789 Phil. 477

SECOND DIVISION

[G.R. No. 204620. July 11, 2016]

ROWENA A. SANTOS, PETITIONER. VS. INTEGRATED PHARMACEUTICAL, INC. AND KATHERYN TANTIANSU, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

Failure to comply strictly with the requirements-of procedural due process for dismissing an employee will not render such dismissal ineffectual if it is based on a just or an authorized cause. The employer, however, must be held liable for nominal damages for non-compliance with the requirements of procedural due process.[1]

This Petition for Review on *Certiorari*[2] assails the August 31, 2012 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 122180 that modified the July 14, 2011 Resolution[4] of the National Labor Relations Commission (NLRC). Said Resolution of the NLRC affirmed the April 1, 2011 Decision[5] of the Labor Arbiter that, in turn, granted petitioner Rowena A. Santos's (petitioner) Complaint[6] for illegal dismissal filed against respondents Integrated Pharmaceutical, Inc. (Integrated Pharma) and/or Katheryn Tantiansu (Tantiansu).

Factual Antecedents

Integrated Pharma is a pharmaceutical marketing and distributing company. On February 26, 2005, it engaged the services of petitioner as "Clinician," tasked with the duty of promoting and selling Integrated Pharma's products. Petitioner's work includes visiting doctors in different hospitals located in Makati, Taguig, Pateros and Pasay.

On April 6, 2010, petitioner received a memorandum[7] from Alicia E. Gamos (Gamos), her immediate supervisor and District Manager of Integrated Pharma, relative to her failure to remit her collections and to return the CareSens POP demonstration unit to the office, at a specified time.

On April 19, 2010, Maribel E. Suarez (Suarez), National Sales Manager for Pharmaceutical Division of Integrated Pharma, called the petitioner to a meeting. Suarez informed petitioner that the management discovered that instead of reporting P2.00 as the actual amount of her travelling expense in going to the Fort Bonifacio Hospital, petitioner charged Integrated Pharma P10.00 as and for her transportation expense.

Then in the morning of April 21, 2010, respondents attempted to serve upon petitioner a memorandum[8] denominated as Memo on Padding of Expense Report. It charged petitioner with (ii) attempting to coerce her immediate supervisor to pad her transportation expenses and (ii) insubordination for not following the instructions of her immediate supervisor to report the true amount of her transportation expenses. In the same memorandum, respondents required petitioner to submit a written explanation within 24 hours in "aid [of] investigation."

Petitioner, however, refused to accept said memorandum.

Subsequently, petitioner received through registered mail another memorandum[9] likewise dated April 21, 2010 but already denominated as Termination of Employment. It enumerated five infractions which, allegedly, constrained respondents to terminate petitioner's employment, *viz*.:

> After weighing all the factors on the various infractions you have committed, to wit:
>
> 1. Overstating transportation expenses
> 2. Attempting to coerce your manager to overstate transportation
> 3. Unpleasant attitude towards clients, co-workers and superiors
> 4. Failure to remit collection on time
> 5. Insubordination (e.g., failure to arrive at appointed meeting time, failure to submit reports at designated hour, and, ultimately, refusal to accept the memo asking for a written explanation on the incidents in question after verbally admitting to committing the stated offenses)
>
> and despite considering your length of stay in the company, we have come to a forced conclusion to terminate your employment, x x x[10]

Petitioner thus filed a complaint[11] for illegal dismissal, nonpayment of salary, separation

pay, and 13th month pay, with claims for moral and exemplary damages and attorney's fees.

Ruling of the Labor Arbiter

In a Decision dated April 1, 2011,[12] the Labor Arbiter ruled that respondents failed to comply with the two-notice requirement as the offenses stated in the April 21, 2010 memorandum terminating petitioner's employment do not pertain to the same infractions enumerated in the April 6, 2010 memorandum. Hence, there is no proof that petitioner was properly informed of the charges against her. With regard to the charge of insubordination (specifically her failure to remit her collections and to return the CareSens POP demonstration unit on time), the Labor Arbiter opined that petitioner had already been reprimanded for such offense.

