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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RICARDO G. SY and HENRY B. ALIX, Petitioners,	**G.R. No. 213748**
	Present:
- *versus* -	CARPIO, *J., Chairperson,* PERALTA, PERLAS-BERNABE,* CAGUIOA, REYES, JR., *JJ.*
NEAT, INC., BANANA PEEL and PAUL VINCENT NG, Respondents.	**Promulgated:** 27 NOV 2017

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DECISION

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* of the Court of Appeals Decision[1] dated March 27, 2014, which reversed and set aside the Decision[2] dated December 27, 2012 issued by the National Labor Relations Commission in NLRC LAC Case No. 08-002451-12 and, accordingly, entered a new judgment finding that petitioners Ricardo Sy and Henry Alix were terminated from employment for just causes, but ordered respondents Neat, Inc., Banana Peel and Paul Vincent Ng to pay petitioners ₱30,000.00 each as nominal damages for the denial of their right to procedural due process.

Respondent Neat, Inc. is a corporation existing by virtue of Philippine laws, and the owner/distributor of rubber slippers known as "*Banana Peel,*"

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* On leave.

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Michael P. Elbinias and Victoria Isabel A. Paredes, concurring; *rollo,* pp. 488-504.

[2] Penned by Commissioner Numeriano D. Villena with Commissioner Herminio V. Suelo concurring, and Commissioner Angelo Ang Palaña dissenting; *id.* at 65-73.

while respondent Paul Vincent Ng is its President and Chief Executive Officer. Petitioner Ricardo Sy was hired on May 5, 2008 as company driver and was dismissed from work on August 4, 2011. Petitioner Henry Alix was hired on November 30, 2005 as a delivery helper/utility and was dismissed from work on May 31, 2011.

Recounting how he was dismissed from work, petitioner Sy alleged that on July 28, 2011, his co-worker Jeffrey Enconado blocked his way to the daily time record of the company, which annoyed him as he was going to be late for work. When he learned from the delivery schedule that Enconado would be his partner, Sy requested the company assistant operations manager, Cesca Abuan, to assign him another "*pahinante*" or delivery utility, but the request was not acted upon. In order to avoid confrontation with Enconado, Sy assigned to himself a new delivery utility. Abuan reported the incident to the human resources department, for which Sy was required to submit a written explanation. The next day, Sy was informed that he would be suspended due to insubordination for three (3) days starting July 29, 2011 until August 2, 2011. Meantime, Sy was supposedly issued 3 other memoranda, covering violations of company rules and regulations on wearing of improper office uniform, which were committed in 2009. On August 3, 2011, Sy reported for work but was not allowed to log in/time in. Human Resource (*HR*) Manager Anabel Tetan informed Sy that his services will be terminated effective August 4, 2011 due to poor performance. Sy disagreed, claiming that for the 3 years that he worked with the company, he received bonuses for excellent performance.

For his part, petitioner Alix averred that sometime in February 2011, he was ordered to assist a newly-hired clerk. After helping his co-worker, Alix sat down for a while. Respondent Ng saw Alix, and thought that he was doing nothing during working hours. On May 19, 2011, Alix was assigned to clean at the company warehouse. After working, Ng saw Alix resting again. Alix was suspended for 3 days, and was thereafter dismissed. A month after his dismissal, Alix went back to the company to ask for his salary. Before being allowed to receive his salary, Alix was asked to sign a document. In dire need of money, he was left with no option but to sign the document, which he later discovered to be a waiver.

On August 10, 2011, petitioners Sy and Alix filed a Complaint[3] for illegal dismissal and payment of money claims.

Respondents Neat, Inc. and Ng countered that during the period that petitioners were employed, they were both problem employees. They alleged that Sy was the recipient of numerous disciplinary actions, namely:

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3 *Rollo*, pp. 85-86.

