

**PUNONGBAYAN AND ARAULLO (P&A), BENJAMIN R.
PUNONGBAYAN., JOSE G. ARAULLO, GREGORIO S. NAVARRO,
ALFREDO V. DAMIAN AND JESSIE C. CARPIO, PETITIONERS, VS.
ROBERTO PONCE LEON RESPO...**

G.R. No. 174115. November 09, 2015

Ponente: JARDELEZA, J.

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JARDELEZA, J.:

This is a petition for review on certiorari[1] of the Decision[2] of the Court of Appeals dated February 15, 2006, and Resolution[3] dated August 3, 2006 reversing the Decision of the NLRC and the Labor Arbiter, holding that petitioners validly dismissed respondent Roberto Ponce Leon due to loss of trust and confidence.

The Facts

Petitioner Punongbayan and Araullo (P&A) is a professional partnership engaged in public accounting practice. It is duly registered and organized under existing Philippine laws. Benjamin R. Punongbayan (Punongbayan), Jose G. Araullo, Gregorio S. Navarro, Alfredo V. Damian (Damian) and Jessie S. Carpio, are partners of P&A (other petitioners).[4]

On July 5, 1988, P&A hired Roberto Ponce Leon (respondent) as Staff Auditor 1. After years of service, he became the Manager-in-Charge of the Cebu operations and the Director of the Visayas-Mindanao operations of P&A.[5] Sometime in April 2002, accounting firm Sycip Gorres Velayo and Company (SGV) commenced negotiations with P&A for a possible merger of their Philippine operations. During negotiations, some of P&A's employees, including respondent, expressed fears on their fate in case of a merger.[6]

On April 24, 2002, P&A sent a Memorandum[7] to its clients informing them about its agreement with SGV to combine their practices, and to later become a member of the Ernst & Young Organization. Subject to appropriate due diligence and final partner's approval, the combined practice was expected to be effective on July 1, 2002.[8] On April 26, 2002, through an email-letter to Punongbayan, respondent pleaded against the merger. He argued mainly that: (1) the combination would defeat the spirit of competition and will create a monopoly of sorts; (2) the arrangement would be very onerous on the part of P&A; (3) Ernst and Young was attacking P&A despite 14 years of collaboration and even threatened to withdraw its technology from P&A; and (4) the cultures of P&A and SGV would not match because P&A's culture was founded on excellence while that of SGV was founded on hubris.[9]

Subsequently, P&A learned that respondent (1) met with P&A's clients and invited them to engage the services of Laya Mananghaya-KPMG (LM-KPMG), a competing accounting firm, and (2) attempted to pirate the entire staff of P&A's Cebu City Office and Davao City Office. Thus, on May 30, 2002, petitioner Damian sent respondent a letter asking him to explain the alleged disloyal and inimical acts he committed against P&A.[10]

The letter reads:

May 30, 2002

Mr. Robert P. Lepon
Punongbayan & Araullo
Cebu City

Dear Bob,

As Greg Navarro communicated to you over the telephone yesterday, it has come to our attention that you have discussed possible employment with the managing partner of one of our competitors and that you have agreed on practically all the terms of employment except the date you will join them. It has also come to our attention that you have been enjoining a number of our clients in Cebu and Davao to consider transferring the audit to the firm you intend to join, and that you have also talked to our staff in Cebu and Davao, inviting them to join you when you make the move to the other firm. Please give us an explanation not later than June 7, 2002 of such actuations on your part, which have caused us to doubt seriously whether or not you are still working in the interest of Punongbayan & Araullo, and which could be valid grounds for the termination of your employment with the Firm.

While we are waiting for your explanation, we require you to go on leave of absence with pay effective June 1, 2002 until June 15, 2002. We would like you to turn over your Firm-issued laptop computer, client work files, and other such materials that may be required for the continued operation of the Cebu and Davao Offices to the person we will designate to take over your functions during the period of your leave of absence. (Emphasis supplied.)

Very truly yours,

(Sgd.)
ALFREDO V. DAMIAN
Partner
HR & Communication[11]

In his reply[12] dated June 6, 2002, respondent reiterated his worries about the merger, and denied the allegations against him. On June 17, 2002, after considering respondent's explanation, Damian served upon respondent a termination notice[13] informing him that his employment is terminated effective June 16, 2002 due to loss of trust and confidence.