The Labor Arbiter likewise ruled the respondents failed to establish that there was a just cause to terminate petitioner's employment; that petitioner is habitually tardy; and, that petitioner was not entitled to P10.00 travelling allowance or that she pocketed the P8.00 difference. The Labor Arbiter thus held Integrated Pharma liable for illegal dismissal and to pay petitioner separation pay, backwages, unpaid salary, 13th month pay, and attorney's fees. The dispositive portion of the Labor Arbiter's April 1, 2011 Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding respondent [sic] liable for illegal dismissal and nonpayment of salary and 13th month pay. Respondent Integrated Pharmaceutical Inc., is ordered to pay complainant Rowena A. Santos the aggregate amount of Two Hundred Twenty Five Thousand Six Hundred Ninety Eight Pesos and 23/100 (P225,698.23) representing separation pay, backwages, salary for April 11-21, 2010 and 13th month pay for three (3) years, plus ten percent (10%) thereof as and for attorney's fees in the amount of P22,569.82.
>
> All other claims are dismissed for lack of merit.[13]

Not satisfied, respondents appealed to the NLRC. They insisted that petitioner was validly dismissed for cause and with due process of law.

Ruling of the National Labor Relations Commission

In its Resolution[14] dated July 14, 2011, the NLRC sustained the ruling of the Labor Arbiter

that the additional infractions mentioned in the April 21, 2010 memorandum cannot be used against petitioner for lack of prior notice. The NLRC likewise affirmed the ruling of the Labor Arbiter anent the charge of padding of transportation expenses.

Respondents filed a Motion for Reconsideration. In a Resolution[15] dated August 23, 2011, however, the NLRC likewise denied said motion.

Still unfazed by the adverse rulings of the labor tribunals, respondents filed before the CA a Petition for *Certiorari*[16] ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in rendering its July 14, 2011 Resolution.

Ruling of the Court of Appeals

On August 31, 2012, the CA rendered its Decision[17] modifying the NLRC's Resolution. It held that petitioner was not illegally dismissed and, therefore, not entitled to separation pay, backwages, attorney's fees, damages, and 13th month pay. It opined that there are just causes to terminate petitioner's employment because she was always late in district meetings and in the submission of periodical reports, had committed acts of insubordination and dishonesty, and her sales performance was far from satisfactory. The CA nonetheless agreed with the NLRC that respondents failed to comply with the two-notice requirement. The *fallo* of the assailed CA Decision reads:

> WHEREFORE, premises considered, the petition is PARTLY GRANTED. The assailed Decision dated 14 July 2011 of [the] National Labor Relations Commission is MODIFIED in that private respondent was not illegally dismissed and, therefore, the awards of separation pay, backwages, attorney's fees, other damages and 13th month pay are deleted. For failure to comply with the twin notice requirements of due process in effecting the just dismissal of private respondent, petitioner is ordered to pay private respondent the amount of P30,000.00 as nominal damages.
>
> SO ORDERED.[18]

Petitioner filed a Motion for Partial Reconsideration.[19] In a Resolution[20] promulgated on November 5, 2012, however, the CA denied petitioner's motion.

Issues

Feeling aggrieved, petitioner filed the instant Petition imputing upon the CA the following errors:

> I.
>
> THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THERE IS SUFFICIENT PROOF TO SUPPORT THE VARIOUS INFRACTIONS COMMITTED BY PETITIONER SANTOS.
>
> II.
>
> THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE DISMISSAL OF PETITIONER SANTOS WAS WITH JUST CAUSE.[21]

Petitioner contends that the CA erred in deviating from the uniform rulings of the labor tribunals whose findings of facts are binding on the CA. She insists that the CA grievously erred in delving into the factual issues of the case instead of limiting itself with the issue of jurisdiction.

