SHS PERFORATED MATERIALS, INC., WINFRIED HARTMANNSHENN, AND HINRICH JOHANN SCHUMACHER, PETITIONERS, VS. MANUEL F. DIAZ, RESPONDENT.

G.R. No. 185814. October 13, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

Petitioners, by way of this petition for review on certiorari under Rule 45, seek to annul and set aside the December 23, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 100015, which reversed and set aside the December 29, 2006 Resolution[2] of the National Labor Relations Commission (NLRC). The NLRC Resolution, in turn, reversed and set aside the June 15, 2006 Decision[3] of the Labor Arbiter (LA).[4]

THE FACTS

Petitioner SHS Perforated Materials, Inc. (SHS) is a start-up corporation organized and existing under the laws of the Republic of the Philippines and registered with the Philippine Economic Zone Authority. Petitioner Winfried Hartmannshenn (Hartmannshenn), a German national, is its president, in which capacity he determines the administration and direction of the day-to-day business affairs of SHS. Petitioner Hinrich Johann Schumacher (Schumacher), also a German national, is the treasurer and one of the board directors. As such, he is authorized to pay all bills, payrolls, and other just debts of SHS of whatever nature upon maturity. Schumacher is also the Executive Vice-President of the European Chamber of Commerce of the Philippines (ECCP) which is a separate entity from SHS. Both entities have an arrangement where ECCP handles the payroll requirements of SHS to simplify business operations and minimize operational expenses. Thus, the wages of SHS employees are paid out by ECCP, through its Accounting Services Department headed by Juliet Taguiang (Taguiang).

Manuel F. Diaz (respondent) was hired by petitioner SHS as Manager for Business Development on probationary status from July 18, 2005 to January 18, 2006, with a monthly salary of P100,000.00. Respondent's duties, responsibilities, and work hours were described in the Contract of Probationary Employment,[5] as reproduced below:

NAME

:

Jose Manuel F. Diaz

TITLE/STATUS

:

Manager for Business Development

LOCATION

:

Lot C3-2A, Phase I, Camelray Industrial Park II, Calamba, Laguna

REPORTS TO

:

Direct to Mr. Winfried Hartmannshenn

Normal Working Hours

:

8:00 a.m. to 5:00 p.m. subject to requirements of the job

OVERTIME

:

_____

JOB DESCRIPTION AND RESPONSIBILITIES:

DAILY/GENERAL DUTIES:

(a)

Represent the company in any event organized by PEZA;

(b)

Perform sales/marketing functions;

(c)

Monitor/follow-up customer's inquiry on EMPLOYER's services;

(d)

Monitor on-going job orders/projects;

(e)

Submit requirements as needed in application/renewal of necessary permits;

(f)

Liaise closely with the other commercial and technical staff of the company;

(g)

Accomplish PEZA documents/requirements for every sales made; with legal assistance where necessary at EMPLOYER's expense; and

(h)

Perform other related duties and responsibilities.

OTHER RESPONSIBILITIES:

(a)

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abide by and perform to the best of his abilities all functions, duties and responsibilities to be assigned by the EMPLOYER in due course;

(b)

comply with the orders and instructions given from time to time by the EMPLOYER, INC. through its authorized representatives;

(c)

will not disclose any confidential information in respect of the affairs of the EMPLOYER to any unauthorized person;

(d)

perform any other administrative or non-administrative duties, as assigned by any of the EMPLOYER's representative from time to time either through direct written order or by verbal assignment. The EMPLOYER may take into account EMPLOYEE's training and expertise when assigning additional tasks.

AGREED:

(sgd. Manuel Diaz).

In addition to the above-mentioned responsibilities, respondent was also instructed by Hartmannshenn to report to the SHS office and plant at least two (2) days every work week to observe technical processes involved in the manufacturing of perforated materials, and to learn about the products of the company, which respondent was hired to market and sell.

During respondent's employment, Hartmannshenn was often abroad and, because of business exigencies, his instructions to respondent were either sent by electronic mail or relayed through telephone or mobile phone. When he would be in the Philippines, he and the respondent held meetings. As to respondent's work, there was no close supervision by him.

