

## JIMMY ARENO, JR., PETITIONER, VS. SKYCABLE PCC-BAGUIO, RESPONDENT.

*G.R. No. 180302. February 05, 2010*

Ponente: DEL CASTILLO, J.

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### DEL CASTILLO, J.:

Disciplinary action against an erring employee is a management prerogative which, generally, is not subject to judicial interference. However, this policy can be justified only if the disciplinary action is dictated by legitimate business reasons and is not oppressive, as in this case.

This petition for review on certiorari[1] assails the Decision[2] dated May 28, 2007 and the Resolution[3] dated October 16, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 94485, which affirmed the February 28, 2006 Decision[4] of the National Labor Relations Commission (NLRC) upholding the legality of petitioner Jimmy Areno Jr.'s suspension and subsequent termination from employment.

#### Factual Antecedents

On January 17, 1995, petitioner was employed as a cable technician by respondent Skycable PCC-Baguio. On January 17, 2002, an accounting clerk of respondent, Hyacinth Soriano (Soriano), sent to the human resource manager a letter-complaint[5] against petitioner alleging that on two separate occasions, the latter spread false rumors about her (the first in the middle of 2001 and the second on December 22, 2001). On January 27, 2002, she was again insulted by petitioner when the latter approached her and said that she was seen going out with Aldrin Estrada, their field service supervisor, at Central Park, Baguio City. During that incident, petitioner uttered, "Ikaw lang ang nakakaalam ng totoo" with malicious intent and in a provocative manner. Soriano averred that petitioner's unscrupulous behavior constituted serious and grave offense in violation of the company's Code of Discipline.

On the same day, respondent issued a Memorandum[6] requiring petitioner to submit an explanation within 76 hours from notice thereof. Petitioner submitted his written explanation[7] dated January 23, 2002 denying all the allegations in Soriano's letter-complaint and further denying having uttered the statement imputed on him, explaining thus:

2. That on the 7[th] of January, 2002 at SkyCable office, I greeted her 'HELLO, HYA'. I thought she didn't hear me greet her so I continued saying 'NAKITA NAMIN KAYO AH...SA CENTRAL PARK.' With that she answered, 'KASAMA KO SI EMMAN.' Then I added, 'BA'T NANDOON YUNG 114?' Then she reacted 'TSISMOSO KA KASI!' In that instance, I didn't intend to insult her as she was saying because I never really implied anything with my statement nor delivered it with malicious intent. So I ended by saying, 'BA'T DI MO SABIHIN YUNG PROBLEMA MO SA AKIN? IKAW LANG ANG NAKAKAALAM NIYAN E!' In this statement, I was asking her to tell me frankly the reasons why she's mad at me. I want to stress that I never delivered the statement in a provocative manner.[8]

An administrative investigation was accordingly conducted on January 31, 2002. In a Memo[9] dated February 6,

2002, the investigating committee found petitioner guilty of having made malicious statements against Soriano during the January 7, 2002 conversation, which is categorized as an offense under the Company Code of Discipline. Consequently, petitioner was suspended for three days without pay effective February 13-15, 2002. The Memo was allegedly served on February 7, 2002 but petitioner refused to sign it.

Notwithstanding the suspension order, however, petitioner still reported for work on February 13, 2002. By reason thereof, respondent sent petitioner a letter denominated as 1[st] Notice of Termination[10] requiring him to explain in writing why he should not be terminated for insubordination. On February 18, 2002, petitioner inquired from respondent whether he is already dismissed or merely suspended since he was refused entry into the company premises on February 14, 2002.[11] Respondent replied that petitioner was merely suspended and gave him additional time to tender his written explanation to the 1[st] Notice of Termination.

On March 2, 2002, petitioner again wrote to respondent, this time requesting for further investigation on his alleged act of spreading rumors against Soriano in order for him to confront his accuser and present his witnesses with the assistance of counsel. Respondent denied the request reiterating that there has been substantial compliance with due process and that a reinvestigation is moot because the suspension was already served.

Anent the new charge of insubordination, petitioner submitted to respondent his written explanation[12] averring that he still reported for work on the first day of his suspension because the accusation of Soriano is baseless and her testimony is hearsay. Besides, according to petitioner, he did not defy any order related to his duties, no representative of the management prevented him from working and that reporting to work without being paid for the service he rendered on that day did not in any way affect the company's productivity.