On June 14, 2002, respondent filed a complaint for illegal suspension and illegal dismissal, and for payment of 13th month pay, service incentive leave, allowances, separation pay, retirement benefits, moral damages, and exemplary damages against P&A and its partners with the Regional Arbitration Branch No. VII of the National Labor Relations Commission (NLRC) in Cebu City. The parties failed to amicably settle the case so they were required to submit position papers.[14]

On August 13, 2013, the Labor Arbiter dismissed the complaint for lack of merit.[15] The Labor Arbiter held that "the [petitioners] were able to satisfactorily discharge their obligation of establishing the basis for their loss of trust and confidence in [respondent] through the affidavits of their witnesses and other pieces of evidence." [16] It also ruled that respondent was not denied due process. Respondent was able to submit his written explanation to the charges against him, and he did not request for an adversarial hearing. Petitioners could not be faulted for requiring respondent to go on leave with pay to prevent him from continuing with his client sorties and attempts to pirate his colleagues and subordinates on firm time and resources.[17]

The NLRC affirmed the Labor Arbiter's Decision.[18] Respondent filed a motion for reconsideration[19] which was denied.[20] Thus, respondent filed a petition for certiorari[21] before the Court of Appeals. He faulted the NLRC for affirming the Labor Arbiter's finding that his dismissal from employment was valid.

The Court of Appeals found the petition meritorious. It reviewed the factual findings of the NLRC, and it ruled that petitioners illegally suspended and dismissed respondent from employment.[22]

The Court of Appeals did not give credence to the affidavits executed by P&A's employees relating to the inimical acts committed by respondent. It noted the "soaring possibility that the affidavits of these persons are highly tainted with bias cannot be discarded, they being employees of P&A." [23]

It further ruled that respondent was denied due process. "With the [respondent's] denial of the charges against him, a hearing or investigation should have been conducted by P&A instead of just hastily furnishing the [respondent] the notice of termination of his employment." [24]

The Court of Appeals set aside the NLRC Decision and directed petitioners to pay jointly and severally respondent full backwages from June 16, 2002 up to the finality of the judgment, separation pay (in lieu of reinstatement), and attorney's fees equivalent to 10% of respondent's separation pay and backwages. The dispositive portion of the decision read:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case and SETTING ASIDE the [D]ecision and [R]esolution promulgated by the public respondent NLRC, Fourth Division in Cebu City in NLRC Case No. V-000090-2004 dated March 31, 2005 and July 5, 2005, respectively. Private respondents are hereby DIRECTED to pay jointly and severally the petitioner his full backwages from June 16, 2002 up to the finality of this judgment, separation pay in the sum of P1,142,400.00 for his 14 years of service with P&A computed at one month salary for every year of service, and attorney's fees equivalent to 10% of the petitioner's separation pay and backwages.[25]

P&A filed a motion for reconsideration[26] which was denied.[27] Thus, this petition.

The Petition

P&A maintained that the Court of Appeals committed grave error in rendering the Decision on four grounds.

First, the Court of Appeals erred when it reversed the factual findings of both the NLRC and the Labor Arbiter. It erred when it re-evaluated the evidentiary weight accorded to the affidavits of petitioners' witnesses though supported by substantial evidence on record.[28]

Second, the Court of Appeals erroneously ruled that the affidavits of the co-employees of respondent are not sufficient basis for petitioners' loss of trust and confidence in him. There was no allegation, much less proof, that respondent's colleagues and subordinates were motivated by any ill motive in giving false statements against him. There was also no showing that the witnesses were forced, intimidated, or coerced into executing their affidavits.[29]

Third, the Court of Appeals erred in ruling that the absence of an administrative investigation constitutes a violation of respondent's right to due process.[30]

Fourth, the Court of Appeals erred in holding the partners jointly and severally liable to pay the judgment award despite the absence of any showing that they acted in bad faith in terminating respondent's employment.[31]

Issues

Based on petitioners' allegations of errors, the issues for resolution before this Court are:

- Whether the factual findings of both the NLRC and the Labor Arbiter were supported by substantial evidence;

- Whether respondent was deprived of his right to due process; and
- Whether the petitioners are jointly and severally liable with P&A to pay the judgment award.

Court's Ruling

The parameters of a Rule 45 appeal from the Court of Appeal's Rule 65 decision on a labor case, are as follows:

In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.

Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.