Petitioner denies being habitually tardy. She claims that respondents failed to provide specific instances where her alleged habitual tardiness could be deduced. Petitioner likewise faults the CA in finding her guilty of insubordination since she was already reprimanded for the acts she committed relative thereto. She maintains that she had dutifully abided with all the lawful orders of Integrated Pharma.

As to her alleged dismal performance, petitioner argues that respondent Integrated Pharma has no written policy as to the expected performance of its employees. Hence, it had no basis in concluding that her performance was unsatisfactory.

Lastly, petitioner admits reporting the amount of P10.00 as her fare in going to the Fort Bonifacio Hospital. Nevertheless, she denies overcharging respondents and maintains that she only reported the actual amount she incurred in going to the said hospital. According to petitioner, to maximize her time, she used to take tricycles and pay P10.00 for her fare,

instead of multicabs for only P2.00. After all, respondents neither forbade her from taking tricycles nor denied her claim for P10.00 tricycle fare. In fact, they allowed her to spend P10.00 for travel expenses for quite some time already.

Respondents, on the other hand, argue that petitioner essentially assails the CA's factual findings, which cannot be done in a petition for review on *certiorari*. They point out that the Supreme Court is not a trier of facts and only questions of law can be raised in a petition for review on *certiorari*. Hence, the Decision of the CA finding sufficient proof that petitioner committed various infractions deserves full faith and credence. Respondents contend that these infractions should be taken collectively; not singly or separately. Viewed as a whole, the series of infractions committed by the petitioner constitutes serious misconduct that justifies the termination of her employment. Specifically, respondents claim that petitioner was guilty of habitual absenteeism and tardiness, insubordination, and dishonesty. According to respondents, petitioner was habitually absent as shown by the evaluation reports and affidavits[22] of petitioner's immediate supervisors who stated that petitioner was always late in district meetings and in the submission of required reports. She committed insubordination when she refused to heed to the reasonable instructions of her supervisor to remit her collections and to bring the CareSens POP demonstration unit at the particular time specified by her supervisor. And, petitioner is guilty of dishonesty because she overstated her travel expenses.

Respondents further contend that they did not reprimand respondent in the April 6, 2010 memorandum. Said memorandum is actually the first written notice in effecting termination of employment.

Our Ruling

We dismiss the Petition.

At the outset, we note that the Petition essentially assails the factual findings of the CA. As a rule, this Court does not analyze and weigh again the evidence presented before the tribunals below because it is not a trier of facts.[23] The only issues it can pass upon in a Petition for Review on *Certiorari* are questions of law. In view, however, of the conflicting findings of the labor tribunals and the CA, this Court finds it compelling to make its own independent findings of facts.[24]

Petitioner was guilty of gross and

habitual neglect of duty for being excessively tardy.

Records reveal that petitioner was indeed habitually tardy. She was always late in district meetings and in the submission of her periodic reports. These are borne out by the evaluation[25] conducted by petitioner's former supervisor, Arnelo R. Penaranda, on September 26, 2008 where it was observed that petitioner was "[a]lways late during District Meetings and [in] passing x x x required reports."[26] Correspondingly, in a scale of 1-5 (5 being the highest), petitioner was given a low mark of 1.5 as to punctuality. Despite such rock-bottom mark, however, the result on petitioner's evaluation[27] conducted barely two years later by her new supervisor did not show any sign of improvement. She still failed "to report on time both in the office and during regular field work visits."[28]

The memorandum[29] dated April 6, 2010 also bears out petitioner's lack of deep sense of duty and punctuality. In that memorandum, petitioner was chastised for arriving in the office late in the afternoon on March 22, 2010 when she was given the specific instruction to be at the office in the morning of said date. Petitioner was also late for about 4 ½ hours for her appointment on April 5, 2010. Her payslips also reveal several deductions from her salary due to tardiness and absences.

These pieces of documentary evidence already constitute substantial evidence (or that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion) proving petitioner's habitual tardiness. Her tardiness is so excessive that it already affects the general productivity and business of Integrated Pharma. It has amounted to gross and habitual neglect of her duty, which is a just cause for terminating employment under Article 282 of the Labor Code.

