CESAR C. LIRIO, DOING BUSINESS UNDER THE NAME AND STYLE OF CELKOR AD SONICMIX, PETITIONER, VS. WILMER D. GENOVIA, RESPONDENT.

G.R. No. 169757. November 23, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in CA-G.R. SP No. 88899 dated August 4, 2005 and its Resolution dated September 21, 2005, denying petitioner's motion for reconsideration.

The Court of Appeals reversed and set aside the resolution of the NLRC, and reinstated the decision of the Labor Arbiter with modification, finding that respondent is an employee of petitioner, and that respondent was illegally dismissed and entitled to the payment of backwages and separation pay in lieu of reinstatement.

The facts are as follows:

On July 9, 2002, respondent Wilmer D. Genovia filed a complaint against petitioner Cesar Lirio and/or Celkor Ad Sonicmix Recording Studio for illegal dismissal, non-payment of commission and award of moral and exemplary damages.

In his Position Paper,[1] respondent Genovia alleged, among others, that on August 15, 2001, he was hired as studio manager by petitioner Lirio, owner of Celkor Ad Sonicmix Recording Studio (Celkor). He was employed to manage and operate Celkor and to promote and sell the recording studio's services to music enthusiasts and other prospective clients. He received a monthly salary of P7,000.00. They also agreed that he was entitled to an additional commission of P100.00 per hour as recording technician whenever a client uses the studio for recording, editing or any related work. He was made to report for work from Monday to Friday from 9:00 a.m. to 6 p.m. On Saturdays, he was required to work half-day only, but most of the time, he still rendered eight hours of work or more. All the employees of petitioner, including respondent, rendered overtime work almost everyday, but petitioner never kept a daily time record to avoid paying the employees overtime pay.

Respondent stated that a few days after he started working as a studio manager, petitioner approached him and told him about his project to produce an album for his 15-year-old daughter, Celine Mei Lirio, a former talent of ABS-CBN Star Records. Petitioner asked respondent to compose and arrange songs for Celine and promised that he (Lirio) would draft a contract to assure respondent of his compensation for such services. As agreed upon, the additional services that respondent would render included composing and arranging musical scores only, while the technical aspect in producing the album, such as digital editing, mixing and sound engineering would be performed by respondent in his capacity as studio manager for which he was paid on a monthly basis. Petitioner instructed respondent that his work on the album as composer and arranger would only be done during his spare time, since his other work as studio manager was the priority. Respondent then started working on the album.

Respondent alleged that before the end of September 2001, he reminded petitioner about his compensation as

composer and arranger of the album. Petitioner verbally assured him that he would be duly compensated. By mid-November 2001, respondent finally finished the compositions and musical arrangements of the songs to be included in the album. Before the month ended, the lead and back-up vocals in the ten (10) songs were finally recorded and completed. From December 2001 to January 2002, respondent, in his capacity as studio manager, worked on digital editing, mixing and sound engineering of the vocal and instrumental audio files.

Thereafter, respondent was tasked by petitioner to prepare official correspondence, establish contacts and negotiate with various radio stations, malls, publishers, record companies and manufacturers, record bars and other outlets in preparation for the promotion of the said album. By early February 2002, the album was in its manufacturing stage. ELECTROMAT, manufacturer of CDs and cassette tapes, was tapped to do the job. The carrier single of the album, which respondent composed and arranged, was finally aired over the radio on February 22, 2002.

On February 26, 2002, respondent again reminded petitioner about the contract on his compensation as composer and arranger of the album. Petitioner told respondent that since he was practically a nobody and had proven nothing yet in the music industry, respondent did not deserve a high compensation, and he should be thankful that he was given a job to feed his family. Petitioner informed respondent that he was entitled only to 20% of the net profit, and not of the gross sales of the album, and that the salaries he received and would continue to receive as studio manager of Celkor would be deducted from the said 20% net profit share. Respondent objected and insisted that he be properly compensated. On March 14, 2002, petitioner verbally terminated respondent's services, and he was instructed not to report for work.

Respondent asserts that he was illegally dismissed as he was terminated without any valid grounds, and no hearing was conducted before he was terminated, in violation of his constitutional right to due process. Having worked for more than six months, he was already a regular employee. Although he was a so called "studio manager," he had no managerial powers, but was merely an ordinary employee.

