Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LEO T. MAULA,
Petitioner,

- *versus* -

XIMEX DELIVERY EXPRESS, INC.,
Respondent.

G.R. No. 207838

Present:

CARPIO *J.*, *Chairperson*,
PERALTA,
MENDOZA,
LEONEN, and,
JARDELEZA,* *JJ.*

Promulgated:

25 JAN 2017

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DECISION

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure seeks to reverse the November 20, 2012 Decision[1] and June 21, 2013 Resolution[2] of the Court of Appeals (*CA*) in CA G.R. SP No. 121176, which set aside the December 15, 2010 Resolution[3] and July 20, 2011 Decision[4] of the National Labor Relations Commission (*NLRC*) that affirmed the February 18, 2010 Decision[5] of the Labor Arbiter (*LA*) finding the illegal dismissal of petitioner.

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* Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

1 Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier, concurring; *rollo*, pp. 208-219.

2 *Rollo*, pp. 233-234.

3 *Id.* at 157-161.

4 *Id.* at 172-174.

5 *Id.* at 121-127.

On May 12, 2009, petitioner Leo T. Maula filed a complaint against respondent Ximex Delivery Express, Inc. and its officers (Jerome Ibañez, Lilibeth Gorospe, and Amador Cabrera) for illegal dismissal, underpayment of salary/wages, non-payment/underpayment of overtime pay, underpayment of holiday premium, underpayment of 13th month pay, non-payment of ECOLA, non-payment/underpayment of night shift differential, illegal deduction, illegal suspension, regularization, harassment, underremittance of SSS premiums, deduction of tax without tax identification number, moral and exemplary damages, and attorney's fees.[6]

The factual antecedents, according to petitioner, are as follows:

> Petitioner was hired by the respondent as *Operation Staff* on March 23, 2002. As *Operation Staff*, he performed a variety of duties such as but not limited to documentation, checker, dispatcher or airfreight coordinator. He [was] on call anytime of the day or night. He was rendering night duty which [started] at 6:00 p.m. More often it went beyond the normal eight-hour schedule such that he normally rendered duty until 6:00 or 7:00 the following morning. This [was] without payment of the corresponding night shift differential and overtime pay. His salary from March 2002 to December 2004 was PhP3,600.00 per month; from January 2005 to July 25, 2006 at PhP6,200.00 per month; from July 26, 2006 to March 15, 2008 at PhP7,500.00 per month; from March 16, 2008 to February 15, 2009 at PhP9,412.00 per month; and, from February 16, 2009 to March 31, 2009 at PhP9,932.00 per month. x x x.
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> Petitioner's employment was uneventful until came February 18, 2009 when the [respondent's] HRD required him and some other employees to sign a form sub-titled "Personal Data for New Hires." When he inquired about it he was told it was nothing but merely for the twenty-peso increase which the company owner allegedly wanted to see. He could not help but entertain doubts on the scheme as they were hurriedly made to sign the same. It also [appeared] from the form that the designated salary/wage [was] daily instead of on a monthly basis. x x x.
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> On February 21, 2009, a Saturday evening, they were surprised to receive an invitation from the manager for a dinner and drinking spree in a restaurant-bar. It indeed came as a surprise as he never had that kind of experience with the manager in his seven (7) years working for the company.
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> On February 25, 2009, he, together with some other concerned employees[,] requested for a meeting with their manager together with the manager of the HRD. They questioned the document and aired their side voicing their apprehensions against the designation "For New Hires" since they were long time regular employees earning monthly salary/wages and not daily wage earners. The respondent company's manager[,] Amador Cabrera[,] retorted: "Ay wala yan walang kwenta yan." When he disclosed

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6 *Id.* at 71-73.

that he consulted a lawyer, respondent Cabrera insisted it was nothing and accordingly, no lawyer could say that it really matters. Cabrera even dared the petitioner to present the lawyer. The meeting was concluded. When he was about to exit from the conference room he was addressed with the parting words: "Baka gusto mo, mag-labor ka!" He did not react.

