

ARMANDO ALILING, PETITIONER, VS. JOSE B. FELICIANO, MANUEL F. SAN MATEO III, JOSEPH R. LARIOS, AND WIDE WIDE WORLD EXPRESS CORPORATION, RESPONDENTS.

G.R. No. 185829. April 25, 2012

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 assails and seeks to set aside the July 3, 2008 Decision[1] and December 15, 2008 Resolution[2] of the Court of Appeals (CA), in CA-G.R. SP No. 101309, entitled *Armando Aliling v. National Labor Relations Commission, Wide Wide World Express Corporation, Jose B. Feliciano, Manuel F. San Mateo III and Joseph R. Lariosa*. The assailed issuances modified the Resolutions dated May 31, 2007[3] and August 31, 2007[4] rendered by the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-10-11166-2004, affirming the Decision dated April 25, 2006[5] of the Labor Arbiter.

The Facts

Via a letter dated June 2, 2004,[6] respondent Wide Wide World Express Corporation (WWWEC) offered to employ petitioner Armando Aliling (Aliling) as “Account Executive (Seafreight Sales),” with the following compensation package: a monthly salary of PhP 13,000, transportation allowance of PhP 3,000, clothing allowance of PhP 800, cost of living allowance of PhP 500, each payable on a per month basis and a 14th month pay depending on the profitability and availability of financial resources of the company. The offer came with a six (6)-month probation period condition with this express caveat: “Performance during [sic] probationary period shall be made as basis for confirmation to Regular or Permanent Status.”

On June 11, 2004, Aliling and WWWWEC inked an Employment Contract[7] under the following terms, among others:

- Conversion to regular status shall be determined on the basis of work performance; and
- Employment services may, at any time, be terminated for just cause or in accordance with the standards defined at the time of engagement.[8]

Training then started. However, instead of a Seafreight Sale assignment, WWWWEC asked Aliling to handle Ground Express (GX), a new company product launched on June 18, 2004 involving domestic cargo forwarding service for Luzon. Marketing this product and finding daily contracts for it formed the core of Aliling’s new assignment.

Barely a month after, Manuel F. San Mateo III (San Mateo), WWWWEC Sales and Marketing Director, emailed Aliling[9] to express dissatisfaction with the latter’s performance, thus:

Armand,

My expectations is [sic] that GX Shuttles should be 80% full by the 3[rd] week (August 5) after launch (July 15). Pls. make that happen. It has been more than a month since you came in. I am expecting sales to be pumping in by now. Thanks.

Nonong

Thereafter, in a letter of September 25, 2004,[10] Joseph R. Lariosa (Lariosa), Human Resources Manager of WWVEC, asked Aliling to report to the Human Resources Department to explain his absence taken without leave from September 20, 2004.

Aliling responded two days later. He denied being absent on the days in question, attaching to his reply-letter[11] a copy of his timesheet[12] which showed that he worked from September 20 to 24, 2004. Aliling's explanation came with a query regarding the withholding of his salary corresponding to September 11 to 25, 2004.

In a separate letter dated September 27, 2004,[13] Aliling wrote San Mateo stating: "Pursuant to your instruction on September 20, 2004, I hereby tender my resignation effective October 15, 2004." While WWVEC took no action on his tender, Aliling nonetheless demanded reinstatement and a written apology, claiming in a subsequent letter dated October 1, 2004[14] to management that San Mateo had forced him to resign.

Lariosa's response-letter of October 1, 2004,[15] informed Aliling that his case was still in the process of being evaluated. On October 6, 2004,[16] Lariosa again wrote, this time to advise Aliling of the termination of his services effective as of that date owing to his "non-satisfactory performance" during his probationary period. Records show that Aliling, for the period indicated, was paid his outstanding salary which consisted of:

PhP 4,988.18 (salary for the September 25, 2004 payroll)

1,987.28 (salary for 4 days in October 2004)

PhP 6,975.46 Total

Earlier, however, or on October 4, 2004, Aliling filed a Complaint[17] for illegal dismissal due to forced resignation, nonpayment of salaries as well as damages with the NLRC against WWVEC. Appended to the complaint was Aliling's Affidavit dated November 12, 2004,[18] in which he stated: "5. At the time of my engagement, respondents did not make known to me the standards under which I will qualify as a regular employee."

Refuting Aliling's basic posture, WWVEC stated in its Position Paper dated November 22, 2004[19] that, in addition to the letter-offer and employment contract adverted to, WWVEC and Aliling have signed a letter of appointment[20] on June 11, 2004 containing the following terms of engagement:

Additionally, upon the effectivity of your probation, you and your immediate superior are required to jointly define your objectives compared with the job requirements of the position. Based on the pre-agreed objectives, your performance shall be reviewed on the 3[rd] month to assess your competence and work attitude. The 5[th] month Performance Appraisal shall be the basis in elevating or confirming your employment status from Probationary to Regular.

