Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ANDREI NICHOLETTE SAGARINO,		**G.R. No. 267379**
	Petitioner,	Present:
	-versus-	CAGUIOA, *J.*, *Chairperson*, INTING,* GAERLAN, DIMAAMPAO,* and SINGH, *JJ.*
TOPLIS SOLUTIONS, INC.,	Respondent.	**Promulgated:** OCT 15 2025 MicDCBett

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DECISION

SINGH, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (**Petition**) under Rule 45 of the Rules of Court filed by petitioner Andrei Nicholette Sagarino (**Andrei**), assailing the Decision,[2] dated July 29, 2022, and the Resolution,[3] dated March 3, 2023, of the Court of Appeals (**CA**) in CA-G.R. SP No. 168601. The CA annulled and set aside the Decision,[4] dated September 30, 2020, and the Resolution,[5] dated December 29, 2020, of the National Labor Relations Commission (**NLRC**) in NLRC LAC No. 02-

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* On official business.

1 *Rollo*, pp. 9–26.

2 *Id.* at 27–39. Penned by Associate Justice Jaime Fortunato A. Caringal and concurred in by Associate Justices Ramon A. Cruz and Louis P. Acosta of the Tenth Division, Court of Appeals, Manila.

3 *Id.* at 40–42. Penned by Associate Justice Jaime Fortunato A. Caringal and concurred in by Associate Justices Ramon A. Cruz and Louis P. Acosta of the Former Tenth Division, Court of Appeals, Manila.

4 *Id.* at 49–59. Penned by Commissioner Gina F. Cenit-Escoto and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Ma. Minerva S. Paez-Collantes of the First Division, National Labor Relations Commission, Quezon City.

5 *Id.* at 60–61. Penned by Commissioner Gina F. Cenit-Escoto and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Ma. Minerva S. Paez-Collantes of the First Division, National Labor Relations Commission, Quezon City.

000505-20, which ruled that Andrei was constructively dismissed by respondent Toplis Solutions, Inc. (**TSI**),[6] and instead held that Andrei was merely placed on floating status.[7]

The Facts

The case stemmed from a Complaint filed by Andrei against TSI, Azalea Hotels and Residences (**Azalea**), Michelle Acosta (**Michelle**), Ryan Lomibao (**Ryan**), Japhet Edora (**Japhet**), and Jen Tan (**Jen**) (collectively, **TSI et al.**) for illegal dismissal, non-payment of 13th month pay, separation pay, and backwages with claim for damages, as well as attorney's fees.[8] Michelle, Ryan, Japhet, and Jen were employees of Azalea.[9]

Andrei averred that she was hired by TSI and was assigned as Azalea's Front Office Supervisor[10] on a probationary basis for a monthly salary of PHP 15,000.00.[11] The pertinent portion of Andrei's employment agreement reads:

> This is to confirm your **PROBATIONARY EMPLOYMENT** under TOPLIS SOLUTIONS, INC. as Front Office Supervisor, effective on March 28, 2019 pursuant to the terms and conditions of employment as defined and stated below:
>
> 1. You will perform the duties and responsibilities assigned as Front Office Supervisor in whatever client or establishment to which you may be assigned by TOPLIS SOLUTIONS, INC. The means and methods by which you will perform your tasks shall be directly implemented and conveyed to you by a Toplis Supervisor and/or its authorized representative in the establishment concerned.
>
>   Your current assignment will be at **AZALEA HOTEL AND RESIDENCES – BAGUIO** with business address at 7 Leonard Wood Loop[,] Baguio City until you are transferred pursuant to the provisions of the next succeeding paragraphs.
>
> 2. The Company may exercise its prerogative to transfer you to another client upon (a) client's request for your relief or replacement for whatever reason; (b) change of [sic] the nature of work; (c) adjustment or change of working methods; (d) determining the place and manner of work where you will be most useful.
>
> 3. Whenever a client decides to request for relief or transfer of your services, or a cancellation or non-renewal of its contract of services with the company, the employer-employee relationship does not

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6 *Id.* at 54, 57.
7 *Id.* at 34–35.
8 *Id.* at 27.
9 *Id.*
10 *Id.* at 28.
11 *Id.* at 50.

> [sever] and you may be transferred, placed on temporary detail, or merely considered on leave until re-assignment with another client is available.
>
> Pending re-assignment, you shall become part of the manpower pool of the company.[12] (Emphasis in the original)

In the performance of her duty as Front Office Supervisor, Andrei confronted guest service associate, Claudette Calatan (**Claudette**), and required the latter to submit documents relevant to her absence on July 30, 2019.[13] Claudette refused and told Andrei that she already communicated her reasons to their manager and to Michelle,[14] a high-ranking officer of Azalea.[15] Andrei felt bypassed and disrespected by Claudette's actions.[16]

