

## **NENUCA A. VELEZ, PETITIONER, VS. SHANGRI-LA'S EDSA PLAZA HOTEL, TERRY KO, COEN MASSELINK AND VANESSA SUATENGCO, RESPONDENTS.**

*G.R. NO. 148261. October 09, 2006*

Ponente: GARCIA, J.

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### **GARCIA, J.:**

Challenged in this petition for review under Rule 45 of the Rules of Court is the Decision[1] dated November 22, 2000 of the Court of Appeals (CA), as reiterated in its Resolution[2] of May 18, 2001, granting the petition for certiorari of the herein respondents in CA-G.R. SP No. 58182, entitled Shangri-la's Edsa Plaza Hotel, Terry Ko, Coen Masselink, and Vanessa Suatengco v. National Labor Relations Commission and Nenuca A. Velez.

The facts:

Herein petitioner Nenuca A. Velez was employed by respondent Edsa Shangri-la Hotel (Hotel) as an Executive Housekeeper, the highest ranking executive of the Hotel's housekeeping department, from April 1, 1991 until her dismissal on July 20, 1995. As executive housekeeper, the petitioner directly supervised the work of three (3) assistant executive housekeepers and eleven (11) supervisors of the Hotel.

On April 25, 1995, all the assistants and supervisors[3] of the Hotel's Housekeeping Department wrote a letter to the petitioner requesting for an audience with her to discuss some issues and problems regarding the working relationship within the Housekeeping Department.

To address the situation immediately, the Hotel's General Manager Terry Ko, one of the herein respondents, met with the signatories of the letter and asked for their explanations. In that meeting, the staff freely expressed their fears and anxieties about their job security, allegedly on account of the petitioner's highhanded manner in dealing with them.

The next day, respondent Ko, together with his co-respondent Coen Masselink, talked to the petitioner regarding the complaints of her assistants and supervisors. On that occasion, the petitioner asked the Hotel management that she be given a free hand on the matter but her request was declined. In the meantime and as agreed upon, the petitioner went on leave with pay. It was felt that the petitioner's absence while the matter was not yet settled was necessary because her presence not only evoked fear among the staff but also created tension among the employees in the Housekeeping Department.

Meanwhile, during the petitioner's leave of absence, the assistants and supervisors of the Housekeeping Department submitted their respective individual written complaints to the management. Most of the complaints related to the petitioner's poor inter-personal relations with her staff. Each of the complaining employees narrated her/his own experiences with the petitioner including the latter's highhandedness, partiality, absence of dialogue, fault-finding and giving no recognition. They claimed that these and other recurring problems had resulted in the demoralization of the supervisors.

In a letter[4] dated May 17, 1995, respondent Ko required the petitioner to explain her side and provided her with the staff's individual complaints. In his letter, Ko expressed to the petitioner his desire to see the problem resolved. In part, the letter reads:

You will note from the letters of the supervisors that their complaints fall into six (6) general categories: (a) your failure or inability to maintain close and open communications with them, collectively and individually; (b) your methods allow an atmosphere of fear to prevail among the group; (c) your partiality in the treatment and appraisal of your staff; (d) your failure or inability to involve yourself in the day to day work problems of your staff; (e) your frequent emphasis on fault, and ignoring merit; and (f) your methods of criticism have undermined the respect and credibility of your supervisors, among their subordinates and with each other.

As you know, the Housekeeping Department is one of the most important groups in the Hotel because its work immediately creates an impression on hotel guests. The guest gets its lasting impression of the Hotel from the room he occupies which the Housekeeping Department maintains. It is important, therefore, that the Housekeeping staff's morale is kept high by good management and excellent teamwork among its members. It is with these in mind that I ask you to give me your comments and explanation on the attached letters. As it is important that we resolve this problem as soon as possible, I ask that I have your written comment not later than Friday, May 26, 1995.