On March 4, 2009, petitioner filed a complaint before the National Conciliation and Mediation Board. During the hearing held on March 25, 2009, it was stipulated/agreed upon that:

(1) Company's counsel admits that petitioner is a regular employee;
(2) There shall be no retaliatory action between petitioner and the company arising from this complaint;
(3) Issues anent BIR and SSS shall be brought to the proper forum.

x x x

Not long thereafter, or on March 25, 2009, in the evening, a supposed problem cropped up. A misroute of cargo was reported and the company [cast] the whole blame on the petitioner. It was alleged that he erroneously wrote the label on the box – the name and destination, and allegedly [was] the one who checked the cargo. The imputation is quite absurd because it was the client who actually wrote the name and destination, whereas, it was not the petitioner but his co-employee who checked the cargo. The following day, he received a memorandum charging him with "negligence in performing duties."

On April 2, 2009 at 4:00 p.m., he received another memorandum of "reassignment" wherein he was directed to report effective April 2, 2009 to Richard Omalza and Ferdinand Marzan in another department of the company. But then, at around 4:30 p.m. of the same day, he was instructed by the HR manager to proceed to his former office for him to train his replacement. He went inside the warehouse and at around 6:00 p.m. he began teaching his replacement. At 8:00 p.m.[,] his replacement went outside. He waited for sometime and came to know later when he verified outside that the person already went straight home. When he went back inside, his supervisor insisted [to] him to continue with his former work, but due to the "reassignment paper" he had some reservations. Sensing he might again be framed up and maliciously accused of such as what happened on March 25, 2009, he thus refused. Around 10:30 p.m., he went home. x x x.

The following day, an attempt to serve another memorandum was made on him. This time he was made to explain by the HR Manager why he did not perform his former work and not report to his reassignment. It only [validated] his apprehension of a set-up. For how could he be at two places at [the same] time (his former work is situated in Sucat, Parañaque, whereas, his new assignment is in FTI, Taguig City). It bears emphasizing that the directive for him to continue discharging his former duties was merely verbal. At this point, petitioner lost his composure. Exasperated, he refused to receive the memorandum and thus retorted "Seguro na-abnormal na ang utak mo" as it dawned on him that they were out looking for every means possible to pin him down.

> Nonetheless, he reported to his reassignment in FTI Taguig on April 3, 2009. There he was served with the memorandum suspending him from work for thirty (30) days effective April 4, 2009 for alleged "Serious misconduct and willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work." His apprehension was thus confirmed. x x x.
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> On April 8, 2009, he filed a case anew with the NCMB x x x Hearings were scheduled at the NCMB on April 20, 27, and May 5, 2009 but the respondents never appeared. On May 4, 2009, he reported to the office only to be refused entry. Instead, a dismissal letter was handed to him. x x x.
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> On May 5, 2009, at the NCMB, the mediator decided that the case be brought to the National Labor Relations Commission for arbitration. Thus, he withdrew his complaint. On May 12, 2009[,] he was able to re-file his complaint with the Arbitration Branch of the NLRC. Efforts were exerted by the Labor Arbiter to encourage the parties to amicably settle but without success.[7]

