

## **GSR GASOLINE STATION/ GERALDINE COO, OWNER, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, CEBU CITY, AND JUDY A. DECENA, RESPONDENTS.**

Ponente: QUIJANO-PADILLA, J.

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### **QUIJANO-PADILLA, J.:**

Petitioner GSR Gasoline Station/Geraldine Coe filed this Petition for Certiorari, under Rule 65 of the Rules of Court, to seek the annulment of (1) the Decision[1] dated March 4, 2011 (“assailed Decision”) and (2) the Resolution[2] dated July 29, 2011 (“assailed Resolution”) of the National Labor Relations Commission - 7[th] Division (“public respondent NLRC”) in NLRC Case No. VAC-01000070-2011. The assailed Decision found herein respondent Judy Decena to have been illegally dismissed and held petitioner Coe liable for payment of backwages, separation pay, 13[th] month pay and attorney's fees in respondent Decena's favor, while the assailed Resolution denied petitioner Coe's Motion for Reconsideration.

The antecedent facts are as follows:

Respondent Decena worked as a gasoline attendant (pump boy) with GSR Gasoline Station (“GSR”), which was owned and managed by petitioner Coe, from March 5, 2005 until his termination on April 5, 2010. Respondent Decena's termination from employment spawned from the report of his alleged attempted falsification of Charge Invoice No. 19385[3] (“charge invoice”).

The discord between herein petitioner and private respondent arose when, on February 22, 2010, M.B. United Commercial (“M.B. United”), a regular client with existing credit line with GSR, fueled up from a diesel pump attended by one pump boy Jonel Dela Cruz. After the fueling of M.B. United's truck, its driver, Wilhelm Samellano, noticed that the charge invoice given to him wrote the figures 86 liters, representing the amount of diesel that was filled in his truck, when the diesel pump meter displayed only 79 liters. The driver, in his affidavit[4] and corroborated by the affidavit[5] of his helper, Alfredo Tiberio, Jr., stated that he informed Jonel and respondent Decena of the discrepancy, but he received a remark from respondent Decena that he need not complain as he would be given P150.00 for breakfast. The driver refused to receive the charge invoice, so respondent Decena issued a new one which indicates 79 liters instead of 86 liters. This incident was then reported by the driver to M.B. United which, in turn, reported the same to petitioner Coe.

Having received the report from M.B. United, petitioner Coe issued a Memorandum[6] dated February 25, 2010, asking respondent Decena and Jonel dela Cruz to explain in writing within twenty four (24) hours their alleged act of attempted falsification of the charge invoice as reported. They were charged with Dishonesty and /or Grave Misconduct.

According to petitioner Coe, she served a copy of this Memorandum to respondent Decena on March 1, 2010 but the latter refused to receive and sign to acknowledge his receipt of the said Memorandum. Meanwhile, respondent Decena claimed that he never received the said memorandum and was only instructed to ask for apology for erasing the entries in the credit invoice mentioned. And heeding the oral request for apology, he wrote a letter[7]

dated March 1, 2010 asking apology for his act of erasing the entries in the charge invoice.

On March 3, 2010, petitioner Coo served a Notice of Suspension[8] to respondent Decena which the latter received on even date but allegedly refused to sign and acknowledge receipt of such notice. The suspension period ran for thirty (30) days from March 4, 2010 since further investigation was needed. Then, on April 5, 2010, finding just cause to terminate respondent Decena's employment for his attempt to defraud GSR, petitioner Coo dismissed respondent Decena from employment through a Memorandum[9] dated April 5, 2010.

Petitioner Coo then filed a criminal complaint[10] against respondent Decena for attempted estafa through falsification of commercial document.

On his part, respondent Decena filed a complaint for illegal dismissal and for money claims.[11]

In respondent Decena's position paper[12], he argued that he had not committed any misconduct or any dishonesty. He said therein that it was his co-employee Jonel Dela Cruz who attended to the truck of M.B. United; that he only corrected the entry written by Jonel as it was Jonel who wrote 86 liters; and that after verification, he explained to Jonel the discrepancy but the latter already erased the entry in the charge invoice, so he just cancelled such charge invoice by writing on its back the note "cancelled" and then he issued a new charge invoice with the correct entry stating 79 liters. He stated also that he reported the cancellation of the previous charge invoice to their secretary. He likewise claimed that he could not defraud GSR as M.B. United had a credit line with GSR, so he could never receive any money as payment, as such, he could not gain any profit from altering invoices to make a discrepancy between the actual amount of fuel pumped in a vehicle and the amount written in the charge invoice.

On December 6, 2010, the Labor Arbiter Rodrigo Camacho dismissed respondent Decena's complaint for lack of merit. He explained in his Decision[13] that respondent Decena's act of concealing and heavily erasing the entries on the charge invoice is a clear indication of serious misconduct, fraud, and willful breach of trust and confidence. He based his finding of just cause to terminate respondent Decena on the finding of probable cause against respondent Decena by the city prosecutor for the crime of attempted estafa through falsification of commercial document. He likewise ruled that the necessary due process was complied with by petitioner Coo in terminating respondent Decena's employment.

The decretal portion of Labor Arbiter Camacho's December 6, 2010 Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered Dismissing the instant case for lack of merit.

All other claims are likewise dismissed for lack of factual and legal basis.

SO ORDERED."[14]

On appeal[15] to herein public respondent NLRC, respondent Decena claimed that the Labor Arbiter committed serious errors in his findings of facts as he insisted that he did not commit any serious misconduct or fraud on his act of erasing a wrong entry in a charge invoice, especially because he was not even the one who erased the same but his co-employee Jonel Dela Cruz. He reiterated in his appeal that his dismissal was not supported by any substantial evidence, and that this was petitioner Coo's means to get back at him as he was the one who reported to the department of labor on petitioner Coo's failure to provide certain labor standard benefits.

On March 4, 2011, public respondent NLRC reversed the Decision of the Labor Arbiter, declaring that respondent Decena was illegally dismissed because petitioner Coo's evidence on respondent Decena's alleged misconduct or fraud was not enough to adjudge his guilt with reasonable certainty. It gave more credence to the respondent

Decena's claim that he was not a party to the transaction where the entry in the charge invoice was erased. It also held that loss of trust and confidence could not be a ground to dismiss respondent Decena because he was not holding a position of trust. Likewise, public respondent NLRC also observed that there was really no genuine effort on petitioner Coos part to provide respondent Decena the required procedural due process considering that he was given only 24 hours to explain and that during the preventive suspension, no concrete investigation was ever conducted in order for respondent Decena to defend himself. It also awarded respondent Decena his claim for 13[th] month pay but did not grant his other monetary claims for his failure to assign the same as error on appeal.

The assailed Decision[16] of the public respondent NLRC held:

“xxxx. We are inclined to tilt the scales of justice in favor of the complainant. There is a dearth of evidence on record to sustain the charge of conspiracy between complainant and Jonel Dela Cruz in the alleged falsification of Charge Invoice No. 19385. Concededly, employers have the right to terminate the services of an employee for a just or authorized cause. However, the dismissal of employees must be made in accordance with law. The burden of proof is always on the employer to prove that the dismissal was for a just or authorized cause. From the circumstances obtaining, We cannot, with reasonable certainty, adjudge the guilt of complainant. The extent of complainant's participation in the refueling transaction of United is not sufficient to impute ill intentions upon him. We, likewise, see no apparent gain for the complainant from the said transaction since, there was no cash payment coming from the driver as it was a charge transaction because of the credit line accorded to United by the respondent. Xxxx.

Complainant's act of writing the customer's name on the charge invoice and signing it and of further bringing it to the driver for signature and later erasing the wrong entries, thereon, after learning that they were erroneous, can hardly constitute serious misconduct nor were those acts constitutive of serious breach of trust resulting in loss of confidence. Xxxx.

It bears to stress that complainant did not hold a position of trust and confidence as he was a pump boy tasked only to man the fuel pump at respondent's gasoline station. Surely, loss of trust and confidence cannot be a ground to terminate his employment. Xxx

xxxx

xxxx

WHEREFORE, premises considered, the Decision of the Labor Arbiter dated 24 November 2010 is, hereby, ANNULLED and SET ASIDE. Judgment is, hereby, rendered declaring complainant to have been illegally dismissed and directing respondent to pay complainant backwages, separation pay, 13th month pay and attorney's fees in the total of ONE HUNDRED TWELVE THOUSAND EIGHT HUNDRED SIXTY PESOS (Php.112,860.00)

SO ORDERED.”[17]

Petitioner Coos immediately sought for the reconsideration of this adverse Decision, but her motion[18] was denied in public respondent NLRC's assailed Resolution[19].

Aggrieved, petitioner Coos filed the instant petition to Us. She anchored her petition on the following grounds:

“The National Labor Relations Commission, Fourth Division (sic), acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack or in excess of jurisdiction in:

1) that there is a patently capricious, arbitrary and whimsical exercise of judgment on the part of public respondent NLRC in annulling and setting aside the Labor Arbiter's decision thus totally reversing that of the Labor Arbiter's dismissing private respondent's complaint for lack of merit, on the basis of the same evidence adduced by the parties before the Labor Arbiter; and

2) that the assailed decision is palpably wanting in legal basis as it ignores, disregards, and failed to apply pertinent rules and jurisprudence in cases where a party failed to raise an issue in his pleadings. It plainly deserves setting aside as a decision contrary to law.”[20]

From the foregoing there are two issues to be resolved: 1) whether public respondent NLRC gravely abused its discretion in finding that respondent Decena was illegally dismissed from employment, thus, he is entitled to separation pay, backwages and attorney's fees; and 2) whether public respondent gravely abused its discretion in awarding respondent Decena his claim for 13[th] month pay.

We find the petition meritorious.

This case is raised under Rule 65 of the Rules of Court via a petition for certiorari. And “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.”[21] It is a settled rule 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.”[22] However, in the case at bar, We are faced with the discordant decisions of the Labor Arbiter and the NLRC – the former found the dismissal of respondent Decena valid, while the latter did not.

And “where the findings of the NLRC contradict those of the Labor Arbiter, the Court, in the exercise of equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[23] In such cases, “the CA examines 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.[24]

In *Norkis Trading Corp. v. Buenavista et al.*[25], 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.”[26]

Simply put, in this petition for certiorari, to determine if there is any grave abuse of discretion on the part of public respondent NLRC, We deem it necessary to examine the evidence of the parties in order to determine whether public respondent NLRC based its decision on substantial evidence or whether it disregarded any evidence on record.

In the case at bar, We rule that the conclusions of public respondent NLRC cannot be said to have been supported by substantial evidence because of its failure to consider the compelling evidence of herein petitioner to prove just

cause in terminating respondent Decena from employment. Moreover, public respondent NLRC gravely abused its discretion when it awarded 13<sup>th</sup> month pay in favor of respondent Decena though the same was not raised as issue in its appellate jurisdiction.

Substantial evidence shows that there exists a valid ground for respondent Decena's termination from employment.

To recall, the ground for terminating respondent Decena was based on his alleged act described in the Memorandum dated February 25, 2010, to wit:

“XXXX

On 22 February 2010, the two of you[27] have [been] found to have conspired in falsifying the Charge Invoice No. 19385 by making it appear that 86 liters of diesel fuel had been loaded on truck with Plate No. GPF 172 owned by M.B. United Commercial when actually only seventy nine (79.237) liters was actually served.

These acts constitute dishonesty and/or grave misconduct which are valid grounds for termination.

XXXX.”[28]

Clearly, the above-described act if proven would warrant the dismissal of respondent Decena on the ground of serious misconduct or even fraud.

The question is was the alleged act proven? We answer in the affirmative.

It is clear in the affidavit[29] of Wilhelm Samellano, the driver of M.B. United, that both respondent Decena and his co-employee Jonel Dela Cruz were involved in the alleged act of making it appear that 86 liters of diesel fuel had been loaded on the truck with Plate No. GPF 172 owned by M.B. United Commercial when actually only seventy nine (79.237) liters were actually served, thus:

“XXXX

XXXX

6. Sang matapos na matughongan ang amon truck, dayon guin obrahan ni Jonel de la Cruz sang “charge invoice” kag guin pafirmahan sa akon ni Judy Decena nga isa ka emplayada sang GSR Gasoline Station;

7. Sang mafirmahan ko na ang “charge invoice” wala ko dayon makuha ang charge invoice kay akon pa guin pa-abante ang akon truck;

8. Sang pagbalik ko na nga bu-ot magkuha sang charge invoice, akon guinpamangkot ang akon helper pila ang nakarga nga diesel kag iya ako guin suguiran nga 79 ka litros kag may sobra nga diotay;

9. Sang makuha ko na ang charge invoice (No. 19385) natingala ako nga 86 ka litros ang nakasulat kag indi 79 ka litros. Gani akon dayon guinhambalan ang duha ka pump attendant nga indi husto ang ila guinahimo kag indi ko pagbatunon ang “charge invoice”. Amo yadto kag naghambal ang isa sa ila nga indi na kami magreklamo kay may P150.00 kami para sa pamahaw;

10. Sang pagkabati ko sadto akon sila guin hambalan nga indi ma-ayo ang ila guina obra kag indi ako magpasugot kay kon wala nila guinahalongan ang ila obra akon iya guina palangga ko ang akon trabaho;

11. Tungod kay indi ako magpasugot sa ila mala-in nga guinahimo ila guin ilisan ang una nga charge invoice (#19385) sang charge invoice #19386 nga nagapakita na sang exacto nga litro sang diesel nga amon nakarga kag amo nga charge invoice akon guinafirmahan sa akon helper;

xxxx

xxxx.”[30]

The above affidavit was corroborated by Samellano's truck helper, Alfredo Tiberio, Jr., who stated in his affidavit[31] that it was respondent Decena who erased the entry in the charge invoice after Samellano refused to receive the charge invoice with a wrong entry and to accept their offer of P150.00, thus:

“xxxx

xxxx

5. Sa pagkatapos mapuno ang amon tangke, dayon ni Jonel de la Cruz ubrahan sang charge invoice kag guin pafirmahan ni Judy Decena nga empleyado man sang GSR Gasoline Station sa driver sang amon truck ng si Wilhelm Samellano;

6. Sang tapos na mafirmahan sang amon driver ang charge invoice, iya nadiparahan nga ang nakasulat 86 ka litro kag indi 79 ka litro kag sobra diotay ang nakasulat sa charge invoice;

7. Sang pagkakita sang amon driver nga si Wilhelm Samellano nga lain nga numero sang kadamu-on nga diesel sa charge invoice sang matuod nga nagtughong sa amon truck, dayon guihambalan sang driver nga si Wilhelm Samellano ang duha ka pump attendant nga indi nya pagbatunon ang sala nga charge invoice (No. 19385) kag guinhambalan ang duha ka empleyado sang GSR Gasoline Station nga kon wala nila guna halongan ang ila trabaho iya guina palangga ang iya obra kag indi siya magpasugot sa indi maayo nila nga guinabuhat;

8. Amo yadto kag naghambal si Judy Decena nga indi na magreklamo kay may P150 kami para sa pamahaw;

9. Kag tunogod indi si Wilhelm Samellano magbaton sang kwarta kag sang sala nga charge invoice (No. 19385) dayon si Judy Decena panason paagi sa pagkuris sang mga nakasulat sa Charge Invoice No. 19385 kag guin paobrahan niya liwat kay Jonel de la Cruz sang isa ka Charge Invoice No. 19386 nga naga pakita na sang exacto nga numero sang diesel nga natughong sa amon truck;

xxxx

xxxx.”[32]

It is very clear from the above affidavits that respondent Decena consciously did the following acts: a) He signed and gave the charge invoice with erroneous entry to the truck driver Mr. Samellano; b) When Mr. Samellano refused to receive the charge invoice, he (respondent Decena) offered P150.00 to Mr. Samellano for breakfast so the latter need not anymore complain; and c) He heavily erased the entries in the charge invoice and issued a new one when Mr. Samellano continued to refuse his offer of P150.00.

It must also be noted that respondent Decena claimed in his position paper that he was not the one who erased the entries in the subject charge invoice but it was Jonel. However, it is clear in his letter dated March 1, 2010 that he was the one who erased the erroneous entry, as the letter stated “Sorry gid sa charge invoice nga gin erase ko. xxxx”[33]

It is apparent in the assailed Decision that although public respondent NLRC considered the two affidavits quoted above, these were taken against the evidence of petitioner Co. However, public respondent NLRC erred in using the affidavits by considering only portions which would support its erroneous finding. Indeed, the affidavits must be taken as a whole and interpreted in its proper context.

Accordingly, public respondent NLRC cannot conclude based on the same affidavits that it was only Jonel who

wrote on the charge invoice the incorrect number of liters of diesel fuel loaded in the truck of M.B. United; that respondent Decena's participation was limited only to writing on the charge invoice the name of customer and bringing it to the driver for signing; and that it was not shown that respondent Decena was aware that the number of liters written on the charge invoice was erroneous.

Public respondent NLRC may have taken these acts to be unarmful acts because it explained that it did not see any apparent gain that respondent Decena may obtain from the above-described acts considering that he never received any money because the transaction of M.B. United would be charged in its credit line.

Seemingly, the acts of respondent Decena may appear to be innocent mistakes were he only corrected an erroneous entry in a charge invoice. But, this is clearly belied by the fact that he was the one who offered P150.00 to the truck driver Samellano and truck helper Tiberio, Jr.

What was the P150.00 for? It was offered to the truck driver and his helper in order for them not to complain anymore. And this is the point that public respondent NLRC failed to appreciate – the modus operandi of respondent Decena and Jonel.

Public respondent failed to appreciate how the acts of respondent Decena could be very inimical to the interest of his employer petitioner Co, hence, the latter explained in her Motion for Reconsideration[34] respondent Decena's thwarted ploy, albeit the same was disregarded, thus:

“With leave of the Honorable Commission, it is necessary and proper to know the following brief rundown in the sale of gasoline or diesel fuel unknown to the consuming public to get a clearer picture on this particular business operation.

Fuel pump dispenser has a meter reading that runs everytime fuel is dispensed from the pump[.] [T]he number of liters sold for every shift (of pump boys) is derived by deducting the end shift reading of the fuel pump dispenser from the beginning or opening shift reading. For instance, when the pump boy overstated the number of liters in the charge invoice that what is actually loaded or fueled up to the vehicle, his report (at the end of the shift) will not naturally tally/balance to the number of liters sold taken from the meter reading of the fuel pump dispenser. Thus, the report prepared by the pump boy (after his shift) will have a higher number of liters sold than that of the fuel pump dispenser.

In this kind of scenario, as what occurred in this case, where a pump boy has overstated the number of liters in the charge invoice, he is in fact making a report appear that the sales on credit is more than what [it] actually is. Therefore, in (sic) his end report will reflect the Total Sales minus the Accounts Receivables (those clients on credit) equals Sales in Cash which he is to turnover to the owner at the end of the shift. Consequently, a pump boy can either pocket the cash payment of other customers corresponding to the number of liters he overstated in the charge invoice or dispense the excess (gasoline or diesel) to other unsuspecting customers for cash so that the End Report will still reflect the same number of liters as the fuel pump dispenser meter reading.”[35]

From the foregoing, it is clear that respondent Decena and Jonel worked, in conspiracy with each other, in their attempt to defraud petitioner Co's business.

Because of this foiled plot, petitioner Co actually filed a criminal case for attempted estafa through falsification of commercial documents against respondent Decena, wherein the prosecutor found probable cause to indict respondent Decena.

How can public respondent closed its eyes on the following substantially proven facts? - a) that respondent Decena was the one who signed and gave the charge invoice with erroneous entry to the truck driver Mr. Samellano; b) that when Mr. Samellano refused to receive the charge invoice, it was respondent Decena who

offered P150.00 to Mr. Samellano for breakfast so the latter need not anymore complain; and c) that respondent Decena was the one who heavily erased the entries in the charge invoice and issued a new one when Mr. Samellano continued to refuse his offer of P150.00. These acts clearly showed the intent of respondent Decena to commit a fraudulent act against his employer, albeit the same was thwarted.

Indubitably, respondent Decena's acts manifested his dishonesty.

Dishonesty implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.[36] On the other hand, 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.”[37] To constitute serious misconduct under Article 282 (a) of the Labor Code, it is important and required that the act or conduct must have been performed with wrongful intent.[38]

In this case, respondent Decena's wrongful intent to deceive and to commit fraud against his employer was exemplified by the fact that he offered bribe money to Mr. Samellano and Mr. Tiberio, Jr. in order for the two to cooperate so that respondent Decena could consummate his forbidden act. Although respondent Decena failed in consummating his fraudulent act as Mr. Samellano and Mr. Tiberio, Jr. refused to be part of the same, it cannot be denied, that, at that time, his wrongful intent very much existed.

To reiterate, when respondent Decena tried to overcharge M.B. United by writing a much higher amount fuel in its charge invoice than that appearing on the diesel pump meter, his wrongful intent was to either pocket the cash payment of other customers corresponding to the number of liters he overstated in the charge invoice or dispense the excess (gasoline or diesel) to other unsuspecting customers for cash so that the End Report will still reflect the same number of liters as the fuel pump dispenser meter reading.

Verily, respondent Decena's dishonesty, that is, his attempt to commit a fraudulent act against his employer, clearly falls under the purview of serious misconduct.

Indeed, public respondent NLRC was incorrect in holding that respondent Decena's guilt cannot be adjudged with reasonable certainty. It is clear from petitioner Co's evidence, especially the affidavits of Mr. Samellano and Mr. Tiberio, Jr. that respondent Decena committed a serious misconduct. It bears stressing that nothing on record would show that Mr. Samellano and Mr. Tiberio, Jr. were impelled with ill motives to testify against respondent Decena. Their affidavits, absent contrary evidence that would discredit their credibility, should be taken as substantial evidence which can prove that respondent Decena is indeed guilty of serious misconduct.

It is worth reiterating that even if respondent Decena failed to consummate his fraudulent act, it cannot be denied that he manifested dishonesty to the extent that he even tried to bribe his customer. Though his foiled attempt to defraud his employer did not give any actual damage to his employer's business, his apparent dishonesty is enough to impose disciplinary actions against him. As jurisprudence hold, “a company has the right to dismiss its employees as a measure of self-protection. It need not wait for it to suffer actual damage or loss before it can rightfully dismiss an employee who it has already found to have been dishonest.”[39]

Accordingly, such finding of serious misconduct is enough to hold that respondent Decena's dismissal was based on a just cause.

As regards the requirement of due process, petitioner Co sent a Memorandum dated February 25, 2010, which required respondent Decena to explain in writing within twenty-four (24) hours the misconduct described therein. Though respondent Decena refused to acknowledge receipt of such Memorandum, he, in fact, read the same and responded through his letter dated March 1, 2010. He cannot anymore complain not having been given sufficient

time to explain because he should have just requested for an extension had he found the twenty-four (24) hours not enough. Clearly, he intended his letter to be his response to the Memorandum given to him. Then, an investigation ensued as petitioner Coo took the affidavits of Mr. Samellano and Mr. Tiberio, Jr., thus, she was convinced that respondent Decena committed an act of dishonesty. Thereafter, in a Memorandum dated April 5, 2010, respondent Decena was notified of his termination.

Hence, We are convinced that the twin-notice rule was complied with, that is, the employee was furnished with two written notices, to wit: (a) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (b) a subsequent notice informing the employee of the employer's decision to dismiss him.

Since petitioner Coo validly dismissed respondent Decena on just cause, the awards for separation pay in lieu of reinstatement, full backwages and attorney's fees do not have any basis.

The NLRC cannot dwell on issues not raised on appeal.

Petitioner Coo is correct in contending that public respondent NLRC gravely abused its discretion when it awarded 13[th] month pay to respondent Decena when such issue was not even raised by respondent Decena in his appeal to public respondent NLRC.

Indeed, a perusal of respondent Decena's Memorandum of Appeal reveals that he never questioned the denial of his monetary claims, including his 13[th] month pay, by the Labor Arbiter. In his appeal to public respondent NLRC, respondent Decena focus solely on the basis and legality of his dismissal. This was actually affirmed by public respondent NLRC in its assailed Decision, to wit:

“As regards complainant's claims for unpaid benefits, We note that complainant did not assign as error, on appeal, the failure of the Labor Arbiter to grant such claims. Xxxx. Thus, the benefit left to be paid by the respondent is only the 13[th] month pay, since respondent failed to adduce evidence of payment of this particular benefit. xxxx.”[40]

Clearly, public respondent NLRC's rulings on unpaid benefits are contradictory. After it noted that such issue was not raised on appeal, it still awarded respondent Decena's claim for 13[th] month pay.

The rule is that the NLRC “shall limit itself to reviewing and deciding specific issues that were elevated on appeal.”[41] Although Article 218(c) of the Labor Code grants the NLRC the authority to “correct, amend or waive any error, defect or irregularity whether in substance or in form” in the exercise of its appellate jurisdiction, “it is already settled in jurisprudence that the NLRC may not rely on Article 218(c) of the Labor Code as basis for its act of reviewing an entire case above and beyond the sole legal question raised.”

In this case, after public respondent NLRC recognized its own rules of procedure, it evidently went against the same, without even stating its reason therefor.

However, even assuming that the NLRC could validly award a monetary claim not raised on appeal, We rule that it has no basis to hold that petitioner Coo failed to adduce evidence of payment of 13[th] month pay. The records reveal that this benefit was paid to and received by respondent Decena himself as shown by the cash vouchers,[42] Annexes “M”, “N”, “O”, attached to petitioner Coo's position paper. Evidently, when public respondent NLRC disregarded these pieces of evidence, it gravely abused its discretion.

In sum, We hold that the assailed Decision and assailed Resolution of public respondent NLRC are tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

WHEREFORE, the petition is GRANTED. The assailed Decision and Resolution of public respondent NLRC in NLRC Case No. VAC-01000070-2011 are ANNULLED and SET ASIDE. The Decision dated December 6, 2010 of the Labor Arbiter dismissing respondent Judy Decena's complaint for lack of merit is hereby REINSTATED. SO ORDERED.

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

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[1] Rollo, pp. 24-34.

[2] Rollo, pp. 36-38.

[3] Records, p. 65.

[4] Records, pp. 61-62.

[5] Records, pp. 63-64.

[6] Records, p. 52.

[7] Records, p. 53.

[8] Records, p. 54.

[9] Records, p. 56.

[10] Records, pp. 58-60.

[11] Records, pp. 39-40.

[12] Records, pp. 89-106.

[13] Records, pp. 128-134.

[14] Records, p. 134.

[15] Records, pp. 136-149.

[16] Supra, note 1.

[17] Records, pp. 28-34.

[18] Records, pp. 213-224.

[19] Supra, note 2.

[20] Records, p. 11.

[21] Protacio v. Laya Mananghaya, G.R. No. 168654, March 25, 2009.

[22] Norkis Trading Corp. v. Buenavista et al., G.R. No. 182018, October 10, 2012.

[23] Luna v. Allado Construction, Co. G.R. No. 175251, May 30, 2011.

[24] Mercado v. AMA Computer College-Paranaque City, Inc., G.R. No. 183572, April 13, 2010.

[25] Supra, note 21.

[26] Emphasis supplied.

- [27] The other one pertains to Jonel Dela Cruz.
- [28] Records, p. 52.
- [29] Supra, note 4.
- [30] Records p. 61. Emphasis supplied.
- [31] Supra, note 5.
- [32] Records, p. 63. Emphasis supplied.
- [33] Records, p. 53. Emphasis supplied.
- [34] Supra, note 18.
- [35] Records, pp. 216-217. Emphasis supplied.
- [36] Japson v. Civil Service Commission, G.R. No. 189479, April 12, 2011.
- [37] John Hancock Life Insurance Corporation v. Davis, G.R. No. 169549, September 3, 2008.
- [38] Aliviado v. Procter and Gamble Phils. Inc., G.R. No. 160506, June 6, 2011.
- [39] St. Luke's Medical Center v. Quebral, et al., G.R. No. 193324, July 23, 2014.
- [40] Records, p. 33.
- [41] 2011 NLRC Rules of Procedure, as amended by En Banc Resolution No. 11-12.
- [42] Records, pp. 70-72.

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