

**ABBOTT LABORATORIES, PHILIPPINES, CECILLE A. TERRIBLE,
EDWIN D. FEIST, MARIA OLIVIA T. YABUT-MISA, TERESITA C.
BERNARDO, AND ALLAN G. ALMAZAR, PETITIONERS, VS. PEARLIE
ANN F. AL...**

G.R. No. 192571. April 22, 2014

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

For resolution is respondent Pearlle Ann Alcaraz's (Alcaraz) Motion for Reconsideration dated August 23, 2013 of the Court's Decision dated July 23, 2013 (Decision).[1]

At the outset, there appears to be no substantial argument in the said motion sufficient for the Court to depart from the pronouncements made in the initial ruling. But if only to address Alcaraz's novel assertions, and to so placate any doubt or misconception in the resolution of this case, the Court proceeds to shed light on the matters indicated below.

A. Manner of review.

Alcaraz contends that the Court should not have conducted a re-weighing of evidence since a petition for review on certiorari under Rule 45 of the Rules of Court (Rules) is limited to the review of questions of law. She submits that since what was under review was a ruling of the Court of Appeals (CA) rendered via a petition for certiorari under Rule 65 of the Rules, the Court should only determine whether or not the CA properly determined that the National Labor Relations Commission (NLRC) committed a grave abuse of discretion.

The assertion does not justify the reconsideration of the assailed Decision.

A careful perusal of the questioned Decision will reveal that the Court actually resolved the controversy under the above-stated framework of analysis. Essentially, the Court found the CA to have committed an error in holding that no grave abuse of discretion can be ascribed to the NLRC since the latter arbitrarily disregarded the legal implication of the attendant circumstances in this case which should have simply resulted in the finding that Alcaraz was apprised of the performance standards for her regularization and hence, was properly a probationary employee. As the Court observed, an employee's failure to perform the duties and responsibilities which have been clearly made known to him constitutes a justifiable basis for a probationary employee's non-regularization. As detailed in the Decision, Alcaraz was well-apprised of her duties and responsibilities as well as the probationary status of her employment:

(a) On June 27, 2004, [Abbott Laboratories, Philippines (Abbott)] caused the publication in a major broadsheet newspaper of its need for a Regulatory Affairs Manager, indicating therein the job description for as well as the duties and responsibilities attendant to the aforesaid position; this prompted Alcaraz to submit her application to Abbott on October 4, 2004;

(b) In Abbott's December 7, 2004 offer sheet, it was stated that Alcaraz was to be employed on a probationary

status;

(c) On February 12, 2005, Alcaraz signed an employment contract which specifically stated, inter alia, that she was to be placed on probation for a period of six (6) months beginning February 15, 2005 to August 14, 2005;

(d) On the day Alcaraz accepted Abbott's employment offer, Bernardo sent her copies of Abbott's organizational structure and her job description through e-mail;

(e) Alcaraz was made to undergo a pre-employment orientation where [Allan G. Almazar] informed her that she had to implement Abbott's Code of Conduct and office policies on human resources and finance and that she would be reporting directly to [Kelly Walsh];

(f) Alcaraz was also required to undergo a training program as part of her orientation;

(g) Alcaraz received copies of Abbott's Code of Conduct and Performance Modules from [Maria Olivia T. Yabut-Misa] who explained to her the procedure for evaluating the performance of probationary employees; she was further notified that Abbott had only one evaluation system for all of its employees; and

(h) Moreover, Alcaraz had previously worked for another pharmaceutical company and had admitted to have an "extensive training and background" to acquire the necessary skills for her job.[2]

Considering the foregoing incidents which were readily observable from the records, the Court reached the conclusion that the NLRC committed grave abuse of discretion, viz.:

[I]n holding that Alcaraz was illegally dismissed due to her status as a regular and not a probationary employee, the Court finds that the NLRC committed a grave abuse of discretion.

To elucidate, records show that the NLRC based its decision on the premise that Alcaraz's receipt of her job description and Abbott's Code of Conduct and Performance Modules was not equivalent to being actually informed of the performance standards upon which she should have been evaluated on. It, however, overlooked the legal implication of the other attendant circumstances as detailed herein which should have warranted a contrary finding that Alcaraz was indeed a probationary and not a regular employee – more particularly the fact that she was well-aware of her duties and responsibilities and that her failure to adequately perform the same would lead to her non-regularization and eventually, her termination.[3]

Consequently, since the CA found that the NLRC did not commit grave abuse of discretion and denied the certiorari petition before it, the reversal of its ruling was thus in order.

At this juncture, it bears exposition that while NLRC decisions are, by their nature, final and executory[4] and, hence, not subject to appellate review,[5] the Court is not precluded from considering other questions of law aside from the CA's finding on the NLRC's grave abuse of discretion. While the focal point of analysis revolves on this issue, the Court may deal with ancillary issues – such as, in this case, the question of how a probationary employee is deemed to have been informed of the standards of his regularization – if only to determine if the concepts and principles of labor law were correctly applied or misapplied by the NLRC in its decision. In other words, the Court's analysis of the NLRC's interpretation of the environmental principles and concepts of labor law is not completely prohibited in – as it is complementary to – a Rule 45 review of labor cases.

Finally, if only to put to rest Alcaraz's misgivings on the manner in which this case was reviewed, it bears pointing out that no "factual appellate review" was conducted by the Court in the Decision. Rather, the Court proceeded to interpret the relevant rules on probationary employment as applied to settled factual findings. Besides, even on the assumption that a scrutiny of facts was undertaken, the Court is not altogether barred from conducting the same. This was explained in the case of *Career Philippines Shipmanagement, Inc. v. Serna*[6] wherein the Court held as follows:

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

Nevertheless, there are exceptional cases where we, in the exercise of our discretionary appellate jurisdiction may be urged to look into factual issues raised in a Rule 45 petition. For instance, when the petitioner persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or court a quo, as Section 5, Rule 133 of the Rules of Court states in express terms that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established only if supported by substantial evidence.[7] (Emphasis supplied)

B. Standards for regularization; conceptual underpinnings.

Alcaraz posits that, contrary to the Court’s Decision, one’s job description cannot by and of itself be treated as a standard for regularization as a standard denotes a measure of quantity or quality. By way of example, Alcaraz cites the case of a probationary salesperson and asks how does such employee achieve regular status if he does not know how much he needs to sell to reach the same.

The argument is untenable.

First off, the Court must correct Alcaraz’s mistaken notion: it is not the probationary employee’s job description but the adequate performance of his duties and responsibilities which constitutes the inherent and implied standard for regularization. To echo the fundamental point of the Decision, if the probationary employee had been fully apprised by his employer of these duties and responsibilities, then basic knowledge and common sense dictate that he must adequately perform the same, else he fails to pass the probationary trial and may therefore be subject to termination.[8]

The determination of “adequate performance” is not, in all cases, measurable by quantitative specification, such as that of a sales quota in Alcaraz’s example. It is also hinged on the qualitative assessment of the employee’s work; by its nature, this largely rests on the reasonable exercise of the employer’s management prerogative. While in some instances the standards used in measuring the quality of work may be conveyed – such as workers who construct tangible products which follow particular metrics, not all standards of quality measurement may be reducible to hard figures or are readily articulable in specific pre-engagement descriptions. A good example would be the case of probationary employees whose tasks involve the application of discretion and intellect, such as – to name a few – lawyers, artists, and journalists. In these kinds of occupation, the best that the employer can do at the time of engagement is to inform the probationary employee of his duties and responsibilities and to orient him on how to properly proceed with the same. The employer cannot bear out in exacting detail at the beginning of the engagement what he deems as “quality work” especially since the probationary employee has yet to submit the required output. In the ultimate analysis, the communication of performance standards should be perceived within the context of the nature of the probationary employee’s duties and responsibilities.