Nevertheless, there are exceptional cases where we, in the exercise of our discretionary appellate jurisdiction, may be urged to look into factual issues raised in a Rule 45 petition. For instance, when the petitioner persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or court a quo, as Section 5, Rule 133 of the Rules of Court states in express terms that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established only if supported by substantial evidence.[32] (Citations omitted; italics and emphasis supplied)

Here, we find it necessary to examine the record to determine whether the findings of the Labor Arbiter and the NLRC are supported by substantial evidence.

The factual findings of the NLRC
and the Labor Arbiter were supported
by substantial evidence.

The Court of Appeals ruled that P&A failed to prove by substantial evidence its allegations that respondent committed acts of disloyalty, or acts inimical to the interest of P&A. The affidavits executed by the employees of P&A, over whom it has undeniable moral ascendancy, do not deserve credence and are highly suspect.[33]

We disagree.

Affidavits may be sufficient to establish substantial evidence. Substantial evidence means "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." [34] In *Capitol Medical Center, Inc. v. National Labor Relations Commission*, [35] this Court gave credence to the affidavits of the 17 employees of Capitol Medical Center, its security guards, and the union members, to the effect that no strike vote took place, in that case, while the Labor Arbiter upheld the affidavits of the employees, guards and union members of Capitol Medical Center, the NLRC and the Court of Appeals ruled that the affidavits had no probative value because they were executed out of fear. The Court of Appeals also noted that the affidavits were uniform and pro forma. In reversing the Court of Appeals, this Court ruled:

The allegations in the foregoing affidavits [of the overseer of the parking lot and the two security guards] belie the claim of the respondents and the finding of the NLRC that a secret balloting took place on November 10, 1997 in front of the hospital at the corner of Scout Magbanua Street and Panay Avenue, Quezon City, x x x. Indeed, 17 of those who purportedly voted in a secret voting executed their separate affidavits that no secret balloting took place on November 10, 1997 and that even if they were not members of the respondent Union, were asked to vote and sign attendance papers. The respondents failed to adduce substantial evidence that the said affiants were coerced into executing the said affidavits. The bare fact that some portions of the said affidavits are similarly worded does not constitute substantial evidence that the petitioner forced, intimidated or coerced the affiants to execute the same.[36] (Emphasis supplied).

This principle was reiterated in *INC Shipmanagement, Inc., et al. v. Moradas*.^[37] In that case, this Court upheld the affidavits and statements executed by the vessel's officers and crew members to support the claim that the injuries of respondent-employee were self-inflicted:

While respondent contended that the affidavits and statements of the vessel's officers and his fellow crew members should not be given probative value as they were biased, self-serving, and mere hearsay, he nonetheless failed to present any evidence to substantiate his own theory. Besides, as correctly pointed out by the NLRC, the corroborating affidavits and statements of the vessel's officers and crew members must be taken as a whole and cannot just be perfunctorily dismissed as self-serving absent any showing that they were lying when they made the statements therein.[38] (Citations omitted; emphasis supplied.)

Here, respondent did not adduce evidence to show that the affiants, including Ramilito L. Nanola (Nanola), Wendell D. Ganhinhin (Ganhinhin), Sophia M. Verdida (Verdida), and Cielo C. Diano (Diano), all of whom were employed by P&A, were coerced to execute an affidavit prejudicial to respondent.

In fact, respondent never questioned the evidentiary value of the affidavits at any stage of the proceedings.^[39] As correctly observed by petitioners, there was no single evidence submitted showing that they have exerted undue pressure on the affiants.^[40]

As correctly held by both the Labor Arbiter and the NLRC, these affidavits constitute substantial evidence to prove that respondent committed acts breaching the trust and confidence reposed on him by P&A. The colleagues and subordinates of respondent executed the affidavits based on their personal knowledge, and without any proof of coercion. Their statements, as discussed below, corroborate each other and leave no room for doubt as to the acts committed by respondent.

Respondent was validly dismissed
on the ground of loss of trust and confidence.
The affidavits of his co-employees are
sufficient basis for P&A's loss of trust
and confidence.

Article 297(c)^[41] of the Labor Code,^[42] as amended, provides that an employer may terminate an employee for willful breach by the employee of trust reposed in him by his employer or duly authorized representative.

