

PRUDENTIAL GUARANTEE AND ASSURANCE EMPLOYEE LABOR UNION AND SANDY T. VALLOTA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PRUDENTIAL GUARANTEE AND ASSURANCE INC., AND/...

G.R. No. 185335. June 13, 2012

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 filed by petitioners Prudential Guarantee and Assurance Employee Labor Union (Union) and Sandy T. Vallota (Vallota) seeking to set aside the September 16, 2008 Decision[1] and November 10, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 102699.

The Facts

Vallota commenced his employment with respondent Prudential Guarantee and Assurance, Inc. (PGAI) on May 16, 1995 as a Junior Programmer assigned to the Electronic Data Processing (EDP) Department. He reported directly to Gerald Dy Victory, then head of the EDP, until his replacement by respondent Jocelyn Retizos (Retizos) sometime in 1997.

In August of 2005, Vallota was elected to the Board of Directors of the Union.

On November 11, 2005, PGAI's Human Resource Manager, Atty. Joaquin R. Rillo (Atty. Rillo), invited Union President, Mike Apostol (Apostol) to his office. Atty. Rillo informed Apostol that PGAI was going to conduct an on-the-spot security check in the Information and Technology (IT) Department. Atty. Rillo also requested that Union representatives witness the inspection to which Apostol agreed.

The inspection team proceeded to the IT Department, and the EDP head, through PGAI network administrator Angelo Gutierrez (Gutierrez), initiated the spot check of IT Department computers, beginning with the one assigned to Vallota. After exploring the contents of all the folders and subfolders in the "My Documents" folder, Gutierrez apparently did not find anything unusual with Vallota's computer and said "Wala naman, saan dito?" Retizos insisted, "Nandyan yan," and took over the inspection until she found a folder named "MAA." She then exclaimed, "Heto oh! Ano to? Bakit may MAA dito?" Retizos asked Vallota, "Are you working for MAA?" Vallota replied, "Hindi po, MAA mutual life po yan na makikita po sa internet." Gutierrez saved a copy of the contents of the MAA folder in a floppy disk.[3]

Sensing that Vallota was being singled out, Apostol insisted that all the computers in the IT Department, including that of Retizos, be also subjected to a spot security check. Later, at Retizos' office, and in the presence of Atty. Rillo, Vallota was informed that Retizos and Atty. Rillo would print the files found in his computer under the folder "MAA." Vallota did not object. After the files were printed, Vallota and the Union Secretary were asked to sign each page of the printout. Vallota, however, was not given a copy of the printed file.

On November 14, 2005, Vallota received a memorandum[4] directing him to explain within 72 hours why highly confidential files were stored in his computer. The case was assigned Reference No. AC-05-02. The same memorandum also informed him that he was being placed under preventive suspension for 30 days effective upon receipt of the said notice. A second memorandum,[5] also dated November 14, 2005, notified Vallota of the extension of his preventive suspension for another 30 days, in view of the fact that the management needed more time to evaluate the administrative case against him.

Vallota responded in writing on November 21, 2005.[6] Three days later, on November 24, 2005, PGAI sent him another memorandum[7] requesting further details on some of the matters he raised in his response. In a letter[8] dated December 6, 2005, Vallota requested a conference, to be attended by a Union representative and counsel. In reply, PGAI sent Vallota another memorandum[9] dated December 7, 2005, which, among others, set a new deadline for Vallota to submit his reply and evidence in his defense.

In compliance with the deadline set, Vallota submitted his reply-memorandum[10] dated December 12, 2005, outlining his response to the charges.

Meanwhile, the Union sent a letter[11] to PGAI President Philip K. Rico (Rico) requesting that a grievance committee be convened and that the contents of the computers of other IT personnel be similarly produced. The request for the convening of a grievance committee was ignored. On December 21, 2005, Vallota was given a notice of termination of his employment effective January 10, 2006 on the ground of loss of trust and confidence. The decision (AC-05-02) was embodied in a memorandum[12] dated December 21, 2005.

Thus, the petitioners filed a complaint for illegal dismissal with claims for full backwages, moral and exemplary damages, and attorney's fees. The case was docketed as NLRC-NCR Case No. 00-01-00387-06.

On March 31, 2006, Labor Arbiter Aliman D. Mangandog (LA) rendered a decision[13] in favor of the petitioners, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered, declaring the dismissal of complainant Vallota illegal and holding the respondents for the following:

- to reinstate complainant Vallota to his former position without loss of benefits and seniority rights.
- to pay complainant Vallota full backwages from the time of his dismissal until actual reinstatement partially computed as of this date amount[ing] to P60,856.00 (P18,400/mo. x 3 mos. & 8 days).
- to pay complainant's attorney's fee equivalent to 10% of the total monetary award.

SO ORDERED.[14]

The LA held that PGAI failed to meet its burden of evidence, and the conflicting claims of the parties were resolved in favor of Vallota for failure of PGAI to adduce substantial evidence to support its claim. The LA further held that the dismissal was not commensurate to the misconduct complained of, especially considering that it was Vallota's first offense.[15]

On the matter of the blank gate pass stored in Vallota's computer, the LA found as satisfactory his explanation that Joseph Tolentino (Tolentino), a PGAI employee, requested him, from time to time, to print a gate pass whenever he had to bring tools outside of the company premises. The LA cited Vallota's argument that "it is quite odd [that] despite the fact that the gate pass form was admitted by the respondents in [their] Reply as their exclusive property, complainant's possession of the same was not considered x x x Possession of Company property without authorization." [16]

The LA further found that the respondents were not able to establish that Vallota used company property for his personal benefit. Nothing on record could show that he made an attempt to defraud his employer. With regard to the charge that, without authorization, he misused or removed company documents, the LA opined that if this were true, the respondents should have conducted a thorough investigation to determine the liable persons.[17]

Finally, the LA ruled that Vallota was denied due process since the respondents refused to conduct a hearing, despite Vallota's request, to thresh out the matters raised by him in his memoranda.[18]

The respondents filed their Memorandum of Appeal[19] dated May 19, 2006. The case was docketed as NLRC NCR CA No. 049107-06(7).

On June 30, 2006, the National Labor Relations Commission (NLRC) issued its Resolution[20] dismissing the appeal on the ground that the respondents failed to submit a certificate of non-forum shopping in accordance with the Rules of Procedure of the NLRC.

The respondents filed their Motion for Reconsideration[21] dated July 17, 2006,[22] which the Union opposed.

On October 31, 2007, the NLRC granted the respondents' motion for reconsideration and reversed and set aside the decision of the LA.[23] The dispositive portion of the resolution reads:

WHEREFORE, premises considered, respondents' Motion for Reconsideration from the Resolution of June 30, 2006 is GRANTED. The appealed decision is hereby REVERSED and SET ASIDE. However, respondent is hereby ordered to pay complainant financial assistance equivalent to one-half (1/2) month pay for every year of service or xx the amount of ninety two thousand pesos (?92,000.00.)

P18,400 x 10 yrs. = P92,000.00

2

SO ORDERED.

The NLRC reasoned out that the respondents had submitted substantial and sufficient evidence to prove that there existed grounds for the PGAI to lose trust and confidence in Vallota. The NLRC also found grave abuse of discretion on the part of the LA to disregard the affidavits of Tolentino, Retizos and Allan Unson, as the LA himself did not set a hearing for the purpose of cross-examining the said witnesses or verifying the statements made in their affidavits. As reflected in the decretal portion, although the NLRC ruled that the dismissal was valid, it still directed the respondents to grant Vallota financial assistance of one-half (1/2) month pay for every year of his ten (10) years of service.[24]

The petitioners moved for a reconsideration[25] of the decision, but their motion was denied in a resolution[26] dated December 28, 2007.

Dejected, the petitioners filed a petition for certiorari[27] with the CA which was docketed as CA-G.R. SP. No. 102699. On September 16, 2008, the CA denied the petition for lack of merit, and sustained the award of the NLRC.

The petitioners' motion for reconsideration was denied in a resolution dated November 10, 2008.

Hence, this petition.

ISSUES

The petitioners raise the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING LIBERALITY TO PRIVATE RESPONDENTS['] FOUR BLATANT VIOLATIONS OF THE NLRC RULES OF PROCEDURE.II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GROSSLY MISAPPRECIATED THE FACT THAT NO SUBSTANTIAL EVIDENCE EXIST[S] TO JUSTIFY THE DISMISSAL OF PETITIONER VALLOTA. [28]

RULING OF THE COURT

First, the allegation of grave abuse of discretion is misplaced, as this is an issue appropriate for a petition for certiorari under Rule 65, not a petition for review on certiorari under Rule 45. There is no question that grave abuse of discretion or errors of jurisdiction may be corrected only by the special civil action of certiorari. Such special remedy does not avail in instances of error of judgment which can be corrected by appeal or by a petition for review. Because the petitioners availed of the remedy under Rule 45, recourse to Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.[29]

Regarding illegal dismissal, the core issues to be resolved here are: (1) whether Vallota was validly dismissed on the ground of loss of trust and confidence; and (2) whether the requirements of procedural due process for termination were observed.

Whether the petitioner was validly dismissed on the ground of loss of trust and confidence

The Court's discussion in *Mabeza v. National Labor Relations Commission*[30] is instructive:

Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, i.e., those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. Evidently, an ordinary chambermaid who has to sign out for linen and other hotel property from the property custodian each day and who has to account for each and every towel or bedsheet utilized by the hotel's guests at the end of her shift would not fall under any of these two classes of employees for which loss of confidence, if ably supported by evidence, would normally apply. Illustrating this distinction, this Court, in *Marina Port Services, Inc. vs. NLRC*, has stated that:

To be sure, every employee must enjoy some degree of trust and confidence from the employer as that is one reason why he was employed in the first place. One certainly does not employ a person he distrusts. Indeed, even the lowly janitor must enjoy that trust and confidence in some measure if only because he is the one who opens the office in the morning and closes it at night and in this sense is entrusted with the care or protection of the employer's property. The keys he holds are the symbol of that trust and confidence.

By the same token, the security guard must also be considered as enjoying the trust and confidence of his employer, whose property he is safeguarding. Like the janitor, he has access to this property. He too, is charged with its care and protection.

Notably, however, and like the janitor again, he is entrusted only with the physical task of protecting that property. The employer's trust and confidence in him is limited to that ministerial function. He is not entrusted, in the Labor Arbiter's words, 'with the duties of safekeeping and safeguarding company policies, management instructions, and company secrets such as operation devices.' He is not privy to these confidential matters, which are shared only in the higher echelons of management. It is the persons on such levels who, because they discharge these sensitive duties, may be considered holding positions of trust and confidence. The security guard does not belong in such category.

More importantly, we have repeatedly held that loss of confidence should not be simulated in order to justify what would otherwise be, under the provisions of law, an illegal dismissal. "It should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith." [31]

(Citations omitted. Emphases supplied.)

In *Bristol Myers Squibb (Phils.), Inc. v. Baban*, [32] the Court discussed the requisites for a valid dismissal on the ground of loss of trust and confidence:

It is clear that Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. The right of employers to dismiss employees by reason of loss of trust and confidence is well established in jurisprudence.

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Verily, We must first determine if respondent holds such a position.

There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or 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. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.

xxx

The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary. [33]

(Citations omitted. Emphases supplied.)

Thus, the first question to be addressed is whether Vallota held a position of trust and confidence. In previous cases, the following positions were classified under the second class of holders of positions of trust and confidence: a pharmaceutical company's district manager employed to handle pharmaceutical products for distribution to medical practitioners and sale to drug outlets, [34] a bank manager, [35] and an employee tasked with purchasing supplies and equipment. [36] The position of a contract claims assistant tasked with monitoring enforcement of contracts involving large sums of money was also classified to be analogous to this second class of holders of positions of trust and confidence. [37]

Vallota was employed by PGAI as a Junior Programmer assigned to the EDP Department. His functions included the following:

- Installation of PGAI System[38] on all designated branches
- Development of internal programs as required by the organization
- Handling and maintenance of all programs as per advise.
- Conduct[s] operation training on PGAI systems on all PGAI branches
- Generates and handles renewal list of all applicable lines.
- Generates and produces renewal notice of all lines as required.
- Generates paid premium production of all agents.
- Generates outstanding production reports of all agents.
- Generates report on top account executive per I.T. supervisor instruction.
- Generates and handle[s] data on top agents per AE premium production.
- Handles and maintains uploading system, accounting data per advise, account receivable system, motor car policy system, claims motor car system, check disbursement system, cash call system, R.I. outgoing and incoming system, facultative systems.
- All other task[s] as may be assigned to him from time to time.[39]

Based on the standards set by previous jurisprudence, Vallota's position as Junior Programmer is analogous to the second class of positions of trust and confidence. Though he did not physically handle money or property, he became privy to confidential data or information by the nature of his functions. At a time when the most sensitive of information is found not printed on paper but stored on hard drives and servers, an employee who handles or has access to data in electronic form naturally becomes the unwilling recipient of confidential information.

Having addressed the nature of his position, the next question is whether the act complained of justified the loss of trust and confidence of Vallota's employer so as to constitute a valid cause for dismissal. It must, thus, be determined whether the alleged basis for dismissal was based on clearly established facts.

The act alleged to have caused the loss of trust and confidence of PGAI in Vallota was the presence in his computer's hard drive of a folder named "MAA" allegedly containing files with information on MAA Mutual Life Philippines, a domestic corporation selling life insurance policies to the buying public, and files relating to PGAI's internal affairs:

- MAA Mutualife Philippines, Inc. prospectus consisting of five (5) pages
- MAA Mutualife Philippines, Inc. corporate profile consisting of six (6) pages
- PGAI client's (sic) questionnaire consisting of five (5) pages
- PGAI values and strategy
- PGAI Client Servicing (sic): Proposed Service Standard consisting of seven (7) pages
- PGAI Marketing Department Division consisting of twenty (20) pages

6.1 Marketing Department present set-up

- 6.2 Present Table of Organization
- 6.3 How is the market evolving? How does it affect PGAI?
- 6.4 The strategy of change
- 6.5 Segmentation
- 6.6 Proposed Table of Organization
- 6.7 Proposed PGA Super Branch

- 6.7.a Objectives
- 6.7.b Accounts to be service

- 6.8 Proposed Chart for the Retail Division
- 6.8.a Dual Objective
- 6.9 Marketing Administration
- 6.10 Analysis of Statistics
- 6.11 Proposed Corporate Accounts Servicing Division
- 6.11.a Facts
- 6.11.b 2003 and 2004 Dealership Production Statistics
- 6.11.c 2003 -2004 Budget Analysis

- PGAI Marketing Division: An Analysis & Proposed Solution consisting of seven (7) pages
- PGAI Customer Service Commitment consisting of six (6) pages
- PGAI Gate Pass Form[40]

Following such discovery, Vallota was charged with the following violations of Company Rules on Company Property:

- Possession of company property without authorization;
- Securing or obtaining Prudential materials or supplies fraudulently;
- Using Company equipment, property, or material to perform or create something for personal gain or purpose; and
- Misuse or removal from company premises without proper authorization of Prudential records or confidential information of any nature.[41]

Vallota and the Union argue, among others, that (1) the respondents failed to prove by substantial evidence that Vallota's position did not allow him to access confidential information and that the data found in his computer had been used for his personal gain; (2) Vallota did not deliberately get the files from other departments; instead, such files were acquired in the process of fixing diskettes and printing information as requested by his co-employees; (3) no evidence was presented to prove that Vallota sold or was about to sell corporate documents to MAA Mutual Life Corporation or to any company; and (4) the respondents' refusal to convene a grievance machinery was a clear abuse of management prerogative.[42]

The respondents, on the other hand, counter that Vallota admitted ownership of the files found in his computer. They also argue that it was the Data Center Technical Support Staff, and not the Junior Programmer, who handled recovery/fixing/printing of files of the nature of those found in Vallota's possession; that it was a remote possibility that the Junior Programmer would be directly requested to assist employees, since the Methods Analyst would have been the designee for such task; that Vallota's functions as Junior Programmer did not include matters relating to web development; that under standard IT procedure and company practice, the employees who requested assistance from the IT Department were required to fill up a Job Request Form (JRF), which was then

submitted for prior approval by the IT Head; that Retizos, as IT Head, could not recall signing or approving any request pertaining to the recovered PGAI files; that Vallota could not produce a single JRF when he was asked to do so and explained the lack of JRFs by stating that such file repairs, file recovery, or printing jobs were merely “little favors” and that such were considered as company “practice”; and that he, however, refused to reveal the names of the employees who had sought assistance in the fixing/printing/recovery of the PGAI files.[43]

The respondents aver that Vallota also had in his computer the PGAI Gate Pass Form template,[44] a company property that could not be copied, stored, or reproduced without company permission. They also claim that Vallota was guilty of using company equipment, property or material to perform or create something for personal gain or purpose. MAA files, alleged to be highly confidential and sensitive, were found in Vallota’s computer which he explained were downloaded from the MAA website outside of company premises merely for information. Upon searching the MAA website, however, they (respondents) did not find any of the said files. They also found that the MAA website was accessible only to certain users and was not open to the public as claimed by Vallota. Given all of these, the respondents concluded that Vallota’s possession of the PGAI and MAA files appeared to be part of a plan to take advantage of the said documents for personal gain.[45]

While the law and this Court recognize the right of an employer to dismiss an employee based on loss of trust and confidence, the evidence of the employer must clearly and convincingly establish the facts upon which the loss of trust and confidence in the employee is based.[46]

To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[47] It must rest on substantial grounds and not on the employer’s arbitrariness, whims, caprices or suspicion; otherwise, the employee would remain eternally at the mercy of the employer.[48] Further, in order to constitute a just cause for dismissal, the act complained of must be work-related and show that the employee concerned is unfit to continue working for the employer.[49] Such ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature.[50]

It must also be remembered that in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to show that the employee’s termination from service is for a just and valid cause.[51] The employer’s case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee,[52] in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them.[53] Often described as more than a mere scintilla,[54] the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[55] Failure of the employer to discharge the foregoing onus would mean that the dismissal is not justified and, therefore, illegal.[56]

In this case, there was no other evidence presented to prove fraud in the manner of securing or obtaining the files found in Vallota’s computer. In fact, aside from the presence of these files in Vallota’s hard drive, there was no other evidence to prove any gross misconduct on his part. There was no proof either that the presence of such files was part of an attempt to defraud his employer or to use the files for a purpose other than that for which they were intended. If anything, the presence of the files reveals some degree of carelessness or neglect in his failure to delete them, but it is an extremely farfetched conclusion bordering on paranoia to state that it is part of a larger conspiracy involving corporate espionage.

Moreover, contrary to the respondents’ allegations, the MAA files found in Vallota’s computer, the prospectus

and corporate profile, are not sensitive corporate documents. These are documents routinely made available to the public, and serve as means to inform the public about the company and to disseminate information about the products it sells or the services it provides, in order that potential clients may make a sound and informed decision whether or not to purchase or avail of such goods and services.

If anything, the presence of the files would merely merit the development of some suspicion on the part of the employer, but should not amount to a loss of trust and confidence such as to justify the termination of his employment. Such act is not of the same class, degree or gravity as the acts that have been held to be of such character. While Vallota's act or omission may have been done carelessly, it falls short of the standard required for termination of employment. It does not manifest either that the employee concerned is unfit to continue working for his employer.

Termination of employment is a drastic measure reserved for the most serious of offenses. When the act complained of is not so grave as to result in a complete loss of trust and confidence, a lower penalty such as censure, warning, or even suspension, would be more circumspect. This is of particular significance here where during Vallota's ten years of service to PGAI, not once was he ever warned or reprimanded for such printing services.

Whether the procedural due process requirements for termination were observed

The petitioners allege that Vallota was denied due process of law, as the records of the case clearly show that his request for an administrative hearing was denied without reason by PGAI. Citing Rule 1, Section 2(d) of the Implementing Rules of Book VI of the Labor Code, the petitioners argue that a hearing or conference must be conducted to afford the employee an opportunity to respond to the charge, and to present or rebut evidence presented against him. The petitioners are of the position that the unjustified refusal of PGAI to conduct a hearing violated the said provision of the Rules implementing the Labor Code, as well as Vallota's right to defend himself before an impartial investigating body.[57]

The Court explained the concept of the opportunity to be heard in the case of *Perez v. Philippine Telegraph and Telephone Company*: [58]

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes[59] or where company rules or practice requires an actual hearing as part of employment pretermination procedure. To this extent, we refine the decisions we have rendered so far on this point of law.

This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277(b) of the Labor Code without unduly restricting the language of the law or excessively burdening the employer. This not only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the implementation of Article 277(b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the

Labor Code], including its implementing rules and regulations shall be resolved in favor of labor.”

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

(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.

(Emphasis original. Underscoring supplied.)(60]

In this case, the two-notice requirement was complied with. By the petitioners’ own admission, PGAI issued to Vallota a written Notice of Charges & Preventive Suspension (Ref. No. AC-05-02) dated November 14, 2005. After an exchange of memoranda, PGAI then informed Vallota of his dismissal in its decision dated December 21, 2005.

Given, however, that the petitioners expressly requested a conference or a convening of a grievance committee, following the Court’s ruling in the Perez case, which was later cited in the recent case of Lopez v. Alturas Group of Companies,[61] such formal hearing became mandatory. After PGAI failed to affirmatively respond to such request, it follows that the hearing requirement was not complied with and, therefore, Vallota was denied his right to procedural due process.

In light of the above discussion, Vallota is entitled to reinstatement and backwages, reckoned from the date he was illegally dismissed until the finality of this decision in accordance with jurisprudence.[62]

In view of the strained relations between Vallota and PGAI, however, it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. It must be stressed, however, that an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement, which are separate and distinct. In *Golden Ace Builders v. Tagle*,[63] it was written:

Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents’ illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. (emphasis, italics and underscoring supplied)

Velasco v. National Labor Relations Commission, emphasizes:

The accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated. (Emphasis in the original; italics supplied)

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[64]

(Emphasis, underscoring and comments in the original.)

This has been the consistent ruling in the award of separation pay to illegally dismissed employees in lieu of reinstatement, in addition to the award of backwages.

Finally, Vallota, having been compelled to litigate in order to seek redress, is entitled, as he had prayed early on, to the award of attorney's fees equivalent to 10% of the total monetary award.

WHEREFORE, the petition is GRANTED. The September 16, 2008 Decision and November 10, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 102699 are REVERSED and SET ASIDE, and the Decision of the Labor Arbiter dated March 31, 2006 is REINSTATED but MODIFIED to the effect that, in addition to backwages, petitioner Sandy T. Vallota is entitled to be awarded separation pay equivalent to one (1) month salary for every year of service in lieu of reinstatement.

SO ORDERED.

Peralta, Abad, Villarama, Jr., and Perlas-Bernabe JJ., concur.

[*] Per Special Order No. 1228 dated June 6, 2012.

[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

[1] Rollo, pp. 53-76. Fourteenth Division. The Decision was penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justice Mario L. Guariña III and Associate Justice Sesinando E. Villon, concurring.

[2] Id. at 50-51.

[3] Id. at 54-55

[4] Id. at 324-326.

[5] Id. at 359.

[6] Id. at 327-330.

[7] Id. at 331.

[8] Id. at 332.

[9] Id. at 333.

[10] Id. at 334-335.

[11] Id. at 336.

[12] Id. at 337.

[13] Id. at 286-300.