The same logic applies to a probationary managerial employee who is tasked to supervise a particular department, as Alcaraz in this case. It is hardly possible for the employer, at the time of the employee’s engagement, to map into technical indicators, or convey in precise detail the quality standards by which the latter should effectively manage the department. Factors which gauge the ability of the managerial employee to either deal with his subordinates (e.g., how to spur their performance, or command respect and obedience from them), or to organize office policies, are hardly conveyable at the outset of the engagement since the employee has yet to be immersed

into the work itself. Given that a managerial role essentially connotes an exercise of discretion, the quality of effective management can only be determined through subsequent assessment. While at the time of engagement, reason dictates that the employer can only inform the probationary managerial employee of his duties and responsibilities as such and provide the allowable parameters for the same. Verily, as stated in the Decision, the adequate performance of such duties and responsibilities is, by and of itself, an implied standard of regularization.

In this relation, it bears mentioning that the performance standard contemplated by law should not, in all cases, be contained in a specialized system of feedbacks or evaluation. The Court takes judicial notice of the fact that not all employers, such as simple businesses or small-scale enterprises, have a sophisticated form of human resource management, so much so that the adoption of technical indicators as utilized through “comment cards” or “appraisal” tools should not be treated as a prerequisite for every case of probationary engagement. In fact, even if a system of such kind is employed and the procedures for its implementation are not followed, once an employer determines that the probationary employee fails to meet the standards required for his regularization, the former is not precluded from dismissing the latter. The rule is that when a valid cause for termination exists, the procedural infirmity attending the termination only warrants the payment of nominal damages. This was the principle laid down in the landmark cases of *Agabon v. NLRC*[9] (*Agabon*) and *Jaka Food Processing Corporation v. Pacot*[10] (*Jaka*). In the assailed Decision, the Court actually extended the application of the *Agabon* and *Jaka* rulings to breaches of company procedure, notwithstanding the employer’s compliance with the statutory requirements under the Labor Code.[11] Hence, although Abbott did not comply with its own termination procedure, its non-compliance thereof would not detract from the finding that there subsists a valid cause to terminate Alcaraz’s employment. Abbott, however, was penalized for its contractual breach and thereby ordered to pay nominal damages.

As a final point, Alcaraz cannot take refuge in *Aliling v. Feliciano*[12] (*Aliling*) since the same is not squarely applicable to the case at bar. The employee in *Aliling*, a sales executive, was belatedly informed of his quota requirement. Thus, considering the nature of his position, the fact that he was not informed of his sales quota at the time of his engagement changed the complexion of his employment. Contrarily, the nature of Alcaraz’s duties and responsibilities as Regulatory Affairs Manager negates the application of the foregoing. Records show that Alcaraz was terminated because she (a) did not manage her time effectively; (b) failed to gain the trust of her staff and to build an effective rapport with them; (c) failed to train her staff effectively; and (d) was not able to obtain the knowledge and ability to make sound judgments on case processing and article review which were necessary for the proper performance of her duties.[13] Due to the nature and variety of these managerial functions, the best that Abbott could have done, at the time of Alcaraz’s engagement, was to inform her of her duties and responsibilities, the adequate performance of which, to repeat, is an inherent and implied standard for regularization; this is unlike the circumstance in *Aliling* where a quantitative regularization standard, in the term of a sales quota, was readily articulable to the employee at the outset. Hence, since the reasonableness of Alcaraz’s assessment clearly appears from the records, her termination was justified. Bear in mind that the quantum of proof which the employer must discharge is only substantial evidence which, as defined in case law, means that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[14] To the Court’s mind, this threshold of evidence Abbott amply overcame in this case.

All told, the Court hereby denies the instant motion for reconsideration and thereby upholds the Decision in the main case.

WHEREFORE, the motion for reconsideration dated August 23, 2013 of the Court’s Decision dated July 23, 2013 in this case is hereby DENIED.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Reyes, JJ., concur.

Brion, J., see my dissent.

Leonen, J., I join the dissent of J. Brion.

[1] *Abbot Laboratories, Philippines v. Alcaraz*, G.R. No. 192571, July 23, 2013, 701 SCRA 682.

[2] *Id.* at 708-709.

[3] *Id.* at 710.

[4] See Article 223 of the Labor Code, as amended.

[5] See *St. Martin Funeral Home v. NLRC*, 356 Phil. 811 (1998).

[6] G.R. No. 172086, December 3, 2012, 686 SCRA 676.

[7] *Id.* at 684-685.

[8] Section 2, Rule I, Book VI of the Implementing Rules of the Labor Code provides that “[i]f the termination is brought about by the x x x failure of an employee to meet the standards of the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination.” To this end, the Court in the assailed Decision pronounced that:

Verily, basic knowledge and common sense dictate that the adequate performance of one’s duties is, by and of itself, an inherent and implied standard for a probationary employee to be regularized; such is a regularization standard which need not be literally spelled out or mapped into technical indicators in every case. In this regard, it must be observed that the assessment of adequate duty performance is in the nature of a management prerogative which when reasonably exercised – as Abbott did in this case – should be respected. This is especially true of a managerial employee like Alcaraz who was tasked with the vital responsibility of handling the personnel and important matters of her department. (*Abbot Laboratories, Philippines v. Alcaraz*, supra note 1, at 709-710.)

[9] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[10] G.R. No. 151378, March 28, 2005, 454 SCRA 119.

[11] “Evidently, the sanctions imposed in both *Agabon* and *Jaka* proceed from the necessity to deter employers from future violations of the statutory due process rights of employees. In similar regard, the Court deems it proper to apply the same principle to the case at bar for the reason that an employer’s contractual breach of its own company procedure – albeit not statutory in source – has the parallel effect of violating the laborer’s rights. Suffice it to state, the contract is the law between the parties and thus, breaches of the same impel recompense to vindicate a right that has been violated. Consequently, while the Court is wont to uphold the dismissal of Alcaraz because a valid cause exists, the payment of nominal damages on account of Abbott’s contractual breach is warranted in accordance with Article 2221 of the Civil Code.” (*Abbot Laboratories, Philippines v. Alcaraz*, supra note 1, at 715-716.)

[12] G.R. No. 185829, April 25, 2012, 671 SCRA 186.

[13] *Rollo*, pp. 19-21, 78, and 80-81.

[14] Philippine Commercial Industrial Bank v. Cabrera, G.R. No. 160368, March 30, 2005, 454 SCRA 792, 803.

DISSENTING OPINION

BRION, J.:

Before the Court are respondent Pearlie Ann Alcaraz's motion for reconsideration of the Court's July 23, 2013 Decision, and petitioners Abbott Laboratories, Phils. (Abbott), Cecille Terrible, Edwin Feist, Maria Olivia Yabut-Misa, Teresita Bernardo, and Allan Almazar's comment thereon. I submit this Dissenting Opinion to grant the present motion for reconsideration and to maintain my view that the petitioners' earlier petition for review lacked merit and should have been denied by the Court.

