

CLINT A. CABIGON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, INTERNATIONAL BROADCASTING CORP. (IBC-13) AND ERIC S. CANOY, RESPONDENTS.

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is a petition for certiorari filed under Rule 65 of the 1997 Revised Rules of Civil Procedure seeking to set aside the Decision[1] of the National Labor Relations Commission (“NLRC”) in LAC No. 05-001711-13, NCR-09-13415-12 dated August 30, 2013 as well as its Resolution[2] dated October 16, 2013 denying petitioner's motion for reconsideration thereto. The NLRC reversed the Labor Arbiter (“LA”) Decision[3] dated March 26, 2013 which ruled in favor of petitioner. The antecedent facts follow:

Petitioner Clint A. Cabigon (“petitioner”) was hired by Intercontinental Broadcasting Corporation (“IBC”) as Video Tape Recorder (VTR) Technician on December 16, 1993[4] until his termination from service on January 20, 2012. As VTR Technician, petitioner was responsible for the operation of VTR machines and all allied pieces of equipment for the purpose of recording, editing, preview and cuing of all video materials, including on-air playback of programs, commercials and promos.[5]

Petitioner's dismissal stemmed from a complaint dated March 4, 2011 filed by VTR Supervisor Ric Casiple (“Casiple”) addressed to Ronie N. Suarez, Engineering Manager of IBC, complaining of petitioner's attitude, to wit:

“Attached are the complain (sic) letter from the producer of the program Up Close and Personnel (sic), that black video appeared and pauses during the airing of the show, and also the operations log dated March 3, 2011 that wrong version was loaded, rewind on air, unable to cue the next material on time.

All these wrong doings has (sic) been happening only on his time of duty. And eventually the switcher personnel brought the matter to their superior x x x. And the meeting was done between Engineering Manager, VTR Supervisor and all personnel concerned. Subject matters had been discussed and agreed, at the end promises was (sic) made that he 'Mr. Clint Cabigon' will do good the next time.

The meeting happened sometime August 2010. Only six months have past (sic), same attitude arise with the same problems encountered in on air operation.”[6]

Acting on the complaint, the Administrative Committee of IBC formally charged petitioner on March 15, 2011 with Gross Negligence of Duty Resulting To Injury/Prejudice/Danger To The Company and/or Gross Misconduct Prejudicial To The Interest of the Company, for the following infraction committed by petitioner, viz.:

1) On March 2, 2011, Ms. Nenita P. Magsino, Executive Producer of Millicent Productions wrote Mr. Joey Ramos Jr., Program Operations Manager, complaining about the airing of Up Close and Personal with Marissa del Mar Episode No. 7 aired on February 16, 2011 and Episode No. 8 aired on February 23, 2011 wherein there was a black video that appeared before during the airing of commercials, pauses during airing and the February 23, 2011 episode was also of (sic) synch.

2) In the July 27, 2010 Memo of the Switcher Personnel to Mr. Robert Fullente, Switcher Supervisor, they also complaint (sic) the attitude problem of Mr. Clint Cabigon when he was assigned in on air duty, citing among others:

- 2.1. Airing material not scheduled on operation log
- 2.2. Never inform the switcher on duty about the no-material for plugging
- 2.3. Remove plugging without switcher's consent
- 2.4. Never standby material to be aired on time that affects the transition of video on air
- 2.5. Always delayed action everytime (sic) the Switcher Technician ask him to roll the material to be aired
- 2.6. Always complaining every time Switcher ask him for additional plugging
- 2.7. Rewind program materials on air 2.8. More focus (sic) on watching other network's programs while on duty instead of IBC program on air.