Respondent countered that: it is a duly registered domestic corporation engaged in the business of cargo forwarding and truck-hauling; petitioner and several other employees misinterpreted the use of its old form "For New Hires," that they were relegated to the status of new employees when in fact they have been employed for quite some time already; after the conciliation conference before the NCMB, it relied on his promise that he would not disturb the peace in the company premises, which proved to be wishful thinking; as to the misdelivered cargo of Globe Telecoms, initial investigation disclosed that he was tasked to check the correct information in the package to ensure prompt delivery, hence, a Memorandum dated March 27, 2009 was issued to him to explain his side; thereafter, it was learned from his co-employees that he abandoned his work a few hours after logging in, which was a serious disobedience to the HR Head's order for him to teach the new employees assigned to his group; also, he refused to accept a company order with respect to his transfer of assignment to another client, Fullerlife; for the series of willful disobedience, a Memorandum dated April 3, 2009 was personally served to him by Gorospe, but he repeatedly refused to receive the memorandum and howled at her, *"Seguro na abnormal ang utak mo!"*; his arrogant actuations, which were directed against a female superior who never made any provocation and in front of many employees, were contemptuous, gravely improper, and breeds disrespect, even ignominy, against the company and its officers; on April 3, 2009, another memorandum was issued to give him the opportunity to explain his side and to inform him of his preventive suspension for thirty (30) days pending investigation; and the management, after evaluating the gravity of the

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7 *Id.* at 10-13. Petitioner substantially stated the same version of facts in his Position Paper before the Labor Arbiter, Comment before the NLRC, and Comment before the CA (*Rollo*, pp. 74-77, 150-153, 194-198).

charges and the number of infractions, decided to dismiss him from employment through a notice of dismissal dated April 27, 2009, which was sent via registered mail.

The LA ruled for petitioner, opining that:

> [Petitioner] had cause for alarm and exasperation it appearing that, after he joined a complaint in the NCMB, in a brief period from [March 27, 2009] to [April 3, 2009], [he] was served with a memo on alleged mishandling which turned out to be baseless, he was reassigned with no clear explanation and was being charged for disobedience of which was not eventually acted upon. There is no indication that the altercation between [him] and the HR Manager was of such aggravated character as to constitute serious misconduct.
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> This Office finds, on the other hand, that the respondents appeared bent on terminating the services of complainant following his taking the respondents to task for the new form and in the eventual dispute before the NCMB.
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> As to the relief, [petitioner], as an illegally dismissed employee[,] is entitled to the twin relief of reinstatement with backwages. However, considering the attendant circumstances, it would not be to the best interest of the [petitioner] to be reinstated as he would be working under an unjustified suspicion from his employer. Thus, this office finds the award of full backwages from the time of dismissal on [April 27, 2009] up to [the] date of this decision and separation pay of one month pay per year of service in order.
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> Thus, the backwages due to the [petitioner] is computed at ₱9,932.00 x 10 months x 1.08 or ₱107,265.00. His separation pay is also set at ₱9,932.00 x 8 years or ₱79,456.00. Other claims are dismissed for lack of factual and legal basis.
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> Individual respondents Jerome Ibanez, Lilibeth Gorospe and Amador Cabrera are held liable for being the responsible officers of the respondent company.
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> WHEREFORE, in view of the foregoing, decision is hereby rendered declaring the dismissal of the [petitioner] to be illegal and ordering respondents XIMEX DELIVERY EXPRESS, INC., JEROME IBANEZ, LILIBETH GOROSPE and AMADOR CABRERA to pay [petitioner] the amount of ₱186,721.00, as computed above, as backwages and separation pay. All other claims are dismissed.
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> SO ORDERED.[8]

On appeal, the NLRC affirmed *in toto* the LA's decision. It added:

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8 *Id.* at 126-127.

> While We concur that each employee should deal with his co-employees with due respect, the attending circumstances[,] however[,] should be taken into consideration why said utterance was made in order to arrive at a fair and equitable decision in this case.
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> In a span of one week[,] [petitioner] received three (3) [memoranda] requiring him to explain three (3) different offenses. The utterance was more of an outburst of [his] emotion, having been subjected to three [memoranda] in successive days, the last of which placed him under suspension for 30 days. Clearly[,] said utterance [cannot] be considered grave and aggravated in character to warrant the dismissal of herein [petitioner]. x x x.[9]

Respondent and its accountable officers moved for reconsideration.[10] In partially granting the motion, the NLRC ruled that while the memoranda charging petitioner of negligence, misconduct, and disobedience were unfounded and that he could not be blamed for his emotional flare-up due to what he considered as successive retaliatory actions, there was no malice or bad faith on the part of Ibañez, Gorospe, and Cabrera to justify their solidary liability with respondent.[11] Petitioner did not move to reconsider the modified judgment.

