MARIVAL TRADING, INC., VIRGINIA A. MANUEL AND BEATRICE A. MANUEL, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND MA. VIANNEY D. ABELLA, RESPONDENTS.

G.R. NO. 169600. June 26, 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 Decision[1] dated 30 June 2005 of the Court of Appeals in CA-G.R. SP No. 87820 entitled, "Ma. Vianney D. Abella v. National Labor Relations Commission, Marival Trading, Inc., Virginia A. Manuel and Beatriz A. Manuel," which affirmed with modifications the Decision of the National Labor Relations Commission (NLRC) dated 10 September 2002 and the Decision of the Labor Arbiter dated 30 May 2001. The Labor Arbiter ruled and was affirmed by the NLRC, that while the disorderly behavior of herein private respondent Ma. Vianney D. Abella (Abella) should not have gone unpunished, such infraction should not be vested with the extreme penalty of dismissal; thus, he ordered the reinstatement of Abella to her former position without backwages, as well as the payment of her proportionate 13th month pay and unpaid salaries for the year 2000. On Appeal, the Court of Appeals categorically found that Abella's misconduct was not so gross as would warrant her dismissal, and awarded her backwages and attorney's fees.

The facts of the case are as follows:

Abella worked as chemist/quality controller at herein petitioner Marival Trading Inc. (Marival), for almost eight years. Marival is a corporation engaged in the production, distribution and sale of veterinary products, while petitioners Virginia and Beatriz Manuel are its President and Vice President (VP)-Personnel, respectively.

On 14 July 2000, Ma. Roxanney A. Manuel (Manuel), Vice President and General Manager of Marival, conducted a staff meeting together with the other officers of the company, Gregorio Albeza (Albeza) and Ma. Claire Distor (Distor), packaging supervisor and importation manager, respectively. After the meeting, Manuel asked Albeza and Distor to stay behind to discuss other matters. She requested two male employees to move some tables and placed Abella's belongings on one of these tables. Apparently, while the rearrangement of the tables was going on, Abella was not in the room. She came in when Manuel, Albeza, and Distor were already having their own meeting. While Abella was attending to her things, her shoulder bag fell loudly on the floor, disrupting the officers' meeting. Manuel approached Abella to ask what the problem was and the latter expressed her resentment over the fact that the employees were not informed first before their tables were moved. Manuel asked Abella to leave the room but she refused to do so. It was only upon Albeza's prodding that Abella later left the room. Abella then stayed in the laboratory for the rest of the afternoon.

Three days later, Abella received a memo from Manuel directing her to explain within 24 hours why no disciplinary action should be imposed for her disrespectful insubordination and unprofessional conduct. The memorandum reads:

> On July 14, 2000, as a result of the physical rearrangement of the tables, you behaved in a most disrespectful insubordination and unprofessional manner towards me.
>
> This incident which lasted approximately for fifteen to twenty minutes (15-20 minutes) was witnessed by Ms. Claire Distor, Jenny Samson and George Albeza.
>
> In this regard you are hereby directed to explain within 24 hours from receipt of this letter why no disciplinary action should be imposed on you for insubordination.[2]

In her response, Abella denied[3] the accusations against her. She clarified that her shoulder bag accidentally fell to the floor, and such should not have caused any offense to the officers present at the meeting. She maintained that she aired her side regarding the table rearrangement in a tactful and courteous manner; that the order for her to get out of the room was unjustified; and that her freedom to lawfully air her grievance in relation to her security of tenure at work should be respected.

Unconvinced by the explanation and finding no justifiable reason for the employee's outburst, Marival, through a letter signed by Beatriz Manuel/VP-Personnel, fired Abella on 21 July 2000.

Thus, Abella filed a complaint for illegal dismissal with the Labor Arbiter, alleging that she was dismissed from work without just cause and without due process. She prayed for reinstatement with full backwages and without loss of seniority rights and other benefits including payment of her unpaid salary for 16-24 July 2000 and damages, among other claims.

The parties failed to settle the matter amicably, and both submitted their position papers presenting their respective narrations of the incident.

