

**JENNY M. AGABON AND VIRGILIO C. AGABON, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION (NLRC), RIVIERA HOME
IMPROVEMENTS, INC. AND VICENTE ANGELES, RESPONDENTS.**

G.R. No. 158693. November 17, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This petition for review seeks to reverse the decision[1] of the Court of Appeals dated January 23, 2003, in CA-G.R. SP No. 63017, modifying the decision of National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 023442-00.

Private respondent Riviera Home Improvements, Inc. is engaged in the business of selling and installing ornamental and construction materials. It employed petitioners Virgilio Agabon and Jenny Agabon as gypsum board and cornice installers on January 2, 1992[2] until February 23, 1999 when they were dismissed for abandonment of work.

Petitioners then filed a complaint for illegal dismissal and payment of money claims[3] and on December 28, 1999, the Labor Arbiter rendered a decision declaring the dismissals illegal and ordered private respondent to pay the monetary claims. The dispositive portion of the decision states:

WHEREFORE, premises considered, We find the termination of the complainants illegal. Accordingly, respondent is hereby ordered to pay them their backwages up to November 29, 1999 in the sum of:

1. Jenny M. Agabon - P56, 231.93
2. Virgilio C. Agabon - 56, 231.93

and, in lieu of reinstatement to pay them their separation pay of one (1) month for every year of service from date of hiring up to November 29, 1999.

Respondent is further ordered to pay the complainants their holiday pay and service incentive leave pay for the years 1996, 1997 and 1998 as well as their premium pay for holidays and rest days and Virgilio Agabon's 13[th] month pay differential amounting to TWO THOUSAND ONE HUNDRED FIFTY (P2,150.00) Pesos, or the aggregate amount of ONE HUNDRED TWENTY ONE THOUSAND SIX HUNDRED SEVENTY EIGHT & 93/100 (P121,678.93) Pesos for Jenny Agabon, and ONE HUNDRED TWENTY THREE THOUSAND EIGHT HUNDRED TWENTY EIGHT & 93/100 (P123,828.93) Pesos for Virgilio Agabon, as per attached computation of Julieta C. Nicolas, OIC, Research and Computation Unit, NCR.

SO ORDERED.[4]

On appeal, the NLRC reversed the Labor Arbiter because it found that the petitioners had abandoned their work, and were not entitled to backwages and separation pay. The other money claims awarded by the Labor Arbiter

were also denied for lack of evidence.[5]

Upon denial of their motion for reconsideration, petitioners filed a petition for certiorari with the Court of Appeals.

The Court of Appeals in turn ruled that the dismissal of the petitioners was not illegal because they had abandoned their employment but ordered the payment of money claims. The dispositive portion of the decision reads:

WHEREFORE, the decision of the National Labor Relations Commission is REVERSED only insofar as it dismissed petitioner's money claims. Private respondents are ordered to pay petitioners holiday pay for four (4) regular holidays in 1996, 1997, and 1998, as well as their service incentive leave pay for said years, and to pay the balance of petitioner Virgilio Agabon's 13th month pay for 1998 in the amount of P2,150.00.

SO ORDERED.[6]

Hence, this petition for review on the sole issue of whether petitioners were illegally dismissed.[7]

Petitioners assert that they were dismissed because the private respondent refused to give them assignments unless they agreed to work on a "pakyaw" basis when they reported for duty on February 23, 1999. They did not agree on this arrangement because it would mean losing benefits as Social Security System (SSS) members. Petitioners also claim that private respondent did not comply with the twin requirements of notice and hearing.[8]

Private respondent, on the other hand, maintained that petitioners were not dismissed but had abandoned their work.[9] In fact, private respondent sent two letters to the last known addresses of the petitioners advising them to report for work. Private respondent's manager even talked to petitioner Virgilio Agabon by telephone sometime in June 1999 to tell him about the new assignment at Pacific Plaza Towers involving 40,000 square meters of cornice installation work. However, petitioners did not report for work because they had subcontracted to perform installation work for another company. Petitioners also demanded for an increase in their wage to P280.00 per day. When this was not granted, petitioners stopped reporting for work and filed the illegal dismissal case.[10]

It is well-settled that findings of fact of quasi-judicial agencies like the NLRC are accorded not only respect but even finality if the findings are supported by substantial evidence. This is especially so when such findings were affirmed by the Court of Appeals.[11] However, if the factual findings of the NLRC and the Labor Arbiter are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings.[12]

Accordingly, the Court of Appeals, after a careful review of the facts, ruled that petitioners' dismissal was for a just cause. They had abandoned their employment and were already working for another employer.

To dismiss an employee, the law requires not only the existence of a just and valid cause but also enjoins the employer to give the employee the opportunity to be heard and to defend himself.[13] 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.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[14] It is a form of neglect of duty, hence, a just cause for termination of employment by the employer.[15] For a valid finding of

abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employees has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[16]

In February 1999, petitioners were frequently absent having subcontracted for an installation work for another company. Subcontracting for another company clearly showed the intention to sever the employer-employee relationship with private respondent. This was not the first time they did this. In January 1996, they did not report for work because they were working for another company. Private respondent at that time warned petitioners that they would be dismissed if this happened again. Petitioners disregarded the warning and exhibited a clear intention to sever their employer-employee relationship. The record of an employee is a relevant consideration in determining the penalty that should be meted out to him.[17]

In *Sandoval Shipyard v. Clave*,^[18] we held that an employee who deliberately absented from work without leave or permission from his employer, for the purpose of looking for a job elsewhere, is considered to have abandoned his job. We should apply that rule with more reason here where petitioners were absent because they were already working in another company.

The law imposes many obligations on the employer such as providing just compensation to workers, observance of the procedural requirements of notice and hearing in the termination of employment. On the other hand, the law also recognizes the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct^[19] and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to his interests.^[20]

After establishing that the terminations were for a just and valid cause, we now determine if the procedures for dismissal were observed.

The procedure for terminating an employee is found in Book VI, Rule I, Section 2(d) of the Omnibus Rules Implementing the Labor Code:

Standards of due process: requirements of notice. – In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee's last known address.

Dismissals based on just causes contemplate acts or omissions attributable to the employee while dismissals based on authorized causes involve grounds under the Labor Code which allow the employer to terminate employees. A termination for an authorized cause requires payment of separation pay. When the termination of employment is declared illegal, reinstatement and full backwages are mandated under Article 279. If reinstatement is no longer

possible where the dismissal was unjust, separation pay may be granted.

Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.

From the foregoing rules four possible situations may be derived: (1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed; (2) the dismissal is without just or authorized cause but due process was observed; (3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for just or authorized cause but due process was not observed.

In the first situation, the dismissal is undoubtedly valid and the employer will not suffer any liability.

In the second and third situations where the dismissals are illegal, Article 279 mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

In the fourth situation, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, the employer should be held liable for non-compliance with the procedural requirements of due process.

The present case squarely falls under the fourth situation. The dismissal should be upheld because it was established that the petitioners abandoned their jobs to work for another company. Private respondent, however, did not follow the notice requirements and instead argued that sending notices to the last known addresses would have been useless because they did not reside there anymore. Unfortunately for the private respondent, this is not a valid excuse because the law mandates the twin notice requirements to the employee's last known address.[21] Thus, it should be held liable for non-compliance with the procedural requirements of due process.

A review and re-examination of the relevant legal principles is appropriate and timely to clarify the various rulings on employment termination in the light of *Serrano v. National Labor Relations Commission*. [22]

Prior to 1989, the rule was that a dismissal or termination is illegal if the employee was not given any notice. In the 1989 case of *Wenphil Corp. v. National Labor Relations Commission*, [23] we reversed this long-standing rule and held that the dismissed employee, although not given any notice and hearing, was not entitled to reinstatement and backwages because the dismissal was for grave misconduct and insubordination, a just ground for termination under Article 282. The employee had a violent temper and caused trouble during office hours, defying superiors who tried to pacify him. We concluded that reinstating the employee and awarding backwages "may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe." [24] We further held that:

Under the circumstances, the dismissal of the private respondent for just cause should be maintained. He has no right to return to his former employment.

However, the petitioner must nevertheless be held to account for failure to extend to private respondent his right to an investigation before causing his dismissal. The rule is explicit as above discussed. The dismissal of an employee must be for just or authorized cause and after due process. Petitioner committed an infraction of

the second requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from employment. Considering the circumstances of this case petitioner must indemnify the private respondent the amount of P1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer.[25]

The rule thus evolved: where the employer had a valid reason to dismiss an employee but did not follow the due process requirement, the dismissal may be upheld but the employer will be penalized to pay an indemnity to the employee. This became known as the Wenphil or Belated Due Process Rule.

On January 27, 2000, in *Serrano*, the rule on the extent of the sanction was changed. We held that the violation by the employer of the notice requirement in termination for just or authorized causes was not a denial of due process that will nullify the termination. However, the dismissal is ineffectual and the employer must pay full backwages from the time of termination until it is judicially declared that the dismissal was for a just or authorized cause.

The rationale for the re-examination of the Wenphil doctrine in *Serrano* was the significant number of cases involving dismissals without requisite notices. We concluded that the imposition of penalty by way of damages for violation of the notice requirement was not serving as a deterrent. Hence, we now required payment of full backwages from the time of dismissal until the time the Court finds the dismissal was for a just or authorized cause.

Serrano was confronting the practice of employers to “dismiss now and pay later” by imposing full backwages.

We believe, however, that the ruling in *Serrano* did not consider the full meaning of Article 279 of the Labor Code which states:

ART. 279. Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

This means that the termination is illegal only if it is not for any of the justified or authorized causes provided by law. Payment of backwages and other benefits, including reinstatement, is justified only if the employee was unjustly dismissed.

The fact that the *Serrano* ruling can cause unfairness and injustice which elicited strong dissent has prompted us to revisit the doctrine.

To be sure, the Due Process Clause in Article III, Section 1 of the Constitution embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our entire history. Due process is that which comports with the deepest notions of what is fair and right and just.[26] It is a constitutional restraint on the legislative as well as on the executive and judicial powers of the government provided by the Bill of Rights.

Due process under the Labor Code, like Constitutional due process, has two aspects: substantive, i.e., the valid and authorized causes of employment termination under the Labor Code; and procedural, i.e., the manner of dismissal. Procedural due process requirements for dismissal are found in the Implementing Rules of P.D. 442, as amended, otherwise known as the Labor Code of the Philippines in Book VI, Rule I, Sec. 2, as amended by Department Order Nos. 9 and 10.[27] Breaches of these due process requirements violate the Labor Code. Therefore statutory due process should be differentiated from failure to comply with constitutional due process.

Constitutional due process protects the individual from the government and assures him of his rights in criminal, civil or administrative proceedings; while statutory due process found in the Labor Code and Implementing Rules protects employees from being unjustly terminated without just cause after notice and hearing.

In *Sebuguero v. National Labor Relations Commission*,^[28] the dismissal was for a just and valid cause but the employee was not accorded due process. The dismissal was upheld by the Court but the employer was sanctioned. The sanction should be in the nature of indemnification or penalty, and depends on the facts of each case and the gravity of the omission committed by the employer.

In *Nath v. National Labor Relations Commission*,^[29] it was ruled that even if the employee was not given due process, the failure did not operate to eradicate the just causes for dismissal. The dismissal being for just cause, albeit without due process, did not entitle the employee to reinstatement, backwages, damages and attorney's fees.

Mr. Justice Jose C. Vitug, in his separate opinion in *MGG Marine Services, Inc. v. National Labor Relations Commission*,^[30] which opinion he reiterated in *Serrano*, stated:

C. Where there is just cause for dismissal but due process has not been properly observed by an employer, it would not be right to order either the reinstatement of the dismissed employee or the payment of backwages to him. In failing, however, to comply with the procedure prescribed by law in terminating the services of the employee, the employer must be deemed to have opted or, in any case, should be made liable, for the payment of separation pay. It might be pointed out that the notice to be given and the hearing to be conducted generally constitute the two-part due process requirement of law to be accorded to the employee by the employer. Nevertheless, peculiar circumstances might obtain in certain situations where to undertake the above steps would be no more than a useless formality and where, accordingly, it would not be imprudent to apply the *res ipsa loquitur* rule and award, in lieu of separation pay, nominal damages to the employee. x x x.^[31]

After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the *Serrano* doctrine and to follow *Wenphil* by holding that the dismissal was for just cause but imposing sanctions on the employer. Such sanctions, however, must be stiffer than that imposed in *Wenphil*. By doing so, this Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well.

The unfairness of declaring illegal or ineffectual dismissals for valid or authorized causes but not complying with statutory due process may have far-reaching consequences.

This would encourage frivolous suits, where even the most notorious violators of company policy are rewarded by invoking due process. This also creates absurd situations where there is a just or authorized cause for dismissal but a procedural infirmity invalidates the termination. Let us take for example a case where the employee is caught stealing or threatens the lives of his co-employees or has become a criminal, who has fled and cannot be found, or where serious business losses demand that operations be ceased in less than a month. Invalidating the dismissal would not serve public interest. It could also discourage investments that can generate employment in the local economy.

The constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right, as in this case.^[32] Certainly, an employer should not be compelled to pay employees for work not actually performed and in fact abandoned.

The employer should not be compelled to continue employing a person who is admittedly guilty of misfeasance or

malfeasance and whose continued employment is patently inimical to the employer. The law protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer.[33]

It must be stressed that in the present case, the petitioners committed a grave offense, i.e., abandonment, which, if the requirements of due process were complied with, would undoubtedly result in a valid dismissal.

An employee who is clearly guilty of conduct violative of Article 282 should not be protected by the Social Justice Clause of the Constitution. Social justice, as the term suggests, should be used only to correct an injustice. As the eminent Justice Jose P. Laurel observed, social justice must be founded on the recognition of the necessity of interdependence among diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about “the greatest good to the greatest number.”[34]

This is not to say that the Court was wrong when it ruled the way it did in *Wenphil, Serrano* and related cases. Social justice is not based on rigid formulas set in stone. It has to allow for changing times and circumstances.

Justice Isagani Cruz strongly asserts the need to apply a balanced approach to labor-management relations and dispense justice with an even hand in every case:

We have repeatedly stressed that social justice – or any justice for that matter – is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are to tilt the balance in favor of the poor to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to give preference to the poor simply because they are poor, or reject the rich simply because they are rich, for justice must always be served for the poor and the rich alike, according to the mandate of the law.[35]

Justice in every case should only be for the deserving party. It should not be presumed that every case of illegal dismissal would automatically be decided in favor of labor, as management has rights that should be fully respected and enforced by this Court. As interdependent and indispensable partners in nation-building, labor and management need each other to foster productivity and economic growth; hence, the need to weigh and balance the rights and welfare of both the employee and employer.

Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. [36] The indemnity to be imposed should be stiffer to discourage the abhorrent practice of “dismiss now, pay later,” which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[37]

As enunciated by this Court in *Viernes v. National Labor Relations Commissions*, [38] an employer is liable to pay indemnity in the form of nominal damages to an employee who has been dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process. The Court, after considering the circumstances therein, fixed the indemnity at P2,590.50, which was equivalent to the employee’s one month salary. This indemnity is intended not to penalize the employer but to vindicate or recognize the employee’s right

to statutory due process which was violated by the employer.[39]

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances.[40] Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.

Private respondent claims that the Court of Appeals erred in holding that it failed to pay petitioners' holiday pay, service incentive leave pay and 13[th] month pay.

We are not persuaded.

We affirm the ruling of the appellate court on petitioners' money claims. Private respondent is liable for petitioners' holiday pay, service incentive leave pay and 13[th] month pay without deductions.

As a general rule, one who pleads payment has the burden of proving it. Even where the employee must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that overtime, differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but in the custody and absolute control of the employer.[41]

In the case at bar, if private respondent indeed paid petitioners' holiday pay and service incentive leave pay, it could have easily presented documentary proofs of such monetary benefits to disprove the claims of the petitioners. But it did not, except with respect to the 13[th] month pay wherein it presented cash vouchers showing payments of the benefit in the years disputed.[42] Allegations by private respondent that it does not operate during holidays and that it allows its employees 10 days leave with pay, other than being self-serving, do not constitute proof of payment. Consequently, it failed to discharge the onus probandi thereby making it liable for such claims to the petitioners.

Anent the deduction of SSS loan and the value of the shoes from petitioner Virgilio Agabon's 13[th] month pay, we find the same to be unauthorized. The evident intention of Presidential Decree No. 851 is to grant an additional income in the form of the 13[th] month pay to employees not already receiving the same[43] so as "to further protect the level of real wages from the ravages of world-wide inflation." [44] Clearly, as additional income, the 13[th] month pay is included in the definition of wage under Article 97(f) of the Labor Code, to wit:

(f) "Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee..."

from which an employer is prohibited under Article 113[45] of the same Code from making any deductions without the employee's knowledge and consent. In the instant case, private respondent failed to show that the deduction of the SSS loan and the value of the shoes from petitioner Virgilio Agabon's 13th month pay was authorized by the latter. The lack of authority to deduct is further bolstered by the fact that petitioner Virgilio Agabon included the same as one of his money claims against private respondent.

The Court of Appeals properly reinstated the monetary claims awarded by the Labor Arbiter ordering the private respondent to pay each of the petitioners holiday pay for four regular holidays from 1996 to 1998, in the amount of P6,520.00, service incentive leave pay for the same period in the amount of P3,255.00 and the balance of Virgilio Agabon's thirteenth month pay for 1998 in the amount of P2,150.00.

WHEREFORE, in view of the foregoing, the petition is DENIED. The decision of the Court of Appeals dated January 23, 2003, in CA-G.R. SP No. 63017, finding that petitioners' Jenny and Virgilio Agabon abandoned their work, and ordering private respondent to pay each of the petitioners holiday pay for four regular holidays from 1996 to 1998, in the amount of P6,520.00, service incentive leave pay for the same period in the amount of P3,255.00 and the balance of Virgilio Agabon's thirteenth month pay for 1998 in the amount of P2,150.00 is AFFIRMED with the MODIFICATION that private respondent Riviera Home Improvements, Inc. is further ORDERED to pay each of the petitioners the amount of P30,000.00 as nominal damages for non-compliance with statutory due process.

No costs.

SO ORDERED.

Quisumbing, Carpio, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Puno, J., see dissenting opinion.

Davide, Jr., C.J., Sandoval-Gutierrez, Chico-Nazario, and Garcia, JJ., join dissenting opinion of Justice Puno.

Panganiban, J., see dissenting opinion.

Tinga, J., in the result, for separate opinion.

Austria-Martinez, J., join in the separate opinion of Justice Tinga.

Corona, J., on leave.

[1] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Josefina Guevara-Salonga and Danilo B. Pine.

[2] Rollo, p. 41.

[3] Id., pp. 13-14.

[4] Id., p. 92.

[5] Id., p. 131.

[6] Id., p. 173.

[7] Id., p. 20.

[8] Id., pp. 21-23.

[9] Id., p. 45.

[10] Id., pp. 42-43.

[11] Rosario v. Victory Ricemill, G.R. No. 147572, 19 February 2003, 397 SCRA 760, 767.

[12] Reyes v. Maxim's Tea House, G.R. No. 140853, 27 February 2003, 398 SCRA 288, 298.

[13] Santos v. San Miguel Corporation, G.R. No. 149416, 14 March 2003, 399 SCRA 172, 182.

- [14] *Columbus Philippine Bus Corporation v. NLRC*, 417 Phil. 81, 100 (2001).
- [15] *De Paul/King Philip Customs Tailor v. NLRC*, 364 Phil. 91, 102 (1999).
- [16] *Sta. Catalina College v. NLRC*, G.R. No. 144483, 19 November 2003.
- [17] *Cosmos Bottling Corporation v. NLRC*, G.R. No. 111155, 23 October 1997, 281 SCRA 146, 153-154.
- [18] G.R. No. L-49875, 21 November 1979, 94 SCRA 472, 478.
- [19] *Judy Philippines, Inc. v. NLRC*, 352 Phil. 593, 606 (1998).
- [20] *Philippine-Singapore Transport Services, Inc. v. NLRC*, 343 Phil. 284, 291 (1997).
- [21] See *Stolt-Nielsen Marine Services, Inc. v. NLRC*, G.R. No. 128395, 29 December 1998, 300 SCRA 713, 720.
- [22] G.R. No. 117040, 27 January 2000, 323 SCRA 445.
- [23] G.R. No. 80587, 8 February 1989, 170 SCRA 69.
- [24] *Id.* at 76.
- [25] *Id.*
- [26] *Solesbee v. Balkcom*, 339 U.S. 9, 16 (1950) (Frankfurter, J., dissenting). Due process is violated if a practice or rule “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental;” *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).
- [27] Department Order No. 9 took effect on 21 June 1997. Department Order No. 10 took effect on 22 June 1997.
- [28] G.R. No. 115394, 27 September 1995, 248 SCRA 535.
- [29] G.R. No. 122666, 19 June 1997, 274 SCRA 386.
- [30] G.R. No. 114313, 29 July 1996, 259 SCRA 699, 700.
- [31] Serrano, *supra*, Vitug, J., Separate (Concurring and Dissenting) Opinion, 323 SCRA 524, 529-530 (2000).
- [32] *Capili v. NLRC*, G.R. No. 117378, 26 March 1997, 270 SCRA 488, 495.
- [33] *Filipro, Inc. v. NLRC*, G.R. No. L-70546, 16 October 1986, 145 SCRA 123.
- [34] *Calalang v. Williams*, 70 Phil. 726, 735 (1940).
- [35] *Gelos v. Court of Appeals*, G.R. No. 86186, 8 May 1992, 208 SCRA 608, 616.
- [36] G.R. No. 112100, 27 May 1994, 232 SCRA 613, 618.
- [37] Art. 2221, Civil Code.
- [38] G.R. No. 108405. April 4, 2003 citing *Kwikway Engineering Works v. NLRC*, G.R. No. 85014, 22 March 1991, 195 SCRA 526, 532; *Aurelio v. NLRC*, G.R. No. 99034, 12 April 1993, 221 SCRA 432, 443; and *Sampaguita Garments Corporation v. NLRC*, G.R. No. 102406, 17 June 1994, 233 SCRA 260, 265.
- [39] *Id.* citing *Better Buildings, Inc. v. NLRC*, G.R. No. 109714, 15 December 1997, 283 SCRA 242, 251; *Iran v. NLRC*, G.R. No. 121927, 22 April 1998, 289 SCRA 433, 442.
- [40] *Savellano v. Northwest Airlines*, G.R. No. 151783, 8 July 2003.

[41] Villar v. NLRC, G.R. No. 130935, 11 May 2000.

[42] Rollo, pp. 60-71.

[43] UST Faculty Union v. NLRC, G.R. No. 90445, 2 October 1990.

[44] “Whereas” clauses, P.D. No. 851.

[45] “Art. 113. Wage deduction. - No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees except:

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check off has been recognized by the employer or authorized in writing by the individual worker concerned; and

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

SEPARATE OPINION

Tinga, J:

I concur in the result, the final disposition of the petition being correct. There is no denying the importance of the Court’s ruling today, which should be considered as definitive as to the effect of the failure to render the notice and hearing required under the Labor Code when an employee is being dismissed for just causes, as defined under the same law. The Court emphatically reaffirms the rule that dismissals for just cause are not invalidated due to the failure of the employer to observe the proper notice and hearing requirements under the Labor Code. At the same time, The Decision likewise establishes that the Civil Code provisions on damages serve as the proper framework for the appropriate relief to the employee dismissed for just cause if the notice-hearing requirement is not met. *Serrano v. NLRC*,^[1] insofar as it is controlling in dismissals for unauthorized causes, is no longer the controlling precedent. Any and all previous rulings and statements of the Court inconsistent with these determinations are now deemed inoperative.

My views on the questions raised in this petition are comprehensive, if I may so in all modesty. I offer this opinion to discuss the reasoning behind my conclusions, pertaining as they do to questions of fundamental importance.

Prologue

The factual backdrop of the present Petition for Review is not novel. Petitioners claim that they were illegally dismissed by the respondents, who allege in turn that petitioners had actually abandoned their employment. There is little difficulty in upholding the findings of the NRLC and the Court of Appeals that petitioners are guilty of abandonment, one of the just causes for termination under the Labor Code. Yet, the records also show that the employer was remiss in not giving the notice required by the Labor Code; hence, the resultant controversy as to the legal effect of such failure vis-à-vis the warranted dismissal.

Ostensibly, the matter has been settled by our decision in *Serrano*^[2], wherein the Court ruled that the failure to properly observe the notice requirement did not render the dismissal, whether for just or authorized causes, null and void, for such violation was not a denial of the constitutional right to due process, and that the measure of

appropriate damages in such cases ought to be the amount of wages the employee should have received were it not for the termination of his employment without prior notice.[3] Still, the Court has, for good reason, opted to reexamine the so-called Serrano doctrine through the present petition

Antecedent Facts

Respondent Riviera Home Improvements, Inc (Riviera Home) is engaged in the manufacture and installation of gypsum board and cornice. In January of 1992, the Agabons were hired in January of 1992 as cornice installers by Riviera Home. According to their personnel file with Riviera Home, the Agabon given address was 3RDS Tailoring, E. Rodriguez Ave., Moonwalk Subdivision, P-II Parañaque City, Metro Manila.[4]

It is not disputed that sometime around February 1999, the Agabons stopped rendering services for Riviera Home. The Agabons allege that beginning on 23 February 1999, they stopped receiving assignments from Riviera Home.[5] When they demanded an explanation, the manager of Riviera Homes, Marivic Ventura, informed them that they would be hired again, but on a “pakyaw” (piece-work) basis. When the Agabons spurned this proposal, Riviera Homes refused to continue their employment under the original terms and agreement.[6] Taking affront, the Agabons filed a complaint for illegal dismissal with the National Labor Relations Commission (“NLRC”).

Riviera Homes adverts to a different version of events leading to the filing of the complaint for illegal dismissal. It alleged that in the early quarter of 1999, the Agabons stopped reporting for work with Riviera. Two separate letters dated 10 March 1999, were sent to the Agabons at the address indicated in their personnel file. In these notices, the Agabons were directed to report for work immediately.[7] However, these notices were returned unserved with the notation “RTS Moved.” Then, in June of 1999, Virgilio Agabon informed Riviera Homes by telephone that he and Jenny Agabon were ready to return to work for Riviera Homes, on the condition that their wages be first adjusted. On 18 June 1999, the Agabons went to Riviera Homes, and in a meeting with management, requested a wage increase of up to Two Hundred Eighty Pesos (P280.00) a day. When no affirmative response was offered by Riviera Homes, the Agabons initiated the complaint before the NLRC.[8]

In their Position Paper, the Agabons likewise alleged that they were required to work even on holidays and rest days, but were never paid the legal holiday pay or the premium pay for holiday or rest day. They also asserted that they were denied Service Incentive Leave pay, and that Virgilio Agabon was not given his thirteenth (13th) month pay for the year 1998.[9]

After due deliberation, Labor Arbiter Daisy G. Cauton-Barcelona rendered a Decision dated 28 December 1999, finding the termination of the Agabons illegal, and ordering Riviera Homes to pay backwages in the sum of Fifty Six Thousand Two Hundred Thirty One Pesos and Ninety Three Centavos (P56,231.93) each. The Labor Arbiter likewise ordered, in lieu of reinstatement, the payment of separation pay of one (1) month pay for every year of service from date of hiring up to 29 November 1999, as well as the payment of holiday pay, service incentive leave pay, and premium pay for holiday and restday, plus thirteenth (13th) month differential to Virgilio Agabon.[10]

In so ruling, the Labor Arbiter declared that Riviera Homes was unable to satisfactorily refute the Agabons’ claim that they were no longer given work to do after 23 February 1999 and that their rehiring was only on “pakyaw” basis. The Labor Arbiter also held that Riviera Homes failed to comply with the notice requirement, noting that Riviera Homes well knew of the change of address of the Agabons, considering that the identification cards it issued stated a different address from that on the personnel file.[11] The Labor Arbiter asserted the principle that in all termination cases, strict compliance by the employer with the demands of procedural and substantive due process is a condition sine qua non for the same to be declared valid.[12]

On appeal, the NLRC Second Division set aside the Labor Arbiter's Decision and ordered the dismissal of the complaint for lack of merit.[13] The NLRC held that the Agabons were not able to refute the assertion that for the payroll period ending on 15 February 1999, Virgilio and Jenny Agabon worked for only two and one-half (2½) and three (3) days, respectively. It disputed the earlier finding that Riviera Homes had known of the change in address, noting that the address indicated in the

identification cards was not the Agabons, but that of the persons who should be notified in case of emergency concerning the employee.[14] Thus, proper service of the notice was deemed to have been accomplished. Further, the notices evinced good reason to believe that the Agabons had not been dismissed, but had instead abandoned their jobs by refusing to report for work.

In support of its conclusion that the Agabons had abandoned their work, the NLRC also observed that the Agabons did not seek reinstatement, but only separation pay. While the choice of relief was premised by the Agabons on their purported strained relations with Riviera Homes, the NLRC pointed out that such claim was amply belied by the fact that the Agabons had actually sought a conference with Riviera Homes in June of 1999. The NLRC likewise found that the failure of the Labor Arbiter to justify the award of extraneous money claims, such as holiday and service incentive leave pay, confirmed that there was no proof to justify such claims.

A Petition for Certiorari was promptly filed with the Court of Appeals by the Agabons, imputing grave abuse of discretion on the part of the NLRC in dismissing their complaint for illegal dismissal. In a Decision[15] dated 23 January 2003, the Court of Appeals affirmed the finding that the Agabons had abandoned their employment. It noted that the two elements constituting abandonment had been established, to wit: the failure to report for work or absence without valid justifiable reason, and; a clear intention to sever the employer-employee relationship. The intent to sever the employer-employee relationship was buttressed by the Agabon's choice to seek not reinstatement, but separation pay. The Court of Appeals likewise found that the service of the notices were valid, as the Agabons did not notify Riviera Homes of their change of address, and thus the failure to return to work despite notice amounted to abandonment of work.

However, the Court of Appeals reversed the NLRC as regards the denial of the claims for holiday pay, service incentive leave pay, and the balance of Virgilio Agabon's thirteenth (13th) month pay. It ruled that the failure to adduce proof in support thereof was not fatal and that the burden of proving that such benefits had already been paid rested on Riviera Homes.[16] Given that Riviera Homes failed to present proof of payment to the Agabons of their holiday pay and service incentive leave pay for the years 1996, 1997 and 1998, the Court of Appeals chose to believe that such benefits had not actually been received by the employees. It also ruled that the apparent deductions made by Riviera Homes on the thirteenth (13th) month pay of Virgilio Agabon violated Section 10 of the Rules and Regulations Implementing Presidential Decree No. 851.[17] Accordingly, Riviera Homes was ordered to pay the Agabons holiday for four (4) regular holidays in 1996, 1997 and 1998, as well as their service incentive leave pay for said years, and the balance of Virgilio Agabon's thirteenth (13th) month pay for 1998 in the amount of Two Thousand One Hundred Fifty Pesos (P2,150.00).[18]

In their Petition for Review, the Agabons claim that they had been illegally dismissed, reasserting their version of events, thus: (1) that they had not been given new assignments since 23 February 1999; (2) that they were told that they would only be re-hired on a "pakyaw" basis, and; (3) that Riviera Homes had knowingly sent the notices to their old address despite its knowledge of their change of address as indicated in the identification cards.[19] Further, the Agabons note that only one notice was sent to each of them, in violation of the rule that the employer must furnish two written notices before termination — the first to apprise the employee of the cause for which dismissal is sought, and the second to notify the employee of the decision of dismissal.[20] The Agabons likewise maintain that they did not seek reinstatement owing to the strained relations between them and Riviera Homes.

The Agabons present to this Court only one issue, i.e.: whether or not they were illegally dismissed from their employment.[21] There are several dimensions though to this issue which warrant full consideration.

The Abandonment Dimension

Review of Factual Finding of Abandonment

As the Decision points out, abandonment is characterized by the failure to report for work or absence without valid or justifiable reason, and a clear intention to sever the employer-employee relationship. The question of whether or not an employee has abandoned employment is essentially a factual issue.[22] The NLRC and the Court of Appeals, both appropriate triers of fact, concluded that the Agabons had actually abandoned their employment, thus there is little need for deep inquiry into the correctness of this factual finding. There is no doubt that the Agabons stopped reporting for work sometime in February of 1999. And there is no evidence to support their assertion that such absence was due to the deliberate failure of Riviera Homes to give them work. There is also the fact, as noted by the NLRC and the Court of Appeals, that the Agabons did not pray for reinstatement, but only for separation

pay and money claims.[23] This failure indicates their disinterest in maintaining the employer-employee relationship and their unabated avowed intent to sever it. Their excuse that strained relations between them and Riviera Homes rendered reinstatement no longer feasible was hardly given credence by the NLRC and the Court of Appeals.[24]

The contrary conclusion arrived at by the Labor Arbiter as regards abandonment is of little bearing to the case. All that the Labor Arbiter said on that point was that Riviera Homes was not able to refute the Agabons' claim that they were terminated on 23 February 1999.[25] The Labor Arbiter did not explain why or how such finding was reachy or how such finding was reachhe Agabons was more credible than that of Riviera Homes'. Being bereft of reasoning, the conclusion deserves scant consideration.

Compliance with Notice Requirement

At the same time, both the NLRC and the Court of Appeals failed to consider the apparent fact that the rules governing notice of termination were not complied with by Riviera Homes. Section 2, Book V, Rule XXIII of the Omnibus Rules Implementing the Labor Code (Implementing Rules) specifically provides that for termination of employment based on just causes as defined in Article 282, there must be: (1) written notice served on the employee specifying the grounds for termination and giving employee reasonable opportunity to explain his/her side; (2) a hearing or conference wherein the employee, with the assistance of counsel if so desired, is given opportunity to respond to the charge, present his evidence or rebut evidence presented against him/her; and (3) written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify termination.

At the same time, Section 2, Book V, Rule XXIII of the Implementing Rules does not require strict compliance with the above procedure, but only that the same be "substantially observed."

Riviera Homes maintains that the letters it sent on 10 March 1999 to the Agabons sufficiently complied with the notice rule. These identically worded letters noted that the Agabons had stopped working without permission that they failed to return for work despite having been repeatedly told to report to the office and resume their employment.[26] The letters ended with an invitation to the Agabons to report back to the office and return to work.[27]

The apparent purpose of these letters was to advise the Agabons that they were welcome to return back to work,

and not to notify them of the grounds of termination. Still, considering that only substantial compliance with the notice requirement is required, I am prepared to say that the letters sufficiently conform to the first notice required under the Implementing Rules. The purpose of the first notice is to duly inform the employee that a particular transgression is being considered against him or her, and that an opportunity is being offered for him or her to respond to the charges. The letters served the purpose of informing the Agabons of the pending matters beclouding their employment, and extending them the opportunity to clear the air.

Contrary to the Agabons' claim, the letter-notice was correctly sent to the employee's last known address, in compliance with the Implementing Rules. There is no dispute that these letters were not actually received by the Agabons, as they had apparently moved out of the address indicated therein. Still, the letters were sent to what Riviera Homes knew to be the Agabons' last known address, as indicated in their personnel file. The Agabons insist that Riviera Homes had known of the change of address, offering as proof their company IDs which purportedly print out their correct new address. Yet, as pointed out by the NLRC and the Court of Appeals, the addresses indicated in the IDs are not the Agabons, but that of the person who is to be notified in case on emergency involve either or both of the Agabons.

The actual violation of the notice requirement by Riviera Homes lies in its failure to serve on the Agabons the second notice which should inform them of termination. As the Decision notes, Riviera Homes' argument that sending the second notice was useless due to the change of address is inutile, since the Implementing Rules plainly require that the notice of termination should be served at the employee's last known address.

The importance of sending the notice of termination should not be trivialized. The termination letter serves as indubitable proof of loss of employment, and its receipt compels the employee to evaluate his or her next options. Without such notice, the employee may be left uncertain of his fate; thus, its service is mandated by the Implementing Rules. Non-compliance with the notice rule, as evident in this case, contravenes the Implementing Rules. But does the violation serve to invalidate the Agabons' dismissal for just cause?

The So-Called Constitutional Law Dimension

Justices Puno and Panganiban opine that the Agabons should be reinstated as a consequence of the violation of the notice requirement. I respectfully disagree, for the reasons expounded below.

Constitutional Considerations

Of Due Process and the Notice-Hearing Requirement in Labor Termination Cases

Justice Puno proposes that the failure to render due notice and hearing prior to dismissal for just cause constitutes a violation of the constitutional right to due process. This view, as acknowledged by Justice Puno himself, runs contrary to the Court's pronouncement in *Serrano v. NLRC*[28] that the absence of due notice and hearing prior to dismissal, if for just cause, violates statutory due process.

The ponencia of Justice Vicente V. Mendoza in *Serrano* provides this cogent overview of the history of the doctrine:

Indeed, to contend that the notice requirement in the Labor Code is an aspect of due process is to overlook the fact that Art. 283 had its origin in Art. 302 of the Spanish Code of Commerce of 1882 which gave either party to the employer-employee relationship the right to terminate their relationship by giving notice to the other one month in advance. In lieu of notice, an employee could be laid off by paying him a *mesada* equivalent to his salary for one month. This provision was repealed by Art. 2270 of the Civil Code, which took effect on August 30, 1950. But on June 12, 1954, R.A. No. 1052, otherwise known as the Termination Pay Law, was enacted reviving the *mesada*. On June 21, 1957, the law was amended by R.A. No. 1787 providing for the giving of

advance notice for every year of service.[29]

Under Section 1 of the Termination Pay Law, an employer could dismiss an employee without just cause by serving written notice on the employee at least one month in advance or one-half month for every year of service of the employee, whichever was longer.[30] Failure to serve such written notice entitled the employee to compensation equivalent to his salaries or wages corresponding to the required period of notice from the date of termination of his employment.

However, there was no similar written notice requirement under the Termination Pay Law if the dismissal of the employee was for just cause. The Court, speaking through Justice JBL Reyes, ruled in *Phil. Refining Co. v. Garcia*:^[31]

[Republic] Act 1052, as amended by Republic Act 1787, impliedly recognizes the right of the employer to dismiss his employees (hired without definite period) whether for just cause, as therein defined or enumerated, or without it. If there be just cause, the employer is not required to serve any notice of discharge nor to disburse termination pay to the employee. xxx^[32]

Clearly, the Court, prior to the enactment of the Labor Code, was ill-receptive to the notion that termination for just cause without notice or hearing violated the constitutional right to due process. Nonetheless, the Court recognized an award of damages as the appropriate remedy. In *Galsim v. PNB*,^[33] the Court held:

Of course, the employer's prerogative to dismiss employees hired without a definite period may be with or without cause. But if the manner in which such right is exercised is abusive, the employer stands to answer to the dismissed employee for damages.^[34]

The Termination Pay Law was among the repealed laws with the enactment of the Labor Code in 1974. Significantly, the Labor Code, in its inception, did not require notice or hearing before an employer could terminate an employee for just cause. As Justice Mendoza explained:

Where the termination of employment was for a just cause, no notice was required to be given to the employee. It was only on September 4, 1981 that notice was required to be given even where the dismissal or termination of an employee was for cause. This was made in the rules issued by the then Minister of Labor and Employment to implement B.P. Blg. 130 which amended the Labor Code. And it was still much later when the notice requirement was embodied in the law with the amendment of Art. 277(b) by R.A. No. 6715 on March 2, 1989.^[35]

It cannot be denied though that the thinking that absence of notice or hearing prior to termination constituted a constitutional violation has gained a jurisprudential foothold with the Court. Justice Puno, in his Dissenting Opinion, cites several cases in support of this

theory, beginning with *Batangas Laguna Tayabas Bus Co. v. Court of Appeals*^[36] wherein we held that "the failure of petitioner to give the private respondent the benefit of a hearing before he was dismissed constitutes an infringement on his constitutional right to due process of law."^[37]

Still, this theory has been refuted, pellucidly and effectively to my mind, by Justice Mendoza's disquisition in *Serrano*, thus:

xxx There are three reasons why, on the other hand, violation by the employer of the notice requirement cannot be considered a denial of due process resulting in the nullity of the employee's dismissal or layoff.

The first is that the Due Process Clause of the Constitution is a limitation on governmental powers. It does not apply to the exercise of private power, such as the termination of employment under the Labor Code. This is plain from the text of Art. III, §1 of the Constitution, viz.: "No person shall be deprived of life, liberty, or

property without due process of law. . . ." The reason is simple: Only the State has authority to take the life, liberty, or property of the individual. The purpose of the Due Process Clause is to ensure that the exercise of this power is consistent with what are considered civilized methods.

The second reason is that notice and hearing are required under the Due Process Clause before the power of organized society are brought to bear upon the individual. This is obviously not the case of termination of employment under Art. 283. Here the employee is not faced with an aspect of the adversary system. The purpose for requiring a 30-day written notice before an employee is laid off is not to afford him an opportunity to be heard on any charge against him, for there is none. The purpose rather is to give him time to prepare for the eventual loss of his job and the DOLE an opportunity to determine whether economic causes do exist justifying the termination of his employment.

xxx

The third reason why the notice requirement under Art. 283 can not be considered a requirement of the Due Process Clause is that the employer cannot really be expected to be entirely an impartial judge of his own cause. This is also the case in termination of employment for a just cause under Art. 282 (i.e., serious misconduct or willful disobedience by the employee of the lawful orders of the employer, gross and habitual neglect of duties, fraud or willful breach of trust of the employer, commission of crime against the employer or the latter's immediate family or duly authorized representatives, or other analogous cases).[38]

The Court in the landmark case of *People v. Marti*[39] clarified the proper dimensions of the Bill of Rights.

That the Bill of Rights embodied in the Constitution is not meant to be invoked against acts of private individuals finds support in the deliberations of the Constitutional Commission. True, the liberties guaranteed by the fundamental law of the land must always be subject to protection. But protection against whom? Commissioner Bernas in his sponsorship speech in the Bill of Rights answers the query which he himself posed, as follows:

"First, the general reflections. The protection of fundamental liberties in the essence of constitutional democracy. Protection against whom? Protection against the state. The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder." (Sponsorship Speech of Commissioner Bernas; Record of the Constitutional Commission, Vol. 1, p. 674; July 17, 1986; Italics supplied)[40]

I do not doubt that requiring notice and hearing prior to termination for just cause is an admirable sentiment borne out of basic equity and fairness. Still, it is not a constitutional requirement that can impose itself on the relations of private persons and entities. Simply put, the Bill of Rights affords protection against possible State oppression against its citizens, but not against an unjust or repressive conduct by a private party towards another.

Justice Puno characterizes the notion that constitutional due process limits government action alone as "passé," and adverts to nouvelle vague theories which assert that private conduct may be restrained by constitutional due process. His dissent alludes to the American experience making references to the post-Civil War/pre-World War II era when the US Supreme Court seemed overly solicitous to the rights of big business over those of the workers.

Theories, no matter how entrancing, remain theoretical unless adopted by legislation, or more controversially, by judicial opinion. There were a few decisions of the US Supreme Court that, ostensibly, imposed on private persons the values of the constitutional guarantees. However, in deciding the cases, the American High Court found it necessary to link the actors to adequate elements of the "State" since the Fourteenth Amendment plainly begins with the words "No State shall..."[41]

More crucially to the American experience, it had become necessary to pass legislation in order to compel private persons to observe constitutional values. While the equal protection clause was deemed sufficient by the Warren Court to bar racial segregation in public facilities, it necessitated enactment of the Civil Rights Acts of 1964 to prohibit segregation as enforced by private persons within their property. In this jurisdiction, I have trust in the statutory regime that governs the correction of private wrongs. There are thousands of statutes, some penal or regulatory in nature, that are the source of actionable claims against private persons. There is even no stopping the State, through the legislative cauldron, from compelling private individuals, under pain of legal sanction, into observing the norms ordained in the Bill of Rights.

Justice Panganiban's Separate Opinion asserts that corporate behemoths and even individuals may now be sources of abuses and threats to human rights and liberties.[42] The concern is not unfounded, but appropriate remedies exist within our statutes, and so resort to the constitutional trump card is not necessary. Even if we were to engage the premise, the proper juristic exercise should be to examine whether an employer has taken the attributes of the State so that it could be compelled by the Constitution to observe the proscriptions of the Bill of Rights. But the strained analogy simply does not square since the attributes of an employer are starkly incongruous with those of the State. Employers plainly do not possess the awesome powers and the tremendous resources which the State has at its command.

The differences between the State and employers are not merely literal, but extend to their very essences. Unlike the State, the *raison d'être* of employers in business is to accumulate profits. Perhaps the State and the employer are similarly capacitated to inflict injury or discomfort on persons under their control, but the same power is also possessed by a school principal, hospital administrator, or a religious leader, among many others. Indeed, the scope and reach of authority of an employer pales in comparison with that of the State. There is no basis to conclude that an employer, or even the employer class, may be deemed a *de facto* state and on that premise, compelled to observe the Bill of Rights. There is simply no nexus in their functions, distaff as they are, that renders it necessary to accord the same jurisprudential treatment.

It may be so, as alluded in the dissent of Justice Puno, that a conservative court system overly solicitous to the concerns of business may consciously gut away at rights or privileges owing to the labor sector. This certainly happened before in the United States in the early part of the twentieth century, when the progressive labor legislation such as that enacted during President Roosevelt's New Deal regime — most of them addressing problems of labor — were struck down by an arch-conservative Court.[43] The preferred rationale then was to enshrine within the constitutional order business prerogatives, rendering them superior to the express legislative intent. Curiously, following its judicial philosophy at the time the U. S. Supreme Court made due process guarantee towards employers prevail over the police power to defeat the cause of labor.[44]

Of course, this Court should not be insensate to the means and methods by which the entrenched powerful class may maneuver the socio-political system to ensure self-preservation. However, the remedy to rightward judicial bias is not leftward judicial bias. The more proper judicial attitude is to give due respect to legislative prerogatives, regardless of the ideological sauce they are dipped in.

While the Bill of Rights maintains a position of primacy in the constitutional hierarchy,[45] it has scope and limitations that must be respected and asserted by the Court, even though they may at times serve somewhat bitter ends. The dissenting opinions are palpably distressed at the effect of the Decision, which will undoubtedly provoke those reflexively sympathetic to the labor class. But haphazard legal theory cannot be used to justify the obverse result. The adoption of the dissenting views would give rise to all sorts of absurd constitutional claims. An excommunicated Catholic might demand his/her reinstatement into the good graces of the Church and into communion on the ground that excommunication was violative of the constitutional right to due process. A

celebrity contracted to endorse Pepsi Cola might sue in court to void a stipulation that prevents him/her from singing the praises of Coca Cola once in a while, on the ground that such stipulation violates the constitutional right to free speech. An employee might sue to prevent the employer from reading outgoing e-mail sent through the company server using the company e-mail address, on the ground that the constitutional right to privacy of communication would be breached.

The above concerns do not in anyway serve to trivialize the interests of labor. But we must avoid overarching declarations in order to justify an end result beneficial to labor. I dread the doctrinal acceptance of the notion that the Bill of Rights, on its own, affords protection and sanctuary not just from the acts of State but also from the conduct of private persons. Natural and juridical persons would hesitate to interact for fear that a misstep could lead to their being charged in court as a constitutional violator. Private institutions that thrive on their exclusivity, such as churches or cliquish groups, could be forced to renege on their traditional tenets, including vows of secrecy and the like, if deemed by the Court as inconsistent with the Bill of Rights. Indeed, that fundamental right of all private persons to be let alone would be forever diminished because of a questionable notion that contravenes with centuries of political thought.

It is not difficult to be enraptured by novel legal ideas. Their characterization is susceptible to the same marketing traps that hook consumers to new products. With the help of unique wrapping, a catchy label, and testimonials from professed experts from exotic lands, a malodorous idea may gain wide acceptance, even among those self-possessed with their own heightened senses of perception. Yet before we join the mad rush in order to proclaim a theory as “brilliant,” a rigorous test must first be employed to determine whether it complements or contradicts our own system of laws and juristic thought. Without such analysis, we run the risk of abnegating the doctrines we have fostered for decades and the protections they may have implanted into our way of life.

Should the Court adopt the view that the Bill of Rights may be invoked to invalidate actions by private entities against private individuals, the Court would open the floodgates to, and the docket would be swamped with, litigations of the scurrilous sort. Just as patriotism is the last refuge of scoundrels, the broad constitutional claim is the final resort of the desperate litigant.

Constitutional Protection of Labor

The provisions of the 1987 Constitution affirm the primacy of labor and advocate a multi-faceted state policy that affords, among others, full protection to labor. Section 18, Article II thereof provides:

The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Further, Section 3, Article XIII states:

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equal employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security to tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

The constitutional enshrinement of the guarantee of full protection of labor is not novel to the 1987 Constitution. Section 6, Article XIV of the 1935 Constitution reads:

The State shall afford protection to labor, especially to working women, and minors, and shall regulate the relations between the landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration.

Similarly, among the principles and state policies declared in the 1973 Constitution, is that provided in Section 9, Article II thereof:

The State shall afford full protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.

On the other hand, prior to the 1973 Constitution, the right to security of tenure could only be found in legislative enactments and their respective implementing rules and regulations. It was only in the 1973 Constitution that security of tenure was elevated as a constitutional right. The development of the concept of security of tenure as a constitutionally recognized right was discussed by this Court in *BPI Credit Corporation v. NLRC*,^[46] to wit:

The enthronement of the worker's right to security or tenure in our fundamental law was not achieved overnight. For all its liberality towards labor, our 1935 Constitution did not elevate the right as a constitutional right. For a long time, the worker's security of tenure had only the protective mantle of statutes and their interpretative rules and regulations. It was as uncertain protection that sometimes yielded to the political permutations of the times. It took labor nearly four decades of sweat and tears to persuade our people thru their leaders, to exalt the worker's right to security of tenure as a sacrosanct constitutional right. It was Article II, section 2 [9] of our 1973 Constitution that declared as a policy that the State shall assure the right of worker's to security tenure. The 1987 Constitution is even more solicitous of the welfare of labor. Section 3 of its Article XIII mandates that the State shall afford full protection to labor and declares that all workers shall be entitled to security of tenure. Among the enunciated State policies are the promotion of social justice and a just and dynamic social order. In contrast, the prerogative of management to dismiss a worker, as an aspect of property right, has never been endowed with a constitutional status.

The unequivocal constitutional declaration that all workers shall be entitled to security of tenure spurred our lawmakers to strengthen the protective walls around this hard earned right. The right was protected from undue infringement both by our substantive and procedural laws. Thus, the causes for dismissing employees were more defined and restricted; on the other hand, the procedure of termination was also more clearly delineated. These substantive and procedural laws must be strictly complied with before a worker can be dismissed from his employment.^[47]

It is quite apparent that the constitutional protection of labor was entrenched more than eight decades ago, yet such did not prevent this Court in the past from affirming dismissals for just cause without valid notice. Nor was there any pretense made that this constitutional maxim afforded a laborer a positive right against dismissal for just cause on the ground of lack of valid prior notice. As demonstrated earlier, it was only after the enactment of the Labor Code that the doctrine relied upon by the dissenting opinions became en vogue. This point highlights my position that the violation of the notice requirement has statutory moorings, not constitutional.

It should be also noted that the 1987 Constitution also recognizes the principle of shared responsibility between

workers and employers, and the right of enterprise to reasonable returns, expansion, and growth. Whatever perceived imbalance there might have been under previous incarnations of the provision have been obviated by Section 3, Article XIII.

In the case of *Manila Prince Hotel v. GSIS*,^[48] we affirmed the presumption that all constitutional provisions are self-executing. We reasoned that to declare otherwise would result in the pernicious situation wherein by mere inaction and disregard by the legislature, constitutional mandates would be rendered ineffectual. Thus, we held:

As against constitutions of the past, modern constitutions have been generally ed upon a different principle and have often become in effect extensive codes of laws intended to operate directly upon the people in a manner similar to that of statutory enactments, and the function of constitutional conventions has evolved into one more like that of a legislative body. Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that —
... in case of doubt, the Constitution should be considered self-executing rather than non-self-executing. ...
Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute.^[49]

In further discussing self-executing provisions, this Court stated that:

In self-executing constitutional provisions, the legislature may still enact legislation to facilitate the exercise of powers directly granted by the constitution, further the operation of such a provision, prescribe a practice to be used for its enforcement, provide a convenient remedy for the protection of the rights secured or the determination thereof, or place reasonable safeguards around the exercise of the right. The mere fact that legislation may supplement and add to or prescribe a penalty for the violation of a self-executing constitutional provision does not render such a provision ineffective in the absence of such legislation. The omission from a constitution of any express provision for a remedy for enforcing a right or liability is not necessarily an indication that it was not intended to be self-executing. The rule is that a self-executing provision of the constitution does not necessarily exhaust legislative power on the subject, but any legislation must be in harmony with the constitution, further the exercise of constitutional right and make it more available. Subsequent legislation however does not necessarily mean that the subject constitutional provision is not, by itself, fully enforceable.^[50]

Thus, the constitutional mandates of protection to labor and security of tenure may be deemed as self-executing in the sense that these are automatically acknowledged and observed without need for any enabling legislation. However, to declare that the constitutional provisions are enough to guarantee the full exercise of the rights embodied therein, and the realization of ideals therein expressed, would be impractical, if not unrealistic. The espousal of such view presents the dangerous tendency of being overbroad and exaggerated. The guarantees of “full protection to labor” and “security of tenure”, when examined in isolation, are facially unqualified, and the broadest interpretation possible suggests a blanket shield in favor of labor against any form of removal regardless of circumstance. This interpretation implies an unimpeachable right to continued employment—a utopian notion, doubtless—but still hardly within the contemplation of the framers. Subsequent legislation is still needed to define the parameters of these guaranteed rights to ensure the protection and promotion, not only the rights of the labor sector, but of the employers’ as well. Without specific and pertinent legislation, judicial bodies will be at a loss, formulating their own conclusion to approximate at least the aims of the Constitution.

Ultimately, therefore, Section 3 of Article XIII cannot, on its own, be a source of a positive enforceable right to

stave off the dismissal of an employee for just cause owing to the failure to serve proper notice or hearing. As manifested by several framers of the 1987 Constitution, the provisions on social justice require legislative enactments for their enforceability. This is reflected in the record of debates on the social justice provisions of the Constitution:

MS. [FELICITAS S.] AQUINO: We appreciate the concern of the Commissioner. But this Committee [on Social Justice] has actually become the forum already of a lot of specific grievances and specific demands, such that understandably, we may have been, at one time or another, dangerously treading into the functions of legislation. Our only plea to the Commission is to focus our perspective on the matter of social justice and its rightful place in the Constitution. What we envision here is a mandate specific enough that would give impetus for statutory implementation. We would caution ourselves in terms of the judicious exercise of self-censorship against treading into the functions of legislation. (emphasis supplied)[51]

xxx

[FLORENZ D.] REGALADO: I notice that the 1935 Constitution had only one section on social justice; the same is true with the 1973 Constitution. But they seem to have stood us in good stead; and I am a little surprised why, despite that attempt at self-censorship, there are certain provisions here which are properly for legislation.[52]xxx

BISHOP [TEODORO S.] BACANI: [I] think the distinction that was given during the presentation of the provisions on the Bill of Rights by Commissioner Bernas is very apropos here. He spoke of self-executing rights which belong properly to the Bill of Rights, and then he spoke of a new body of rights which are more of claims and that these have come about largely through the works of social philosophers and then the teaching of the Popes. They focus on the common good and hence, it is not as easy to pinpoint precisely these rights nor the situs of the rights. And yet, they exist in relation to the common good.[53]

xxx

MS. [MINDA LUZ M.] QUESADA: I think the nitty-gritty of this kind of collaboration will be left to legislation but the important thing now is the conservation, utilization or maximization of the very limited resources. xxx

[RICARDO J.] ROMULO: The other problem is that, by and large, government services are inefficient. So, this is a problem all by itself. On Section 19, where the report says that people's organizations as a principal means of empowering the people to pursue and protect through peaceful means..., I do not suppose that the Committee would like to either preempt or exclude the legislature, because the concept of a representative and democratic system really is that the legislature is normally the principal means.

[EDMUNDO G.] GARCIA: That is correct. In fact, people cannot even dream of influencing the composition or the membership of the legislature, if they do not get organized. It is, in fact, a recognition of the principle that unless a citizenry is organized and mobilized to pursue its ends peacefully, then it cannot really participate effectively.[54]

There is no pretense on the part of the framers that the provisions on Social Justice, particularly Section 3 of Article XIII, are self-executory. Still, considering the rule that provisions should be deemed self-executing if enforceable without further legislative action, an examination of Section 3 of Article XIII is warranted to determine whether it is complete in itself as a definitive law, or if it needs future legislation for completion and enforcement.[55] Particularly, we should inquire whether or not the provision voids the dismissal of a laborer for just cause if no valid notice or hearing is attendant.

Constitutional Commissioner Fr. Joaquin G. Bernas makes a significant comment on Section 3, Article XIII of the 1987 Constitution:

The [cluster] of rights guaranteed in the second paragraph are the right “to security of tenure, humane conditions of work, and a living wage.” Again, although these have been set apart by a period (.) from the next sentence and are therefore not modified by the final phrase “as may be provided by law,” it is not the intention to place these beyond the reach of valid laws. xxx (emphasis supplied)[56]

At present, the Labor Code is the primary mechanism to carry out the Constitution’s directives. This is clear from Article 3[57] under Chapter 1 thereof which essentially restates the policy on the protection of labor as worded in the 1973 Constitution, which was in force at the time of enactment of the Labor Code. It crystallizes the fundamental law’s policies on labor, defines the parameters of the rights granted to labor such as the right to security of tenure, and prescribes the standards for the enforcement of such rights in concrete terms. While not infallible, the measures provided therein tend to ensure the achievement of the constitutional aims.

The necessity for laws concretizing the constitutional principles on the protection of labor is evident in the reliance placed upon such laws by the Court in resolving the issue of the validity of a worker’s dismissal. In cases where that was the issue confronting the Court, it consistently recognized the constitutional right to security of tenure and employed the standards laid down by prevailing laws in determining whether such right was violated.[58] The Court’s reference to laws other than the Constitution in resolving the issue of dismissal is an implicit acknowledgment that the right to security of tenure, while recognized in the Constitution, cannot be implemented uniformly absent a law prescribing concrete standards for its enforcement.

As discussed earlier, the validity of an employee’s dismissal in previous cases was examined by the Court in accordance with the standards laid down by Congress in the Termination Pay Law, and subsequently, the Labor Code and the amendments thereto. At present, the validity of an employee’s dismissal is weighed against the standards laid down in Article 279, as well as Article 282 in relation to Article 277(b) of the Labor Code, for a dismissal for just cause, and Article 283 for a dismissal for an authorized cause.

The Effect of Statutory Violation Of Notice and Hearing

There is no doubt that the dismissal of an employee even for just cause, without prior notice or hearing, violates the Labor Code. However, does such violation necessarily void the dismissal?

Before I proceed with my discussion on dismissals for just causes, a brief comment regarding dismissals for authorized cause under Article 283 of the Labor Code. While the justiciable question in *Serrano* pertained to a dismissal for unauthorized cause, the ruling therein was crafted as definitive to dismissals for just cause. Happily, the Decision today does not adopt the same unwise tack. It should be recognized that dismissals for just cause and dismissals for authorized cause are governed by different provisions, entail divergent requisites, and animated by distinct rationales. The language of Article 283 expressly effects the termination for authorized cause to the service of written notice on the workers and the Ministry of Labor at least one (1) month before the intended date of termination. This constitutes an eminent difference than dismissals for just cause, wherein the causal relation between the notice and the dismissal is not expressly stipulated. The circumstances distinguishing just and authorized causes are too markedly different to be subjected to the same rules and reasoning in interpretation.

Since the present petition is limited to a question arising from a dismissal for just cause, there is no reason for making any pronouncement regarding authorized causes. Such declaration would be merely obiter, since they are neither the law of the case nor dispositive of the present petition. When the question becomes justiciable before this Court, we will be confronted with an appropriate factual milieu on which we can render a more judicious disposition of this admittedly important question.

B. Dismissal for Just Cause

There is no express provision in the Labor Code that voids a dismissal for just cause on the ground that there was no notice or hearing. Under Section 279, the employer is precluded from dismissing an employee except for a just cause as provided in Section 282, or an authorized cause under Sections 283 and 284. Based on reading Section 279 alone, the existence of just cause by itself is sufficient to validate the termination.

Just cause is defined by Article 282, which unlike Article 283, does not condition the termination on the service of written notices. Still, the dissenting opinions propound that even if there is just cause, a termination may be invalidated due to the absence of notice or hearing. This view is anchored mainly on constitutional moorings, the basis of which I had argued against earlier. For determination now is whether there is statutory basis under the Labor Code to void a dismissal for just cause due to the absence of notice or hearing.

As pointed out by Justice Mendoza in *Serrano*, it was only in 1989 that the Labor Code was amended to enshrine into statute the twin requirements of notice and hearing.^[59] Such requirements are found in Article 277 of the Labor Code, under the heading “Miscellaneous Provisions.” Prior to the amendment, the notice-hearing requirement was found under the implementing rules issued by the then Minister of Labor in 1981. The present-day implementing rules likewise mandate that the standards of due process, including the requirement of written notice and hearing, “be substantially observed.”^[60]

Indubitably, the failure to substantially comply with the standards of due process, including the notice and hearing requirement, may give rise to an actionable claim against the employer. Under Article 288, penalties may arise from violations of any provision of the Labor Code. The Secretary of Labor likewise enjoys broad powers to inquire into existing relations between employers and employees. Systematic violations by management of the statutory right to due process would fall under the broad grant of power to the Secretary of Labor to investigate under Article 273.

However, the remedy of reinstatement despite termination for just cause is simply not authorized by the Labor Code. Neither the Labor Code nor its implementing rules states that a termination for just cause is voided because the requirement of notice and hearing was not observed. This is not simply an inadvertent semantic failure, but a conscious effort to protect the prerogatives of the employer to dismiss an employee for just cause. Notably, despite the several pronouncements by this Court in the past equating the notice-hearing requirement in labor cases to a constitutional maxim, neither the legislature nor the executive has adopted the same tack, even gutting the protection to provide that substantial compliance with due process suffices.

The Labor Code significantly eroded management prerogatives in the hiring and firing of employees. Whereas employees could be dismissed even without just cause under the Termination Pay Law^[61], the Labor Code affords workers broad security of tenure. Still, the law recognizes the right of the employer to terminate for just cause. The just causes enumerated under the Labor Code $\frac{3}{4}$ serious misconduct or willful disobedience, gross and habitual neglect, fraud or willful breach of trust, commission of a crime by the employee against the employer, and other analogous causes $\frac{3}{4}$ are characterized by the harmful behavior of an employee against the business or the person of the employer.

These just causes for termination are not negated by the absence of notice or hearing. An employee who tries to kill the employer cannot be magically absolved of trespasses just because the employer forgot to serve due notice. Or a less extreme example, the gross and habitual neglect of an employee will not be improved upon just because the employer failed to conduct a hearing prior to termination.

In fact, the practical purpose of requiring notice and hearing is to afford the employee the opportunity to dispute

the contention that there was just cause in the dismissal. Yet it must be understood – if a dismissed employee is deprived of the right to notice and hearing, and thus denied the opportunity to present countervailing evidence that disputes the finding of just cause, reinstatement will be valid not because the notice and hearing requirement was not observed, but because there was no just cause in the dismissal. The opportunity to dispute the finding of the just cause is readily available before the Labor Arbiter, and the subsequent levels of appellate review. Again, as held in *Serrano*:

Even in cases of dismissal under Art. 282, the purpose for the requirement of notice and hearing is not to comply with the Due Process Clause of the Constitution. The time for notice and hearing is at the trial stage. Then that is the time we speak of notice and hearing as the essence of procedural due process. Thus, compliance by the employer with the notice requirement before he dismisses an employee does not foreclose the right of the latter to question the legality of his dismissal. As Art. 277(b) provides, "Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission."^[62]

The Labor Code presents no textually demonstrable commitment to invalidate a dismissal for just cause due to the absence of notice or hearing. This is not surprising, as such remedy will not restore the employer or employee into equity. Absent a showing of integral causation, the mutual infliction of wrongs does not negate either injury, but instead enforces two independent rights of relief.

The Damages' Dimensions

Award for Damages Must Have Statutory Basis

The Court has grappled with the problem of what should be the proper remedial relief of an employee dismissed with just cause, but not afforded either notice or hearing. In a long line of cases, beginning with *Wenphil Corp. v. NLRC*^[63] and up until *Serrano* in 2000, the Court had deemed an indemnification award as sufficient to answer for the violation by the employer against the employee. However, the doctrine was modified in *Serrano*.

I disagree with *Serrano* insofar as it held that employees terminated for just cause are to be paid backwages from the time employment was terminated "until it is determined that the termination is for just cause because the failure to hear him before he is dismissed renders the termination of his employment without legal effect."^[64] Article 279 of the Labor Code clearly authorizes the payment of backwages only if an employee is unjustly dismissed. A dismissal for just cause is obviously antithetical to an unjust dismissal. An award for backwages is not clearly warranted by the law.

The Impropriety of Award for Separation Pay

The formula of one month's pay for every year served does have statutory basis. It is found though in the Labor Code though, not the Civil Code. Even then, such computation is made for separation pay under the Labor Code. But separation pay is not an appropriate as a remedy in this case, or in any case wherein an employee is terminated for just cause. As Justice Vitug noted in his separate opinion in *Serrano*, an employee whose employment is terminated for a just cause is not entitled to the payment of separation benefits.^[65] Separation pay is traditionally a monetary award paid as an alternative to reinstatement which can no longer be effected in view of the long passage of time or because of the realities of the situation.^[66] However, under Section 7, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, "[t]he separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code."^[67] Neither does the Labor Code itself provide instances wherein separation pay is warranted for dismissals with just cause. Separation pay is warranted only for dismissals for authorized causes, as enumerated in Article 283 and 284 of the Labor Code.

The Impropriety of Equity Awards

Admittedly, the Court has in the past authorized the award of separation pay for duly terminated employees as a measure of social justice, provided that the employee is not guilty of serious misconduct reflecting on moral character.[68] This doctrine is inapplicable in this case, as the Agabons are guilty of abandonment, which is the deliberate and unjustified refusal of an employee to resume his employment. Abandonment is tantamount to serious misconduct, as it constitutes a willful breach of the employer-employee relationship without cause.

The award of separation pay as a measure of social justice has no statutory basis, but clearly emanates from the Court's so-called "equity jurisdiction." The Court's equity jurisdiction as a basis for award, no matter what form it may take, is likewise unwarranted in this case. Easy resort to equity should be avoided, as it should yield to positive rules which pre-empt and prevail over such persuasions.[69] Abstract as the concept is, it does not admit to definite and objective standards.

I consider the pronouncement regarding the proper monetary awards in such cases as *Wenphil Corp. v. NLRC*,^[70] *Reta*,^[71] and to a degree, even *Serrano* as premised in part on equity. This decision is premised in part due to the absence of cited statutory basis for these awards. In these cases, the Court deemed an indemnity award proper without exactly saying where in statute could such award be derived at. Perhaps, equity or social justice can be invoked as basis for the award. However, this sort of arbitrariness, indeterminacy and judicial usurpation of legislative prerogatives is precisely the source of my discontent. Social justice should be the aspiration of all that we do, yet I think it the more mature attitude to consider that it ebbs and flows within our statutes, rather than view it as an independent source of funding.

Article 288 of the Labor Code as a Source of Liability

Another putative source of liability for failure to render the notice requirement is Article 288 of the Labor Code, which states:

Article 288 states:

Penalties. — Except as otherwise provided in this Code, or unless the acts complained of hinges on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (P10,000.00), or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court.

It is apparent from the provision that the penalty arises due to contraventions of the provisions of the Labor Code. It is also clear that the provision comes into play regardless of who the violator may be. Either the employer or the employee may be penalized, or perhaps even officials tasked with implementing the Labor Code.

However, it is apparent that Article 288 is a penal provision; hence, the prescription for penalties such as fine and imprisonment. The Article is also explicit that the imposition of fine or imprisonment is at the "discretion of the court." Thus, the proceedings under the provision is penal in character. The criminal case has to be instituted before the proper courts, and the Labor Code violation subject thereof duly proven in an adversarial proceeding. Hence, Article 288 cannot apply in this case and serve as basis to impose a penalty on *Riviera Homes*.

I also maintain that under Article 288 the penalty should be paid to the State, and not to the person or persons who may have suffered injury as a result of the violation. A penalty is a sum of money which the law requires to be paid by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done.^[72] A penalty should be distinguished from damages which is the pecuniary compensation or indemnity to a person who has suffered loss, detriment, or injury, whether to his person, property, or rights, on account of the

unlawful act or omission or negligence of another. Article 288 clearly serves as a punitive fine, rather than a compensatory measure, since the provision penalizes an act that violates the Labor Code even if such act does not cause actual injury to any private person.

Independent of the employee's interests protected by the Labor Code is the interest of the State in seeing to it that its regulatory laws are complied with. Article 288 is intended to satiate the latter interest. Nothing in the language of Article 288 indicates an intention to compensate or remunerate a private person for injury he may have sustained.

It should be noted though that in *Serrano*, the Court observed that since the promulgation of *Wenphil Corp. v. NLRC*[73] in 1989, "fines imposed for violations of the notice requirement have varied from P1,000.00 to P2,000.00 to P5,000.00 to P10,000.00." [74] Interestingly, this range is the same range of the penalties imposed by Article 288. These "fines" adverted to in *Serrano* were paid to the dismissed employee. The use of the term "fines," as well as the terminology employed a few other cases,[75] may have left an erroneous impression that the award implemented beginning with *Wenphil* was based on Article 288 of the Labor Code. Yet, an examination of *Wenphil* reveals that what the Court actually awarded to the employee was an "indemnity", dependent on the facts of each case and the gravity of the omission committed by the employer. There is no mention in *Wenphil* of Article 288 of the Labor Code, or indeed, of any statutory basis for the award.

The Proper Basis: Employer's Liability under the Civil Code

As earlier stated, *Wenphil* allowed the payment of indemnity to the employee dismissed for just cause is dependent on the facts of each case and the gravity of the omission committed by the employer. However, I considered *Wenphil* flawed insofar as it is silent as to the statutory basis for the indemnity award. This failure, to my mind, renders it unwise for to reinstate the *Wenphil* rule, and foster the impression that it is the judicial business to invent awards for damages without clear statutory basis.

The proper legal basis for holding the employer liable for monetary damages to the employee dismissed for just cause is the Civil Code. The award of damages should be measured against the loss or injury suffered by the employee by reason of the employer's violation or, in case of nominal damages, the right vindicated by the award. This is the proper paradigm authorized by our law, and designed to obtain the fairest possible relief.

Under Section 217(4) of the Labor Code, the Labor Arbiter has jurisdiction over claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations. It is thus the duty of Labor Arbiters to adjudicate claims for damages, and they should disabuse themselves of any inhibitions if it does appear that an award for damages is warranted. As triers of facts in a specialized field, they should attune themselves to the particular conditions or problems attendant to employer-employee relationships, and thus be in the best possible position as to the nature and amount of damages that may be warranted in this case.

The damages referred under Section 217(4) of the Labor Code are those available under the Civil Code. It is but proper that the Civil Code serve as the basis for the indemnity, it being the law that regulates the private relations of the members of civil society, determining their respective rights and obligations with reference to persons, things, and civil acts.[76] No matter how impressed with the public interest the relationship between a private employer and employee is, it still is ultimately a relationship between private individuals. Notably, even though the Labor Code could very well have provided set rules for damages arising from the employer-employee relationship, referral was instead made to the concept of damages as enumerated and defined under the Civil Code.

Given the long controversy that has dogged this present issue regarding dismissals for just cause, it is wise to lay

down standards that would guide the proper award of damages under the Civil Code in cases wherein the employer failed to comply with statutory due process in dismissals for just cause.

First. I believe that it can be maintained as a general rule, that failure to comply with the statutory requirement of notice automatically gives rise to nominal damages, at the very least, even if the dismissal was sustained for just cause.

Nominal damages are adjudicated in order that a right of a plaintiff which has been violated or invaded by another may be vindicated or recognized without having to indemnify the plaintiff for any loss suffered by him.[77] Nominal damages may likewise be awarded in every obligation arising from law, contracts, quasi-contracts, acts or omissions punished by law, and quasi-delicts, or where any property right has been invaded.

Clearly, the bare act of failing to observe the notice requirement gives rise to nominal damages assessable against the employer and due the employee. The Labor Code indubitably entitles the employee to notice even if dismissal is for just cause, even if there is no apparent intent to void such dismissals deficiently implemented. It has also been held that one's employment, profession, trade, or calling is a "property right" and the wrongful interference therewith gives rise to an actionable wrong.[78]

In *Better Buildings, Inc. v. NLRC*, [79] the Court ruled that the while the termination therein was for just and valid cause, the manner of termination was done in complete disregard of the necessary procedural safeguards.[80] The Court found nominal damages as the proper form of award, as it was purposed to vindicate the right to procedural due process violated by the employer.[81] A similar holding was maintained in *Iran v. NLRC* [82] and *Malaya Shipping v. NLRC*. [83] The doctrine has express statutory basis, duly recognizes the existence of the right to notice, and vindicates the violation of such right. It is sound, logical, and should be adopted as a general rule.

The assessment of nominal damages is left to the discretion of the court,[84] or in labor cases, of the Labor Arbiter and the successive appellate levels. The authority to nominate standards governing the award of nominal damages has clearly been delegated to the judicial branch, and it will serve good purpose for this Court to provide such guidelines. Considering that the affected right is a property right, there is justification in basing the amount of nominal damages on the particular characteristics attaching to the claimant's employment. Factors such as length of service, positions held, and received salary may be considered to obtain the proper measure of nominal damages. After all, the degree by which a property right should be vindicated is affected by the estimable value of such right.

At the same time, it should be recognized that nominal damages are not meant to be compensatory, and should not be computed through a formula based on actual losses. Consequently, nominal damages usually limited in pecuniary value.[85] This fact should be impressed upon the prospective claimant, especially one who is contemplating seeking actual/compensatory damages.

Second. Actual or compensatory damages are not available as a matter of right to an employee dismissed for just cause but denied statutory due process. They must be based on clear factual and legal bases,[86] and correspond to such pecuniary loss suffered by the employee as duly proven.[87] Evidently, there is less degree of discretion to award actual or compensatory damages.

I recognize some inherent difficulties in establishing actual damages in cases for terminations validated for just cause. The dismissed employee retains no right to continued employment from the moment just cause for termination exists, and such time most likely would have arrived even before the employer is liable to send the first notice. As a result, an award of backwages disguised as actual damages would almost never be justified if the employee was dismissed for just cause. The possible exception would be if it can be proven the ground for just

cause came into being only after the dismissed employee had stopped receiving wages from the employer.

Yet it is not impossible to establish a case for actual damages if dismissal was for just cause. Particularly actionable, for example, is if the notices are not served on the employee, thus hampering his/her opportunities to obtain new employment. For as long as it can be demonstrated that the failure of the employer to observe procedural due process mandated by the Labor Code is the proximate cause of pecuniary loss or injury to the dismissed employee, then actual or compensatory damages may be awarded.

Third. If there is a finding of pecuniary loss arising from the employer violation, but the amount cannot be proved with certainty, then temperate or moderate damages are available under Article 2224 of the Civil Code. Again, sufficient discretion is afforded to the adjudicator as regards the proper award, and the award must be reasonable under the circumstances.[88] Temperate or nominal damages may yet prove to be a plausible remedy, especially when common sense dictates that pecuniary loss was suffered, but incapable of precise definition.

Fourth. Moral and exemplary damages may also be awarded in the appropriate circumstances. As pointed out by the Decision, moral damages are recoverable where the dismissal of the employee was attended by bad faith, fraud, or was done in a manner contrary to morals, good customs or public policy, or the employer committed an act oppressive to labor.[89] Exemplary damages may avail if the dismissal was effected in a wanton, oppressive or malevolent manner.

Appropriate Award of Damages to the Agabons

The records indicate no proof exists to justify the award of actual or compensatory damages, as it has not been established that the failure to serve the second notice on the Agabons was the proximate cause to any loss or injury. In fact, there is not even any showing that such violation caused any sort of injury or discomfort to the Agabons. Nor do they assert such causal relation. Thus, the only appropriate award of damages is nominal damages. Considering the circumstances, I agree that an award of Fifteen Thousand Pesos (P15,000.00) each for the Agabons is sufficient.

All premises considered, I VOTE to:

(1)

DENY the PETITION for lack of merit, and AFFIRM the Decision of the Court of Appeals dated 23 January 2003, with the MODIFICATION that in addition, Riviera Homes be ORDERED to pay the petitioners the sum of Fifteen Thousand Pesos (P15,000.00) each, as nominal damages.

(2)

HOLD that henceforth, dismissals for just cause may not be invalidated due to the failure to observe the due process requirements under the Labor Code, and that the only indemnity award available to the employee dismissed for just cause are damages under the Civil Code as duly proven. Any and all previous rulings and statements of the Court inconsistent with this holding are now deemed INOPERATIVE.

[1] 380 Phil. 416 (2000).

[2] Id.

[3] Id. at 443, 445, 448.

[4] Rollo, p. 42.

[5] Id. at 32.

[6] Ibid.

[7] Id. at 59-60.

[8] Id. at 15.

[9] Id. at 34.

[10] Id. at 92.

[11] Id. at 91. The address indicated in the identification cards was “V 6 Cruz Iron Works, E. Rodriguez Parañaque City.”

[12] Ibid citing PAL v. NLRC, 279 SCRA 533.

[13] In a Decision dated 21 August 2000, penned by Commissioner V.R. Calaycay, and concurred in by Presiding Commissioner R. Aquino and Commissioner A. Gacutan.

[14] Rollo, p. 127.

[15] Penned by Associate Justice M. Buzon, concurred in by Associate Justices J. Guevara-Salonga and D. Pine.

[16] In their Petition for Certiorari before the Court of Appeals, the Agabons particularly claimed that they were required to work on four holidays, namely, Araw Ng Kagitingan, National Heroes Day, Bonifacio Day, and Rizal Day. See Rollo, p. 154.

[17] Deducted from Virgilio Agabon’s thirteenth (13th) month pay were his SSS loan and expenses for shoes. Rollo, pp. 171-172.

[18] Rollo, p. 173.

[19] Id. at 22.

[20] Id. at 23 citing Kingsize Manufacturing Corporation v. NLRC, 238 SCRA 349.

[21] Rollo, p. 20.

[22] Palencia v. NLRC, G.R. No. L-75763, 21 August 1987; Pure Blue Industries v. NLRC, G.R. No. 115879, 16 April 1997.

[23] Rollo, pp. 129, 170.

[24] Both the NLRC and the Court of Appeals noted that the 10 June 1999 conference between the Agabons and Riviera Homes was at the behest of the Agabons, thus countering the claim of strained relations. Rollo, pp. 130, 170-171.

[25] Rollo, p. 91.

[26] Supra note 6.

[27] Id.

[28] Supra note 1.

[29] Supra note 1 at 446.

[30] See Section 1, Republic Act No. 1052, which states:

Sec. 1. In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause; or without just cause in the case of an employee by serving written notice on the employer at least one month in advance, or in the case of an employer, by serving such notice to the employee at least one month in advance or one-half month for every year of service of the employee, whichever is longer, a fraction of at least six months being considered as one whole year.

The employee, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice.

[31] 124 Phil. 698 (1966).

[32] *Id.* at 703.

[33] 139 Phil. 747 (1969).

[34] *Id.* at 754.

[35] *Serrano v. NLRC*, *supra* note 1 at 447.

[36] G.R. No. L-38482, 18 June 1976, 71 SCRA 470.

[37] *Serrano v. NLRC*, *supra* note 1 at 480.

[38] *Serrano*, *supra* note 1 at 445-446.

[39] G.R. No. 81651, 18 January 1991, 193 SCRA 57.

[40] *Id.* at 67.

[41] See G. Gunther and K. Sullivan, *Constitutional Law* (14th ed.) at 867.

[42] Separate Opinion of Justice Panganiban, p. 12.

[43] See e.g., *Morehead v. State of New York*, 298 U.S. 587 (1936), which affirmed the invalidity of minimum wage laws as previously declared in *Adkins v. Children's Hospital*, 261 U.S. 525 (1923).

[44] Famously justified by the Supreme Court as an assertion of the "liberty of contract", or "the right to contract about one's affairs", as contained in the Fourteenth Amendment. *Adkins v. Children's Hospital*, 261 U.S. 525, 545. (1923). But as Justice Holmes famously critiqued: "Contract is not specially mentioned in the text (of the Fourteenth Amendment) that we have to construe. It is merely an example of doing what you want to do, embodied in the word liberty. But pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts." *Adkins v. Children's Hospital*. *Id.* at 568.

[45] See *People v. Tudtud*, G.R. No. 144037, 26 September 2003.

[46] G.R. No. 106027, 234 SCRA 441, 25 July 1994.

[47] *Id.* at 451-452.

[48] 335 Phil. 82 (1997). The Court therein was divided, with twelve voting for, and three against the decision. Interestingly, both Justices Puno and Panganiban adopted the dissenting position that the provisions of Article XII of the Constitution alone were insufficient to accord the Filipino bidder a preferential right to obtain the winning

bid for Manila Hotel. Their concession as to the enforceability of paragraph 2, Section 10, Article XII of the Constitution without enabling legislation was in a situation wherein if the bids of the Filipino and the foreign entity were tied. *Id.* at 154 (J. Puno, dissenting) and 154 (J. Panganiban, dissenting).

[49] *Id.* at 102 citing 16 Am Jur. 2d 281.

[50] *Id.* at 103-104 citing 16 Am Jur 2d 283-284.

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[52] *Id.* at 617.

[53] *Id.* at 626.

[54] *Id.* at 644.

[55] The test suggested by Justice Puno in the Manila Hotel case, *supra* note 47, is as definitive as any proposed method of analysis could ever be. “A searching inquiry should be made to find out if the provision is intended as a present enactment, complete in itself as a definitive law, or if it needs future legislation for completion and enforcement. The inquiry demands a micro-analysis and the context of the provision in question.” J. Puno, dissenting, *id.* at 141-142. See also *Rev. Pamatong v. COMELEC*, G.R. No. 161872, 13 April 2004.

[56] J. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (1996), at 1064.

[57] Article 3, Chapter I of the Labor Code declares:

Declaration of basic policy.—The State shall afford full protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure and just and humane conditions of work.

[58] See *Phil. Aeolus Automotive United Corp. v. NLRC*, 387 Phil 250 (2000); *Gonzales v. National Labor Relations Commission*, 372 Phil 39 (1999); *Jardine Davies v. National Labor Relations Commission*, 370 Phil 310 (1999); *Pearl S. Buck Foundation v. National Labor Relations Commission*, G.R. No. 80728, February 21, 1990, 182 SCRA 446; *Bagong Bayan Corporation, Realty Investors & Developers v. National Labor Relations Commission*, G.R. No. 61272, September 29, 1989, 178 SCRA 107; *Labajo v. Alejandro, et al.*, G.R. No/L-80383, September 26, 1988, 165 SCRA 747; *D.M. Consunji, Inc. v. Pucan, et al.*, G.R. No. L-71413, March 21, 1988, 159 SCRA 107; *Santos v. National Labor Relations Commission*, G.R. No. L-76271, September 21, 1987, 154 SCRA 166; *People’s Bank & Trust Co. v. People’s Bank & Trust Co. Employees Union*, 161 Phil 15 (1976); *Philippine Movie Pictures Association v. Premiere Productions*, 92 Phil. 843 (1953); *Phil. Refining Co. v. Garcia*, *supra*.

[59] *Serrano v. NLRC*, *supra* note 1.

[60] Section 2, Rule XXIII, Book V, OMNIBUS RULES IMPLEMENTING THE LABOR CODE.

[61] *Supra* note 2.

[62] *Serrano v. NLRC*, *supra* note 1 at 445.

[63] G.R. No. 80587, 8 February 1989, 170 SCRA 69.

[64] *Serrano*, *supra* note 1 at 453.

[65]Serrano, *supra* note 1 at 485; J. Vitug, separate concurring and dissenting.

[66] Balaquezon EWTU v. Zamora, G.R. No. L-46766-7, 1 April 1980, 97 SCRA 5, 8.

[67] “xxx without prejudice, however, to whatever rights, benefits, and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice”. Section 7, Rule 1, Book VI, Omnibus Rules Implementing the Labor Code.

[68]See *Philippine Rabbit Bus Lines, Inc. v. NLRC*, G.R. No. 98137, 15 September 1997, 279 SCRA 106, 115, citing cases.

[69] *Aguila v. CFI*, G.R. No. L-48335, 15 April 1988, 160 SCRA 352, 360. “For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law.” *Id.*

[70]170 SCRA 69 (1989).

[71] G.R. No. 112100, May 27, 1994, 232 SCRA 613.

[72]BLACK’S LAW DICTIONARY, 1990 ed., p. 1133; citing *Hidden Hollow Ranch v. Collins*, 146 Mont. 321, 406 P.2d 365, 368.

[73] 170 SCRA 69 (1989).

[74] *Serrano v. NLRC*, *supra* note 1 at 442.

[75] See e.g., *Reta v. NLRC*, G.R. No. 112100, 27 May 1994, 232 SCRA 613, wherein the Court held that “private respondents should pay petitioner P10,000.00 as penalty for failure to comply with the due process requirement.” *Id.* at 618.

[76] A. TOLENTINO, *CIVIL CODE OF THE PHILIPPINES* (1990 ed.), at 11; citing 9 Fabres 10.

[77] Article 2221, Civil Code.

[78] *Ferrer v. NLRC*, G.R. No. 100898, 5 July 1993; citing *Callanta vs. Carnation Philippines, Inc.*, 145 SCRA 268.

[79]347 Phil. 521, 531 (1997).

[80] *Id.* at 531.

[81] *Id.*

[82] G.R. No. 121927, 22 April 1998.

[83] G.R. No. 121698, 26 March 1998. The ponente in all three cases was Justice Florida Ruth Romero.

[84] See Article 2216, Civil Code. See also *Saludo v. Court of Appeals*, G.R. No. 95536, 23 March 1992.

[85] In relation to Article 2224 of the Civil Code, nominal damages are less than temperate/moderate damages or compensatory damages.

[86] See *De la Paz, Jr. v. IAC*, 154 SCRA 65; *Chavez v. Gonzales*, 32 SCRA 547.

[87] See Art. 2199, Civil Code.

[88] Art. 2225, Civil Code.

[89]Page 16, Decision, citing jurisprudence.

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