Failure to meet the job requirements during the probation stage means that your services may be terminated without prior notice and without recourse to separation pay.

WWVEC also attached to its Position Paper a memo dated September 20, 2004[21] in which San Mateo asked Aliling to explain why he should not be terminated for failure to meet the expected job performance, considering that the load factor for the GX Shuttles for the period July to September was only 0.18% as opposed to the allegedly agreed upon load of 80% targeted for August 5, 2004. According to WWVEC, Aliling, instead of

explaining himself, simply submitted a resignation letter.

In a Reply-Affidavit dated December 13, 2004,[22] Aliling denied having received a copy of San Mateo's September 20, 2004 letter.

Issues having been joined, the Labor Arbiter issued on April 25, 2006[23] a Decision declaring Aliling's termination as unjustified. In its pertinent parts, the decision reads:

The grounds upon which complainant's dismissal was based did not conform not only the standard but also the compliance required under Article 281 of the Labor Code. Necessarily, complainant's termination is not justified for failure to comply with the mandate the law requires. Respondents should be ordered to pay salaries corresponding to the unexpired portion of the contract of employment and all other benefits amounting to a total of THIRTY FIVE THOUSAND EIGHT HUNDRED ELEVEN PESOS (P35,811.00) covering the period from October 6 to December 7, 2004, computed as follows:

Unexpired Portion of the Contract:

Basic Salary

P13,000.00

Transportation

3,000.00

Clothing Allowance

800.00

500.00

P17,300.00

10/06/04 – 12/07/04

P17,300.00 x 2.7 mos.

=

P35,811.00

Complainant's 13[th] month pay proportionately for 2004 was not shown to have been paid to complainant, respondent be made liable to him therefore computed at SIX THOUSAND FIVE HUNDRED THIRTY TWO PESOS AND 50/100 (P6,532.50).

For engaging the services of counsel to protect his interest, complainant is likewise entitled to a 10% attorney's fees of the judgment amount. Such other claims for lack of basis sufficient to support for their grant are unwarranted.

WHEREFORE, judgment is hereby rendered ordering respondent company to pay complainant Armando Aliling the sum of THIRTY FIVE THOUSAND EIGHT HUNDRED ELEVEN PESOS (P35,811.00) representing his salaries and other benefits as discussed above.

Respondent company is likewise ordered to pay said complainant the amount of TEN THOUSAND SEVEN HUNDRED SIXTY SIX PESOS AND 85/100 ONLY (10,766.85) representing his proportionate 13th month pay for 2004 plus 10% of the total judgment as and by way of attorney's fees.

Other claims are hereby denied for lack of merit. (Emphasis supplied.)

The labor arbiter gave credence to Aliling's allegation about not receiving and, therefore, not bound by, San Mateo's purported September 20, 2004 memo. The memo, to reiterate, supposedly apprised Aliling of the sales quota he was, but failed, to meet. Pushing the point, the labor arbiter explained that Aliling cannot be validly terminated for non-compliance with the quota threshold absent a prior advisory of the reasonable standards upon which his performance would be evaluated.

Both parties appealed the above decision to the NLRC, which affirmed the Decision in toto in its Resolution dated May 31, 2007. The separate motions for reconsideration were also denied by the NLRC in its Resolution dated August 31, 2007.

Therefrom, Aliling went on certiorari to the CA, which eventually rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, the petition is PARTLY GRANTED. The assailed Resolutions of respondent (Third Division) National Labor Relations Commission are AFFIRMED, with the following MODIFICATION/CLARIFICATION: Respondents Wide Wide World Express Corp. and its officers, Jose B. Feliciano, Manuel F. San Mateo III and Joseph R. Lariosa, are jointly and severally liable to pay petitioner Armando Aliling: (A) the sum of Forty Two Thousand Three Hundred Thirty Three & 50/100 (P42,333.50) as the total money judgment, (B) the sum of Four Thousand Two Hundred Thirty Three & 35/100 (P4,233.35) as attorney's fees, and (C) the additional sum equivalent to one-half (1/2) month of petitioner's salary as separation pay.

SO ORDERED.[24] (Emphasis supplied.)

The CA anchored its assailed action on the strength of the following premises: (a) respondents failed to prove that Aliling's dismal performance constituted gross and habitual neglect necessary to justify his dismissal; (b) not having been informed at the time of his engagement of the reasonable standards under which he will qualify as a regular employee, Aliling was deemed to have been hired from day one as a regular employee; and (c) the strained relationship existing between the parties argues against the propriety of reinstatement.

Aliling's motion for reconsideration was rejected by the CA through the assailed Resolution dated December 15, 2008.

Hence, the instant petition.