Still aggrieved, respondent elevated the case to the CA, which reversed and set aside the December 15, 2010 Resolution and the July 20, 2011 Decision of the NLRC. The appellate court held:

> x x x [A]fter a careful scrutiny of the facts on record, we find that [petitioner's] behavior constitute serious misconduct which was of grave and aggravated character. When he threw the *Memorandum* served on him by HR Supervisor Gorospe in front of her and when he later on shouted at her, *"Siguro na abnormal ang utak mo!"*, he was not only being disrespectful, he also manifested a willful defiance of authority and insubordination. Much more, he did it in the presence of his co-employees which if not corrected would create a precedent to [respondent's] detriment. [Petitioner's] actuations were willfully done as shown by the foul language he used against his superior, with apparent wrongful intent and not mere error in judgment, making him unfit to continue working for [respondent]. [Petitioner] attempted to blame [respondent] for his behaviour allegedly because he was provoked by the successive memoranda it issued to him in a span of two (2) days. This, however, is a lame excuse and did not in any way justify the inflammatory language he used against Gorospe and the throwing of the *Memorandum* at the HR Supervisor, in the presence of his co-employees at that. Condoning his behaviour is not what the law contemplates when it mandated a liberal treatment in favor of the working man. An employer cannot be compelled to continue employing an employee guilty of acts inimical to the

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9 *Id.* at 160.
10 *Id.* at 162-171.
11 *Id.* at 173.

> employer's interest, justifying loss of confidence in him. A company has the right to dismiss its erring employees as a measure of self-protection against acts inimical to its interest. x x x.
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> x x x x
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> Further, in a long line of cases, it was ruled that accusatory and inflammatory language used by an employee to the employer or superior can be a ground for dismissal or termination. Likewise, it did not escape Our attention that [petitioner] had been intentionally defying the orders of his immediate superiors when he refused to train his replacement prior to his transfer at Fullerlife in Taguig City despite being told to do so. This defiance was also manifested when he left his work station without his superior's permission. Undoubtedly, [petitioner's] behavior makes him unfit to continue his employment with [respondent] who was rendered helpless by his acts of insubordination.
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> On the other hand, [respondent] complied with the due process requirements in effecting [petitioner's] dismissal. It furnished the latter two (2) written notices, *first,* in *Memorandum* dated April 3, 2009 apprising him of the charge of serious misconduct for which his dismissal was sought and *second*, in *Notice of Dismissal* dated April 27, 2009 which informed him of [respondent's] decision to dismiss him.[12]

The petition is meritorious.

Standard of Review

In a Rule 45 petition of the CA decision rendered under Rule 65, We are guided by the following rules:

> [I]n a Rule 45 review (of the CA decision rendered under Rule 65), the question of law that confronts the Court is the legal correctness of the CA decision – *i.e.*, whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision on the merits of the case was correct. . . .
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> Specifically, in reviewing a CA labor ruling under Rule 45 of the Rules of Court, the Court's review is limited to:
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> (1) Ascertaining the correctness of the CA's decision in finding the presence or absence of a grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings; and

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12 *Id.* at 215-217.

> (2) Deciding any other jurisdictional error that attended the CA's interpretation or application of the law.[13]

The general rule is that *certiorari* does not lie to review errors of judgment of a quasi-judicial tribunal since the judicial review does not go as far as to examine and assess the evidence of the parties and to weigh their probative value.[14] However, the CA may grant the petition when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the Labor Arbiter; and when necessary to arrive at a just decision of the case.[15]

