trust. Moreover, as petitioners clarified, what was deducted from respondent's last salary was only the amount of ECOLA she still granted herself after the issuance of the Notice of Personnel Action dated August 22, 2005, which was for the period of August 2005 to December 2005. Respondent is still liable to return to petitioners the ECOLA she granted herself from November 2002 to July 2005. For this purpose, the case shall be remanded to the Labor Arbiter for computation of the exact amount of ECOLA which respondent must pay back to petitioner SMSI.

Unlike the unwarranted ECOLA, however, the Court cannot order respondent to pay her outstanding cash advances from petitioner SMSI, allegedly amounting to ₱64,173.83.

In *Bañez v. Valdevilla*,[34] the Court recognized that the jurisdiction of Labor Arbiters and the NLRC in Article 217[35] of the Labor Code, as amended, is comprehensive enough to include claims for all forms of damages "arising from the employer-employee relations." Whereas the Court in a number of occasions had applied the jurisdictional provisions of Article 217 to claims for damages filed by employees, it also held that by the designating clause "arising from the employer-employee relations," Article 217 should apply with equal force to the claim of an employer for actual damages against its dismissed employee, where the basis for the claim arises from or is necessarily connected with the fact of termination, and should be entered as a counterclaim in the illegal dismissal case.

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34 387 Phil. 601, 608 (2000).

35 Art. 217. *Jurisdiction of the Labor Arbiters and the Commission.* – (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practice cases;

(2) Termination disputes;

(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

(4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

(5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

(6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding Five thousand pesos (₱5,000.00), regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

Petitioners' counterclaim for payment of respondent's outstanding cash advances, although undoubtedly arising from employer-employee relations between petitioners and respondent, did not arise from or was not necessarily connected with the fact of respondent's termination. To recall, petitioners terminated respondent's employment on the ground that respondent, in granting herself unwarranted ECOLA, willfully breached the trust reposed in her by petitioners as Accounting Supervisor. Respondent's failure to make the necessary deductions from her salary to pay for her cash advances from petitioner SMSI was clearly another transgression petitioners were charging respondent with. While the Court may take cognizance herein of the fact that such a charge by petitioners against respondent exists, it has no jurisdiction to determine the truth or falsity of such charge. Such charge was not covered by the notices and hearing petitioners accorded respondent prior to the latter's dismissal and for the Court to rule upon the same in this case would be in violation of respondent's right to due process.

Finally, the Court denies petitioners' claims for moral and exemplary damages for utter lack of factual and legal bases.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The Decision dated February 22, 2010 of the Court of Appeals in CA-G.R. SP No. 103847 is **AFFIRMED** with the following **MODIFICATIONS**: (1) the award of separation pay to respondent Lanie M. Labitigan is **DELETED**; (2) the Decision dated January 31, 2008 of the NLRC in NLRC LAC No. 08-002292-07, dismissing for lack of merit respondent Lanie M. Labitigan's complaint for illegal dismissal against petitioners Supra Multi-Services, Inc., Jesus S. Tambunting, Jr., and Rita Clair T. Dabu, is **AFFIRMED**; (3) respondent Lanie M. Labitigan is **ORDERED** to pay back petitioner Supra Multi-Services, Inc. the amount of ECOLA she granted and paid to herself from November 2002 to July 2005, plus 6% interest from the time of finality of this judgment until the said amount is fully paid; and (4) the case is **REMANDED** to the Labor Arbiter for computation of the total amount respondent Lanie M. Labitigan is to pay back to petitioner Supra Multi-Services, Inc.

SO ORDERED.

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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.

MARIA LOURDES P. A. SERENO
Chief Justice