The Issues

Aliling raises the following issues for consideration:

- A. The failure of the Court of Appeals to order reinstatement (despite its finding that petitioner was illegally dismissed from employment) is contrary to law and applicable jurisprudence.
- B. The failure of the Court of Appeals to award backwages (even if it did not order reinstatement) is contrary to law and applicable jurisprudence.
- C. The failure of the Court of Appeals to award moral and exemplary damages (despite its finding that petitioner was dismissed to prevent the acquisition of his regular status) is contrary to law and applicable jurisprudence.[25]

In their Comment,[26] respondents reiterated their position that WWVEC hired petitioner on a probationary basis and fired him before he became a regular employee.

The Court's Ruling

The petition is partly meritorious.

Petitioner is a regular employee

On a procedural matter, petitioner Aliling argues that WWVEC, not having appealed from the judgment of CA which declared Aliling as a regular employee from the time he signed the employment contract, is now precluded from questioning the appellate court's determination as to the nature of his employment.

Petitioner errs. The Court has, when a case is on appeal, the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. We said as much in *Sociedad Europea de Financiacion, SA v. Court of Appeals*,[27] "It is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case."

The issue of whether or not petitioner was, during the period material, a probationary or regular employee is of pivotal import. Its resolution is doubtless necessary at arriving at a fair and just disposition of the controversy.

The Labor Arbiter cryptically held in his decision dated April 25, 2006 that:

Be that as it may, there appears no showing that indeed the said September 20, 2004 Memorandum addressed to complainant was received by him. Moreover, complainant's tasked where he was assigned was a new developed service. In this regard, it is noted:

"Due process dictates that an employee be apprised beforehand of the conditions of his employment and of the terms of advancement therein. Precisely, implicit in Article 281 of the Labor Code is the requirement that reasonable standards be previously made known by the employer to the employee at the time of his engagement (Ibid, citing *Sameer Overseas Placement Agency, Inc. vs. NLRC*, G.R. No. 132564, October 20, 1999).[28]

From our review, it appears that the labor arbiter, and later the NLRC, considered Aliling a probationary employee despite finding that he was not informed of the reasonable standards by which his probationary employment was to be judged.

The CA, on the other hand, citing *Cielo v. National Labor Relations Commission*,[29] ruled that petitioner was a regular employee from the outset inasmuch as he was not informed of the standards by which his probationary employment would be measured. The CA wrote:

Petitioner was regularized from the time of the execution of the employment contract on June 11, 2004, although respondent company had arbitrarily shortened his tenure. As pointed out, respondent company did not make known the reasonable standards under which he will qualify as a regular employee at the time of his engagement. Hence, he was deemed to have been hired from day one as a regular employee.[30] (Emphasis supplied.)

WWVEC, however, excepts on the argument that it put Aliling on notice that he would be evaluated on the 3rd and 5th months of his probationary employment. To WWVEC, its efforts translate to sufficient compliance with the requirement that a probationary worker be apprised of the reasonable standards for his regularization. WWVEC invokes the ensuing holding in *Alcira v. National Labor Relations Commission*[31] to support its case:

Conversely, an employer is deemed to substantially comply with the rule on notification of standards if he

apprises the employee that he will be subjected to a performance evaluation on a particular date after his hiring. We agree with the labor arbiter when he ruled that:

In the instant case, petitioner cannot successfully say that he was never informed by private respondent of the standards that he must satisfy in order to be converted into regular status. This rans (sic) counter to the agreement between the parties that after five months of service the petitioner's performance would be evaluated. It is only but natural that the evaluation should be made vis-à-vis the performance standards for the job. Private respondent Trifona Mamaradlo speaks of such standard in her affidavit referring to the fact that petitioner did not perform well in his assigned work and his attitude was below par compared to the company's standard required of him. (Emphasis supplied.)

WWWEC's contention is untenable.

Alcira is cast under a different factual setting. There, the labor arbiter, the NLRC, the CA, and even finally this Court were one in their findings that the employee concerned knew, having been duly informed during his engagement, of the standards for becoming a regular employee. This is in stark contrast to the instant case where the element of being informed of the regularizing standards does not obtain. As such, Alcira cannot be made to apply to the instant case.

To note, the June 2, 2004 letter-offer itself states that the regularization standards or the performance norms to be used are still to be agreed upon by Aliling and his supervisor. WWWEC has failed to prove that an agreement as regards thereto has been reached. Clearly then, there were actually no performance standards to speak of. And lest it be overlooked, Aliling was assigned to GX trucking sales, an activity entirely different to the Seafreight Sales he was originally hired and trained for. Thus, at the time of his engagement, the standards relative to his assignment with GX sales could not have plausibly been communicated to him as he was under Seafreight Sales. Even for this reason alone, the conclusion reached in Alcira is of little relevant to the instant case.