3) The foregoing statements of the Switcher Personnel was (sic) affirmed by the discrepancies recorded on the following dates in 2009, February 26, March 9, 23, April 11, June 15, July 28, and Dec. 30, 2009; in 2010, January 4, 6, Feb. 10, 11, March 22, April 26, June 1, 21, Sept. 14, 17, Oct. 8, 2010, and in 2011, March 3 and 9, 2011.

x x x x x x x x"[7]

On April 19, 2011, petitioner filed his Affidavit[8] denying that he was negligent in performing his duties as VTR technician and blaming the technical lapses which occurred during the airing of the program Up Close and Personal with Marissa del Mar on February 16, 2011 to the lack of beta camera players and defective switch boards. He likewise denied responsibility for the black video which appeared before the airing of the said program on February 23, 2011 claiming that he was on leave at that time. As to the charge regarding his attitude problem, petitioner averred that there was no need for management to make a big deal out of these "menial incidents that employees can always settle among themselves." Pertinent portions of petitioner's affidavit read:

1. X x x Before coming up with the answer for each charges, I would like to point out the insufficiency or lack of equipments (sic) that affects the efficiency and quality of shows. Normally, in order to produce an efficient and good shows (sic), there should be five (5) Beta Camera Player (sic). The switch board must be functioning well and not defective. Deficiency of the beta camera player as well as defects in the switch board results to the delay, blocking on the air or no air.
2. Most of the alleged infractions if they are to be considered as infractions have something to do with the lack of the required number of machine or beta camera player and also due to defective switch board. In order for an efficient, smooth and production of unimpaired and good shows, the management has to provide at least five (5) well-maintained beta camera player (sic). Five (5) beta camera players will prevent and avoid delay. With only three (3) beta camera player (sic), the VTR technician has to spent (sic) additional seconds if not minutes to conduct the necessary rewinding or transfer from one Beta Camera Player to another before a material or an item is finally aired. The sufficiency of beta camera player in number should also be complimented by a well-maintained and functioning switch board. Any defect for both the beta camera player and the switch board result to problems such as delay or even an error or mistake in the loading and unloading

of materials for airing or showing.

3. As technician, I have called the attention of my immediate superior regarding the lack of number of beta camera player as well as the need for the repair of the switch board but no such positive actions were taken.

4. May I also point out that because we only (sic) three (3) machines or Beta Camera Player, the work or functions of the VTR technicians is increased causing additional pressure on their part. Furthermore, because of the defect in the switch board, the functions originally assigned to switchers are now passed on the VTR technician like myself. As a result, the technician like myself is pressured and affected that understandably results to some kind of lapses.

5. With respect to the March 16, 2011 incident of blocked on air/no air or delay during Episode No. 7 of the Up-Close and Personal Show, I would like to state that there were defects and lapses that occurred but it was brought about by the following reasons: (a) There were many materials required to be loaded due to so many commercials; (b) Only three (3) Beta Camera Player (sic) were used instead of five (5); (c) There was need to make some rewinding that obviously resulted to some delay. The delay however did not last for minutes but only seconds.”[9]

Clarificatory hearings were conducted by IBC to give petitioner the opportunity to explain and air his side. On December 19, 2011, the Administrative Committee declared petitioner to have committed infractions prejudicial to the business interest of IBC and issued a Resolution[10] recommending his dismissal on the ground of Gross Negligence of Duty Resulting To Injury/Prejudice/Danger To The Company and/or Gross Misconduct Prejudicial To The Interest of the Company. Pertinent portions of the Resolution read:

“X x x

IBC-13 as a broadcaster generates income from commercials and programs that it shows. It is through this income generating activities that help and support the station i.e. salary of the employees, payment for operations and maintenance. Needless to say, that it is of vital importance to exercise utmost diligence in cuing the commercials or shows on time and to perform his duties and responsibilities as VTR Technician efficiently and effectively.

Thus, impairing the operations in this manner such as wrong cuing or delaying the airing of material causes irreparable damage to IBC-13.

In view of the foregoing, the infractions committed by Clint were prejudicial to the interest of IBC-13.

X x x x x x x x”

During the clarificatory hearings the committee gave Clint the opportunity to explain and air his side on the formal charges against him.