While the right of an employer to freely select or discharge his employees is subject to regulation by the State in the exercise of its paramount police power, there is also an equally established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interest of the employer and justifying loss of confidence in him.^[43]

In *Bristol Myers Squibb (Phils.), Inc. v. Baban*,^[44] this Court explained that the following requisites must be satisfied to justify a valid dismissal based on loss of trust and confidence, to wit:

(1) The employee concerned must be one holding a position of trust and confidence;[45] and

(2) There must be an act that would justify the loss of trust and confidence.[46]

These two requisites are present in this case.

As to the first requisite, employees holding positions of trust and confidence may be classified into two. The first class consists of the managerial employees who are vested with the powers and prerogatives to lay down management policies and to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc., who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[47]

The Labor Arbiter and the NLRC correctly ruled that respondent was a managerial employee. At the time of his termination on June 16, 2002, respondent was the Manager-in-Charge of the Cebu operations and the Director of the Visayas-Mindanao operations of P&A.[48] The Labor Arbiter noted that respondent failed to dispute that his position, as the highest ranking officer of P&A's Visayas-Mindanao operations, demanded utmost trust and confidence.[49] The NLRC ruled that as Director of the Visayas-Mindanao operations, respondent was bound by more exacting work ethics and was expected to uphold the dignity and interest of P&A even if his opinion ran counter to that of his employer.[50]

The second requisite is also present. P&A's loss of trust and confidence is based on a willful breach of trust, and is founded on clearly established facts. In *Mendoza v. HMS Credit Corporation*,[51] this Court distinguished the degree of proof required in proving loss of trust and confidence in a managerial employee on one hand, and a rank and file employee on the other:

The degree of proof required in labor cases is not as stringent as in other types of cases. It must be noted, however, that recent decisions of this Court have distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[52] (Citations omitted; emphasis supplied)

Respondent breached the trust reposed in him by committing the following acts: (1) negotiating to transfer to a competing firm while still employed with P&A; (2) enjoining a number of P&A's clients to transfer their audit business to a competing firm; (3) inviting P&A's staff to join him in his transfer to a competing firm; and (4) enjoining P&A's staff to engage in a sympathy strike during his preventive suspension.

The affidavits of Nanola,[53] Ganhinhin,[54] Verdida,[55] and Diane[56] show respondent's commission of these acts which are all in breach of the trust and confidence reposed in him by P&A.

On the first act, Nanola narrated how respondent told him about his Memorandum of Understanding with LM-KPMG and his impending transfer to the competitor firm:

7. x x x Upon his arrival in Davao, prior to our meeting with clients, he met all of us (Davao office staff members) and told us again about the LM-KPMG offer and his future plans. He even told me that he already

signed a Memorandum of Understanding with LM-KPMG and that he will start on June 15, 2002. He also told us that the purpose of the meeting with clients is to inform them about the merger/combination and where he will be going. Among the clients, which we visited are Burmeister & Wain Scandinavian Contractors (BWSC) Mindanao, Inc., Asia Industries, Inc., Nader and Ebrahim Philippines, AME Travel/Construction, Techno Trade Davao, Farm Coop and Micro-Enterprise Bank, which are all based in Davao City. During the said visits, Mr. Lepon told the clients in my presence that he is leaving P&A due to the impending merger of SGV and P&A and that he will not join the merger /combination but instead he will be joining LM-KPMG. He also mentioned his plans and dreams for the country. There were several instances also he mentioned our competitor, LM-KPMG, which he is intending to join, x x x[57]

In *Elizalde International (Philippines) Inc. v. Court of Appeals*;^[58] we ruled:

One who asserts an interest, or performs acts adverse or disloyal to one's employer commits a breach of an implied condition of the contract of employment which may warrant discharge, as, for example, where one secretly engages in a business which renders him a competitor and rival of his employer[.]" Aside from any duties expressly imposed upon or undertaken by the employee in the contract of employment, the law implies various obligations and undertakings by an employee in entering into a contract of employment, x x x An employer has the right to expect loyalty from his employees as long as the employment relationship continues[.]" "Implicit in the contract of employment is the undertaking that the employee shall be faithful to the interest of the employer during the term of the employment. When an employee deliberately acquires an interest adverse to his employer, he is disloyal, and his discharge is justified, x x x"[59] (Citations omitted; emphasis supplied.)