Abella's position paper, in gist, reiterated the contents of her letter to Manuel and challenged the severity of the penalty imposed upon her. She questioned the version of events as narrated by Manuel:

> Ms. Manuel's version was that after the rearrangement of the tables and during the meeting with the officers, they were all startled by Ms. Abella's banging of folders and papers on her desk and the forceful throwing of her shoulder bag. She approached Ms. Abella and asked if there was a problem. The latter sneered and rudely answered, "Sana naman next time na uurungin yung gamit namin eh, sasabihin muna sa amin." The superior, piqued by this remark, told her, "I can do anything I want with the things in this office, it's a company property and I am the owner of the company. As far as I am concerned the only personal belonging you have in this office is your shoulder bag and I did not touch it. What you're doing to me is insubordination." Ms. Abella returned to her desk and resumed her defiant table-banging to which Ms. Manuel asked, "Anong ipinagdadabog mo?" The former retorted, "Eh sa nahulog yung bag ko, anong magagawa ko?" Ms. Manuel at that moment asked her to get out of the office, and Mr. Albeza had to persuade the latter to leave. The respondent's side of the story regarding the employee's demeanor was supported by Mr. Albeza and Ms. Distor, both of whose affidavits were attached to the employer's position paper.[4]

Abella presented her own version of events in a verified Joint Reply and Counter-Affidavit signed by her and her officemates, Rosemarie Cruz and Jenny Samson, which states that:

> They claimed therein, inter alia, that [Abella's] shoulder bag indeed just fell on the floor and that [Abella] was never arrogant. Her comment was politely delivered to their superior and in fact, it was Ms. Manuel who was the angry and hysterical (sic), telling [Abella], "umalis ka na at ayoko nang makita ang pagmumukha mo," to which the latter (sic) immediately left. Rosemarie Cruz likewise asserted that Ms. Manuel, who was fuming mad, bluntly told her, "ang kakapal ng mukha ninyo, lahat na ng paraan ginawa ko para umalis lang kayo sa trabaho at bakit ayaw pa ninyong umalis." They all opined that this is an orchestrated, clever, and convenient ploy to dismiss them, especially [Abella].[5]

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On 30 May 2001, the Labor Arbiter ruled that Marival had grounds to take disciplinary action against Abella, but since this is Abella's first offense, the Labor Arbiter considered the penalty of dismissal too severe and ordered her reinstatement to her former position. The dispositive portion of the Labor Arbiter's decision reads:

> Wherefore, judgment is hereby rendered ordering [Marival] to reinstate [Abella] to her former position but without backwages.
>
> [Marival] are also ordered to pay [Abella] her proportionate 13th month pay and unpaid salaries for the year 2000.
>
> All other claims are dismissed for lack of merit.[6]

Unsatisfied, Abella appealed her case to the NLRC. She insisted that the table rearrangement incident was not work-related and that no grave misconduct or willful disobedience can be imputed to her; hence, she likewise deserves backwages, appropriate damages and attorney's fees.

On 10 September 2002, the NLRC dismissed Abella's partial appeal and held that her act constituted serious misconduct. While the NLRC upheld the Labor Arbiter that Abella was disrespectful to her superior and that her act constituted serious misconduct, it nevertheless agreed with the finding of the Labor Arbiter that such act do not constitute sufficient ground for dismissal. Pertinent portion of the NLRC Decision is hereby reproduced, to wit:

> To begin with, the Arbiter a quo was well within his parameters when he denied [Abella] the award of backwages although he ordered her reinstatement. A judicious examination of the evidences on record shows that [Abella] was indeed seriously disrespectful to her superior. The meeting being held by [Manuel] would not be disturbed by the mere accidental drop of [Abella]'s bag on the floor. As [Manuel] claimed which was corroborated by two witnesses, [Abella] kept on banging her things on her desk continuously and answering the latter in a disrespectful manner as a form of resentment to the movement of her desk without her knowledge.
>
> Thus, an employee who utters obscene, insulting or offensive words against a superior may be dismissed. His act is a sufficient ground for dismissal. It is not only destructive of his co-employee's morale and a violation of the company rules and regulations, but also constitute gross misconduct, a ground provided by law for terminating an employee's services. (Asian Design and Manufacturing Corporation vs. Hon. Deputy Minister of Labor, G.R. No. 70552, May 2, 1986).[7]