In his defense he relied heavily that the cause of the delay, blocking on the air or no air was due to the deficiency of the beta machine player as well as defects in the switch board.

It was also during this hearing that the committee came to know that he has been performing his work for the past 10 years using the same equipment. Moreover, the committee came to know that compared to other VTR technician (sic) it was only his time or when he was on duty that a delay, blocking on the air or no air was very recurrent as appearing on the records.

Review of his 201 File also revealed that he was already sanctioned several times for loading uncue materials and for being negligent in the performance of his duties and responsibilities as reflected in the Daily Discrepancy Report. In fact, he was again reprimanded and given final warning on February 24, 2010 for delaying/sabotaging the taping of AutoVote 2010 as he focused more on watching Showtime in Channel 2 while on duty rather than concentrating in the performance of his duties as VTR Technician. Despite the

warnings and considerations given to him, however, he again fumbled several times in the airing of Up Close and Personal with Marissa del Mar Episode No. 7 on February 16, 2011, or less than a year after he was sanctioned for violating the IBC General Policy/Standard Operating Procedures and Approvals Manual Art. XI, Sec. 2, Par. 16.

Considering all of the foregoing, the AdminCom therefore recommends that the penalty of dismissal effective upon service of this Resolution, with forfeiture of all benefits be imposed upon the respondent, Clint Cabigon for GROSS NEGLIGENCE OF DUTY RESULTING TO INJURY/PREJUDICE/DANGER TO THE COMPANY AND/OR GROSS MISCONDUCT PREJUDICIAL TO THE INTEREST OF THE COMPANY.”[11]

On June 6, 2012, Joseph T. Yee, Union President of Intercontinental Broadcasting Corporation Employees Union, of which petitioner is a member, filed, on behalf of petitioner, a motion for reconsideration asking the Committee to impose suspension instead of the harsh penalty of dismissal.[12] As no reply/answer thereto was made by IBC, petitioner filed on September 10, 2012, a Complaint[13] for Illegal Dismissal with prayer for reinstatement and payment of full backwages, moral and exemplary damages, and attorney's fees against IBC and its President, Eric S. Canoy.

In his Position Paper[14], petitioner alleged that he was illegally dismissed without just cause. Petitioner reiterated that he was not grossly negligent in performing his duties as VTR technician and that he was not responsible for the alleged infractions imputed against him. He further reiterated the defenses he proffered in his affidavit claiming that he should not have been dismissed as he was able to completely refute IBC's charges of serious misconduct and gross negligence.

IBC, on the other hand, averred that there was just cause for petitioner's dismissal not only because he was found to have been responsible for the technical glitches that occurred during the airing of the program Up Close and Personal with Marissa del Mar but also because of petitioner's numerous and habitual violations of IBC's rules and regulations. In its position paper, IBC enumerated the offenses previously committed by petitioner which, according to IBC, taken together with his recent transgressions ultimately proved to be prejudicial to the company's interests.[15]

On March 26, 2013, the Labor Arbiter rendered a Decision[16] declaring petitioner's dismissal illegal. The dispositive portion of the LA Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered, declaring complainant to have been illegally dismissed by respondents. Accordingly, respondents are hereby ordered jointly and severally liable:

1) To reinstate complainant to his former and/or substantially equivalent position, without loss of seniority rights, benefits and other privileges;

2) To pay complainant his backwages, computed up to actual reinstatement. As of this date, his backwages amounted to P457,113.41;

3) To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees. Other claims are dismissed for lack of merit.”[17]

On appeal, however, the aforementioned decision was reversed by the NLRC, viz.:

“WHEREFORE, the appeal is GRANTED and the Decision dated 26 March 2013 is REVERSED and SET

ASIDE.

SO ORDERED.”[18]

Aggrieved, petitioner filed a motion for reconsideration,[19] which was, however, denied. Hence, this petition.