THE MOTION FOR RECONSIDERATION

In her motion for reconsideration, Alcaraz alleges that the Court engaged in judicial legislation when it equated Alcaraz's job description and, in the process, enumerated the circumstances showing when and how the petitioners conveyed Alcaraz's duties and responsibilities to her to the reasonable standards for regularization required by the Labor Code. She argues that "one's job description cannot by itself be considered the standard for regularization"[1] because a "standard denotes a measure of quantity or quality." [2] In so doing, the Court acted contrary to the principles of social justice and protection to labor.

Alcaraz further claims that the Court erred in considering her dismissal on the third month of her probationary employment to be a mere due process violation that only warrants an award of nominal damages. In support, Alcaraz cites Abbott's own rules under which Abbott must evaluate Alcaraz's performance on the third and fifth months of the probationary period; if Abbott finds Alcaraz to be underperforming on the third month, Abbott should come up with a performance improvement plan (PEP). Only upon her failure to meet this PEP that Abbott may end her probationary employment.

Alcaraz also points out that Abbott failed to abide by its own rules and immediately dismissed Alcaraz, without any just cause under Article 281 of the Labor Code to support its action. Without a just cause, the dismissal is illegal and entitles her to reinstatement and backwages.

Lastly, even assuming that Abbott can terminate Alcaraz at any time for failure to qualify for regularization, it is clear that Abbott "merely feigned its dissatisfaction"[3] of Alcaraz's job performance as shown by the high-handed manner Abbott used in implementing her dismissal.

THE COMMENT

In their Comment, the petitioners maintained the correctness of the Court's ruling on both procedural and substantive grounds.

Abbott argues that the Court correctly proceeded as it did in evaluating the facts and evidence in deciding the case. While the Court does not normally embark on the re-examination of the evidence presented by the parties, it may do so when, among others: (i) the findings are grounded entirely on speculation, surmises or conjectures; (ii) the judgment is based on misapprehension of facts; (iii) the findings of fact are conflicting; (iv) when the findings are contrary to the trial court; and (v) the Court of Appeals (CA) manifestly overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion. In the present case, all these instances are present.

The probationary nature of Alcaraz's employment is clear from the evidence and should be respected. In fact, in her reply-letter to Abbott, Alcaraz even asked that the probationary period of six months be reduced to three

months since “Abbott can already determine if [she] is fit for the position.”[4] Her statement does not only show her knowledge of the nature of her employment but proves her acknowledgment that there were standards to be met and that the company will evaluate her compliance with these standards.

The petitioners posit that this same statement belies Alcaraz’s claim that she was not informed of these standards.[5] In fact, Alcaraz herself admitted that “Abbott has only one evaluation system for all types of employees in the organization.”[6] She knew that she had to undergo the Probationary Performance Standards Evaluation (PPSE) (based on the duties and responsibilities of her position, i.e., her job description) to document her performance during the probationary period and to serve as basis in recommending her regularization or termination.

The petitioners also note that in signing her appointment paper, Alcaraz agreed “to abide by all existing policies, rules and regulations of the company, as well as those, which may hereinafter be promulgated.”[7] All these taken together comply with the legal requirement that the probationary employee be informed of the reasonable standards at the time of her engagement.

Citing *Alcira v. NLRC*,[8] the petitioners claim that they “substantially complied” with the notification requirement since they informed Alcaraz of the PPSE; it is only natural that the evaluation should be made vis-à-vis the performance standards for the job.

DISCUSSION

A. Procedural Objection

I shall first address the petitioners’ claim that the Court can normally undertake a review of the facts and evidence under a Rule 45 petition, citing the numerous exceptions to what is otherwise claimed as the general rule. In doing so, I reiterate my position in my earlier Dissent, with added arguments to specifically address the petitioners’ claim and the ponencia’s present explanation.

A1. The Rule 65 petition and *Montoya v. Transmed*

When a labor case reaches the judicial system, courts must proceed based on two basic premises: first, the ruling of the National Labor Relations Commission (NLRC) is declared by law to be a final ruling that is no longer appealable; and second, the only remedy left to set aside or modify this ruling is through a Rule 65 review by the CA that is narrowly grounded on jurisdictional errors – i.e., whether the NLRC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Once the CA decision reaches the Court under a Rule 45 petition for review on certiorari, from what prism does the Court examine the CA decision? Note that Rule 45 of the Rules of Court limits the scope of the petition to “pure questions of law.”[9] This review is not a matter of right but of sound judicial discretion. Obviously, the sound judicial discretion requirement is meant to limit what could otherwise be an unlimited exercise of discretion by the Highest Court to lay open and review the whole case, both as to fact and law.

Montoya v. Transmed Manila Corporation[10] instructs us that in a Rule 45 review (of the CA decision rendered under Rule 65), the question of law that confronts the Court is the legal correctness of the CA decision – i.e., whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision on the merits of the case was correct. As applied in the present case, the Court should simply determine the legal correctness of the CA’s finding that the NLRC ruling had basis in fact and law, not the question of whether it was or was not correct. I clearly stated these in my Dissenting Opinion, as follows:

Specifically, in reviewing a CA labor ruling under Rule 45 of the Rules of Court, the Court’s review is limited

to:

- (1) Ascertaining the correctness of the CA's decision in finding the presence or absence of a grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings; and
- (2) Deciding any other jurisdictional error that attended the CA's interpretation or application of the law.[11]

While these two questions should sufficiently delimit the narrow scope of review under Rule 65, nonetheless, the petitioners submit that factual review is appropriate under the numerous exceptions cited in a case where the decisions of the trial court and the appellate court were brought on appeal to the Supreme Court. Notably, jurisprudence has even extended the application of these numerous exceptions to the decisions rendered by the labor tribunals and the CA.

In other words, based on these exceptions, the existence of a conflict in the factual findings and/or conclusions at any stage of the case, from the labor arbiter (LA) to the CA, renders it open for the Court to conduct a factual review that is deemed necessary in deciding the case.

This approach obviously considers the Rule 65 petition route to the CA (instead of this Court) only in light of the doctrine of hierarchy of courts and disregards the final and unappealable character of the NLRC decision. If a court's certiorari jurisdiction has a limited scope and breadth, the Court, under a Rule 45 petition for review (of the CA decision), could not have a more expanded jurisdiction than what Rule 45 expressly provides, i.e., that the issue is limited to pure questions of law.