Petitioner was guilty of insubordination.

Petitioner also committed willful disobedience of reasonable and lawful orders of her employer. As a just cause for dismissal of an employee under Article 282 of the Labor Code, willful disobedience of the employer's lawful orders requires the concurrence of two elements: "(1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which she had been engaged to discharge."[30]

Both requisites are present in the instant case. It is clear from the April 6, 2010

memorandum that petitioner was tasked to remit her collections to the office in the morning of March 22, 2010, a Monday. In fact, it was upon her behest that instead of on March 19, 2010, the date when she got her collections, petitioner would make the remittance on Monday morning. Come Monday, however, petitioner arrived in her office late in the afternoon, thereby making it impossible for the respondents to deposit her collections. While petitioner alleged that she attended first to her area of coverage, the fact remains that she wantonly disobeyed the reasonable and lawful orders of her employer to remit her collections *in the morning* of March 22, 2010, the specific time given by her employer. In one case, this Court held that "the employer had the discretion to regulate all aspects of employment, and that the workers had the corresponding obligation to obey company rules and regulations, x x x [Deliberately disregarding or disobeying the rules could not be countenanced, and any justification that the disobedient employee might put forth would be deemed inconsequential. The lack of resulting damages was unimportant, because the 'heart of the charge is the crooked and anarchic attitude of the employee towards his employer. Damage aggravates the charge but its absence does not mitigate or negate the employee's liability.'"[31]

Another instance of petitioner's insubordination was when she did not bring the CareSens SOP demonstration unit to the office at a particular given time. Petitioner does not dispute that respondents instructed her to bring to the office said demonstration unit at 9:00 o'clock in the morning as a fellow Clinician from Batangas would pick it up that same morning. However, petitioner could not provide sensible justification why she failed to arrive at the appointed time. Her failure to come on time without weighty reasons evinces her willful disregard of the clear and simple instructions of her superiors.

Lastly, as early as January 2010 Gamos instructed petitioner to reflect in her expense report the amount of P2.00, which is the actual amount she incurred as transportation expense in going to the Fort Bonifacio Hospital. Petitioner, however, disobeyed her immediate supervisor and continued to reflect the amount of PI 0.00 in her expense reports.

Petitioner is guilty of dishonesty.

Petitioner would also have this Court believe that she actually incurred PI0.00 travel expense in going to the Fort Bonifacio Hospital because she used to take tricycles. She avers that it is faster to take the tricycle because it takes quite a while before multicabs are filled with passengers.

We cannot, however, give credence to petitioner's excuses in light of the result of the investigation Gamos conducted on the matter and petitioner's own admission to Suarez that she overcharged respondents. In her memorandum dated April 13, 2010, Gamos reported to Suarez that the only means of public transportation to Fort Bonifcio Hospital at that time was by taking a multicab. Thus:

> [Petitioner] admitted that ever since she started covering FBH under her former DSM's, she was charging a tricycle fare of P10 on her way to the mentioned [hospital]. Further, she claimed that [in] her previous Expense Reports she was declaring that the means of transportation she regularly take is tricycle *when in fact the only means of regular transportation to FBH is actually a multicab.*
>
> But since I had no service car then, I went to the same route and discovered that there was no tricycle ride since last year on the way to FBH[;] instead available for free to employees and soldiers of Fort Bonifacio were multicabs with routes around the camp. The public or outsiders were requested to pay the P2 amount only as donation for the unit's maintenance and driver's salary and this was confirmed by the guards on the gate when I asked them about it that same day.[32] (Emphasis ours)

In her affidavit,[33] Suarez stated that on April 19, 2010 she, together with Tantiansu, discussed the matter of overcharging with petitioner. On said occasion, petitioner admitted that she overcharged the transportation expense every time she would go to Fort Bonifacio Hospital.