Date of Memorandum	Nature of Offense	Penalty Imposed
30 January 2009	Improper uniform (wearing earrings)	Warning
29 May 20009	Improper uniform	Warning
01 June 2009	Improper uniform	3-day suspension
28 July 2011	Insubordination	3-day suspension
05 August 2011	Poor Performance Evaluation	Warning

In a notice dated August 4, 2011, respondent Neat, Inc., through HR Manager Tetan, terminated Sy's services effective on even date, thus:

> We regret to inform you that Neat, Inc. has terminated your employment effective August 04, 2011. Your dismissal is due to the offenses made; according to our record you have been issued 5 written warnings that are subjected to your dismissal.
>
> Neat, Inc. would like to take this opportunity to thank you for your service that you rendered in our company. Please report to the head office HR Department for your clearance and return any company properties that are in your possession.[4]

Alix was also a recipient of many disciplinary actions:

Date of Memorandum	Nature of Offense	Penalty Imposed
21 July 2007	Negligence in work	Warning
29 May 2009	Improper Uniform	Warning
01 February 2011	Wasting Time	Warning
01 February 2011	Poor Performance Evaluation	Warning
19 May 2011	Wasting Time	3-day suspension
20 May 2011	Frequent Tardiness	Warning
30 May 2011	Poor Performance	Warning

In a Memorandum[5] dated May 31, 2011, Neat, Inc., through HR Manager Tetan, terminated Alix's services on even date, thus:

> We regret to inform you that your employment with Neat, Inc. has terminated effective as of May 31, 2011. Your dismissal is due to the offense made; according to our record you have been issued 6 written warnings that are subjected to your dismissal.
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> Reason for your termination are as follows:
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> 1st warning (issued on July 21, 2008) – negligence in performing his work
> 2nd warning (issued on May 29, 2009) – Not wearing complete uniform

4 *Id.* at 354; Marked as Annex "377."
5 *Id.* at 379.

3rd warning (issued on February 1, 2011) – Wasting time during working hours
4th warning (issued on February 1, 2011) – Poor performance evaluation from Production Supervisor, Noel Jabagat
5th warning (issued on May 19, 2011) – Wasting time during working hours
6th warning (issued on May 20, 2011) – Tardiness for the month of January, February, March, April 2011
7th warning (issued on May 30, 2011) – Poor performance evaluation from operation[s] head.

Respondents contended that because of petitioners' continued and repeated commission of various offenses and violations of company rules and regulations, they were terminated for a just cause. They added that petitioners were paid wages, overtime pay, 13th month pay and other benefits in accordance with the Labor Code and other laws, as shown in the payslips attached as Annexes "1" to "354" of their position paper.

As the parties failed to reach a settlement, the Labor Arbiter[6] (*LA*) directed them to submit their respective position papers. Both parties submitted their Position Papers on October 13, 2011, their Replies on November 15, 2011, and their Rejoinders on November 28, 2011.

On July 25, 2012, the LA rendered a Decision, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the complaint for illegal dismissal is dismissed for lack of merit. But, the respondents are hereby ordered to pay complainants Alix and Sy the amount of ₱15,000.00 each, or a total of ₱30,000.00 for both, as financial assistance.
>
> All other claims of complainants are dismissed for lack of merit.
>
> **SO ORDERED.**[7]

The LA found that petitioners Sy and Alix were dismissed due to serious misconduct, gross neglect of duty and insubordination. It held that these offenses were duly proven by the respondents, as can be gleaned from the case records, and noted that Alix even signed a Waiver and Release on June 10, 2011, releasing respondents from any liabilities whatsoever in connection with his employment. The LA ruled that the evidence on record shows that respondents gave petitioners opportunity to defend themselves, and have thus complied with the procedural due process required by the Labor Code. Nonetheless, for compassionate reasons and considering that petitioners have rendered services which somehow contributed to the growth

[6] Penned by Labor Arbiter Arden S. Anni.
[7] *Rollo*, p. 83.

of the company, the LA deemed it proper to award them financial assistance in the amount of ₱15,000.00 each.

Dissatisfied with the Labor Arbiter decision, petitioners filed an appeal before the National Labor Relations Commission (*NLRC*).

On December 27, 2012, the NLRC rendered a Decision, the dispositive portion of which reads:

> **WHEREFORE**, complainants' APPEAL is hereby GRANTED. Respondents are hereby ordered to pay complainants full backwages and separation pay equivalent to one (1) month salary for every year of service. The award of financial assistance is deleted.
>
> The attached computation shall form part of the decision.
>
> **SO ORDERED.**[8]

The NLRC reversed the LA's Decision, finding that the records failed to support the grounds of serious misconduct, gross neglect of duty and insubordination cited by respondents as bases in terminating petitioners' employment. It held that records show that petitioners were suspended after a single incident and thereafter, they were served notices of termination which denied them their rights to defend themselves. The NLRC noted that Sy was suspended after changing his "*pahinante*" despite not being allowed to do so, and was then issued 3 memos for infractions committed in 2009, while Alix was suspended after being caught resting and not working, and was thereafter served with a notice of termination.