Respondent prayed for his reinstatement without loss of seniority rights, or, in the alternative, that he be paid separation pay, backwages and overtime pay; and that he be awarded unpaid commission in the amount of P2,000.00 for services rendered as a studio technician as well as moral and exemplary damages.

Respondent's evidence consisted of the Payroll dated July 31, 2001 to March 15, 2002, which was certified correct by petitioner,[2] and Petty Cash Vouchers[3] evidencing receipt of payroll payments by respondent from Celkor.

In defense, petitioner stated in his Position Paper[4] that respondent was not hired as studio manager, composer, technician or as an employee in any other capacity of Celkor. Respondent could not have been hired as a studio manager, since the recording studio has no personnel except petitioner. Petitioner further claimed that his daughter Celine Mei Lirio, a former contract artist of ABS-CBN Star Records, failed to come up with an album as the latter aborted its project to produce one. Thus, he decided to produce an album for his daughter and established a recording studio, which he named Celkor Ad Sonicmix Recording Studio. He looked for a composer/arranger who would compose the songs for the said album. In July 2001, Bob Santiago, his son-in--law, introduced him to respondent, who claimed to be an amateur composer, an arranger with limited experience and musician without any formal musical training. According to petitioner, respondent had no track record as a composer, and he was not known in the field of music. Nevertheless, after some discussion, respondent verbally agreed with petitioner to co-produce the album based on the following terms and conditions: (1) petitioner shall provide all the financing, equipment and recording studio; (2) Celine Mei Lirio shall sing all the songs; (3) respondent shall act as composer and arranger of all the lyrics and the music of the five songs he

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already composed and the revival songs; (4) petitioner shall have exclusive right to market the album; (5) petitioner was entitled to 60% of the net profit, while respondent and Celine Mei Lirio were each entitled to 20% of the net profit; and (6) respondent shall be entitled to draw advances of P7,000.00 a month, which shall be deductible from his share of the net profits and only until such time that the album has been produced.

According to petitioner, they arrived at the foregoing sharing of profits based on the mutual understanding that respondent was just an amateur composer with no track record whatsoever in the music industry, had no definite source of income, had limited experience as an arranger, had no knowledge of the use of sound mixers or digital arranger and that petitioner would help and teach him how to use the studio equipment; that petitioner would shoulder all the expenses of production and provide the studio and equipment as well as his knowledge in the use thereof; and Celine Mei Lirio would sing the songs. They embarked on the production of the album on or about the third week of August 2002.

Petitioner asserted that from the aforesaid terms and conditions, his relationship with respondent is one of an informal partnership under Article 1767[5] of the New Civil Code, since they agreed to contribute money, property or industry to a common fund with the intention of dividing the profits among themselves. Petitioner had no control over the time and manner by which respondent composed or arranged the songs, except on the result thereof. Respondent reported to the recording studio between 10:00 a.m. and 12:00 noon. Hence, petitioner contended that no employer-employee relationship existed between him and the respondent, and there was no illegal dismissal to speak of.

On October 31, 2003, Labor Arbiter Renaldo O. Hernandez rendered a decision,[6] finding that an employer-employee relationship existed between petitioner and respondent, and that respondent was illegally dismissed. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, we find that respondents CELKOR AD SONICMIX RECORDING STUDIO and/ or CESAR C. LIRIO (Owner), have illegally dismissed complainant in his status as regular employee and, consequently, ORDERING said respondents:
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> 1)
>
> To pay him full backwages from date of illegal dismissal on March 14, 2002 until finality of this decision and, in lieu of reinstatement, to [pay] his separation pay of one (1) month pay per year of service reckoned from [the] date of hire on August 15, 2001 until finality of this decision, which as of date amounts to full backwages total of 145,778.6 (basic P7,000.00 x 19.6 mos.=P133,000.00 + 1/12 thereof as 13th month pay of P11,083.33 + SILP P7,000/32.62 days=P214.59/day x 5=P1,072.96 x 1.58 yrs.=P1,695.27); separation pay of P22,750.00 (P7,000.00 x 3.25 yrs.);
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> 2)
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> To pay complainant's unpaid commission of P2,000.00;
>
> 3)
>
> To pay him moral and exemplary damages in the combined amount of P75,000.00.