On August 2, 2019, Jen instructed Andrei to report to work earlier than usual.[17] Upon arrival at Azalea, Andrei met Japhet, Jen, and Gretchen Durohom (**Gretchen**), TSI's Human Resources coordinator.[18] Believing this was her chance to recommend the suspension of Claudette due to her disrespectful behavior, Andrei was both shocked and dismayed[19] to instead be handed a "Notice of Pull Out" effective August 10, 2019.[20] According to the notice, Andrei did not pass the standard performance evaluation and thus will be placed on floating status.[21] Andrei was also informed of her violations of the company code of ethics and Azalea's decision to return her to the TSI work pool.[22] Upon reviewing the documents attached to the Notice of Pull Out, Andrei discovered that her employee performance evaluation had been tampered with.[23] Andrei asserted that the attached employee performance evaluation reflected lower scores compared to the evaluation previously issued to her by Ryan.[24] As a result of the events that transpired, Andrei filed the subject Complaint against TSI et al.[25]

Andrei asserted that, at the time of her engagement, she was not informed of the standards required to qualify as a regular employee.[26] As such, she contended that she should be considered a regular employee who may be terminated only for just or valid cause and in accordance with

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12 *Id.* at 28.
13 *Id.* at 50.
14 *Id.* at 28–29.
15 *Id.* at 51.
16 *Id.*
17 *Id.* at 29.
18 *Id.*
19 *Id.* at 44.
20 *Id.* at 29.
21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.*
25 *Id.* at 51.
26 *Id.* at 45.

procedural due process.[27] On this score, Andrei argued that TSI failed to meet both substantive and procedural requirements for a valid termination.[28] According to Andrei, her dismissal was unlawful, citing the lack of substantive grounds for her termination.[29] She also contended that she was deprived of due process.[30] While she admitted that TSI has the sole valid management prerogative to terminate the services of employees, she argued that she was never given a chance to submit her answer or explanation to the alleged infractions she committed against the rules and policies of the company.[31]

TSI, for its part, asserted that it was a legitimate independent contractor, duly registered with the Department of Labor and Employment.[32] It hired Andrei as a probationary employee, assigning her to Azalea as a Front Office Supervisor, in accordance with its service agreement contract[33] with the said company.[34]

Thereafter, TSI was informed that Andrei had stopped reporting to work since August 10, 2019.[35] Thus, on August 16, 2019, it sent an invitation to report[36] to Andrei, requesting a meeting to discuss the latter's employment status.[37] Subsequently, on August 19, 2019, TSI issued a "Notice of Pull Out" to Andrei, which she refused to sign.[38] Consequently, TSI sent a copy of the notice via registered mail.[39]

TSI maintained that Andrei was not illegally dismissed.[40] Instead, she was a probationary employee who failed to meet the required employment standards of Azalea and was therefore placed on floating status.[41] TSI claimed that there was no severance of the employer-employee relationship between it and Andrei, and pending Andrei's reassignment, she became part of the manpower pool of TSI.[42] TSI even manifested during the Mandatory Conciliation and Mediation Conference that Andrei was merely pulled-out

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27 *Id.* at 45–46.
28 *Id.*
29 *Id.* at 44.
30 *Id.* at 45.
31 *Id.*
32 *Id.* at 29.
33 Does not appear in the records of the case.
34 *Rollo*, p. 29.
35 *Id.*
36 Does not appear in the records of the case.
37 *Rollo*, p. 29.
38 *Id.*
39 *Id.* at 29–30.
40 *Id.* at 30.
41 *Id.*
42 *Id.* at 45.

from Azalea and that she was required to report to work.[43] However, Andrei refused to do the same.[44]

Because of these reasons, TSI argued that Andrei had no valid cause of action against it, as her claim for illegal dismissal was filed prematurely.[45] TSI also denied any allegations of tampering with Andrei's performance evaluation.[46]

The Ruling of the Labor Arbiter

In a Decision,[47] dated December 9, 2019, Labor Arbiter Malcom P. Bacuso (**Labor Arbiter**) ruled that Andrei was a regular employee.[48] Labor Arbiter found that Andrei's employment contract with TSI did not contain any standards which could effectively guide her to become a regular employee after the period of six months.[49] With no evidence that Andrei was informed of such standards, she was deemed a regular employee[50] who could only be terminated for a just or valid cause and with procedural due process.[51]

As a regular employee, Labor Arbiter ruled that Andrei was not given the required due process when her employment was terminated, resulting in her illegal dismissal.[52] Labor Arbiter also determined that Andrei's alleged low evaluation report was maliciously created, as evidenced by the alterations made thereto.[53] Furthermore, Labor Arbiter ruled that TSI had no real intention of placing Andrei on floating status because the Notice of Pull Out was undated and simply stated that Andrei refused to receive the same.[54] For these reasons, Labor Arbiter ordered TSI and Azalea to jointly and severally pay for separation pay, backwages, and attorney's fees.[55]

TSI appealed to the NLRC, arguing that Labor Arbiter erred in ruling that Andrei was illegally dismissed and in holding both TSI and Azalea solidarily liable for the awards granted to Andrei.[56]

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43 *Id.* at 30.
44 *Id.*
45 *Id.*
46 *Id.*
47 *Id.* at 43–48.
48 *Id.* at 30, 46.
49 *Id.* at 46.
50 *Id.* at 30.
51 *Id.* at 46.
52 *Id.* at 30.
53 *Id.*
54 *Id.*
55 *Id.* at 48.
56 *Id.* at 52.

