

**WESTLAKE TOTAL SOLUTIONS, INC./JERRY FOZ SESMUNDO,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
ARMANDO O. CABAGUING, DOMINGO B. ABUDA, RAYMUNDO B.
CINCO AND JEFFREIL D...**

Ponente: BRUSELAS, JR. J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4cddd31b8028/>

BRUSELAS, JR. J.:

Before us is a Petition for Certiorari filed by the petitioners pursuant to Rule 65 against the Decision[1] of the National Labor Relations Commission (NLRC) which modified the Decision[2] of the Labor Arbiter dated 27 August 2013. The dispositive portion of the NLRC decision is herein quoted as follows:

“WHEREFORE, the appeal is partly meritorious and the decision appealed from is MODIFIED in that We AFFIRM the findings insofar as complainants Domingo Abuda, Raymundo Cinco and Jeffreil Alquizar are concerned and with respect to the complaint of complainant Armando Cabaguing, the same is hereby DISMISSED for lack of merit.

SO ORDERED.”[3]

Likewise assailed is the Resolution[4] promulgated on 20 January 2014 which denied the petitioners' motion for partial reconsideration[5] for lack of merit.

The pertinent and relevant facts, as found by the NLRC, are as follows:

Complaints for illegal, constructive dismissal, illegal suspension and monetary claims were instituted by the respondents against the petitioner herein Westlake Total Solutions, Inc. (“Westlake”), a company engaged in the business of providing manpower for housekeeping, maintenance, janitorial and messengerial services for various clients. Respondent Armando O. Cabaguing (“Cabaguing”) was initially hired as an on-call reliever and was later promoted as supervisor of the housekeeping and janitorial staff of Westlake. He was tasked to supervise Westlake's housekeeping and janitorial staff deployed at Soho Central Condominium where the respondents, Domingo B. Abuda (“Abuda”), Raymundo B. Cinco (“Cinco”) and Jeffreil D. Alquizar (“Alquizar”), were assigned.

Westlake received allegations from its staff that Cabaguing neglected his duties as supervisor and there were several complaints that Abuda, Cinco and Alquizar disregarded their assigned tasks and responsibilities but Cabaguing tolerated them and, instead of rectifying the wrong behavior, gave them special treatments. On 17 October 2012, a meeting was called to tackle the complaints lodged against Cabaguing and the other respondents as well as to hear the side of Cabaguing who was placed under preventive suspension effective 25 October 2012, for a maximum of thirty (30) days, while the investigation was being conducted.[6] Meanwhile, Westlake, through its Executive Vice President, Jerry Foz Sesmundo, also charged Abuda, Cinco and Alquizar separately with various infractions; i.e.; for unauthorized absences, discourteous behavior, willful disregard of management directives and improper handling of company property. After their supposed suspension, they reported back for

work but were told that they could not be rehired because there was no vacancy. On 29 October 2012, the respondents filed a complaint for illegal, constructive dismissal, illegal suspension and monetary claims against the petitioners.[7]

The respondents claimed that they were not given the opportunity to explain their side and no proper investigation had been conducted about their alleged infractions or violations of the company rules.

The petitioners countered that the respondents were not dismissed but were merely suspended due to their various infractions. They asserted that it was the respondents, instead, who refused to report for work after the October 17 meeting.

On 27 August 2013, the Labor Arbiter found the petitioners to be liable for illegal dismissal. The Labor Arbiter believed that Cabaguing did not receive the memorandum which purportedly directed him to explain his side vis-a-vis the allegations hurled against him. With respect to the other respondents, the petitioners were found to have failed to prove by substantial evidence the basis of their dismissal.

On appeal, the NLRC found the petitioners' cause to be partly meritorious with respect to Cabaguing. The NLRC pointed out that Cabaguing's averments in his position paper clearly established that he had knowledge of the contents of the memorandum wherein he was directed to submit a written explanation on the allegations against him and that the period of his suspension had been set to a maximum of 30 days. The NLRC found that Cabaguing prematurely filed a complaint for illegal dismissal against the petitioners because the period of his preventive suspension had not yet lapsed. As to the other respondents, their suspension was found to be wanting in factual and legal bases. The NLRC did not find any memorandum issued by the petitioners requiring Abuda, Cinco and Alquizar to explain their alleged infractions before they were meted the penalty of suspension. Further, the NLRC found no record of an investigation allegedly conducted by the petitioners particularly inquiring into the complaints lodged against the said respondents.