As will be shown later, none of the recognized exceptions is present in this case; hence, the CA erred when it made its own factual determination of the matters involved and, on that basis, reversed the NLRC ruling that affirmed the findings of the labor arbiter. While this Court, in a Rule 45 petition, is not a trier of facts and does not analyze and weigh again the evidence presented before the tribunals below, the conflicting findings of the administrative bodies exercising quasi-judicial functions and the CA compels Us to make Our own independent findings of facts.[16]

Termination of Employment

While an employer is given a wide latitude of discretion in managing its own affairs, in the promulgation of policies, rules and regulations on work-related activities of its employees, and in the imposition of disciplinary measures on them, the exercise of disciplining and imposing appropriate penalties on erring employees must be practiced in good faith and for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of employees under special laws or under valid agreements.[17] The reason being that –

> Security of tenure of workers is not only statutorily protected, it is also a constitutionally guaranteed right. Thus, any deprivation of this right must be attended by due process of law. This means that any disciplinary action which affects employment must pass due process scrutiny in both its substantive and procedural aspects.

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13 *Stanley Fine Furniture v. Gallano,* G.R. No. 190486, November 26, 2014, 743 SCRA 306, 319. (Citation omitted)

14 *Continental Micronesia, Inc. v. Basso,* G.R. Nos. 178382-83, September 23, 2015.

15 *Continental Micronesia, Inc. v. Basso,* G.R. Nos. 178382-83, September 23, 2015.

16 See *Santos v. Integrated Pharmaceutical, Inc.,* G.R. No. 204620, July 11, 2016; *Convoy Marketing Corp. v. Albia,* G.R. No. 194969, October 7, 2015; and *United Tourist Promotions (UTP), et al. v. Kemplin,* G.R. No. 205453, February 5, 2014, 726 Phil. 337, 349.

17 *Convoy Marketing Corp. v. Albia,* G.R. No. 194969, October 7, 2015.

> The constitutional protection for workers elevates their work to the status of a vested right. It is a vested right protected not only against state action but against the arbitrary acts of the employers as well. This court in *Philippine Movie Pictures Workers' Association v. Premier Productions, Inc.* categorically stated that "[t]he right of a person to his labor is deemed to be property within the meaning of constitutional guarantees." Moreover, it is of that species of vested constitutional right that also affects an employee's liberty and quality of life. Work not only contributes to defining the individual, it also assists in determining one's purpose. Work provides for the material basis of human dignity.[18]

Dismissal from employment have two facets: *first*, the legality of the act of dismissal, which constitutes substantive due process; and, *second*, the legality of the manner of dismissal, which constitutes procedural due process.[19] The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid.[20] In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[21] Thus, unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee.[22] When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.[23]

Act of Dismissal

Respondent manifestly failed to prove that petitioner's alleged act constitutes serious misconduct.

Misconduct is improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[24] The misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant.[25] Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the

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18 *Montinola v. Philippine Airlines,* G.R. No. 198656, September 8, 2014, 734 SCRA 439, 453-454.

19 See *NDC Tagum Foundation, Inc. v. Sumakote,* G.R. No. 190644, June 13, 2016 and *Agullano v. Christian Publishing, et al.,* 588 Phil. 43, 49 (2008).

20 See *Montinola v. Philippine Airlines,* G.R. No. 198656, September 8, 2014, 734 SCRA 439, 456 and *Abel v. Philex Mining Corp.,* 612 Phil. 203, 213 (2009).

21 See *Montinola v. Philippine Airlines,* G.R. No. 198656, September 8, 2014, 734 SCRA 439, 456 and *Abel v. Philex Mining Corp.,* 612 Phil. 203, 214 (2009).

22 *Abel v. Philex Mining Corp.,* 612 Phil. 203, 213 (2009).

23 *Id.* at 213-214.

24 *Nissan Motors Phils. Inc. v. Angelo,* 673 Phil. 150, 158-159 (2011).

