CENTURY APPLIANCE CENTER, INC., AND/OR PAUL K. YAP-PRESIDENT, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION AND JOSEPH BRYAN A. MIPHRANUM, RESPONDENTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before this Court is a petition for certiorari[1] under Rule 65 of the Revised Rules of Court filed by petitioner Century Appliance Center Inc., assailing the resolution[2] dated September 30, 2010 issued by public respondent, 8[th] division of the National Labor Relations Commission Cagayan de Oro City. The said resolution reversed the findings of the labor arbiter who dismissed the private respondent's complaint for lack of merit.

The facts as borne by the records are as follows:

In November of 2007, private respondent, Joseph Bryan A. Miphranum was hired by petitioner company, Century Appliance Center Inc., to be its marketing manager. On November 28 of the following year, Century Appliance thru one of its senior officers Catherine Cafe, issued a memorandum (MEMO BS 08-11-1936)[3] addressed to Miphranum as marketing manager and to Miphranum's key accounts officers Mr. Noel Sanoy and Ms. Sophia San. The memo issued guidelines in the submission of weekly reports, itinerary reports, sales and collection reports as well as procedures for requisition and replenishment. Included in the memo was a note specifically addressed to Miphranum which read:

> "Should stay always in the Office, however if there are certain instances that need to be attended very importantly outside the Office, you must inform first the Head Office regarding the matter."

On March 20, 2009, Century Appliance thru its operations manager, Venice Portugaliza, sent a memo (MEMO EMP 09-03-141014)[4] to Miphranum directing him to explain why no disciplinary action should be imposed upon him for failing to notify his superiors of his absence, during the period of January 15-17, 2009. The company also noted that he filed his leave only after he incurred the said absence. Further, he was also reproached for having left the office on several occasions, without permission, during office hours to attend to personal matters.

In a letter[5] dated March 25, 2009, Miphranum explained that he had always informed his superiors of his absences by sending them text messages on the day of his absence or even the day before. He recalled that on previous occasions he sent his text messages to his superior, Mrs. Figuracion, who would almost always reply to his text messages. After she was replaced, he then sent notice by text message to Ms. Jennifer Eno and/or Ms. Catherine Cafe. However, he rarely received a reply from them but he presumed that the messages were received. With regard to the filing of leave of absences, Miphranum claimed that it was common practice for the employee to file his leave of absence upon returning to work and that such practice was never prohibited. Finally, on the

matter of leaving his assigned work without permission, Miphranum denied the same noting that no specific dates and circumstances were given and as such he could not sufficiently explain the said charges.

On March 27, 2009, Portugaliza, sent a second memo (MEMO EMP 09-03-141069)[6] to Miphranum warning him that he had committed: a serious offense by failing to inform his supervisor of his absence, defined and penalized under pages 18 and 20 of the House Rules and Regulations, and; a grave offense when he left his assigned work without proper permission, defined and penalized under pages 16 and 20 of the same rules. He was reminded that the rules require that employees must advise and inform their supervisors or department heads, in case they will be unable to report for work, at least one day before or on the day itself, otherwise the absence shall be deemed unauthorized. He was further advised that sending text messages is not a reliable method of informing his superiors as the messages might not be received or read in a timely manner. Lastly, Miphranum was directed to inform or call his supervisors directly in case of future instances wherein he would be unable to report for work or when he needed to leave the office. Miphranum filed a reconsideration letter[7] reiterating that he had substantially complied with the rules by informing his superiors thru text messages.

On March 30, 2009 another memo (MEMO EMP 09-03-141073)[8] was sent to Miphranum directing him to explain why no disciplinary action should be imposed upon him for failing to notify his superiors of his absence when he failed to report for work on March 14, 2009. In his April 4, 2009 reply[9], again Miphranum proffered the same explanation: that he informed his supervisors thru text messages and that he presumed that the messages were received.

A fourth memo (MEMO EMP 09-04-141224)[10] was sent to Miphranum on April 7, 2009, this time suspending him for a period of three (3) days. Century Appliance stated that Miphranum had committed the offense of “incurring unauthorized absence”, as defined and penalized under pages 18 and 20 of the House Rules and Regulations, for his failing to notify his superiors of his absence on March 14, 2009. It was explained that he had already been previously directed to inform or call his supervisors directly instead of merely sending them text messages in case of future instances wherein he would be unable to report for work. Considering that this was a repeated offense, the same warranted a suspension.