Still aggrieved, the petitioners came to us via the instant petition for certiorari[8] on the sole ground, that:

“PUBLIC RESPONDENT NLRC HAS COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING/ISSUING THE NOW ASSAILED DECISION AND RESOLUTION.”

In this petition, the petitioners fundamentally assail the conclusion of the NLRC that upheld the Labor Arbiter's finding that Abuda, Cinco and Alquizar have been illegally discharged after their suspension was found to be without factual and legal bases. The petitioners contend that the respondents have not been dismissed, constructively or otherwise but were merely placed under preventive suspension as an exercise of legitimate management prerogative over the infractions that have been committed in relation to the respondents' employment. They claim that the NLRC gravely erred in concluding that the said respondents were not afforded the opportunity to explain their infractions through proper notice or memorandum. The petitioners further claim that the respondents failed to return to work despite a directive requiring them to do so; hence, the intent to abandon their jobs was manifest.

The instant petition necessarily involves the issue of whether or not there is evidence on record to support the findings of the NLRC that Abuda, Cinco and Alquizar have been illegally suspended and consequently, constructively dismissed in a manner that is against the law.

We have to note here that the appellate court's jurisdiction to review a decision of the NLRC in a petition for certiorari is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision.[9] Likewise, errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari. It is thus incumbent upon

the petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of certiorari will lie.[10]

The NLRC, upon examining the submissions of the parties, found that the failure to reinstate Abuda, Cinco and Alquizar after their suspension amounted to an illegal, constructive dismissal.

We shall look at the circumstances of each of the employee- respondents separately in order to determine whether or not the NLRC had ample bases in declaring all three of them to have been illegally suspended and dismissed unlawfully.

With respect to Abuda, the NLRC relied on his averment that he was merely told verbally of his suspension for 15 days without the proper notice or memorandum. Further, the NLRC noted that the memorandum to explain allegedly sent to Abuda and designated as Annex “K” of the petitioners’ position paper was actually addressed to a certain Carol Aguda and not to Abuda. The petitioners asseverated that Abuda was not actually suspended or dismissed. They adduced copies of the Daily Time Record (DTR)[11] which show that Abuda reported for work during the period that the latter claimed that he was suspended or dismissed. The petitioners further asseverated that Abuda was directed through a memorandum[12] dated 31 October 2012 to submit a written explanation regarding his unauthorized absences.

The NLRC, in affirming the findings of the Labor Arbiter, maintained that the signatures of Abuda on the DTRs adduced by the petitioners were indeed forged. To determine whether or not Abuda was suspended and whether or not he merely failed to report for work for 5 consecutive days, would call for a re-examination of the evidence, which the Court cannot entertain in a certiorari action. Determinations of fact are beyond the ambit of a Rule-65 certiorari petition. To reiterate, the sole office of the writ of certiorari is the correction of errors of jurisdiction and it does not include correction of the NLRC’s evaluation of the evidence or of its factual findings. A party assailing such findings bears the burden of showing that the NLRC totally disregarded an evidence material to the controversy, in order that the extraordinary writ of certiorari will lie.

In the case of Abuda, the NLRC considered all the submissions available and drew its findings and conclusion from them that Abuda was indeed suspended without proper notice or memorandum informing him of the infractions charged against him as well as of the period of his suspension. We also note that the supposed memorandum to explain dated 31 October 2012 allegedly sent by the petitioners to Abuda was drafted after the latter lodged a complaint for illegal, constructive dismissal and illegal suspension and that there is no indication that Abuda actually received the said memorandum.

With respect to Abuda, therefore, it may not be said that the NLRC committed a grave abuse of discretion.