Instead of submitting the desired comment, the petitioner, through counsel, requested for a formal written notice stating the particular acts or omissions for which she was being charged.[5]

On June 14, 1995, Ko again wrote[6] the petitioner, this time specifying the following acts or omissions which the latter should answer and explain not later than June 22, 1995:

a)

failure or inability to communicate with them [i.e., the staff] collectively and individually, resulting in long existing problems being left unsolved;

b)

your arbitrary method of management instills fear in all your subordinates, intimidating them and arousing their indifference if not hostility;

c)

you have shown partiality in the evaluation and treatment of your subordinates;

d)

daily, you always keep to your office for the most part of the day, thus isolating yourself from the work problems of your subordinates;

e)

in criticizing the work of your subordinates, you focus on fault, no matter how minor, and ignore merit;

f)

you publicly shout at and humiliate them, sometimes using foul words;

g)

you have abused your authority by requiring contract workers assigned to the hotel, to work at your residence. You threaten subordinates who displease you with immediate termination or use others to pressure them to

resign; you also use your authority to reshuffle your subordinates, to punish them;

h)

unauthorized removal of hotel property (vacuum cleaner) from the hotel's premises for personal use.

On June 20, 1995, the petitioner, again through counsel, reiterated her earlier request that the charges against her be described and delineated with sufficient definiteness or particularity so that she or her counsel could properly respond thereto.[7]

In another letter[8] to the petitioner, Ko reiterated that she should submit her comment and/or explanation on the complaint not later than July 5, 1995 and set the investigation on July 6, 1995, at 2 o'clock p.m. However, no reply thereto was submitted by the petitioner.

During the investigation of July 6, 1995, the petitioner, with her counsel, appeared only to inform the investigating committee that the individual complaints furnished her by Ko, as well as Ko's letters to her, were vague. Petitioner did not participate in the investigation proceedings.

Notwithstanding the parties' disagreement on the alleged particularity of the charges and the non-participation of the petitioner in the fact-finding investigation, the committee proceeded and came out with the following infractions[9] committed by the petitioner:

- Causing dissatisfaction among her staff as a result of her autocratic management style.

- Violating some important provisions of the Hotel's Code of Conduct, to wit:

Section 19. Use of Company Time Premises, etc., for Personal Benefit: Using company time, premises, vehicles, tools, equipment or materials for personal benefit.

Section 20. Unauthorized Possession of Company Property: Unauthorized possession or use of any company, employee or guest property, hotel supplies.

- Violating, on the basis of the testimonies of her staff, the following provisions of the Hotel's Code of Conduct:

Section 4. Special Treatment or Privilege/ Bribery: Bribery in any form or manner; soliciting or demanding anything of value in exchange for or in consideration of any act, decision or service connected with the performance of the employee's duties or functions.

Section 5. Borrowing, Accepting Money or Soliciting Material favors from supplier/ customers: Borrowing or accepting money, gifts, commission, offers of promises or soliciting material favors from suppliers or customers with which the Company has a business relationship for his own personal benefits.

Section 13. Kickbacks: Entering into arrangements with suppliers, customers or guests to certain kickbacks or other preferential treatment.

On the basis of the foregoing, the Hotel management terminated petitioner's employment due to "loss of confidence" effective July 16, 1995.

On July 31, 1995, the petitioner filed with the Arbitration Branch of the National Labor Relations Commission (NLRC), a complaint for illegal dismissal against the respondents.

On January 29, 1998, the Labor Arbiter dismissed the complaint for lack of merit. The Labor Arbiter found that the charges against the petitioner, which include misconduct, are serious and involve violation of the rules and regulations of the respondent Hotel. He added that the petitioner's refusal to give any explanation regarding the charges despite opportunities given her, could have only strengthened the respondent Hotel's distrust on the

petitioner's competency and integrity as manager of its Housekeeping Department, compelling the Hotel to dismiss her.

On petitioner's appeal to the NLRC, the latter, in a decision dated April 13, 1999, granted the appeal and reversed the Labor Arbiter, ruling that the petitioner's dismissal is illegal, and accordingly rendered judgment as follows:

WHEREFORE, in the light of the foregoing discussion, the appeal is hereby granted.

Consequently, the decision appealed from is ordered Reversed and Set Aside and a new one entered finding complainant's [petitioner's] dismissal illegal.

Accordingly, respondents are ordered to pay complainant backwages from the time of her dismissal up to the promulgation of this judgment.

Complainant is likewise entitled to separation pay in lieu of reinstatement at the rate of one month salary for every year of service, a fraction of month is considered one whole year.

Lastly, moral and exemplary damages are ordered awarded to complainant in the amount of P200,000.00 and P100,000.00 respectively.

Ten percent of the total monetary award is for attorney's fees recoverable by complainant. (Word in bracket supplied.)

SO ORDERED.

Both parties moved for reconsideration. In its resolution of January 31, 2000, the NLRC granted the petitioner's partial motion for reconsideration and denied that of the respondents.

Imputing grave abuse of discretion on the part of the NLRC, the respondents went on certiorari to the CA in CA-G.R. SP No. 58182, raising the argument that the NLRC made no findings of facts from which it based its decision.

Giving due course to the petition, the CA, in its decision[10] of November 22, 2000, ultimately affirmed in toto the decision of the Labor Arbiter and ordered that the writ of preliminary injunction it issued on June 29, 2000 be made permanent, thus:

WHEREFORE, the petition is given due course. The assailed decision of the NLRC is hereby set aside as well as the Resolution dated January 31, 2000. The decision of the Labor Arbiter is affirmed in toto. The Writ of Preliminary Injunction issued on June 29, 2000 is made permanent.

Explains the CA in its reversal action:

A reading of the public respondent's decision reveals that it just copied in toto the allegations of [petitioner] Velez' complaint, then followed by the finding that there has been "insufficient evidence to warrant the charge of loss of confidence." However, respondent Commission failed to state profoundly why it concluded that the evidence is insufficient, and why the statement of facts as narrated by the [petitioner] prevailed over the finding of facts of the Labor Arbiter.

In trying to be very brief in resolving the appeal, the Commission completely disregarded the evidence presented to and appreciated by the Labor Arbiter.

In so doing, the Commission failed to abide by the jurisprudence laid down by the Supreme Court ....

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The Commission's decision is bereft of support from the records. It reversed the decision of the Labor Arbiter

without stating the reason therefor, without explanation whatever as to why the Arbiter's evidentiary findings were not worthy of credit. (Words in brackets supplied.)

Hence, this appeal by the petitioner raising the following issues: (1) whether or not the CA erred in granting the respondents' petition in CA-G.R. SP No. 58182 despite the fact that only three of the numerous pleadings, affidavits, documentary evidence and other supporting papers were attached to the said petition; and (2) whether or not the respondent Hotel illegally dismissed the petitioner.

We AFFIRM.

Petitioner bewails the appellate court's refusal to dismiss the respondents' petition for certiorari in CA-G.R. SP No. 58182 on the ground that the petition is fatally defective as it was not accompanied by copies of all the pleadings and documents relevant and pertinent thereto, in contravention of Section 1, Rule 65 of the Rules of Court.

We are not persuaded.

Acceptance of a petition for certiorari as well as the grant of due course thereto are addressed to the sound discretion of a court. The court discerns whether, on the basis of what has been submitted, it could already judiciously determine the merits of the petition. Section 1, Rule 65[11] of the Rules of Court, in relation to Section 3, Rule 46, of the same Rules, does not specify the precise documents, pleadings or parts of the records that should be appended to a certiorari petition other than the judgment, final order, or resolution being assailed. The Rules only states that such documents, pleadings or records should be relevant or pertinent to the assailed resolution, judgment or order.

In the petition for certiorari filed by the respondents with the CA, the decisions of the Labor Arbiter as well as that of the NLRC, and the latter's resolution denying their motion for reconsideration were duly annexed. The Labor Arbiter summarized and discussed in his decision the material allegations embodied in the position papers of both parties. We see no reason, then, to disturb the appellate court's determination that the copies of the decisions and resolution attached to the petition in CA-G.R. SP No. 58182 were sufficient to make out a *prima facie* case.

This brings us to the more important issue of whether the petitioner was illegally dismissed.

For a dismissal to be valid, two requisites must concur, namely: (a) the dismissal must be for any of the causes stated in Article 282[12] of the Labor Code; and (b) the employee must have been accorded due process, basic of which is the opportunity to be heard and to defend himself.[13] Simply put, an employer can terminate the services of an employee for just and valid causes, which must be supported by clear and convincing evidence, and with due process, meaning that the employee must be given notice with adequate opportunity to be heard before he is notified of his actual dismissal for cause. All were complied with by the respondents in this case.

Petitioner insists, however, that she was dismissed from employment not for a just and valid cause and without due process of law. She contends that the accusation of dishonesty (when she brought a vacuum cleaner out of the Hotel's premises and utilized the services of the Hotel contract employees to work in her house without the knowledge of the Hotel) is wholly unsupported by the established facts.

Paragraph (c) of Article 282 of the Labor Code provides that an employer may terminate an employment for fraud or willful breach by the employee of the trust reposed in him by his employer or the latter's duly authorized representative. A breach is willful if done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. In *China City Restaurant Corporation v. NLRC*, [14] the Court came up with the following guidelines for the application of the doctrine of loss of confidence:

(a)

the loss of confidence should not be simulated;

(b)

it should not be used as a subterfuge for causes which are improper, illegal or unjustified;

(c)

it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and

(d)

it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

In *Sulpicio Lines, Inc. v. Gulde*,<sup>[15]</sup> the Court emphasized that loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility or of trust and confidence. As such, he must be invested with confidence on delicate matters, such as the custody, handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and must show that the employee is unfit to continue to work for the employer.

Recent decisions of this Court have distinguished the treatment of managerial employees from that of the rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.<sup>[16]</sup> Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, albeit the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests and not on the employer's arbitrariness, whims and caprices or suspicion, otherwise the employee would eternally remain at the mercy of the employer.<sup>[17]</sup>

Here, the petitioner is not an ordinary rank-and-file employee. For sure, she held the position of an Executive Housekeeper, the highest ranking executive of the Housekeeping Department of the respondent Hotel. Hers is a position of responsibility which demands of her that she manage, control and take responsibility over activities in her department. As such, the petitioner is tasked to perform key and sensitive functions, which call for and bind her to more exacting work ethics.<sup>[18]</sup> As explained by respondent Ko in his letter of May 17, 1995 to the petitioner: the Housekeeping Department is one of the most important groups in the Hotel because its work immediately creates an impression on hotel guests. The guest gets its lasting impression of the Hotel from the room he occupies which the Housekeeping Department maintains. It is important, therefore, that the Housekeeping staff's morale is kept high by good management and excellent teamwork among its members. Doubtless, petitioner's sensitive position requires the full trust and confidence of her employer in every exercise of managerial discretion insofar as the conduct of her employer's business is concerned. Breaching that trust and confidence warrants dismissal from the service. We thus agree with the findings of the Labor Arbiter, as affirmed by the appellate court, that the petitioner betrayed the trust and confidence reposed on and expected of her when she brought home the Hotel's vacuum cleaner and personally utilized the services of the Hotel's contract employees to work in her house without the knowledge of her employer, in violation of the Hotel's Code of Conduct. We quote with approval what the Labor Arbiter said in its decision:<sup>[19]</sup>

The second ground which respondent hotel used as basis for its loss of confidence in the complainant [petitioner] was her taking out of the hotel, without any authority, a vacuum cleaner belonging to the hotel, and using it in her house. She returned it to the hotel only after six months, when her subordinates filed their written complaint. Complainant [petitioner] did not deny the charge regarding the vacuum cleaner and she even admitted it in writing and under oath. This she did in her answers (Exhibit "8-A" and Exhibit "9-A") to respondent's request for admission (Exhibit "8"), their written interrogatories (Exhibit "9") and their request for stipulation (Exhibit "9-B"). The complainant's [petitioner's] own admission of the second charge provides enough basis for respondents' loss of confidence in complainant [petitioner].

Complainant's [petitioner's] use of the vacuum cleaner without authority violated her employer's Code of Conduct (Exhibit "F"). Section 19 and Section 20 punishes with dismissal the following acts of dishonesty by an employee: Section 19. Use of Company Time Premises, etc., for Personal Benefit: Using company time, premises, vehicles, tools, equipment or materials for personal benefit.

Section 20. Unauthorized Possession of Company Property: Unauthorized possession or use of any company, employee or guest property, hotel supplies.

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Respondents Hotel's third ground for its loss of confidence in the complainant [petitioner] is the charge, also found in the written complaints of one of her subordinates, that she required employees of the hotel's labor contractor, M.S. Ignacio, to clean her house and its surroundings. Respondents' evidence is that as Executive Housekeeper, complainant [petitioner] had the power to accept or reject any employee of the contractor to be assigned to the Hotel. Complainant admitted that she had this "personal arrangement" with the hotel labor contractor to assign workers to work at her house. Her husband, Mr. Jose R. Velez, who testified for her at hearing of the case, corroborated her admission. He likewise admitted that complainant [petitioner] did not pay M.S. Ignacio for the work of his employees. According to Mr. Velez, these employees worked not only on weekends but also on weekdays whenever they did not have to work at the respondent hotel. The arrangement stopped only when a complaint was filed against complainant [petitioner]. After that, the couple hired regular maids to work at their house.

The third described above is likewise not denied but even admitted. As in the previous charges, it provides basis for respondent Hotel's loss of confidence in complainant [petitioner]. Complainant's [petitioner's] arrangement with the hotel's contractor violates its Code of Conduct. Section 4, 5 and 13 of the Code punish with dismissal the following act:

Section 4. Special Treatment or Privilege/Bribery: Bribery in any form or manner; soliciting or demanding anything of value in exchange for or in consideration of any act, decision or service connected with the performance of the employee's duties or functions.

Section 5. Borrowing, Accepting Money or Soliciting Material favors from supplier/customers: Borrowing or accepting money, gifts, commission, offers of promises or soliciting material favors from suppliers or customers with which the Company has a business relationship for his own personal benefits.

Section 13. Kickbacks: Entering into arrangements with suppliers, customers or guests to certain kickbacks or other preferential treatment.

The third substantial charge against her, that she used employees of a labor contractor of the hotel, to clean her house on a regular basis, is another case of misconduct. Considering her authority to accept or reject any employee of the contractor the latter may assign to the hotel, these workers assigned to her house clearly had no choice but to accept the assignment, despite the additional burden and the little pay. The free labor admittedly received by the complainant [petitioner] from the labor contractor of the respondent hotel, clearly violates the

above-quoted provisions of the Code of Conduct. The lame excuse of the complainant [petitioner] that she can properly observe the manner of their work fails to persuade this Arbitration Branch.

Equally unpersuasive is the petitioner's assertion that the charges against her were not supported by substantial evidence. We note that the Labor Arbiter used every reasonable means to ascertain the facts by giving the parties ample opportunity to present their respective causes. They were given the opportunity to file their respective position papers, affidavits and other documents. Regrettably, the petitioner failed to categorically refute any of the charges leveled against her but even admitted her misconduct. Undeniably, the acts committed by the petitioner adversely reflected on her competence and integrity, sufficient enough for her employer to lose trust and confidence in her.

Nor can there be any procedural infirmity that could have attended the petitioner's dismissal. Due notice and hearing were given her. The records clearly show that the petitioner was given ample opportunity to explain and defend herself. But instead of availing of that right, the petitioner ignored the directives given her and chose to remain silent on the charges against her. Evidence shows that she was properly notified of the charges against her through the May 17, 1995 letter to her of respondent Ko, requiring her to explain her side and even provided her with the staff's individual complaints. This was followed by Ko's letter of June 14, 1995 whereunder were specified the acts and omissions which the petitioner was required to answer and explain. And even as she appeared at the investigating committee's hearing on July 6, 1995, she did not take part and merely satisfied herself by informing the committee that she could not answer the complaints as they were not specific. That hearing could have been her chance to clarify all matters but she purposely ignored it until eventually, she was notified of her dismissal. If this is not due process, then the petitioner is completely wrong.

It cannot be overemphasized that there is no substitute for honesty for sensitive positions which call for utmost trust. Fairness dictates that the respondent Hotel should not be allowed to continue, under its, employ the petitioner who has breached the confidence reposed on her. Unlike other just causes for dismissal, trust in an employee, once lost, is difficult, if not impossible, to regain. Respondent Hotel has every right to dismiss the petitioner as a measure of self-preservation against acts patently inimical to its interests.

With the reality that the petitioner was not illegally dismissed, she is not entitled to backwages. Backwages may be granted only when there is a finding that the dismissal is illegal.[20]

IN VIEW WHEREOF, the challenged Decision dated November 22, 2000 and Resolution dated May 18, 2001 of the CA are AFFIRMED.

Costs against the petitioner.

**SO ORDERED.**

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Eugenio S. Labitoria (now ret.) and concurred in by Associate Justices Eloy R. Bello, Jr., (now ret.) and Eliezer R. de los Santos; Rollo, pp. 77-85.

[2]Id. at 88.

[3] Namely: Edisto Graneda, Jr., Jonat Xerez-Burgos, William Obagne, Florentino M. San Juan, Romy Betiles, August Evangelista, Ramon Jude Serrano, Bong Sarmiento, Ma. Erlinda Gonzalez, Ismael Adlao, Noemi Yatco, Miguel T. Fama III, Sonny Trinidad and Ramon B. Chuidian.

[4]Rollo, p. 238.

[5]Id. at 239-240.

[6]Id. at 241-242.

[7] Id. at 243-244.

[8]Id. at 245.

[9]Respondent's Comment, Id. at 487.

[10] Supra note 1.

### **[11] RULE 65 CERTIORARI, PROHIBITION AND MANDAMUS**

SECTION 1. Petition for Certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[12] Art. 282. 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.

[13]ACD Investigation Security Agency, Inc., v. Daquera, G.R. No. 147473, March 30, 2004, 426 SCRA 494.

[14] G.R. No. 97196, January 22, 1993, 217 SCRA 443, cited in Tolentino v. Philippine Long Distance Telephone Company, Inc., et al, G.R. No. 160404, June 8, 2005, 459 SCRA 737.

[15]427 Phil. 805 (2002).

[16]Maquiling v. Philippine Tuberculosis Society, Inc., G.R. No. 143384, February 4, 2005, 450 SCRA 465, citing Asia Pacific Chartering (Phils.) Inc. v. Farolan, 441 Phil. 776 (2002).

[17] Samson v. National Labor Relation Commission, 386 Phil. 669 (2000).

[18]Gonzales v. National Labor Relations Commission, G.R. No. 131653, March 26, 2001, 355 SCRA 195.

[19]Id. at 154-156.

[20] San Miguel Corporation v. Aballa, G.R. No. 149011, June 28, 2005, 461 SCRA 392.

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