Based on the facts established in this case in light of extant jurisprudence, the CA's holding as to the kind of employment petitioner enjoyed is correct. So was the NLRC ruling, affirmatory of that of the labor arbiter. In the final analysis, one common thread runs through the holding of the labor arbiter, the NLRC and the CA, i.e., petitioner Aliling, albeit hired from management's standpoint as a probationary employee, was deemed a regular employee by force of the following self-explanatory provisions:

Article 281 of the Labor Code

ART. 281. Probationary employment. - Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee. (Emphasis supplied.)

Section 6(d) of the Implementing Rules of Book VI, Rule VIII-A of the Labor Code

Sec. 6. Probationary employment. – There is probationary employment where the employee, upon his engagement, is made to undergo a trial period where the employee determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x x

(d) In all cases of probationary employment, the employer shall make known to the employee the standards

under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee. (Emphasis supplied.)

To repeat, the labor arbiter, NLRC and the CA are agreed, on the basis of documentary evidence adduced, that respondent WWVEC did not inform petitioner Aliling of the reasonable standards by which his probation would be measured against at the time of his engagement. The Court is loathed to interfere with this factual determination. As We have held:

Settled is the rule that the findings of the Labor Arbiter, when affirmed by the NLRC and the Court of Appeals, are binding on the Supreme Court, unless patently erroneous. It is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below. The jurisdiction of this Court in a petition for review on certiorari is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.[32]

The more recent *Peñafrancia Tours and Travel Transport, Inc., v. Sarmiento*[33] has reaffirmed the above ruling, to wit:

Finally, the CA affirmed the ruling of the NLRC and adopted as its own the latter's factual findings. Long-established is the doctrine that findings of fact of quasi-judicial bodies x x x are accorded respect, even finality, if supported by substantial evidence. When passed upon and upheld by the CA, they are binding and conclusive upon this Court and will not normally be disturbed. Though this doctrine is not without exceptions, the Court finds that none are applicable to the present case.

WWVEC also cannot validly argue that “the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.” Its very own letter-offer of employment argues against its above posture. Excerpts of the letter-offer:

Additionally, upon the effectivity of your probation, you and your immediate superior are required to jointly define your objectives compared with the job requirements of the position. Based on the pre-agreed objectives, your performance shall be reviewed on the 3rd month to assess your competence and work attitude. The 5th month Performance Appraisal shall be the basis in elevating or confirming your employment status from Probationary to Regular.

Failure to meet the job requirements during the probation stage means that your services may be terminated without prior notice and without recourse to separation pay. (Emphasis supplied.)

Respondents further allege that San Mateo's email dated July 16, 2004 shows that the standards for his regularization were made known to petitioner Aliling at the time of his engagement. To recall, in that email message, San Mateo reminded Aliling of the sales quota he ought to meet as a condition for his continued employment, i.e., that the GX trucks should already be 80% full by August 5, 2004. Contrary to respondents' contention, San Mateo's email cannot support their allegation on Aliling being informed of the standards for his continued employment, such as the sales quota, at the time of his engagement. As it were, the email message was sent to Aliling more than a month after he signed his employment contract with WWVEC. The aforequoted Section 6 of the Implementing Rules of Book VI, Rule VIII-A of the Code specifically requires the employer to inform the probationary employee of such reasonable standards at the time of his engagement, not at any time later; else, the latter shall be considered a regular employee. Thus, pursuant to the explicit provision of Article 281 of the Labor Code, Section 6(d) of the Implementing Rules of Book VI, Rule VIII-A of the Labor Code and settled jurisprudence, petitioner Aliling is deemed a regular employee as of June 11, 2004, the date of his employment contract.

Petitioner was illegally dismissed

To justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal.[34]

WWVEC had failed to discharge its twin burden in the instant case.

First off, the attendant circumstances in the instant case aptly show that the issue of petitioner's alleged failure to achieve his quota, as a ground for terminating employment, strikes the Court as a mere afterthought on the part of WWVEC. Consider: Lariosa's letter of September 25, 2004 already betrayed management's intention to dismiss the petitioner for alleged unauthorized absences. Aliling was in fact made to explain and he did so satisfactorily. But, lo and behold, WWVEC nonetheless proceeded with its plan to dismiss the petitioner for non-satisfactory performance, although the corresponding termination letter dated October 6, 2004 did not even specifically state Aliling's "non-satisfactory performance," or that Aliling's termination was by reason of his failure to achieve his set quota.

What WWVEC considered as the evidence purportedly showing it gave Aliling the chance to explain his inability to reach his quota was a purported September 20, 2004 memo of San Mateo addressed to the latter. However, Aliling denies having received such letter and WWVEC has failed to refute his contention of non-receipt. In net effect, WWVEC was at a loss to explain the exact just reason for dismissing Aliling.

At any event, assuming for argument that the petitioner indeed failed to achieve his sales quota, his termination from employment on that ground would still be unjustified.

