

RAMIRO I. SAMAR, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND COCA COLA BOTTLERS PHILS, INC./VIRGILIO MINDO/CHRISTINE KALAW/JOEL JAVELLANA, RESPONDENTS.

Ponente: SALANDANAN-MANAHAN, J.

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SALANDANAN-MANAHAN, J.:

Before Us is a Petition for Certiorari under Rules 65 of the Rules of Court seeking to reverse and set aside the following issuances of public respondent National Labor Relations Commission ("NLRC") in NLRC LAC No. 09-0023964-11 (NLRC NCR Case No. SRAB V-12-00192-10/NLRC NCR Case No. SRAB V-05-00065-10), to wit:

- Decision[1] dated 30 January 2012; and
- Resolution[2] dated 25 July 2012

The assailed NLRC Decision[3] dated 30 January 2012 found Petitioner validly dismissed from employment on the ground of serious misconduct, willful disobedience to a lawful order and gross habitual neglect of duty. The dispositive portion of which reads:

"WHEREFORE, complaint's appeal is DENIED for lack of merit while respondent's partial appeal is GRANTED. The Decision promulgated on 25 July 2011 is MODIFIED by DELETING the awards of separation pay, service incentive leave pay and 13[th] month pay.

The rest of the Labor Arbiter's decision is AFFIRMED.

SO ORDERED."

On the other hand, the impugned Resolution[4] dated 25 July 2012 denied Petitioner's motion for reconsideration. The decretal portion of which states:

"WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit. No further motion for reconsideration of the same tenor shall be entertained.

SO ORDERED"

The antecedent facts are as follows:

On 13 February 2001, Petitioner Ramiro I. Samar ("Petitioner" for brevity) started his employment with Coca Cola Bottlers Philippines, Inc. ("CCBPI", for brevity) as salesman. On 1 July 2009, Petitioner was promoted as Account Developer.[5]

Pursuant to his assignment as Account Developer, Petitioner was required to attend the 1[st] Account Developer Daily Routine Training on 14-16 July 2009.[6] After the lecture, a test was given to assess the knowledge of the trainees on the Account Developer's Routine. Petitioner inexplicably refused to answer the test and wrote "I'll do it in actual" across the test paper.[7] Consequently, Petitioner failed the said training. Nonetheless, he was given

another chance and was required to attend the 2nd Account Developer Routine Training on 4-6 August 2009.[8] Petitioner attended said training and eventually passed.

Subsequently, Petitioner was informed of his areas of assignment. On 12 August 2009, an area map and list of outlets within his scope of responsibility was sent to him, but Petitioner strangely refused to accept the same.[9] On 23 October 2009, Petitioner was likewise furnished a Memorandum[10] reiterating his assignment to the then named District 43 (renamed later as District 33), informing him of his immediate superior who at that time was District Team Leader Carlos Rivera, and ordering him to report to the latter and resume his duties by 26 October 2009. He was also furnished with a hard copy of his responsibilities as an Account Developer.[11] Petitioner was also provided with a service vehicle, a Tamaraw Sinki but he also refused to accept the same, demanding a "better" four-wheeled vehicle.

On 23 April 2010, the acting District Team Leader Joseph V. Estrada ("DTL Estrada" for brevity) was informed by the Human Resources Department that Petitioner failed to submit the required Individual Attendance Sheets as proof of his attendance for periods 5 to 10 and 12 to 15 of April 2010.[12]

To give Petitioner an opportunity to explain his side, a Notice to Explain[13] dated 28 April 2010 was furnished to him with a directive to explain his failure to submit the "prescribed weekly individual attendance sheet" within five (5) days from receipt. However, the period lapsed and no written explanation was tendered by Petitioner.

On 6 May 2010, DTL Estrada was again informed that Petitioner failed to submit the required Individual Attendance Sheet for the period 16 to 30 of April 2010.[14] DTL Estrada sent a Memorandum[15] to Petitioner directing him to explain within five (5) days his failure to submit the proofs of attendance. However, Petitioner again failed to advance any explanation.

On 7 May 2010, a complaint for constructive dismissal; non-payment/underpayment of salaries, holiday and rest day premium, holiday pay, and overtime pay; illegal deductions; damages and attorney's fees was filed by Petitioner against CCBPI and docketed as NLRC Case No. SRAB-V-05-00065-10.[16]

On 11 May 2010, HR Manager Christine O. Kalaw ("HR Manager Kalaw" for brevity) informed Petitioner of the reduction in his salaries due to his failure to submit proofs of attendance.[17]

On 13 May 2010, Territory Sales Manager Javellana issued a Memorandum[18] giving Petitioner another chance to respond to the Notice to Explain dated 20 April 2010 and Memorandum dated 28 April 2010 of DTL Estrada and to explain his absences on 5-10, 12-15, and 19 April 2010 and failure to submit the required Individual Attendance Sheets. In response, Petitioner informed TSM Javellana that a complaint for constructive dismissal was already filed and pending before the NLRC.[19]

In the interim, the Tamaraw Sinki service vehicle previously assigned to Petitioner was changed to a Mitsubishi Canter, a 6-pallet truck upon request of Petitioner of a better four wheeled vehicle.[20] Despite this accommodation, Petitioner still failed to perform his duties as Account Developer.

On 13 May 2010, a Memorandum[21] was sent to him by TSM Javellana requiring Petitioner to report to his assigned area covering Sagnay to Patitinan in Camarines Sur under DTL Ralph Canlas on 17 May 2010.

Instead of reporting for work on 17 May 2010, Petitioner sent a letter, to CCBPI regarding his failure to submit the required Individual Attendance Sheets. But rather than providing an explanation, Petitioner asked for a photocopy of the "attendance sheet for the period April 1 to 30, 2010 from HR Manager Kalaw.[22]

In response, on 21 May 2010, a letter was sent to him asking him to clarify exactly what attendance sheet he is requesting, given that he has not submitted any Individual Attendance Sheets for that period.[23]

As a result, DTL Canlas issued several Memoranda[24] directing Petitioner to submit an explanation regarding his failure to report for work in his assigned area. In addition, Petitioner was informed of the possibility of being charged with Violations of CCBPI Employee's Code of Disciplinary Rules and Regulations, specifically Rule 2, Section 5, thereof, on Absence Without Permission or Leave.

On 23 June 2010, Petitioner submitted his explanation letter wherein he countered that he was either on union leave or was inside the plant premises in Naga Plant having allegedly filed the Personnel Leave Authorities corresponding to such leaves.[25]

On 2 July 2012, a Memorandum[26] was issued by DTL Canlas stating that the Personnel Leave Authorities covering the claimed union leaves filed by Petitioner were in fact not approved prior to Petitioner availing of the supposed union leaves. Furthermore, DTL Canlas pointed out that, on said dates, Petitioner did not report to his assigned area nor did he submit the required Individual Attendance Sheets signed by the MEP of his area. DTL Canlas, thus, informed Petitioner that the charges for his Absences without Permission or Leave will stand and continue to be implemented.

On the same day that Petitioner was informed that he will be charged for Absence without Permission or Leave, he received his Account Development Tools and Materials which he initially refused to accept on 12 August 2009.[27]

On 8 July 2010, a Notice to Explain[28] was issued informing Petitioner of the charge against him particularly violation of CCBPI's Employee's Code of Disciplinary rules and Regulations Section 5 on "Absences without Permission or Leave" due to his numerous unexplained absences. The said Notice to Explain required him to explain his side in writing within five (5) days from receipt thereof.

On 19 July 2010, Petitioner submitted his Answer[29] and reiterated his previous claims that on the said dates he was either on union leave or at the CCBPI's Naga Plant. Petitioner added that some of the days were either holidays or non-working days.

In a Letter[30] dated 30 July 2010, Petitioner further explained that the service vehicle assigned to him, the Mitsubishi Canter is not suitable for him because of his medical condition which disabled him to drive large vehicles. In the said letter, Petitioner again demanded that the vehicle be replaced with a smaller and more compact vehicle, with power steering, if possible.

In a Memorandum[31] dated 31 August 2010, TSM Javellana reiterated the order for Petitioner to report to his assigned area and perform his duties as an Account Developer. TSM Javellana informed Petitioner that by 6 September 2010, the latter should have already complied with the order. Petitioner was likewise informed that a smaller vehicle, one with power steering was being assigned to him a 3-pallet truck instead of the 6-pallet truck previously assigned to him.

Despite this accommodation of CCBPI, Petitioner still failed to report for work at his assigned area. Petitioner sent a Letter[32] dated 6 September 2010 claiming that he had consulted his doctor regarding the possible effect of driving the vehicle assigned to him. Petitioner insisted that CCBPI issue a written assurance that it will take full responsibility for whatever consequence to his health by reason of driving the assigned vehicle.

On 7 September 2010 a Notice of Investigation[33] was issued informing Petitioner that an investigation will be conducted on 20 September 2010 relative to his violation of CCBPI Employee's Code of Disciplinary Rules and Regulations on "Absence without Permission or Leave".

The 20 September 2010 investigation however was discontinued after Petitioner informed the investigators of the

pendency of his constructive dismissal case docketed as NLRC Case No. SRABV-05-00065-10.[34]

On 20 September 2010, TSM Javellana issued a Memorandum[35] charging Petitioner with another set of violations to wit: (1) violation of Section 10, Rule 3 of the Company Employee's Code of Disciplinary Rules and Regulations, i.e., Insubordination or willful disobedience; and (2) serious misconduct and willful disobedience under Article 282 of the Labor Code on account of his failure to report to his areas of assignment despite instructions to do so from DTLs Canlas and Carlos Rivera. In response, Petitioner averred that he was effectively prevented from going to his assigned area because his medical condition made it difficult for him to drive the service vehicle which was eventually assigned to him.[36]

On 7 October 2010, a Memorandum[37] was issued for the continuation of the administrative hearing on 20 October 2010. In reply, Petitioner contended that the investigation, among others, not only violated the existing CBA but also "served nothing but a mechanism of harassment". In addition, he countered that he would consider the investigation result as null and void.[38]

On 20 October 2010, the scheduled administrative hearing was conducted without Petitioner's presence. Consequently, the hearing was then declared closed.[39]

On 27 October 2010, Petitioner was informed of a hearing set on 29 October 2010 relative to the second charge of insubordination, willful disobedience and serious misconduct.[40] Petitioner manifested that he considers the investigation as "pure and simple harassment".[41] In view of Petitioner's absence the hearing was adjourned.[42]

Subsequently, a Notice of Decision[43] dated 13 December 2010 was issued dismissing Petitioner after finding him guilty of several instances of absences without permission or leave, abandonment of work, gross and habitual negligence, serious misconduct or willful disobedience of the lawful order.

This prompted Petitioner to file a complaint for illegal dismissal and other money claims before the NLRC docketed as NLRC Case No. SRABV-12-00192-10 on 30 December 2010.[44]

On 2 February 2011, the constructive dismissal case docketed as NLRC Case No. SRABV-05-00065-10 was consolidated with the actual illegal case docketed as NLRC Case No. SRABV-12-00192-10.[45]

On 25 July 2011, the Labor Arbiter rendered the decision[46] upholding the validity of Petitioner's dismissal from employment. The Labor Arbiter opined that Private Respondent presented substantial evidence that clearly and convincingly support the fact that Petitioner committed absence without permission or without leave and insubordination or willful disobedience.

The Labor Arbiter further denied Petitioner's claim for damages and attorney's fees but awarded separation pay, service incentive leave pay, 13[th] month pay

Dismayed, Petitioner appealed the case to the NLRC and reiterated his previous arguments regarding the illegality of his dismissal and entitlement to his unpaid wages for the period 15 April to 30 September 2010 and from 1 to 14 December 2010, holiday pay, and holiday and restday premium, damages and attorney's fees.[47]

Also unsatisfied, CCBPI filed a Partial Appeal[48] wherein they asserted that Petitioner is not entitled to separation pay as a form of financial assistance because he was dismissed due to just causes, i.e., serious misconduct, willful disobedience to their lawful order, and gross and habitual neglect of duty. CCBPI further argued that Petitioner is not entitled to service incentive leave because his position as Account Developer classified him as a field personnel and also because he was entitled to and was paid P23, 903.23 as monetization of his vacation leaves; and that they paid Petitioner P16, 809.17 as 13[th] month pay for 2010; and over paid Petitioner's salaries by P66, 577.00.

On 30 January 2012, the NLRC rendered a Decision[49] affirming the validity of Petitioner's dismissal after finding that his absence without leave and repeated failure to work at his areas of assignment amounted to gross and habitual neglect of duties, serious misconduct and willful disobedience to a lawful order.

The NLRC also deleted the award of separation pay, service incentive leave pay and 13[th] month pay.

Unyielding, Petitioner filed a Motion for Reconsideration but the same was denied in a Resolution[50] dated 25 July 2012.

Adamant, Petitioner instituted this present Petition ascribing grave abuse of discretion amounting to lack and excess of jurisdiction to the NLRC in:

1. finding that the numerous memoranda issued by the private respondents constitute substantial evidence establishing the charge of AWOL;
2. not giving credence to Petitioner's evidence showing that he was on union leave on some of the dates alleged as his absences;
3. not giving credence to Petitioner's evidence showing that he was inside respondent's Naga plant on the dates he was allegedly on AWOL;
4. giving credence to the affidavit of Mr. Erwin O. Tianes attesting that the recognized proof of attendance for Account Developers was discussed during the trainings;
5. holding that the herein Petitioner propounded excuses and claimed that his medical condition made it dangerous for him to drive heavy vehicles;
6. holding that the herein Petitioner could not rely on his lack of materials and tools of the trade as reason for his failure to report for work;
7. holding that the respondents complied with the requirements of procedural due process;
8. denying Petitioner's claim for unpaid wages, holiday pay as well as holiday and rest day premium pay;
9. not awarding moral and exemplary damages as well as attorney's fees in favor of herein Petitioner.[51]

Simply stated, the present controversy hinges on (1) whether or not Petitioner was validly dismissed; and (2) whether or not Petitioner is entitled to damages, attorney's fees and other money claims.

Well-settled is the rule that in order to effectuate a valid dismissal, the employer must comply with both substantive and procedural due process.[52] Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 282, 283 or 284 of the Labor Code. Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.[53]

As a complementary principle, the onus probandi to prove the lawfulness of the dismissal rests with the employer. In this regard, the quantum of proof which the employer must discharge is substantial evidence which has been defined as the amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[54]

Applying the foregoing principles to this case, the Court finds no reversible error on the part of the NLRC in finding that CCBPI was able to prove by substantial evidence that Petitioner was validly dismissed from employment.

As to the substantive aspect, Petitioner was validly dismissed from employment on the ground of gross and

habitual neglect of duty, willful disobedience of lawful order and serious misconduct under Article 282 of the Labor Code for violating CCBPI's Employee's Code of Disciplinary Rules and Regulations, particularly Rule 2, Section 5 on "Absence without Permission or Without Leave" and Rule 3, Section 10 on "Insubordination or willful disobedience in complying with, or carrying out, reasonable and valid orders, or instructions of superiors".

Relative to the first charge on "Absence Without Permission or Without Leave", the documentary evidence adduced by CCBPI comprising of numerous memoranda[55] and Notices to Explain[56] convincingly support the NLRC's findings that Petitioner incurred several absences without permission or leave.

Petitioner's attempt to excuse his absences by claiming that his absences were union leaves covered by Personnel Leave Authorities[57] is devoid of merit since such Personnel Leave Authorities were neither properly filed nor approved by CCBPI.

It must be noted that under the Collective Bargaining Agreement between CCBPI and Petitioner's Union, union leave must be filed no later than seventy two (72) hours before the intended leave. As an exception and in urgent circumstances, a shorter period is allowed but no less than twenty four (24) hours prior to the intended leave.[58]

In this case, evidence on record shows that Petitioner failed to comply with the foregoing requirements. The Personnel Leave Authorities claimed by Petitioner was in fact not filed within the normal seventy-two (72) hour prior notice or the emergency twenty-four (24) hour notice. Three (3) of the Personnel Leave Authorities[59] claimed by Petitioner do not even bear the required "Received" stamp which would show that the same was not properly received by CCBPI. Necessarily, any availment of union leave not conforming with the prescribed requirements cannot be considered as union leave contemplated by the CBA. Perforce, it will be treated as an absence without permission or without leave.

In his another attempt to justify his unauthorized absences, Petitioner claims that the "Attendance Report of Non-Punching Employees" should be considered as proof of his attendance for work. Petitioner points out that he was inside the premises of CCBPI's Naga Plant on some of the days on which he was declared absent without leave.[60]

Petitioner's contentions deserve scant consideration.

It must be stressed that Petitioner is not classified as "Non-Punching Employee". Being an Account Developer, Petitioner is required to submit an Individual Attendance Sheet.[61] At best, his attendance in the Attendance Report of Non-Punching Employee can establish the fact that he was supposedly present at CCBPI's Naga Plant. Nonetheless, his presence thereat is meaningless considering that his place of assignment is not in Naga Plant and the performance of his duties did not require him to be at Naga Plant. More importantly, Petitioner failed to present any proof that he performed any work at the Naga Plant.

On this score, the disquisition of the NLRC is worth mentioning, thus:

"Also, complainant's reliance on the logbook as proof that he was inside respondent's Naga plant on the dates he was allegedly on AWOL is unconvincing. First, the logbook was not the proof of attendance recognized by respondents. Second, respondent's Naga was not his assigned area. Third, he failed to present proof that he performed any work"[62]

Verily, whatever excuse put forward by Petitioner for his unauthorized absences, it will not exculpate him from liability. The fact remains that he did not perform his duties at his assigned area. Corollarily, he was properly considered as AWOL on the days he failed to perform his work in violation of CCBPI's rules and regulations on Absence without Permission or Without Leave.

As to the second charge on "Insubordination and Wilfull Disobedience", Petitioner asserts that he did not disobey the orders of CCBPI to report for work. He points out that it was in fact CCBPI who prevented him from performing his duties as Account Developer when CCBPI failed to provide him with a service vehicle and tools of trade.[63]

In stark contrast to Petitioner's assertions, CCBPI had extended all accommodation necessary so that Petitioner could finally perform the work pursuant to his duties as Account Developer. On the contrary, manifest on record shows that it was in fact Petitioner who persistently offered excuses to justify his failure to report for work at his assigned area.

Relative to the service vehicle, a Tamaraw Sinki was always made available to Petitioner's use from the start of his assignment as an Account Developer. Petitioner, however, insisted that this be replaced with a better "four-wheeled vehicle". Despite, the irregularity of his request, the same was granted by CCBPI and a new four-wheeled vehicle was assigned to him, a Mitsubishi Canter 6-pallet truck.[64] Petitioner, however, still refused to report at his assigned area claiming again that his medical condition prevented him from driving large vehicles.[65] CCBPI again accommodated Petitioner and re-assigned a new vehicle to him, a smaller three-pallet truck with power steering. Instead of reporting to his place of assignment,[66] Petitioner yet again found another excuse not to report for work when he demanded that CCBPI issue a "guarantee" that it would be responsible for any consequence to his health, as a result of driving the newly assigned vehicle.[67]

As can be gleaned from the foregoing, it was Petitioner who keeps on rejecting the service vehicle assigned to him by propounding excuses to justify his refusal to report for work.

Anent the materials and tools of trade as Account Developer, evidence on record bear out that these materials and tools had always been made available to him as early as the start of his assignment when these were first offered to him through the Transmittal Slip[68] dated 12 August 2009. As sufficiently established by the records, it was Petitioner who failed to claim the same. Notably, the NLRC correctly observed that Petitioner only received the tools and materials on 2 July 2010[69] or on the same day he was charged for Absence without leave or without permission.

Under these circumstances, Petitioner cannot take refuge on his claim that he was prevented from work on the ground of lack of service vehicle and tools of trade. To reiterate, CCBPI has provided him with the necessary service vehicle and tools of trade so that he could comply with the orders directing him to render work as an Account Developer. Thus, for his unjust refusal and repeated disregard of the Orders[70] of CCBPI directing him to report for work, Petitioner undeniably violated CCBPI's rules and regulations on Insubordination and Willful Obedience.

Prescinding from the above, the NLRC did not err in finding that Petitioner's repeated absence without leave as well as his repeated failure to report to his areas of assignment despite instructions to do so amounted to gross and habitual neglect of duty, serious misconduct and willful disobedience of lawful order.

Gross negligence has been defined as the want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[71]

In *Valiao v. Court of Appeals*[72], the Supreme Court ruled that habitual absenteeism without leave, as in this case, constitute gross negligence and is sufficient to justify termination of an employee.

In the same breadth, in *Agullano v. Christian Publishing*[73], the Supreme Court held that unexplained absences

amount to habitual and gross neglect of duties.

Moreover, as held in the case of *Quiambao v. Manila Electric[74] Company*, the repeated unauthorized absences by an employee, similar to this case, may be of such a gross and habitual kind as to sufficiently render what would normally be viewed as neglect of duties as serious misconduct, to wit:

"We have examined the records which indeed show that petitioner's unauthorized absences as well as tardiness are habitual despite having been penalized for past infractions. In *Gustilo v. Wyeth Philippines, Inc.*, we held that a series of irregularities when put together may constitute serious misconduct. We also held that gross neglect of duty becomes serious in character due to frequency of instances. Serious misconduct is said to be a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and indicative of wrongful intent and not mere error of judgment. Oddly, petitioner never advanced any valid reason to justify his absences. Petitioner's intentional and willful violation of company rules shows his utter disregard of his work and his employer's interest. Indeed, there can be no good faith in intentionally and habitually incurring unexcusable absences. Thus, the CA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in equating petitioner's gross neglect of duty to serious misconduct."

As to willful disobedience, jurisdiction dictates that willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee must comply with two requisites (1) the employee's assailed conduct must have been willful or intentional; and (2) the other violated must have reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[75]

In this case, the Orders[76] to report for work were undeniably reasonable and lawful. It is well within the right of an employer, such as CCBPI, to order its employee to report for work at the latter's assigned area. These Orders were made known to Petitioner but Petitioner persistently and stubbornly refused to comply with the Orders and had ready excuses why he would not report for work at his assigned area. Clearly, his obtuse defiance of the Orders of CCBPI show his deliberate and callous disregard for the welfare of CCBPI which renders him unfit to continue as its employee.

Thus, in upholding the validity of dismissal of an employee on the ground of willful disobedience, the Supreme Court in the case of *Areno, Jr. v. SkyCable PCC-Baguio[77]* held that deliberate disregard or disobedience of rules by the employee cannot be countenanced since the same will render a mockery of the rules of discipline employees are required to observe. The far reaching protection extended to labor was never meant to coddle such employees, allowing them to remain employed despite their persistent and belligerent disobedience of the employer.[78]

Anent the procedural due process in dismissal cases, the law requires that the employer must comply with the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.[79]

In this case, the foregoing requirements were duly complied with.

Relative to the first charge on "Absence without Permission or Without leave", a Notice to Explain[80] dated 8 July 2010 was furnished Petitioner apprising him that he was being charged for violating CCBPI's Employee's Code of Disciplinary Rules and Regulations, particularly Rule 2, Section 5 for failing to report for work for the months of April, May and June. In the said Notice to Explain, Petitioner was given a directive to explain his side

in writing within five (5) days from receipt.

With regard to the hearing requirement, an administrative hearing was conducted on 20 September 2010, which Petitioner was informed of in the 7 September 2010 Notice of Investigation[81]. The second administrative hearing on the said charge was held on 20 October 2010, which Petitioner was also informed in the 7 October 2010 Inter-Office Memorandum[82].

As to the second charge on "Insubordination, and Willful Disobedience", Petitioner was also furnished a Notice to Explain[83] dated 20 September 2010 where it was specifically mentioned that he is being charged for violating Rule 3, Section 10 of CCBPI's Employee's Code of Disciplinary Rules and Regulations and Serious Misconduct or willful obedience under Article 282 of the Labor Code. In the said Notice to Explain, Petitioner was likewise given the opportunity to explain his side in writing within five (5) days from receipt.

As to the hearing requirement, an administrative hearing was set on 29 October 2010 of which Petitioner was informed in an Inter-Office Memorandum[84] dated 27 October 2010. Although Petitioner was given only two (2) days before the scheduled hearing on 27 October 2010, the NLRC correctly noted that this would not detract from the fact that he was afforded due process.[85] It must be noted that Petitioner was able to submit his explanation letter[86] dated 25 September 2010 answering the charges contained in the Notice to Explain dated 20 September 2010. Moreover, he sent a Letter[87] dated 28 October 2010 informing CCBPI that he would not attend the administrative hearings for the reasons he had previously stated.

With regard to the second notice requirement for both charges, a Notice of Decision[88] dated 13 December 2010 was issued by CCBPI indicating with sufficient particularity the acts and circumstances committed by Petitioner which formed the basis for his dismissal from employment.

In light of the foregoing disquisitions, it cannot be overemphasized that both the substantive and procedural due process required in dismissal cases have been properly observed. Accordingly, Petitioner's dismissal from employment must be upheld.

Turning now to Petitioner's claim for damages, attorney's fees and other monetary claims.

Petitioner's claim for reinstatement and backwages was correctly denied by the NLRC. An award for reinstatement and backwages is only proper if an employee was unjustly dismissed from work. Where, as in this case, Petitioner was validly dismissed, it is axiomatic that there can be no basis for such an award.

Similarly, in as much as Petitioner was validly dismissed, his claim for moral and exemplary damages inevitably fails. But even if Petitioner was illegally dismissed, it will not automatically entitle him to moral and exemplary damages in the absence of bad faith and malice on the part of CCBPI. As held by the Supreme Court in *Manila Water Company, Inc. v. Pena*[89]:

"This Court however cannot sustain the award of moral and exemplary damages in favor of private respondents. Such an award cannot be justified solely upon the premise that the employer dismissed his employee without just cause or due process. Additional facts must be pleaded and proved to warrant the grant of moral damages under the Civil Code. The act of dismissal must be attended with bad faith, or fraud, or was oppressive to labor or done in a manner contrary to morals, good customs or public policy and, of course, that social humiliation, wounded feelings, or grave anxiety resulted therefrom. Similarly, exemplary damages are recoverable only when the dismissal was effected in a wanton, oppressive or malevolent manner."

In this case, none of the foregoing circumstances have been adequately established. On the contrary, what was substantially proven is the fact that CCBPI had been overly accommodating to Petitioner in granting his requests and giving him numerous chances to explain his side during the administrative investigations. Suffice it to say the

pieces of evidence adduced negate any claim that CCBPI acted in wanton, oppressive or malevolent manner" so as to justify his claim for moral and exemplary damages.

In like manner, there is no basis for the award of attorney's fees because Petitioner was validly dismissed and it was not shown that CCBPI acted in bad faith in terminating his employment.

Likewise, the NLRC did not err in deleting the award of separation pay. The leading case of *Philippine Long Distance Telephone Co. v. NLRC*[90] enunciated the ruling that separation pay "as a measure of social justice" is allowed in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. On the other hand, the case of *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. NLRC*[91] expanded the doctrine laid down in *PLDT* by adding dismissals other than those under Art. 282 of the Labor Code, like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family which would preclude award of separation pay.

As the rule now stands, the award of separation pay is authorized in the situations dealt with in Articles 283 and 284 of the Labor Code, but not in terminations of employment based on instances enumerated in Article 282.[92]

Conformably to the foregoing jurisprudence, Petitioner is indeed not entitled to separation pay because he was dismissed due to causes enumerated under Article 282 specifically serious misconduct, willful disobedience and gross and habitual neglect of duties.

Anent Petitioner's claim for holiday pay, holiday premium pay, rest day premium pay and service incentive leave pay, the same is also bereft of legal and factual basis. Under Article 82 of the Labor Code, field personnel are specifically excluded from the coverage of the law regarding conditions of employment which include holiday pay, holiday premium pay, and rest day premium pay and service incentive leave pay.

In this case, the NLRC correctly denied the foregoing claims of Petitioner not only because of his own admission[93] that his position falls within the ambit of a field personnel but more importantly because it was substantially proven that he was already paid said benefits even if he was not statutorily entitled to the same[94].

Similarly, the NLRC correctly deleted the award of 2010 13[th] month pay as Petitioner was already paid said benefit[95].

All told, the NLRC's findings that Petitioner was validly dismissed for a just cause coupled with observance of procedural due process have sufficient basis in evidence, law and jurisprudence, and in Our view, far from the arbitrariness that characterizes excess of jurisdiction.

WHEREFORE, premises considered, the Petition is DENIED. The Decision dated 30 January 2012 and Resolution dated 25 July 2012 by the NLRC in NLRC LAC No. 09-0023964-11 (NLRC NCR Case No. SRAB V-12-00192-10/NLRC NCR Case No. SRAB V-05-00065-10) are hereby AFFIRMED.

SO ORDERED.

Dimaampao, (Chairperson), and Ybañez, JJ., concur.

[1] Rollo pp. 31- 56

[2] *Id.*, pp. 57-58

[3] *Supra* Note 1

- [4] Supra Note 2
- [5] Rollo, p. 32
- [6] Id., p. 1141
- [7] Id., p. 1143
- [8] Id., p. 1145
- [9] Id., p. 1153
- [10] Id., p.1173
- [11] Id., pp. 1174-1175
- [12] Id., p. 1180
- [13] Id., p. 1182
- [14] Id., p. 1183
- [15] Id., p. 1181
- [16] Id., p. 817
- [17] Id., p. 1184
- [18] Id., p. 1186
- [19] Id., p. 1187
- [20] Id., pp. 1188-1189
- [21] Id., p. 1191
- [22] Id., p. 1193
- [23] Id., p. 1194
- [24] Id., p. 1194-1201
- [25] Id., p. 1202
- [26] Id., p. 1205
- [27] Id., p. 1206
- [28] Id., p. 1207
- [29] Id., p. 1208
- [30] Id., p. 1211
- [31] Id., p. 1212
- [32] Id., p. 1214
- [33] Id., p. 1215
- [34] Id., p. 1216-1217

- [35] Id., p. 1218-1219
- [36] Id., p. 1220
- [37] Id., p. 1221-1222
- [38] Id., p. 1223
- [39] Id., p. 1224
- [40] Id., p. 1225
- [41] Id., p. 1226
- [42] Id., p. 1227
- [43] Id., p. 1228-1229
- [44] Id., p. 410
- [45] Id., pp. 61-62
- [46] Id., pp. 341-356
- [47] Id., pp. 301-339
- [48] Id., pp. 594-644
- [49] Supra Note 1
- [50] Supra Note 2
- [51] Rollo, pp. 11-12
- [52] Loadstar Shipping Corporation, Inc., 455 Phil 936 (2003)
- [53] Alps Transportation v. Rodriguez, et al., G.R. No. 186732, 13 June 2013
- [54] Surigao de Norte Electric Cooperative, Inc. v. Gonzaga, G.R. No. 187722, 10 June 2013
- [55] Supra Note 12, 14, 15, 17, 18, 24, 26,
- [56] Supra Note 13, 28
- [57] Rollo, p. 12
- [58] Id., pp. 1203-1204
- [59] Id., pp. 1233-1235
- [60] Id., p. 14
- [61] Id., p. 1148-1152
- [62] Id., p. 44
- [63] Id., p. 15-17
- [64] Id., pp. 1188-1189
- [65] Id., p. 1211

- [66] Id., p. 1212
- [67] Id., p. 1214
- [68] Id., p. 1153
- [69] Id., p. 1206
- [70] Supra Note 21, 31
- [71] Abel v. Philix Mining Corporation, G.R. 178976, 31 July 2009
- [72] G.R. No. 146621, 30 July 2004
- [73] G.R. No. 164850, 25 September 2008
- [74] G.R. No. 171023, 18 December 2009
- [75] Arenos v. Skycable PCC-Baguio, G.R. No. 180302, 5 February 2010
- [76] Supra Note. 21, 31
- [77] G.R. No. 180302, 5 February 2010
- [78] Rollo, p. 1036
- [79] Skippers United Pacific, Inc. v. Doza, et al., G.R. No. 175558, 8 February 2012
- [80] Supra Note 28
- [81] Supra Note 33
- [82] Supra Note 37
- [83] Supra Note 35
- [84] Supra Note 40
- [85] Rollo, p. 51
- [86] Supra Note 36
- [87] Rollo, p. 1226
- [88] Rollo, p. 1228
- [89] G.R. No. 158255, 8 July 2004
- [90] G.R. No. L-80609, 23 August 1988, 164 SCRA 671.
- [91] G.R. Nos. 158786, 158789, 158798-99, 19 October 2007
- [92] G.R. No. 189686, 10 July 2013
- [93] Rollo, p. 410
- [94] Id., pp. 825-831, 840-841
- [95] Id., p. 652

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