A Motion for Reconsideration was filed, but the same was denied in a Resolution dated 27 September 2004. The NLRC, in upholding the Labor Arbiter's finding that Abella was disrespectful to her superior, reasoned:

> There is no shadow of doubt that [Abella] was dismissed for serious misconduct which is a valid ground for dismissal. Her attitude at the time she was confronted by Ms. [Roxanney] Manuel, Vice-President of the company, clearly reveals her true worth and character as a person. Instead of showing calmness and respect since the person she is talking (sic) is the Vice-President of the company, [Abella] has exhibited contemptuous acts of discourtesy and insubordination. It is possible that her emotions were at its highest level at that time that she was not able to control herself when she was confronted by [Manuel], but this cannot be considered sufficient justification for her to react that way since the superior occupies a lofty position in the company hierarchy. Clearly, this is a case of insubordination and disrespect of the highest order and for which complainant must suffer the consequences.
>
> x x x x
>
> The contention of [Manuel] that the incident regarding movement of Abella's chair without her consent which happened on July 14, 2000 is not work-related and therefore should not be classified as grave misconduct is

> entirely out of context and bereft of merit. It should be stressed that this happened within the premises of the respondent company and when on official meeting took place and as such, there can be no doubt that [Abella] was in the performance of her assigned duties and responsibilities when the confrontation between her and Roxanney Manuel took place.[8]

Still feeling aggrieved, Abella appealed to the Court of Appeals alleging that she is likewise entitled to backwages and damages from the time of her dismissal, as the same was without just cause.

On 30 June 2005, the Court of Appeals rendered a Decision affirming with modification the NLRC and the Labor Arbiter's Decisions. The Court of Appeals ruled that Abella's behavior amounted to misconduct and disrespect in violation of company rules, but it was not so gross as to be meted the ultimate penalty of dismissal. The Court of Appeals ruled thus:

> WHEREFORE, THE Petition is hereby DENIED and the assailed NLRC Decision and Resolution affirming the Labor Arbiter's decision are hereby AFFIRMED with the following MODIFICATION, adding that:
>
> - Petitioner is awarded 10% on the total monetary judgment as attorney's fees; and
>
> - Respondent Marival Trading, Inc. is ordered to immediately reinstate Ma. Vianney Abella and pay the salaries due her from May 30, 2001 until her actual reinstatement or until this judgment attains finality.[9]

A Motion for Reconsideration was filed by Marival, but it was denied in a Resolution dated 5 September 2005.[10]

Hence, this Petition raising the lone issue, that:

> THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE ACTS COMMITTED BY PRIVATE RESPONDENT ABELLA CONSTITUTED MERE MISCONDUCT FOR WHICH THE PENALTY OF DISMISSAL WAS TOO SEVERE AND IGNORED THE WELL SETTLED RULE THAT FINDINGS OF FACT OF QUASI JUDICIAL BODIES LIKE THE NLRC, PARTICULARLY WHEN THEY COINCIDE WITH THOSE OF THE LABOR ARBITER ARE ACCORDED WITH RESPECT AND FINALITY IF SUPPORTED BY SUBSTANTIAL EVIDENCE[11]

This Court denies the petition.

As a preliminary matter, this Court must first address the procedural infirmity ascribed by petitioner to the Court of Appeals when it allegedly ignored the well-settled rule that findings of fact of quasi judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter, are accorded respect and finality if supported by substantial evidence. Petitioners contend that the Court of Appeals should have just affirmed the factual findings of the Labor Arbiter and the NLRC.

It has long been settled in the landmark case of St. Martin Funeral Home v. National Labor Relations Commission,[12] that the mode for judicial review of decisions of the NLRC is by a petition for certiorari under Rule 65 of the revised Rules of Civil Procedure. The different modes of appeal, namely, writ of error (Rule 41), petition for review (Rules 42 and 43), and petition for review on certiorari (Rule 45), cannot be availed of because there is no provision on appellate review of the NLRC decisions in the Labor Code, as amended.[13] Although the same case recognizes that both the Court of Appeals and the Supreme Court have original jurisdiction over such petitions, it has chosen to impose the strict observance of the hierarchy of courts. Hence, a petition for certiorari of a decision or resolution of the NLRC should first be filed with the Court of Appeals; direct resort to the Supreme Court shall not be allowed unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify an availment of a remedy within and calling for the exercise by the Supreme Court of its primary jurisdiction.