Petitioner imputes grave abuse of discretion on the part of the NLRC in reversing the decision of the Labor Arbiter, specifically:

“IN DECLARING THAT PETITIONER IS GUILTY OF GROSS AND HABITUAL NEGLECT OF DUTY ALLEGEDLY BECAUSE:

- HE WAS RESPONSIBLE FOR THE TECHNICAL GLITCHES DURING THE AIRING OF THE PROGRAM 'UP CLOSE AND PERSONAL WITH MARISSA DEL MAR' ON FEBRUARY 16, 2011;
- ERRORS DURING BROADCAST LIKE DELAY AND BLACKING (SIC) ON AIR OR NO AIR WOULD RECUR ONLY DURING PETITIONER'S DUTY;
- PETITIONER IMPLIEDLY ADMITTED NEGLIGENCE FOR CITING LACK OF EQUIPMENTS (SIC) THAT CAUSED THE DELAY IN THE AIRING OF THE PROGRAM;
- DUE TO PREVIOUS DISCIPLINARY ACTION IMPOSED AGAINST THE PETITIONER APPLYING THE TOTALITY RULE.”[20]

It is the contention of the petitioner that the NLRC gravely erred in declaring that he was responsible for the technical glitches during the airing of the program Up Close and Personal with Marissa del Mar on February 16, 2011 and in accepting “hook and line and sinker” IBC's assertion that compared with other VTR technicians, technical errors during broadcast, like delay in the airing of materials and “blocking on the air” or no air recur only while petitioner is on duty. Petitioner denies responsibility for the technical glitches and insists on blaming the occurrence of the “black video” to the lack of beta camera players and the many materials required to be loaded.

The main question in this case is whether or not there was just cause for the dismissal of petitioner.

At the outset, it must be pointed out that the issue of whether petitioner was validly dismissed is a factual one and generally, factual findings of the NLRC are accorded respect. In this case, however, there is compelling reason to deviate from this salutary principle because the findings of facts of the NLRC are in conflict with that of the labor arbiter. Accordingly, this Court must of necessity review the records to determine which findings should be preferred as more conformable to the evidentiary facts.[21]

The Labor Arbiter ruled that IBC failed to adduce evidence to show that petitioner was dismissed for a valid cause and with due process. It pointed out that IBC failed to establish sufficient evidence – either testimonial or documentary – to prove that petitioner was responsible for the “black video” incident and that he was grossly negligent in performing his duties as a VTR technician. As regards petitioner's attitude problem, the same could not also be sufficient ground for the harsh penalty of dismissal. It further ruled that the previous infractions enumerated by IBC in its Position Paper which were allegedly committed by the petitioner can not be made the basis for the latter's dismissal considering that he had been duly subjected to disciplinary actions for said violations ranging from warning, reprimand and suspension. To consider these past violations as justification for petitioner's dismissal would violate the due process requirement of notice and opportunity to be heard. According to the labor arbiter, IBC was deemed to have condoned petitioner's past infractions considering that after having been penalized by IBC for his previous violations, petitioner was allowed to work.[22]

Public respondent NLRC, on the other hand, ruled that there was just cause for petitioner's dismissal as he was

found to have been grossly negligent in performing his duties as VTR technician to the prejudice of IBC; specifically because IBC was able to prove that petitioner was responsible for the technical glitches which occurred on February 16, 2011. Relying on the principle of "totality of infractions", the NLRC found that petitioner have been committing the same kind of offenses of the same nature during the long period of time (more or less 18 years) that he was employed by IBC. Although, petitioner had been sanctioned for these past violations, the NLRC, citing *Valiao vs. Court of Appeals*,^[23] held that, "the totality of infractions or number of violations committed during the period of employment shall be considered in determining the penalty to be imposed on the erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other."^[24]

After a perusal of the records of this case, We concur with the NLRC that there is substantial evidence to support the conclusion that the dismissal of petitioner is for a just cause. As against petitioner's mere denial of being responsible for the technical glitches which occurred before the airing of the show *Up Close and Personal with Marissa del Mar* and his lame excuse of lack of Beta Camera players and defective switchboard or outdated equipment, the NLRC upheld evidence showing that petitioner was grossly negligent in performing his responsibilities as VTR Technician necessitating his termination from his job. The assailed NLRC decision held:

"A thorough review of the case reveals that the Respondents were able to substantially prove that the Complainant was indeed responsible for the technical glitches that occurred during the airing of the program 'Up Close and Personal with Marissa del Mar' on February 16, 2011 based on the following considerations: Firstly, the errors subject of the complaint of Nenita P. Magsino of Millicent Productions are clearly identified; Secondly, the VTR Supervisor in his memo dated 04 March 2011 identified the Complainant as the person on duty at the time the black video appeared during the broadcast of the show. This was further supported by the memo dated 14 March 2011 of the Manager of the Engineering Department; Thirdly, there was an implied admission on the part of the Complainant of his negligence as can be inferred from his Affidavit where he lay the blame on the lack of equipment which caused the operational glitches during the airing of the said program. Lastly, the Administrative Committee mentioned in their Resolution that they found out during the hearing of the administrative case that errors during broadcast such as delay, blocking on the air, or no air would recur only during the time the Complainant was on duty as compared to the other VTR Technicians. It has been observed that the Complainant has been operating the same set of equipment for the past ten (10) years thereby negating his allegation that the lack of equipment has been causing the operational blunder during broadcast. It was also noted that his 201 file is replete with disciplinary memos sanctioning him for various violation (sic) of the Respondent's work policies. The Complainant's common infractions essentially involve negligence. Having committed numerous infractions of the same nature for such period of time, the Complainant's negligence can no longer be considered simple. X x x"^[25]

The rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of the dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence, i.e. "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion"^[26] even if other minds, equally reasonable, might conceivably opine otherwise^[27], is considered sufficient.

A review of the records of this case shows substantial evidence that indeed petitioner was the person responsible for the technical glitches that occurred on February 16, 2011. It is undisputed that petitioner was the VTR technician on duty on said date. Being the VTR technician on duty, it can be naturally concluded that he was responsible for the pauses during the airing of the show *Up Close and Personal with Marissa del Mar* and the "black video" which appeared before the airing of the show's commercials, which were the subject of the complaint-letter filed by the Executive Producer of said show. This fact was even admitted by the petitioner in his

affidavit when he stated that:

“5. With respect to the March (sic) 16, 2011 incident of blocked on air/no air or delay during Episode No. 7 of the Up-Close and Personal show, I would like to state that there were defects and lapses that occurred but it was brought about by the following reasons: (a) There were many materials required to be loaded due to so many commercials; (b) Only three (3) Beta Camera Player (sic) were used instead of five (5); (c) There was need to make some rewinding that obviously resulted to some delay. X x x”[28]

Nevertheless, despite admitting that he was the one responsible for the technical glitches which occurred on February 16, 2011, petitioner argues that a single act does not constitute negligence nor serious misconduct so as to justify his dismissal. Moreso, when the delay that resulted to the appearance of the black video “lasted only for seconds”[29] and “did not result to serious damage as the private respondent would like to blow up.”[30]

We are not persuaded.

Under Article 293 (formerly Article 279) of the Labor Code,[31] an employer shall not terminate the services of an employee except only for a just or authorized cause. A dismissal not anchored on a just or authorized cause is considered illegal. Article 296 (a) and (b) (formerly Article 279 [a] & [b])[32] of the same Code codifies the just causes of termination, among which is serious misconduct and gross and habitual neglect of duties, the grounds cited by IBC in dismissing the petitioner.

Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful character, and implies wrongful intent and not mere error of judgment. For misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer. Indeed, an employer may not be compelled to continue to employ such person whose continuance in the service would be patently inimical to his employer's business.[33]

On the other hand, neglect of duty, to be a ground for dismissal, must be both gross and habitual. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[34]

Based on the foregoing and contrary to petitioner's claim, the transgressions he committed constitute serious misconduct and gross and habitual neglect in the performance of duty warranting his dismissal as provided under Article 296 (a) and (b) of the Labor Code.

For one, it must be emphasized that petitioner's duty as VTR technician includes cuing of all video materials and on-air playback of programs, commercials and promos. Necessarily, petitioner is required to diligently and efficiently cue video materials on time and be extra vigilant in the performance of his job as wrong cuing and/or delay in airing video materials can cause technical malfunctions resulting to irreparable damage to the financial and business interest of IBC. As aptly pointed out by private respondent in its Resolution, “IBC-13 as a broadcaster generates income from commercials and programs that it shows. It is through this income generating activities that help and support the station, i.e. salary of the employees, payment for operations and maintenance. Needless to say, that it is of vital importance [for petitioner] to exercise utmost diligence in cuing the commercials and shows on time and to perform his duties and responsibilities as VTR Technician efficiently and effectively.”[35]

Thus, we cannot allow petitioner to downplay the results of his carelessness by callously claiming that “there was ONLY one (1) black video on February 16, 2011 when petitioner was on duty” and dismiss as inconsequential the

technical glitches by stating matter of factly that the black video “lasted only for seconds” and “did not result to serious damage as the private respondent would like to blow up.”[36] To do so would be tantamount to condoning his negligent acts.

For another, evidence shows that in his more or less 18 years with IBC, petitioner was habitually remiss in his duties as VTR technician. Prior to the February 16, 2011 incident, petitioner had been guilty of the following infractions for which he had been sanctioned and disciplined, to wit:

- On August 11, 1999, petitioner was issued a Memorandum of Reprimand for having been absent for five (5) days without filing an official leave of absence in violation of IBC House Rules, Article VIII, Sections 2.[37]

- On February 2, 2000, he was issued a memorandum because one of IBC's clients complained of discrepancies during the airing of the program *Alas Dose Sa Trese* due to petitioner's “wrong load of program materials”. At first, petitioner justified the discrepancy by blaming the Switcher Technician and Production Assistant before finally admitting that he was careless because “... while I was arranging the tapes of 'Alas Dose sa Trese', I accidentally turned on the rewind control and was caught unaware...the material rewinded while on air. My carelessness regarding this incident has caught my attention and has earned me a lesson.” After an investigation was conducted, it was discovered that he was watching other television channels while on duty. Consequently, petitioner was reprimanded and warned that a repetition of the same offense will be dealt with by disciplinary action.[38]

- On March 27, 2001, he was suspended for seven (7) days without pay based on a Discrepancy Report stating that he again committed the same act of loading the wrong material; instead of “OBB FERNATA/TULP, PEOTRACO BUMPER” was loaded.[39]

- In 2002, because of a complaint, he was reprimanded and suspended for fifteen (15) days without pay due to the following infractions:

- a. On April 8, 2002, he was caught watching an X-Rated film inside IBC's VTR Room during “ON AIR” operations, and while on duty, running the risk of having the film broadcasted in live television. He admitted that he made an honest mistake by bringing his personal VCR player for repair to the Maintenance and when he decided to put on an x-rated film for testing;[40] and

- b. On July 9, 2002, the program “The Weakest Link” was aired with audio gaps or no musical scoring because of his negligence. Again, petitioner tried to put the blame on the switcher, eventually however, he admitted that the malfunction was his fault.[41]

- On 16 September 2004, he was once more suspended for five (5) days for failure to properly cue the tape for the program “Bayless Conley” causing fumbles on air, viz.:

“The program Bayless Conley was reported not properly cued causing fumbles on air. And you stated in your explanation report that when you aired the said program the material that was turned over was set on the last part. And you had to rewind the whole tape causing a blank on-air. It is very clear that you did not check your materials before airing whether or not they are properly cued. It is not any bodies (sic) duty, but it is the duty of the VTR man operating on air operation. Beside(s) you had a one hour program (Family TV Mass) before Bayless Conley's airing that has no commercial gaps, having a one-hour preparation.

Last Sept. 16, 2004 you were given a final warning for an inattentive and slackness to your work. It is a very fresh reminder that you did the same attitude.

Due to the circumstances above, you are hereby recommended for five working days suspension.”[42]

- On 24 February 2010, because of an Incident Report filed by one of IBC's clients, Ms. Noemi Reyes, Associate

Producer of AutoVote 2010, he was issued a Memorandum of Reprimand for violating IBC General Policy/Standard Operating Procedures and Approvals Manual, Article XI, Sec. 2 (16) which enjoins its employees to tune in only to Channel 13 and sanctions anyone caught watching other TV stations. In his reply, petitioner admitted that there was a TV monitor which was tuned in to Channel 2's Showtime which "hampered the taping of AutoVote 2010...by increasing the volume of the TV tuned in to Channel 2's Showtime." [43]

Thus, the NLRC did not commit grave abuse of discretion when it applied the doctrine of totality of infractions or the number of violations committed by petitioner during the period he was employed with IBC in determining the penalty to be imposed upon him. [44] In *Merin vs. National Labor Relations Commission*, [45] the Supreme Court expounded on the principle of totality of infractions as follows:

"The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty[.] Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests." (Citations omitted)

Needless to say, the February, 2011 incident was not the first time that petitioner was negligent in performing his responsibilities as VTR technician. Evidently, petitioner had been repeatedly committing violations and/or infractions related to his duties as VTR technician which are considered detrimental to IBC as a television network, i.e. wrong loading of video materials; rewinding materials while "on air"; watching an X-rated film during "on air" operations and failing to cue materials on time, among others. And despite previous disciplinary actions, reminders and final warnings, petitioner repeatedly commits the same negligent acts.

In the case of *Alvarez vs. Golden Tri Bloc, Inc.*, [46] the Supreme Court, in sustaining petitioner Eric Alvarez's dismissal for committing at least three (3) different offenses — ranging from tardiness, negligence in preparing inventory to dishonesty relating to his timecard — which he repeatedly committed over the years and for which he has been constantly disciplined, declared that:

"A repetition of the same offense for which one has been previously disciplined and cautioned evinces deliberateness and willful intent; it negates mere lapse or error in judgment. While it may be assumed that the petitioner has become stubborn or has forgotten the 2003 episode, it should not work to his advantage, because either cause demonstrates his indifference to GTBI's policies on employees' conduct and discipline. Based on this consideration, taken together with his numerous other offenses, GTBI had compelling reasons to conclude that the petitioner has become unfit to remain in its employ."

Admittedly, security of tenure is constitutionally guaranteed. However, this should not be indiscriminately invoked to deprive an employer of its management prerogatives and right to shield itself from incompetent, inefficient and disobedient employees. [47]

All told, this Court, therefore, finds that the public respondent NLRC did not commit grave abuse of discretion in reversing the decision of the labor arbiter and upholding the dismissal of petitioner.

WHEREFORE, the petition is DISMISSED for lack of merit and the assailed Decision dated August 30, 2013 and Resolution dated October 16, 2013 issued by the NLRC are hereby AFFIRMED.

SO ORDERED.

Barrios, and Diy, JJ., concur.

- [1] Rollo, Annex “A”, pp. 22-29.
- [2] Rollo, Annex “B”, pp. 31-32.
- [3] Rollo, Annex “O”, pp. 166-179.
- [4] Petitioner's Position Paper, Rollo, Annex “K”, p. 56.
- [5] IBC's Position Paper, Rollo, Annex “L”, p. 93.
- [6] Rollo, Annex “E”, p. 38.
- [7] Rollo, Annex “C”, pp. 35-36.
- [8] Rollo, Annex “G”, pp. 40-43.
- [9] Supra, note 8.
- [10] Rollo, Annex “I”, pp. 44-52.
- [11] Supra, note 10, pp. 49-52.
- [12] Rollo, pp. 90-92.
- [13] Rollo, Annex “J”, pp. 53-54.
- [14] Rollo, Annex “K”, pp. 55-71.
- [15] IBC's Position Paper, Rollo, Annex “L”, pp. 93-108.
- [16] Rollo, Annex “O”, pp. 166-179.
- [17] Supra, note 16, pp. 178-179.
- [18] NLRC Decision dated August 30, 2013, Rollo, Annex “A”, pp. 28-29.
- [19] Rollo, Annex “R”, pp. 270-281.
- [20] Petition, pp. 3-19, 9.
- [21] Samson vs. NLRC, G.R. No. 121035; April 12, 2000 citing Arboleda vs. NLRC, 303 SCRA 38 (1999); Tanala vs. NLRC, 252 SCRA 314 (1996).
- [22] Rollo, Annex “O”, pp. 166-179.
- [23] G.R. No. 146621, July 30, 2004, 435 SCRA 543, 552-553.
- [24] Rollo, Annex “A”, pp. 22-29.
- [25] Rollo, Annex “A”, pp. 26-27.
- [26] Section 5, Rule 133, Rules on Evidence.
- [27] Sec. 5, Rule 133, Rules of Court; Manila Electric Co. vs. NLRC, 198 SCRA 681 [1991].

[28] Petitioner's Affidavit, Rollo, Annex "G", p. 41.

[29] Petition, p. 10.

[30] Ibid.

[31] Renumbered by Republic Act No. 10151 entitled "An Act Allowing the Employment of Night Workers, Thereby Repealing Articles 130 and 131 of Presidential Decree No. Four Hundred Forty-Two, As Amended, Otherwise Known as the Labor Code of the Philippines.

[32] ART. 279. Termination by employer. — An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; (e) Other causes analogous to the foregoing.

[33] Marival Trading, Inc. vs. NLRC, G.R. No. 169600, June 26, 2007 citing Samson vs. NLRC, 386 Phil. 669, 682 (2000); Philippine Aeolus Automotive United Corporation vs. NLRC, 387 Phil. 250, 261 (2000); GT Printers vs. NLRC, G.R. No. 100749, April 24, 1992.

[34] Hospital Management Services, Inc.-Medical Center Manila vs. Hospital Management Services, Inc.-Medical Center Manila Employees Association-AFW, G.R. No. 176287, January 31, 2011 citing Janssen Pharmaceutica vs. Silayro, G.R. No. 172528, February 26, 2008.

[35] Rollo, Annex "I", pp. 49-51.

[36] Petition, pp. 11-12.

[37] Annex "A" of IBC's Position Paper, Rollo, p. 112.

[38] Annexes "D", "E" & "F" of IBC's Position Paper, Rollo, pp. 115-117.

[39] Annexes "G", "H", "I" & "J" of IBC's Position Paper, Rollo, pp. 118-121.

[40] Annexes "K" & "L" of IBC's Position Paper, Rollo, pp. 122-123.

[41] Annexes "M", "N" & "O" of IBC's Position Paper, Rollo, pp. 124-127.

[42] Annex "P" of IBC's Position Paper, Rollo, p. 128.

[43] Annex "Q" of IBC's Position Paper, Rollo, p. 129.

[44] Merin vs. NLRC, G.R. No. 171790, October 17, 2008. 45Ibid, citing Valiao vs. Court of Appeals, G.R. No. 146621, July 30, 2004; Challenge Socks Corporation vs. Court of Appeals, G.R. No. 165268, November 8, 2005.

[46] G.R. No. 202158, September 25, 2013.

[47] Realda vs. New Age Graphics, Inc., G.R. No. 192190, April 25, 2012.

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