The Ruling of the NLRC

The NLRC affirmed Labor Arbiter's finding that Andrei was a regular employee.[57] However, the NLRC ruled that Andrei was constructively dismissed on February 10, 2020, and not actually illegally dismissed from employment upon her pull out from Azalea on August 10, 2019.[58] According to the NLRC, while TSI validly exercised its management prerogative to transfer Andrei, it was still remiss in its duty to redeploy Andrei during the pendency of the case or within the six-month period starting from August 10, 2019.[59] The NLRC claimed that this is crucial because, while Andrei appeared to have prematurely filed a case for illegal dismissal, this does not necessarily relieve TSI of its duty to reinstate Andrei within the allowable floating period.[60] Thus, the NLRC modified Labor Arbiter's Decision in this wise:

> **WHEREFORE**, premises considered, the appeal is hereby **DISMISSED**. Accordingly, the Decision[,] dated [December 9, 2019,] is hereby **MODIFIED** as follows:
>
> 1. Complainant was constructively dismissed on [February 10, 2020] and not actually illegally dismissed from employment upon her pull out from respondent Azalea Hotels and Residences on [August 10, 2019];
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> 2. The provisional computation of complainant's backwages shall commence only on [February 10, 2020];
>
> 3. The awards of backwages and separation pay shall be computed up to the finality of this Decision;
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> 4. The computation of attorney's fees is hereby adjusted considering that complainant's constructive dismissal from employment took effect only on [February 10, 2020]; and
>
> 5. Our provisional computation up to [June 30, 2020] entitles the complainant not to the awards granted by the Office of the Labor Arbiter, but to the following:

Awards	**Amounts**
1. Full backwages 1.1. Monthly Basic Wage 1.2. Proportionate 13th Month Pay	[PHP] 76,375.00 [PHP] 70,500.00 [PHP] 5,875.00
2. Separation Pay	[PHP] 15,000.00
SUB-TOTAL	**[PHP] 167,750.00**
3. Attorney's Fees	[PHP] 16,775.00

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57 *Id.*
58 *Id.* at 31.
59 *Id.* at 30.
60 *Id.* at 54.

Equivalent to [10%] of the total award.	
GRAND TOTAL	**[PHP] 184,525.00**

6. Respondent Toplis Solutions, Inc. is solely liable to pay complainant the foregoing awards.

SO ORDERED.[61] (Emphasis in the original)

TSI filed a Motion for Reconsideration,[62] which the NLRC denied in its Resolution,[63] dated December 29, 2020.[64]

On September 24, 2021, the NLRC issued an Entry of Judgment,[65] providing that the Decision of the Commission had become final and executory on March 2, 2021.[66]

Undeterred, TSI elevated the case, by way of a Petition for *Certiorari*[67] via Rule 65 of the Rules of Court, to the CA, arguing that the NLRC committed a capricious and whimsical exercise of judgment: (1) in declaring that Andrei was constructively dismissed on February 10, 2020 and not actually illegally dismissed from employment upon her pull out from Azalea on August 10, 2019; (2) in awarding full backwages and separation pay to Andrei; and (3) in ordering TSI to pay attorney's fees.[68]

The Ruling of the CA

The CA, in its Decision,[69] dated July 29, 2022, agreed that Andrei was hired as a regular employee of TSI.[70] While the employment agreement indicated that Andrei was on "probationary employment," there was nothing in the records that proved that she was apprised of the reasonable standards by which her probationary employment was to be assessed.[71] Neither was there any showing that TSI exerted efforts to inform Andrei of such standards that would qualify her for regularization.[72]

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61 *Id.* at 57–58.
62 Does not appear in the records of the case.
63 *Rollo*, pp. 60–61.
64 *Id.* at 60.
65 *Id.* at 62–63.
66 *Id.* at 63.
67 Does not appear in the records of the case.
68 *Rollo*, p. 32.
69 *Id.* at 27–39.
70 *Id.* at 34.
71 *Id.*
72 *Id.*

The CA, however, disagreed with the NLRC's conclusion that Andrei was constructively dismissed.[73] The CA found that the evidence showed that Andrei was not dismissed but was instead placed on floating status, as clearly stated in the "Notice of Pull Out" issued by TSI.[74] The CA emphasized that the law allows employers to place its employees on floating status for a period not exceeding six months.[75] However, here, Andrei filed her illegal dismissal complaint just 19 days after being placed on floating status.[76] Thus, the CA concluded that, at the time of the filing of the complaint, there was no dismissal to speak of yet.[77] The CA further ruled that the premature filing of the case deprived TSI of the legal opportunity to reassign Andrei to another client.[78] Additionally, the CA noted that TSI offered Andrei the chance to return to work during the Single Entry Approach (**SENA**) conference[79] and issued a return-to-work order after receiving Labor Arbiter's Decision.[80] Furthermore, the CA noted that TSI had sent Andrei an invitation to report to work as early as August 16, 2019, which directly contradicted the NLRC's finding that TSI had not offered Andrei a return to work or reassignment.[81]