During meetings with the respondent, Hartmannshenn expressed his dissatisfaction over respondent's poor performance. Respondent allegedly failed to make any concrete business proposal or implement any specific measure to improve the productivity of the SHS office and plant or deliver sales except for a meagre P2,500.00 for a sample product. In numerous electronic mail messages, respondent acknowledged his poor performance and offered to resign from the company.

Respondent, however, denied sending such messages but admitted that he had reported to the SHS office and plant only eight (8) times from July 18, 2005 to November 30, 2005.

On November 16, 2005, in preparation for his trip to the Philippines, Hartmannshenn tried to call respondent on his mobile phone, but the latter failed to answer. On November 18, 2005, Hartmannshenn arrived in the Philippines from Germany, and on November 22 and 24, 2005, notified respondent of his arrival through electronic mail messages and advised him to get in touch with him. Respondent claimed that he never received the messages.

On November 29, 2005, Hartmannshenn instructed Taguiang not to release respondent's salary. Later that afternoon, respondent called and inquired about his salary. Taguiang informed him that it was being withheld and that he had to immediately communicate with Hartmannshenn. Again, respondent denied having received such directive.

The next day, on November 30, 2005, respondent served on SHS a demand letter and a resignation letter. The

resignation letter reads:

> This is to tender my irrevocable resignation from SHS Perforated Materials, Inc, Philippines, effective immediately upon receipt of my due and demandable salary for the period covering November 16 to 30, 2005, which has yet been unpaid and is still currently being withheld albeit illegally. This covers and amounts to the sum of Php50,000.00 pesos net of all taxes. As my employment contract clearly shows I receive a monthly salary of Php100,000.00 net of all taxes.
>
> It is precisely because of illegal and unfair labor practices such as these that I offer my resignation with neither regret nor remorse.[6]

In the evening of the same day, November 30, 2005, respondent met with Hartmannshenn in Alabang. The latter told him that he was extremely disappointed for the following reasons: his poor work performance; his unauthorized leave and malingering from November 16 to November 30, 2005; and failure to immediately meet Hartmannshenn upon his arrival from Germany.

Petitioners averred that respondent was unable to give a proper explanation for his behavior. Hartmannshenn then accepted respondent's resignation and informed him that his salary would be released upon explanation of his failure to report to work, and proof that he did, in fact, work for the period in question. He demanded that respondent surrender all company property and information in his possession. Respondent agreed to these "exit" conditions through electronic mail. Instead of complying with the said conditions, however, respondent sent another electronic mail message to Hartmannshenn and Schumacher on December 1, 2005, appealing for the release of his salary.

Respondent, on the other hand, claimed that the meeting with Hartmannshenn took place in the evening of December 1, 2005, at which meeting the latter insulted him and rudely demanded that he accept P25,000.00 instead of his accrued wage and stop working for SHS, which demands he refused. Later that same night, he sent Hartmannshenn and Schumacher an electronic mail message appealing for the release of his salary. Another demand letter for respondent's accrued salary for November 16 to November 30, 2005, 13[th] month pay, moral and exemplary damages, and attorney's fees was sent on December 2, 2005.

To settle the issue amicably, petitioners' counsel advised respondent's counsel by telephone that a check had been prepared in the amount of P50,000.00, and was ready for pick-up on December 5, 2005. On the same date, a copy of the formal reply letter relating to the prepared payment was sent to the respondent's counsel by facsimile transmission. Despite being informed of this, respondent never picked up the check.

Respondent countered that his counsel received petitioners' formal reply letter only on December 20, 2005, stating that his salary would be released subsequent to the turn-over of all materials owned by the company in his possession. Respondent claimed that the only thing in his possession was a sample panels folder which he had already returned and which was duly received by Taguiang on November 30, 2005.

On December 9, 2005, respondent filed a Complaint[7] against the petitioners for illegal dismissal; non- payment of salaries/wages and 13[th] month pay with prayer for reinstatement and full backwages; exemplary damages, and attorney's fees, costs of suit, and legal interest.

THE RULING OF THE LABOR ARBITER

On June 15, 2006, the LA rendered his decision, the dispositive portion of which states:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainant as having been illegally dismissed and further ordering his immediate reinstatement without loss of seniority rights and

benefits. It is also ordered that complainant be deemed as a regular employee. Accordingly, respondents are hereby ordered to jointly and severally pay complainant the following

- P704,166.67 (P100,000.00 x 6.5 + (P100,000.00 x 6.5/12) as backwages;

- P50,000.00 as unpaid wages;

- P37,083.33 as unpaid 13[th] month pay

- P200,000.00 as moral and exemplary damages;

- P99,125.00 as attorney's fees.

SO ORDERED.[8]

The LA found that respondent was constructively dismissed because the withholding of his salary was contrary to Article 116 of the Labor Code as it was not one of the exceptions for allowable wage deduction by the employer under Article 113 of the Labor Code. He had no other alternative but to resign because he could not be expected to continue working for an employer who withheld wages without valid cause. The LA also held that respondent's probationary employment was deemed regularized because petitioners failed to conduct a prior evaluation of his performance and to give notice two days prior to his termination as required by the Probationary Contract of Employment and Article 281 of the Labor Code. Petitioners' contention that they lost trust and confidence in respondent as a managerial employee was not given credence for lack of notice to explain the supposed loss of trust and confidence and absence of an evaluation of respondent's performance.

The LA believed that the respondent complied with the obligations in his contract as evidenced by his electronic mail messages to petitioners. He ruled that petitioners are jointly and severally liable to respondent for backwages including 13[th] month pay as there was no showing in the salary vouchers presented that such was integrated in the salary; for moral and exemplary damages for having in bad faith harassed respondent into resigning; and for attorney's fees.

THE RULING OF THE NLRC

On appeal, the NLRC reversed the decision of the LA in its December 29, 2006 Resolution, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is hereby GRANTED.

The Decision dated June 15, 2006 is hereby REVERSED and SET ASIDE and a new one is hereby entered:

(1) dismissing the complaint for illegal dismissal for want of merit;

(2) dismissing the claims for 13[th] month pay, moral and exemplary damages and attorney's fees for lack of factual and legal basis; and

(3) ordering respondents to pay the complainant's unpaid salary for the period covering November 16-30, 2005 in the amount of FIFTY THOUSAND PESOS (Php 50,000.00).

SO ORDERED.[9]

The NLRC explained that the withholding of respondent's salary was a valid exercise of management prerogative. The act was deemed justified as it was reasonable to demand an explanation for failure to report to work and to account for his work accomplishments. The NLRC held that the respondent voluntarily resigned as evidenced by the language used in his resignation letter and demand letters. Given his professional and educational background,

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the letters showed respondent's resolve to sever the employer-employee relationship, and his understanding of the import of his words and their consequences. Consequently, respondent could not have been regularized having voluntarily resigned prior to the completion of the probationary period. The NLRC further noted that respondent's 13[th] month pay was already integrated in his salary in accordance with his Probationary Contract of Employment and, therefore, no additional amount should be due him.

On January 25, 2007, respondent filed a motion for reconsideration but the NLRC subsequently denied it for lack of merit in its May 23, 2007 Resolution.

THE RULING OF THE COURT OF APPEALS

The CA reversed the NLRC resolutions in its December 23, 2008 Decision, the dispositive portion of said decision reads:

> WHEREFORE, premises considered, the herein petition is GRANTED and the 29 December 2006 Resolution of the NLRC in NLRC CN RAB-IV-12-21758-05-L, and the 23 May 2007 Resolution denying petitioner's Motion for Reconsideration, are REVERSED and SET ASIDE. Accordingly, a new judgment is hereby entered in that petitioner is hereby awarded separation pay equivalent to at least one month pay, and his full backwages, other privileges and benefits, or their monetary equivalent during the period of his dismissal up to his supposed actual reinstatement by the Labor Arbiter on 15 June 2006.
>
> SO ORDERED.[10]

Contrary to the NLRC ruling, the CA held that withholding respondent's salary was not a valid exercise of management prerogative as there is no such thing as a management prerogative to withhold wages temporarily. Petitioners' averments of respondent's failure to report to work were found to be unsubstantiated allegations not corroborated by any other evidence, insufficient to justify said withholding and lacking in probative value. The malicious withholding of respondent's salary made it impossible or unacceptable for respondent to continue working, thus, compelling him to resign. The respondent's immediate filing of a complaint for illegal dismissal could only mean that his resignation was not voluntary. As a probationary employee entitled to security of tenure, respondent was illegally dismissed. The CA ruled out actual reinstatement, however, reasoning out that antagonism had caused a severe strain in their relationship. It was of the view that separation pay equivalent to at least one month pay would be a more equitable disposition.

THE ISSUES

Aggrieved, the petitioners come to this Court praying for the reversal and setting aside of the subject CA decision presenting the following

ISSUES

> I
>
> THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT AFFIRMING THE DECISION OF THE NLRC, WHICH WAS BASED ON SUBSTANTIAL EVIDENCE.
>
> II
>
> THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT AFFIRMING THE NLRC'S HOLDING THAT PETITIONERS' WITHHOLDING OF RESPONDENT'S SALARY FOR THE PAYROLL PERIOD NOVEMBER 16-30, 2005 IN VIEW OF RESPONDENT'S FAILURE TO RENDER ACTUAL WORK FOR SAID PAYROLL PERIOD WAS A VALID EXERCISE OF

MANAGEMENT PREROGATIVE.

III

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN AFFIRMING THE LABOR ARBITER'S FINDING THAT RESPONDENT HAD BEEN CONSTRUCTIVELY DISMISSED.

IV

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN AWARDING RESPONDENT SEPARATION PAY EQUIVALENT TO AT LEAST ONE MONTH PAY IN LIEU OF REINSTATEMENT, FULL BACKWAGES, AND OTHER PRIVILEGES AND BENEFITS, OR THEIR MONETARY EQUIVALENT IN VIEW OF THE FACT THAT RESPONDENT VOLUNTARILY RESIGNED FROM PETITIONER SHS AND WAS NOT ILLEGALLY DISMISSED.

V

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT HOLDING THAT INDIVIDUAL PETITIONERS HARTMANNSHENN AND SCHUMACHER MAY NOT BE HELD SOLIDARILY AND PERSONALLY LIABLE WITH PETITIONER SHS FOR THE PAYMENT OF THE MONETARY AWARD TO RESPONDENT.

The resolution of these issues is dependent on whether or not respondent was constructively dismissed by petitioners, which determination is, in turn, hinged on finding out (i) whether or not the temporary withholding of respondent's salary/wages by petitioners was a valid exercise of management prerogative; and (ii) whether or not respondent voluntarily resigned.

THE COURT'S RULING

As a rule, the factual findings of the courts below are conclusive in a petition for review on certiorari where only errors of law should be reviewed. The case, however, is an exception because the factual findings of the CA and the LA are contradictory to that of the NLRC. Thus, a review of the records is necessary to resolve the factual issues involved and render substantial justice to the parties.[11]

Petitioners contend that withholding respondent's salary from November 16 to November 30, 2005, was justified because respondent was absent and did not show up for work during that period. He also failed to account for his whereabouts and work accomplishments during said period. When there is an issue as to whether an employee has, in fact, worked and is entitled to his salary, it is within management prerogative to temporarily withhold an employee's salary/wages pending determination of whether or not such employee did indeed work.

We disagree with petitioners.

Management prerogative refers "to the right of an employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of work."[12] Although management prerogative refers to "the right to regulate all aspects of employment," it cannot be understood to include the right to temporarily withhold salary/wages without the consent of the employee. To sanction such an interpretation would be contrary to Article 116 of the Labor Code, which provides:

> ART. 116. Withholding of wages and kickbacks prohibited. - It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker's consent.

Any withholding of an employee's wages by an employer may only be allowed in the form of wage deductions under the circumstances provided in Article 113 of the Labor Code, as set forth below:

> ART. 113. Wage Deduction. - No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:
>
> (a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;
>
> (b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and
>
> (c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.

As correctly pointed out by the LA, "absent a showing that the withholding of complainant's wages falls under the exceptions provided in Article 113, the withholding thereof is thus unlawful."[13]

Petitioners argue that Article 116 of the Labor Code only applies if it is established that an employee is entitled to his salary/wages and, hence, does not apply in cases where there is an issue or uncertainty as to whether an employee has worked and is entitled to his salary/wages, in consonance with the principle of "a fair day's wage for a fair day's work." Petitioners contend that in this case there was precisely an issue as to whether respondent was entitled to his salary because he failed to report to work and to account for his whereabouts and work accomplishments during the period in question.

To substantiate their claim, petitioners presented hard copies of the electronic mail messages[14] sent to respondent on November 22 and 24, 2005, directing the latter to contact Hartmannshenn; the Affidavit[15] of Taguiang stating that she advised respondent on or about November 29, 2005 to immediately communicate with Mr. Hartmannshenn at the SHS office; Hartmannshenn's Counter-Affidavit[16] stating that he exerted earnest efforts to contact respondent through mobile phone; Schumacher's Counter- Affidavit[17] stating that respondent had not filed any request for official leave; and respondent's admission in his Position Paper[18] that he found it absurd to report to the SHS plant when only security guards and machinists were present.

Respondent, on the other hand, presented reports[19] prepared by him and submitted to Hartmannshenn on November 18 and 25, 2005; a receipt[20] issued to him by Taguiang for a client's payment during the subject period; and eight notarized letters[21] of prospective clients vouching for meetings they had with the respondent during the subject period.

The Court finds petitioners' evidence insufficient to prove that respondent did not work from November 16 to November 30, 2005. As can be gleaned from respondent's Contract of Probationary Employment and the exchanges of electronic mail messages[22] between Hartmannshenn and respondent, the latter's duties as manager for business development entailed cultivating business ties, connections, and clients in order to make sales. Such duties called for meetings with prospective clients outside the office rather than reporting for work on a regular schedule. In other words, the nature of respondent's job did not allow close supervision and monitoring by petitioners. Neither was there any prescribed daily monitoring procedure established by petitioners to ensure that respondent was doing his job. Therefore, granting that respondent failed to answer Hartmannshenn's mobile calls and to reply to two electronic mail messages and given the fact that he admittedly failed to report to work at the SHS plant twice each week during the subject period, such cannot be taken to signify that he did not work from November 16 to November 30, 2005.

Furthermore, the electronic mail reports sent to Hartmannshenn and the receipt presented by respondent as evidence of his having worked during the subject period were not controverted by petitioners. The eight notarized

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letters of prospective clients vouching for meetings they had with respondent during the subject period may also be given credence. Although respondent only presented such letters in support of his Motion for Reconsideration filed with the NLRC, they may be considered by this Court in light of Section 10, Rule VII, of the 2005 New Rules of Procedure of the NLRC, which provides in part that "the rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process." While administrative tribunals exercising quasi-judicial functions are free from the rigidity of certain procedural requirements, they are bound by law and practice to observe the fundamental and essential requirements of due process in justiciable cases presented before them.[23] In this case, due process was afforded petitioners as respondent filed with the NLRC a Motion to Set Case for Reception of Additional Evidence as regards the said letters, which petitioners had the opportunity to, and did, oppose.

Although it cannot be determined with certainty whether respondent worked for the entire period from November 16 to November 30, 2005, the consistent rule is that if doubt exists between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter[24] in line with the policy mandated by Articles 2 and 3 of the Labor Code to afford protection to labor and construe doubts in favor of labor. For petitioners' failure to satisfy their burden of proof, respondent is presumed to have worked during the period in question and is, accordingly, entitled to his salary. Therefore, the withholding of respondent's salary by petitioners is contrary to Article 116 of the Labor Code and, thus, unlawful.

Petitioners contend that respondent could not have been constructively dismissed because he voluntarily resigned as evidenced by his resignation letter. They assert that respondent was not forced to draft the letter and his intention to resign is clear from the contents and terms used, and that given respondent's professional and educational background, he was fully aware of the import and consequences of the said letter. They maintain that respondent resigned to `save face' and avoid disciplinary measures due to his allegedly dismal work performance and failure to report to work.

The Court, however, agrees with the LA and the CA that respondent was forced to resign and was, thus, constructively dismissed. In Duldulao v. Court of Appeals, it was written:

> There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. [25]

What made it impossible, unreasonable or unlikely for respondent to continue working for SHS was the unlawful withholding of his salary. For said reason, he was forced to resign. It is of no moment that he served his resignation letter on November 30, 2005, the last day of the payroll period and a non-working holiday, since his salary was already due him on November 29, 2005, being the last working day of said period. In fact, he was then informed that the wages of all the other SHS employees were already released, and only his was being withheld. What is significant is that the respondent prepared and served his resignation letter right after he was informed that his salary was being withheld. It would be absurd to require respondent to tolerate the unlawful withholding of his salary for a longer period before his employment can be considered as so impossible, unreasonable or unlikely as to constitute constructive dismissal. Even granting that the withholding of respondent's salary on November 30, 2005, would not constitute an unlawful act, the continued refusal to release his salary after the payroll period was clearly unlawful. The petitioners' claim that they prepared the check ready for pick- up cannot undo the unlawful withholding.

It is worthy to note that in his resignation letter, respondent cited petitioners' "illegal and unfair labor practice"[26] as his cause for resignation. As correctly noted by the CA, respondent lost no time in submitting his resignation letter and eventually filing a complaint for illegal dismissal just a few days after his salary was withheld. These circumstances are inconsistent with voluntary resignation and bolster the finding of constructive dismissal.

Petitioners cite the case of Solas v. Power & Telephone Supply Phils., Inc.[27] to support their contention that the mere withholding of an employee's salary does not by itself constitute constructive dismissal. Petitioners are mistaken in anchoring their argument on said case, where the withholding of the salary was deemed lawful. In the above-cited case, the employee's salary was withheld for a valid reason - it was applied as partial payment of a debt due to the employer, for withholding taxes on his income and for his absence without leave. The partial payment of a debt due to the employer and the withholding of taxes on income were valid deductions under Article 113 paragraph (c) of the Labor Code. The deduction from an employee's salary for a due and demandable debt to an employer was likewise sanctioned under Article 1706 of the Civil Code. As to the withholding for income tax purposes, it was prescribed by the National Internal Revenue Code. Moreover, the employee therein was indeed absent without leave.

In this case, the withholding of respondent's salary does not fall under any of the circumstances provided under Article 113. Neither was it established with certainty that respondent did not work from November 16 to November 30, 2005. Hence, the Court agrees with the LA and the CA that the unlawful withholding of respondent's salary amounts to constructive dismissal.

Respondent was constructively dismissed and, therefore, illegally dismissed. Although respondent was a probationary employee, he was still entitled to security of tenure. Section 3 (2) Article 13 of the Constitution guarantees the right of all workers to security of tenure. In using the expression "all workers," the Constitution puts no distinction between a probationary and a permanent or regular employee. This means that probationary employees cannot be dismissed except for cause or for failure to qualify as regular employees.[28]

This Court has held that probationary employees who are unjustly dismissed during the probationary period are entitled to reinstatement and payment of full backwages and other benefits and privileges from the time they were dismissed up to their actual reinstatement.[29] Respondent is, thus, entitled to reinstatement without loss of seniority rights and other privileges as well as to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. Respondent, however, is not entitled to the additional amount for 13[th] month pay, as it is clearly provided in respondent's Probationary Contract of Employment that such is deemed included in his salary. Thus:

> EMPLOYEE will be paid a net salary of One Hundred Thousand (Php100,000.00) Pesos per month payable every 15[th] day and end of the month.
>
> The compensation package defined in this paragraph shall represent all that is due and demandable under this Contract and includes all benefits required by law such as the 13[th] month pay. No other benefits, bonus or allowance shall be due the employee. [30]
> (emphasis supplied)