Too, this approach has resulted in turning the rule (that factual findings of labor tribunals are binding on the Court) into an exception - the Court effectively becomes a trier of facts – and vice versa. Notably, when one traces in jurisprudence the justification for the exception, it will invariably point to cases where the Supreme Court departed from the rule – that the jurisdiction of the Court in cases brought to it from the CA is limited to the review of errors of law, as the factual findings of the lower courts are deemed conclusive – when, among others, the findings of facts by the trial court and the appellate court are conflicting.[12]

The indiscriminate adoption of this remedial law principle into labor cases stands on shaky legal grounds. To begin with, certiorari is different from appeal. In an appellate proceeding, the original suit is continued on appeal. In a certiorari proceeding, the certiorari petition is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. “[T]he higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts.”[13]

Put more bluntly, when the Court undertakes a review of the factual findings made by the lower courts, it does so on the premise that the recourse to the CA is part of the appellate process authorized by law. Hence, when the trier of facts at the trial and appellate level reach divergent factual findings, even if the same pieces of evidence are before them, the Court, in the exercise of its sound discretion, sets aside the rule that only questions of law may be raised under a Rule 45 petition in order to arrive at a correct and just decision. The same situation does not apply in labor cases because statutory law does not provide for an appellate process beyond the NLRC, and thus, the mere existence of a conflict in the factual findings at any stage of the proceedings does not by itself warrant the Court to undertake an independent review.

A2. The question of how a probationary employee “is deemed to have been informed of the standards of his regularization” may be a question

of law, but not from the prism of a
decision rendered under Rule 65

According to the ponencia, the Court may consider “other questions of law aside from the CA’s finding on the NLRC’s grave abuse of discretion.” In the present case, this other question of law or “ancillary issue” is the “question of how a probationary employee is deemed to have been informed of the standards of regularization.” To the ponencia, this consideration is necessary “if only to determine if the concepts and principles of labor law were correctly applied or misapplied by the NLRC in its decision.”

I strongly disagree with the ponencia’s reasoning for two reasons:

First, the ponencia unmistakably validates the very objection I raised in my earlier Dissenting Opinion that there were in fact no communication standards expressly communicated to Alcaraz; the Court, through the Decision under review, simply attempted to supply this fatal omission via an assumption and disjointed implication. I reiterate the following points in my earlier Dissent:

The ponencia’s reasoning, however, is badly flawed.

1st. The law and the rules require that these performance standards be communicated at the time of engagement to the probationary employee. The performance standards to be met are the employer’s specific expectations of how the probationary employee should perform. The ponencia impliedly admits that no performance standards were expressly given but argues that because [Alcaraz] had been informed of her duties and responsibilities (a fact that was and is not disputed), she should be deemed to know what was expected of her for purposes of regularization. This is a major flaw that the ponencia satisfies only via an assumption. The ponencia apparently forgets that knowledge of duties and responsibilities is different from the measure of how these duties and responsibilities should be delivered. They are separate elements and the latter element is missing in the present case.

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4th. The ponencia also forgets that these “performance standards” or measures cannot simply be assumed because they are critically important in this case, or for that matter, in any case involving jobs whose duties and responsibilities are not simple or self-descriptive. If [Alcaraz] had been evaluated or assessed in the manner that the company’s internal rules require, these standards would have been the basis for her performance or lack of it. Last but not the least, [Alcaraz’s] services were terminated on the basis of the performance standards that, by law, the employer set or prescribed at the time of the employee’s engagement. If none had been prescribed in the first place, under what basis could the employee then be assessed for purposes of termination or regularization?

Second, in considering the “ancillary issue” as a proper subject of a Rule 45 petition for review on certiorari of a ruling rendered under a Rule 65 petition, the ponencia apparently fails to distinguish the difference between errors of law and errors of jurisdiction in an attempt to justify its decision that is based solely on assumptions.

Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction. This is the province of the writ of certiorari. The writ of certiorari will not be issued to cure errors in the appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. If the CA finds that the NLRC committed no error of jurisdiction, the Court’s task is to only determine the legal correctness of this CA finding – and not to supplant the NLRC and the CA’s conclusion with what the Court thinks should be the correct interpretation of the law, in utter disregard of the different levels of review the case underwent. If the Court will undertake a review of the “ancillary issues” suggested by the ponencia, the Court will in effect create a right of appeal from the NLRC ruling when the law confers none.

Too, a Rule 65 petition requires the presence of grave abuse of discretion – and not mere abuse of discretion – before courts may issue the corrective writ of certiorari in labor cases not only because the ruling under review is already final; but, more importantly, because the appreciation of the evidence and its legal effects carries with it discretion within the bounds of the law. The discretion granted to the NLRC to affirm or reverse the LA, on one hand, and the discretion granted to the CA to determine whether grave abuse of discretion attended the NLRC's ruling, on the other hand, are discretions within legal bounds that the Court cannot supplant at will, much less via mere assumption.

In sum, these are what the NLRC and the CA found as matters of fact and law:

- Abbott failed to specify the reasonable standards by which Alcaraz' alleged poor performance was evaluated, much less to prove that such standards were made known to her at the time of her recruitment.
- The employment contract does not show that Alcaraz had been apprised of the requirements to become a regular employee.
- The Labor Arbiter's reasoning that a top level pharmaceutical corporation would not be remiss in leaving its standards of continued employment undisclosed to its employees is simply non sequitur.
- Alcaraz' receipt of Abbott's Code of Good Corporate Conduct, Probationary Performance Standards and Evaluation and Performance Excellence Orientation Modules for the Hospira ALSU Staff cannot be equated with being actually informed of the performance standards. Notably, what Alcaraz received was the Probationary Performance Standards for the Hospira ALSU Staff.
- Alcaraz received these various documents not at the time of her engagement but only on March 3, 2005 or a month after her engagement.
- Abbott's claim on Alcaraz' poor performance (on account of her tardiness, poor time management, failure to build effective rapport, non-completion of training and poor time management skills) [was] not supported by evidence.
- There is also no evidence to show that Abbott conveyed to or confronted Alcaraz with her alleged inefficiencies or incompetence at any time during her tenure with Abbott.
- While Abbott has a standard operating procedure in evaluating probationary employees, there is no evidence that Alcaraz underwent this procedure.
- What makes [Alcaraz's] dismissal for alleged dismal performance even more highly suspicious is that she was even complimented by no less than Ms. Kelly Walsh in her electronic mail dated 25 April 2005.[14]

Based on these findings, the CA correctly determined that the NLRC did not commit grave abuse of discretion in reversing the LA's ruling. Consider the following: first, the LA's ruling that Alcaraz was apprised of the reasonable standards (to qualify as regular employee) was merely based on Alcaraz's factual narrations in her position paper – narrations that by themselves do not at all speak of any reasonable performance standards. This is not even disputed by the ponencia; second, Alcaraz received the documents that purportedly contain the performance standards only on March 3, 2005 or a month after her engagement – contrary to what the law requires on when the reasonable standards must be communicated; and third, the LA himself is not convinced that these documents would suffice to prove the existence of performance standards that he had to rely on a baseless assumption that a top level pharmaceutical corporation would not be remiss in leaving its standards of continued employment undisclosed to its employees. In reversing the CA's ruling that no grave abuse of discretion existed, the Court itself might have crossed into prohibited territory through its own grave abuse of discretion.

B. Substantive Objections

I. The constitutional guarantee of security of tenure

The Constitution decrees that all workers are entitled to security of tenure. This means that an employer cannot terminate his employee's employment (whether actual or constructive) or otherwise suspend him without any just or authorized cause and without complying with the due process requirements mandated by law. This constitutional and statutory guarantee seeks, in the ultimate, to prevent the capricious exercise by the employer of his power to dismiss.[15]

Aside from the just and authorized causes provided by law, the law also allows the employer to dismiss a probationary employee if 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." The inclusion of this phrase in Article 281 of the Labor Code and the manner by which it is phrased indicate that: first, a probationary employment is not a default mode of an employment contract; and second, inadequate performance of one's duties and failure to comply with reasonable standards cannot actually mean the same thing.