Given that no dismissal had occurred, the CA ruled that reinstatement was not warranted.[82] Instead, it declared that Andrei was entitled to return to work, and that TSI must accept her, as the employment relationship between them had never been severed.[83] Thus, the CA disposed of the case in this wise:

> **WHEREFORE**, premises considered, the instant petition for [*certiorari*] is **GRANTED**. The Decision[,] dated September 30, 2020[,] and Resolution[,] dated December 29, 2020[,] of the National Labor Relations Commission in NLRC LAC No. 02-000505-20 are **ANNULLED** and **SET ASIDE**. Private respondent Andrei Nicholette A. Sagarino is **DIRECTED** to report for work within [10] days from notice.[84] (Emphasis in the original)

Andrei's Motion for Reconsideration[85] was denied by the CA, in its Resolution,[86] dated March 3, 2023.[87] Hence, this current Petition.[88]

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73 *Id.*
74 *Id.* at 35.
75 *Id.* at 36–37.
76 *Id.* at 37.
77 *Id.*
78 *Id.*
79 *Id.*
80 *Id.* at 32.
81 *Id.*
82 *Id.* at 38.
83 *Id.*
84 *Id.*
85 Does not appear in the records of the case.
86 *Rollo*, pp. 40–42.
87 *Id.* at 41.
88 *Id.* at 9–25.

Andrei imputes error on the part of the CA in annulling and setting aside the Decision of the NLRC.[89] Andrei posits that there was no real intention on the part of TSI to place her on floating status.[90] Since she has been constructively dismissed, Andrei contends that Labor Arbiter and the NLRC correctly found TSI liable for backwages, separation pay, and attorney's fees.[91]

Issues

1. Did the CA err in holding that Andrei was not constructively dismissed but was merely placed on floating status?

2. Did the CA err in deleting the award of damages in favor of Andrei, and instead ordering her to report for work within 10 days from notice?

The Ruling of the Court

The Petition is meritorious.

At the outset, it must be emphasized that the issue of whether Andrei was merely placed on floating status, was thereafter asked to report back to work, and was not, therefore, constructively dismissed are questions of fact that are not the proper subjects of a petition for review under Rule 45 of the Rules of Court.

As a rule, only questions of law are reviewable by the Court.[92] Because the Court is not a trier of facts, it is not duty-bound to analyze, review, and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error.[93] Thus, in general, the factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded great respect by the Court, as they are specialized to rule on matters falling within their jurisdiction, especially when these are supported by substantial evidence.[94] This doctrine applies with greater force in labor cases since questions of fact presented therein are for the labor tribunals to resolve.[95]

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89 *Id.* at 18.
90 *Id.* at 20.
91 *Id.* at 23.
92 *Central Azucarera De Bais v. Heirs of Zuelo Apostol*, 828 Phil. 211, 221 (2018) [Per J. Reyes, Jr., Second Division].
93 *Id.* at 221–222.
94 *Id.* at 222.
95 *Id.*

In labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC.[96] *Career Philippines Shipmanagement, Inc. v. Serna,*[97] citing *Montoya v. Transmed Manila Corp.,*[98] is instructive on the parameters of judicial review under Rule 45:

> As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:
>
> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to review the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[99]

After a careful examination of the records, the Court is constrained to reverse the Decision of the CA, which ultimately held that Andrei was not constructively dismissed but was merely placed on floating status.[100] The reversal of the CA's Decision is further justified by the absence of any explicit finding that the NLRC committed grave abuse of discretion in concluding that TSI constructively dismissed Andrei under the given circumstances.

Andrei is a regular employee of TSI

Our labor laws and the Constitution afford security of tenure to employees, ensuring that they have a reasonable expectation of stability and protection in their employment.[101] Employees are guaranteed that they can only be terminated from service for a just and valid cause and when supported by substantial evidence after due process.[102]

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96 *Morales v. Central Azucarera De La Carlota, Inc.*, 931 Phil. 516 (2022) [Per J. Leonen, Second Division].

97 700 Phil. 1 (2012) [Per J. Brion, Second Division].

98 613 Phil. 696 (2009) [Per J. Brion, Second Division].

99 *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012) [Per J. Brion, Second Division].

100 *Rollo*, pp. 34–35.

101 *Telus International Philippines, Inc. v. De Guzman*, 867 Phil. 270, 287 (2019) [Per J. Hernando, Second Division].

102 *Id.*

Security of tenure is enjoyed even by employees on probation,[103] thus, while they do not enjoy permanent status, they cannot be removed from their positions,[104] during the period of their probation, unless for just or authorized causes, or if they fail to qualify in accordance with reasonable standards made known by their employers at the time of the engagement.[105]

Here, TSI alleged that Andrei was a probationary employee who failed to pass the required employment standards of Azalea.[106] On the other hand, Andrei averred that she was a regular employee since TSI failed to inform her of the standards required for regular employment at the time of her engagement.[107]

Labor Arbiter, the NLRC, and the CA uniformly held that Andrei was TSI's regular employee[108] because of the lack of reasonable standards by which Andrei's probationary employment was to be assessed.[109]

The Court finds no cogent reason to disturb this factual finding of the labor tribunals and the CA, as it is in line with our labor laws and the prevailing jurisprudence on the matter.