Other monetary claims of complainant are dismissed for lack of merit.[7]

The Labor Arbiter stated that petitioner’s denial of the employment relationship cannot overcome respondent’s positive assertion and documentary evidence proving that petitioner hired respondent as his employee.[8]

Petitioner appealed the decision of the Labor Arbiter to the National Labor Relations Commission (NLRC).

In a Resolution7 dated October 14, 2004, the NLRC reversed and set aside the decision of the Labor Arbiter. The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the Appeal is GRANTED. Accordingly, the Decision appealed from is REVERSED and, hence, SET ASIDE and a new one ENTERED dismissing the instant case for lack of merit.[9]

The NLRC stated that respondent failed to prove his employment tale with substantial evidence. Although the NLRC agreed that respondent was able to prove that he received gross pay less deduction and net pay, with the corresponding Certification of Correctness by petitioner, covering the period from July 31, 2001 to March 15, 2002, the NLRC held that respondent failed to proved with substantial evidence that he was selected and engaged by petitioner, that petitioner had the power to dismiss him, and that they had the power to control him not only as to the result of his work, but also as to the means and methods of accomplishing his work.

Respondent's motion for reconsideration was denied by the NLRC in a Resolution9 dated December 14, 2004.

Respondent filed a petition for certiorari before the Court of Appeals.

On August 4, 2005, the Court of Appeals rendered a decision[10] reversing and setting aside the resolution of the NLRC, and reinstating the decision of the Labor Arbiter, with modification in regard to the award of commission and damages. The Court of Appeals deleted the award of commission, and moral and exemplary damages as the same were not substantiated. The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, the petition is GRANTED and the assailed resolutions dated October 14, 2004 and December 14, 2004 are hereby REVERSED and SET ASIDE. Accordingly, the decision dated October 31, 2003 of the Labor Arbiter is REINSTATED, with the modification that the awards of commission and damages are deleted.[11] (Emphasis supplied.)

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in its Resolution[12] dated September 21, 2005.

Hence, petitioner Lirio filed this petition.

Petitioner states that respondent appealed to the Court of Appeals via a petition for certiorari under Rule 65, which will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of the NLRC.[13] However, petitioner contends that the Court of Appeals decided the case not in accordance with law and applicable rulings of this Court as petitioner could not find any portion in the Decision of the Court of Appeals ruling that the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner submits that the Court of Appeals could not review an error of judgment by the NLRC raised before it on a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. Moreover, petitioner contends that it was error on the part of the Court of Appeals to review the finding of facts of the NLRC on whether there exists an employer-employee relationship between the parties.

Petitioner's argument lacks merit.

It is noted that respondent correctly sought judicial review of the decision of the NLRC via a petition for certiorari under Rule 65 of the Rules of Court filed before the Court of Appeals in accordance with the decision of the Court in St. Martin Funeral Home v. NLRC,[14] which held:

> Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for certiorari under Rule 65.

> Consequently, all such petitions should henceforth be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.[15]

The Court of Appeals stated in its decision that the issue it had to resolve was "whether or not the public respondent [NLRC] committed grave abuse of discretion when it declared that no employer-employee relationship exists between the petitioner and the private respondents, since the petitioner failed to prove such fact by substantial evidence."[16]

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.[17] 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.[18]

The Court of Appeals, therefore, could 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 that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties.[19] 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.[20] Thus, contrary to the contention of petitioner, the Court of Appeals can review the finding of facts of the NLRC and the evidence of the parties to determine whether the NLRC gravely abused its discretion in finding that no employer-employee relationship existed between petitioner and respondent.[21]

Respondent raised before the Court of Appeals the following issues:

> I. RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN SHIFTING THE BURDEN OF PROVING THAT EMPLOYMENT RELATIONS EXISTED BETWEEN THE PETITIONER AND THE PRIVATE RESPONDENTS TO THE FORMER, IN VIOLATION OF ESTABLISHED PROVISION OF LAWS AND JURISPRUDENCE.
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> II. RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT NO EMPLOYER-EMPLOYEE RELATIONSHIP EXISTED BETWEEN THE PETITIONER AND THE PRIVATE RESPONDENTS.
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> III. RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE PETITIONER'S PAYROLL AND THE PETTY CASH VOUCHERS AS AN INDICIA OF EMPLOYMENT RELATIONS BETWEEN PETITIONER AND THE PRIVATE RESPONDENTS.[22]