Respondent also showed Ganhinhin a copy of a letter purportedly written by LM-KPMG which promised respondent a bonus in case he achieves certain revenue targets.^[60]

On the second act, Nañola narrated how respondent attempted to persuade P&A's clients to transfer to LM-KPMG:

7. In May 2002, Mr. Lepon called up from Cebu and requested my secretary to set meetings with our clients. Since the Davao staff members are more inclined to join SGV, we are hesitant to set up meetings with our clients as we wanted to bring all our clients upon our transfer. I told my secretary to ask him about the purpose of the meetings. She told me later that Mr. Lepon asked her who asked such question. To avoid unnecessary argument, we continue setting up the meetings, x x x He also informed some of the clients we met that they would be getting the short end of the bargain if they chose (sic) to stay with P&A since the quality of its service is expected to deteriorate as a result of the merger. Moreover, he also told some of them that the bad reputation of SGV will taint the reputation of P&A and this bad reputation will result in the delivery of poor service to the clients.

8. On May 28, 2002, during lunch time, we again informed him about our final stand as regards what is the best option for us to take, which is to join SGV. From that moment, the mood of Mr. Lepon changed. When we resumed our meeting that afternoon with one of our clients, the way he conducted the meeting was totally different from our previous meetings. This time, he talked a lot about LM-KPMG. Obviously, trying to convince the client to move to LM-KPMG. He even gave his P&A calling card and scribbled his cell number so that he can easily be contacted.^[61] (Emphasis supplied.)

Verdida and Diano's joint affidavit also proved respondent's intention to lead P&A's clients away from P&A:

6. x x x Mr. Lepon even instructed us to summarize the audit fees of our clients that he can probably convince to transfer to LM-KPMG. He also instructed us to prepare a summary of our compensation package that he would present to LM-KPMG. x x x[62]

Respondent cannot invoke the Memorandum^[63] dated April 24, 2002. The Memorandum was issued by P&A to

its clients for the only purpose of informing them about the proposed merger with SGV and of the advantages of a merger. Instead, respondent went to Cebu and Davao telling P&A's clients that they will be getting the short end of the bargain if they choose to stay with P&A since the quality of P&A's service will deteriorate as a result of the merger. He explained to them why he was not joining the merger, where he would probably go, and told them that P&A's service is expected to deteriorate.

As held by the NLRC, while respondent may have the liberty to express his views of the proposed merger, he was not justified when he made his own conviction go overboard, by telling clients of P&A that the latter's reputation as provider of quality service is expected to deteriorate due to the merger and further induced them to patronize the rival firm he intended to join.[64] Respondent, as the Director of P&A's Visayas-Mindanao operations, owed duties of loyalty to P&A, his employer, to inform its clients about P&A's business decision to merge, for as long as he was still employed by P&A.

As to the third act, Nañola narrated how respondent persuaded his colleagues and subordinates to transfer at LM-KPMG:

6. Sometime in April 2002, together with other Managers and Directors, we attended a meeting with the key partners of SGV and P&A. The following morning, I told Mr. Lepon that my Davao staff members are more inclined to join with SGV. Hence, Mr. Lepon told me that he will no longer include Davao office for any options. However, according to Mr. Lepon the Laya Mananghaya-KPMG (LM-KPMG) offer came (sic) up and he told me to consider said option and disseminate the information to my staff. He even called up my secretary and my senior staff members about the LM-KPMG offer and persuaded them to join LM-KPMG. According to him, LM-KPMG is offering three months bonus for the Director and Managers, two months bonus for senior staff and a month bonus for junior staff. He also mentioned that if we could meet the [P]6,000,000 gross revenue and the [P]1,500,000 net income (not told to my staff), he will receive a [P]500,000 bonus, which he intend to make available for all of us. Mr. Lepon is very persistent in convincing us to consider the LM-KPMG option.[65]

Ganhinhin's narration also proved that respondent explained to his colleagues and subordinates the compensation package and benefits offered by LM-KPMG:

6. Sometime in May 2002, according to Mr. Lepon, Laya Mananghaya-KPMG (LM-KPMG) offered three months bonus for the Director and Managers, two months bonus for senior staff and a month bonus for junior staff. He showed to me a 2-page letter in plain bond paper which he claimed came from LM-KPMG. Under the said letter, if he could meet certain revenue targets, he will receive a [P]500,000 bonus, which he intends to make available to all of us.[66]

Verdida and Diano's joint affidavit further proved respondent's intention to lead P&A's staff to transfer to the competing firm:

6. 'there is no truth whatsoever to the claim of Ms. Louilyn N. Amboang, a former contractual employee of [P&A], that Mr. Lepon never campaigned among the employees to abandon [P&A]. All the employees of P&A's Cebu City Office knew for a fact that Mr. Lepon had aggressively invited the staff of [P&A]'s Cebu City Office to join him when he joins LM-KPMG. He kept on harping on his claim that we have no future with [P&A] and that a much better compensation package awaits us should we decide to join him in LM-KPMG. x x x He also instructed us to prepare a summary of our compensation package that he would present to LM-KPMG. When Mr. Lepon went on leave with pay, he instructed us to give to him all documents, including the draft of his employment contract with LM-KPMG, and to delete all the files in our computers pertaining to LM-KPMG.[67] (Emphasis supplied.)