Respondent's reinstatement, however, is no longer feasible as antagonism has caused a severe strain in their working relationship. 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. Payment liberates the employee from what could be a highly oppressive work environment, and at the same time releases the employer from the obligation of keeping in its employ a worker it no longer trusts. Therefore, a more equitable disposition would be an award of separation pay equivalent to at least one month pay, in addition to his full

backwages, allowances and other benefits.[31]

With respect to the personal liability of Hartmannshenn and Schumacher, this Court has held that corporate directors and officers are only solidarily liable with the corporation for termination of employment of corporate employees if effected with malice or in bad faith.[32] Bad faith does not connote bad judgment or negligence; it imports dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of unknown duty through some motive or interest or ill will; it partakes of the nature of fraud.[33] To sustain such a finding, there should be evidence on record that an officer or director acted maliciously or in bad faith in terminating the employee.[34]

Petitioners withheld respondent's salary in the sincere belief that respondent did not work for the period in question and was, therefore, not entitled to it. There was no dishonest purpose or ill will involved as they believed there was a justifiable reason to withhold his salary. Thus, although they unlawfully withheld respondent's salary, it cannot be concluded that such was made in bad faith. Accordingly, corporate officers, Hartmannshenn and Schumacher, cannot be held personally liable for the corporate obligations of SHS.

WHEREFORE, the assailed December 23, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 100015 is hereby AFFIRMED with MODIFICATION. The additional amount for 13[th] month pay is deleted. Petitioners Winfried Hartmannshenn and Hinrich Johann Schumacher are not solidarily liable with petitioner SHS Perforated Materials, Inc.

SO ORDERED.

Velasco, Jr.,[*]Nachura,[**] (Acting Chairperson), Leonardo-De Castro, [***] and Brion, [****] JJ., concur.

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[*] Designated as an additional member in lieu of Senior Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[**] Per Special Order No. 898 dated September 28, 2010.

[* * *] Designated as an additional member in lieu of Justice Roberto A. Abad, per Special Order No. 905 dated October 5, 2010.

[* * * *] Designated as an additional member in lieu of Associate |Justice Diosdado M. Peralta, per Special Order No. 904 dated October 5, 2010.

[1] Rollo, pp. 9-24. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and Associate Justice Noel G. Tijam.

[2] Id. at 428-440.

[3] Id. at 880-885.

[4] Id. Penned by Labor Arbiter Enrico Angelo C. Portillo in NLRC Case No. RAB IV-12-21758-05-L.

[5] Id. at 122.

[6] Id. at 135.

[7] Id. at 177.

[8] Id. at 884-885.

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[9] Id. at 439.

[10] Id. at 23-24.

[11] Norkis Trading Co., Inc. v. Gnilo, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 289.

[12] Baybay Water District v. Commission on Audit, 425 Phil. 326, 343-344 (2002).

[13] Rollo, p. 883.

[14] Id. at 133-134.

[15] Id. at 174.

[16] Id. at 162.

[17] Id. at 169.

[18] Id. at 1082.

[19] Id. at 1108-1109.

[20] Id. at 1110.

[21] Id. at 461-469.

[22] Id. at 123-132.

[23] Cesa v. Office of the Ombudsman, G.R. No. 166658, April 30, 2008, 553 SCRA 357, 365.

[24] Phil. Employ Services and Resources, Inc. v. Paramio, 471 Phil. 753, 777 (2004).

[25] Duldulao v. Court of Appeals, G.R. No. 164893, March 1, 2007, 517 SCRA 191, 199.

[26] Rollo, p. 135.

[27] G.R. No. 162332, August 28, 2008, 563 SCRA 522, 529.

[28] Civil Service Commission v. Magnaye, G.R. No. 183337, April 23, 2010.

[29] Lopez v. Javier, 322 Phil. 70, 81 (1996).

[30] Rollo, p. 121.

[31] Golden Ace Builders v. Talde, G.R. No. 187200, May 5, 2010.

[32] Wensha Spa Center, Inc. v. Yung, G.R. No. 185122, August 16, 2010.

[33] Malayang Samahan ng Mga Mangagawa v. Ramos, 409 Phil. 61, 83 (2001).

[34] M + W Zander Philippines, Inc. and Rolf Wiltschek v. Trinidad Enriquez, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 610-611.

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