

RICARDO HELLENI L. RAAGAS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION – SEVENTH DIVISION, THE REDSYSTEMS COMPANY INC., COCA-COLA BOTTLERS, JOSEPH SARMEN AND/ DANIELO AR...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Petitioner Ricardo Helleni Raagas (“petitioner Raagas”) filed this Petition for Certiorari, under Rule 65 of the Rules of Court, seeking the annulment of (1) the Decision[1] dated July 31, 2013 (“assailed Decision”) of the National Labor Relations Commission - 7[th] Division (“public respondent NLRC”) in NLRC Case No. VAC-06-000388-2013 which affirmed in toto the decision dated May 16, 2013 of Labor Arbiter Arturo M. Camiller; and (2) the Resolution[2] dated September 30, 2013 (“assailed Resolution”) of the public respondent in the same case, which denied the Motion for Reconsideration of petitioner Raagas.

The antecedent facts are as follows:

Respondent The Redsystems Company, Inc. (TRCI) is engaged in distribution and warehousing services for various products, including those for Coca Cola Bottlers Philippines, Inc. (CCBPI). It has sixty-five (65) employees, including its Delivery Service Representatives (DSRs) who are tasked to deliver and distribute CCBPI products to various Market Executioner Partners (MEP) of CCBPI in Region 8.

Petitioner Raagas was one of respondent TRCI's DSRs; he was hired on April 1, 2011.

The controversy between petitioner Raagas and respondent TRCI arose when, in the morning of August 4, 2012, the guard-on-duty, ASG Charlito Altichie, of the CCBPI, after conducting his routine inspection, allegedly found an excess load of 17 bottles of Sparkle 240 ml beneath the passenger seat of the route truck driven by petitioner Raagas. Hence, based on the security incident report[3], petitioner Raagas was asked to explain about his alleged violation of company rules which would constitute theft.[4] Then, an investigation ensued.

In his explanation,[5] petitioner claimed that in the morning of August 4, 2012, he was tasked to deliver 10 pallets or 560 cases of Sparkle 240 ml to Carilla Burauen MEP dealer. Of all the cases he delivered, one case was returned because seven bottles in the case were broken, missing or uncapped. The other remaining bottles (17 Sparkle 240 ml) were in good condition, so he brought them back to CCBPI Tacloban Plant on the same day in time for the second load and delivery. That upon arrival at the plant, he directly proceeded to the check-in area for verification with the finance office, and there he declared the returned products and the same were documented. His truck was then brought to the loading area, but, being in a hurry to leave the loading area for he still had to process the papers for the next loading and delivery, he inadvertently forgot to inform the personnel in the loading area that there were 17 bottles of Sparkle 240 ml returned goods that had to be unloaded from the truck. That when he returned to the loading area and rode his truck to commence his delivery, he did not anymore notice that there were goods that were not unloaded. So, when he passed by the main gate going out from the plant, a routine inspection was conducted, and that was the time ASG Altichie noticed the 17 Sparkle bottles placed on the floor

where the passenger seat is located. That when he was asked about the goods, he declared immediately that these were the returned goods from Carilla Burauen which the personnel from the loading area forgot to unload. Then the goods were unloaded and placed inside the guard house. Petitioner Raagas claimed that ASG Altichie never asked for a document regarding the returned goods, contrary to the latter's report.

Finding petitioner Raagas' explanation unmeritorious and giving more credence to the security incident report, respondent TRCI dismissed petitioner Raagas from employment on January 30, 2013.[6]

Consequently, petitioner Raagas filed a complaint for illegal dismissal, unfair labor practice and claims for reinstatement and backwages, overtime pay, holiday pay, vacation/sick leave pays, and for moral and exemplary damages.

In his position paper,[7] petitioner Raagas alleged that he is an active member and a Union Coordinator of the Federation of Free Workers (FFW) in Tacloban City; that his work schedule ranged from 4:00AM to 5PM (for short distance travels) and twenty-four (24) hours (for long distance travels), or an average of eighteen (18) hours a day; that he worked from Monday to Saturday and was receiving a daily rate of P243.00; that he was entitled to 11.5 days of vacation leave; that his meal allowances and hotel allowance for long distance deliveries were discontinued without notice; that he had not received his holiday pay for the past two years; and that before he was illegally dismissed, he had been working with TRCI for a total of 2 years and 9 months. He mainly argued in his position paper that he had no intention to steal the Sparkle products and that he only inadvertently forgot to unload the same after reporting these as returned goods to the CCBPI office.

Respondents, on the other hand, argued that petitioner Raagas was paid a daily rate of P260.00; that he could not demand for overtime pay and premium pay for holiday and rest day work and holiday pay because he was a field personnel; that even if he could not demand the benefits under the provisions on working conditions of the Labor Code, his wage under TRCI's payment scheme was more than the minimum wage for his day's work including premium payments for holiday, holiday pay and allowances; that records show that he was able to avail of his vacation and sick leaves; that TRCI cannot be liable of unfair labor practice considering that it had recently forged a Memorandum of Agreement with FFW union; and that his termination from employment was for a just cause considering that he violated TRCI's Employee's Code of Conduct having been found guilty of theft after administrative investigation.[8]

On May 16, 2013, Labor Arbiter Arturo Camiller proceeded to rule that respondent TRCI did not commit any unfair labor practice and held that petitioner Raagas was a field personnel, so he could not claim for overtime pay and holiday pay. More importantly, the Labor Arbiter ruled that the penalty of dismissal imposed on petitioner Raagas is too harsh a penalty, hence he concluded that petitioner Raagas is entitled to reinstatement, but further explained that reinstatement is not anymore feasible due to loss of trust and confidence, so petitioner Raagas is entitled to separation pay in lieu of reinstatement. However, the Labor Arbiter did not award backwages as he found that there was no illegal dismissal. Finally, he awarded the monetary value of vacation leave that is due to petitioner Raagas.[9]

The decretal portion of the Labor Arbiter's May 16, 2013 decision reads:

“WHEREFORE, in view of the foregoing, a Decision is hereby rendered ordering respondent The Red System Corporation, Inc. (TRCI) of Coca-Cola to pay complainant Ricardo Hellini Raagas the following benefits:

1. Separation Pay

P13,520.00

2. Money Value of Vacation Leave

2,990.00

Total

P16,510.00

All other claims are DISMISSED for lack of merit.

SO ORDERED.”[10]

Finding the above decision adverse to his cause, petitioner Raagas appealed his case to the public respondent NLRC.[11] He raised basically the same issues and arguments raised before the Labor Arbiter. He, however, underscored that if the Labor Arbiter found the penalty of dismissal too harsh, then the same was also a finding of illegal dismissal, so he should have been entitled to the twin reliefs of reinstatement and backwages, and not only separation pay in lieu of reinstatement. Likewise, he argued that he is not a field personnel, thus, he is entitled to holiday pay and overtime pay.

Public respondent NLRC found no reason to reverse any finding of the Labor Arbiter. It also ratiocinated that separation pay in lieu of reinstatement is a valid relief afforded to petitioner Raagas considering that there was already a loss of trust and confidence and such created strained relations between the parties. Hence, its assailed Decision reads:

“WHEREFORE, premises considered, the Decision of the Labor Arbiter dated 16 May 2013 is hereby AFFIRMED in toto.

SO ORDERED.”[12]

Petitioner Raagas moved for a reconsideration of the foregoing assailed Decision, but public respondent NLRC denied his motion in its assailed Resolution.[13]

Aggrieved, petitioner Raagas filed the instant petition to Us. He alleges that the public respondent NLRC committed serious errors in its findings of facts and law which would be tantamount to a grave abuse of discretion. Hence, he raised the following issues for resolution:

I. “WHETHER OR NOT PUBLIC RESPONDENT NLRC- SEVENTH DIVISION COMMITTED GRAVE AND PALPABLE BUT REVERSIBLE ERROR IN ITS APPRECIATION OF FACTS PARTICULARLY AS TO THE REQUIREMENT OF MEETING THE STANDARD OF SUBSTANTIAL EVIDENCE CONSIDERING THAT PETITIONER DID NOT COMMIT GRAVE NEGLECT OF DUTY TO WARRANT HIS DISMISSAL FROM EMPLOYMENT.

II. WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ITS FINDINGS OF APPLICABLE LAWS PARTICULARLY AS TO THE FINDINGS THAT DELIVERY SERVICE REPRESENTATIVES ARE DELIVERY DRIVERS OF THE COMPANY AND THUS ARE NOT FIELD PERSONNEL CONSISTENT WITH THE RULING OF THE SUPREME COURT IN AUTOBUS TRANSPORT SYSTEM, INC. VS. BAUTISTA.

III. WHETHER OR NOT PETITIONER WAS ILLEGALLY AND UNJUSTLY DISMISSED FROM HIS EMPLOYMENT; AND

IV. WHETHER OR NOT PETITIONER IS ENTITLED TO REINSTATEMENT, FULL BACKWAGES AND OTHER MONETARY BENEFITS, DAMAGES AND ATTORNEY'S FEES.”[14]

The resolution of the above issues is dependent on the determination whether petitioner Raagas was dismissed for just cause. A resolution on whether petitioner Raagas is a field personnel or not would also determine the issue whether he is entitled to his claim for monetary benefits.

We find the petition partly meritorious.

Foremost, We rule on the contention of the private respondent TRCI that petitioner cannot anymore question the similar findings of facts by the Labor Arbiter and the NLRC in a petition for certiorari. Indeed, “in certiorari proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh each piece of evidence introduced in the case. But what the CA examines are the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction.”[15]

In the recent case of *Protacio v. Laya Mananghaya & Co.*[16], the Supreme Court ruled that:

As a general rule, in certiorari proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding 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. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court’s reversals of the decisions of labor tribunals if they are not supported by substantial evidence.[17]

In the same vein, in *Norkis Trading Corp. v. Buenavista et al.*[18], the Supreme Court held, to wit:

“On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can then grant a petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.

We have thus explained in *Cocomangas Hotel Beach Resort v. Visca* that the CA can take cognizance of a petition for certiorari if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which are material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which are alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.”[19]

Otherwise stated, re-evaluation of evidence, as a general rule, cannot be properly done in a petition for certiorari under Rule 65, EXCEPT in cases where substantial evidence to support the NLRC's findings are wanting or where there is disregard of the evidence on record.

In the case at bar, We rule that the findings of Labor Arbiter and the NLRC as regards the existence of just cause to warrant the dismissal of petitioner Raagas are not supported by substantial evidence. However, We affirm its finding that petitioner Raagas is a field personnel.

Petitioner Raagas was illegally dismissed as the evidence of theft is not substantial. He is entitled not only to reinstatement but also to the award of backwages.

The basis for petitioner Raagas' termination was the incident he was involved in on August 4, 2012. The security incident report prepared by the Chief Security Office stated, among others:

“Brief Narration of Incident

Timeline of Events:

1150H: CCBP Tacloban Plant Main Gate – Asg. Altichie, Charlito (P1) on duty guard reported; that Seventeen (17) bottles of Sparkle 240ml FGS excess load was intercepted at the main gate loaded into TRCI route truck bearing plate no. PCQ-771 driven by Mr. Ricardo Raagas.”

“Initial Investigation Findings

Initial investigation disclosed; that on particular date and time August 4, 2012 at around 1150H at CCBPI Tacloban Plant main gate, Asg. Altichie, Charlito (P1) on duty guard noted Seventeen (17) bottles of Sparkle 240ml FGS excess load which was placed inside the cab beneath the passenger seat of TRCI route truck bearing plate no. PCQ-771 driven by Ricardo Raagas amounting to P173.75 more or less. It so happen when the aforementioned guard was about to conduct checked inspection as mere procedure and reconcile the document versus actual load.

That during interrogation with the above-cited driver revealed; that said excess load was his claimed in one of the MEP dealer. However, he failed to show some receipt as proof of evidences that said load is legitimate.

Action Taken: Immediate unload confiscated product and put at security office for evidence.”[20]

Hence, petitioner Raagas was asked to explain in writing as the security incident report would be a possible violation of Section 20, Rule 3 of TRCI Employee's Code of Conduct, which states:

“Theft or unauthorized taking of property or funds of the company, or that of co-employees or third persons within the company premises.”[21]

Petitioner Raagas explained that the 17 Sparkle bottles were inadvertently left in his truck. He claimed that he forgot to unload the same but they were already reported to the finance office as returned goods. However, respondent TRCI refused to believe in his explanation and considered the same as “palusot”.

We hold that the security incident report alone is not substantial evidence to prove theft of the Sparkle products.

Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. And We hold that the security incident report is not adequate to support the conclusion that petitioner Raagas is guilty of theft constituting a serious misconduct.

Clearly, what respondent TRCI claimed as an act of stealing was based on the mere allegation that the 17 Sparkle bottles were found inside the passenger seat of the truck driven by petitioner Raagas and that when the latter was asked for evidence for such load he failed to present the same. But this allegation has been effectively refuted by petitioner Raagas, that he only forgot to unload the same and that he failed to inform the personnel in the loading station that he still had 17 bottles in his truck as he was in a hurry for the next batch of delivery; that he never had any intention of stealing those product, as in fact, he even declared in the finance office that these were returned products.

Aside from the security incident report, no other evidence was relied upon by respondent TRCI to prove theft.

It must be emphasized that petitioner Raagas never changed his explanations from the time he was asked to explain by respondent TRCI until the case was filed before the Labor Arbiter and up to this Court. He has been consistent in insisting that he inadvertently forgot to unload the Sparkle products and that these products were reported to the finance office as returned products, so if he really had the intention to steal these products he would not have reported them.

Considering that there is indeed a possibility that the petitioner Raagas is telling the truth, as the evidence presented is susceptible to different interpretations, and considering further that there is a need to justify a disciplinary action that would be imposed to an erring employee, respondent TRCI should have conducted further investigation involving the finance office, the personnel in the loading station, and the security guard-on-duty, and not merely relied on the security incident report and on mere speculation that petitioner Raagas only presented a “palusot” in his explanation.

Indeed, it is very convenient for respondent TRCI just to disbelieve petitioner Raagas' explanation than to conduct a thorough investigation.

We are well aware that respondent TRCI need not prove that petitioner Raagas is guilty beyond reasonable doubt of the crime of theft as this is not a criminal case. What We would like to underscore, however, is that the allegation that the Sparkle bottles were found inside the truck driven by petitioner Raagas does not necessarily mean that petitioner Raagas stole or intended to steal the products. The fact that petitioner Raagas reported these products to the finance office would render his explanation plausible, thus, respondent TRCI should have exerted more effort to find another evidence that would substantially support their allegation of theft.

Dismissal is the ultimate penalty that can be meted to an employee. Thus, it must be based on just cause and must be supported by clear and convincing evidence.[22]

Hence, the law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. And in case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.[23]

It has been a consistent rule that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[24]

In this light, We quote the following findings of the Labor Arbiter, thus:

“What respondent is trying to convene is that complainant's dismissal is for a just cause for theft of seventeen (17) bottles of Sparkle 240 ml. Although respondent has complied with the twin requirements of notices to show that there was due process, the penalty of dismissal imposed on complainant without any benefit at all is too harsh a penalty. First, this is the first offense committed by complainant. Second, the quantity of the goods is very minimal which are only seventeen (17) bottles of Sparkle softdrinks. Third, there is no clear showing that there is intent to gain on the part of complainant. Maybe this was just an honest mistake on the part of complainant when he failed to declare the same by inadvertence.”[25]

Clearly, the Labor Arbiter himself was not convinced that petitioner Raagas committed theft. His conclusion after evaluating the evidence is that there is no clear showing that there is intent to gain on the part of petitioner Raagas when he failed to declare the Sparkle products by inadvertence.

This finding was affirmed by the public respondent NLRC. However, it failed to consider the applicable and existing law and jurisprudence that if there are doubts that exist in the evidence, the same should be resolved in favor of the employee. Clearly, this finding would logically result in the conclusion that petitioner Raagas' dismissal was not based on a just and valid cause for the failure of respondent TRCI to present substantial evidence to prove that petitioner was guilty of theft or any serious misconduct.

We are astounded why the public respondent NLRC affirmed the conclusion of the Labor Arbiter when the latter ruled that he did not find any illegal dismissal even after he noted that petitioner Raagas' alleged misconduct may actually be only pure inadvertence.

Misconduct is defined as “the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error in judgment.”[26] In other words, “in order to constitute serious misconduct under Article 282 (a) of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent.”[27]

Indubitably, even if We consider petitioner Raagas' inadvertence of failing to remove or unload the returned Sparkle products from his truck as a violation of company rules, the same would not fall within the purview of serious misconduct absent any showing of any wrongful intent. Thus, if this would be the case, We echo the Supreme Court, in holding that, “where a penalty less punitive would suffice, whatever missteps may have been committed by the worker ought not be visited with a consequence so severe as dismissal from employment.”[28]

To reiterate, respondent TRCI failed to discharge its burden to prove that petitioner Raagas' dismissal was for a just cause. As already discussed, respondent TRCI's evidence could not justify the dismissal of petitioner Raagas on the ground of theft constituting a serious misconduct. And even assuming that petitioner's inadvertent failure to unload the Sparkle products from his truck would be considered a violation of company rules, the same may be penalized with a lesser penalty other than dismissal from employment.

There being illegal dismissal as there was absence of a valid cause, petitioner Raagas is, thus, entitled to the twin reliefs of reinstatement and backwages.

The computation of petitioner's backwages shall be from the time of his dismissal, that is, on January 30, 2013 until his actual reinstatement in accordance with Article 279[29] of the Labor Code.

Petitioner must be reinstated, not
only paid with separation pay in lieu
of reinstatement.

Public respondent NLRC in its assailed Decision noted the issue raised by petitioner Raagas on the award of separation pay in lieu of reinstatement, explaining that separation pay in lieu of reinstatement is allowed by law when there exists strained relations between the parties. But petitioner Raagas insisted before public respondent that there is no strained relations between him and respondent TRCI.

In this regard, We emphasized that reinstatement is the general rule, while the award of separation pay is the exception.[30] And under the principle of strained relations, when strained relations exist between the parties separation pay in lieu of reinstatement may be awarded.[31] However, strained relations must be demonstrated as a fact and to be adequately supported by evidence—substantial evidence to show that the relationship between the employer and the employee is indeed strained as a necessary consequence of the judicial controversy.[32]

In this case, what the Labor Arbiter considered as basis for awarding separation pay in lieu of reinstatement was

his conclusion that there was already loss of trust and confidence considering that the dismissal was for a just cause on the ground of theft. Meanwhile, public respondent NLRC affirmed this loss of trust and confidence considering that petitioner was a DSR who is in charge of the custody and protection of respondent TRCI's property, and his act has brought loss of faith, trust and confidence, and his reinstatement would only prove to be destructive and inspire vindictiveness rather than forgiveness.

Again, this finding of strained relations by the public respondent is not supported by substantial evidence. First, it must be emphasized that the Labor Arbiter, as affirmed by the NLRC, has found that there is no clear showing that petitioner intended to steal and that his act may only be pure inadvertence. Second, petitioner Raagas is very much willing to return to and work again with the company. Third, even respondent TRCI could not prove as a fact the existence of strained relations, it only held as basis the assailed Decision of public respondent NLRC. Lastly, petitioner is employed by respondent TRCI and his alleged violation or act was not done against respondent TRCI but against CCBPI. CCBPI may have lost its trust to petitioner Raagas, but respondent TRCI cannot merely dwell on such alleged loss of trust in order not to reinstate petitioner Raagas because respondent TRCI may just opt to transfer petitioner Raagas to another assignment or customer.

Likewise, the controversy between the parties being brought before administrative agencies and to this Court would also not be adequate to rule that strained relations exist. We bear to emphasize the ruling of the Supreme Court that the "doctrine of 'strained relations' cannot be used recklessly or applied loosely to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. While the Court acknowledges that, in the natural course of events, a certain degree of hostility is engendered by litigation, it will not by itself constitute sufficient proof of the existence of strained relations to rule out the possibility of reinstatement." [33]

Worth noting too is the ruling of the Supreme Court in *Leopard Security and Investigation Agency v. Quitoy, et al.* [34], it held thus:

"xxxx. Even in cases of illegal dismissal, the doctrine of strained relations is not applied indiscriminately as to bar reinstatement, especially when the employee has not indicated an aversion to returning to work or does not occupy a position of trust and confidence in or has no say in the operation of the employer's business. Although litigation may also engender a certain degree of hostility, it has likewise been ruled that the understandable strain in the parties' relations would not necessarily rule out reinstatement which would, otherwise, become the rule rather than the exception in illegal dismissal cases." [35]

Prescinding from the foregoing, We rule that petitioner Raagas must be actually reinstated not merely paid with separation pay in lieu of reinstatement.

Petitioner Raagas is a Field
Personnel, thus, he is not entitled to
Holiday Pay, Premium Pay, and
Overtime Pay.

On the issue of whether or not petitioner Raagas is a field personnel, We affirm the findings of public respondent NLRC.

Clearly, the nature of work of respondent Raagas makes him a field personnel. Petitioner Raagas claims that his "schedule of work was from 4:00 am until 5:00 pm on short distance a day or 24 hours on long distance or an average of 18 hours/day, Monday to Saturday, being a driver, representative and delivery personnel of Coca Cola products", hence, he falls within the purview of a field personnel.

Being required to be at the plant to get deliveries at 4:00 am and going back there at 5:00 pm does not necessarily

mean that his time of work is under constant supervision and control even if he is performing his work outside the principal office. On this note, the case *Union of Filipino Employees v. Vivar, Jr.*[36] is instructive, wherein the Supreme Court held:

“Under Article 82, field personnel are not entitled to holiday pay. Said article defines field personnel as “non-agritultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.”

The controversy centers on the interpretation of the clause “whose actual hours of work in the field cannot be determined with reasonable certainty.”

It is undisputed that these sales personnel start their field work at 8:00 a.m. after having reported to the office and come back to the office at 4:00 p.m. or 4:30 p.m. if they are Makati-based.

The petitioner maintains that the period between 8:00 a.m. to 4:00 or 4:30 p.m. comprises the sales personnel's working hours which can be determined with reasonable certainty.

The Court does not agree. The law requires that the actual hours of work in the field be reasonably ascertained. The company has no way of determining whether or not these sales personnel, even if they report to the office before 8:00 a.m. prior to field work and come back at 4:30 p.m., really spend the hours in between in actual field work.

We concur with the following disquisition by the respondent arbitrator:

The requirement for the salesmen and other similarly situated employees to report for work at the office at 8:00 a.m. and return at 4:00 or 4:30 p.m. is not within the realm of work in the field as defined in the Code but an exercise of purely management prerogative of providing administrative control over such personnel. This does not in any manner provide a reasonable level of determination on the actual field work of the employees which can be reasonably ascertained. The theoretical analysis that salesmen and other similarly-situated workers regularly report for work at 8:00 a.m. and return to their home station at 4:00 or 4:30 p.m., creating the assumption that their field work is supervised, is surface projection. Actual field work begins after 8:00 a.m., when the sales personnel follow their field itinerary, and ends immediately before 4:00 or 4:30 p.m. when they report back to their office. The period between 8:00 a.m. and 4:00 or 4:30 p.m. comprises their hours of work in the field, the extent or scope and result of which are subject to their individual capacity and industry and which “cannot be determined with reasonable certainty.” This is the reason why effective supervision over field work of salesmen and medical representatives, truck drivers and merchandisers is practically a physical impossibility. Consequently, they are excluded from the ten holidays with pay award.

Like the above-cited case, petitioner Raagas' work away from the principal office cannot be determined with reasonable certainty. Being asked to report to office and to return is not equivalent to constant supervision of employee's time and performance, it is only an exercise of management prerogative of providing administrative control over the employee. Verily, when petitioner Raagas was out for his deliveries his time was under his own hands, thus, he had the choice whether to deliver more than one batch in a day.

Being a field personnel, thus, petitioner Raagas cannot claim for holiday pay and overtime pay. Article 82 of the Labor Code is clear that provisions on working conditions, which include payment of holiday pay, premium pay and overtime pay, do not apply to field personnel, thus:

“ART. 82. Coverage.- The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary

of Labor in appropriate regulations.

xxxxx

"Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.”[37]

Anent petitioner's claim for meal allowances and hotel allowances, We find no basis to award them. Aside from petitioner Raagas' bare allegation that these allowances were given as a matter of company practice, there is no other proof that the same were actually given by respondent TRCI. Nothing in petitioner Raagas contract that would point out that these allowances was part of his compensation packages. No proof, like the company manual, was presented to show that these allowances were a matter of company practice.

Petitioner Raagas is not entitled to moral and exemplary damages.

In the case of *Nazareno v. City of Dumaguete*,[38] the Supreme Court elucidated on the necessary elements in order for one to be entitled to moral damages, to wit:

“Moral damages are awarded if the following elements exist in the case: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated Article 2219 of the Civil Code. In addition, the person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive. Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.”[39]

Indeed, We have ruled that petitioner Raagas was illegally dismissed, however We find no evidence that the same was done in bad faith.

Basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.[40] By imputing bad faith to respondent TRCI, petitioner Raagas has the burden of proof to present substantial evidence to support that his dismissal was tainted with bad faith.

Moreover, the fact that he was illegally dismissed is insufficient to prove bad faith. In *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*,[41] the Supreme Court ruled:

“A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process.”

The same can be said to petitioner Raagas' claim for exemplary damages. Since petitioner Raagas is not entitled to moral damages, We cannot have basis too to award exemplary damages. In any case, there is no clear showing that respondent TRCI gravely abused its management prerogative or exercised the same in a wanton, fraudulent, reckless, oppressive or malevolent manner.

Petitioner Raagas is entitled to Attorney's fees and Legal Interest.

We hold that Petitioner Raagas is entitled to attorney's fees in the amount of ten percent (10%) of his monetary award constituting his backwages, as he was forced to litigate in order to seek redress of his grievances, pursuant to Article 111 of the Labor Code.

The award of attorney's fees is further justified in *Rutaquio v. NLRC*,^[42] which held that:

“It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.”

Finally, legal interest shall be imposed on his total monetary award herein granted at the rate of 6% per annum from January 30, 2013 until fully paid.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The assailed Decision and Resolution of public respondent NLRC in NLRC Case No. VAC-06-000388-2013 are **AFFIRMED** with the **MODIFICATIONS** that: a) it is hereby declared that petitioner Raagas was illegally dismissed; and b) being illegally dismissed from employment, petitioner Raagas is therefore entitled to reinstatement and backwages. Hence, respondent TRCI is hereby ordered:

- 1) to **REINSTATE** petitioner Raagas to his former position without loss of seniority rights and other privileges;
- 2) to **PAY** petitioner Raagas his backwages from January 30, 2013 until actual reinstatement; and
- 3) to **PAY** petitioner Raagas legal interest, in the amount of six percent (6%) per annum, on the total monetary award constituting petitioner Raagas' backwages.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, J., concur.

[1] Rollo, pp. 186-202.

[2] Rollo, p. 220.

[3] Rollo, p. 103.

[4] Rollo, p. 106.

[5] Rollo, pp. 107-108.

[6] Rollo, p. 112.

[7] Rollo, pp. 38-62.

[8] Rollo, pp. 68-95.

[9] Rollo, pp. 141-150.

[10] Rollo, p. 150.

[11] See Memorandum of Appeal, Rollo, pp. 151-174.

[12] Rollo, p. 202.

[13] *Supra*, note 2.

[14] Rollo, p. 20.

- [15] Mercado v. AMA Computer College-Paranaque City, Inc., G.R. No. 183572, April 13, 2010.
- [16] G.R. No. 168654, March 25, 2009.
- [17] Emphasis supplied.
- [18] G.R. No. 182018, October 10, 2012.
- [19] Emphasis supplied.
- [20] Rollo, p. 103.
- [21] Rollo, p. 106.
- [22] Union Motor Corp. v. NLRC, G.R. No. 159738, December 9, 2004.
- [23] Times Transportation Co. Inc. v. NLRC, G.R. Nos. 148500-01, November 29, 2006.
- [24] Fujitsu Computer Products v. Court of Appeals, G.R. No. 158232, March 31, 2005.
- [25] Rollo, p. 149.
- [26] John Hancock Life Insurance Corporation v. Davis, G.R. No. 169549, September 3, 2008.
- [27] Aliviado v. Procter and Gamble Phils. Inc., G.R. No. 160506, June 6, 2011.
- [28] Sagales v. Rustan's Commercial Corp. G.R. No. 166554, November 27, 2008, citing Almira v. B.F. Goodrich Philippines, Inc. G.R. No. L-34974, July 25, 1974.
- [29] ART. 279. Security of tenure.- xxxx. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
- [30] Emeritus Security and Maintenance System, Inc. v. Dailig, G.R. No. 204761, April 2, 2014.
- [31] Globe-Mackay Cable and Radio Corp. v. NLRC, G.R. No. 82511, 3 March 1992.
- [32] Golden Ace Builders v. Talde, G.R. 187200, May 5, 2010.
- [33] Pheschem Industrial Corp. v. Moldez, G.R. No. 161158, May 9, 2005. Emphasis original.
- [34] G.R. No. 186344, February 20, 2013.
- [35] Underscoring supplied.
- [36] G.R. No. 79255, January 20, 1992.
- [37] Underscoring and emphasis supplied.
- [38] G.R. 177795, June 19, 2009.
- [39] Emphasis supplied.
- [40] Culili v. Eastern Telecommunications Philippines Inc., et al., G.R. No. 165381, February 9, 2011.
- [41] G.R. No. 170464, July 12, 2010.
- [42] G.R. Nos. 97652-53, October 19, 1999.

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