In *Molina v. Pacific Plans, Inc.*, [68] this Court ruled:

xxx Moreover, an employer has a protectable interest in the customer relationships of its former employee established and/or nurtured while employed by the employer, and is entitled to protect itself from the risk that a former employee might appropriate customers by taking unfair advantage of the contract developed while working for the employer. While acting as an agent of his employer, an employee owes the duty of fidelity and loyalty. Being a fiduciary, he cannot act inconsistently with his agency or trust. He cannot solicit his employer's customers or co-employees for himself or for a business competitor of his employer, x x x[69] (Citations omitted; emphasis supplied.)

As to the fourth act, Ganhinhin narrated that respondent enjoined the staff of P&A's Cebu Office to conduct a sympathy strike during respondent's preventive suspension:

7. When Mr. Lepon was required to take a leave of absence with pay by P&A, lie asked the staff of P&A Cebu Office to join him in LM-KPMG and enjoined us to sympathize with him by not reporting to work so as to paralyze the operations of the P&A Cebu Office. I told him to consult his labor lawyer before doing that because I believe it is not appropriate to abandon our job since the issue of leave of absence does not concern us. [70] (Emphasis supplied.)

Verdida and Diano also narrated in their joint affidavit that respondent invited them to engage in a sympathy strike to paralyze the operations of P&A's Cebu City Office:

5. On May 29, 2002, when Mr. Lepon was informed over the telephone that lie would be required to go on leave of absence with pay effective June 1, 2002, he asked the staff of [P&A]'s Cebu City Office to join him in LM-KPMC and enjoined us to sympathize with him by not reporting to work so as to paralyze the operations of P&A's Cebu City Office, He suggested that we would finish our pending work in LM-KPMG. Mr. Lepon even got disappointed at us after the staff of [P&A]'s Cebu City refused to conduct a sympathy strike for his leave of absence with pay.[71]

In *Perez v. Medical City General Hospital*,[72] we ruled that "[a]n employer cannot be expected to retain an employee whose lack of morals, respect and loyalty to his employer or regard for his employer's rules and appreciation of the dignity and responsibility of his office has so plainly and completely been bared."

We cannot sanction respondent's act of inviting P&A's staff to conduct a sympathy strike. This is inconsistent with respondent's duty of fidelity and loyalty to P&A. In doing so, respondent urged his colleagues and subordinates to disregard their responsibilities as employees of P&A and sought to disrupt the latter's operations. Thus, P&A merely acted within its right as employer when it dismissed respondent. The acts he committed are sufficient basis for the loss of trust and confidence of P&A.

Respondent was not deprived of due process

The Court of Appeals ruled that respondent was denied of due process because P&A failed to conduct a hearing or investigation prior to the notice of termination.

We disagree.

Article 292(b),[73] of the Labor Code, as amended, in relation to the then applicable Section 2(d),[74] Rule I of the Implementing Rules of Book VI of the Labor Code, as amended by Department Order No. 10, series of 1997, requires the employer to give the employee two written notices prior to his termination for just cause. The first notice must contain a statement of the causes for termination, and shall afford the employee ample opportunity to be heard and to defend himself with the assistance of a representative if he so desires. The second notice, which is the notice of termination, must indicate that upon due consideration of all the circumstances, grounds have been established to justify the employee's termination.

P&A complied with the two-notice rule under Article 292 of the Labor Code, as amended. P&A served respondent with the first notice dated May 30, 2002 which properly apprised him of the incidents that contributed to P&A's loss of trust and confidence. Respondent sent his reply dated June 6, 2002 where he justified his actions, and presented his defenses against the accusations against him. After evaluation of the matters raised in respondent's reply, P&A sent a notice of termination dated June 13, 2002 informing him that the totality of his reactions and actuations in relation to the proposed combination of P&A and SGV has put his loyalty to serious doubt, and has led to a complete loss of the partners' trust and confidence in him. This is the second notice required under Article 292.