Article 282 of the Labor Code considers any of the following acts or omission on the part of the employee as just cause or ground for terminating employment:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the foregoing. (Emphasis supplied)

In *Lim v. National Labor Relations Commission*,^[35] the Court considered inefficiency as an analogous just cause for termination of employment under Article 282 of the Labor Code:

We cannot but agree with PEPSI that "gross inefficiency" falls within the purview of "other causes analogous to the foregoing," this constitutes, therefore, just cause to terminate an employee under Article 282 of the Labor Code. One is analogous to another if it is susceptible of comparison with the latter either in general or in some specific detail; or has a close relationship with the latter. "Gross inefficiency" is closely related to "gross neglect," for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. In *Buiser vs. Leogardo*, this Court ruled that failure to observed prescribed standards to inefficiency may constitute just cause for dismissal. (Emphasis supplied.)

It did so anew in *Leonardo v. National Labor Relations Commission*^[36] on the following rationale:

An employer is entitled to impose productivity standards for its workers, and in fact, non-compliance may be visited with a penalty even more severe than demotion. Thus,

[t]he practice of a company in laying off workers because they failed to make the work quota has been recognized in this jurisdiction. (Philippine American Embroideries vs. Embroidery and Garment Workers, 26 SCRA 634, 639). In the case at bar, the petitioners' failure to meet the sales quota assigned to each of them constitute a just cause of their dismissal, regardless of the permanent or probationary status of their employment. Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest. (Emphasis supplied.)

In fine, an employee's failure to meet sales or work quotas falls under the concept of gross inefficiency, which in turn is analogous to gross neglect of duty that is a just cause for dismissal under Article 282 of the Code. However, in order for the quota imposed to be considered a valid productivity standard and thereby validate a dismissal, management's prerogative of fixing the quota must be exercised in good faith for the advancement of its interest. The duty to prove good faith, however, rests with WWVEC as part of its burden to show that the dismissal was for a just cause. WWVEC must show that such quota was imposed in good faith. This WWVEC failed to do, perceptibly because it could not. The fact of the matter is that the alleged imposition of the quota was a desperate attempt to lend a semblance of validity to Aliling's illegal dismissal. It must be stressed that even WWVEC's sales manager, Eve Amador (Amador), in an internal e-mail to San Mateo, hedged on whether petitioner performed below or above expectation:

Could not quantify level of performance as he as was tasked to handle a new product (GX). Revenue report is not yet administered by IT on a month-to-month basis. Moreover, this in a way is an experimental activity. Practically you have a close monitoring with Armand with regards to his performance. Your assessment of him would be more accurate.

Being an experimental activity and having been launched for the first time, the sales of GX services could not be reasonably quantified. This would explain why Amador implied in her email that other bases besides sales figures will be used to determine Aliling's performance. And yet, despite such a neutral observation, Aliling was still dismissed for his dismal sales of GX services. In any event, WWVEC failed to demonstrate the reasonableness and the bona fides on the quota imposition.

Employees must be reminded that while probationary employees do not enjoy permanent status, they enjoy the constitutional protection of security of tenure. They can only be terminated for cause or when they otherwise fail to meet the reasonable standards made known to them by the employer at the time of their engagement.^[37] Respondent WWVEC miserably failed to prove the termination of petitioner was for a just cause nor was there substantial evidence to demonstrate the standards were made known to the latter at the time of his engagement. Hence, petitioner's right to security of tenure was breached.

Aliling's right to procedural due process was violated

As earlier stated, to effect a legal dismissal, the employer must show not only a valid ground therefor, but also that procedural due process has properly been observed. When the Labor Code speaks of procedural due process, the reference is usually to the two (2)-written notice rule envisaged in Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, which provides:

Section 2. Standard of due process: requirements of notice. — In all cases of termination of employment, the

following standards of due process shall be substantially observed.

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

- (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
- (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
- (c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee's last known address.

MGG Marine Services, Inc. v. NLRC[38] tersely described the mechanics of what may be considered a two-part due process requirement which includes the two-notice rule, "x x x one, of the intention to dismiss, indicating therein his acts or omissions complained against, and two, notice of the decision to dismiss; and an opportunity to answer and rebut the charges against him, in between such notices."

King of Kings Transport, Inc. v. Mamac[39] expounded on this procedural requirement in this manner:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five calendar days from receipt of the notice xxxx Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 288 [of the Labor Code] is being charged against the employees

(2) After serving the first notice, the employees should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice x x x.

(3) After determining that termination is justified, the employer shall serve the employees a written notice of termination indicating that: (1) all the circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. (Emphasis in the original.)

Here, the first and second notice requirements have not been properly observed, thus tainting petitioner's dismissal with illegality.