As to Alquizar, we came across a memorandum[13] dated 20 September 2012. He was found to have committed various infractions including improper conduct or acts of disrespect and improper use or handling of company property. The pertinent portion of the said memorandum is worded as follows:

“The above offenses is tantamount to Suspension for fifteen (15) days which will commence on September 21, 2012, and you shall be permanently relieved from your present post at SOHO CENTRAL CONDOMINIUM CORP.

Repetition of same grave offense punishable with Dismissal as per our Code of Conduct shall serve you an immediate Termination from your employment.”

For their part, the petitioners argue that Alquizar was subjected to a floating status for less than a month. They claimed that they directed Alquizar to report for work and its Human Resource (HR) Head Pinky Yu contacted Alquizar and told him to report to Westlake’s office for his re-assignment at PSB. An affidavit[14] was executed

by Ms. Yu declaring that Alquizar even apologized for what he did to the property of Soho and that Westlake directed him to call the HR from time to time but that they eventually lost contact with Alquizar.

A “floating status” requires a dire exigency in the employer's bona fide suspension of operation of a business or undertaking. This may happen when the agency's client does not renew its contract or when the service contract stipulates that the client can request the agency for the replacement of the staff assigned to it even for want of cause. The replaced staff may be placed on temporary “off-detail” if there are no available posts under the agency's existing contracts.[15] As a consequence, the said staff does not receive any salary or financial benefit provided by law. Due to the grim, economic consequences to the employee, the employer should bear the burden of proving that there are no posts available to which the employee who is temporarily out of work, can be assigned. This, the petitioners failed to discharge.

It is gathered that the petitioners intended to put Alquizar under preventive suspension for 15 days. The allowable period of suspension is 30 days, following Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code (Implementing Rules), viz:

“SEC. 8. Preventive suspension. - The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.”

“SEC. 9. Period of suspension. - No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.”

As above-quoted, Section 9 of the said Implementing Rules expressly provides that, in the event the employer chooses to extend the period of suspension, he is required to pay the wages and other benefits due the worker and the worker is not bound to reimburse the amount paid to him during the extended period of suspension even if, after the completion of the hearing or investigation, the employer decides to dismiss him.

The petitioners did not inform Alquizar that they were extending the period of suspension, nor did they pay him his wages and other benefits after the lapse of the 15-day period of suspension and even after the 30th day from the commencement of suspension. Neither did the petitioners issue an order lifting Alquizar's suspension, or any official assignment, memorandum or detail order for him to re-assume his post or another post.

At the time Alquizar joined the other respondents in filing the complaint for illegal suspension, constructive dismissal and monetary claims on 29 October 2012, he had been placed under preventive suspension for more than 30 days. Thus, Alquizar's prolonged suspension, owing to petitioners' neglect to conclude the investigation, had ripened to constructive dismissal.[16]

As for the petitioners' claim that Alquizar refused to heed their directive for him to report back to work, and that they verbally offered him a post but that he never made contact with Westlake, the Court is not persuaded. Alquizar's filing of a complaint for illegal, constructive dismissal and illegal suspension, along with a prayer for reinstatement, clearly indicates that he did not abandon his work. It is a settled rule that mere absence or failure to report for work is not enough to amount to abandonment of work.[17]

In Alquizar's case therefore, the NLRC had ample bases to affirm the Labor Arbiter's findings. When supported by substantial evidence, factual findings of the NLRC affirming those of the Labor Arbiter, both bodies being deemed to have acquired expertise in matters within their jurisdictions, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on the Court.[18]

We found no grave abuse on the part of the NLRC in its exercise of discretion because we saw substantial proof that supported the labor tribunal's conclusion. In affirming the Labor Arbiter's decision, the NLRC relied on the evidence submitted by the parties, the law and jurisprudence on the matter. It did not conclude out of thin air. With respect to Abuda and Alquizar, the petitioners failed to establish that the NLRC exercised its power arbitrarily or despotically, by reason perhaps of passion, prejudice, or personal hostility.