25 *Id* at 59.

performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[26]

While this Court held in past decisions that accusatory and inflammatory language used by an employee to the employer or superior can be a ground for dismissal or termination,[27] the circumstances peculiar to this case find the previous rulings inapplicable. The admittedly insulting and unbecoming language uttered by petitioner to the HR Manager on April 3, 2009 should be viewed with reasonable leniency in light of the fact that it was committed under an emotionally charged state. We agree with the labor arbiter and the NLRC that the on-the-spur-of-the-moment outburst of petitioner, he having reached his breaking point, was due to what he perceived as successive retaliatory and orchestrated actions of respondent. Indeed, there was only lapse in judgment rather than a premeditated defiance of authority.

Further, petitioner's purported "thug-like" demeanor is not serious in nature. Despite the "grave embarassment" supposedly caused on Gorospe, she did not even take any separate action independent of the company. Likewise, respondent did not elaborate exactly how and to what extent that its "nature of business" and "industrial peace" were damaged by petitioner's misconduct. It was not shown in detail that he has become unfit to continue working for the company and that the continuance of his services is patently inimical to respondent's interest.

Even if a just cause exists, the employer still has the discretion whether to dismiss the employee, impose a lighter penalty, or condone the offense committed.[28] In making such decision, the employee's past offenses may be taken into consideration.[29]

> x x x In *Merin v. National Labor Relations Commission*, this Court expounded on the principle of totality of infractions as follows:
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> > The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be

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[26] *Nissan Motors Phils. Inc. v. Angelo,* 673 Phil. 150, 159 (2011); *Fujitsu Computer Products Corp. of the Phils. v. Court of Appeals,* 494 Phil. 697, 726 (2005); and *Phil. Aeolus Automotive United Corp. v. NLRC,* 387 Phil. 250, 261 (2000).

[27] *Nissan Motors Phils. Inc. v. Angelo,* 673 Phil. 150, 160 (2011), citing *St. Mary's College v. National Labor Relations Commission*, 260 Phil. 63, 67 (1990); *Garcia v. Manila Times*, G.R. No. 99390, July 5, 1991, 224 SCRA 399, 403; *Asian Design and Manufacturing Corp. v. Department of Labor and Employment*, 226 Phil. 20, 23 (1986).

[28] See *Santos v. Integrated Pharmaceutical, Inc.*, G.R. No. 204620, July 11, 2016.

[29] See *Santos v. Integrated Pharmaceutical, Inc.*, G.R. No. 204620, July 11, 2016.

> compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty[.] Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests.[30]

In this case, respondent contends that aside from petitioner's disrespectful remark against Gorospe, he also committed several prior intentional misconduct, to wit: erroneous packaging of a cargo of respondent's client, abandoning work after logging in, failing to teach the rudiments of his job to the new employees assigned to his group despite orders from his superior, and refusing to accept the management's order on the transfer of assignment. After evaluating the gravity of the charges and the number of infractions, respondent decided to dismiss petitioner from his employment.

We do not agree. Respondent cannot invoke the principle of totality of infractions considering that petitioner's alleged previous acts of misconduct were not established in accordance with the requirements of procedural due process. In fact, respondent conceded that he "was not even censured for any infraction in the past." It admitted that "[the] March 25, 2009 incident that [petitioner] was referring to could not be construed as laying the predicate for his dismissal, because [he] was not penalized for the misrouting incident when he had adequately and satisfactorily explained his side. Neither was he penalized for the other [memoranda] previously or subsequently issued to him."[31]

This Court finds the penalty of dismissal too harsh. Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal because the penalty to be imposed on an erring employee must be commensurate with the gravity of his or her offense.[32] Petitioner's termination from employment is also inappropriate considering that he had been with respondent company for seven (7) years and he had no previous derogatory record. It is settled that notwithstanding the existence of a just cause, dismissal should not be imposed, as it is too severe a penalty,

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30 *Realda v. New Age Graphics, et al.*, 686 Phil. 1110, 1120 (2012). (Citations omitted)