On March 15, 2002, an investigation on the insubordination case was conducted which was attended by the parties and their respective counsels. Through a Final Notice of Termination dated April 1, 2002,[13] petitioner was dismissed from service on the ground of insubordination or willful disobedience in complying with the suspension order.

#### Proceedings before the Labor Arbiter

On April 5, 2002, petitioner filed a complaint[14] before the Arbitration Branch of the NLRC against respondent assailing the legality of his suspension and eventual dismissal. He claimed that his suspension and dismissal were effected without any basis, and that he was denied his right to due process.

On July 31, 2003, the Labor Arbiter rendered a Decision[15] dismissing petitioner's complaint for lack of merit. The Labor Arbiter ruled that the act of petitioner in spreading rumors or intriguing against the honor of a co-employee was persistent and characterized by willful and wrongful intents. It thus held that the order suspending petitioner is a legitimate exercise of management prerogative and that the deliberate refusal of petitioner to comply therewith constitutes willful disobedience.

#### Proceedings before the NLRC

Petitioner appealed to the NLRC, which, in a Decision[16] dated July 22, 2005 found his suspension and dismissal illegal. It held that the testimonies given during the January 31, 2002 administrative investigation and used as basis for petitioner's suspension are hearsay. The NLRC likewise held that petitioner was deprived of his basic right to due process when he was not allowed to confront his accuser despite his repeated requests.

Respondent moved for reconsideration.[17] Petitioner, for his part, filed a Motion for Partial Reconsideration[18] with respect to the limited award of backwages and to claim payment of attorney's fees and damages as well.

The NLRC, in its February 28, 2006 Decision,[19] reconsidered its earlier Decision and reinstated the Labor

Arbiter's Decision dismissing the complaint. In reversing itself, the NLRC opined that as shown by the transcripts of the investigation conducted on January 31, 2002, the testimony of Soriano was not, after all, hearsay. The NLRC also considered the Memorandum dated December 10, 2001 which placed petitioner under deactivation for three months due to an offense he earlier committed. While under said deactivation period, the commission of any further infraction warrants the imposition of the penalty of suspension. Finally, the NLRC struck down petitioner's claim that he has no knowledge of the suspension order since this was never raised before the Labor Arbiter but only on appeal.

#### Proceedings before the Court of Appeals

Aggrieved, petitioner filed with the CA a petition for certiorari.[20] On May 28, 2007, the CA affirmed the findings of the NLRC, ruling that the suspension of petitioner was not predicated on hearsay evidence; that petitioner was not deprived of due process both at the company level and during the proceedings held before the NLRC; and that petitioner's failure to comply with respondent's suspension order, despite notice thereof, is a case of willful disobedience of a lawful order which is a valid ground for dismissal.

Petitioner moved for reconsideration.[21] Before acting thereon, the CA required respondent to file its comment.[22] Although 19 days late, the CA admitted respondent's comment[23] in the interest of justice.[24]

On October 16, 2007, the CA resolved petitioner's Motion for Reconsideration as follows:

Finding no cogent reason with which to modify, much less reverse Our assailed Decision dated May 28, 2007, petitioner's Motion for Reconsideration filed on June 18, 2007 is hereby DENIED.

SO ORDERED.[25]

#### Issues

Hence, the present petition with the following assignment of errors:

I.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE WHIMSICAL AND CAPRICIOUS DECISION OF THE NLRC WHICH REVERSED ITS ORIGINAL DECISION FINDING THAT WITNESS HYACINTH SORIANO'S TESTIMONY IS NOT HEARSAY AFTER ALL:

- . BY MEANS OF SELECTIVE CITATION ON A PORTION ON PAGE TWO OF THE FIVE-PAGE UNSWORN TESTIMONY OF HYACINTH SORIANO THAT HER TESTIMONY IS NOT HEARSAY AFTER ALL WHEN IN ITS ENTIRETY THE TESTIMONIES ARE DOUBLE-TRIPLE-HEARSAY AS FOUND [BY] THE RESPONDENT NLRC IN ITS ORIGINAL DECISION, ASIDE FROM THE FACT THAT IN THAT JANUARY 31, 2002 HEARING WITNESS HYACINTH SORIANO DID NOT TESTIFY UNDER OATH AND THE ENTIRE PROCEEDINGS OF THE MINUTES WAS NOT SIGNED BY THE 3-MEMBER INVESTIGATION COMMITTEE, HENCE THE BASIS OF THE PETITIONER'S SUSPENSION WHICH PUBLIC RESPONDENTS FOUND TO BE A LEGAL ORDER IS NOTHING BUT A SCRAP OF PAPER.