The adverted memo dated September 20, 2004 of WWVEC supposedly informing Aliling of the likelihood of his termination and directing him to account for his failure to meet the expected job performance would have had constituted the "charge sheet," sufficient to answer for the first notice requirement, but for the fact that there is no proof such letter had been sent to and received by him. In fact, in his December 13, 2004 Complainant's Reply Affidavit, Aliling goes on to tag such letter/memorandum as fabrication. WWVEC did not adduce proof to show

that a copy of the letter was duly served upon Aliling. Clearly enough, WWVEC did not comply with the first notice requirement.

Neither was there compliance with the imperatives of a hearing or conference. The Court need not dwell at length on this particular breach of the due procedural requirement. Suffice it to point out that the record is devoid of any showing of a hearing or conference having been conducted. On the contrary, in its October 1, 2004 letter to Aliling, or barely five (5) days after it served the notice of termination, WWVEC acknowledged that it was still evaluating his case. And the written notice of termination itself did not indicate all the circumstances involving the charge to justify severance of employment.

Aliling is entitled to backwages
and separation pay in lieu of reinstatement

As may be noted, the CA found Aliling's dismissal as having been illegally effected, but nonetheless concluded that his employment ceased at the end of the probationary period. Thus, the appellate court merely affirmed the monetary award made by the NLRC, which consisted of the payment of that amount corresponding to the unserved portion of the contract of employment.

The case disposition on the award is erroneous.

As earlier explained, Aliling cannot be rightfully considered as a mere probationary employee. Accordingly, the probationary period set in the contract of employment dated June 11, 2004 was of no moment. In net effect, as of that date June 11, 2004, Aliling became part of the WWVEC organization as a regular employee of the company without a fixed term of employment. Thus, he is entitled to backwages reckoned from the time he was illegally dismissed on October 6, 2004, with a PhP 17,300.00 monthly salary, until the finality of this Decision. This disposition hews with the Court's ensuing holding in *Javellana v. Belen*:^[40]

Article 279 of the Labor Code, as amended by Section 34 of Republic Act 6715 instructs:

Art. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

Clearly, the law intends the award of backwages and similar benefits to accumulate past the date of the Labor Arbiter's decision until the dismissed employee is actually reinstated. But if, as in this case, reinstatement is no longer possible, this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final. (Emphasis supplied.)

Additionally, Aliling is entitled to separation pay in lieu of reinstatement on the ground of strained relationship.

In *Golden Ace Builders v. Talde*,^[41] the Court ruled:

The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.

As to how both awards should be computed, *Macasero v. Southern Industrial Gases Philippines* instructs:

[T]he award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under

Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof:

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. x x x

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.

Strained relations must be demonstrated as a fact, however, to be adequately supported by evidence — substantial evidence to show that the relationship between the employer and the employee is indeed strained as a necessary consequence of the judicial controversy.

In the present case, the Labor Arbiter found that actual animosity existed between petitioner Azul and respondent as a result of the filing of the illegal dismissal case. Such finding, especially when affirmed by the appellate court as in the case at bar, is binding upon the Court, consistent with the prevailing rules that this Court will not try facts anew and that findings of facts of quasi-judicial bodies are accorded great respect, even finality. (Emphasis supplied.)

As the CA correctly observed, “To reinstate petitioner [Aliling] would only create an atmosphere of antagonism and distrust, more so that he had only a short stint with respondent company.”[42] The Court need not belabor the fact that the patent animosity that had developed between employer and employee generated what may be considered as the arbitrary dismissal of the petitioner.

Following the pronouncements of this Court in *Sagales v. Rustan's Commercial Corporation*,[43] the computation of separation pay in lieu of reinstatement includes the period for which backwages were awarded:

Thus, in lieu of reinstatement, it is but proper to award petitioner separation pay computed at one-month salary for every year of service, a fraction of at least six (6) months considered as one whole year. In the computation of separation pay, the period where backwages are awarded must be included. (Emphasis supplied.)

Thus, Aliling is entitled to both backwages and separation pay (in lieu of reinstatement) in the amount of one (1) month's salary for every year of service, that is, from June 11, 2004 (date of employment contract) until the finality of this decision with a fraction of a year of at least six (6) months to be considered as one (1) whole year. As determined by the labor arbiter, the basis for the computation of backwages and separation pay will be

Aliling's monthly salary at PhP 17,300.

Finally, Aliling is entitled to an award of PhP 30,000 as nominal damages in consonance with prevailing jurisprudence^[44] for violation of due process.

Petitioner is not entitled to moral and exemplary damages

In *Nazareno v. City of Dumaguete*,^[45] the Court expounded on the requisite elements for a litigant's entitlement to moral damages, thus:

Moral damages are awarded if the following elements exist in the case: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated Article 2219 of the Civil Code. In addition, the person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive. Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud. (Emphasis supplied.)