- [14] Id. at 300.
- [15] Id. at 296-297.
- [16] Id. at 297.
- [17] Id. at 298.
- [18] Id. at 298-299.
- [19] Id. at 221-253.
- [20] Id. at 209-210. Third Division. The Resolution was penned by Presiding Commissioner Lourdes C. Javier, with Commissioners Tito F. Genilo and Gregorio O. Bilog III, concurring.
- [21] Rollo, pp. 211-219.
- [22] Id. at 199-207.
- [23] Id. at 180-188.
- [24] Id. at 187.
- [25] Id. at 189-198.
- [26] Id. at 177-178.
- [27] Id. at 144-175.
- [28] Id. at 18.
- [29] Cebu Woman's Club v. de la Victoria, 384 Phil. 264, 270 (2000).
- [30] 338 Phil. 386 (1997).
- [31] Id. at 395-397, citing General Bank and Trust Co. vs. Court of Appeals, 135 SCRA 569, 578 (1985).
- [32] G.R. No. 167449, December 17, 2008, 574 SCRA 198.
- [33] Id. at 205-206, citing Garcia v. National Labor Relations Commission, G.R. No. 113774, April 15, 1998, 289 SCRA 36.
- [34] Bristol Myers Squibb (Phils.), Inc. v. Baban, supra note 32 at 206.
- [35] Lopez v. Keppel Bank Philippines, Inc., G.R. No. 176800, September 5, 2011, 656 SCRA 718, 727.
- [36] Santos v. Shing Hung Plastics, Co., Inc., G.R. No. 172306, September 29, 2008, 567 SCRA 11, 19.
- [37] Abel v. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 694.
- [38] Also referred to as the legacy system.
- [39] Rollo, pp. 8-9.
- [40] Id. at 325.
- [41] Id. at 325.
- [42] Id. at 55.

[43] Id. at 56.

[44] The template was blank and did not contain the necessary signatures.

[45] Rollo, p. 57.

[46] Samillano v. National Labor Relations Commission, 333 Phil. 658, 667 (1996), citing Imperial Textile Mills, Inc. v. NLRC, G.R. No. 101527, January 19, 1993, 217 SCRA 237.

[47] AMA Computer College, Inc. v. Garay, G.R. No. 162468, January 23, 2007, 512 SCRA 312, 316, citing Brent Hospital, Inc. v. NLRC, G.R. No. 117593, July 10, 1998, 292 SCRA 304, 310.

[48] Id. at 316-317, citing Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 760.

[49] Cruz v. Court of Appeals, 527 Phil. 230, 243 (2006), citing Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 760.

[50] AMA Computer College, Inc. v. Garay, G.R. No. 162468, January 23, 2007, 512 SCRA 312, supra note 48 at 317, citing Brent Hospital, Inc. v. NLRC, G.R. No. 117593, July 10, 1998, 292 SCRA 304, 310.

[51] Functional, Inc. v. Granfil, G.R. No. 176377, November 16, 2011, citing Harborview Restaurant v. Labro, G.R. No. 168273, April 30, 2009, 587 SCRA 277, 281.

[52] Id., citing Philippine Long Distance Telephone Company, Inc. v. Tiamson, 511 Phil. 384, 394 (2005).

[53] Id., citing Triple Eight Integrated Services, Inc. v. National Labor Relations Commission, 359 Phil. 955, 964 (1998).

[54] Id., citing Spouses Aya-ay v. Arpahil Shipping Corporation, 516 Phil. 628, 639 (2006).

[55] Id., citing Oriental Shipmanagement Co., Inc. v. Bastol, G.R. No. 186289, June 29, 2010, 622 SCRA 352, 377.

[56] Id., citing Tacloban Far East Marketing Corporation v. Court of Appeals, G.R. No. 182320, September 11, 2009, 599 SCRA 662, 670.

[57] Rollo, pp. 490-491.

[58] G.R. No. 152048, April 7, 2009, 584 SCRA 110, also cited in Lopez v. Alturas Group of Companies, G.R. No. 191008, April 11, 2011, 647 SCRA 568, 574-575.

[59] Citing Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) (Brennan J., concurring in part and dissenting in part) citing Arnett v. Kennedy, 416 U.S. 134 (1974) (Marshall J., dissenting).

[60] Perez v. Philippine Telegraph and Telephone Company, G.R. No. 152048, April 7, 2009, 584 SCRA 110, 126-127.

[61] G.R. No. 191008, April 11, 2011, 647 SCRA 568.

[62] DUP Sound Phils v. Court of Appeals, G.R. No. 168317, November 21, 2011, citing Javellana, Jr. v. Belen, G.R. Nos. 181913 & 182158, March 5, 2010, 614 SCRA 342, 353-353, and Cabatulan v. Buat, G.R. No. 147142, February 14, 2005, 451 SCRA 234, 247.

[63] G.R. No. 187200, May 5, 2010, 620 SCRA 283.

[64] Id. at 289-290, citing *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500.

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