- BY SIMPLY STATING THAT PETITIONER WAS NOT DENIED DUE PROCESS BECAUSE HE WAS FURNISHED COPY OF THE TERMINATION NOTICE STATING THE GROUNDS THERETO ALTHOUGH IN THE PLANT LEVEL INVESTIGATION/HEARING ON JANUARY 31, 2002, PETITIONER WAS EXCLUDED OR HIS PRESENCE WAS NOT ALLOWED DURING THE GUIDED/COUCHED INTERROGATIONS FOR THE TESTIMONIES OF WITNESS HYACINTH SORIANO AND AFTER WITNESS SORIANO'S GUIDED/COUCHED TESTIMONIES ENDED, THE

PANEL OF INVESTIGATORS SUBSEQUENTLY TOOK THE TESTIMONIES OF THE PETITIONER, ONE AFTER THE OTHER. IN SHORT, DESPITE HIS REPEATED DEMANDS FROM THE PRIVATE RESPONDENT MANAGEMENT THAT HE BE ALLOWED TO CONFRONT HIS ACCUSER HYACINTH SORIANO, PETITIONER WAS NOT ALLOWED TO CONFRONT HIS ACCUSER.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO CONSIDER THE UNCONTROVERTED FACT THAT THE SO-CALLED THREE-DAY SUSPENSION WAS ANCHORED ON A SCRAP OF PAPER BECAUSE IT WAS NOT SIGNED AND ISSUED BY A COMPANY OFFICIAL OF THE PRIVATE RESPONDENT AUTHORIZED TO EFFECT ANY DISMISSAL OR SUSPENSION ORDER, THUS PETITIONER DID NOT VIOLATE ANY LAWFUL ORDER.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE WHIMSICAL AND CAPRICIOUS SECOND DECISION OF THE RESPONDENT NLRC WHICH REVERSED ITS ORIGINAL DECISION ON THE ALLEGED GROUND:

- A. THAT THE PETITIONER KNEW OF HIS SUSPENSION WHEN HE REPORTED FOR DUTY ON FEBRUARY 13, 2002 AS DECREED IN THE UNSIGNED SO-CALLED SUSPENSION ORDER ALLEGEDLY CONSTITUTING INSUBORDINATION WHEN THE FACTS DISCLOSE THAT PETITIONER DECLINED TO RECEIVE IT PERSONALLY AND HE ASKED THAT IT BE SENT TO HIM THROUGH REGISTERED MAIL AND THIS FACT IS ADMITTED BY PRIVATE RESPONDENT, THUS PUBLIC RESPONDENTS' FINDINGS AND CONCLUSION ARE NOT ONLY CONTRARY TO THE ADMISSION OF BOTH PARTIES BUT BASED ON CONJECTURES AND SURMISES.

- THAT AS FOUND BY THE COURT OF APPEALS IT IS ONLY ON APPEAL THAT PETITIONER INTERPOSES THE ARGUMENT THAT HE COULD NOT HAVE KNOWN ABOUT HIS SUSPENSION THUS HE COULD NOT VIOLATE AN ORDER WHICH HE HAD NOT KNOWN IN THE FIRST PLACE, IS NOT IN ACCORD WITH THE APPLICABLE JURISPRUDENCE, MOREOVER, UPON SCRUTINY IT WAS NOT SIGNED BY A COMPANY OFFICIAL AUTHORIZED TO EFFECT DISMISSAL OR SUSPENSION ORDER. THUS THE COURT OF APPEALS SERIOUSLY ERRED IN ITS FINDING ON THIS MATTER.