The extent of judicial review by certiorari of decisions or resolutions of the NLRC, as exercised previously by the Supreme Court and now by the Court of Appeals, is described in Zarate, Jr. v. Olegario,[14] thus –

> The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for certiorari under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.

The Court of Appeals, therefore, can grant the Petition for Certiorari if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy; and the Court of Appeals cannot make this determination without looking into the evidence presented by the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.

As this Court elucidated in Garcia v. National Labor Relations Commission[15] --

> [I]n Ong v. People, we ruled that certiorari can be properly resorted to where the factual findings complained of are not supported by the evidence on record. Earlier, in Gutib v. Court of Appeals, we emphasized thus:
> [I]t has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings. The cases in which certiorari will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is more discretionary than either prohibition or mandamus. In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.
>
> And in another case of recent vintage, we further held:
>
> In the review of an NLRC decision through a special civil action for certiorari, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the findings of the NLRC contradict those of the Labor Arbiter.
>
> In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary to arrive at a just decision of the case. The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for certiorari; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC. (Underscoring supplied.)

The Court of Appeals can even grant the Petition for Certiorari when the factual findings complained of are not

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supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the Labor Arbiter; and when necessary to arrive at a just decision of the case.

In the case at bar, the Court of Appeals necessarily had to look into the evidence at hand to determine if there was substantial evidence to support the findings of the Labor Arbiter and the NLRC. In doing so, the Court of Appeals, apparently, did not make any factual findings contrary to those of the Labor Arbiter and the NLRC. It, in fact, affirmed the Decisions of the Labor Arbiter and the NLRC in ruling that Abella was disrespectful to her superior and dismissal was too harsh a penalty. The Court of Appeals only modified the Labor Arbiter and the NLRC Decisions when it ruled that Abella's act does not constitute gross or serious misconduct, thus, entitling her to payment of backwages and award of Attorney's fees equivalent to 10% of the total monetary judgment.[16] The Court of Appeals acted well within its jurisdiction when it reviewed the factual findings in, and modified, the Labor Arbiter and NLRC Decisions, as it was necessary to arrive at a just resolution of the case.

We now proceed to the main issue for resolution in this case which is whether the Court of Appeals committed a reversible error of law in modifying the Decisions of the Labor Arbiter and the NLRC. The Court of Appeals ruled that Abella should be awarded 10% of the total monetary judgment as attorney's fees; and that she not only be reinstated, but that she be paid the salaries due her from 20 May 2001 until her actual reinstatement or until the judgment attains finality.

However, to arrive at a resolution of the foregoing main issue, this Court must first make a determination of the following:

> (1) whether a valid cause existed to justify Abella's dismissal; and
>
> (2) whether the cause of Abella's dismissal amounts to serious misconduct.

The just causes for the termination of employment are specifically enumerated in Article 282 of the Labor Code.

Article 282 provides thus:

> ART. 282. Termination by employer.- An employer may terminate an employment for any of the following causes:
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;
>
> (e) Other causes analogous to the foregoing.

The Labor Arbiter and the NLRC agreed that Abella's act constituted misconduct but both held that the penalty of dismissal was not proper under the circumstances. The Labor Arbiter and the NLRC in arriving in its conclusion relied as the affidavits executed by Manuel, Albeza and Distor.