On April 17, 2009, a memo (MEMO EMP 09-04-141277)[11] was again sent to Miphranum directing him to explain why no disciplinary action should be imposed upon him for failing to ask permission from his superiors when he left work early last March 19, 2009. Further, he was directed to explain his insufficiency in performing his work as enumerated below:

- Failure to hit the target on furniture sales during the period from August 2008 to March of 2009. Failure to hit the target on billboard sales during the period from February to March of 2009.

- Failure in pulling out units from Citi Appliance and Wilkris dealers who have outstanding accounts.

- Failure to monitor and collect from the hanging account of Wilkris Appliance.

In his answer[12] dated April 22, 2009, Miphranum denied the first allegation and stated that before he left the

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office on March 19, 2009 he had sought permission from Ms. Germelyn Cuyos who was his direct supervisor. On the charges of inefficiency, he said that, aside from external factors beyond his control, his failure to effectively perform his functions was due to the instructions contained in the guidelines issued on November 28, 2008, wherein he was directed that he "Should stay always in the Office". He claims that the order had "confined and restricted" him from performing his job functions. Regarding the pull-out of stocks from Citi Appliance and Wilkris Appliance, Miphranum countered that he proposed the pull-out of stocks in both companies as early as October of 2008, unfortunately the company only acted on the proposal in March of the following year. As to the collection of outstanding accounts, Miphranum claimed that he, along with his key account officers had repeatedly tried to collect the said accounts but unfortunately the companies were still delinquent in their payments.

The sixth memo (MEMO EMP 09-05-141541)[13] which contained the subject matter: "FIRST NOTICE, MEMO TO EXPLAIN WITH NOTICE OF HEARING", came on May 5, 2009. Said memo stated that per company records and reports, Miphranum was negligent of his duties and responsibilities to the company. His acts and omissions inimical to the interests of the company were enumerated as follows:

- For the Zero sales in Funiture in the month of April (2009);

- For the Zero client in LS Ads in the month of April (2009);

- Failure to monitor or take immediate action on the overdue account of Citi Appliance dealer for the month of March, which is Php 8,940.00, overdue for 43 days;

- Also for the overdue account of Sugni amounting to Php 62,625.00, Consigned for six (6) months and yet only one (1) unit was sold out and you failed to take action on this.

- Failure to attend the meeting last May 4, 2009, when you know that every Monday is our meeting unless you were advised that no meeting should be held.

- You were even late in reporting for duty on the same day and failed to inform the Head Office immediately about your being late, it was only during the call of Germelyn Cuyos when she had known that you were late through Lourdes Mansuguin. When you called the head office, you said that you were already in Samal Island accompanying your kids, and that you could no longer attend the meeting. It was recalled that you have filed for leave last April 30, 2009 that you will be absent on May 2, 2009 since as you said you will accompany your children in travel and you were granted. However on May 2, 2009, you sent an e-mail and you eventually called

Germelyn Cuyos to disregard your leave since you reported for duty that time. But it was known that you were already at Samal on May 4, 2009.

- Failed to go over or check the reports submitted by your subordinates, when these were submitted to you for perusal before forwarding in the Head Office and you knew that you have to sign these reports before submission. It was found out that the reports contained errors and mistakes. This was revealed during the meeting dated May 5, 2009 at 10:30 in the morning. It seems that you have no knowledge at all with these reports submitted. When you were asked to explain about the report, you were not sure with your answers through your phrases such as "I think", "siguro", which merely implied your hesitations,

- As similar to your misdeeds in the past, you have consistently and repeatedly shown your disrespect to the undersigned and your co-employees much worse, the blatant disregard of the company rules and regulations, which you yourself should repose being an employee entrusted with the company's confidence.

Miphranum was directed to explain in writing, within five (5) days from receipt, why no disciplinary action should be imposed upon him in connection with the foregoing acts of misconduct. The memo also notified him of an investigative hearing to be held on May 16, 2009 at 1:30 in the afternoon at the Davao Central Warehouse Club Inc. Miphranum filed his answer[14] on May 9, 2009. In reply to the first and second charges, Miphranum again attributed the fact of his inefficiency to the "Should stay always in the Office" order issued to him in November of 2008. For the third and fourth charges, he said that the Citi Appliance account had an approved payment term of 90 days and as such the account was still in current status and therefore not overdue. As for the Sugni account, Miphranum claimed that he had always requested for a budget to travel to be able to monitor and collect overdue payments from Sugni Appliance but unfortunately the company denied all requests for travel. In answering the next two charges, Miphranum explained that he was already late coming to work on May 4, 2009, and since per company policy tardiness will be considered absence, he decide to take a leave of absence. However before leaving he claimed that he inquired from Mr. Sanoy if there was a meeting on that day, to which the latter replied that there was none. He insisted that he had no intention of being absent from the regular meeting. As for the seventh charge, Miphranum denied that he did not check the reports before forwarding them to the head office. Finally, Miphranum argued that he had never shown any disrespect for his superiors.

On May 18, 2009, Century Appliance sent a revised memo (MEMO EMP 09-05-141689)[15] which contained the exact contents of the previous memo except that the hearing was rescheduled on May 19, 2009 at 9:30 in the morning. The investigation and hearing were conducted as scheduled on May 19, 2009. On May 25, 2009, Century Appliance issued its Final Notice of Dismissal[16], the text of which is quoted as follows:

"FINAL NOTICE OF DISMISSAL

> After a thorough investigation and examination of all the evidence, evaluations and reports submitted on hand, including your letters/replies of explanation, you are found guilty of committing the following acts:

- For incurring an unauthorized absence on March 14, 2009 (defined and penalized in pages 18 and 20 of the

House Rules and regulations;

- For taking under-time last March 19, 2009 without asking permission or informing the Head Office ahead of time thereby leaving the assigned task/work unaccomplished (as defined and penalized in pages 16 and 20 of the House Rules and Regulations)

- Failure to reach the sales quota of Furniture and Billboard clients for the following months:

FURNITURE BILLBOARD

1. August 2008 1. February 2009
2. September 2008 2. March 2009
3. October 2008
4. November 2008
5. December 2008
6. January 2009
7. February 2009
8. March 2009

- Failure to facilitate the pulling out of units from Citi Appliance and Wilkris dealers who still have huge hanging accounts;

- Failure to monitor the account of Wilkris Appliance and failure to solve and collect his account;

- For zero sales in Furniture in the month of April 2009;

- For zero sales in LS Ads in the month of April 2009;

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- Failure to monitor and take immediate action on the overdue account of Citi Appliance dealer in the amount of Php 8,940.00 for the month of March which has been overdue for a period of 43 days;

- Failure to attend the meeting last May 4, 2009 despite knowledge thereof and taking time off instead in going to Samal Island;

- Failure to check and ensure the accuracy of the reports submitted by your subordinates which were subsequently exposed during the meeting held on May 5, 2009 to have contained errors and your seeming unfamiliarity and inadequacy of knowledge of the same.

- Repeated disrespect to the undersigned and co-employees and the blatant disregard of company rules and regulations.

> No. 11 is more or less summarized as follows:
>
> - Despite being told to stay at the office where your presence is very needed, you insisted in going out of the premises without permission.
>
> - Despite the denial of your request to go out of the office, you disobeyed and defied the same by going outside the premises to attend to your personal needs over the interest of the company
>
> - Incurring of unauthorized absences and your practice of leaving the office prior to the time of dismissal.
>
> As you are very well aware that the position you hold is one of trust and confidence, the repeated infractions, violations you have committed and the inefficiency you have displayed have gravely affected the company much less its profitability.
>
> Such acts cannot be condoned as it is inimical to the company's interest and set a bad example to others. As such, we regret to inform you that your employment with the company is hereby deemed terminated effective immediately upon receipt of this notice."

Aggrieved with his dismissal from employment, Miphranum filed a complaint for illegal dismissal with money

claims before the Labor Arbiter who, in a decision[17] dated February 26, 2010, dismissed the same for lack of merit, the dispositive portion of which reads:

> "WHEREFORE FOREGOING PREMISES CONSIDERED, judgment is hereby rendered DISMISSING the complaint for illegal dismissal for lack of merit.
>
> However, in the absence of proof to the contrary, herein respondents are held liable to pay and are further directed to immediately release to the complainant his unpaid salary or exit pay covering the period May 16-30, 2009.
>
> All other money claims not hereto awarded are considered denied for lack of merit.
>
> SO ORDERED."

Dissatisfied with the Labor Arbiter's disposition, Miphranum appealed to the NLRC who, after reviewing the facts of the case and the pieces of evidence adduced by the parties, reversed the Labor Arbiter's ruling and found Miphranum to have been illegally dismissed per its Resolution[18] of September 30, 2010:

> "WHEREFORE, premises considered, finding the appeal of complainant-appellant Joseph A. Miphranum meritorious, the decision dated February 26, 2010 of the Labor Arbiter is reversed and set aside. A new one is entered finding complainant Joseph A. Miphranum illegally dismissed and ordering respondents Century Appliance Center Inc., and Paul K. Yap solidarily liable to pay Miphranum separation pay and back wages, inclusive of all benefits due him, subject to computation at the time of the execution of this decision. Further, respondents are ordered to pay complainant unpaid wages covering the period from May 11 to 31, 2009 in the amount of Php31,923.08 and attorney's fees equivalent to ten (10) percent of the money award. All the rest of the money claims are dismissed for lack of merit.
>
> **SO ORDERED."**

The motion for reconsideration filed by Century Appliance was likewise denied prompting the filing of the instant petition before this Court. Petitioners alleged that:

"THAT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION:

"A) WHEN IT HASTILY REVERSED THE DECISION OF LABOR ARBITER ELMER PASION AND INSTEAD DECLARED THAT THE DISMISSAL OF BRYAN MIPHRANUM IS ILLEGAL, WITHOUT ANY BASIS AND CONTRARY TO ALL EVIDENCE ON RECORD;

"B) WHEN IT AWARDED ALL THE MONEY CLAIMS OF [MIPHRANUM] WITHOUT ANY PREMISE AS TO ITS BASIS, THEREBY MANIFESTLY DISPLAYING GRAVE ABUSE OF DISCRETION IN EXERCISING THEIR ADJUDICATORY POWERS; and

"C) WHEN IT DECLARED PAUL K. YAP AS SOLIDARILY LIABLE WITH RESPONDENT COMPANY, CENTURY APPLIANCE CENTER, INC."

The underlying question needed to be answered is whether or not the dismissal by Century Appliance of Miphranum was for just causes. A perusal of the final notice of dismissal shows that Miphranum was dismissed from employment based on “loss of trust and confidence” due to: his alleged gross inefficiency in the performance of his functions for failing to hit target sales; and, gross negligence or habitual neglect of duty resulting from his alleged absenteeism and taking of under-time from work without permission from his superiors.

In its decision, the labor arbiter ruled that based on the evidence, the dismissal was for just causes. The labor arbiter considered the series of memos and replies between Century Appliance and Miphranum to be sufficient evidence showing his habitual commission of offenses which when taken in its totality can be a gauge of an employee’s fitness for continued employment[19]. On the other hand the NLRC reversed the decision of the labor arbiter saying that the dismissal of Miphranum was illegal. In its resolution, the NLRC stated that they had not found anything of substance on the alleged infractions of Miphranum. To the charges of absenteeism, the NLRC ruled that Miphranum was able to sufficiently explain the various absences without leave charged against him. As to the accusation of inefficiency, the NLRC declared that such accusations against Miphranum had no factual basis as there were no particular documents presented to substantiate such accusation. The commission ruled that the charges were no more than accusations, which in itself cannot take the place of proof.

After a judicious review of all the documents submitted to this Court, we find that the labor arbiter was correct in ruling that there were valid grounds for Miphranum’s termination from employment.

In the charge of absenteeism, we noted that Miphranum was particularly charged with the serious offense of incurring unauthorized absences defined in page 18 of the company’s house rules and regulations[20]. As found in the facts outlined above, petitioner company sent Miphranum two memorandums, MEMO EMP 09-03-141014[21] and MEMO EMP 09-03-141073[22], each citing an instance wherein Miphranum failed to inform his supervisors of his absence, along with the reasons and possible duration of his absence. The absences first occurred in January 15-17, 2009 and repeated on March 14, 2009 despite earlier warnings. In the first memo[23] sent to Miphranum, petitioner company reiterated that the rules required that employees must advise and inform their supervisors or department heads, in case they will be unable to report for work, at least one day before or on the day itself, otherwise the absence shall be deemed unauthorized. Miphranum was even advised to call his supervisors directly. Miphranum admitted to being absent on the cited days but denied his superiors were not informed. In his letter[24] dated March 25, 2009, Miphranum explained that he had informed his superiors thru text messages. He said that on past occasions wherein he would be absent from work, he sent his text messages to his supervisor, Mrs. Figuracion, who confirmed her receipt by replying to the said messages. When Mrs. Figuracion was replaced, he then sent notice of his absences by text message to Ms. Jennifer Eno and/or Ms. Catherine Cafe. However, he rarely received a reply but nevertheless he presumed that the messages were received. Miphranum claims that he had substantially complied with the house rules and regulations by informing his supervisors thru text messages.

We are not convinced; it is not only logical but more common to human experience to assume that a text message was not received or remains unread when the recipient did not reciprocate with a reply. Since by his past experience his previous supervisor would reply to his text messages to confirm them, it would be inconsistent to assume that his new supervisors received his messages notwithstanding the absence of a reply for confirmation. Further, he was already advised to call his supervisors directly in case he will be unable to report for work, but surprisingly no call was made. Moreover, Miphranum failed to present any evidence to prove that he actually sent text messages to his superiors. No certification from the telecommunications company was presented nor was his cellphone ever presented for verification. Miphranum’s failure to inform his superiors was simply due to his own negligence. In fact, he recognized his shortcomings in his reconsideration letter[25] dated April 4, 2009 when he

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said: “In fact you suggested that I should call if warranted. At most probably, there was a lapse in the procedure in getting permission”. Failing to present evidence that he did indeed send text messages to inform his superiors and having been previously ordered that he should call his supervisors directly instead of sending text messages, we cannot subscribe to Miphranum’s contention that he had substantially complied in informing his supervisors of his absence. As a result, his absences were correctly considered unauthorized.

On the charge of inefficiency, Miphranum was accused of failing to hit target quotas from the period of August 2008 to March 2009 and for zero sales in the month of April 2009. His failure to reach target quotas was first brought to his attention by Century Appliance in a memo (MEMO EMP 09-04-141277)[26] dated April 17, 2009. In his reply[27] dated April 22, 2009 he explained:

> “The attainment and non-attainment of targets are influenced not only internal factors but also likewise outside factors that the employees and the company have no control of it. The economic crisis has even an effect on it just to give an example.
>
> It is however of worthy to note that in your MEMO BS 08-12-1948, the undersigned was instructed that “He should stay always in the office.” The conditions that were set forth therein have clamped the undersigned to effectively perform his functions. You have indeed confined and restricted the undersigned from performing among his job functions.”

Similarly, for the accusations of zero sales contained in the memo[28] dated May 5, 2009, Miphranum gave the same argument:

> “It may sound repetitive, but these charges were exhaustively answered by the undersigned in his reply memo dated April 22, 2009. Further to that however, it may be recalled that you issued also a memorandum dated (sic) enjoining the undersigned TO ALWAYS STAY in the office, the said memo is copied hereunder for your immediate reference:
>
> Xxx
>
> Note: For Bryan Miphranum
>
> “Should stay always in the Office, however if there are certain instances that need to be attended very importantly outside the Office, you must inform first the Head Office regarding the matter.”
>
> Xxx
>
> Expectedly, being in the confines of the four corners of the office affected me of my performance which you are charging me now.”

In both instances, Miphranum admitted to the charges of apparent inefficiency for being unable to reach the quota as required of managers like him, but he blamed the restrictive guidelines issued by Century Appliance in its memorandum (MEMO BS 08-11-1936)[29] to be the cause of his failures. Having clearly admitted his inefficiency in his letter replies to Century Appliance, We find that the need for particular documents to be presented to substantiate the accusation of zero sales and missed target quotas, as insisted by the NLRC, to be unnecessary.

Equally, We find the contention of Miphranum untenable. The Court finds no reason why the aforementioned memorandum would restrict Miphranum from performing his work. A simple reading would show that the memorandum did not forbid Miphranum from leaving the office but merely required him to first inform his superiors in case he needed to leave the office to attend to his work related activities. Further, the said memorandum was issued in November of 2008. However as stated in the memo of April 17, 2009 (MEMO EMP 09-04-141277)[30] Miphranum's failure to hit target quotas started as early as August 2008 or three months before the supposed "restrictive" memo was issued. We find Miphranum's justifications for his lack luster performance deserve scant consideration.

Concerning the charges of disrespect to his superiors, Miphranum denied showing any disrespect to his superiors at any time. After reading each reply letter submitted by Miphranum We find that not only was he disrespectful to his superiors, but the tenor of his replies revealed his overbearing treatment of his superiors, if not his total arrogant and inappropriate attitude. Being a manager entrusted with the full trust and confidence of his employer, Miphranum should have been a role model for his co-employees. He should have exercised humility and professionalism in addressing his superiors whether or not he was guilty of the infractions called upon him to explain. However in his letter reply[31] dated March 25, 2009, instead of answering the memo to explain in a humble and straightforward manner, Miphranum resorted to bragging about his contributions to the company and "name-dropping" to wit:

> "The undersigned even made his own job descriptions and scope of duties and responsibilities as requested by the very person who hired him, no less than the owner of the company, Mr. Paul K. Yap Jr.,"

Finding no relevance between the said declaration and his explanation to the charge of leaving assigned work without proper permission, We can only conclude that such statement was no less than an attempt by Miphranum to intimidate his supervisors with the fact that he personally knew the company president. Likewise, in his letter reply[32] dated April 22, 2009, Miphranum, instead of humbly addressing the issues, he again arrogantly enumerated his contributions to the company. Finally, in his letter reply[33] dated May 9, 2009, Miphranum not only accused his supervisor of setting him up, but also he told her how to do her job:

> "Needless to say that it was a set-up, indeed you have taken advantage of using against me the data that I have reported to you during the meeting. x x x
>
> x x x
>
> Moreover, it is of noteworthy to remind you being our supervisor that it had never occurred in all of our meetings that you have practiced taking down minutes and distributes the same to the concerned attendants, even merely for record purposes."

Ironically a fish is caught by its mouth. Based on the evidence of Miphranum's letters to his superiors, clearly Miphranum did not accord his superiors with the utmost respect due to them.

Finding Miphranum to be guilty of the aforementioned charges, Century Appliance had sufficient grounds for terminating Miphranum based on loss of trust and confidence. "Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer.[34]"

Being the Marketing manager of Century Appliance, Miphranum was charged with the administration of the whole marketing department whose purpose was to ensure the increased profitability of the company thru the promotion and sales of the company's products, services and brand. With such responsibility, there is no question as to the trust and confidence afforded to him by Century Appliance. Failing to accomplish the responsibilities required by his position for almost nine (9) consecutive months was sufficient ground for Century Appliance to terminate his services on the ground of loss of trust and confidence as his continued employment would be patently inimical to their interest. As employer Century Appliance "has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers."[35]

It has been consistently held that "an employer has a distinct prerogative and wider latitude of discretion in dismissing a managerial employee who performs functions which by their nature require the employer's full trust and confidence. As distinguished from rank and file personnel, mere existence of a basis for believing that a managerial employee has breached the trust of the employer justifies dismissal. Loss of confidence as a ground for dismissal does not require proof beyond reasonable doubt as the law requires only that there be at least some basis to justify it".[36]

Finally, leaving no stone unturned, We come to the imputation of bad faith alleged by Miphranum against Century Appliance President Paul Yap. In his position paper with the labor arbiter, Miphranum alleged that the cause of his dismissal was actually due to the ire of Paul Yap against him. During his employment, Miphranum narrated that Paul Yap sought his assistance in handling matters concerning Paul Yap's personal relationship with a certain Allen Jane de Vera. Miphranum, in one of his meetings with Ms. de Vera, supposedly accidentally revealed the true identity of Paul Yap who was allegedly going by the name "Raymund Tan". It was for this cause and after which that Miphranum insists that Paul Yap orchestrated his dismissal. Reviewing the evidence, We find no instance showing that Mr. Paul Yap had played a part much less orchestrated Miphranum's dismissal. In the case of Wensha Spa Center, Inc., v. Yung[37] the Supreme Court ruled that: "To sustain such a finding (of bad faith), there should be an evidence on record that an officer or director acted maliciously or in bad faith in terminating the services of an employee." Miphranum failed to present any evidence to show Mr. Paul Yap's hand in his dismissal. In fact, in Miphranum's letter[38] reply to the first issued memo (MEMO EMP 09-03-141014)[39], Miphranum stated that it was even Mr. Yap who had clarified with his supervisors that his leaving the office was consulted with Mr. Ressureccion, to wit:

> "On February 10, 2009 meeting with you and Mr. Paul K. Yap, Jr. transpired. One of the topics was your allegation to the undersigned for unauthorized field transactions. At the end of the meeting it was made clear by Mr. Yap the undersigned had consulted the matter of vehicle registration procedures with Mr. Raul

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Ressurection."

If indeed Mr. Paul Yap was bent on dismissing Miphranum, then why help him by explaining his infractions. Mr. Yap could have easily just terminated Miphranum at the point when their special relationship as confidants turned "sour" in September 2008. Mr. Yap's behavior of clearing Miphranum of his infraction runs contrary to the allegation of bad faith against him. Obviously, Miphranum's allegations concerning his special relationship with Mr. Yap should have and in fact has nothing to do with his conduct as employee and manager of the company. It is clear that all the subject memos were issued by Miphranum's supervisors and officers without an iota of evidence that they were orchestrated at all by Mr. Paul Yap. A special relationship with the owner of the company can never justify inefficient and inappropriate conduct of management by its employee no matter how close their relationship might be. It will just ruin the "bond" and eventually the relationship as employer and employee. We thus find the allegations of bad faith without merit.

The special civil action for certiorari under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The petition for certiorari is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions which acted without or in excess of its or his jurisdiction or with grave abuse of discretion. "Grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[40]

In the present case we find that the NLRC had acted without or in excess of its jurisdiction when it erroneously disregarded the clear evidence of Miphranum's admissions and reversed the decision of the labor arbiter when it issued its Resolution[41] of September 30, 2010.

Wherefore, the petition for certiorari is hereby GRANTED. The assailed September 30, 2010 resolution of the 8[th] division of the National Labor Relations Commission, Cagayan de Oro City in NLRC CA No. MAC-05-011470-10 (RAB-11-07-00707-09) is REVERSED and SET ASIDE. Resultantly, the decision of Labor Arbiter Elmer V. Pasion dated February 26, 2010 is REINSTATED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

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[1]

Rollo, p.4

[2] Rollo, pp. 35-44.

[3] Rollo, p. 113-114

[4] Rollo, p. 115

[5] Rollo, pp. 116-118

[6] Rollo, p. 119

[7] Rollo, p.122

[8] Rollo, p. 120

[9] Rollo, p. 121

[10] Rollo, p.124

[11] Rollo, p. 125

[12] Rollo, p. 126

[13] Rollo, p. 131

[14] Rollo, p. 133-136

[15] Rollo, p. 137

[16] Rollo, p. 139

[17] Rollo, pp. 144-153

[18] Rollo, pp. 35-45

[19] Valiao v. CA, G.R. No. 146621, July 30, 2004

[20] Rollo, p. 91

[21] Rollo, p. 115

[22] Rollo, p. 120

[23] Rollo, p. 119

[24] Rollo, pp. 116-118

[25] Rollo, p.122

[26] Rollo, p. 125

[27] Rollo, p. 126

[28] Rollo, p. 126

[29] Rollo, pp. 113-114

[30] Rollo, p. 125

[31] Rollo, p. 117

[32] Rollo, pp. 126-127

[33] Rollo, p. 135

[34] Jerusalem v. Keppel Monte Bank, G.R. No. 169564, April 6, 2011

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[35] Deles, Jr. v. National Relations Commission, G.R. No. 121348, March 9, 2000

[36] Reyes- Rayel v. Philippine Luen Thai Holdings Corporation, G.R. No. 174893, July 11, 2012

[37] Wensha Spa Center, Inc., v. Yung G.R. No. 185122, August 16, 2010

[38] Rollo, PP. 116-118

[39] Rollo, p. 115

[40] Julie's Franchise Corp. Judge Ruiz, G.R. No. 180988, August 28, 2009

[41] Rollo, pp. 35-45

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