Between the documentary evidence presented by respondent and the mere allegation of petitioner without any proof by way of any document evincing their alleged partnership agreement, the Court of Appeals agreed with the Labor Arbiter that petitioner failed to substantiate his claim that he had a partnership with respondent, citing the Labor Arbiter's finding, thus:

> In this case, complainant's evidence is substantial enough to prove the employment relationship that on August 14, 2001, he was hired as 'Studio manager' by respondent Lirio to manage and operate the recording studio and to promote and sell its services to music enthusiasts and clients, proven by his receipt for this purpose from said respondent a fixed monthly compensation of P7,000.00, with commission of P100.00 per hour when serving as recording technician, shown by the payroll from July 31, 2001-March 15, 2002. The said evidence points to complainant's hiring as employee so that the case comes within the purview of our jurisdiction on labor disputes between an employer and an employee. x x x.

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> Respondent Lirio's so-called existence of a partnership agreement was not substantiated and his assertion thereto, in the face of complainant's evidence, constitute but a self-serving assertion, without probative value, a mere invention to justify the illegal dismissal.
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> x x x x
>
> Indeed, we find credible that what caused complainant's dismissal on March 14, 2002 was due to his refusal to respondent's Lirio's insistences on merely giving him 20% based on net profit on sale of the album which he composed and arranged during his free time and, moreover, that salaries which he received would be deducted therefrom, which obviously, soured the relations from the point of view of respondent Lirio.[23]

Hence, based on the finding above and the doctrine 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,”[24] the Court of Appeals reversed the resolution of the NLRC and reinstated the decision of the Labor Arbiter with modification. Even if the Court of Appeals was remiss in not stating it in definite terms, it is implied that the Court of Appeals found that the NLRC gravely abused its discretion in finding that no employer-employee relationship existed between petitioner and respondent based on the evidence on record.

We now proceed to the main issue raised before this Court: Whether or not the decision of the Court of Appeals is in accordance with law, or whether or not the Court of Appeals erred in reversing and setting aside the decision of the NLRC, and reinstating the decision of the Labor Arbiter with modification.

In petitions for review, only errors of law are generally reviewed by this Court. This rule, however, is not ironclad.[25] Where the issue is shrouded by a conflict of factual perceptions by the lower court or the lower administrative body, in this case, the NLRC, this Court is constrained to review the factual findings of the Court of Appeals.[26]

Before a case for illegal dismissal can prosper, it must first be established that an employer-employee relationship existed between petitioner and respondent.[27]

The elements to determine the existence of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer’s power to control the employee’s conduct. The most important element is the employer’s control of the employee’s conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.[28]

It is settled that no particular form of evidence is required to prove the existence of an employer-employee relationship.[29] Any competent and relevant evidence to prove the relationship may be admitted.[30]

In this case, the documentary evidence presented by respondent to prove that he was an employee of petitioner are as follows: (a) a document denominated as "payroll" (dated July 31, 2001 to March 15, 2002) certified correct by petitioner,[31] which showed that respondent received a monthly salary of P7,000.00 (P3,500.00 every 15th of the month and another P3,500.00 every 30th of the month) with the corresponding deductions due to absences incurred by respondent; and (2) copies of petty cash vouchers,[32] showing the amounts he received and signed for in the payrolls.

The said documents showed that petitioner hired respondent as an employee and he was paid monthly wages of P7,000.00. Petitioner wielded the power to dismiss as respondent stated that he was verbally dismissed by petitioner, and respondent, thereafter, filed an action for illegal dismissal against petitioner. The power of control refers merely to the existence of the power.[33] It is not essential for the employer to actually supervise the performance of duties of the employee, as it is sufficient that the former has a right to wield the power.[34] Nevertheless, petitioner stated in his Position Paper that it was agreed that he would help and teach respondent

how to use the studio equipment. In such case, petitioner certainly had the power to check on the progress and work of respondent.