The Affidavit of Manuel, in part, reads:

> - On July 14, 2000, I had a meeting with the laboratory staff of our corporation at its location in San Mateo, Rizal;

- Before the meeting broke-up, I requested Mr. George Albeza, and Ms. Claire N. Distor to stay behind as we had other details to discuss. I also requested two (2) male employees to remain and help move some tables;

- As I was meeting with Ms. Distor and Mr. Albeza, and after the rearrangement of some tables was done, we were startled by loud banging noises which we saw was being done by Ma. Vianney D. Abella who was banging her folders and papers on her desk top;

- As the noise was quite disruptive and rude, I asked Vianney, what her problem was (Vianney may problema ba?);

- In response, Vianney came to our table with a very unpleasant sneer on her face and replied, “Sana naman next time na uurungin yung gamit naming, eh sasabihin muna sa amin;”

- That unexpexted response being so rudely made, I retorted: “I can do anything I want with the things in this office. Its company’s property. As far (sic) I am concerned, the only personal belonging you have in this office is your shoulder bag and I did not touch it. What you’re doing to me is insubordination;”

- Thereafter, Vianney returned to her table and resumed her banging sound so I approached her table and asked her “anong ipinagdadabog mo? and Vianney replied in a sarcastic manner, “eh a nahulog yung bag ko, anong magagawa ko?”

- At this point, to avoid any further problem, I asked Vianney to leave the office. In reply, she went to her table, sat down and acted as if nothing had happened. George Albeza then approached her and pleaded with her to leave, only then did Vianney leave the room.[17]

According to Albeza’s affidavit:

- As we were meeting and the tables were being moved by Mr. Cruz and Mr. Reues, Ms. Vianney D. Abella returned to the room and began dropping her folders and other papers loudly on her table, in so doing, Ms. Abella threw her bag to the floor;

- When Ms. Manuel asked Vianey what her problem was, Ms. Abella approached us and in a loud voice answered “Sana ho kung maglilipat kayo ng gamit magpaalam muna sa may-ari (or words of the same meaning).[18]

And Distor recounts in her affidavit that:

- While Ms. Manuel was talking to Mr. Albeza, Vianney Abella entered the room and started fixing her papers on her table but she was doing it in a very loud way that our meeting was disrupted;

- Ms. Manuel asked Vianney what her problem was and Abella approached our table with a very hostile sneer on her face and rudely said: “Ma’am Honey sa sussunod huwag ninyo muna kami pababain bago ninyo ayusin and mga tables.”[19]

Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful character, and implies wrongful intent and not mere error of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee’s work to constitute just cause for his separation.[20] Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) must relate to the performance of the employee’s duties; and (c) must show that the employee has become unfit to continue working for the employer.[21] Indeed, an employer may not be compelled to continue to employ such person whose continuance in the service would be patently inimical to his employer’s business.[22]

However, as discussed above, in order to consider it a serious misconduct that would justify dismissal under the law, it must have been done in relation to the performance of her duties as would show her unfit to continue working for her employer. The acts complained of, under the circumstances they were done, did not in any way pertain to her duties as chemist/quality controller.

This case should be distinguished from the previous cases where we held that the use of insulting and offensive language constitutes gross misconduct justifying an employee's dismissal. Thus:

In De La Cruz v. National Labor Relations Commission,[23] the dismissed employee shouted, "Sayang ang pagka-professional mo!" and "Putang ina mo" at the company physician when the latter refused to give him a referral slip.

In Autobus Workers' Union (AWU) v. National Labor Relations Commission,[24] the dismissed employee told his supervisor "Gago ka" and taunted the latter by saying, "Bakit anong gusto mo, tang ina mo."

In Asian Design and Manufacturing Corporation v. Deputy Minister of Labor,[25] the dismissed employee made false and malicious statements against the foreman (his superior) by telling his co-employees: "If you don't give a goat to the foreman you will be terminated. If you want to remain in this company, you have to give a goat." The dismissed employee therein likewise posted a notice in the comfort room of the company premises, which read: "Notice to all Sander - Those who want to remain in this company, you must give anything to your foreman."

In Reynolds Philippines Corporation v. Eslava,[26] the dismissed employee circulated several letters to the members of the company's board of directors calling the executive vice-president and general manager a "big fool," "anti-Filipino" and accusing him of "mismanagement, inefficiency, lack of planning and foresight, petty favoritism, dictatorial policies, one-man rule, contemptuous attitude to labor, anti-Filipino utterances and activities."