- Probationary employment is not a default mode of employment contract

Regardless of the kind of employment arrangement between the parties, an employer has the right to put a newly-hired employee under a probationary period or it may choose not to do so, as part and parcel of its power to hire. If the employer opts for the latter, however, he may not easily sever the relationship without proving the existence of a just or authorized cause and without complying with procedural due process. If the employer opts to hire an employee on a probationary basis, valid severance of the employer-employee relationship - outside of the just and authorized causes - presupposes that the employer had accomplished the following things:

- The employer must communicate to the employee that he is being hired on a probationary basis;
- The employer must convey to the probationary employee the reasonable standards to qualify for regularization;
- The probationary status of the newly-hired employee must be communicated to him prior to the commencement of his employment;
- The employer must convey these reasonable standards at the time of the probationary employee's engagement;
- The employer must evaluate the performance of the probationary employee vis the duly communicated reasonable standards; and
- The employee fails to comply with these reasonable standards before the completion of the probationary period.

These cumulative requirements are demanded from the employer itself and cannot be supplied for him by law. These requirements, too, should serve to dispel the wrong notion that a probationary employee enjoys lesser rights than a regular employee under the Labor Code. Since a probationary employment is not an "employment at will" situation as that phrase is understood in American jurisprudence, the only way by which the constitutional guarantee of security of tenure may be enforced is to ensure that the employer sufficiently discharges its burden of proving compliance with these requirements in the same manner that it is burdened to prove the existence of a valid cause in dismissing an employee.[16]

- "Inadequate performance of one's duties"

and “failure to comply with reasonable standards” cannot actually mean the same thing

The ponencia reiterates that adequate performance of one’s duties and responsibilities constitutes the inherent and implied standard for regularization. In short, “if the probationary employee had been fully apprised by his employer of these duties and responsibilities, then basic knowledge and common sense dictate that he must adequately perform the same.”[17] Otherwise, he may be terminated on the ground that his performance during the probationary period is “inadequate.”

If this is the case, then the law could have simply stated that a probationary employee can be dismissed “if he fails to adequately perform his duties and responsibilities” if it actually meant the “adequate performance of one’s duties” and “reasonable standards” to mean the same thing.

In employing its present terms, Article 281 of the Labor Code merely proceeded from the premise that security of tenure is not merely a statutory but a constitutionally guaranteed right. To consider an employee’s regularization on the overly broad basis of “adequacy of performance” alone would practically negate the constitutional guarantee. Rather, the law employed a qualitative and quantitative measurement of one’s performance by requiring a probationary employee’s performance to be measured on the basis of reasonable standards. These standards or measurement of performance serve as a statutory limitation to the employer’s prerogative to dismiss an employee, consistent with the constitutional right to security of tenure.

The reason for requiring the existence of reasonable standards that are duly communicated to the employee is not hard to discern. The probationary period of employment is not exclusively for the benefit of the employer but of both the employer and the employee: on one hand, the employer observes the fitness, propriety and efficiency of a probationary employee to ascertain whether she is qualified for permanent employment; the probationary employee, on the other hand, seeks to prove to the employer that she has the qualifications to meet the reasonable standards duly communicated by the employer for permanent employment.

In the same manner that the probationary period of employment (or trial period) is meant to serve the interests of both the employer and the employee, the requirement of reasonable standards seeks to protect the rights of both the employer (to his management prerogative) and the employee (since his employment is in a sense a property right).

In the context of the present case, an employer who duly communicates to a probationary employee these reasonable standards for regularization can reasonably expect that his exercise of management prerogative (whether to hire or fire) will be respected by the State (through its labor tribunals and eventually the courts). Similarly, a probationary employee who has been duly informed cannot be heard to cry foul later should she fail in these performance standards of which she has notice.

II. Elements of valid probationary employment

Based on Article 281 of the Labor Code and Section 6(d) of the Implementing Rules of Book VI, Rule I of the Labor Code, a valid probationary employment presupposes the concurrence of two requirements: First, the employer shall make known to the employee the reasonable standard (performance standard) that the probationary employee must comply with to qualify as a regular employee. Second, the employer shall inform the employee of the applicable performance standard at the time of his/her engagement. Failing in one or both, the employee, even if initially hired as a probationary employee, should be considered a regular employee.

Both these elements are sorely wanting in this case.

- The rule and the exception in jurisprudence

For emphasis, performance standards are the specific expectations of the employer on how the probationary employee should perform. These specific expectations cannot be equated with the duties and responsibilities attached to the position. While the “specific expectations” inhere in an employer and, accordingly, vary from one employer to another, the duties and responsibilities inhere in the peculiarities of the particular job itself. Due to the difference between the two, proof of the existence of one does not necessarily prove the existence of the other and vice versa.

In *Aberdeen Court, Inc. v. Agustin, Jr.*,^[18] the Court made a qualification to the rule that failure to comply with the two requirements for valid probationary employment would make the employment a regular employment. Where the employee acted “in a manner contrary to basic knowledge and common sense, in regard to which there is no need to spell out a policy or standard to be met,”^[19] then his termination on this ground will be upheld by the Court.

In *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*,^[20] the Court stated that a probationary employee shall be deemed a regular employee where no standards are made known to him at the time of his engagement “unless the job is self-descriptive, like maid, cook, driver, or messenger.”

Under these two instances, the very nature of the duty or duties to be performed by the employee or of what he failed to perform (showing lack of basic knowledge and common sense) is necessarily equated with the performance standard or specific expectations of the employer as required by law. Notably, what these cases instruct finds its logic in the law itself: failure to meet a performance standard that is rooted on “basic knowledge and common sense” can be a valid ground to terminate a probationary employee without the need of an express prior communication of the performance standard to the probationary employee. Basic knowledge and common sense should be possessed by anyone desiring to find a regular employment.

Additionally, if the very nature of the job no longer permits the employer from specifying his expectations that would constitute performance standards beyond what the job itself entails, the law likewise cannot demand something more from the employer. The law, however, does not bar the employer from expressly laying down his terms, even with the simplicity of the job, before a probationary employee can qualify for regularization.

While all jobs, regardless of their nature, would necessitate a description of what they entail, not all jobs would legally require the employers to set and communicate a performance standard applicable to them, as enunciated under the exceptions. The legal requirement for the employer to lay down and communicate the performance standards to the employee at the time of his engagement arises from the nature of the probationary employment as a trial period. A trial period presupposes the existence of a standard against which the probationary employee’s performance would be tried and measured. Accordingly, the communication of a performance standard is a requirement imposed by law - on top of the practical requirement of describing the job and communicating, expressly or impliedly, this description to the employee - unless the nature of the job falls within the exceptions.

In the present case, while the ponencia did not – and could not – expressly claim that the petitioners’ case falls within the exceptions it oddly leaned on the exceptions to stretch its reading of the general rule. This legal maneuvering is most unwarranted for going against the basic principle in dismissal-of-employees cases, i.e., the burden of proof rests upon the employer to show that the dismissal is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.^[21]

These observations lead to the conclusion that the law's demand for compliance with the two requirements (for a valid probationary employment to exist) becomes greater as the complexity of the job increases since the same complex nature of the job results in varying needs and specific expectations from different employers that are engaged in the same line of industry. Hence, it is highly inappropriate to cite Alcaraz's "extensive training and background" to effectively make up for Abbott's own failure to comply with the requirements of the law.