The NLRC stressed that past infractions cannot be collectively taken as justification for dismissal of an employee from service. The NLRC pointed out that in the matrix submitted by respondents, corresponding penalties for past infractions were already imposed, and petitioners were further suspended for their latest infractions; thus, there is no valid justification on the part of respondents to consider the past infractions in terminating petitioners. Anent the waiver and release signed by Alix, the NLRC rejected it, stating that his wage is his only source of income to sustain his family, and that any person in a similar situation would sign any document to get the withheld salary. Since petitioners were illegally dismissed, the NLRC held that they are entitled to payment of backwages and payment of separation pay *in lieu* of reinstatement on account of the strained relations between the parties, but the award of financial assistance is considered moot and academic.

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[8] *Id.* at 73.

Respondents filed a motion for reconsideration, which the NLRC denied for lack of merit in the Resolution dated June 20, 2013.

Aggrieved by the NLRC Decision, respondents filed before the Court of Appeals (*CA*) a petition for *certiorari* under Rule 65 of the Rules of Court.

On March 27, 2014, the CA rendered the assailed Decision, finding that the NLRC gravely abused its discretion in reversing the decision of the LA, and disposing as follows:

> **WHEREFORE**, in view of the foregoing premises, the petition is hereby partially **GRANTED**. The Resolution dated June 20, 2013 and the Decision dated December 27, 2012 issued by the National Labor Relations Commission (Fourth Division) in NLRC LAC Case No. 08-002451-12 are **REVERSED AND SET ASIDE.**
>
> Accordingly, a **NEW JUDGMENT** is entered finding that private respondents were terminated from employment for just cause. However, the petitioners are ordered to pay private respondents ₱30,000.00 each as nominal damages for the former's denial of their right to procedural due process.
>
> **SO ORDERED.**[9]

The CA held that the dismissal of petitioners was justified under Article 282 (a) and (b) of the Labor Code, as amended, on the grounds of serious misconduct or willful disobedience of the lawful order of the employer or representative in connection with the employee's work, and gross and habitual neglect of the employee's duties.

With respect to petitioner Sy, the CA stressed that his repeated violations of the company's rules and regulation, as reflected in the several warnings found on record, amounted to just cause for termination, and that his act of insubordination alone when he changed his "*pahinante*" in direct contravention of the orders of his superior, amounts to serious misconduct or willful disobedience. As for petitioner Alix, the CA said that aside from his frequent tardiness, the six (6) warnings issued to him provide a just cause for his dismissal. While there are just causes for the termination of petitioners' employment, the CA ruled that failure to comply with the procedural requirements of notice [specifying the ground/s for termination, and giving to the employee reasonable opportunity to be heard] and hearing, constitutes denial of due process, which entitles them to an award of nominal damages in the amount of ₱30,000.00 each. As regards the Waiver and Release signed by Alix, the CA said that it cannot bar him from demanding what is legally due, because an employee does not stand on equal footing with the employer, and

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[9] *Id.* at 503. (Emphasis is the original)

in desperate situations may even be willing to bargain away his rights. Finally, there being no basis for the grant of backwages and separation pay, the CA no longer discussed the monetary award computed by the NLRC.

Unconvinced with the CA Decision, petitioners filed this petition for review on *certiorari* under Rule 45, arguing in the affirmative of the following issues:

I.
WHETHER THE PETITIONERS' ALLEGED PAST INFRACTIONS IS DETERMINATIVE IN IMPOSING THE PENALITY FOR THEIR SUPPOSED RECENT INFRACTION.

II.
WHETHER RESPONDENTS ILLEGALLY DISMISSED PETITIONERS.

III.
WHETHER PETITIONERS ARE ENTITLED TO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[10]

The petition is partly impressed with merit.

In resolving the issue of whether or not respondents were able to establish that petitioners were validly terminated on the ground of serious misconduct and willful disobedience of the lawful orders of the employer, and gross and habitual neglect of duties, the Court is called upon to re-examine the facts and evidence on record. Given that the Court is not a trier of facts, and the scope of its authority under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact, which are for labor tribunals to resolve,[11] one of the recognized exceptions to the rule is when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the CA.[12] Departure from the settled rule is warranted and a review of the records and the evidence presented by the opposing parties shall be made in order to determine which findings should be preferred as more conformable with evidentiary facts.

After a circumspect study of the records, the Court rules that the CA erred in finding that respondents were able to prove that the totality of Sy's violations of company rules and regulations constitute a just cause for termination of employment.