31 See Reply of respondent before the Labor Arbiter, *rollo*, p. 104.

32 *Montallana v. La Consolacion College Manila,* G.R. No. 208890, December 8, 2014, 744 SCRA 163, 175.

if the employee had been employed for a considerable length of time in the service of his or her employer, and such employment is untainted by any kind of dishonesty and irregularity.[33]

Manner of dismissal

The procedural due process requirement was not complied with. *King of Kings Transport, Inc. v. Mamac,*[34] provided for the following rules in terminating the services of employees:

> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
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> (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
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> (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[35]

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33 See *Samson v. National Labor Relations Commission,* 386 Phil. 669, 686 (2000).
34 *King of Kings Transport, Inc. v. Mamac,* 553 Phil. 108 (2007).
35 *Id.* at 115-116.

Later, *Perez, et al. v. Phil. Telegraph and Telephone Co. et al.*,[36] clarified that an actual or formal hearing is not an absolute requirement. The Court *en banc* held:

> Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient." In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).
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> Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."*
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> The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.
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> Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed *"substantially,"* not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.*
>
> An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.
>
> A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. *"To be heard"*

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36 602 Phil. 522 (2009).

does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings. Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.

x x x x

[T]he employer may provide an employee with ample opportunity to be heard and defend himself with the assistance of a representative or counsel in ways other than a formal hearing. The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure. To this extent, we refine the decisions we have rendered so far on this point of law.

This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277(b) of the Labor Code without unduly restricting the language of the law or excessively burdening the employer. This not only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the implementation of Article 277(b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations shall be resolved in favor of labor."

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

(a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes

exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.[37]

In this case, the Memorandum dated April 3, 2009 provided:

Ito ay patungkol sa pangyayari kanina, mga bandang alas kuwatro ng hapon, na kung saan ang mga ipinakita at ini-asal mo sa akin bilang iyong HR Supervisor na pagbato/paghagis na may kasamang pagdadabog ang memo na ibinigay para sa iyo na nagsasaad na ikaw ay pinag-papaliwanag lamang sa mga alegasyon laban sa iyo na dinulog sa aming tanggapan. Ikaw ay binigyan ng pagkakataon na ibigay ang iyong paliwanag ngunit ang iyong ginawa ay, ikaw ay nagdabog at inihagis ang memo sa harapan mismo ng iyong HR Supervisor sa kadahilanang hindi mo lamang matanggap ang mga alegasyong inirereklamo tungkol sayo. Ang paninigaw mo at pagsasabi na **"Abnormal pala utak mo eh"** sa HR Supervisor mo na mas nakatataas sa iyo sa harap ng maraming empleyado ay nagpapakita lang na ikaw ay lumabag sa patakaran ng kumpanya na **"Serious Misconduct and willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work."**

Dahil dito, ang pamunuan ay nagdesisyon na ikaw ay suspendihin ng tatlumpung araw (30) habang isinasagawa ang imbestigasyon at ito ay magsisimula pagkatanggap mo ng liham na ito.

Para sa iyong kaalaman at pagsunod.[38]

On the other hand, the dismissal letter dated April 27, 2009, which was also signed by Gorospe, stated:

Ito ay patungkol sa pangyayari na kung saan, ipinakita mo ang hindi kagandahang asal at kagaspangan ng iyong pag-uugali at hindi pagbibigay ng respeto sa mas nakatataas sa iyo. Na kung saan ay iyong ibinato/inihagis ang memo para sa iyo na nagsasaad na ikaw ay pinag-papaliwanag at binibigyan ng pagkakataon na marinig ang iyong panig laban sa mga alegasyon na iyong kinakaharap. Ang paninigaw mo at pagsasabi na **"Abnormal pala utak mo eh"** sa akin na HR Supervisor mo na mas nakatataas sa iyo sa harap ng maraming empleyado ay nagpapakita lamang na ikaw ay lumabag sa patakaran ng kumpanya, ang **"Serious Misconduct by the employee of the lawful orders of his employer or representative in connection with his work."** Nais naming sabihin na hindi pinahihintulutan ng pamunuan ang ganitong mga pangyayari.