In other words, the more complex the job is (like that of managerial employee) the more it becomes necessary to specify what the employer's specific expectations are vis-à-vis the duties and responsibilities that the job entails. In this manner, compliance with the twin requirements of a valid probationary employment may require the employer to lay down a quantitative or qualitative standard (or both) in measuring the performance of a probationary employee.

In the present case, none of the petitioners' evidence shows what these quantitative and/or qualitative standards are.

- Abbott's pre-employment orientation and other documentary evidence cannot amount to performance standards

The pre-employment orientation the petitioners conducted for Alcaraz and the office policies communicated to her cannot be equated with the performance standards required by law. The pre-employment orientation pertains to Alcaraz's

The other pieces of documentary evidence Abbott presented - Code of Conduct, PPSE and Performance Excellence Orientation Modules - were likewise in line with its purpose of acquainting and assisting Alcaraz in her duty in supervising and evaluating the employees assigned to her department.

Interestingly, even if these documents were not given to Alcaraz for the purpose of communicating the performance standards that apply to her, Abbott claims that since it has only one evaluation system for all its employees, Alcaraz very well knew that the contents of these documents would be the same measure in evaluating Alcaraz's performance. However, the facts, as found by the ponencia itself, tell otherwise, i.e., that Alcaraz was actually subjected to a different work performance evaluation:

On April 20, 2005, Alcaraz had a meeting with petitioner Cecille Terrible (Terrible), Abbott's former HR Director, to discuss certain issues regarding staff performance standards. In the course x x x thereof, Alcaraz accidentally saw a printed copy of an e-mail sent by Walsh to some staff members which essentially contained queries regarding the former's job performance. Alcaraz asked if Walsh's action was the normal process of evaluation. Terrible said that it was not.[22] (emphasis ours)

This is a uniform, undisputed finding of fact of the LA, the NLRC and the CA. Given the difference in treatment by Abbott in Alcaraz's case, Abbott cannot avoid the conclusion that it may only legally be allowed to divert from the usual procedure on the ground that Alcaraz is actually bound by a different set of specific expectations by her employer because of the nature of the duties and responsibilities that a managerial employee like her has to discharge. If she is bound by a different set of expectations, then Abbott must prove what these expectations are in order to comply with the required performance standards.

As the NLRC and the CA found however, there is no evidence on record to show what these standards really were and that they were duly communicated. Much less was there evidence that Alcaraz was actually evaluated on the basis of the required duly communicated standards.

Abbott's own admission that it had only one evaluation system for all of its employees actually backfires against

it for being inconsistent with its own conduct (when it subjected Alcaraz to a different evaluation process) and omission (when it failed to communicate to Alcaraz the performance standards that are actually applicable to her). By itself, its admission proves the utter lack of evidence to show Abbott's compliance with the first (and, much less the second) requirement of a valid probationary employee. If Abbott would insist on the uniformity of its performance standard, one can be tempted to ask whether Abbott can assess its Regulatory Affairs Manager, like Alcaraz, who has an initial salary of P110,000.00 on the same standard Abbott applies to its office receptionist or clerk and objectively consider the application compliant with the law.

To be sure, Abbott cannot answer this question affirmatively without, at the same time, suggesting the superfluity of the two requirements in Article 281 of Labor Code for a valid probationary employment to exist. The law precisely required the performance standards to be "reasonable" since the performance standard applicable to only one type of employee (e.g., managerial) cannot reasonably be applied to a different type of employee (e.g., clerical).

Abbott likewise cannot answer in the negative without contradicting its own admission on record and without emphasizing what the NLRC and the CA have found all along – the absence of an applicable performance standard duly communicated to Alcaraz.

Since the validity of Alcaraz's dismissal hinges on whether Abbott complied with the twin requirements under Article 281 of the Labor Code, then proof of its compliance with these requirements must be substantiated by the evidence – and not merely assumed from or impelled by something that, in the first place, the NLRC and the CA did not find existing.

3. The case of Aliling v. Feliciano

On this point, I submit that *Alcira v. NLRC*,^[23] far from advancing Abbott's position, in fact, supports this Dissent in the same manner that the case of *Armando Aliling v. Jose B. Feliciano, et al.*,^[24] cited by Alcaraz, does.

In *Aliling*, there were three grounds cited, each of which can independently support the Court's ruling, in finding that the probationary employee was actually a regular employee, for failure to comply with the requirements of the law on probationary employment.

First, the labor tribunals and the CA uniformly found the lack of performance standards duly communicated to the employee. In the present case, the fact that the LA arrived at a conclusion different from those reached by the NLRC and the CA does not authorize the Court to simply brush aside the factual findings at these two levels of review because the Court's jurisdiction under a Rule 45 petition is limited. More importantly, the LA's ruling itself was legally and factually baseless, thus warranting its reversal on appeal.

At the risk of being repetitive, what the CA reviews under a Rule 65 petition is a ruling that under the law is already final. To warrant the issuance of the writ of certiorari, the CA should find the existence of grave abuse of discretion. Should it find none, as in the present case, the Court, under a Rule 45 petition, is confined to the determination of the legal correctness of the CA's finding that the NLRC ruling of illegal dismissal had basis in fact and in law (i.e., was not attended by grave abuse of discretion).

Second, the probationary employee was "assigned to GX trucking sales, an activity entirely different from the Seafreight Sales he was originally hired and trained for."^[25] The difference in assignment led the Court to conclude that "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."^[26]

This circumstance is admittedly absent in the present case. Nonetheless, the third ground cited by the Court

requires an extended discussion since it touches on the quantitative and qualitative assessment of probationary employees now advanced by the ponencia.

- a. The quantitative and qualitative assessment of probationary employees

In *Aliling*, the letter-offer to the probationary employee states that the regularization standards or the performance norms to be used are still to be agreed upon by the probationary employee and his supervisor – i.e., the two would “jointly define [their] objectives compared with the job requirements of the position”[27] – without the employer proving that an agreement has, in fact, been reached. While there was evidence that the supervisor reminded the probationary employee of the sales quota he must reach for continued employment, this standard was communicated belatedly or one month after the employee’s engagement.

While the specific expectations of an employer may cut across the details of one’s job description, the Court must not confuse one with the other. In the case of a salesperson (account executive), specific expectations may translate into the minimum quota that a probationary employee must reach to be entitled to regularization. In the present case, there is absolutely nothing in the petitioner’s evidence that would have given the NLRC and the CA – and this Court – a hint as to what the petitioners’ expectations would translate into. The ponencia’s reasoning that it is the adequacy of the performance of these duties and responsibilities, which constitutes as the “implied and inherent” reasonable standards for regularization, begs the question. On what basis is the “adequacy” legally gauged? To this argument, the ponencia offers an explanation.

The determination of “adequate performance” is not, in all case, measurable by quantitative specification, such as that of a sales quota... It also hinged on the qualitative assessment of the employee’s work; by its nature, this largely rests on the reasonable exercise of the employer’s management prerogative. While in some instances the standards used in measuring the quality of work may be conveyed xxx not all standards of quality measurement may be reducible to hard figures or are readily articulable in specific pre-engagement descriptions. A good example would be the case of probationary employees whose tasks involve the application of discretion and intellect, such as xxx lawyers, artists and journalist. In these kinds of jobs, the best that the employer can do at the time of engagement is to inform the probationary employee of his duties and responsibilities and to orient him on how to properly proceed with the same. The employer cannot bear out in exacting detail at the beginning of the engagement what he deems as “quality work” especially since the employee has yet to submit the required output. In the ultimate analysis, the communication of performance standards should be perceived within the context of the nature of probationary employee’s duties and responsibilities.[28]

The fundamental flaw in the ponencia’s explanation is that it contradicts the evidence on record. Applying the ponencia’s reasoning, Abbott itself may have recognized that the standards for measuring the quality (instead of quantity) of Alcaraz’s work are not “reducible to hard figures.”[29] To be able to comply with the law, Abbott devised its own system of evaluation to measure the “adequacy of Alcaraz’s performance.” Since the “adequacy of performance” cannot entirely be left to the whims and caprices of Abbott, the Court can rightfully consider Abbott’s PPSE as its legal compliance with Article 281 of the Labor Code on the twin requirements of probationary employment. Abbott’s PPSE requires:

- Performance standards must be discussed in detail with the employee within the first two weeks on the job. This means the leader should have already identified the Core Job Responsibilities, goals, and competency expectations prior to discussion with the probationary employee.
- A signed copy of the Probationary Performance Standards and Evaluations (PPSE) must be submitted to HRD within employee’s 1st two weeks on the job.

- The completed PPSE will serve as documentation of the employee's performance during his/her probationary period, and will serve as basis for recommending confirmation or termination of employment with Abbott. To be submitted to HRD on the probationary employee's 5th month on the job.[30]

In short, based on Abbott's own manner of legal compliance with the law's requirement on performance standards, Abbott prescribes the procedure for making the evaluation and it is only through compliance with this procedure that Abbott's determination of the adequacy of performance can be shown. Since not all probationary standards of quality measurement are "reducible to hard figures or are readily articulable in specific pre-engagement descriptions,"[31] Abbott's PPSE is its own solution, as far as practicable, to be able to "map into technical indicators or convey in precise detail the quality standards"[32] by which Alcaraz's probationary employment would be assessed. The truism that the substance of the law can be found in the interstices of the procedure cannot be more applicable than in the present case.

Abbott's failure to comply with its own prescribed manner of determining a probationary employee's performance goes into and against the very nature of the employer's legal obligation to evaluate the probationary employee's performance and to determine that she actually failed to comply with the reasonable standards required by the law itself. In the ponencia's words, this reasonable standard is the adequacy of performance of her duties and responsibilities. Abbott's failure to comply with its own procedure in evaluating Alcaraz's performance – and in actually deviating therefrom – is itself a palpable proof that there were no duly communicated performance standards in the present case to begin with, both in point of fact and law.

On this point and contrary to the ponencia's view, Abbott's non-compliance with the terms of the PPSE cannot be regarded as a mere matter of procedural lapse. In reality, one cannot divorce the requirement of reasonable standards and of duly communicating it to the probationary employee, on one hand, and the requirement that the employee, in fact, failed to comply with these standards in the manner that the employer himself had contractually determined if only to give life to the constitutional guarantee of security of tenure to all workers, on the other hand. For this reason, the ponencia cannot insist that the non-compliance with the PPSE is only a formal defect and yet claim that adequacy of performance is not reducible to figures. Abbott cannot have its cake and eat it too.

Notably, prior to or at the time of Alcaraz's engagement, Abbott's communications to Alcaraz comprised only of: (i) her job description; (ii) the duties and responsibilities attached to the position; (iii) the conditions of her employment, i.e., the position title, the assigned department, the status of employment, and the period of employment; (iv) Abbott's organizational structure; and (v) what she had to implement, i.e., Abbott's Code of Conduct, office policies on human resources and finance, and to whom she would be reporting to.

Even if we go by the ponencia's reasoning, these communications by themselves do not establish the legal gauge of "adequacy" of performance by which Alcaraz's probationary performance would be measured. To emphasize, Abbott's PPSE serves as a legal gauge to measure the adequacy of Alcaraz's performance. Unfortunately, the silence of the ponencia and the dearth of evidence on why this legal gauge was not applied to Alcaraz would keep this aspect of the case in mystery. To make matters worse, the PPSE (together with the Performance Excellence Orientation Modules) was given to Alcaraz almost a month after her engagement.

In other words, even the "totality of circumstances" approach by the ponencia is fractured from the very start. The 2nd requirement for a valid probationary employment under the Labor Code is, in fact, an offshoot of the first requirement of a reasonable standard: a standard is reasonable not only because it lays down the employer's specific expectations applicable to a particular type of employee vis the attendant duties and responsibilities but also because it is duly communicated to the employee. A belated communication of what the reasonable standard is deprives the standard of the character of reasonableness.

Still, Abbott attempts to show the inadequacy of Alcaraz's performance – although deviating from the prescribed procedure – by presenting its May 19, 2005 letter addressed to Alcaraz, noting her "NA (Not Achieved) ratings in the area of Core Job Competencies." [33] The ponencia unqualifiedly bought this claim in this manner -

The employee in Aliling, a sales executive, was belatedly informed of his quota requirement. Thus, considering the nature of his position, the fact the he was not informed of his sales quota at the time of his engagement changed the complexion of his employment. Contrarily the nature of respondent's duties and responsibilities as Regulatory Affairs Manager negates the application of the foregoing. Records show that respondent was terminated because she xxx. Due to the nature of these tasks, the performance standards for measuring the same were hardly articulable at the time of her engagement unlike those in Aliling which were already conveyable. Hence, since the reasonableness of respondent's assessment clearly appears from the records, her termination was justified. [34]

The ponencia's statements require some serious reflection from the Court. First, are we, in effect, saying that the reasonable standards required by the law may be communicated at a point beyond the time of the employee's engagement? To put it bluntly, is the Court not engaging in clear judicial legislation? Article 281 of the Labor Code is pointedly clear.

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. [italics supplied; emphasis and underscore ours]

Second, the ponencia makes the qualitative assessment (in contrast with a quantitative assessment) of a probationary employee far more esoteric in business application than it actually is. As may be implied from my earlier discussion, had Abbott discussed the PPSE with Alcaraz vis-à-vis her duties and responsibilities, Abbott could have easily communicated to Alcaraz, at least substantially, the specific expectations that translate into the reasonable standards required of it by law. Not only did Abbott fail in this regard, Abbott, in fact, belatedly gave the PPSE to Alcaraz, in patent violation of Article 281 of the Labor Code.

Third, the ponencia wrote too early in claiming that it did not undertake a "factual appellate review" of the case. Yet, it weighed in on the supposed "reasonableness of [the petitioners'] assessment" of Alcaraz's performance because it "clearly appears on the record." [35] As the NLRC and the CA found however, the factual accuracy of Abbott's assessment of Alcaraz is not supported by evidence.

b. Rubbing it in: extension of the Agabon
and Jaka rulings does not cure a fatal flaw

In an apparent attempt to belittle Abbott's non-compliance with its internal procedure, the Court – for the first time – extends the application of its rulings in *Agabon v. NLRC* [36] and *Jaka Food Processing Corporation v. Pacot* [37] to the present case. In these cases, the Court ruled that when a valid cause for termination exists, the employer's non-compliance with the procedural requirements warrants the payment of nominal damages.