Lastly, we find Cinco's case to be comparable with the case of Cabaguing. Cinco maintained that his suspension was illegal and that it ripened into an illegal, constructive dismissal.

In the case of Cinco, the NLRC gravely erred in declaring him to have been constructively dismissed, much less, illegally suspended.

Cinco's second offense of disrespect to a superior consequently caused Westlake to suspend him for 15 days, starting from 24 October 2012.[19] Prior to this suspension, Cinco had been meted the penalty of reprimand for the same offense through a memorandum dated 20 September 2012[20]. It was clearly stated in the earlier memorandum that 'repetition of the same offense will mean suspension for 15 days from service'. Thus, Cinco was fully apprised of a possible suspension should he disrespect a superior again or commit the same offense.

From the foregoing, we do not view Cinco's suspension to be illegal. He was duly notified thereof and was formally informed of the possible penalty upon repetition of the same offense pursuant to Westlake's Code of Conduct. This fact was not denied by Cinco. All that he claimed was that, he was never given the opportunity to explain his side before he was placed under suspension. In our view, a hearing for that purpose was no longer essential given that the first memorandum gave him sufficient warning and that he never denied that he committed the second offense.

As already mentioned, after Cinco was placed under suspension effective 24 October 2012, he forthwith, or on 29 October 2012, filed a complaint for illegal, constructive dismissal and illegal suspension. Clearly, Cinco had no cause of action yet when he filed the complaint together with his co-respondents against the petitioners. Like Cabaguing, Cinco's filing of the complaint was premature as the period of his 15-day suspension had not yet lapsed.

Because the imposition on Cinco of a suspension was proper and that such suspension did not amount to an illegal dismissal, there can be no basis for the grant of backwages and separation pay in lieu of reinstatement.

In the case of Cinco therefore, the NLRC disregarded an evidence material to the controversy and such a disregard amounted to a grave abuse of discretion. The extraordinary writ of certiorari is thus available with respect to Cinco.

WHEREFORE, the petition is PARTLY GRANTED only with respect to the case of Raymundo Cinco. NLRC's decision insofar as he be concerned is VACATED. The decision of the NLRC with respect to Domingo Abuda and Jeffreil Alquizar is consequently MAINTAINED.

IT IS SO ORDERED.

Bueser and [*]Reyes Carpio JJ., concur.

[*] Acting Junior Member per Office Order No. 81-15-ABR dated 3/16/15.

[1] Dated 25 November 2013 in NLRC LAC No. 10-002894-13, Rollo, p. 34.

[2] Rollo, p. 268.

- [3] Rollo, p. 47.
- [4] Rollo, p. 51.
- [5] Rollo, p. 192.
- [6] Annex “I”, Rollo, p. 71.
- [7] Annex “O”, Rollo, p. 78.
- [8] Rollo, p. 3.
- [9] Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union vs. Manila Water Company, Inc., GR No. 174179, 16 November 2011, 660 SCRA 263.
- [10] Leonis Navigation Co., Inc. and World Marine Panama, S.A. vs. Catalino U. Villamater, et al., GR No. 179169, 03 March 2010, 614 SCRA 182.
- [11] Rollo, p. 162.
- [12] Annex “J”, Rollo, p. 73.
- [13] Annex “M”, Rollo, p. 76.
- [14] Annex “N”, Rollo, p. 77.
- [15] Pido vs. NLRC, GR No. 169812, 23 February 2007, 516 SCRA 609.
- [16] Supra note 15.
- [17] New Ever Marketing, Inc. vs. Court of Appeals, GR No. 140555, 14 July 2005, 463 SCRA 284.
- [18] Pharmacia and Upjohn, Inc. (now Pfizer Phils., Inc.), et al. vs. Albayda, Jr., G.R. No. 172724, 23 August 2010, 628 SCRA 545 citing Ignacio vs. Coca-Cola Bottlers Phils., Inc., GR No. 144400, 19 September 2001, 365 SCRA 418.
- [19] See Memorandum dated 22 October 2012, Annex “L”, Rollo, p. 75.
- [20] Annex “K”, Rollo, p. 74.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.