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37 *Perez, et al. v. Phil. Telegraph and Telephone Co. et al.*, 602 Phil. 522, 537-542 (2009).

38 *Rollo*, p. 69.

Dahil dito, ang pamunuan ay nagdesisyon na ikaw ay tanggalin sa kumpanyang ito na magsisimula pagkatanggap mo ng sulat [na] ito.

Paki sa ayos ang iyong mga trabahong maiiwan.[39]

Evidently, Memorandum dated April 3, 2009 does not contain the following: a detailed narration of facts and circumstances for petitioner to intelligently prepare his explanation and defenses, the specific company rule violated and the corresponding penalty therefor, and a directive giving him at least five (5) calendar days to submit a written explanation. No ample opportunity to be heard was also accorded to petitioner. Instead of devising a just way to get the side of petitioner through testimonial and/or documentary evidence, respondent took advantage of his "refusal" to file a written explanation. This should not be so. An employer is duty-bound to exert earnest efforts to arrive at a settlement of its differences with the employee. While a full adversarial hearing or conference is not required, there must be a fair and reasonable opportunity for the employee to explain the controversy at hand.[40] Finally, the termination letter issued by respondent miserably failed to satisfy the requisite contents of a valid notice of termination. Instead of discussing the facts and circumstances to support the violation of the alleged company rule that imposed a penalty of dismissal, the letter merely repeats the self-serving accusations stated in Memorandum dated April 3, 2009.

Preventive Suspension

Similar to a case,[41] no hearing or conference was called with respect to petitioner's alleged misconduct. Instead, he was immediately placed under preventive suspension for thirty (30) days and was dismissed while he was still serving his suspension. According to respondent, it is proper to suspend him pending investigation because his continued employment poses serious and imminent threat to the life of the company officials and also endanger the operation of the business of respondent, which is a common carrier duty-bound to observe extra ordinary diligence.[42]

Preventive suspension may be legally imposed against an employee whose alleged violation is the subject of an investigation. The purpose of suspension is to prevent harm or injury to the company as well as to fellow employees.[43] The pertinent rules dealing with preventive suspension are found in Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, which read:

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39 *Id.* at 70.

40 *NDC Tagum Foundation, Inc. v. Sumakote,* G.R. No. 190644, June 13, 2016.

41 See *NDC Tagum Foundation, Inc. v. Sumakote,* G.R. No. 190644, June 13, 2016.

42 *Rollo,* p. 91.

43 *Mandapat v. Add Force Personnel Services, Inc., et al.,* 638 Phil. 150, 157 (2010).

> SEC. 8. ***Preventive suspension.*** – The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.
>
> SEC. 9. ***Period of suspension.*** – No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

As succinctly stated above, preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.[44] Here, it cannot be said that petitioner posed a danger on the lives of the officers or employees of respondent or their properties. Being one of the Operation Staff, which was a rank and file position, he could not and would not be able to sabotage the operations of respondent. The difficulty of finding a logical and reasonable connection between his assigned tasks and the necessity of his preventive suspension is apparent from the fact that even respondent was not able to present concrete evidence to support its general allegation.

WHEREFORE, premises considered, the petition is **GRANTED**. The November 20, 2012 Decision and June 21, 2013 Resolution of the Court of Appeals in CA G.R. SP No. 121176, which set aside the December 15, 2010 Resolution and July 20, 2011 Decision of the National Labor Relations Commission that affirmed the February 18, 2010 Decision of the Labor Arbiter finding the illegal dismissal of petitioner, are hereby **REVERSED AND SET ASIDE**. The Labor Arbiter is **DIRECTED** to recompute the proper amount of backwages and separation pay due to petitioner in accordance with this decision.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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44 *Artificio v. National Labor Relations Commission,* 639 Phil. 449, 458 (2010).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice