

NICOLAS C. VILLEGAS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PORT COQUITLAM DEVELOPMENT CORP. AND/OR BOWEN GOTHONG, RESPONDENTS.

Ponente: COSICO, J.

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COSICO, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolutions[1] dated November 26, 2004 and January 31, 2005 rendered by the National Labor Relations Commission (NLRC) (Second Division) in NLRC CA No. 041050-04 reversing the decision[2] dated June 28, 2004 of Labor Arbiter Donato G. Quinto Jr. in NLRC-NCR CASE No. 05-05675-03 which is, first and foremost, a complaint for illegal dismissal with damages filed by petitioner Nicolas Villegas against his former employer, private respondent Port Coquitlam Development Corp.(PCDC) and Bowen Gothong.

In the proceedings below, the Labor Arbiter ruled that petitioner's dismissal was illegal and made the following pronouncements in the June 28, 2004 Decision, to wit:

“WHEREFORE, premises above considered, a decision is hereby rendered declaring the dismissal of the complainant illegal, and ordering respondent to pay him separation pay equivalent to one-month salary for every year of service, in the amount of P176,000.00 considering that reinstatement appears no longer feasible, plus full backwages of P165, 000.00, all in the aggregate of THREE HUNDRED THIRTY ONE THOUSAND PESOS (P331,000.00) plus attorney's fee equivalent to ten percent (10%) of the total above award. Respondent is further ordered to pay complainant P20,000 as moral damages and P10,000 as exemplary damages as discussed above.

The rest of the claims are hereby dismissed for lack of merit.

SO ORDERED.[3] [Decision, p. 8]

On appeal[4] to the NLRC, the latter found petitioner's dismissal was legal. Hence, in its November 26, 2004 Resolution, respondent Commission ruled:

“WHEREFORE, all foregoing premises considered, the appealed Decision dated June 28, 2004 is hereby SET ASIDE and VACATED and a new one entered DISMISSING this case for lack of merit.

SO ORDERED.”[5] [Decision, p. 12]

Meanwhile, in its January 31, 2005 Resolution, respondent Commission denied for lack of merit the motion for reconsideration of the above Resolution.

The Facts

This petition stemmed from the amended complaint for illegal dismissal, illegal suspension and underpayment/non-payment of salaries, overtime pay, legal holiday pay, premium pay, service incentive leave and 13th month pay with prayer for an award for separation pay and backwages, refund of cash bond, plus moral and exemplary damages and attorney's fee filed by Nicolas Villegas against his former employer PCDC and its

President, Bowen Gothong.

As the records show, petitioner was formerly the Officer-in-Charge (OIC) for Branch Operations of PCDC's Manila Branch Office and held three positions therein; that of manager for both the company's cargo and trucking business and supervisor of the company's trucking business since 1998 until his employment was terminated on April 23, 2003. On February 11, 2003, PCDC issued to him a suspension order[6] requiring him to answer the following charges: (1) Hi-jacking incidents which occurred during his stint which may have been the result of his unauthorized absences; (2) Failing to inform the management of the impoundment of one of the company's truck and failing to recover the same and as a result thereof, the truck was cannibalized. Petitioner was thereafter placed under preventive suspension and the company directed the former to appear at PCDC's Cebu Branch Office on February 21, 2003 for the investigation of his case.

In response thereto, petitioner through his letter-explanation[7] dated February 18, 2003 written by his son, PCDC was informed that petitioner could not attend the February 21, 2003 hearing due to lack of funds. With respect to aforesaid charges, however, petitioner had this to say:

"It is worth stressing that my father was originally assigned to manage the LCL Department alone by which for years he was exceedingly good at. It was only then when Mr. Teotimo Nocos resigned from the service and whose vacant position was never replaced that my father took over the management and handling of Trucking Department which is a separate and distinct from that of the LCL in order not to paralyze Trucking Operations aside from being the Manager for LCL Department at the same time. Nevertheless, for years also, my father was able to make good of it until such time that some members of the Trucking Department, through their own surprisingly engaged in [an] illegal activities such as theft and hi jacking operations. Admittedly, my father's shortcomings consists mainly on the Trucking side by which he was merely substituting in temporary capacity the position vacated by another manager, Mr. Teotimo Nocos, while at the same time concentrating on his main task, the LCL Department. Such being the case, I hope the management would consider the fact pending the result of the investigation leading to my father's involvement or participation to the same, be presumed innocent. Please let it be noted as well that it is blatantly unfair on the part of my father if he will be deprived of the only source of livelihood he has to support his family merely on account of infractions committed by others which is beyond his control.

As regards to the issue of the absences of my father please be considerate for that as he was by that time visiting his ailing mother and was sometimes called for an emergency."

Subsequently, another letter[8] dated March 10, 2003 was issued by PCDC to petitioner informing him that the company shall transfer the venue for the investigation of his case to Manila and the hearing thereof shall be conducted on March 25, 2003. Petitioner was also required to answer the charges leveled against him by former company employees, Redeemer Lizada and Edmar Marata, through their letters attached to the company letter. Meanwhile, in the reply-letter dated March 24, 2003 of petitioner, written in his behalf by his son, the latter clarified that his father is still an employee of PCDC and inquired as to the following inconsistencies: (1) Petitioner's latest earned salary prior to his preventive suspension was continuously withheld unjustifiably; (2) Petitioner's SSS loan application was rejected/disapproved on the ground that he has no more employer even prior to his receipt of the aforesaid suspension memo; (3) Petitioner was prematurely replaced by the newly hired PCDC Manager by the person of Mr. Terry Gulpan who started in his official capacity on March 1, 2003; and (4) Petitioner's preventive suspension was over 30 days without pay.

As to the charges, petitioner submits that the written statement of Lizada and Marata should not be given probative value for being devoid of legal and factual bases. The contents of the written statement of Lizada are mere fabrications, tainted with malice, motivated by personal ill will, an act of retaliation and most of all unsupported by any documentary evidence and it is unlikely for Marata to have personal knowledge of the

allegations of Lizada as the nature of Marata's duties require him to be out of the company premises almost all the time.

Not satisfied with petitioner's letter-explanations, the company on April 8, 2003, wrote[9] to petitioner terminating his employment:

"By reason of your indifference and gross neglect of duty our company asset was lost. This could have been averted, had you exercised prudence and diligence in seeing to it that proper documentations were done and reports were made to the office. You could not claim and feign ignorance, because this has been our STANDARD OPERATING PROCEDURE, and you have done this before in all our other accidents and undertakings. What made matters worse, was the fact that this incident was allowed to lapse for over one year without you making any report about it. As the company's OIC, you occupy a position of trust and confidence. You have been entrusted by the company of its valuable assets, some 15 units of trucks and some 60 units of trailer costing MILLIONS of pesos. The company expects you to take care of these units as a good father of a family. By your act and attitude of indifference, you have shown that the company was mistaken in leaving to your care and protection its valuable assets. You must understand, that you were hired as the company's OIC. You represent the company in its absence. In short, you are expected to take good care of the company's properties and assets. It is very sad to note, that you failed in this.

It is likewise noteworthy to note, that in the investigation of this case, MR. REDEEMER LIZADA submitted a sworn statement detailing some of your activities during your stint as our company's OIC. This sworn testimony not having been rebutted, shall stand.

IN VIEW OF ALL THE FOREGOING, it is the DECISION of the company, to dismiss your services effective upon receipt hereof, on account of loss of trust and confidence and gross negligence of your duties and responsibilities. The company reserves the right to claim for damages for the loss of its valuable assets due to your acts." [PCDC Resolution, pp. 2-3]

Petitioner received the aforesaid notice of termination on April 23, 2003. Losing no time, petitioner instituted the present complaint for illegal dismissal against PCDC.

Conciliation efforts to settle the dispute between the parties have proven to be futile, the Labor Arbiter required them to submit their respective position papers and supporting evidence and annexes and thereafter declared the case submitted for decision.

The Ruling of the Labor Arbiter

Verily, Labor Arbiter Donato G. Quinto, Jr. found petitioner to have been illegally dismissed, ruling thus[10]:

"As above expounded, the dismissal of complainant is illegal as respondent did not observed (sic) the requirements of substantial and procedural due process. It even appears plain that his dismissal was done under anomalous circumstances x x x" [June 28, 2004 Decision, p. 7]

The Ruling of the NLRC

As earlier adverted to on appeal[11], the NLRC found private respondents to have sufficiently complied with the substantive and procedural due process set forth under the law and made the following ratiocinations, to wit:

"From the tenor of complainant's letter-explanation to respondents' show cause memo, the former virtually admitted the charges against him for negligence and unauthorized absences which resulted to substantial losses to the company amounting to millions of pesos.

As to his unauthorized absences without proper memorandum, complainant's lame explanation was that he was "visiting his ailing mother x x x There is, however, no evidence to support such bare allegations.

As to the incidents of hi-jacking involving cargoes of FCTC worth more than One Million Pesos; the matter of

the company truck being abandoned at the PNCC impounding compound as well as the other hi-jacking incidents which happened during complainant's stint as OIC Manager, complainant likewise virtually admitted that these incidents indeed happened during his watch but denied any personal involvement therein x x x

x x x

x x x

In light of the foregoing, there is no doubt that complainant's suspension and eventual termination from his employment was for a just and valid cause.

As a top management employee at respondent Company's Manila Branch, complainant's position is [i]mbued with complete trust and confidence. x x x Being the OIC Branch Manager, complainant cannot escape his responsibility for the theft and hi-jacking incidents occurring in his area of responsibility thereby costing the Company millions of pesos in terms of losses by simply saying that "he was merely substituting in a temporary capacity the position vacated by another Manager" and that said "infractions (were) committed by other which is beyond his control". Such evasive statements do not relieve him from his responsibility for the incidents which happened during his stint. At best, it is an open admission of his inefficiency and gross negligence in the performance of his functions.

x x x

On the Labor Arbiter a quo's finding that "dismissal of the complainant is illegal as respondent did not observed (sic) the requirements of substantial and procedural due process", such conclusion is not supported by the evidence on record. As above-shown, records show that respondents issued complainant a show-cause letter dated February 11, 2003 informing him of the charges against him x x x In response thereto, complainant submitted his letter-explanation dated February 18, 2003 x x x. Not satisfied with his explanation, respondent Company issued complainant a termination letter dated April 8, 2003 x x x It is clear from the foregoing that complainant was accorded substantial and procedural due process before he was finally dismissed from his employment. x x x"[12] [November 26, 2004 Resolution, pp. 6-9]

The motion for reconsideration[13] filed having been denied[14], petitioner is now before us in the instant petition.

The Present Petition

Petitioner raises the following issues for this Court's resolution, to wit:

I.

THE APPEAL OF PRIVATE RESPONDENTS BEFORE THE NLRC SHOULD HAVE BEEN DISMISSED OUTRIGHT DUE TO ITS FAILURE TO SUBMIT A CERTIFICATE OF NON-FORUM SHOPPING AS REQUIRED BY NLRC RULES OF PROCEDURE AS WELL AS SC CIRCULAR NO. 04-94.

II.

THE DECISION OF THE LABOR ARBITER WAS SUFFICIENTLY CORROBORATED BY THE EVIDENCE ON RECORD WHILE NLRC'S FINDINGS ARE CONTRARY TO THE EVIDENCE ON RECORD AS WELL AS THE ADMISSION OF PRIVATE RESPONDENTS.

III.

PETITIONER IS ENTITLED TO SEPARATION PAY, HIS SALARY COVERING THE PERIOD PRIOR TO HIS PREVENTIVE SUSPENSION AND THE CORRESPONDING WAGES COVERING THE PERIOD OF HIS SUSPENSION OF MORE THAN THIRTY (30) DAYS. HIS SUSPENSION OF SEVENTY-ONE (71) DAYS HAS NO LEGAL BASIS.

IV.

PETITIONER'S DISMISSAL WAS DONE IN BAD FAITH.

V.

PETITIONER'S DISMISSAL ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE ON ACCOUNT OF THE INCIDENTS OF HIJACKING AND CANNIBALIZATION OF PRIVATE RESPONDENTS' TRUCK WAS NOT SUPPORTED BY EVIDENCE TO JUSTIFY DISMISSAL.

VI.

PETITIONER'S LENGTH OF SERVICE COUPLED BY HIS EXEMPLARY PERFORMANCE IS PROTECTED BY LAW AND EXISTING JURISPRUDENCE.

In sum, the sole issue raised before the instant petition is whether or not respondent NLRC committed grave abuse of discretion in ruling that the dismissal of petitioner was legal.

Petitioner argues^[15] that the NLRC's factual findings were grounded on mere speculation, surmises, conjectures and are based on pure misapprehension of facts and misapplication of laws and jurisprudence which also show public respondent's manifest bias as shown by the following acts:

First, private respondent's appeal memorandum should have been dismissed by the NLRC considering that the same did not contain a Certificate of Non-Forum Shopping as required by the NLRC Rules of Procedure.

Second, the evidence on record sufficiently support a finding that petitioner's dismissal was illegal considering that there was no just cause for his dismissal nor did it appear that petitioner's right to procedural due process, in termination cases, was observed.

Third, petitioner lays stress to the fact that he is only the manager of the company's LCL/Cargo Consolidation business and avers that he never became a manager of private respondent's trucking business. Hence, the latter cannot dismiss him on the ground of loss of trust and confidence. Nonetheless, the alleged grounds relied upon by private respondents that petitioner was indeed responsible for the hi-jacking and cannibalization of the company's truck was never clearly shown.

Lastly, considering petitioner's length of service, the penalty of dismissal is unduly harsh for the perceived offenses committed by the latter.

On the other hand, private respondents maintain^[16], that the issue of non-forum shopping is moot and academic since the matter was already brought before the NLRC when it had the opportunity to rule that technicalities of procedure shall not prevail over the interest of one's party to due process. The NLRC was correct in reversing the finding of the Labor Arbiter and holding that petitioner was not constructively dismissed considering that no evidence on record will show that private respondent reported to the SSS that petitioner was no longer employed by the company.

Likewise, petitioner's right to due process was observed when he was given two notices as required by law before he was dismissed from employment. The first notice apprised him of the acts and omission for which his dismissal was sought and the second notice informed him of the employer's decision to dismiss him. Contrary to petitioner's assertions, the company had sufficiently established that petitioner's dismissal was for a just cause, that is, by reason of his gross neglect in attending to his duties, the company not only incurred monetary losses but also lost its trust and confidence in him. As such, PCDC emphasizes that the loss of its property is not an imaginary thing. It was lost by reason of the negligence and want of care of petitioner, as OIC manager, which was proven after the investigation conducted by the company and wherein petitioner was well afforded the opportunity to be heard.

This Court's Ruling

The petition is bereft of merit.

Before delving into the substantive aspects of this petition, it must be stressed that the rules of procedure in labor cases should not be applied in a very rigid and technical sense.[17] After all, they are merely tools designed to facilitate the attainment of justice.[18] As such, where its strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided.[19] This is especially true in the instant case considering that the appeal filed by PCDC before the NLRC rested on meritorious grounds. Significantly, Section 10, Rule VII of the 2002 Rules of Procedure of the NLRC provide:

“SECTION 10. TECHNICAL RULES NOT BINDING. The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. [Underlining]”

As such, in the case cited by petitioner, that of *Maricalum v. NLRC*[20], the Supreme Court took note that the requirement of filing a certificate of non-forum shopping should be reasonably applied as in the said case, to allow a strict enforcement of the said requirement will work injustice to the employee therein who for several years had been trying to enforce a judgment which had long become final and executory, hence:

“(s)ubstantial compliance with the Circular is sufficient. This Circular expanded or broadened the applicability of Circular No. 28-91 of this Court. In *Gabionza vs. Court of Appeals* [G.R. No. 112547, Resolution of July 1994, 234 SCRA 192] this Court held that substantial compliance therewith is sufficient for:

‘It is scarcely necessary to add that Circular No. 28-91 must be so interpreted and applied to achieve the purposes projected by the Supreme Court when it promulgated that Circular. Circular No. 28-91 was designed to serve as an instrument to promote and facilitate an orderly administration of justice and should not be interpreted with absolute literalness as to subvert its ultimate and legitimate objective or the goal of all rules of procedure-which is to achieve substantial justice as expeditiously as possible.’

xxx xxx xxx.

The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.”

Prescinding therefrom, it does not appear that PCDC filed another case or has a pending action of the same or similar import akin to the case at bar. Thus, we find that to dismiss the said appeal on mere technicality alone will not serve the ends of justice. To repeat, technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties.[21] Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed.[22]

As such, we now turn to the other arguments in the petition. On this note, petitioner imputes bias on the part of the NLRC in rendering the assailed Resolutions considering that the same were allegedly not in accord with the evidence on hand which shows that his dismissal from employment was illegal for being violative of the substantive and procedural due process observed in termination cases.

Ordinarily, in certiorari proceedings, the appellate court is not tasked to dwell, assess or weigh the sufficiency of evidence upon which the labor arbiter and the NLRC based their conclusions, the query being usually 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 resolution. An exception to this rule, however, is where the factual findings of the labor arbiter and the NLRC are in conflict with one another.[23] In such case, the appellate court as the reviewing court may dwell into the records and examine for itself the questioned findings.[24]

Considering the foregoing, the main brunt of controversy is the status of the dismissal of petitioner. On one hand,

petitioner submits that his dismissal was illegal for failure of the company to comply with the substantive and procedural due process required in termination cases; on the other hand, PCDC alleges the contrary. On this note, where the controversy involves a case of illegal dismissal, the oft-repeated rule is that it is the employer who bears the onus of proving that the dismissal was for just cause and that the employee's procedural due process was observed.[25] That being the case, PCDC is burdened to prove that petitioner's dismissal is valid by showing that the following requisites are present, to wit: (a) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and (b) the employee must be afforded an opportunity to be heard and defend himself.[26] This means that an employer can terminate the services of an employee for just and valid causes, which must be supported by clear and convincing evidence.[27] It also means that, procedurally, the employee must be given notice, with adequate opportunity to be heard, before he is notified of his actual dismissal for cause.[28]

Petitioner's Dismissal was for a Just Cause

As borne by the evidence on hand, PCDC dismissed petitioner on the grounds of gross neglect and loss of confidence and trust. For this matter, the term "gross negligence" as a just cause for dismissal has been defined as one that connotes want of care on the part of the dismissed employee in the performance of his duties.[29] At the same time, loss of confidence and trust occurs when there is willful breach of the employer's trust making the employee unfit for the position he is holding. In *Fujitsu Computer Products Corp. of the Philippines v. Court of Appeals*, the Supreme Court defined what constitutes the employer's "willful breach of trust", to wit[30]:

"A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer."

Loss of confidence as a just cause for termination of employment is premised on the fact that the employee holds a position of trust and confidence.[31] Hence, in order to constitute a just cause for dismissal, the act complained of must be "work-related" and would show the employee concerned to be unfit to continue working for the employer.[32]

An examination of the records reveals that petitioner voluntarily assumed three positions on PCDC's business, that of his position as manager for the latter's cargo business and manager and supervisor for the company's trucking business. Relatively, he performed the duties corresponding to the three positions with nary a protest on his part for a period of time spanning five to six years prior to his dismissal. As the records also show, during such time, the following events occurred: (1) Impoundment and non-recovery of one of PCDC's truck and its cannibalization; and (2) Hi-jackings of PCDC's trucks; and (3) Petitioner's unauthorized absences. Admittedly, petitioner acknowledged his "shortcomings" in the performance of his duties and unequivocally stated that he "lost focus" on recovering the truck belonging to PCDC, albeit, its non-recovery was due to the company's fault.

On this note, petitioner insists that had the company remitted funds after he informed the latter of the truck's impoundment, the incident of the truck being cannibalized and incurring storage charges amounting to P80,000.00 would have been averted. Meanwhile, PCDC denied that it had knowledge of the whole incident of the truck's impoundment. However, considering that it is petitioner who alleges knowledge on the part of the company of the said impoundment, being an affirmative defense, it is petitioner who should show and prove that PCDC did have knowledge of the said incident. This fact certainly constitutes part of his defense, and even in labor cases, allegations per se are not evidence.[33] As such, petitioner should have presented evidence of the company's knowledge of the matter. At the very least, he could have presented a copy of PCDC Inventory of Assets[34] which petitioner alleged to reflect the fact of the truck's impoundment or affidavits of the persons whom he allegedly informed of the said incident.

Indeed, we cannot simply rely on petitioner's allegation *moreso*, considering that PCDC's lack of knowledge is more believable in the instant case and logically consistent with human experience. As pointed out by PCDC, the truck's worth is more than a million pesos, and the storage charges for its impoundment was only P80,000.00. What benefit therefore would PCDC thus gain by not immediately recovering the truck had the latter known that it was previously impounded? In fact, petitioner himself stated^[35] in his affidavit that PCDC's President was very mad with him when the truck's "long overdue" impoundment and "cannibalization" came to the president's knowledge that the management in Cebu had to send its Chief Operations Officer to Manila to conduct an investigation into petitioner's lapses in the management of company operations and subsequently, recover the impounded truck. We might also add, that as the manager, petitioner has the responsibility to see to it that all the trucks of PCDC is operational. In this regard, by no stretch of imagination can we therefore consider that the latter would not have noticed or "lost focus" that one of the trucks under its management was not operational. To our mind, this further bolsters the fact that petitioner was neglectful of its responsibility as manager for PCDC's business in Manila.

On the matter of the charges against him for appropriating company property and merchandise for his own benefit, again, it is not amiss to note that while petitioner tried to show that he was authorized to withdraw some of the merchandise inside the container vans being allegedly the owner of the said container vans, no proof was however adduced on such fact of ownership and that the said container vans are the very same ones owned by petitioner. Moreover, while petitioner alleged that he had witnesses to corroborate him on the matter of the "20 sacks of sugar" from PCDC which was allegedly appropriated by him, the said witnesses were never presented by petitioner. As to the other accusations, instead of presenting evidence in his favor, petitioner opted merely to deny the said charges. In this regard, though this is only a labor case, it is one of the basic rules in evidence that the defense of denial is a weak defense, because, more often than not, it is easy to contrive but difficult to disprove. As such, to be believed, it must be buttressed by strong evidence of non-culpability, otherwise such denial is purely self-serving and is with nil evidentiary value.^[36] Such being the case, considering that petitioner failed to present satisfactory evidence to dispute the accusations against him, such unequivocal assertions of culpability should be given greater weight. After all, denial cannot prevail over the positive declarations of persons that petitioner committed the acts imputed upon him.^[37] More importantly, there is no reason to doubt the truthfulness of the accusations of Lizada and Marata absent any ill motive on their part as to why they will impute such serious charges against petitioner. This is also applicable on the part of PCDC as petitioner likewise failed to show any improper or evil motive on its part as to why the latter will terminate his employment for no reason at all.

On another note, we find that PCDC management had been very accommodating to petitioner's plight that when he allegedly lacked funds to attend the hearing to be held in Cebu, the company even went to the extent of transferring the venue for the hearing from Cebu to Manila. Nevertheless, petitioner opted not to attend on the excuse that he was in Negros Oriental to "clear" his mind. From this, we can only doubt petitioner's sincerity as to his intention of attending the said hearing, for while he reasoned out that he had no funds to go to Cebu, yet, he had funds to go to Negros Oriental. To our mind, he was being evasive in confronting the charges against him. In addition, contrary to petitioner's allegation that the company was motivated by bad faith in transferring the venue from Cebu to Manila, there is want of any circumstance to show such alleged bad faith. In the first place, no evidence was shown by petitioner that he informed PCDC that he was going to Negros Oriental which was closer to Cebu. Second, no evidence was likewise adduced to show that petitioner really had the intention to attend the scheduled hearing. In fact, no such intention can be inferred from a reading of petitioner's letter dated March 24, 2003 in response to the March 10, 2003 letter of the company wherein the said venue for the investigation was transferred to Manila and scheduled on March 25, 2003. Corollary to this, we find that petitioner's evasive stance

and indifference in not attending the hearing to be contrary to human experience especially for someone who had been falsely accused. This is especially true when not only his employment was at stake but likewise his reputation for honesty and loyalty.

In any case, we are convinced not only from the evidence submitted by PCDC but also from petitioner's admissions that there were indeed just causes for the company to dismiss his employment for gross neglect and loss of trust and confidence. It does not matter that he was performing duties corresponding to three different positions. The fact remains that he voluntarily assumed the same for several years without a sound of protest. To our mind, had he informed the management of PCDC that he cannot handle all the duties of the said positions the company would have hired another person or would have done something, unless and as we are more inclined to believe in this case, he represented to the company that he can handle and perform all the duties attending to the said positions.

In sum, PCDC entrusted to petitioner the entire operations and management of its Manila Branch Office, for which reason, being in Cebu the management can only rely on the information supplied by petitioner, as manager and the person in control of its Manila operations. However, as the records reveal, petitioner was not only remiss in his duties but also caused unnecessary harm to the company finances, to its property and reputation. To our mind, there is sufficient reason to support a finding that petitioner grossly neglected his duties and breached the confidence and trust reposed upon him by PCDC as his employer.

Lastly, petitioner interposes that dismissal is a harsh penalty considering that he had been in the company for 14 years and in fact had been given a loyalty award. It is quite unfortunate and sad that notwithstanding that the company had been rewarding petitioner for his work, he still had the temerity to "bite the hand that feeds him", so to speak. The fact that he had been in PCDC for quite a long time and yet still committed the above acts, should his long service in the company all the more be taken against him. In the case of *Etcuban, Jr. v. Sulpicio Lines, Inc.*[38] the Supreme Court observed:

"The fact that the petitioner has worked with the respondent for more than 16 years, if it is to be considered at all, should be taken against him. The infraction that he committed, vis-à-vis his long years of service with the company, reflect a regrettable lack of loyalty. Loyalty that he should have strengthened instead of betrayed. If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, it will become a prize for disloyalty, perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables."

We cannot therefore in good conscience saddle PCDC with such an employee which, in view of the foregoing disquisition, had suffered enough losses from petitioner's neglect and ingratitude.

Procedural Due Process was Observed.

It is petitioner's argument that his procedural right to due process was violated on the ground that as early as January 27, 2003, he was already constructively dismissed as allegedly shown by the following facts: (a) SSS Online Inquiry document dated January 27, 2003 shows that he was "NOT EMPLOYED BY CERT EMPLOYER x x x"; (b) His salary in the period prior to his preventive suspension was already withheld and his preventive suspension is beyond the 30-day period set forth by law; and (c) As of March 1, 2003, the company already hired his replacement as manager.

Even if we take the following instances in its totality, we are still unconvinced that petitioner was constructively dismissed for the following reasons:

First, the term constructive dismissal or constructive discharge has been defined as quitting because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a

diminution in pay.[39] Applying the foregoing definition to the instant case, it must be stressed that even after his constructive dismissal, which was alleged to have occurred as early as January 27, 2003, petitioner was still reporting for work until February 11, 2003 or the date of his preventive suspension. No inference can be seen that petitioner's employment on or after January 27, 2003 became impossible, unreasonable or unlikely, nor was he demoted in position or salary. Moreover, we agree with the NLRC that the phrase, "NOT EMPLOYED BY CERTIFYING EMPLOYER, NOT IN ER STATIC" is a very vague computer information and in fact this matter was clarified by PCDC by presenting the company's SSS Form R-1A showing that as of March 3, 1989, petitioner was already reported to SSS and, contrary to the Labor Arbiter's findings, there is no evidence to support the fact that petitioner had indeed been reported by PCDC as no longer connected with the latter.[40]

Second, on the matter of PCDC's act of hiring another person to replace him, taking into account that petitioner is occupying the position of manager charged with the entire company operations in Manila, it is quite understandable under the circumstances that the company should find someone else to replace him, lest it suffers further losses should the operations be suspended until the termination of petitioner's investigation. Verily, it must be remembered that petitioner is the head of the operations of PCDC Manila Branch Office. To await the conclusion of the investigation of his case while putting on hold the company's operations in Manila would be contrary to sound business judgment.

Nonetheless, petitioner is entitled to his salary covering the period from January 25, 2003 up to February 9, 2003 prior to his preventive suspension; and his salary[41] covering the period exceeding 30 days from the time of his preventive suspension until April 23, 2003 when he received PCDC's notice terminating him from employment. Relatively, since it does not appear that private respondent Bowen Gothong exceeded his authority in exercising his official functions as president of PCDC, he cannot be held personally liable for the acts or omission of the company herein.[42] Otherwise stated, the liability for payment of petitioner's unpaid salaries and benefits, if any, solely belongs to PCDC.

That having been said, the law and jurisprudence provide that an employee's procedural due process in dismissal cases is satisfied when the employee is given two (2) notices: one, of the intention to dismiss, indicating therein his acts or omissions complained against, and two, notice of the decision to dismiss.[43]

As the records show, petitioner had been served with three letters. The first two letters dated February 11, 2003 and March 10, 2003 are notices informing petitioner of the charges against him and giving him an opportunity to explain himself, which he was able to do in the letters dated February 18, 2003 and March 24, 2003, while the third letter dated April 8, 2003, is a notice of termination of his employment. Hence, there is no violation of his procedural right to due process.

In fine, what is repugnant to due process is the denial of the opportunity to be heard.[44] As aptly shown, petitioner had the opportunity to be informed of the charges against him and be heard therein but was sadly found wanting. Consequently, he was notified of his dismissal.

All told, even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives.[45] As long as the company's exercise of those rights and prerogative is in good faith to advance its interest and not for the purpose of defeating or circumventing the right of employees under the laws or valid agreements, such exercise will be upheld.[46]

WHEREFORE, premises considered, the instant petition for certiorari is DISMISSED. The assailed Resolutions of the National Labor Relations (Second Division) in NLRC CA No. 041050-04 is AFFIRMED with MODIFICATION in that, Port Coquitlam Development Corp. is ordered to pay Nicolas Villegas' salary and other benefits, if any, for the period covering January 25, 2003 to February 9, 2003; and his salary and other

benefits, if any, for the period after the expiration of petitioner's thirty (30)-day preventive suspension counted from February 11, 2003, to April 8, 2003, the date of his termination from employment.

The case is hereby remanded to the Labor Arbiter of origin for the proper computation of petitioner's salaries and other benefits, if any, which he may be entitled to.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[1] Rollo at 47-59 and 86-87.

[2] Id. at 253-260.

[3] Id. at 260.

[4] Id. at 261-270.

[5] Id. at 58.

[6] Id. at 144-145.

[7] Id. at 146-147.

[8] Id. at 171-173.

[9] Id. at 155-157.

[10] Id. at 259.

[11] Id. at 261-287.

[12] Id. at 52-55.

[13] Id. 60-85.

[14] January 31, 2005 Resolution; Rollo at 86-87.

[15] Id. at 348-369.

[16] Id. at 378-399.

[17] *Tres Reyes v. Maxim's Tea House*, 398 SCRA 288, 297[2003].

[18] *Ibid.*

[19] *Ibid.*

[20] 298 SCRA 378, 385[1998]

[21] *Ibid.*

[22] *Ibid.*

[23] *Agabon v. National Labor Relations Commission*, 442 SCRA 573,604-605[2004]

[24] *Ibid.*

[25] Fujitsu Computer Products Corp. of the Philippines v. Court of Appeals, G.R. No. 158232, April 8, 2005.

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Valiao v. Court of Appeals, 435 SCRA 543, 551[2004].

[30] G.R. No. 158232, April 8, 2005.

[31] Etcuban, Jr. v. Sulpicio Lines, Inc. 448 SCRA 516, 529 [2005]

[32] Ibid.

[33] Ramoran v. Jardine CMG Life Insurance Company, Inc., 326 SCRA 208, 221 [2000]

[34] Rollo. at 158-163; Par. 25 of Petitioner's Affidavit.

[35] Id. at 160;

[36] Jugueta v. Estacio, 444 SCRA 10, 16 [2004].

[37] People v. Borbon, 425 SCRA 178, 187 [2004].

[38] 448 SCRA 516, 532 [2005].

[39] Unicorn Safety Glass, Inc. v. Basarte, 444 SCRA 287 [2004]

[40] Rollo at 57.

[41] By virtue of Rule XXIII, Section 9 of the Rules to Implement the Labor Code, as amended which states that, "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. x x x

[42] De Leon, The Corporation Code of the Philippines, 298-299 [2002 ed.]

[43] Golden Thread Knitting Industries, Inc v. NLRC, 304 SCRA 568,580[1999].

[44] Gaoiran v. Alcala, 444 SCRA 428,444 [2004]

[45] Valiao v. Court of Appeals, 435 SCRA 543, 553[2004].

[46] Ibid.

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