A probationary employee is one who is placed on trial by an employer, during which the latter determines whether or not the former is qualified for permanent employment.[110] The essence of probationary period of employment is explained by this Court in *Skyway O & M Corp. v. Reinante*,[111] thus:

> The essence of a probationary period of employment lies primordially in the purpose and objective of both the employer and employee during such period. On one hand, the employer observes the fitness, propriety and efficiency of a probationary employee in order to ascertain whether or not such person is qualified for regularization. The latter, on the other hand, seeks to prove to the former that he or she has the qualifications and proficiency to meet the reasonable standards for permanent employment.[112]

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103 *Jaso v. Metrobank & Trust Co.*, 903 Phil. 203, 213 (2021) [Per J. Inting, Third Division].
104 *Colegio San Agustin v. NLRC*, 278 Phil. 414, 419 (1991) [Per J. Medialdea, First Division].
105 *Jaso v. Metrobank & Trust Co.*, 903 Phil. 203, 213 (2021) [Per J. Inting, Third Division].
106 *Rollo*, p. 30.
107 *Id.* at 19.
108 *Id.* at 34, 46, 52.
109 *Id.*
110 *Skyway O & M Corp. v. Reinante*, 860 Phil. 668, 674 (2019) [Per J. Inting, Third Division].
111 *Id.*
112 *Id.* at 674–675.

It is primordial that at the start of the probationary period, the standards for regularization be made known to the probationary employee.[113] In *Sameer Overseas Placement Agency, Inc. v. Cabiles,*[114] this Court explained the rationale for establishing predetermined standards at the time of engagement, thus:

> The pre-determined standards that the employer sets are the bases for determining the probationary employee's fitness, propriety, efficiency, and qualifications as a regular employee. Due process requires that the probationary employee be informed of such standards at the time of his or her engagement so he or she can adjust his or her character or workmanship accordingly. Proper adjustment to fit the standards upon which the employee's qualifications will be evaluated will increase one's chances of being positively assessed for regularization by his or her employer.[115]

Here, it is indisputable that Andrei was hired on a probationary basis, as evidenced by the employment agreement[116] she signed with TSI. As the CA rightly pointed out, the agreement clearly specified that Andrei's employment was probationary.[117] However, as correctly found by the CA and the labor tribunals, TSI failed to communicate the reasonable standards for regularization at the time of Andrei's employment. The mere inclusion of Andrei's duties and responsibilities as a Front Office Supervisor in the employment agreement is not sufficient. As the basis to determine a probationary employee's fitness, propriety, efficiency, and qualifications as a regular employee, the reasonable standards must allow the employee to accordingly adjust, should there be an adverse assessment in the performance of tasks.[118] There should have been clear and reasonable standards upon which regularization was contingent.[119] Since no standards were communicated to Andrei at the time of her engagement, she is considered a regular employee, as stipulated under the Amended Rules Implementing Books III and VI of the Labor Code,[120] which state:

> Section 6. *Permissible contracting or subcontracting.* – . . .
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> . . . .
>
> (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. *Where*

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113 *Jaso v. Metrobank & Trust Co.*, 903 Phil. 203, 210 (2021) [Per J. Inting, Third Division].

114 740 Phil. 403 (2014) [Per J. Leonen, *En Banc*].

115 *Id.* at 425.

116 Does not appear in the records of the case.

117 *Rollo*, p. 28.

118 *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014) [Per J. Leonen, *En Banc*].

119 *Tamson's Enterprises, Inc. v. Court of Appeals and Rosemarie L. Sy*, 676 Phil. 384, 397 (2011) [Per J. Mendoza, Third Division].

120 Department of Labor and Employment Department Order No. 10, Amending the Rules Implementing Books III and VI of the Labor Code As Amended (1997).

> *no standards are made known to the employee at that time, he shall be deemed a regular employee* [.][121] (Emphasis supplied)

Andrei was constructively dismissed from employment

The CA found that Andrei was not dismissed from employment but was merely placed on floating status.[122] The CA based its conclusion on the Notice of Pull Out issued by TSI to Andrei, which, in pertinent part, reads:

> This is to inform you that your company is constrained to issue a pull out memo, effective August 10, 2019, due to failure to pass the Standard Performance Evaluation of your assigned tasks.
>
> At this juncture, you are advised that this pull out memo is not a pre-termination of your employment contract rather you are on a floating status pending your redeployment for a position that will fit your qualifications.
>
> Further, let it be known to you, that while under PULL-OUT status, you are not entitled to your salary nor to any company benefit. However, rest assured that we will prioritize your redeployment and will immediately notify once there is available [sic] job position that will fit your qualifications.[123]

According to the CA, the pull out was a valid exercise of TSI's management prerogative,[124] particularly in this case, where TSI had a *bona fide* reason to reassign Andrei to another client.[125] The CA further ruled that there was no constructive dismissal, noting that TSI offered Andrei the opportunity to return to work during the SENA conference and even sent her an invitation to report to work as early as August 16, 2019.[126]

This Court disagrees with the CA's findings and conclusions.