In alleging that WWVEC acted in bad faith, Aliling has the burden of proof to present evidence in support of his claim, as ruled in *Culili v. Eastern Telecommunications Philippines, Inc.*:^[46]

According to jurisprudence, "basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same." By imputing bad faith to the actuations of ETPI, Culili has the burden of proof to present substantial evidence to support the allegation of unfair labor practice. Culili failed to discharge this burden and his bare allegations deserve no credit.

This was reiterated in *United Claimants Association of NEA (UNICAN) v. National Electrification Administration (NEA)*,^[47] in this wise:

It must be noted that the burden of proving bad faith rests on the one alleging it. As the Court ruled in *Culili v. Eastern Telecommunications, Inc.*, "According to jurisprudence, 'basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.'" Moreover, in *Spouses Palada v. Solidbank Corporation*, the Court stated, "Allegations of bad faith and fraud must be proved by clear and convincing evidence."

Similarly, Aliling has failed to overcome such burden to prove bad faith on the part of WWVEC. Aliling has not presented any clear and convincing evidence to show bad faith. The fact that he was illegally dismissed is insufficient to prove bad faith. Thus, the CA correctly ruled that "[t]here was no sufficient showing of bad faith or abuse of management prerogatives in the personal action taken against petitioner."^[48] In *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*,^[49] the Court ruled:

A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process.

The officers of WWVEC cannot be held

jointly and severally liable with the company

The CA held the president of WWVEC, Jose B. Feliciano, San Mateo and Lariosa jointly and severally liable for the monetary awards of Aliling on the ground that the officers are considered "employers" acting in the interest of the corporation. The CA cited *NYK International Knitwear Corporation Philippines (NYK) v. National Labor*

Relations Commission[50] in support of its argument. Notably, NYK in turn cited A.C. Ransom Labor Union-CCLU v. NLRC.[51]

Such ruling has been reversed by the Court in Alba v. Yupangco,[52] where the Court ruled:

By Order of September 5, 2007, the Labor Arbiter denied respondent's motion to quash the 3rd alias writ. Brushing aside respondent's contention that his liability is merely joint, the Labor Arbiter ruled:

Such issue regarding the personal liability of the officers of a corporation for the payment of wages and money claims to its employees, as in the instant case, has long been resolved by the Supreme Court in a long list of cases [A.C. Ransom Labor Union-CLU vs. NLRC (142 SCRA 269) and reiterated in the cases of Chua vs. NLRC (182 SCRA 353), Gudez vs. NLRC (183 SCRA 644)]. In the aforementioned cases, the Supreme Court has expressly held that the irresponsible officer of the corporation (e.g. President) is liable for the corporation's obligations to its workers. Thus, respondent Yupangco, being the president of the respondent YL Land and Ultra Motors Corp., is properly jointly and severally liable with the defendant corporations for the labor claims of Complainants Alba and De Guzman. x x x

x x x x

As reflected above, the Labor Arbiter held that respondent's liability is solidary.

There is solidary liability when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires. MAM Realty Development Corporation v. NLRC, on solidary liability of corporate officers in labor disputes, enlightens:

x x x A corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents are not theirs but the direct accountabilities of the corporation they represent. True solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:

1. When directors and trustees or, in appropriate cases, the officers of a corporation:

- (a) vote for or assent to patently unlawful acts of the corporation;
- (b) act in bad faith or with gross negligence in directing the corporate affairs;

x x x x

In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.

A review of the facts of the case does not reveal ample and satisfactory proof that respondent officers of WWEC acted in bad faith or with malice in effecting the termination of petitioner Aliling. Even assuming arguendo that the actions of WWEC are ill-conceived and erroneous, respondent officers cannot be held jointly and solidarily with it. Hence, the ruling on the joint and solidary liability of individual respondents must be recalled.

Aliling is entitled to Attorney's Fees and Legal Interest

Petitioner Aliling is also entitled to attorney's fees in the amount of ten percent (10%) of his total monetary award, having been forced to litigate in order to seek redress of his grievances, pursuant to Article 111 of the Labor Code and following our ruling in Exodus International Construction Corporation v. Biscocho,[53] to wit:

In Rutaquio v. National Labor Relations Commission, this Court held that:

It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.

In *Producers Bank of the Philippines v. Court of Appeals* this Court ruled that:

Attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party.

While in *Lambert Pawnbrokers and Jewelry Corporation*,^[54] the Court specifically ruled:

However, the award of attorney's fee is warranted pursuant to Article 111 of the Labor Code. Ten (10%) percent of the total award is usually the reasonable amount of attorney's fees awarded. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.

Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of 6% per annum from October 6, 2004 (date of termination) until fully paid.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The July 3, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 101309 is hereby **MODIFIED** to read:

WHEREFORE, the petition is **PARTIALLY GRANTED**. The assailed Resolutions of respondent (Third Division) National Labor Relations Commission are **AFFIRMED**, with the following **MODIFICATION/CLARIFICATION**: Respondent Wide World Express Corp. is liable to pay Armando Aliling the following: (a) backwages reckoned from October 6, 2004 up to the finality of this Decision based on a salary of PhP 17,300 a month, with interest at 6% per annum on the principal amount from October 6, 2004 until fully paid; (b) the additional sum equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months considered as one whole year based on the period from June 11, 2004 (date of employment contract) until the finality of this Decision, as separation pay; (c) PhP 30,000 as nominal damages; and (d) Attorney's Fees equivalent to 10% of the total award.

SO ORDERED.

Peralta, Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 22-31. Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Josefina Guevara-Salonga and Normandie B. Pizarro.

[2] *Id.* at 33-34.

[3] CA rollo, pp. 38-48.

[4] *Id.* at 49-50.

[5] *Id.* at 135-143

[6] *Id.* at 69-70.

[7] *Id.* at 71-74.

[8] *Id.* at 71.

[9] *Id.* at 109.

[10] *Id.* at 74.

[11] Letter dated Sept. 27, 2004; *id.* at 75.

[12] Id. at 76.

[13] Id. at 77.

[14] Id. at 79-80.

[15] Id. at 81.

[16] Id. at 83.

[17] Id. at 51.

[18] Id. at 85-89.

[19] Id. at 90-101.

[20] Id. at 105.

[21] Id. at 113.

[22] Id. at 117-121.

[23] Id. at 135-143.

[24] Rollo, pp. 30-31.

[25] Id. at 11-12.

[26] Id. at 44-56.

[27] G.R. No. 75787, January 21, 1991, 193 SCRA 105, 114; citing *Maricalum Mining Corporation v. Brion*, G.R. No. 157696-97, February 9, 2006, 482 SCRA 87, 99; *Miguel v. Court of Appeals*, No. L-20274, October 30, 1969, 29 SCRA 760, 767-768; *Saura Import & Export Co., Inc. v. Philippine International Co., Inc.*, No. L-151, May 31, 1963, 8 SCRA 143, 148.

[28] CA rollo, p. 142.

[29] G.R. No. 78693, January 28, 1991, 193 SCRA 410.

[30] Rollo, p. 28.

[31] G.R. No. 149859, June 9, 2004, 431 SCRA 508, 514.

[32] *German Machineries Corporation v. Endaya*, G.R. No. 156810, November 25, 2004, 444 SCRA 329, 340.

[33] G.R. No. 178397, October 20, 2010, 634 SCRA 279, 289-290.

[34] *Dacuital v. L. M. Camus Engineering Corporation*, G.R. No. 176748, September 1, 2010, 629 SCRA 702, 715.

[35] G.R. No. 118434, July 26, 1996, 259 SCRA 485, 496-497.

[36] G.R. No. 125303 June 16, 2000, 333 SCRA 589, 598-599.

[37] *Agoy v. NLRC*, G.R. No. 112096, January 30, 1996, 252 SCRA 588, 595.

[38] G.R. No. 114313, July 29, 1996, 259 SCRA 664, 677.

[39] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-26.

[40] G.R. No. 181913, March 5, 2010, 614 SCRA 342, 350-351.

[41] G.R. No. 187200, May 05, 2010, 620 SCRA 283, 288-290.

[42] CA rollo, p. 248.

[43] G.R. No. 166554, November 27, 2008, 572 SCRA 89, 106; citing *Farrol v. Court of Appeals*, G.R. No. 133259, February 10, 2000, 325 SCRA 331, citing in turn *Jardine Davies, Inc. v. National Labor Relations Commission*, G.R. No. 76272, July 28, 1999, 311 SCRA 289, *Guatson International Travel and Tours, Inc. v. National Labor Relations Commission*, G.R. No. 100322, March 9, 1994, 230 SCRA 815.

[44] *Hilton Heavy Equipment Corporation v. Dy*, G.R. No. 164860, February 2, 2010, 611 SCRA 329, 339.

[45] G.R. No. 177795, June 19, 2009, 590 SCRA 110, 141-142.

[46] G.R. No. 165381, February 9, 2011, 642 SCRA 338, 361.

[47] G.R. No. 187107, January 31, 2012.

[48] Rollo, p. 29.

[49] G.R. No. 170464, July 12, 2010, 624 SCRA 705, 720.

[50] G.R. No. 146267, February 17, 2003, 397 SCRA 607.

[51] G.R. No. 69494, June 10, 1986, 142 SCRA 269.

[52] G.R. No. 188233, June 29, 2010, 622 SCRA 503, 506-508.

[53] G.R. No. 166109, February 23, 2011, 644 SCRA 76, 91.

[54] *Supra* note 49, at 721.

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