In the case at bar, records do not show that Abella made any such false and malicious statements against her superiors. Quite obviously, affiants failed to cite particular acts or circumstances which would show that Abella was extremely disrespectful to her superior. Affiants merely alleged that respondent threw her bag and other things noisily and uttered unpleasant remarks at her employer. Abella merely uttered, "Sana naman next time na uurungin yung gamit naming (sic), eh sasabihin muna sa amin." We do not find the remarks unpleasant. Quite the contrary, the words "SANA NAMAN" which Abella supposedly uttered, suggest that she was merely making a request or entreaty to her superior for a little more consideration. The utter lack of respect for her superior was not patent. False and malicious statements were not made by Abella. Her acts were not intended to malign or to cast aspersion on Manuel, Marival's Vice-President and General Manager. The affidavits were not sufficient to prove Abella's gross misconduct. Viewed in its context, the act is not of such serious and grave character to warrant dismissal. Given the factual circumstances of this case, Abella's act clearly do not constitute serious misconduct as to justify her dismissal.

The Court reiterates the settled doctrine that in termination of employment disputes, the burden of proof is always on the employer to prove that the dismissal was for a just and valid cause,[27] which Marival herein failed to discharge. Evidence must be clear, convincing and free from any inference that the prerogative to dismiss an employee was abused and unjustly used by the employer to further any vindictive end.[28]

This Court agrees with the Court of Appeals' conclusion that, under the attendant factual antecedents, the dismissal meted out on Abella for misconduct appears to be too harsh a penalty. It must be noted that Abella is being held liable for a first-time offense, despite eight years of unblemished service. Even when an employee is

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found to have transgressed the employer's rules, in the actual imposition of penalties upon the erring employees, consideration must still be given to his length of service and the number of violations committed during his employment.[29]

Terminating employment is one of Marival's prerogatives as an employer. As an employer, Marival has the right to regulate, according to its discretion and best judgment, 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.[30] 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.[31]

The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position, but his very livelihood,[32] his very breadbasket.

Dismissal is the ultimate penalty that can be meted to an employee. The Constitution does not condone wrongdoing by an employee; nevertheless, it urges a moderation of the sanction that may be applied to him.[33] Where a penalty less punitive would suffice, whatever missteps may have been committed by the worker ought not to be visited with a consequence so severe such as dismissal from employment. For the Constitution guarantees the right of the workers to "security of tenure." The misery and pain attendant to the loss of jobs then could be avoided if there is acceptance of the view that under certain circumstances of the case the workers should not be deprived of their means of livelihood.[34] Indeed, the consistent rule is that if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[35]

Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to the payment of 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.[36] These remedies give life to the worker's constitutional right to security of tenure.[37]

After a finding of illegal dismissal herein, we apply the foregoing provision entitling the employee 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 his reinstatement. [38]

Thus, the award of backwages by the Court of Appeals is in order. However, the Court of Appeals' period of computation of the award of backwages must be modified. The Court of Appeals ruled that:

> As regards backwages, it must be stressed that not every case of illegal dismissal will automatically entail its grant. While generally an order of reinstatement carries with it an award of backwages, the court may not only mitigate, but also absolve the employer from liability of backwages where good faith is evident. In the instant case, the employer believed that Ms. Abella's dismissal was based on a valid ground. Her hostile attitude was uncalled for, and Ms. Manuel cannot be blamed for her anger, being provoked by the disrespect accorded her

> by the employee. This militates against the propriety of granting [Abella] backwages, even moral and exemplary damages, as to sanction [Abella's] unprofessional conduct.
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> Lastly, [Abella] informs this Court that Marival until now has not yet reinstated her since the May 30, 1991 Labor Arbiter's decision, arguing that the NLRC failed to make a clarificatory ruling regarding her immediate reinstatement. As correctly argued by [Abella], reinstatement is self executory and without need of writ of execution. It is mandatory upon Marival to actually reinstate Ms. Abella or reinstate her in the payroll. Having failed to do so entitles her to the salaries and other benefits from the time of the Labor Arbiter's decision until the finality of this judgment.[39]

In line with the aforecited provision of the Labor Code (Article 279) and prevailing jurisprudence, the award of backwages should be modified in the sense that backwages should be computed from the time the compensation was not paid up to the time of reinstatement.

Finally, Marival, et al., lament that the Court of Appeals erred in granting Abella attorney's fees. The award of attorney's fees, though not prayed for, is sanctioned by law and must be upheld.

This Court held in San Miguel Corporation v. Aballa[40] that in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code.