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10 *Id.* at 19.

11 *Raza v. Daikoku Electronic Phils., Inc., et al.*, 765 Phil. 61, 75 (2015).

12 *Philippine Long Distance Telephone Company, et al., v. Estrañero*, 745 Phil. 543, 550 (2014).

It is well settled that in illegal dismissal cases, "the burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. Failure of the employer to discharge the foregoing onus would mean that the dismissal is not justified and therefore illegal."[13]

In determining the sanction imposable on an employee, the employer may consider the former's past misconduct and previous infractions. Also known as the principle of totality of infractions, the Court explained such concept in *Merin v. National Labor Relations Commission, et al.*,[14] thus:

> 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 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. It has the right to dismiss such an employee if only as a measure of self-protection.

A closer look into the entirety of the violations imputed against Sy shows that respondents failed to prove with substantial evidence that the totality of infractions committed by him constitutes as a just cause for his dismissal under the Labor Code. In fact, even by its own standards, respondents' dismissal of Sy fails to measure up to Neat, Inc.'s Guide to the Administration of Code of Conduct,[15] which states that the "termination of employment of the employee by the Company is usually imposed when the employee's record over the period of time shows clearly that the amount of

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13 *Blue Sky Trading Co., Inc. v. Blas, et al.*, 683 Phil. 689, 706 (2007), citing *Functional, Inc. v. Granfil*, 676 Phil. 279, 287 (2011).

14 590 Phil. 596, 602-603 (2008).

15 *Id.* at 309-312.

warnings and other disciplinary actions has not made the employee understand the error of his ways and/or for the first offense which is such a serious error that cannot be ignored."[16]

There is no dispute that Sy was properly warned twice and aptly sanctioned with a 3-day suspension for violation of the company dress code which he committed on January 29, 2009, May 28, 2009 and May 30, 2009.[17] There is also no question that Sy is guilty of insubordination for not following the instruction of Operation Assistant Cesca Abuan on July 28, 2011 as to the swapping of his assigned delivery utility, and for insisting on his preferred delivery utility. Because of such incident, a Memorandum[18] dated July 29, 2011 was issued to Sy (1) suspending him for 3 days starting on even date until August 2, 2011; (2) requiring him to report to the head office on August 3, 2011 to discuss the grounds and degree of violation, and (3) warning him that further violation of policies will result in disciplinary action up to and including immediate termination of employment. Unfortunately, Sy was terminated the following day, August 4, 2011, due to the 5 written warnings previously issued to him — 3 of which were due to wearing of improper uniform in 2009, 1 for insubordination on July 28, 2011, and the last for supposed poor performance evaluation on August 3, 2011.

Based on a Memorandum[19] dated August 5, 2011, HR Manager Tetan met with Sy on August 3, 2011 to discuss his work performance, particularly his attitude problem. On said date, Tetan discussed Sy's performance evaluation by his Operation Manager, Ricky Jamlid, who said that on several instances Sy was not following instruction, despite being given verbal warning. Tetan also pointed out that such concern has already been raised by the previous Operations Manager, Marianne De Leon, and aside from not following instruction, complaints were also received that Sy keeps on arguing and did not show respect to his superior. Tetan added that based on Sy's written explanation with regard to his performance evaluation, he did not take the criticism positively and blamed someone else for his mistake. Tetan stated that Sy just realized and acknowledged his mistake after having a closed door meeting together with his operation manager last August 3, 2011, and promised to take the necessary steps to improve his performance. In closing, Tetan informed Sy that the meeting was held to give appropriate action for the complaints of his operations manager on his poor performance.

Contrary to respondents' contention, however, the past 3 infractions in 2009 for wearing of improper uniform can no longer be taken against Sy, because he was already warned and penalized for them, and he has, in fact, reformed his errors in that regard. Notably, in the Performance Appraisal

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16 *Id.* at 310.

17 *Rollo*, pp. 313, 315, and 317; Marked as Annexes "356," "358" and "360," respectively.

18 *Id.* at 318, Marked as Annex "361."