On the other hand, petitioner failed to prove that his relationship with respondent was one of partnership. Such claim was not supported by any written agreement. The Court notes that in the payroll dated July 31, 2001 to March 15, 2002,[35] there were deductions from the wages of respondent for his absence from work, which negates petitioner's claim that the wages paid were advances for respondent's work in the partnership. In Nicario v. National Labor Relations Commission,[36] the Court held:

> It is a well-settled doctrine, that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection of labor. This rule should be applied in the case at bar, especially since the evidence presented by the private respondent company is not convincing. x x x[37]

Based on the foregoing, the Court agrees with the Court of Appeals that the evidence presented by the parties showed that an employer-employee relationship existed between petitioner and respondent.

In termination cases, the burden is upon the employer to show by substantial evidence that the termination was for lawful cause and validly made.[38] Article 277 (b) of the Labor Code[39] puts the burden of proving that the dismissal of an employee was for a valid or authorized cause on the employer, without distinction whether the employer admits or does not admit the dismissal.[40] For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause, and (b) the employee must be afforded due process.[41] Procedural due process requires the employer to furnish an employee with two written notices before the latter is dismissed: (1) the notice to apprise the employee of the particular acts or omissions for which his dismissal is sought, which is the equivalent of a charge; and (2) the notice informing the employee of his dismissal, to be issued after the employee has been given reasonable opportunity to answer and to be heard on his defense.[42] Petitioner failed to comply with these legal requirements; hence, the Court of Appeals correctly affirmed the Labor Arbiter's finding that respondent was illegally dismissed, and entitled to the payment of backwages, and separation pay in lieu of reinstatement.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 88899, dated August 4, 2005, and its Resolution dated September 21, 2005, are AFFIRMED.

No costs.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Perez,[*] and Mendoza, JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

[1] CA rollo, p. 49.

[2] Annex "A," id. at 61.

[3] CA rollo, pp. 62-65.

[4] Id. at 66.

[5] Art. 1767. By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

[6] CA rollo, p. 115.

[7] Id. at 120-121.

[8] Labor Arbiter's Decision, id. at 118.

[9] Rollo, pp. 53-54.

[10] Id. at 30-41.

[11] Id. at 41.

[12] Id. at 42.

[13] Id. at 24, citing Philtranco Service Enterprises, Inc. v. National Labor Relations Commission, 351 Phil. 827, 834 (1998).

[14] 356 Phil. 811 (1998).

[15] Id. at 824. (Emphasis supplied.)

[16] Emphasis supplied.

[17] Leonis Navigation Co., Inc. v. Villamater, G.R. No. 179169, March 3, 2010, 614 SCRA 182, 192.

[18] Id.

[19] Id.

[20] Id.

[21] See St. Martin Funeral Home v. NLRC, supra note 14.

[22] CA Decision, rollo, pp. 36-37.

[23] Rollo, pp. 39-40.

[24] Sy v. Court of Appeals, G.R. No. 142293, February 27, 2003, 398 SCRA 301, 309.

[25] Alay sa Kapatid International Foundation, Inc. (AKAP) v. Dominguez, G.R. No. 164198, June 15, 2007, 524 SCRA 719, 723.

[26] Id. See also Philemploy Services and Resources, Inc. v. Rodriguez, G.R. No. 152616, March 31, 2006, 486 SCRA 302, 314; Filipinas Pre-Fabricated Building Systems, Inc. v. Puente, 493 Phil. 923, 930 (2005); Go v. Court of Appeals, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 365.

[27] Sy v. Court of Appeals, supra note 23, at 306.

[28] Id.

[29] Opulencia Ice Plant and Storage v. NLRC, G.R. No. 98368, December 15, 1993, 228 SCRA 473, 478.

[30] Id.

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[31] CA rollo, p. 61.

[32] Id. at 62-65.

[33] Social Security System v. Court of Appeals, 401 Phil. 132, 151 (2000).

[34] Id.

[35] CA rollo, p. 61

[36] 356 Phil. 936 (1998).

[37] Id. at 943.

[38] Sy v. Court of Appeals, supra note 24, at 310.

[39] Article 277. Miscellaneous provisions. – x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. 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. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x (Emphasis supplied.)

[40] Sy v. Court of Appeals, supra note 24, at 310.

[41] Id.

[42] Id. at 312.

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