

PETRON CORPORATION AND PETER C. MALIGRO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND CHITO S. MANTOS, RESPONDENTS.

G.R. NO. 154532. October 27, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court is the Resolution dated November 26, 2001[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67702, dismissing the petition for certiorari thereat filed by the herein petitioners on the ground that the Verification and Certification on Non-Forum Shopping was defective because co-petitioner Peter C. Maligro was not a signatory thereto, as reiterated in its subsequent Resolution of July 16, 2002,[2] denying the petitioners' motion for reconsideration.

The facts:

Petitioner Petron Corporation (Petron), a corporation duly organized and existing under the laws of the Philippines, is engaged in the refining, sale and distribution of petroleum and other related products, while its co-petitioner Peter C. Maligro was the former Visayas Operations Assistant Manager of Petron's Visayas-Mindanao District Office at Lahug, Cebu City.

On May 15, 1990, Petron, through its Cebu District Office, hired the herein private respondent Chito S. Mantos, an Industrial Engineer, as a managerial, professional and technical employee with initial designation as a Bulk Plant Engineering Trainee. He attained regular employment status on November 15, 1990 and was later on designated as a Bulk Plant Relief Supervisor, remaining as such for the next five years while being assigned to the different plants and offices of Petron within the Visayas area.

It was while assigned at Petron's Cebu District Office with petitioner Peter Maligro as his immediate superior, when Mantos, thru a Notice of Disciplinary Action dated October 29, 1996,[3] a copy of which was received by him on November 18, 1996,[4] was suspended for 30 days from November 1 to 30, 1996 for violating company rules and regulations regarding Absence Without Leave (AWOL), not having reported for work during the period August 5 to 27, 1996.

Subsequently, in a notice Termination of Services bearing date November 20, 1996[5] and received by him on November 25, 1996,[6] Mantos' services were altogether terminated effective December 1, 1996, by reason of his continued absences from August 28, 1996 onwards, as well as for Insubordination/Discourtesy for making false accusations against his superior.

Meanwhile, on November 8, 1996, contending that he has been constructively dismissed as of August 5, 1996, Mantos filed with the National Labor Relations Commission, Regional Arbitration Branch (NLRC-RAB), Cebu City, a complaint for illegal dismissal and other monetary claims against Petron and/or Peter C. Maligro. The case was docketed as NLRC RAB-VII Case No. 11-1439-96.

In his complaint, Mantos made the following allegations:

xxx He had an unblemished record in his service with [Petron]. Intrigues and professional jealousies, however, have prevailed over the work atmosphere in [Petron]. This became more particularly true in regard to his close relationship with Jaime "Boy" Tamayo, then the VISMINE Operations Manager who later left the company to migrate to Canada. His closeness to Tamayo has caused problems with his relationship with Peter Maligro, Visayas Operations Assistant Manager, who has been after his neck for sometime. Maligro's hatred on him became evident when he was assigned to Nasipit Bulk Plant at Nasipit, Agusan del Norte for two (2) months or so. He was deprived of his usual P1,000.00 a day per diem. He was also deprived of the usual facilities such as the service vehicle and the use and access to lighterage services.

Because of the tremendous work pressure, he availed and was granted a vacation leave in March 1996. Before he reported back to work he was summoned to the office of Peter Paul Shotwell. There, he was advised by [Petron's] officers to resign from [Petron] as they were instructed by superiors that he should quit as they no longer liked him. Failing to convince him he was later offered to avail of [Petron's] early retirement program dubbed as "Manpower Reduction Program" or MRP. Thereafter he was advised to avail of his remaining vacation leave while they process his MRP papers. After his vacation, he was no longer allowed to report back at his assignment at Mactan Aviation Facilities but directly to Maligro at the Cebu District Office. While being designated as Operations Engineer, he was assigned only menial tasks such as recopying errands, digging up files, drafting and redrafting memoranda and other mere clerical works. On August 5, 1996, Maligro bad-mouthed him in the presence of his co-employees for alleged dissatisfaction of his work as a mere clerk. What [Petron and Maligro] have done to him amounts to constructive dismissal. Hence, his complaint.[7] (Words in brackets supplied.)

For their part, Petron and Maligro averred that Mantos was dismissed for just and valid causes effective December 1, 1996, asserting that:

xxx complainant [Mantos] incurred absences without leave (AWOL) on August 5 to 27, 1996 inclusive. He failed to comply with the instruction of a superior for him to report for work at the Cebu City District office and to submit a formal explanation of his AWOL. From August 28, 1996, up to the filing of respondents' position paper, complainant has not reported for work but continued to receive the salary for the months of August, September and October 2, 1996. An investigation was conducted on September 2, 1996 but complainant failed to appear. Instead he sent two (2) letters thru his counsel accusing respondent Maligro of certain acts humiliating and prejudicing him. After a series of hearings, [Petron's] Investigation Committee in a report and recommendation of November 19, 1996, recommended that after a 30-day suspension, complainant should be subjected to a more severe penalty. Hence, they deny complainant's claims. [8]

In a decision dated June 30, 1998, Labor Arbiter Dominador A. Almirante declared Mantos to have been constructively dismissed but ruled that only Petron could be held liable to him for separation pay in lieu of reinstatement and the cash equivalent of his certificate of stocks, less his personal accountabilities. More specifically, the decision dispositively states:

WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering the respondent Petron Corporation VISMINE District Office to pay complainant the amount of One Hundred Two thousand Nine Hundred Twenty-Eight Pesos and 41/100 (P102,928.41) representing the separation pay for his six (6) years of service at P15,420.00 a month, the cash equivalent of his certificate of stocks minus his outstanding account, computed as follows:

a. Separation Pay:

P15,420.00 x 6 years

-

P 92,520.00

b. Cash equivalent of certificate of stocks

-

P 66,600.00

Total

P159,120.00

Minus

-

P 56,191.59

Net Award

P102,928.41

SO ORDERED. [9]

Explains the Labor Arbiter in his decision:

It is an established fact that for his absences from August 5 to August 27, 1996, complainant was imposed the penalty of suspension for thirty (30) days from November 1 to 30, 1996 per the letter of respondent Maligro to complainant dated October 29, 1996 (Annex "D"). From respondents' Annex "6" which is a memorandum of November 19, 1996 containing the report of the Investigation Committee it is shown therein that the summons in this case was received by respondents on November 14, 1996. The following day, November 15, 1996, the Committee met to determine the factual basis of the charges of absence without leave and insubordination against complainant. The Committee was convened seven (7) days after the filing of the complaint herein on November 8, 1996.

We find that the foregoing factual milieu militates badly against the cause for the respondents. It appears that the Investigation Committee was belatedly constituted as an afterthought after the respondents received the summons in this case. For his AWOL, complainant was already sufficiently penalized by suspension for thirty (30) days, the maximum penalty authorized by law. In fact, complainant was still serving his suspension when the Committee was convened and issued the memorandum of November 19, 1996 recommending his dismissal for AWOL and insubordination. The insubordination aspect stemmed from complainant's accusation in his complaint for constructive dismissal and withholding of his stock certificates. The imposition of the penalty of dismissal smacks of a desire to get even for complainant's filing of a complaint against the respondents. Anyway, the penalty of dismissal was too harshly and [d]isproportionately imposed on the complainant considering his length of service.

Furthermore, there is in an (sic) un rebutted evidence for the complainant that earlier while being assigned directly under respondent Maligro at the Cebu District Office, with the designation as Operations Engineer, he was assigned only menial tasks like recopying errands, digging up files, drafting and redrafting memoranda and other clerical works.

We find that respondents' act was tantamount to constructive dismissal xxx Under such circumstances, the continuance of complainant's employment with respondent corporation has been rendered impossible,

unreasonable and unlikely. There exists also a demotion in rank.

xxx xxx xxx

We find therefore that complainant was illegally dismissed from the service. He should have been reinstated to his former position without loss of seniority rights. We find however, that the filing of this complaint has spawned strained relationship between the parties. Hence, reinstatement is no longer practical and feasible. Instead complainant should be awarded his separation pay equivalent to one (1) month pay per year of service. He is not however entitled to backwages. He is not completely free from blame in his separation from the service. He committed absences without leave. xxx

xxx xxx xxx

Complainant is also entitled to the cash equivalent of his certificate of stocks admitted in respondent's Exhibit "7" to be P66,600.00. From the total award shall be deducted the amount of P56,191.59 complainant's outstanding account to respondent.

The rest of the claims are hereby ordered dismissed for lack of merit not having been substantiated by clear and convincing evidence. Respondent Peter C. Maligro is hereby absolved from any liability hereof there being no showing that he acted in bad faith and in excess of his authority in dealing with the complainant. [10]

Both dissatisfied, the parties questioned the aforementioned Labor Arbiter's decision: Petron and Maligro, by way of an appeal to the NLRC at Cebu City, accompanied by a P102, 928.41 surety bond in favor of Mantos; and the latter, by a motion for reconsideration which the NLRC eventually treated as an appeal.

On July 31, 2000, the NLRC reversed the findings of the Labor Arbiter regarding Mantos' constructive dismissal as of November 1, 1996 and considered him to have been illegally dismissed only on December 1, 1996. In the same decision, the NLRC adjudged Maligro solidarily liable with Petron, and accordingly modified the Labor Arbiter's decision as follows:

WHEREFORE, the questioned Decision is MODIFIED in that complainant was illegally suspended from November 1-30, 1996 and was ILLEGALLY DISMISSED on December 1, 1996, accordingly and as discussed, he should be paid separation pay based on his one month salary (P15,420.00) per year of service computed until the month of promulgation (July, 2000) of this Decision. In addition, complainant is entitled to full backwages from November 1, 1996 until July, 2000.

The finding below of cash equivalent of certificate of stocks in the amount of P66,600.00 is deleted. The accountability of complainant in the amount of P56,191.59 shall be deleted from his total awards.

Complainant is likewise entitled to ten percent (10%) of the total awards by way of attorney's fees.

The foregoing liabilities are solidary against respondents Petron Corporation and Peter C. Maligro.

SO ORDERED.[11]

Justifying its decision, the NLRC explained that Mantos failed to prove that he had to quit his job on August 5, 1996 because his continued employment was rendered impossible, unbearable and unlikely. On the other hand, Petron and Maligro did not observe the requisite procedural due process considering that (1) the alleged Notice of Violation of Company Rules and Regulations dated August 27, 1996 which preceded the suspension of Mantos was not received by the latter; and (2) no separate notice for the two new charges of Absence Without Leave (AWOL) starting August 28, 1996 and Insubordination/Discourtesy for making false accusations against his superior, were sent to Mantos prior to the Notice of Termination dated November 20, 1996 based on the report/recommendation dated November 19, 1996 of the Investigation Committee. Furthermore, the Commission noted that on the day after Petron and Maligro received the summons with respect to Mantos' complaint with the

NLRC-RAB, the Investigation Committee was immediately convened regarding Mantos' continued absences beginning August 28, 1996 with Maligro himself being a member of said committee.

With their motion for reconsideration having been denied by the NLRC in its Resolution of August 31, 2001,[12] the petitioners elevated the case via certiorari to the CA in CA-G.R. SP No. 67702.

As stated at the threshold hereof, the CA, in its assailed Resolution of November 26, 2001, outrightly dismissed the petition for being defective in form because only petitioner Petron signed the verification and certification on non-forum shopping without its co-petitioner Peter Maligro likewise signing the same.

Their motion for reconsideration having been denied by the CA in its second impugned Resolution of July 16, 2002, the petitioners are now with us via the present recourse on the following grounds:[13]

- THE COURT OF APPEALS ERRED IN DISMISSING PETITIONERS' PETITION FOR CERTIORARI ON THE GROUND THAT THE SAME FAILED TO COMPLY WITH THE RULE ON CERTIFICATION ON NON-FORUM SHOPPING CONSIDERING THAT:

- THERE WAS SUBSTANTIAL COMPLIANCE BY PETITIONERS WITH THE REQUIREMENTS ON CERTIFICATION OF NON-FORUM SHOPPING.

- THERE WAS A REASONABLE CAUSE FOR PETITIONER MALIGRO'S FAILURE TO ATTACH A VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING.

- THE OUTRIGHT DISMISSAL OF THE PETITION BY THE COURT OF APPEALS WOULD DEFEAT SUBSTANTIAL JUSTICE CONSIDERING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT:

- PRIVATE RESPONDENT'S COMPLAINT FOR ILLEGAL DISMISSAL WAS NOT FILED AS A MALICIOUS SCHEME AGAINST PETITIONERS, DESPITE OVERWHELMING EVIDENCE ON RECORD.

- PETITIONERS DISMISSED PRIVATE RESPONDENT MANTOS WITHOUT OBSERVING THE REQUISITE PROCEDURAL DUE PROCESS BECAUSE PETITIONERS ALLEGEDLY DID NOT PROVE THAT MANTOS RECEIVED THE NOTICE OF VIOLATION OF COMPANY RULES DATED 27 AUGUST 1996 AS WELL AS THE TWO TELEGRAMS REQUIRING MANTOS TO REPORT FOR WORK, CONTRARY TO SUBSTANTIAL EVIDENCE ON RECORD.

- THAT PETITIONERS DISMISSED MANTOS WITHOUT OBSERVING THE REQUISITE PROCEDURAL DUE PROCESS BECAUSE PETITIONERS ALLEGEDLY DID NOT SEND A NOTICE OF VIOLATION OF COMPANY RULES TO PRIVATE RESPONDENT FOR THE OFFENSES THAT HE COMMITTED FOR THE SECOND TIME, DESPITE CONTRARY EVIDENCE ON RECORD.

- THAT PETITIONERS DID NOT SHOW HOW THE INVESTIGATION COMMITTEE THAT INVESTIGATED MANTOS' VIOLATIONS OF COMPANY RULES WAS CREATED AND THAT THE SAME WAS BIASED AGAINST MANTOS MERELY BECAUSE ITS CHAIRMAN WAS MANTOS' SUPERIOR, DESPITE CONTRARY EVIDENCE ON RECORD.

- THAT PETITIONER PETER C. MALIGRO IS SOLIDARILY LIABLE WITH PETITIONER PETRON CORPORATION FOR THE LATTER'S ALLEGED LIABILITY TO MANTOS NOTWITHSTANDING THE ABSENCE OF EVIDENCE INDICATING THAT MALIGRO ACTED WITH BAD FAITH AGAINST MANTOS.

- THAT PRIVATE RESPONDENT IS ENTITLED TO AWARD OF FULL BACKWAGES FROM 1 NOVEMBER 1996 UNTIL JULY 2000 AND TO THE OTHER MONETARY AWARDS MADE BY THE

NLRC.

In his Comment,[14] the private respondent avers, among others, that the petitioners' petition for certiorari in CA-G.R. SP No. 67702 cannot alter the factual findings of the Labor Arbiter as affirmed by the NLRC. He argues that the sole office of a writ of certiorari is to correct jurisdictional errors including grave abuse of discretion amounting to lack or excess of jurisdiction, and does not include correction of the NLRC's evaluation of the evidence, whose factual findings are generally accorded not only great respect but even finality.

The petition is partly meritorious.

Concededly, the fact that only Petron, minus its co-petitioner Peter C. Maligro, executed and signed the Verification and Certification on Non-Forum Shopping,[15] attached to the petition for certiorari in CA-G.R. SP No. 67702, is a cause for the dismissal of that petition, conformably with Section 5, Rule 7 of the Rules of Court which expressly requires that the certification against forum shopping must have to be certified under oath by "the plaintiff or principal party," and failure to comply therewith shall cause the dismissal of the action.[16]

Be that as it may, we hold that the CA erred in outrightly dismissing CA-G.R. SP No. 67702 solely on the ground that therein co-petitioner Peter Maligro failed to equally sign the verification and certification on non-forum shopping.

It must be remembered that the petitioners in CA-G.R. SP No. 67702 are Petron and its operations assistant manager, Peter Maligro. Evidently, Maligro was included in the complaint filed by Mantos in NLRC RAB-VII Case No. 11-1439-96 in Maligro's capacity as Petron's corporate officer. Maligro has no separate and distinct personality from that of Petron, undoubtedly the direct employer of Mantos against which any award in the latter's favor is enforceable. With Petron being the real party-in interest in that case and not Maligro, the latter's failure to equally sign the verification and certification on non-forum shopping should not have merited the CA's outright dismissal of the certiorari petition in CA-G.R. SP No. 67702.

In outrightly dismissing the petition, the CA relied on *Loquias v. Office of the Ombudsman*.^[17] The appellate court's reliance on that case is misplaced. For, in the subsequent case of *Micro Sales Operation Network and Willy Bendol v. NLRC, et. al.*,^[18] wherein the CA based its dismissal of the therein similarly defective petition for certiorari on the strength of *Loquias*, this Court ruled:

The Court of Appeals relied on *Loquias v. Office of the Ombudsman*, which held that a certification on non-forum shopping signed by only one of two or more petitioners is defective, unless he was duly authorized by his co-petitioner. However, the said ruling applies when the co-parties are being sued in their individual capacities. Note that the petitioners in *Loquias* are the mayor, vice-mayor, and three members of the municipal board of San Miguel, Zamboanga del Sur. The said co-parties were charged with violation of Republic Act No. 3019 15 in their various capacities.

In the instant case, the petitioners are the company and its operations manager, Willy Bendol. The latter was impleaded simply because he was a co-respondent in the illegal dismissal complaint. He has no interest in this case separate and distinct from the company, which was the direct employer of private respondents. Any award of reinstatement, backwages, and attorney's fees in favor of private respondents will be enforced against the company as the real party in interest in an illegal dismissal case. Petitioner Bendol is clearly a mere nominal party in the case. His failure to sign the verification and certification on non-forum shopping is not a ground for the dismissal of the petition. The appellate court erred in dismissing outright petitioners' special civil action for certiorari solely on that ground. (Emphasis supplied.)

In any event, considering that Maligro derives his standing or personality in the case from Petron, the certification on non-forum shopping executed and signed only by the corporation benefited Maligro such that the attachment

of said certification to the petition in CA-G.R. SP No. 67702 should be deemed substantial compliance with the rule on certification on non-forum shopping.

We have, therefore, opted to give due course to the present petition. And realizing that a remand of this case to the CA would only entail further delay in the proceedings, we deemed it prudent to resolve the controversy to finally put it to a rest.

In the review of NLRC decisions through the special civil action of certiorari, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. The Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. [19]

Here, however, we are constrained to make a review of the records and a re-examination of the questioned NLRC findings to arrive at a complete, just and proper determination of the case.

Essentially, the issue posed is the validity of private respondent's dismissal.

The validity of an employee's dismissal hinges on the satisfaction of two substantive requirements, to wit: (1) the employee was accorded due process, basic of which are the opportunity to be heard and to defend himself; and (2) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code.[20] The illegality of the act of dismissal constitutes discharge without just cause, while the illegality in the manner of dismissal is dismissal without due process.[21]

Here, private respondent was successively charged with two (2) sets of offenses and separately penalized for each set.

The first set of infractions consisted of private respondent's being AWOL from August 5 to 27, 1996 and Insubordination/Discourtesy as set forth in the Notice of Violation of Company Rules and Regulations dated August 27, 1996,[22] for which he was penalized with suspension for 30 days effective November 1 to 30, 1996 but only for the charge of being AWOL. The second set, as contained in the Notice of Violation of Company Rules and Regulations (EM 300) dated November 12, 1996[23] consisted also of being AWOL, this time beginning August 28, 1996, and Insubordination/Discourtesy for making false accusations against his superior, for which he was dismissed effective December 1, 1996.

Private respondent did not report for work starting August 5, 1996 due to his belief that he has already been dismissed as of said date. But since he failed to prove his allegation of clear acts of harassment and humiliation, which had allegedly become so unbearable as to leave him with no choice but to forego his continued employment, we uphold the legality of his suspension due to his unauthorized absences from August 5 to 27, 1996.

With respect to respondent's dismissal, however, we find the same unjustified.

Under paragraph (a), Article 282 of the Labor Code,[24] an employer may terminate the services of an employee for his willful disobedience of the employer's lawful orders in connection with his work.

Verily, the employer's rules, instructions or commands, in order to be a ground for discharge on the score of disobedience, must be reasonable and lawful, must be known to the employee, and must pertain to the duties for which his services were engaged.[25]

From the foregoing, it is clear that the factual basis for the petitioners' charge of insubordination against the private respondent, i.e., making false accusations against his superior cannot constitute a just cause for dismissal. The so-called accusations are embodied in the complaint filed by the private respondent in NLRC RAB-VII Case No. 11-1439-96, in which complaint he believed himself to have been constructively dismissed as of August 5,

1996. By no stretch of imagination can the filing of such complaint constitute insubordination. If, as asserted by the private respondent, he had been constructively dismissed as of August 5, 1996, such assertion could not have risen to the level of false accusation against his superior.

On the other hand, while respondent has indeed been absent from August 28, 1996, the penalty of dismissal therefor is too harsh considering that all the while, he deemed himself to have been already dismissed as early as August 5, 1996. Besides, private respondent has already been penalized with suspension for his unauthorized absences, which notice of suspension he only received on November 18, 1996.

Likewise, the petitioners failed to prove that they complied with the requisites of procedural due process in dismissing private respondent.

It is horn-book law that an employee sought to be dismissed must be served two (2) written notices before termination of employment: a notice to apprise the employee of the particular acts or omissions for which his dismissal is sought; and the subsequent notice to inform him of the employer's decision to discharge him from the service.[26] The procedure is mandatory and non-observance thereof renders the dismissal illegal and void.[27]

Here, while the private respondent received the Notice of Disciplinary Action dated October 29, 1996 informing him of his suspension, and the Memorandum dated November 20, 1996 terminating his services, he did not receive any prior notice[s] apprising him of the particular acts for which his suspension and/or termination were being sought.

As rightly found by the NLRC, the private respondent was not given the following notices, to wit: (1) the Notice of Violation of Company Rules and Regulations dated August 27, 1996 on his AWOL from August 5 to 27, 1996 and Insubordination/Discourtesy with notice of an investigation on September 2, 1996; and (2) the Notice dated November 12, 1996 on the second set of charges of AWOL starting August 28, 1996 and Insubordination/Discourtesy for allegedly making false accusations against his superior with notice of the investigation on November 15, 1996.

As borne by the records, it was only in their motion for reconsideration of the NLRC decision that the petitioners proffered the delivery records of a private courier to show that the aforementioned notices, as well as two alleged telegrams requiring the private respondent to report for work,[28] were in fact sent to the latter. But, a perusal of said delivery records does not bear the petitioners' claim. For, apart from the private respondent's full name, Chito S. Mantos, being written in block letters on the said delivery records, there is no other way of knowing whether it was really him who received the notices or that another person could have received the same in his behalf.[29] Verily, said delivery records do not substantially show respondent's receipt of the notices in question.

Given the above, we cannot give credence to petitioners' claim that as early as August 27, 1996, the date of the notice allegedly sent to the respondent informing him of the first set of offenses, the latter already knew that a committee was going to investigate him for infractions of company rules and regulations in connection with the second set and that he was invited to attend the investigating committee's scheduled hearing.

We, therefore, lend concurrence to the common findings of both the NLRC and the Labor Arbiter that the committee which investigated the alleged second set of offenses and which eventually led to the committee's recommendation for his dismissal was created only on November 15, 1996 or a day at the heels of the petitioners' receipt on November 14, 1996 of the summons issued in NLRC RAB-VII Case No. 11-1439-96.

With the reality that no notice of any investigation was timely served on the private respondent, the latter's filing of his complaint for illegal dismissal in NLRC RAB-VII Case No. 11-1439-96 on November 8, 1996 could not be said to have been made to preempt the investigation regarding his alleged offenses as he was yet unaware of any

such investigation. Moreover, as the NLRC rightly observed:

We note from the records that although complainant quit working starting August 5, 1996 because he felt he was "constructively dismissed" he did not file outright the present complaint. Instead, he wrote respondent Maligro on October 18, 1996, thru counsel asking an explanation why no case for illegal dismissal with damages would be filed against respondents. When he therefore finally filed the present case on November 8, 1996, that showed his lingering belief that he was constructively dismissed although from the viewpoint of respondents, he was already penalized with "grave suspension" for his AWOL from August 5-27, 1996. In short, the filing of the complaint was not a "malicious scheme" on the part of the complainant contrary to the contention of respondents. [30]

Petitioners' failure to comply with the two-notice requirement as shown above, let alone the lack of just cause for terminating the services of private respondent, rendered the latter's dismissal illegal.

In fine, we rule and so hold that the NLRC did not gravely abuse its discretion in declaring the illegality of private respondent's dismissal.

We are, however, with the petitioners in their submission that the NLRC erred in holding petitioner Peter Maligro jointly and severally liable with petitioner Petron for the money claims of the private respondent.

Settled is the rule in this jurisdiction that a corporation is invested by law with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[31] Thus, obligations incurred by corporate officers acting as corporate agents are not theirs but the direct accountabilities of the corporation they represent.[32] True, solidary liabilities may at times be incurred by corporate officers, but only when exceptional circumstances so warrant.[33] For instance, in labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment if done with malice or in bad faith.[34]

In the present case, the apparent basis for the NLRC in holding petitioner Maligro solidarily liable with Petron were its findings that (1) the Investigation Committee was created a day after the summons in NLRC RAB-VII Case No. 11-1439-96 was received, with Maligro no less being the chairman thereof; and (2) the basis for the charge of insubordination was the private respondent's alleged making of false accusations against Maligro.

Those findings, however, cannot justify a finding of personal liability on the part of Maligro inasmuch as said findings do not point to Maligro's extreme personal hatred and animosity with the respondent. It cannot, therefore, be said that Maligro was motivated by malice and bad faith in connection with private respondent's dismissal from the service.

If at all, what said findings show are the illegality itself of private respondent's dismissal, the lack of just cause therefor and the non-observance of procedural due process. Verily, the creation of the investigation committee and said committee's consideration of the insubordination charge against the private respondent, were merely aimed to cover up the illegal dismissal or to give it a semblance of legality.

Besides, the fact that Maligro himself was the committee chairman is not itself sufficient to impute bad faith on his part or attribute bias against him. It is undisputed that Maligro was private respondent's superior, being Petron's Operations Assistant Manager for Visayas and Mindanao. It is thus logical for him to be part of the committee that will investigate private respondent's alleged infractions of company rules and regulations. As well, the committee was composed of three other Petron officers as members, and nowhere is there any showing that Maligro, as committee chairman, influenced the other committee members to side against the private respondent.

In any event, it must be stressed that private respondent's allegation of bad faith on the part of Maligro was not

established in this case. We quote the NLRC's finding in this regard:

Whether he really caught the ire of his immediate supervisor (respondent Maligro) in view of his alleged closeness to the previous one who migrated to Canada, and whether or not he was assigned to menial clerical jobs when his designation was that of Operations Engineer, were not clearly established by complainant.[35]

Lastly, as to the award of backwages, we refer to Article 279 of the Labor Code (as amended by Section 34 of R.A. 6715) which provides that an employee who is unjustly dismissed from work is entitled to reinstatement without loss of seniority rights and other privileges, and to the payment of his full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld from him (which, as a rule, is from the time of his illegal dismissal) up to the time of his actual reinstatement. Similarly, under R.A. 6715,[36] employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.[37]

Since the circumstances obtaining in this case do not warrant private respondent's reinstatement in the light of the antagonism generated by this litigation which must have caused a severe strain in the parties' employer-employee relationship, an award of separation pay in lieu of reinstatement, equivalent to one month pay for every year of service, in addition to full backwages, allowances, and other benefits or the monetary equivalent thereof, is in order. The award of attorney's fees is sanctioned by law and must be upheld.

WHEREFORE, the assailed Resolution of the Court of Appeals is SET ASIDE, and the NLRC decision dated July 31, 2000 is AFFIRMED with the MODIFICATION that (1) private respondent Chito S. Mantos is awarded separation pay equivalent to one month pay for every year of service and full backwages, other privileges and benefits or to the monetary equivalent thereof, computed from the date of his illegal dismissal on December 1, 1996 until the finality of this decision; and (2) petitioner Peter C. Maligro is ABSOLVED from any liability adjudged against co-petitioner Petron Corporation.

Costs against the petitioners.

SO ORDERED.

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

[1] Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Andres B. Reyes, Jr. and Amelita G. Tolentino; Rollo, pp. 77-78.

[2] Id. at 80.

[3] Id. at 135.

[4] Id.

[5] Id. at 136.

[6] Id.

[7] Id. at 151-152.

[8] Id. at 152-153.

[9]Id. at 156.

[10] Id. at 153-154, 155-156.

[11] Id. at 188-189.

[12]Id. at 212-215.

[13]Id. at 28-29.

[14] Id. at 479-486.

[15] Id. at 267-268.

[16] In full, said provision states:

SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report the fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[17] G.R. No. 139396, August 15, 2000, 338 SCRA 62.

[18] G.R. No. 155279, October 11, 2005, 472 SCRA 328.

[19] Globe Telecom, Inc., Delfin Lazaro, Jr. and Roberto Galang v. Joan Florendo-Flores, G.R. No. 150092, September 27, 2002, 390 SCRA 201, 208.

[20] Edgardo B. Alcazaren v. Univet Agricultural Products, Inc., G.R. No. 149628, November 22, 2005, 475 SCRA 636.

[21]Shoemart, Inc. v. NLRC, G.R. No. 74225, August 11, 1989, 176 SCRA 385, 390.

[22] Rollo, p. 198.

[23]Id. at 203.

[24] Article 282 of the Labor Code enumerates the just causes for termination by the employer: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or the latter's representative in connection with the employee's 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 his 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; and (e) other causes analogous to the foregoing.

[25]Textile Mills, Inc. v. Blanco, et. al., G.R. No. L-27029, November 12, 1981, 109 SCRA 87.

[26] Voyeur Visage Studin, Inc. v. CA and Melissa Del Mundo, G.R. No. 144939, March 18, 2005, 453 SCRA 721.

[27]Grandspan Development Corporation v. Ricardo Bernardo, et al., G.R. No. 141464, September 21, 2005, 470 SCRA 461.

[28] Rollo, pp. 200-201.

[29] Id. at 199 and 204.

[30]Id. at 186-187.

[31]Uichico, et al. v. NLRC, G.R. No. 121434, June 2, 1997, 273 SCRA 35, 45.

[32] MAM Realty Development Corp. and Manuel Centeno v. NLRC and Celso B. Balbastro, G.R. No. 114787, June 2, 1995, 244 SCRA 797, 802.

[33] As generally, in the following cases:

- When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.
- When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.
- When the director , trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation.
- When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

MAM Realty Development Corp. and Manuel Centeno v. NLRC and Celso B. Balbastro, G.R. No. 114787, June 2, 1995, 244 SCRA 797, 802-803.

[34] Ibid.; Uichico v. NLRC, at p. 46.

[35] Rollo, p. 185.

[36] R.A. 6715 is the "New Labor Relations Law" or the "Herrera-Veloso Law" which took effect on March 21, 1989.

[37] Philippine Journalists, Inc. v. Michael Mosqueda, G.R. No. 141430, May 7, 2004, 428 SCRA 369, 376-377.

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