19 *Id.* at 321, Marked as Annex "363."

dated August 3, 2011 for the criteria of "Personal Appearance – personal impression of an individual makes on others. (Consider cleanliness, grooming, neatness and appropriateness of dress on the job,"[20] Operations Manager Jamlid gave Sy a grade of 80 points for "Good – Competent and dependable level of performance. Meets standards at the job",[21] and commented that Sy report[s] to work in complete uniform. Where an employee had already suffered the corresponding penalties for his infraction, to consider the same offenses as justification for his dismissal would be penalizing the employee twice for the same offense.[22]

Significantly, the infractions of Sy for wearing of improper uniform are not related to his latest infractions of insubordination and purported poor performance evaluation. Previous offenses may be used as valid justification for dismissal only if they are related to the subsequent offense upon which the basis of termination is decreed,[23] or if they have a bearing on the proximate offense warranting dismissal.[24]

Neither can respondents fault Sy's sole act of insubordination as amounting to serious misconduct, willful disregard of the lawful orders of the employer, or gross and habitual negligence.

Misconduct is defined as 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."[25] In order for serious misconduct to justify dismissal, these requisites must be present: (a) it must be serious; (b) it must relate to the performance of the employee's duties, showing that the employee has become unfit to continue working for the employer, and (c) it must have been performed with wrongful intent.[26] On the other hand, to be considered as a just cause for terminating an employee's services, "*insubordination*" requires that the orders, regulations or instructions of the employer or representative must be (a) reasonable and lawful; (b) sufficiently known to the employee; (c) in connection with the duties which the employee has been engaged to discharge; and (d) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude.[27]

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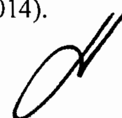
20 *Id.* at 323.
21 *Id.*
22 *Salas v. Aboitiz One*, Inc. 578 Phil. 915, 929 (2008).
23 *Id.*
24 *McDonalds (Katipunan Branch), etc. v. Alba*, 595 Phil. 44, 54 (2008).
25 *Imasen Philippine Manufacturing Corporation v. Alcon, et al.*, 746 Phil. 172, 181 (2014).
26 *Id.*
27 *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011).



Sy's insubordination of changing his delivery utility without permission from the operations manager is no doubt a misconduct, but not a serious and willful one as to cost him his livelihood. Concededly, Sy's act of unilaterally assigning to himself another delivery utility *in lieu* of the one designated to him, reflects his attitude problem and disregard of a lawful order of a representative of the employer. Be that as it may, such willful disobedience cannot be deemed to depict a wrongful attitude, because it was prompted by his desire to carry out his duty without distractions. It is not farfetched that Sy's annoyance with the delivery utility assigned to him, who annoyed him earlier in the day by blocking his way to the daily time record, could have prevented him from performing his task, or worst, could have resulted in fisticuffs with the said co-worker.

As a just cause for termination of employment, on the other hand, the neglect of duties must not only be gross but habitual as well. Gross negligence means an absence of that diligence that a reasonably prudent man would use in his own affairs, and connotes want of care in the performance of one's duties.[28] Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[29] A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. Suffice it to state that by no stretch of reasoning can the 5 infractions — wearing of improper uniform, insubordination and poor performance evaluation — imputed against Sy be collectively deemed as gross and habitual negligence.

A careful perusal of the Memorandum dated August 5, 2011 regarding Sy's poor performance evaluation further reveals that such unfavorable conclusion is not consistent with the Performance Appraisal dated August 3, 2011. Instead of being given an "Unsatisfactory" rating, Operations Manager Jamlid merely stated that Sy "needed improvement" in terms of "People Interaction," "Cooperativeness" and "Judgment" mainly because he is very emotional when dealing with his superior and co-workers. In citing poor performance as a ground for termination, respondents cannot also ignore the other factors where Sy was rated "Good," namely: "Quality," "Productivity," "Job Knowledge," "Availability," "Independence," "Personal Appearance," and "Attendance." Granted that the employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees, those directives must always be fair and reasonable, and the corresponding penalties, when prescribed, must be commensurate to the offense involved and to the degree of the infraction.[30] To be lawful, the cause for termination must be a serious and grave malfeasance to justify the deprivation of a means of livelihood.

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[28] *Nissan Motors Philippines, Inc. v. Angelo, supra* note 27, at 162.

[29] *AFI International Trading Corp. (Zamboanga Buying Station) v. Lorenzo*, 561 Phil. 451, 457 (2007).

[30] *VH Manufacturing Inc. v. NLRC*, 379 Phil. 444, 451, 457 (2000).

This is merely in keeping with the spirit of our Constitution and laws which lean over backwards in favor of the working class, and mandate that every doubt must be resolved in their favor.[31] After all, an employment is not merely a contractual relationship, since in the life of most workers it may spell the difference of whether or not a family will have food on their table, roof over their heads and education for their children.