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ADMITTING THE PRIVATE RESPONDENT'S COMMENT DESPITE x x x NON-COMPLIANCE WITH THE COURT OF APPEALS' ORDER TO FILE COMMENT [DISREGARDING] THE STRICT OBSERVANCE OF THE RULES WHICH IS MANDATORY. FURTHERMORE, WHETHER OR NOT THE COURT OF APPEALS [VIOLATED] THE MANDATE OF SECTION 14, ARTICLE VIII OF THE CONSTITUTION IN ITS DENIAL OF PETITIONER'S MOTION FOR RECONSIDERATION WITHOUT STATING THE LEGAL BASIS THEREFOR.[26]

Petitioner contends that his suspension was without any basis since the testimony of Soriano is hearsay and was not made under oath. Also, the minutes of the investigative proceeding/hearing was not signed by the investigators. Petitioner likewise contends that he was denied due process as he was not given the opportunity to contest the evidence against him. He further insists that the suspension order is a scrap of paper as it was not signed and issued by an official who is authorized to effectuate such order. And even assuming that the suspension order is valid, no proof was ever presented to show that he was indeed served or that he received a copy thereof. Therefore, he could not have violated any lawful order to justify his dismissal.

## Our Ruling

The petition is devoid of merit.

The CA did not err in admitting  
the comment of respondent  
despite its late filing.

Petitioner argues that the CA erred in admitting respondent's Comment to petitioner's Motion for Reconsideration which was filed 19 days late.

A close scrutiny of Section 6, Rule 65 of the Rules of Court,[27] which grants discretionary authority to the CA in ordering parties to file responsive and other pleadings in petitions for certiorari filed before it, will reveal that such rule is merely directory in nature. This is so because the word "may" employed by the rule shows that it is not mandatory but discretionary on the part of the CA to require the filing of pleadings which it deems necessary to assist it in resolving the controversies.[28] In the same way, the admission of any responsive pleading filed by party-litigants is a matter that rests largely on the sound discretion of the court. At any rate, rules of procedure may be relaxed in the interest of substantial justice and in order to afford litigants maximum opportunity for the proper and just determination of their causes.[29] Strict adherence to technical adjective rules should never be unexceptionally required because a contrary precept would result in a failure to decide cases on their merits.[30] The CA could not have erred in admitting the comment, albeit filed late, when it viewed that the interest of justice would be better served by the policy of liberality.

CA stated legal basis for denying  
petitioner's motion for reconsideration.

Petitioner next alleges that the CA denied reconsideration without indicating its legal basis in violation of the mandate of Section 14, Article VIII of the Constitution, which provides that no petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor. This requirement, however, was complied with in the instant case, when the CA, in its resolution denying petitioner's motion for reconsideration, stated that it found no cogent reason to modify, much less reverse itself.[31]

Suspension validly meted out  
by respondent on petitioner.

Going now to the merits of the case, the 3-day suspension of petitioner is not tainted with substantive or procedural infirmities. For one, petitioner's insistent claim that his suspension was predicated on hearsay testimony deserves scant consideration.

The NLRC initially ruled that Soriano's testimony during the investigation on the alleged act of petitioner in spreading rumors is hearsay. Nevertheless, it reversed itself by holding that while Soriano stated that her allegation with regard to the first two instances that petitioner was spreading false information about her is based on what she heard from other people, her narration of the third instance relating to what has transpired during their January 7, 2002 conversation is not hearsay. The NLRC ruled quoting in part the relevant testimony of Soriano as recorded in the transcript of the investigation:

x x x. Indeed, complainant had been spreading malicious information against Ms. Soriano. It appears that Ms. Soriano had averred that this happened on three (3) occasions. The first two (2) instances happened in midyear of 2001 and another in December 2001. the [sic] first two (2) instances were merely referred to by the complainant in passing. Thus, she stated:

Raul:

So ang pag-uusapan natin dito ay yung number 3, yung January 7?

Hya:

Opo. Kasi yung mid last year at yung December 23, iniignore ko lang hanggang nung Jan 7 harap harapan na.

Tessa:

Are you considering numbers 1 and 2? Kasi dito naman nag-ugat yun e.

Hya:

Ma'am kasi ang parang point ko dito is to cite na ngayon may proof na ako kasi hinarap na nya ako unlike noon napuro hearsay lang. Ngayon parang Napatunayan ko na thru' Jan 7 na totoo nga. Parang ang ano ko kasi dito is yung intrigue. Yung 1 & 2 Rumors lang pero nung Jan 7, intrigue na un kasi may mga taong nakarinig.

Raul:

So ang sinasabi mo ba is talagang ang offense is yung pag-insulto nya? Parang ang talagang intension nya is awayin ka? Parang alam nya maiinis ka.

Hya:

Opo

Raul:

Kasi di ba when you're provoking a fight usually hinahamon mo? In this case ba yung sinabi ni Toto ay parang gumawa sya ng statement na hindi maganda sa iyo at yung reaction mo ay x x

Hya:

Sir siguro sa part ni Toto hindi kasi he's used to it na e. Pero on my part x x x

Raul:

So yun ang interpretation mo sa offense ni x x x.

Hya:

Opo.

The foregoing reveals that Ms. Soriano's testimony is not `hearsay' and neither is it `say-so'. "[32]

On appeal, the CA affirmed this ruling when it likewise found that the following statements of Soriano were limited to matters of personal knowledge:

Hya:

12:15, pagbungad ko palang, O HYA KUMAIN PALA KAYO SA CENTRAL PARK? Sabi ko OO KASAMA KO SI EMAN, sasabihin ko palang yung hindi na nakasama si May, Ang sabi niya na E NASA LABAS NAMAN YUNG SASAKYAN NI. tapos sinabi nya yung plate # ni sir Aldrin.

Tessa:

Nasa labas daw yung sasakyan ni Aldrin.

Hya:

Opo, e di nagtaka ako, nag-argue na kami, tinitingnan na kami ng mga Ae's tapos iniwan ko sya.[33]

The CA and NLRC are in agreement with this finding and since both are supported by evidence on record, the same must be accorded due respect and finality.

Petitioner still contends that the testimonies elicited during the investigative hearing were not made under oath, that the record of the proceeding is not admissible for being unsigned, and that he was not given a chance to confront his accuser, thus, invoking denial of due process.

In this case, petitioner was asked to explain and was informed of the complaint against him. A committee was formed which conducted an investigation on January 31, 2002 by exhaustively examining and questioning both petitioner and his accuser, Soriano, separately. Petitioner actively participated therein by answering the questions interposed by the panel members. The proceeding was recorded, and the correctness of which was certified by respondent thru its Regional Manager, Raul Bandonill.[34] Undoubtedly, petitioner was given enough opportunity to be heard and defend himself. It has already been held that the essence of due process is simply an opportunity to be heard, a formal or trial-type hearing is not essential as the due process requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side.[35]

The decision to suspend petitioner was rendered after investigation and a finding by respondent that petitioner has indeed made malicious statements against a co-employee. The suspension was imposed due to a repeated infraction within a deactivation period set by the company relating to a previous similar offense committed. It is axiomatic that appropriate disciplinary sanction is within the purview of management imposition.[36] What should not be overlooked is the prerogative of an employer company to prescribe reasonable rules and regulations necessary for the proper conduct of its business and to provide certain disciplinary measures in order to implement said rules to assure that the same would be complied with.[37] Respondent then acted within its rights as an employer when it decided to exercise its management prerogative to impose disciplinary measure on its erring employee.

Petitioner was validly dismissed on the ground of willful disobedience in refusing to comply with the suspension order.

The CA refused to give credence to petitioner's assertion of having no knowledge of the suspension because he refused to receive the suspension order preferring that it be sent by registered mail. The appellate court affirmed the factual finding of the NLRC that petitioner was definitely aware of his suspension but only feigned ignorance of the same. As a rule, we refrain from reviewing factual assessments of agencies exercising adjudicative functions. Factual findings of administrative agencies that are affirmed by the CA are conclusive on the parties and not reviewable by this Court so long as these findings are supported by substantial evidence.[38]

Anyhow, evidence on record repudiates petitioner's pretension. His insistence that he had no notice of his suspension is belied by evidence as it shows that the suspension order was served on petitioner on February 7, 2002 by his immediate superior, Al Luzano, but petitioner declined to sign it. No acceptable reason was advanced for doing so except petitioner's shallow excuse that it should be sent to him by registered mail.

Petitioner also challenges the validity of the suspension order for being unsigned. The same has no merit. Upon careful examination, it appears that the contention was raised for the first time in petitioner's motion for reconsideration of the Decision of the CA. In *Arceno v. Government Service Insurance System*, [39] the hornbook principle that new issues cannot be raised for the first time on appeal was reiterated. We emphasized therein that the rule is based on principles of fairness and due process and is applicable to appealed decisions originating from regular courts, administrative agencies or quasi-judicial bodies, whether rendered in a civil case, a special

proceeding or a criminal case, citing the case of *Tan v. Commission on Elections*.<sup>[40]</sup> Even assuming that it was raised, the same would be without merit because the suspension order bears the signature of respondent's engineering manager and petitioner's immediate superior, Al Luzano, who, in fact, is a member of the panel committee that conducted an investigation on the complaint of Soriano against petitioner.

As a just cause for dismissal of an employee under Article 282<sup>[41]</sup> of the Labor Code, willful disobedience of the employer's lawful orders requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, i.e., characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.<sup>[42]</sup> Both requisites are present in the instant case. It is noteworthy that upon receipt of the notice of suspension, petitioner did not question such order at the first instance. He immediately defied the order by reporting on the first day of his suspension. Deliberate disregard or disobedience of rules by the employee cannot be countenanced. It may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe.<sup>[43]</sup>

Petitioner was served the first notice of termination and was given time to submit his written explanation. A hearing was conducted wherein both parties with their respective counsels were present. After finding cause for petitioner's termination, a final notice apprising him of the decision to terminate his employment was served. All things considered, respondent validly dismissed petitioner for cause after complying with the procedural requirements of the law.

The allegation of fraud should be proven.

On the last point, petitioner posits that the unfavorable Decision of the Labor Arbiter and the Decision of the NLRC were issued and obtained by means of fraud, which is a valid ground for their annulment. In our jurisdiction, however, fraud is never presumed and should be proved as mere allegations are not enough.<sup>[44]</sup> The burden of proof rests on petitioner, which, in this case, he failed to discharge.

WHEREFORE, the petition is DENIED for lack of merit. The assailed May 28, 2007 Decision and October 16, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 94485 are AFFIRMED.

**SO ORDERED.**

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

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[1] Rollo, pp. 4-41.

[2] *Id.* at 44-56; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

[3] *Id.* at 58.

[4] *Id.* at 130-135; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Romeo O. Lagman and Tito F. Genilo.

[5] CA rollo, pp. 363-364.

[6] *Id.* at 362.

[7] *Id.* at 365.

[8] *Id.*

[9] Id. at 366.

[10] Id. at 361.

[11] Id. at 368.

[12] Id. at 356-359.

[13] Id. at 352-355.

[14] Id. at 81.

[15] Rollo, pp. 137-166; penned by Labor Arbiter Monroe C. Tabinan.

[16] Id. at 116-128.

[17] Id. at 224-233.

[18] Id. at 216-222.

[19] Id. at 130-135.

[20] CA rollo, pp. 3-28.

[21] Id. at 384-399.

[22] Id. at 412.

[23] Id. at 413-426.

[24] Id. at 434.

[25] Rollo, p. 58.

[26] Id. at 332-334.

[27] Sec. 6. Order to comment. -- x x x

In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

[28] *People v. Ondo*, G.R. No. 101361, November 8, 1993, 227 SCRA 562, 569.

[29] *De Grano v. Lacaba*, G.R. No. 158877, June 16, 2009.

[30] *Ambrosio v. Intermediate Appellate Court*, G.R. No. 75663, January 17, 1990, 181 SCRA 99, 104.

[31] *JRB Realty, Inc. v. Court of Appeals*, 337 Phil. 677, 581-682 (1997).

[32] Rollo, p. 132.

[33] Id. at 75.

[34] CA rollo, p. 433.

[35] *Valiao v. Court of Appeals*, 479 Phil. 459, 472 (2004).

[36] *San Miguel Corporation v. National Labor Relations Commission*, G.R. Nos. 146121-22, April 16, 2008, 551

SCRA 410, 426.

[37] *Soco v. Mercantile Corporation of Davao*, 232 Phil. 488, 494 (1987).

[38] *Herida v. F & C Pawnshop and Jewelry Store*, G.R. No. 172601, April 16, 2009.

[39] G.R. No. 162374, June 18, 2009.

[40] G.R. Nos. 166143-47, November 20, 2006, 507 SCRA 352.

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

[42] *Gilles v. Court of Appeals*, G.R. No. 149273, June 5, 2009.

[43] *San Miguel Corporation v. Ubaldo*, G.R. No. 92859, February 1, 1993, 218 SCRA 293, 300.

[44] *Rabaja Ranch Development Corporation v. AFP Retirement and Separation Benefits System*, G.R. No. 177181, July 7, 2009.

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