Placing employees on "floating status" or temporary "off-detail" is a valid management prerogative, typically exercised by security agencies reliant on service contracts.[127] The Court explained the nature of "floating status,"

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[121] Department of Labor and Employment Department Order No. 10, Amending the Rules Implementing Books III and VI of the Labor Code As Amended, sec. 6(d) (1997).
[122] *Rollo*, p. 34.
[123] *Id.* at 35.
[124] *Id.*
[125] *Id.* at 36.
[126] *Id.* at 37.
[127] *Samillano v. Valdez Security and Investigation Agency, Inc.*, 875 Phil. 440, 448 (2020) [Per J. J. Reyes, Jr., First Division].

as understood in the context of security agencies, in the case of *Salvaloza v. National Labor Relations Commission*:[128]

> Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. When such a "floating status" lasts for more than six [] months, the employee may be considered to have been constructively dismissed.[129]

Although the Labor Code does not contain a specific provision addressing "floating status" or temporary "off-detail" of employees, the Court, by analogy to Article 301 of the Labor Code, treats this situation as a form of temporary retrenchment or layoff.[130] Article 301 of the Labor Code provides:

> Art. 301. [286] *When Employment Not Deemed Terminated.* – The *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six [] months, or the fulfillment [sic] by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicated his desire to resume his work not later than one [] month from the resumption of operations of his employer or from his relief from the military or civic duty.[131]

Although primarily applied to security services, the concept of "floating status" or temporary "off-detail" extends to other industries.[132]

The floating status principle finds application in this case.

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128 650 Phil. 543 (2010) [Per J. Nachura, Second Division].

129 *Id.* at 557–558.

130 *Superior Maintenance Services, Inc. v. Bermeo*, 844 Phil. 766, 771–772 (2018) [Per J. A. Reyes, Jr., Second Division].

131 LABOR CODE, as renumbered in 2015, art. 301.

132 *Telus International Philippines, Inc. v. De Guzman*, 867 Phil. 270, 292 (2019) [Per J. Hernando, Second Division].

It is irrefutable that TSI is a legitimate independent contractor, with its operations dependent on client contracts. Consequently, the need to reassign Andrei is contingent upon the requirements of TSI's third-party clients and contractual obligations. In fact, Andrei's employment agreement with TSI highlights this when it provides:

> 2. The Company may exercise its prerogative to transfer you to another client upon (a) client's request for your relief or replacement for whatever reason; (b) change of the nature of work; (c) adjustment or change of working methods; (d) determining the place and manner of work where you will be most useful.[133]

Thus, here, it is within TSI's prerogative to place Andrei on floating status, especially since Azalea informed TSI that Andrei's services will no longer be extended.[134] However, TSI's valid exercise of management prerogative in placing Andrei on floating status does not absolve it of its responsibility to reassign Andrei to another client.

TSI asserted that it did not neglect its duty to reassign Andrei to another client, highlighting that it consistently sent her invitations to report for work.[135] TSI further averred that Andrei prematurely filed the illegal dismissal complaint, noting that only 19 days have passed since she was placed on floating status.[136] The CA sided with TSI and held that the premature filing of the illegal dismissal case deprived TSI of the latitude given to it by law to reassign Andrei to another client.[137] The CA also agreed with TSI's assertion that it offered Andrei several opportunities to return to work.[138]

The Court disagrees.

While a complaint for illegal dismissal filed prior to the lapse of the six-month period and/or the actual dismissal of the employee is generally considered as prematurely filed,[139] nothing precludes the employers from giving the employee/s new assignments during the pendency of the case before the labor arbiter. An employer's failure to offer reinstatement or reassignment to an employee placed on floating status, even during the

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133 *Rollo*, p. 36.
134 *Id.* at 35.
135 *Id.* at 29–30.
136 *Id.* at 34.
137 *Id.* at 37.
138 *Id.*
139 *Bognot v. PINIC International (Trading) Corporation/CD-R King*, 848 Phil. 771, 779–780 (2019) [Per J. J. Reyes, Jr., Second Division].

pendency of the labor dispute constitutes constructive dismissal.[140] As the Court explained in *MegaForce Security and Allied Services, Inc. v. Lactao*:[141]

> Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal as their assignments primarily depend on the contracts entered into by the security agencies with third parties. Indeed, the Court has repeatedly recognized that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time; when such a "floating status" lasts for more than six months, the employee may be considered to have been constructively dismissed.
>
> *However, in the present case, while the charge of illegal dismissal may have been premature because Lactao has not been given a new assignment or temporary "off-detail" for a period of seven days only when he amended his complaint, the continued failure of Megaforce to offer him a new assignment during the proceedings of the case before the LA and beyond the reasonable six-month period makes it liable for constructive dismissal.*[142] (Emphasis supplied; citations omitted)

Here, although TSI, as agreed by the CA, asserted that it sent Andrei an invitation to report to work on August 16, 2019,[143] offered her a chance to return during the SENA conference,[144] and issued a notice for her to return on February 4, 2020,[145] such notices do not suffice to alter Andrei's floating status. There is no proof that the notices state a specific client to which Andrei would be assigned, rendering them mere general return-to-work orders. As such, they do not absolve TSI of liability for constructive dismissal.