With respect to Sy's attitude problem, the Court finds no evidence to substantiate such allegation. Aside from the allegations in the August 5, 2012 memorandum to the effect that the Operations Managers have complained about his attitude problem, nothing in the records show that Sy was previously warned for not following instructions, and for arguing with or disrespecting his superiors. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules. To be sure, unsubstantiated suspicions, accusations and conclusions of employers do not provide for legal justification for dismissing an employee. Respondents failed to present reports or sworn statements of the Operations Managers, narrating the instances when he displayed attitude problems at work, as well as his previous Performance Appraisal indicating unsatisfactory evaluation of his work.

On the other hand, in light of the totality of petitioner Alix's infractions against the company rules and regulations, the Court cannot extend the same magnanimity it has accorded to Sy. Respondents have proven with substantial evidence said infractions through 7 written warnings, *viz.*:

1. July 21, 2007 – Negligence of work due to lost or receipt of Handy Man[32]
2. May 29, 2009 – Wearing of improper uniform[33]
3. February 1, 2011 – Wasting time during working hours[34]
4. February 1, 2011 – Poor Performance Evaluation[35]
5. May 19, 2011 – Wasting time during working hours[36]
6. May 20, 2011 – Tardiness for the months of January, February, March and April of 2011[37]
7. May 30, 2011 – Poor Performance evaluation from operations head[38]

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31 *The Hongkong and Shanghai Banking Corporation v. NLRC*, 328 Phil. 1156, 1166 (1996).
32 *Rollo*, p. 326; Marked as Annex "365."
33 *Id.* at 327; Marked as Annex "366."
34 *Id.* at 330; Marked as Annex "368."
35 *Id.* at 333; Marked as Annex "370."
36 *Id.* at 340; Marked as Annex "372."
37 *Id.* at 346; Marked as Annex "374."
38 *Id.* at 351; Marked as Annex "375."

It does not escape the attention of the Court that the third (3rd) to sixth (6th) warnings were all received by petitioner Alix only on May 20, 2011, and that the seventh (7th) warning was received on the very day of his termination, May 31, 2011, prompting him to make separate handwritten explanations on the same date of receipt of said warnings. Respondents' perfunctory observance of Alix's right to notice and hearing, however, does not detract from the veracity of the violations of company rules and regulation imputed against him.

Habitual tardiness alone, as aptly noted by the CA, is a just cause for termination of Alix's employment. Punctuality is a reasonable standard imposed on every employee, whether in government or private sector, whereas habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee.[39] Habitual tardiness manifests lack of initiative, diligence and discipline that are inimical to the employer's general productivity and business interest.[40] Respondents have substantiated habitual tardiness by presenting Alix's daily time card, showing that in 2011 alone prior to his dismissal, he was late fourteen (14) times in January, seven (7) times in February, eight (8) times in March, and five (5) times in April.[41]

Having in mind the work productivity-related infractions he incurred in a span of 5 months from January to May 2011 — consisting of habitual tardiness, 2 warnings for wasting time during working hours and 2 more warnings for poor performance evaluation — the Court must agree with the CA that respondents have a just cause to terminate Alix's employment. As held in *Piedad v. Lanao del Norte Electric Coop, Inc..*,[42] "fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. A series of irregularities when put together may constitute serious misconduct, which under Article 283 [now Art. 297] of the Labor Code, is a just cause for dismissal."

More than the fact that an employee's right to security of tenure does not give him a vested right to his position,[43] Alix would also do well to bear in mind the prerogative of the employer to prescribe reasonable rules and regulations necessary or proper for the conduct of its business and to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with.[44] Although the State affords the constitutional blanket of affording protection to labor, the rule is settled that

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39 *Carvajal v. Luzon Development Bank, et al.,* 692 Phil. 273, 285 (2012).
40 *Realda v. New Age Graphics, Inc., et al.*, 686 Phil. 1110, 1121 (2012).
41 *Rollo*, pp. 347-350.
42 237 Phil. 481, 488 (1987).
43 *Exocet Security and Allied Services Corp, et al. v. Serrano*, 744 Phil. 403, 420 (2014).
44 *Areno, Jr. v. Skycable PCC-Baguio*, 625 Phil. 561, 576-577 (2010).

it must also protect the right of employers to exercise what are clearly management prerogatives, so long as the exercise is without abuse of discretion.[45]

Having discussed the just causes for termination of employment, the Court may now dwell on the procedural requirements of due process as laid down in *King of Kings Transport, Inc. v. Mamac*:[46]

> To clarify, the following should be considered in terminating the services of employees:
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> (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.