We are not also convinced with the labor tribunals' ratiocination that petitioner should be absolved for overcharging since there is no proof that she is not entitled to PI0.00 travel expense or that she pocketed the difference of P8.00. There is a difference between allotted transportation allowance and actual transportation expense. Thus, to state an amount of actual transportation expense other than the amount actually incurred for transportation is dishonesty. Elsewise put, just because petitioner was allotted P10.00 transportation expense does not mean that she can keep the remainder should she not exhaust the entire amount thereof. Petitioner's act of deliberately misdeclaring or overstating her actual travelling expense constitutes dishonesty and serious misconduct, which are lawful grounds for her dismissal under paragraphs (a) and (c) of Article 282 of the Labor Code.[34] It provides:

> ART. 282. *Termination by employer*. An employer may terminate an employment for any of the following just causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.
>
> xxxx
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

The fact that petitioner had been declaring P10.00 as her actual travelling expense for quite some time cannot be interpreted as condonation of the offense or waiver of Integrated Pharma to enforce its rules. "A waiver is a voluntary and intentional relinquishment or abandonment of a known legal right or privilege."[35] To be valid and effective, the waiver must be couched in clear and unequivocal terms leaving no doubt as to the intention of a party to give up a right or benefit which legally pertains to it.[36] Hence, the management prerogative to discipline employees and impose punishment cannot, as a general rule, be impliedly waived.[37]

Past offense may be taken into consideration in imposing the appropriate penalty.

Petitioner further faults the CA in finding her guilty of insubordination since she was already reprimanded for the acts she committed in relation thereto.

We agree with petitioner that she had already been reprimanded for the infractions stated in the April 6, 2010 memorandum. It undoubtedly dealt with her failure to remit her collections and to return the Caresens POP demonstration unit, at the appointed time. Thus:

> This memo is being issued to reprimand you for an offense you have repeated despite several discussions in the hope that you will correct your bad habit and improve your performance. However, it seems that our pleas have been unheard or disregarded because you continue to commit the same infraction, to wit:[38]

The last paragraph of said Memorandum even contained a warning that a repetition of the

same offense in the future may result in the imposition of stiffer penalty of suspension or even termination.

> Your failure to comply with appointed tasks and schedules shows disobedience and a lack of respect for authority and peers. This is clearly a form of insubordination. We have talked with you time and again to help you realize this offense, but we have hardly seen any improvement. We really hope that you will strive to correct this poor behavior. Otherwise, we will be constrained to impose a suspension that may lead to eventual termination should the same offense happen again.[39]

Hence, petitioner could no longer be punished for said offenses. Nevertheless, petitioner's failure to remit her collections and to return the Caresens POP demonstration unit on time may still be considered in imposing the appropriate penalty for future offenses. In *Philippine Rabbit Bus Lines, Inc. v. National Labor Relations Commission*[40] we held that that:

> Nor can it be plausibly argued that because the offenses were already given the appropriate sanctions, they cannot be taken against him. They are relevant in assessing private respondent's liability for the present violation for the purpose of determining the appropriate penalty. To sustain private respondent's argument that the past violation should not be considered is to disregard the warnings previously issued to him.[41]

As discussed above, petitioner is guilty of dishonesty and serious misconduct. Based on Article 282 of the Labor Code, such offense *may* merit the termination of employment. However, while the law provides for a just cause to dismiss an employee, the employer still has the discretion whether it would exercise its right to terminate the employment or not. In other words, the existence of any of the just or authorized causes enumerated in Articles 282 and 283 of the Labor Code does not automatically result in the dismissal of the employee. The employer has to make a decision whether it would dismiss the employee, impose a lighter penalty, or perhaps even condone the offense committed by an erring employee. In making a decision, the employer may take into consideration the employee's past offenses. In this case, petitioner had been forewarned that her failure to correct her poor behavior would be visited with stiffer penalty. However, she remained recalcitrant to

her superiors' directives and warnings. Thus, respondents "have come to a forced conclusion to terminate [her] employment."[42]

Petitioner was not accorded due process.