Article 111 of the Labor Code reads:

> ART. 111. Attorney's fees.- (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
>
> (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceeding for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

Section 8, Rule VIII, Book III of its Implementing Rules, provides:

> SEC. 8. Attorney's fees.- Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

Paragraph 7, Article 2208 of the Civil Code, reads:

> ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> x x x x
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers; x x x.

The award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. What is important is merely a showing that the lawful wages were not paid accordingly, as in the instant controversy.

WHEREFORE, the instant Petition is hereby DENIED. The Decision dated 30 June 2005 of the Court of Appeals in CA-G.R. SP No. 87820 is hereby AFFIRMED with MODIFICATION that backwages be awarded from the time that compensation was not paid up to the time of her actual reinstatement. Let the records of this case be remanded to the Computation and Examination Unit of the NLRC for proper computation of subject money

claims as above-discussed. Costs against petitioners.

SO ORDERED.

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

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[1] Penned by Associate Justice Mariano C. del Castillo with Associate Justices Salvador J. Valdez, Jr. and Magdangal M. de Leon, concurring. CA rollo, pp. 210-223.

[2] Id. at 64.

[3] Id. at 65.

[4] Id. at 213-214.

[5] Id. at 214.

[6] Id. at 97.

[7] Id. at 32.

[8] Id. at 34-36.

[9] Id. at 222.

[10] Id. at 239.

[11] Rollo, p. 18.

[12] 356 Phil. 811, 816 (1998); See also Philippine National Bank v. Cabansag, G.R. No. 157010, 21 June 2005, 460 SCRA 514, 524.

[13] Noted in Footnote 17 of the case St. Martin Funeral Home v. National Labor Relations Commission, supra.

[14] 331 Phil. 278, 287-288 (1996).

[15] G.R. No. 147427, 7 February 2005, 450 SCRA 535, 548-549.

[16] Note that both the Labor Arbiter and the NLRC found that Abella committed gross or serious misconduct, but did not impose upon her the penalty of dismissal in consideration of the fact that this was her first offense.

[17] CA rollo, pp. 67-68.

[18] Id. at 69.

[19] Id. at 71.

[20] Samson v. National Labor Relations Commission, 386 Phil. 669, 682 (2000).

[21] Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission, 387 Phil. 250, 261 (2000).

[22] GT Printers v. National Labor Relations Commission, G.R. No. 100749, 24 April 1992, 208 SCRA 321, 324-325.

[23] G.R. No. 82703, 15 September 1989, 177 SCRA 626, 627.

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[24] 353 Phil. 419, 423 (1998).

[25] 226 Phil. 20, 21 (1986).

[26] G.R. No. L-48814, 27 June 1985, 137 SCRA 259, 261.

[27] Mendoza v. National Labor Relations Commission, 369 Phil. 1113, 1123 (1999); Austria v. National Labor Relations Commission, 369 Phil. 557, 565 (1999); Maranaw Hotels and Resort Corporation v. National Labor Relations Commission, 363 Phil. 163, 168 (1999).

[28] St. Michael's Institute v. Santos, 422 Phil. 723, 734 (2001).

[29] De Guzman v. National Labor Relations Commission, 371 Phil. 192, 204 (1999).

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

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

[32] Maglutac v. National Labor Relations Commission, G.R. No. 78345, 21 September 1990, 189 SCRA 767, 778.

[33] Austria v. National Labor Relations Commission, supra note 27.

[34] Philips Semiconductors (Phils.), Inc. v. Fadriquela, G.R. No. 141717, 14 April 2004, 427 SCRA 408.

[35] Asuncion v. National Labor Relations Commission, 414 Phil. 329, 336 (2001).

[36] Rodriguez, Jr. v. National Labor Relations Commission, 441 Phil. 849, 858-859 (2002).

[37] Hantex Trading Co., Inc. v. Court of Appeals, 438 Phil. 737, 747-748 (2002).

[38] Agabon v. National Labor Relations Commission, G.R. No. 158693, 17 November 2004, 442 SCRA 573, 608.

[39] CA rollo, p. 38.

[40] G.R. No. 149011, 28 June 2005, 461 SCRA 392.

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