Respondents failed to afford petitioners the first written notice, containing the specific causes or grounds for termination against them, as well as the requisite hearing or conference wherein they should have been

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[45] *Pantranco North Express, Inc. v. NLRC*, 373 Phil. 520, 529 (1999).

[46] 553 Phil. 108, 115-116 (2007). (Emphasis in the original)

given reasonable opportunity to be heard and defend themselves. Save for the notices of termination dated August 4, 2011 and May 31, 2011[47] issued to petitioners Sy and Alix, respectively, all the other notices given to petitioners consist of warnings, suspension, and orders to submit written explanations for specific violations of company rules and regulations. It bears stressing that prior to his termination on August 4, 2011, the last warning given to Sy on August 3, 2011 was on account of poor performance evaluation only, without mentioning his past infractions of wearing improper uniform and insubordination. As for Alix, the last warning given to him was received on the very day of his termination, May 31, 2011, for poor performance evaluation *sans* any reference to his past infractions of negligence in performing work, wearing of improper uniform, wasting time during working hours, tardiness, and poor performance evaluation. While they were given several warnings for separate offenses committed, petitioners were not given opportunity to be heard why they should not be terminated on account of the totality of their respective infractions against company rules and regulations. It bears emphasis that notice to the employee should embody the particular acts or omissions constituting the grounds for which the dismissal is sought, and that an employee may be dismissed only if the grounds cited in the pre-dismissal notice were the ones cited for the termination of employment.[48]

An employee who is dismissed without just cause and due process is entitled to either reinstatement if viable or separation pay if reinstatement is no longer viable, and payment of full backwages and other benefits. Specifically prayed for by petitioner Sy,[49] the NLRC correctly awarded separation pay, which is proper when reinstatement is no longer viable due to the antagonism and strained relationship between the employer and the employee as a consequence of the litigation, not to mention the considerable length of time that the latter has been out of the former's employ. Nevertheless, the Court limits the award of separation pay, backwages and other benefits, because Sy is not entirely faultless.[50] Since the latest infraction of Sy relating to attitude problem at work does not constitute serious misconduct, willful disobedience to lawful orders of the employer or gross and habitual negligence in the performance of duties, as to merit the harsh penalty of dismissal, the Court holds that Sy is entitled to the award of (1) separation pay equivalent to 1 month salary for every year of service computed from May 5, 2008 when he was hired up to December 27, 2012 when the NLRC ruled that he was illegally dismissed; and (2) backwages and other benefits, computed from the time of his termination on August 4, 2012 until December 27, 2012.

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47 *Rollo,* pp. 354 and 379; Marked as Annexes "377" and "379."

48 *Glaxo Wellcome Phils. Inc., v. Nagkakaisang Empleyado ng Wellcome-DFA,* 493 Phil. 410, 427 (2005).

49 *Rollo*, p. 25, Petition for Review on *Certiorari*; p. 85, Complaint; p. 418, Notice of Appeal with Manifestation and Memorandum of Appeal.

50 *Salas v. Aboitiz One, Inc.*, 578 Phil. 915, 930 (2008); *PLDT v. National Labor Relations Commission*, 362 Phil. 352, 361 (1999).

Anent the Waiver and Release dated June 10, 2011 where Alix stated that he has no claim of whatever kind and nature against Neat, Inc., the Court sustains the CA that such quitclaim does not bar an employee from demanding what is legally due him, especially when it is made under circumstances where the voluntariness of such agreement is questionable. While quitclaims are, at times, considered as valid and binding compromise agreements,[51] the rule is settled that the burden rests on the employer to prove that the quitclaim constitutes a credible and reasonable settlement of what an employee is entitled to recover, and that the one accomplishing it has done so voluntarily and with a full understanding of its import.[52] Respondents failed to discharge such burden. Recognizing that the subordinate position of individual rank-and-file employees *vis-a-vis* management renders the former vulnerable to the latter's blandishments, importunings and even intimidation that may well result in the improvident if reluctant signing over of benefits to which the employees are entitled, the Court has consistently held that quitclaims of workers' benefits will not bar them from asserting these benefits on the ground that public policy prohibits such waivers.[53]

The Court likewise upholds the award of nominal damages awarded in favor of petitioners Sy and Alix. Nominal damages are "adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him."[54] Jurisprudence holds that such indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later."[55] The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer."[56] Considering that petitioners were deprived of their right to notice and hearing prior to their termination, the Court affirms the CA's award of ₱30,000.00 as nominal damages.