Respondent cannot argue that a hearing, investigation or any semblance thereof should have been conducted before he was terminated. In *Perez v. Philippine Telegraph and Telephone Company*,^[75] this Court explained the meaning of "ample opportunity to be heard" under Article 292 of the Labor Code, as amended:

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. To be heard"does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings. Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.^[76]

x x x

(a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.^[77] (Citations omitted; emphasis supplied).

Despite the lack of formal hearing or investigation, respondent was given ample opportunity to be heard. He was given the opportunity to refute the charges against him. In fact, his reply dated June 6, 2002 thoroughly discussed his justifications and defenses to the accusations imputed on him.^[78] He cannot argue that the absence of a formal hearing or investigation, despite his denial to the accusations, constituted a defect on his dismissal from employment.^[79]

In view of the foregoing, respondent's dismissal from employment is valid. Thus, respondent's monetary claims against P&A and petitioners have no legal and factual basis.

WHEREFORE, premises considered, the petition is hereby GRANTED and the decision of the Court of Appeals dated February 15, 2006 is hereby REVERSED. We AFFIRM the Decision dated March 31, 2005 and the Resolution dated July 25, 2005 of the National Labor Relations Commission which affirmed the August 13, 2003 Decision of the Labor Arbiter.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Villarama, Jr., and Reyes, JJ., concur.

January 7, 2016

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____November 9, 2015____ a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 7, 2016 at 10:02 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 3-44

[2] Nineteenth Division, through Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring, id. at 46-56.

[3] Id. at 58-59.

[4] Id. at 47; P&A and the oilier petitioners shall be collectively referred to as petitioners

[5] Id.

[6] Id.

[7] Id. at 120.

[8] Id.

[9] Id. at 118-119.

[10] Id. at 10.

[11] Id. at 121.

[12] Id. at 122-125.

[13] Id. at. 126.

[14] Id. at 48.

[15] Id. at 158-169.

[16] Based on P&As' manifestation dated July 17, 2003 before the Labor Arbiter, respondent submitted as evidence the affidavits of Louilyn Amboang and Margaret Susan M. Escorra. The affidavits were submitted only after the ease was deemed submitted for decision. The Labor Arbiter did not give credence to Amboang's affidavit because of doubt on Amboang's motivation for executing the affidavit. The Labor Arbiter noted that the

regularization of her employment with P&A was strongly recommended by respondent and she worked briefly at LM-KPMG after the termination of her contractual employment with P&A. The Labor Arbiter did not also consider the affidavit of Escorra. She did not state that she was present during the client visits conducted by respondent in May 2002. Thus, her affidavit was not necessarily inconsistent with the affidavit of Nañola and therefore did not establish that respondent did not commit the acts complained of; *id.* at 163-164. The NLRC did not discuss these two affidavits in its Decision. Respondent no longer raised the issue in his petition for certiorari before the Court of Appeals nor in his comment before this Court.

[17] *Id.* at 166-167.

[18] *Id.* at 244-247.

[19] *Id.* at 248-280.

[20] *Id.* at 306-308.

[21] *Id.* at 309-350,.

[22] *Id.* at 50.

[23] *Id.* at 51.

[24] *Id.* at 52.

[25] *Id.* at 55.

[26] *Id.* at 513-538.

[27] *Id.* at 58-59.

[28] *Id.* at 16.

[29] *Id.* at 22-23.

[30] *Id.* at 33.

[31] *Id.* at 35.

[32] *Career Philippines Slipmanagemenl, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 684-685 citing *Montaya v. Trammed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

[33] *Rollo*, p. 51.

[34] REVISED RULES ON EVIDENCE, Rule 133, Sec. 5.

[35] G.R. No. 147080, April 26, 2005, 457 SCRA 235.

[36] *Id.* at 253.

[37] G.R. No. 178564, January 15, 2014, 713 SCRA 475.

[38] *Id.* at 493-494.

[39] Based on P&A's manifestation dated July 17, 2003 before the Labor Arbiter, respondent did not file a reply; *rollo*, p. 468. He also did not raise any question as to the credibility of the affiants in his Memorandum of Appeal before the NLRC. Even respondent's petition before the Court of Appeals, assailing the Decision of the Labor

Arbiter and the NLRC, was silent on the matter.