Section 5.2. of Department of Labor and Employment - Department Order No. 14, Series of 2001[146] provides that return-to-work orders must include the following details:

> 5.2. For every assignment of a security guard/personnel to a principal, the duty detail order shall contain the following, among others:
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> a. Description of job, work or service to be performed.
>
> b. Hours and days of work, work shift and applicable premium, overtime and night shift pay rates.

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140 *MegaForce Security and Allied Services, Inc. v. Lactao*, 581 Phil. 100, 106 (2008) [Per J. Austria-Martinez, Third Division].

141 581 Phil. 100 (2008) [Per J. Austria-Martinez, Third Division].

142 *Id.* at 106.

143 *Rollo*, p. 37.

144 *Id.*

145 *Id.*

146 Department of Labor and Employment Department Order No. 14, Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry, sec. 5.2 (2001).

The specificity requirement for return-to-work orders is reflected in several cases ruled upon by this Court. On numerous occasions, the Court has emphasized that a new assignment must be made to a specific client. A general return-to-work order, without such specificity, is insufficient.

In *Padilla v. Airborne Security Service, Inc.*,[147] the Court ruled that the letters sent by respondents to petitioners, which required the latter to report to Airborne's head office did not suffice.[148] The Court noted that the letters merely required petitioner to report to work and to explain why he had failed to report to the office.[149] The letters did not identify any specific client to which petitioner was to be reassigned. Thus, the letters were, at best, nothing more than general return-to-work orders.[150] Under the circumstances, the Court concluded that the CA gravely erred in ruling that petitioner was not constructively dismissed.[151]

Similarly, in *Ador v. Jamila and Company Security Services, Inc.*,[152] the Court held that petitioner was constructively dismissed after being placed on floating status from May 12, 2012 to April 11, 2013.[153] The Court ruled that the three notices to report for work sent to petitioner were merely general return-to-work orders which did not specify the required details of his posting assignment.[154]

In *Hamid v. Gervasio Security and Investigation Agency, Inc.*,[155] the Court found that the notices to report issued to the petitioner did not state a specific client to which he would be deployed.[156] The notices merely required petitioner to report to the security agency, and were, at best, nothing more than general return-to-work orders which did not toll the running of petitioner's floating status.[157] The Court emphasized that what is required is for the employee to be deployed to a specific client and not merely recalled to the agency's office.[158]

Also, in *Ibon v. Genghis Khan Security Services*,[159] the Court held that respondent's letters, which required petitioner to report back to work and to explain why he failed to report to the office after inquiring about his posting

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147 821 Phil. 482 (2017) [Per J. Leonen, Third Division].
148 *Id.* at 490.
149 *Id.*
150 *Id.*
151 *Id.* at 487.
152 876 Phil. 572 (2020) [Per J. Lazaro-Javier, First Division].
153 *Id.* at 584.
154 *Id.* at 589.
155 926 Phil. 602 (2022) [Per J. Gaerlan, Third Division].
156 *Id.* at 610.
157 *Id.*
158 *Id.* at 609.
159 811 Phil. 250 (2017) [Per J. Mendoza, Second Division].

status were insufficient to refute a finding of constructive dismissal.[160] Such notices were not deemed to be specific notices assigning petitioner to a particular client. As explained by this Court:

> Respondent could not rely on its letter requiring petitioner to report back to work to refute a finding of constructive dismissal. The letters, dated November 5, 2010 and February 3, 2011, which were supposedly sent to petitioner merely requested him to report back to work and to explain why he failed to report to the office after inquiring about his posting status. More importantly, there was no proof that petitioner had received the letters.
>
> In *Tatel v. JLFP Investigation* [], the Court initially found that the security guard was constructively dismissed notwithstanding the employer's letter ordering him to report back to work. It expounded that in spite of the report-to-work order, the security guard was still constructively dismissed because he was not given another detail or assignment. On motion for reconsideration, however, the Court reversed its ruling after it was shown that the security guard was in fact assigned to a specific client, but the latter refused the same and opted to wait for another posting.
>
> A holistic analysis of the Court's disposition in *JFLP Investigation* reveals that: [1] an employer must assign the security guard to another posting within six [] months from his last deployment, otherwise, he would be considered constructively dismissed; and [2] the security guard must be assigned to a specific or particular client. A general return-to-work order does not suffice.
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> In *Exocet Security and Allied Services Corporation v. Serrano* [], the Court absolved the employer even if the security guard was on a floating status for more than six [] months because the latter refused the reassignment to another client, to wit:
>
> > In the controversy now before the Court, there is no question that the security guard, Serrano, was placed on floating status after his relief from his post as a VIP security by his security agency's client. Yet, there is no showing that his security agency, petitioner Exocet, acted in bad faith when it placed Serrano on such floating status. What is more, **the present case is not a situation where Exocet did not recall Serrano to work within the six-month period as required by law and jurisprudence. Exocet did, in fact, make an offer to Serrano to go back to work.** [. . .]
> >
> > Clearly, Serrano's lack of assignment for more than six months cannot be attributed to petitioner Exocet. On the contrary, records show that, as early as September 2006, or one month after Serrano was relieved as a VIP security, Exocet had already offered Serrano a position in the general security service **because there were no available clients requiring positions for VIP security.** Notably, even though the new assignment does not involve a demotion in

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[160] *Id.* at 258.