To be entitled to an award of moral damages, it is not enough for an employee to prove that he was dismissed without just cause or due process. Moral damages are recoverable only where the dismissal or suspension of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good

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51 *Samaniego v. National Labor Relations Commission*, 275 Phil. 126, 135 (1991).

52 *Plastimer Industrial Corp. v. Gopo, et al.*, 658 Phil. 627, 635 (2011).

53 *Carmelcraft Corporation v. NLRC*, 264 Phil. 763, 769 (1990).

54 An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act No. 386 (1950), Art. 2221.

55 *Concepcion v. Minex Import Corporation, et al.*, 679 Phil. 491, 507 (2012), citing *Agabon v. NLRC*, 485 Phil. 248, 287 (2004).

56 *Id.*

customs or public policy.[57] "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith."[58] Awarded in accordance with the sound discretion of the court, on the other hand, exemplary damages are imposed as a corrective measure when the guilty party has acted in a wanton, fraudulent, reckless and oppressive manner. In this case, apart from petitioners' bare allegation of entitlement thereto, no proof was presented to justify an award of moral and exemplary damages. At any rate, all the damages awarded to petitioners shall incur interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid, in line with *Nacar v. Gallery Frames, Inc.*[59]

In actions for recovery of wages, or where an employee was forced to litigate and thus incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article III of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the New Civil Code. Considering that petitioners were compelled to engage the services of the Public Attorney's Office to protect their rights and interests, the attorney's fees equivalent to 10% of the monetary award to which they are entitled should be deposited to the National Treasury in accordance with Republic Act No. 9406.[60]

Finally, as to the liability of respondent Paul Vincent Ng as President and Chief Executive Officer of Neat, Inc., for the illegal dismissal of petitioner Sy and the dismissal of Alix without due process, it has been held that a corporation, being a juridical entity, may act only through its directors, officers and employees, and that obligations incurred by these officers, acting as such corporate agents, are not theirs but the direct accountability of the corporation they represent.[61] Solidary liability may at times be incurred, but only under exceptional circumstances.[62] In labor cases, corporate directors and officers are solidarily liable with the corporation for the termination of employment of employees only if such is done with malice or in bad faith.[63] There being no proof that he was guilty of malice and bad faith in Sy's illegal dismissal, respondent Ng, as its President and CEO, cannot be held solidarily liable with Neat, Inc.

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[57] *Montinola v. Philippine Airlines*, 742 Phil. 487, 505 (2014).

[58] *Id.*

[59] 716 Phil. 267, 282-283 (2013).

[60] An Act Reorganizing and Strengthening the Public Attorney's Office (PAO), Republic Act No. 9406, §6 (2007):

"The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO."

[61] *Alba v. Yupangco*, 636 Phil. 514, 519 (2010), quoting *MAM Realty Devt. Corp. v. NLRC*, 314 Phil. 838, 844 (1995).

[62] *Id.*

[63] *David v. National Federation of Labor Unions, et al.*, 604 Phil. 31, 41 (2009).

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED**. The Decision of the Court of Appeals dated March 27, 2014 in CA-G.R. SP No. 131410 is **AFFIRMED WITH MODIFICATION** declaring that petitioner Ricardo Sy was dismissed without just cause and due process. Accordingly, respondent Neat, Inc. is **ORDERED** to **PAY** him:

(1) Separation pay equivalent to one (1) month salary for every year of service, computed from May 5, 2008 when he was hired up to December 27, 2012 when the National Labor Relations Commission ruled that he was illegally dismissed;

(2) Backwages and other benefits, computed from August 4, 2011 when he was illegally dismissed up to December 27, 2012; and

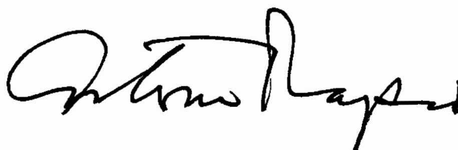
(3) Ten percent (10%) attorney's fees based on the total amount of the awards, which shall be deposited to the National Treasury in accordance with Republic Act No. 9406.

Legal interest is further imposed on the monetary awards at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid. The records of this case is **REMANDED** to the Labor Arbiter, who is **ORDERED** to make a re-computation of the total monetary benefits awarded.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

On leave
ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
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