[40] Id. at 24.

[41] ART. 297. [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 representatives; and
- (e) Other causes analogous to the foregoing.

[42] As renumbered in Department of Labor and Employment's Department Order No. 01, series of 2015 pursuant to Article 5 of Presidential Decree No. 442, as amended, and in view of the enactment of Republic Act No. 10151, with the effect of renumbering subsequent articles starting from Book Four, Title I, Chapter I of Presidential Decree No. 442 and considering the numerous piece-meal amendments to the Code since its promulgation in 1974.

[43] *Tabacalera Insurance Co. v. NLRC*, G.R. No. L-72555, July 31, 1987, 152 SCRA 667, 675 citing *Dole Philippines, Inc. v. National Labor Relations Commission*, G.R. No. L-55413, July 25, 1983, 123 SCRA 673, 677; *Int'l Hardwood and Veneer Co. of the Phil. v. Leogardo*, G.R. No. L-57429, October 28, 1982, 117 SCRA 967; *Nevans v. Court of Industrial Relations*, G.R. No. L-21510, June 29, 1968, 23 SCRA 1321; *Phil. Education Co., Inc. v. Union of Phil. Education Employees and CIR*, 107 Phil. 1003 (1960); *Manila Trading v. Manila Trading Laborers' Assn.* 83 Phil. 297 (1949).

[44] G.R. No. 167449, December 17, 2008, 574 SCR A 198.

[45] Id. at 205.

[46] Id. at 206.

[47] Id at 205-206.

[48] Court of Appeals Decision, rollo, p. 47.

[49] Labor Arbiter's Decision, id. at 162.

[50] NLRC Decision, id. at 245.

[51] G.R. No. 187232, April 17, 2013, 696 SCRA 794.

[52] Id. at 804 citing *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCR A 516, 529-530.

[53] Rollo, pp. 399-400.

[54] Id. at 401-402.

[55] Id. at 479-480.

[56] Id.

[57] See footnote 54.

[58] G.R. No. L-40553, February 26, 1981, 103 SCR A 247.

[59] Id. at 255-256.

[60] See footnote 54.

[61] See footnote 54.

[62] See footnote 56.

[63] See footnote 7.

[64] NLRC Decision, rollo, p. 245.

[65] Id. at 399.

[66] Id. at 401.

[67] See footnote 56.

[68] G.R. No. 165476, March 10, 2006, 484 SCRA 498.

[69] Id. at 524 citing *American Software USA, Inc. v. Moore*, 448 S.E. 2d 206, 264 Ga. 480 (1994) and *Corroon & Black of Illinois, Inc. v. Magnet*; 494 N.E. 2d 785 (1986).

[70] Rollo, p. 40 1.

[71] Id. at 479.

[72] G.R. No. 150198, March 6, 2006, 484 SCRA 138, 145.

[73] ART. 292 [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

[74] Section 2. Security of tenure.— x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

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

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

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

against him.

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

[75] G.R. No. 152048, April 7, 2009, 584 SCRA 110.

[76] Id. at 123-124.

[77] Id. at 127.

[78] Specifically, while respondent admitted that he criticized P&A's merger with SGV because it was grossly disadvantageous to the Firm, he denied exploring other accounting firms. He narrated that one of the partners sympathized with him and suggested that he explore other accounting firms but he decided not to because it would be divisive. He decided to retire to Cebu, take up law and attend to his small bakery, he further stated that he thought of putting up a small accounting practice to continue what they (addressing Mr. Damian) have begun at P&A. He categorically stated that he will make it go global and fight the big four. Respondent also explained that certain clients had been calling him to explain the letter sent by SGV to the clients about the merger. Thus, he felt obliged to talk to the clients and explain to them the implications of the combination, why he was not joining and where he would probably go. He said that based on his visits with the clients, he realized that he did not have to convince them not to hire SGV since they have already decided themselves not to. He even gave to P&A on May 31, 2002 the results of his survey on the opinion of the clients. Respondent likewise stated in his reply that the stall" told him to look for an alternative accounting firm because the staff did not like SGV. Allegedly, the staff are willing to look for options but will decide once the options are presented. In addition, he did not instigate the staff and the managers to file separation pay; see footnote 13.

[79] Reyes-Royel v. Philippine Luen Thai Holding Corporation, G.R. No. 174893, July 11, 2012, 676 SCR A 183.

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