In these cases, however, the procedural requirements do not have a bearing on the validity of the dismissal since the existence of a just or authorized cause can be proved by independent and objective evidence. In the present case, what the ponencia advances as ground for termination of a probationary employee is the inadequacy of her probationary performance. At the risk of raising a rhetorical question, what is the legal gauge of this basis of adequacy that is consistent with the constitutionally guaranteed right of security of tenure? In other words, where the validity of the cause of dismissal – adequacy of performance - cannot be resolved without undergoing the very

process prescribed by the employer for measuring the adequacy, there is no reason to extend the Agabon and Jaka rulings in the present case.

On this score, it is highly inapt to equate Abbott's internal procedure of evaluating a probationary employee with the notice requirements under the law even as a consoling gesture on the part of the Court. The inextricable link between the procedure devised by Abbott for evaluating Alcaraz (as a means to qualitatively specify Abbotts' specific expectations vis-a-vis the duties and responsibilities of Alcaraz' position and to evidence its qualitative assessment of Alcaraz), on one hand, and the end that this procedure seeks to achieve, on the other hand, suffices to distinguish Abbott's internal procedure and the statutory procedural requirements.

c. Evidence of performance standards

As stated in my earlier Dissent, the performance standard contemplated in law may be proven by evidence of how the employee's performance was intended to be or was, in fact, measured by the employer. The performance standard may be in the form of a clear set of the employer's expectations, or by a system of feedbacks (e.g., comment cards) and document evaluation or performance evaluation and appraisals conducted by the employer.

To this, again the ponencia offers an explanation:

[T]he performance standard contemplated by law should not, in all cases, be contained in a specialized system of feedbacks or evaluation. The Court takes judicial notice of the fact that not all employers, such as simple businesses or small-scale enterprises, have a sophisticated form of human resource management, so much so that the adoption of technical indicators as utilized through "comment cards" or "appraisal" tools should not be treated as a prerequisite for every case of probationary engagement.[38]

The problem with the ponencia's explanation is that it veers away from the problem at hand – in the same manner that it did when it claimed that actual communication of specific standards might not be necessary "when the job is self-descriptive in nature, for instance, in the case of maids, cooks, drivers, or messengers" even if Alcaraz was, in the first place, never a maid, cook, driver or a messenger. Abbott is not engaged in a simple business nor is it a small-scale enterprise. Abbott is a multinational corporation, with branches and different facilities located all over the world. As such, it is most unfortunate that the specialized system it actually has in place – as a legal gauge to measure the "adequacy of performance" of Alcaraz, i.e., the PPSE – was never observed, not to mention, not duly communicated.[39]

III. Consequence of non-compliance
with Article 281 of the Labor Code

Since Abbott failed to comply with the requisites for valid probationary employment, then Alcaraz should be deemed a regular employee who can be removed only with just or authorized causes. In the present case, the petitioners failed to show that Alcaraz's dismissal was for a valid cause. The petitioners also failed to comply with the two-written notice requirement under Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, in violation of Alcaraz's procedural due process rights under the law.

In addition, the abrupt and oppressive manner by which the petitioners dismissed Alcaraz from her employment justified the award of moral and exemplary damages and attorney's fees. To reiterate my earlier Dissent:

The narration of facts of the Labor Arbiter, the NLRC and the CA shows, among others, that: (1) the individual petitioners did not follow the petitioner's prescribed procedure performance evaluation as, in fact, the respondent's work was not evaluated; (2) the individual petitioners, through their concerted actions, ganged up on the respondent in forcing her to resign from employment; (3) the individual petitioners pressured the respondent to resign by announcing her resignation to the office staff, thereby subjecting her to unwarranted humiliation; and (4) they blackmailed the respondent by withholding her personal possessions until she

resigned from employment.

Bad faith can also be inferred from the lack of fairness and underhandedness employed by the individual petitioners on how they informed the respondent of the termination of her employment. The records disclose that the respondent was lured into a meeting on the pretext that her work performance was to be evaluated; she was caught off-guard when she was informed that her employment had been terminated. Aside from the abrupt notification, bad faith can also be deduced from the fact that the termination was made immediately effective; the respondent was immediately banned from the petitioner's premises after she was informed that her employment had been terminated.

In these lights, I vote to grant the motion for reconsideration.

[1] Motion for Reconsideration, p. 4.

[2] Id.

[3] Id. at 9.

[4] Comment, p. 3.

[5] Id. at 4.

[6] Id. at 5.

[7] Id. at 8.

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

[9] A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact (*Tongonan Holdings and Development Corporation v. Escaño, Jr.*, G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314).

[10] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

[11] *Abbott Laboratories, Philippines, et al. v. Pearlie Ann F. Alcaraz*, G.R. No. 192571, July 23, 2013; emphases supplied.

[12] *Reyes v. CA*, 328 Phil. 171, 180 (1996).

[13] *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 780 (2004); citation omitted.

[14] CA decision, pp. 3, 13-14; NLRC decision, pp.12-16.

[15] *Alert Security and Investigation Agency, Inc. v. Pasawilan*, G.R. No. 182397, September 14, 2011, 657 SCRA 655, 665, citing *De Guzman, Jr. v. Commission on Elections*, G.R. No. 129118, July 19, 2000, 336 SCRA 188, 197-198.

[16] *Aberdeen Court, Inc. v. Agustin, Jr.*, 495 Phil. 706, 712 (2005).

[17] Draft Resolution, pp. 4-5.

- [18] Supra note 16, at 712.
- [19] Id. at 716-717.
- [20] G.R. No. 177937, January 19, 2011, 640 SCRA 135, 145.
- [21] Harborview Restaurant v. Labro, G.R. No. 168273, April 30, 2009, 587 SCRA 277, 281.
- [22] Ponencia, pp. 4-5.
- [23] Supra note 8. In this case, the probationary employee, in fact, underwent company evaluation in accordance with the parties' agreement.
- [24] G.R. No. 185829, April 25, 2012, 681 SCRA 186.
- [25] Id. at 201.
- [26] Ibid.
- [27] Id. at 204.
- [28] Draft Resolution, p. 5.
- [29] Ibid.
- [30] CA Decision, p. 4; rollo, p. 1043.
- [31] Draft Resolution, p. 3.
- [32] Ibid.
- [33] Abbott's Position Paper, rollo, p. 87.
- [34] Id. at 6; emphasis supplied.
- [35] Id. at 7.
- [36] 485 Phil. 248 (2004).
- [37] 494 Phil. 114 ((2005).
- [38] Draft Resolution, p. 6.
- [39] Dissenting Opinion of Justice Arturo Brion in Abbott Laboratories, Philippines, et al. v. Pearlie Ann F. Alcaraz, supra note 11.

3rd. The ponencia badly contradicts itself in claiming that actual communication of specific standards might not be necessary "when the job is self-descriptive in nature, for instance, in the case of maids, cooks, drivers, or messengers." The respondent, in the first place, was never a maid, cook, driver or a messenger and cannot be placed under this classification; she was hired and employed as a human resources manager[.] [italics supplied]

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