> rank or diminution in salary, pay, or benefits, **Serrano declined the position because it was not the post that suited his preference, as he insisted on being a VIP Security.** [. . .]
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> . . . .
>
> Thus, it is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of floating status as a case of constructive dismissal, without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post. This is especially true in the present case where the security guard's own refusal to accept a non-VIP detail was the reason that he was not given an assignment within the six-month period. The security agency, Exocet, should not then be held liable.
>
> Applying the foregoing to the present controversy, respondent should have deployed petitioner to a **specific** client within six [] months from his last assignment. The correspondences allegedly sent to petitioner merely required him to explain why he did not report to work. He was never assigned to a particular client. Thus, even if petitioner actually received the letters of respondent, he was still constructively dismissed because none of these letters indicated his reassignment to another client. Unlike in *Exocet Security* and *JFLP Investigation*, respondent is guilty of constructive dismissal because it never attempted to redeploy petitioner to a definite assignment or security detail.[161] (Emphasis in the original; citations omitted)

Thus, based on the foregoing, the Court is compelled to rule that TSI constructively dismissed Andrei. There is no evidence that Andrei was assigned to a specific client during the pendency of the labor case. At most, TSI issued general return-to-work orders, which did not interrupt the duration of Andrei's floating status.

Consequences of a finding of constructive dismissal

Jurisprudence provides that the petitioner would ordinarily be entitled to reinstatement as a consequence of the finding of illegal dismissal.[162] However, there are instances when reinstatement is no longer feasible.[163] In *Hamid v. Gervasio Security and Investigation Agency, Inc.,*[164] citing *Dela Fuente v. Gimenez,*[165] the Court held that reinstatement is no longer feasible (a) when the former position of the illegally dismissed employee no longer

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161 *Id.* at 258–260.

162 *Hamid v. Gervasio Security and Investigation Agency, Inc.*, 926 Phil. 602, 611 (2022) [Per J. Gaerlan, Third Division].

163 *Id.*

164 926 Phil. 602 (2022) [Per J. Gaerlan, Third Division].

165 915 Phil. 517 (2021) [Per J. Zalameda, Third Division].

exists; or (b) when the employer's business has closed down; or (c) when the employer-employee relationship has already been strained as to render the reinstatement impossible.[166] The Court further considered reinstatement to be non-feasible when a "considerable time" has lapsed between the dismissal and the resolution of the case.[167]

Here, the Complaint for illegal dismissal was filed in 2019. Since five years had passed from the time Andrei filed her Complaint against TSI, this Court rules that reinstatement is no longer possible, especially given that Andrei has been specific in asking that she no longer be reinstated.[168] Thus, instead of reinstatement, Andrei is granted separation pay of one month for every year of service until the finality of this Decision, with a fraction of a year of at least six months being counted as one whole year.

Finally, in conformity with prevailing jurisprudence,[169] interest at the rate of 6% per annum from the date of the finality of this Decision until full payment should be imposed on the total monetary award.

FOR THESE REASONS, the Petition for Review on *Certiorari* filed by petitioner Andrei Nicholette Sagarino is **GRANTED**. The Decision, dated July 29, 2022, and the Resolution, dated March 3, 2023, of the Court of Appeals in CA-G.R. SP No. 168601, are **REVERSED**. Accordingly, respondent Toplis Solutions, Inc. is **ORDERED** to **PAY** petitioner Andrei Nicholette Sagarino the following:

(1) Full backwages and other benefits computed from the date petitioner's employment was illegally terminated until the date of the finality of this Decision;

(2) Separation pay computed from the date petitioner commenced employment until the date of the finality of this Decision at the rate of one month's salary for every year of service, with a fraction of a year of at least six months being counted as one whole year;

(3) Attorney's fees equivalent to 10% of the total award; and

(4) Interest of 6% per annum on all the monetary awards from the date of the finality of this Decision until full payment.

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166 *Hamid v. Gervasio Security and Investigation Agency, Inc.*, 926 Phil. 602, 612 (2022) [Per J. Gaerlan, Third Division].

167 *Id.*

168 *Rollo*, p. 23.

169 *See Lara's Gift's & Decors, Inc. v. Midtown Industrial Sales, Inc.*, 929 Phil. 754, 765–767 (2022) [Per J. Leonen, *En Banc*].

The case is **REMANDED** to the Labor Arbiter to make a detailed computation of the amounts due to petitioner Andrei Nicholette Sagarino, which must be paid without delay, and for the execution of this Decision.

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On official business)
HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

(On official business)
JAPAR B. DIMAAMPAO
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice