

**PILAR ESPINA, ELEANOR G. AQUINO, LORENE C. BARNUEVO,
MARICRIS S. J. BANDINO, JULIO M. PETALIO, JR., NOEL T. DE BORJA,
REMEGIO P. BASCO, MATEO D. DEOCAREZA, EMILIANO A. EBREO,
BE...**

G.R. NO. 164582. March 28, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Review on Certiorari under Rule 45 of the Rules of Court seeks to reverse the following Resolutions of the Court of Appeals in CA-G.R. SP No. 78797 entitled, "Pilar Espina, et al. v. National Labor Relations Commission, et al.": (a) Resolution[1] dated 23 September 2003 which dismissed petitioners' appeal for failure of all of the petitioners to sign the certification of non-forum shopping; (b) Resolution[2] dated 3 March 2004, denying petitioners' motion to drop the names of their co-workers who failed to sign the certification of non-forum shopping; and (c) Resolution[3] dated 23 June 2004, denying petitioners' Motion for Reconsideration.

The factual antecedents of the case are as follows:

Respondent M.Y. San Biscuits, Inc. (M.Y. San) was previously engaged in the business of manufacturing biscuits and other related products.

On 27 December 2000, in a conciliation proceeding before the Department of Labor and Employment (DOLE) NCMB-NCR Director Leopoldo de Jesus, the duly authorized representative of M.Y. San Worker's Union-PTGWO and M.Y. San Sales Force Union-PTGWO was informed of the closure or cessation of business operations of respondent M.Y. San as a result of the intended sale of the business and all the assets of respondent M.Y. San to respondent Monde M.Y. San Corporation (Monde) and was notified of their termination, effective 31 January 2001. It was agreed that:

In the interest of industrial peace, the union and management have agreed as follows:

- In consideration of the length of service of the employees, the management will pay separation package in accordance with their existing Collective Bargaining Agreement. In addition the company will likewise grant nine (9) days per year of service on top of what is provided for in the CBA.
- The computation of separation package shall be based on employees' present basic daily rate for year 2000 plus the increase of P15.00 per day for all employees.
- The cut-off date of the length of service is on January 31, 2001.
- The Company shall extend to all affected employees the cash equivalent of their vacation and sick leaves, as follows:

Vacation leaves

1-5 years ----- 17 days
5-10 years ----- 17 days
10-20 years ----- 17 days
20-30 years ----- 30 days
30-35 years ----- 32 days

Sick leaves

1-5 years ----- 17 days
5-10 years ----- 17 days
10-20 years ----- 17 days
20-30 years ----- 30 days
30-up ----- 32 days

- The Company will pay one-half of the total union dues for year 2001.
- The existing local unions affiliated with PTGWO is directly and voluntarily recognized as the sole and exclusive bargaining agent of the employees at Monde M.Y. San Corporation, the new owner/name of M.Y. San Biscuits Inc. The company promises to give PTGWO a written confirmation of recognition from the new owner/company.
- That the separation pay is Tax-Free.
- That the SSS and PAG-IBIG loans shall be directly remitted by the employees' concerned.
- The company will submit list of all employees to the new owner for purposes of rehiring, subject to the new qualifications that may be imposed by the new owner/company. The said employees, however, shall be given hiring preference.
- As requested, the company furnished the union with a copy of the list of affected employees and announcement letter from the President of M.Y. San Biscuit.
- The Company agrees to start the giving of separation pay by the second week of January 2001 but shall in no case beyond the third week of the said month.
- The agreement of the parties in this proceeding shall be contained in the Memorandum of Agreement that will be immediately prepared by the parties.
- In view of this Agreement, the notices of strike filed with this Office are deemed settled and withdrawn. The rights of the parties are, however, not waived should any of the terms of this agreement are violated by any of the parties.

27 December 2001.[4]

On 28 December 2000, the written notice of the sale and purchase of the assets of respondent M.Y. San to respondent Monde and of the termination of all the employees of respondent M.Y. San were filed before the DOLE Regional Office No. IV.[5]

On 22 January 2001, respondent M.Y. San and the Union signed a Memorandum of Agreement (MOA) embodying the agreements set forth in the Minutes/Agreement, dated 27 December 2000. Embodied in the MOA is an agreement that the existing Collective Bargaining Agreement shall cease to be effective on 31 January 2001 and shall in no way be binding upon the buyer, respondent Monde, and that respondent M.Y. San shall provide respondent Monde a list of all its present employees who shall be given preference in employment by the latter. Pertinent provisions of the Agreement:

- The Company agrees to submit the list of all its present employees to the new corporation for purposes of rehiring if said employee applies and qualifies, subject to such criteria as the new corporation may impose. In the rehiring, the covered employees shall be given hiring preference, if qualified. The corresponding Notice as to whom of the covered employees have been hired by the new corporation shall be issued immediately after January 31, 2001. During the entire rehiring process and until the election and qualification of the new officers, the PTGWO, through its National President, or his authorized representative, shall act as the TRUSTEE of the UNION.

- All employees hired by MONDE M.Y. SAN CORPORATION and/or the new owner of the COMPANY, shall upon hiring, subject to the terms and conditions of their probationary employment, become members of the UNION. The continued existence of the UNION in the company and/or MONDE M.Y. SAN CORPORATION shall not be interrupted by the payment of the Company's employees of their separation package or the temporary closure of the Company's operations.[6]

On 31 January 2001, all the employees of respondent M.Y. San received their separation pay and the cash equivalent of their vacation and sick leaves. Thereafter, they signed their respective Quitclaims.

On 1 February 2001, an Asset Purchase Agreement was executed between respondents M.Y. San and Monde.

On 2 February 2001, respondent Monde commenced its operations. All the former employees of respondent M.Y. San who were terminated upon its closure and who applied and qualified for probationary employment, including petitioners herein, started working for respondent Monde on a contractual basis for a period of six months.

Subsequently, petitioners were terminated on various dates.

Thus, petitioners filed a Complaint for illegal dismissal and underpayment, damages and attorney's fees and litigation cost with the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. IV.

Petitioners alleged that respondent My San stopped its operations on 31 January 2001, but three days after, resumed its operation with the same top management running the business; the union officers, in exchange for being re-hired, acceded to bust the union; and the sale of respondent M.Y. San to respondent Monde was merely a ploy to circumvent the provisions of the Labor Code.

Respondent M.Y. San insisted that its employer-employee relationship with petitioners had ceased to exist, thus, the complaint for illegal dismissal against it could no longer prosper. It further contended that the power to hire and fire employees is now lodged in the new business owner, respondent Monde.

On the other hand, respondent Monde alleged that petitioners had no cause of action against it, stating thus:

A few days before 02 May 2001, the respective supervisors of Monde conducted an evaluation of the performance of all its probationary employees, including herein complainants, to determine their fitness to qualify as regular employees therein.

On 02 May 2001, the probationary employees of Monde who passed the performance appraisal and who qualified as regular employees thereof were accordingly appointed as such. Out of the one hundred sixteen (116) probationary employees engaged by respondent Monde, a total of seventy-four employees qualified for regular employment on 02 May 2001. x x x.

For those who did not qualify for regular employment on 02 May 2001, including herein complainants [petitioners], respondent Monde gave complainants the remainder of their probationary period, or until 02 July 2001, within which to prove their qualification for regular employment therewith.

Notwithstanding the opportunity given to herein complainants [petitioners] to improve their performance to qualify for regular employment with Monde, complainants [petitioners] either: (a) resigned from their

employment with Monde; (b) refused to report for work on 02 May 2001 and on the days following; or (c) failed to qualify for regular employment at the expiration of the period of their probationary employment.

More specifically, the following complainants [petitioners] resigned from their employment with Monde and for which they signed their respective release, waiver and quitclaims:

- Lorene C. Barnuevo;
- Lina P. Asugao;
- Noel T. de Borja;
- Claudio delos Reyes;
- Eddie Ollorsa; and
- Joey Cerbito

Complainants Barnuevo and Ollorsa refused to be transferred from the mixing department to the packing department and consequently tendered their resignation letters and likewise signed their respective release, waiver and quitclaims. x x x.

Seven (7) complainants opted not to report for work either on 02 May 2001 and the succeeding days thereafter or even before the expiration of their probationary employment. After notice to explain was duly served upon them, they deliberately failed/refused to explain their absences. Accordingly, individual notices informing them of their dismissal due to AWOL/gross and habitual neglect of duties were personally delivered to their respective addresses or by registered mail.

- Pilar Espina;
- Eleanor G. Aquino;
- Maricris S.J. Bandino;
- Julio M. Petalio, Jr.;
- Emiliano A. Ebreo;
- Benjamin Paz; and
- Leonora Paz

Copies of the notices to explain and the notice of dismissal of the foregoing employees are hereto attached x x x. In view of complainants Espino, Aquino and Bandino's refusal to receive copies of the notice of dismissal personally delivered to them, Monde likewise submitted copies of the same to the Rizal Province Labor and Employment Office, DOLE Region 4 on 29 June 2001.

The following complainants failed to qualify as regular employees in accordance with the terms and conditions of their probationary employment with Monde and were duly informed of their failure to qualify as regular employees by letter dated 23 June 2001 terminating their probationary employment effective at the close of business hours on 02 July 2001:

- Leandro F. Celis;
- Paterno Fernandez;
- Aniceto M. Rodriguez;

- Donato M. Punzalan;
- George Quinquillera;
- Lourdes Alfonso;
- Allan Palilio;
- Daisy V. Arceo;
- Mario Ramos;
- Alejandro Pascual;
- Ma. Corazon Bajo;
- Arnold M. Blanco;
- Cristito Abela;
- Dioscoro Fajnilag; and
- Agustin Wong.

Representative copies of the letter dated 23 June 2001 terminating the probationary employment of the foregoing employees effective at the close of business hours on 02 July 2001 are hereto attached x x x.

Anent complainant Remegio Basco, on 10 May 2001, Mr. Sandy B. Brillantes, the Employee Relation Officer of Monde, chanced upon the former while serving the Notice of Termination of complainants Julio Petallo and Emiliano Ebreo. Complainant Basco, in response to the query as to why he has not been reporting for work, informed Mr. Brillantes that he had decided to stay home instead of reporting for work.

With respect to complainant Mateo Deocareza, he has been absent without official leave (AWOL) since 02 May 2001 and respondent Monde has yet to receive any information on him and/or his whereabouts.

Complainant Arlene Laguerta last reported for work on 26 May 2001 and has not reported back for work since then.[7]

After evaluation of their respective pleadings, Labor Arbiter Vicente R. Layawen rendered a Decision[8] dismissing the case for lack of merit. It ruled that respondent M.Y. San's Decision to shut down its operations by selling its assets is its sole prerogative which must be respected, and that it had faithfully complied with the requirements of the law, i.e., the notice and payment of separation pay. As to respondent Monde, the Labor Arbiter ruled that the former satisfactorily discharged the burden of establishing a just and authorized cause for terminating the services of petitioners.

On appeal, NLRC affirmed the Decision of the Labor Arbiter in a Resolution[9] dated 30 August 2002.

Aggrieved, petitioners went to the Court of Appeals via a Petition for Certiorari[10] under Rule 65 of the Rules of Court. However, the appellate court dismissed[11] the petition on the ground that the Special Power of Attorney (SPA) executed by petitioners did not bear the signatures of their three other co-petitioners therein. A perusal of the said SPA would reveal the apparent absence therein of the signatures of Eddie Ollorsa, Joey Cerbito and George Quinquillera.

Subsequently, petitioners filed a motion[12] to drop the names of their three co-petitioners who failed to sign the SPA and prayed for the reconsideration of the dismissal of their petition. The Motion was denied[13] by the Court of Appeals on 3 March 2004, on the ground that subsequent compliance does not warrant a reconsideration of the

Order of dismissal. The appellate court further stated that there was no prima facie error committed by the NLRC in affirming the Decision of the Labor Arbiter.

Petitioners again filed a Motion for Reconsideration[14] of the 3 March 2004 Resolution, but the same was denied by the Court of Appeals in a Resolution[15] dated 23 June 2004. According to the appellate court, the said motion for reconsideration was actually a second motion for reconsideration, which is a prohibited pleading under Sec. 2, Rule 52[16] of the Rules of Court.

Petitioners are now before us imputing to the Court of Appeals the following errors, to wit[17]:

I.

THE HONORABLE COURT OF APPEALS (FORMER FIFTEENTH DIVISION) SERIOUSLY ERRED IN DISMISSING THE PETITION FOR CERTIORARI FOR FAILURE OF ALL THE PETITIONERS TO SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.

II.

THE HONORABLE COURT OF APPEALS (FORMER FIFTEENTH DIVISION) SERIOUSLY ERRED IN DENYING PETITIONERS' MOTION TO DROP EDDIE OLLORSA, JOEY CERBITO AND GEORGE QUINQUILLERA AS PETITIONERS.

III.

THE HONORABLE COURT OF APPEALS (FORMER FIFTEENTH DIVISION) SERIOUSLY ERRED IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION.

IV.

THE HONORABLE COURT OF APPEALS (FORMER FIFTEENTH DIVISION) SERIOUSLY ERRED IN NOT DECLARING THE ALLEGED SALE OF M.Y. SAN TO MONDE AS MERE PLOY TO CIRCUMVENT THE PROVISIONS OF THE LABOR CODE AND THUS, VIOLATED THE TENURIAL SECURITY OF THE PETITIONERS.

V.

THE HONORABLE COURT OF APPEALS (FORMER FIFTEENTH DIVISION) SERIOUSLY ERRED IN NOT PIERCING THE VEIL OF THE CORPORATE PERSONALITIES OF M.Y. SAN AND/OR MONDE.

VI.

THE HONORABLE COURT OF APPEALS (FORMER FIFTEENTH DIVISION) SERIOUSLY ERRED IN NOT DECLARING THAT THE PETITIONERS WERE ILLEGALLY DISMISSED.[18]

Before resolving the substantive issues raised by petitioners, the Court will first address the procedural infirmities. Petitioners assail the correctness and propriety of the dismissal by the Court of Appeals of their Petition on the ground that the SPA executed by petitioners does not bear the signatures of their three other co-petitioners therein.

While the general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs or petitioners in a case and the signature of only one of them is insufficient, this Court has stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective.[19] Strict compliance with the provision regarding the certificate of non-forum shopping underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[20] It does not, however, thereby interdict substantial compliance with its provisions under justifiable

circumstances.[21]

In the case of *San Miguel Corporation v. Aballa*,^[22] the dismissed employees filed with the NLRC a complaint for declaration as regular employees of San Miguel Corporation (SMC) and for an illegal dismissal case, following SMC's closure of its Bacolod Shrimp Processing Plant. After an unfavorable ruling from the NLRC, the dismissed employees filed a petition for certiorari with the Court of Appeals. Only three out of the 97 named petitioners signed the verification and certification of non-forum shopping. This Court ruled that given the collective nature of the petition filed before the appellate court, which raised only one common cause of action against SMC, the execution by the three petitioners, in behalf of all the other petitioners, of the certificate of non-forum shopping constitutes substantial compliance with the Rules.

In the case at bar, the signatures of 25 out of the 28 employees who filed the Petition for Certiorari in the appellate court, likewise, constitute substantial compliance with the Rules. Petitioners raised one common cause of action against respondents M.Y. San and Monde, i.e., the illegal closure of respondent M.Y. San and its subsequent sale to respondent Monde, which resulted in the termination of their services. They share a common interest and common defense in the Complaint for illegal dismissal, which they filed with the NLRC. Thus, when they appealed their case to the appellate court, they pursued the same as a collective body, raising only one argument in support of their rights against the illegal dismissal allegedly committed by respondents M.Y. San and Monde. There is sufficient basis, therefore, for the 25 petitioners, to speak for and in behalf of their co-petitioners, to file the Petition in the appellate court.

Ordinarily, we would have remanded this case to the Court of Appeals for disposition on the merits. However, so as not to needlessly prolong the resolution of a comparatively simple controversy, we deem it just and equitable to decide the same on the merits.^[23]

Based on the merits, the petition must, just the same, fail.

The substantive issue being presented by petitioners for resolution is whether they were illegally terminated from work by respondents M.Y. San and Monde. Corollary to the above issue is whether the closure of business by respondent M.Y. San was valid.

We shall first discuss the validity of the closure of business by respondent M.Y. San before tackling the alleged illegal dismissal of petitioners by respondent M.Y. San.

Work is a necessity that has economic significance deserving legal protection. The provisions on social justice and protection to labor in the Constitution^[24] dictate so.

However, employers are also accorded rights and privileges to assure their self-determination and independence and reasonable return of capital. This mass of privileges comprises the so-called management prerogatives. Although they may be broad and unlimited in scope, the State has the right to determine whether an employer's privilege is exercised in a manner that complies with the legal requirements and does not offend the protected rights of labor. One of the rights accorded an employer is the right to close an establishment or undertaking.^[25] Just as no law forces anyone to go into business, no law can compel anybody to continue the same.^[26]

The right to close the operations of an establishment or undertaking is explicitly recognized under the Labor Code as one of the authorized causes in terminating employment of workers, the only limitation being that the closure must not be for the purpose of circumventing the provisions on terminations of employment embodied in the Labor Code. Article 283 of the Labor Code reads:

ART. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL.-The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy,

retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year. (Emphasis supplied.)

The phrase "closure or cessation of operations of establishment or undertaking" includes a partial or total closure or cessation.

x x x Ordinarily, the closing of a warehouse facility and the termination of the services of employees there assigned is a matter that is left to the determination of the employer in the good faith exercise of its management prerogatives. The applicable law in such a case is Article 283 of the Labor Code which permits "closure or cessation of operation of an establishment or undertaking not due to serious business losses or financial reverses," which, in our reading includes both the complete cessation of operations and the cessation of only part of a company's business.[27]

And the phrase "closure or cessation not due to serious business losses or financial reverses" recognizes the right of the employer to close or cease its business operations or undertaking even in the absence of serious business losses or financial reverses, as long as he pays his employees their termination pay in the amount corresponding to their length of service.

It would indeed be stretching the intent and spirit of the law if a court were to unjustly interfere in management's prerogative to close or cease its business operations just because said business operation or undertaking is not suffering from any loss.[28] The determination to cease operations is a prerogative of management which the State does not usually interfere with, as no business or undertaking must be required to continue operating simply because it has to maintain its workers in employment, and such act would be tantamount to a taking of property without due process of law.[29] As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of circumventing the rights of employees under the law or a valid agreement, such exercise will be upheld.[30]

Clearly then, the right to close an establishment or undertaking may be justified on grounds other than business losses but it cannot be an unbridled prerogative to suit the whims of the employer.[31]

Under Article 283 of the Labor Code, three requirements are necessary for a valid cessation of business operations, namely:

- (1) service of a written notice to the employees and to the DOLE at least one (1) month before the intended date thereof;
- (2) the cessation must be bona fide in character; and
- (3) payment to the employees of termination pay amounting to at least one half (1/2) month pay for every year of service, or one (1) month pay, whichever is higher.

The records reveal that private respondent M.Y. San complied with the aforecited requirements. M.Y. San employees were adequately informed of the intended business closure and a written notice to the Regional Director of DOLE was filed by respondent M.Y. San, informing the DOLE that M.Y. San will be closed effective 31 January 2001.

The ultimate test of the validity of closure or cessation of establishment or undertaking is that it must be bona fide

in character.[32] And the burden of proving such falls upon the employer.[33]

Respondent M.Y. San in good faith complied with the requirements for closure; sold and conveyed all its assets to respondent Monde for valuable consideration; and there were no previous labor problems. It has been ruled that an employer may adopt policies or changes or adjustments in the operations to insure profit to itself or protect the investments of its stockholders, and in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties which may bring about the dismissal or termination of its employees in the process.[34]

Lastly, the petitioners received their termination pay which was even beyond the amount required by law. The computation of their separation pay was 15 days for every year of service plus an additional nine days for every year of service, and cash equivalent of their vacation and sick leaves.[35] Petitioners received their separation pay and accordingly signed their quitclaims.

The closure, therefore, of the business operation of respondent M.Y. San was not tainted with bad faith or other circumstance that would give rise to suspicions of malicious intent. Other than their mere allegations, petitioners failed to present independent evidence that would otherwise show that the closure of M.Y. San was without factual basis and done in utter bad faith. Mere allegation is not evidence. It is a basic rule in evidence that each party must prove his affirmative allegation.[36]

Thus, since private respondent M.Y. San's closure and cessation of business was lawful, there was no illegal dismissal of petitioners to speak of.

We shall now proceed to discuss the validity of the termination of the employment of petitioners by respondent Monde.

There is no dispute that petitioners were probationary employees as stated in their individual contracts of employment with respondent Monde.

Article 281 of the Labor Code governs probationary employment:

Art. 281. PROBATIONARY EMPLOYMENT. - Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

While petitioners were only probationary employees who do not enjoy permanent status, nonetheless, they were still entitled to the constitutional protection of security of tenure. As may be gleaned in the abovequoted provision, their employment may only be terminated for a valid and just cause or for failing to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the time of engagement and after being accorded due process.[37]

Procedural due process requires that the employee be given two written notices before he is terminated, consisting of a notice which appraises the employee of the particular acts/omissions for which the dismissal is sought and the subsequent notice which informs the employee of the employer's decision to dismiss him.[38]

In the case at bar, petitioners were notified of the standards they have to meet to qualify as regular employees of respondent Monde when the latter apprised them, at the start of their employment, that:

- You shall be under probation for a maximum period of six (6) months or until Jul. 03, 2001. During this

period, you are expected to learn your job, perform your duties and responsibilities to the best of your ability, and observe all company rules and regulations; if during this period, you fail to meet company standards, your appointment may be terminated earlier or at the expiration of your probationary period at the discretion of the company.

x x x x

- To determine your fitness to assume your position on a permanent status, when considered due, your supervisor shall rate your performance during your probationary period.[39]

Significantly, petitioners Lorene C. Barnuevo, Claudio delos Reyes, Eddie Ollorsa, and Joey Cerbito voluntarily resigned from respondent Monde and signed their respective release, waiver and quitclaims.

Respondent Monde exercised its management prerogative in good faith when it dismissed petitioners Pilar Espina, Eleanor G. Aquino, Maricris S.J. Bandino, Julio M. Petalio, Jr., Emiliano A. Ebreo, Benjamin Paz, and Leonora Paz, due to absence without leave (AWOL), gross and habitual neglect of duties, and only after the personal delivery of the notices to their respective addresses or by registered mail. With respect to petitioner Mateo Deocareza, he has been AWOL since 2 May 2001 and respondent Monde has yet to receive any information on him and/or his whereabouts. There were two notices sent to petitioners individually - a notice apprising them of the particular acts or omissions for which their dismissal was sought and a memorandum informing them that they were terminated from work.