But the existence of a just cause to terminate an employment is one thing; the manner and procedure by which such termination should be effected is another. If the dismissal is based on a just cause under Article 282 of the Labor Code, as in this case, the employer must give the employee two written notices and conduct a hearing. The first written notice is intended to apprise the employee of the particular acts or omissions for which the employer seeks her dismissal; while the second is intended to inform the employee of the employer's decision to terminate him.[43] In *King of Kings Transport, Inc. v. Mamac*,[44] this Court elaborated on what should be the contents of the first notice and the purpose thereof. Thus:

> (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.[45]

The employer bears the burden of proving compliance with the above two-notice requirement.[46]

In the present case, respondents presented two *first* written notices (memoranda dated April 6, 2010 and April 21, 2010) charging petitioner with various offenses. Both notices,

however, fell short of the requirements of the law. The April 6, 2010 memorandum did not apprise petitioner of an impending termination from employment. It did not require her to submit within a specified period of time her written explanation controverting the charges against her. Said memorandum did not also specify the company rules allegedly violated by the petitioner or the cause of her possible dismissal as provided under Article 282 of the Labor Code. After elaborating on the two acts of insubordination, said memorandum merely reprimanded petitioner and warned her that a commission of the same or similar offense in the future would be visited with stiffer penalty. It reads:

> This memo is being issued to reprimand you for an offense you have repeated despite several discussions in the hope that you will correct your bad habit and improve your performance. However, it seems that our pleas have been unheard or disregarded because you continue to commit the same infraction, to wit:
>
> 1. On March 19, 2010, late in the afternoon, you informed our VP for operations that you were able to collect some accounts and asked if you could postpone your remittance to the office to Monday the following week. You were asked to report early on Monday morning, so that your remittances may be deposited on the same day. Without notice, you appeared close to 5:00PM that day, thus the office was not able to deposit your remittances anymore. Your explanation that you prioritized regular coverage in the morning is not acceptable. If you had an important appointment that morning/day, you should have taken this up with our VP for operations during your conversation on Friday or even during the weekend prior to Monday morning to allow the office to think of a way to get the remittances from you and be able to deposit them that morning. It was clear to you that you were tasked to bring them to the office during opening hours on Monday, March 22, but you failed to do so.
> 2. Yesterday, you were asked to bring the CareSens POP demo unit to the office at 9:00AM, so that your fellow clinician from Batangas can pick it up for an urgent demo. Again, you agreed, and it was clear to you what time you were expected at the office. However, you arrived at 1:30PM, claiming that you sent text messages today and explaining that you had to go to PAL to cover doctors. While it is important to keep to your itinerary, the specific instruction for you to deviate your morning schedule to deliver the demo unit should have been your priority. If your visit to PAL office was very

> important, you should have brought this up as you were being instructed yesterday. Your failure to surrender the unit to the office resulted in a missed appointment for your fellow clinician, not to mention incurred travel expenses and wasted time and effort. This was not only irresponsible but selfish on your part.
>
> You failure to comply with appointed tasks and schedules shows disobedience and a lack of respect for authority and peers. This is clearly a form of insubordination. We have talked with you time and again to help you realize this offense, but we have hardly seen any improvement. We really hope that you will strive to correct this poor behavior. Otherwise, we will be constrained to impose a suspension that may lead to eventual termination should the same offense happen again.[47]

With regard to the April 21, 2010 memorandum,[48] respondents claim that they attempted to furnish petitioner with a copy thereof, but that petitioner refused to receive the same. However, respondents' bare allegation that they attempted to furnish the petitioner with a copy of the April 21, 2010 memorandum is not sufficient. Proof of actual service is required.[49] Also, the April 21, 2010 memorandum did not afford petitioner ample opportunity to intelligently respond to the accusations hurled against her as she was not given a reasonable period of at least five days to prepare for her defense. Notably, respondents terminated her employment through another memorandum bearing the same date. Moreover, the April 21, 2010 memorandum did not also state the specific company rule petitioner violated or the just cause for terminating an employment. Nothing was likewise mentioned about the effect on petitioner's employment should the charges against her are found to be true.[50]

Lastly, it does not escape our attention that respondents never scheduled a hearing or conference where petitioner could have responded to the charge and presented her evidence.[51] Both the April 6, 2010 and the April 21, 2010 memoranda do not contain a notice setting a particular date for hearing or conference.

In *Agabon v. National Labor Relations Commission*,[52] the Court held that if the dismissal was for cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. However, respondents' violation of petitioner's right to statutory due process warrants the payment of indemnity in the form of nominal damages. The amount of

such damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances. Hence, the CA did not err in awarding the amount of P30,000.00 to petitioner as and by way of nominal damages.

WHEREFORE, premises considered, the instant Petition is hereby DENIED and the assailed August 31, 2012 Decision of the Court of Appeals in CA-G.R. SP No. 122180 is **AFFIRMED.**

SO ORDERED.

Carpio, (Chairperson), Brion, , and *Leonen, JJ.*, concur.
Mendoza, J., on official leave.

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[1] *Agabon v. National Labor Relations Commission,* 485 Phil. 248,281 (2004).

[2] *Rollo,* pp. 3-43.

[3] Id. at 45-52; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Remedios A, Salazar-Femando and Norraandie B. Pizarro.

[4] Id. at 191-197; penned by Commissioner Gregorio O. Bilog ill and concurred in by Presiding Commissioner Alex A, Lopez and Commissioner Pablo C. Espiritu, Jr.

[5] Id. at 177-189; penned by Labor Arbiter Vensranda C. Guerrero.

[6] Id. at 150-152.

[7] Id. at 363.

[8] Id. at 380.

[9] Id. at 382.

[10] Id.

[11] Id. at 150-152.

[12] Id. at 177-189.

[13] Id. at 188-189.

[14] Id. at 191-197.

[15] Id. at 209-210.

[16] Id. at 70-149.

[17] Id. at 45-52.

[18] Id. at 52.

[19] Id. at 56-68.

[20] Id. at 54-55.

[21] Id. at 23.

[22] Id. at 349-358.

[23] *Diokno v. Hon. Cacdac*, 553 Phil. 405,428 (2007).

[24] *InterOrient Maritime Enterprises, Inc. v. Creer III*, G.R. No. 181921, September 17, 2014, 735 SCRA 267, 281.

[25] *Rollo*, pp. 349-351.

[26] Id. at 349.

[27] Id. at 353-355.

[28] Id. at 354.

[29] Id. at 363.

[30] *R.B. Michael Press v. Galit,* 568 Phil. 585, 597-598 (2008).

[31] *Glaxo Wellcome Phils., Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA*, 493 Phil. 410, 424-425 (2005)

[32] *Rollo*, p. 360.

[33] Id. at 364-365.

[34] *San Miguel Corporation v. National Labor Relations Commission*, 256 Phil. 271, 276 (1989).

[35] *R.B. Michael Press v. Galit*, supra note 30 at 596.

[36] Id.

[37] Id.

[38] *Rollo*, p. 363.

[39] Id.

[40] 344 Phil. 522 (1997).

[41] Id. at 530-531.

[42] *Rollo*, p. 382.

[43] *University of the Immaculate Conception v. Office of the Secretary of Labor and Employment,* G.R. Nos 178085-178086, September 14, 2015.

[44] 553 Phil. 108 (2007).

[45] Id. at 115-116.

[46] *University of the Immaculate Conception v. Office of the Secretary of Labor and Employment*, supra note 43.

[47] *Rollo,* p. 363.

[48] Id. at 380.

[49] *Electro System Industries Corporation v. National Labor Relations Commission*, 509 Phil. 187, 192-193 (2005).

[50] *Dr. Maquiling v. Philippine Tuberculosis Society, Inc.*, 491 Phil. 43, 57-58 (2005).

[51] Pertinent portion of Section 2, Rule I, of the Implementing Rules of Book VI of the Labor

Code provides: (d) hi all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just cases as defined in Article 282 of the Labor Code:

> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

[52] Supra note 1.

Date created: March 22, 2018