In the case of petitioners Leandro R. Celis, Paterno Fernandez, Aniceto M. Rodriguez, Donato M. Punzalan, Lourdes Alfonso Q., Allan Panlilio, Daisy V. Arceo, Alejandro Pascual, Ma. Corazon Bajo, Arnold M. Blanco, Cristito Abela, Dioscoro Fajanalag, and Agustin Wong, they failed to qualify as regular employees in accordance with the terms and conditions of their probationary employment with respondent Monde and were duly informed of their failure to qualify as regular employees by letter dated 23 June 2001 terminating their probationary employment effective at the close of the business on 2 July 2001. Again, there were two notices sent to petitioners individually - a notice apprising them of the particular acts or omissions for which their dismissal was sought and a memorandum informing them that they were terminated from work.

It must be noted that petitioners were terminated prior to the expiration of their probationary contracts on 3 July 2001. As probationary employees, they enjoyed only temporary employment status. In general terms, this meant that they were terminable anytime, permanent employment not having been attained in the meantime. The employer could well decide if he no longer needed the probationary's service or his performance fell short of expectations, as a probationary employee is one who, for a given period of time, is under observation and evaluation to determine whether or not he is qualified for permanent employment. During the probationary period, the employer is given the opportunity to observe the skill, competence and attitude of the employee to determine if he has the qualification to meet the reasonable standards for permanent employment. The length of time is immaterial in determining the correlative rights of both the employer and the employee in dealing with each other during said period. Thus, as long as the termination was made before the expiration of the six-month probationary period, the employer was well within his rights to sever the employer-employee relationship. A contrary interpretation would defeat the clear meaning of the term "probationary." [40]

Terminating employment is one of respondent Monde's prerogatives. As an employer, respondent Monde has the right to regulate, according to its discretion and best judgment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[41]

This Court has upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements.[42]

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 recognizes the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct 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 interest. [43]

Thus, respondent Monde exercised in good faith its management prerogative as there is no dispute that petitioners had been habitually absent, neglectful of their work, and rendered unsatisfactory service, to the damage and prejudice of the company.

Anent the validity of quitclaims signed by petitioners.

To be sure, the law looks with disfavor upon quitclaims and releases by employees who are inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities. But quitclaims and releases are not per se invalid.

We have clarified the standards for determining the validity of quitclaim or waiver in the case of *Periquet v. National Labor Relations Commission*,[44] to wit:

If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.

x x x.

In the case at bar, there is no showing that petitioners were coerced into signing the quitclaims. In their sworn quitclaims, they freely declared that they received to their satisfaction all that are due them by reason of their employment and that they were voluntarily releasing respondents M.Y. San and Monde, for any liability in relation to their employment. Nothing on the face of their quitclaims would show that they were unconscionable. Further, petitioners did not present evidence that they had been forced or intimidated in signing the same.

Finally, it is significant to note that both the Labor Arbiter and the NLRC were unanimous in their findings that the closure of respondent M.Y. San is valid and that the employees of respondents M.Y. San and Monde were not illegally dismissed. The issue as to whether there was a valid ground for petitioners' dismissal is factual in nature.[45] We have always held that factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. As long as their Decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is the Court's stamp of finality by affirming the factual findings made by the NLRC and the Labor Arbiter.[46] We find no reason to depart from this Rule.

WHEREFORE, this Court grants the instant Petition insofar as it REVERSES the Resolutions of the Court of Appeals dated 23 September 2003, 3 March 2004, and 23 June 2004 and DECLARES the signing of the certification of non-forum shopping by 25 of the 28 named petitioners substantial compliance with the Rules. This Court though finds it unnecessary to remand the case to the Court of Appeals and proceeds to RESOLVE the

same based on the merits. This Court thus AFFIRMS the Decision dated 30 August 2002 of the National Labor Relations Commission affirming the Decision dated 25 April 2002 of the Labor Arbiter finding that the closure of respondent M.Y. San was valid and bona fide and in accordance with statutory requirements, and that petitioners were not illegally dismissed by either respondent M.Y. San or Monde. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Callejo, Sr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Rodrigo V. Cosico and Rosalinda Asuncion-Vicente, concurring. Rollo, p. 13.

[2] Id. at 15.

[3] Id. at 17.

[4] Id. at 897-899.

[5] Id. at 75.

[6] Id. at 92.

[7] Records, pp. 44-48.

[8] CA rollo, p. 382.

[9] Id. at 58.

[10] Id. at 17-42.

[11] Id. at 13.

[12] Id. at 489-494.

[13] Id. at 513.

[14] Id. at 517-526.

[15] Id. at 561.

[16] Rule 52. Sec. 2. Second Motion for Reconsideration.- No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[17] Rollo, pp. 27-68.

[18] Id. at 1194-1195.

[19] Cavile v. Heirs of Clarita Cavile, 448 Phil. 302, 311 (2003).

[20] HLC Construction and Development Corporation v. Emily Homes Sibdivision Homeowners Associations, 458 Phil. 392, 397 (2003).

[21] Cavile v. Heirs of Clarita Cavile, *supra* note 19.

[22] G.R. No. 149011, 28 June 2005, 461 SCRA 392, 411, 412.

[23] Vallejo v. Court of Appeals, G.R. No. 156413, 14 April 2004, 427 SCRA 658, 669; San Luis v. Court of

Appeals, 417 Phil. 598, 605 (2001); Chua v. Court of Appeals, 338 Phil. 262, 273 (1997); Golangco v. Court of Appeals, 347 Phil. 771, 778 (1997).

[24] 1987 Constitution, Article II, Section 18. The state affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Article XIII, Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. x x x.

[25] Capitol Medical Center, Inc. v. Meris, G.R. No. 155098, 16 September 2005, 470 SCRA 125, 136.

[26] Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering, 460 Phil. 583, 590 (2003).

[27] Capitol Medical Center v. Meris, supra note 25.

[28] Industrial Timber Corporation v. National Labor Relations Commission, supra note 27.

[29] Id.

[30] J.A.T. General Services v. National Labor Relations Commission, 465 Phil. 785, 797 (2004).

[31] Capitol Medical Center Inc. v. Meris, supra note 25.

[32] Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering, supra note 26.

[33] J.A.T. General Services v. National Labor Relations Commission, supra note 31 at 87.

[34] Corporal, Sr. v. National Labor Relations Commission, 395 Phil. 890, 901 (2000).

[35] Rollo, p. 91.

[36] Martinez v. National Labor Relations Commission, 339 Phil. 176, 183 (1997).

[37] Cebu Marine Beach Resort v. National Labor Relations Commission, 460 Phil. 301, 307 (2003).

[38] Secon Philippines, Ltd. v. National Labor Relations Commission, 377 Phil. 711, 718 (1999).

[39] Records, pp. 236-237.

[40] De La Cruz, Jr. v. National Labor Relations Commission, 463 Phil. 606, 618 (2003).

[41] Deles, Jr. v. National Labor Relations Commission, 384 Phil. 271, 281-282 (2000).

[42] Manila Electric Company v. National Labor Relations Commission, 331 Phil. 838, 847 (1996).

[43] Agabon v. National Labor Relations Commission, G.R. No. 158693, 17 November 2004, 442 SCRA 573, 606-607.

[44] G.R. No. 91298, 22 June 1990, 186 SCRA 724, 730-731.

[45] Anvil Ensembles Garment v. Court of Appeals, G.R. No. 155037, 29 April 2005, 457 SCRA 675, 681.

[46] Bolinao Security and Investigation Service, Inc. v. Toston, G.R. No. 139135, 29 January 2004, 421 SCRA 406, 412.

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