

**FOODBEV INTERNATIONAL AND LUCILA S. DELA CRUZ,
PETITIONERS, VS. NOLI C. FERRER, JEVER BELARDO, FELIX
GALELA, ROMEO SISCAR, MICHAEL BALDESCO, RICO ACADEMIA,
EDUARDO DELA CRUZ, RY...**

G.R. No. 206795. September 16, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

This case is about four consolidated labor complaints of illegal dismissal, unfair labor practice, non-payment of salary and other benefits, and claims for damages and attorney's fees filed by union members.

The Facts

Petitioner Foodbev International (Foodbev) is a partnership engaged in the food service industry by providing after-sales support for specialized equipment, like hot and cold dispensers and displays. Foodbev hires skilled technicians to ensure that its specialized equipment are installed and maintained properly.[1]

Respondents Noli C. Ferrer (Ferrer), Jever N. Belardo (Jever),[2] Felix Galela (Galela),[3] Romeo Siscar, Jr. (Siscar), Michael Baldesco (Baldesco), Rico Academia (Academia), Eduardo Dela Cruz (Dela Cruz), Ryan Aquino (Aquino), Gaudencio Pario III (Pario), Mark Trapago (Trapago), Mair Gomez (Gomez), and Reynaldo B. Eroles, Jr.[4] (Eroles), are Foodbev rank and file employees and members of Samahan ng Nagkakaisang Manggagawa ng Foodbev International Central (Samahan), a labor union established on May 31, 2008.

Respondent Bernadette Belardo (Bernadette) is a managerial employee and spouse of respondent Jever.[5] She filed a complaint for illegal dismissal, which was consolidated with the other cases.

From July 3 to 9, 2008, meetings were held between the union members, Foodbev managers, and petitioner Lucila Dela Cruz (Lucila), Foodbev president. Lucila asked their grievances and reasons in establishing a union, and threatened to close Foodbev if the union activities persist. In a general meeting of all Foodbev workers, union members were made to stand in front of everyone. Foodbev's Quality Assurance Manager Malou Espeña (Espeña) shared her husband's experience with a union. She relayed that the management closed the company, filed for bankruptcy, and no one got paid. Lucila reiterated to stop union activities and to withdraw from the union for the sake of their jobs. Espeña and Operations Manager Mila Gatchalian (Gatchalian) asked for the union members' voluntary resignation in exchange for one month salary, proportional 13th month pay, one sack of rice, and one dozen canned corned beef, but without separation pay. Those who refused to resign were told to submit an apology letter for establishing a union.[6]

Most of the union members did not resign, so Foodbev castigated them by conducting a written examination exclusively for union members. The examination was difficult as it involved questions on machines that were unrelated to their duties. It was only after Galela complained that other non-union-member employees were made to take the examination. Those who failed the examination were considered guilty of violating Article VI, Section

C4 of Foodbev's Code of Discipline on slowing down, dragging or limiting out.[7]

Gatchalian issued a July 18, 2008 memorandum (memo) to Ferrer, Aquino, Trapago, Pimentel, and Pario, who are ice cream machine technicians. They were required to explain why they should not be given disciplinary action after finding that the ice cream machine that they installed at Don Bosco, Makati on July 11, 2008,[8] was infested with cockroaches. An administrative hearing was conducted, and shortly thereafter, they were served with termination notices for gross negligence resulting to loss, which caused grave damage to the company's reputation and image.[9]

On July 21, 2008, Ferrer, Aquino, Jever, Galela, and Pario filed a complaint for unfair labor practice with the National Labor Relations Commission (NLRC), docketed as NLRC NCR 07-10332-08. The following day, July 22, 2008, another complaint for unfair labor practice was filed by Eroles, Baldesco, Gomez, Fame, Dela Cruz, Academia, Siscar, Jimenez, and Trapago in the NLRC, docketed as NLRC NCR 07-10360-08. The complaints were consolidated and assigned to Labor Arbiter (LA) Virginia Azarraga (LA Azarraga).[10]

Thereafter, the respondents started receiving memoranda. Academia received his July 23, 2008 memo, requiring him to explain why he should not be subject of a disciplinary action for negligence of duty and for failing in the examination for the second time.[11]

Eroles received two memoranda both dated July 23, 2008. One temporarily assigning him to Isabela branch effective July 25, 2008. Another ordering him to explain his July 22, 2008[12]absence, when he filed a complaint for unfair labor practice with the NLRC.[13]

Ferrer, Pario, Galela, and Aquino received a similar memo regarding their July 21, 2008 absence when they filed their complaint.[14]

On July 28, 2008, the five ice cream machine technicians filed a complaint for illegal dismissal and money claims with the NLRC, docketed as NLRC NCR 07-10721-08, which was assigned to LA Thomas T. Que, Jr. (LA Que).[15] On July 31, 2008, Foodbev offered them one month salary and goods should they sign, a quitclaim, but they refused.[16]

On July 29, 2008, Foodbev managers, Bernadette and Espeña, verbally instructed several respondents to report to Equipment Masters International (EMI), another Dela Cruz owned corporation. Galela followed the instruction but was told that he was not in the list of employees required to report at EMI. He went to Foodbev's head office and inquired if he was being transferred to EMI. Foodbev's managers, Espeña and Gatchalian, asked him "Gaano ka ka-solid sa grupo, 50 percent ba o 100 percent? " He answered "Ma 'am hindi naman percentage ang pinaguusapan, kung ano yung nararapat at tama, dun po ako. " Espeña and Gatchalian included him in the list of technicians who would report to EMI.[17]

At EMI, the other respondents were confused as they were made to wait for work instruction coming from Foodbev. Respondents feared that they were being removed from Foodbev and transferred to EMI, and so, they requested to formalize the verbal order given them.[18] On August 2, 2008, Foodbev posted a July 29, 2008 memo at the gate reassigning to EMI 11 technicians, nine of whom are union members.[19]

Also on August 2, 2008, Foodbev issued a memo to Jever, Galela, Gomez, Baldesco, Academia, Siscar, Dela Cruz, Jimenez, and Piad informing them that they "can go home since there is no more work schedule that can be given" to them for that day. Respondents noticed that non-union members were not sent home. Still, they went home as directed.[20] Upon reporting for work on August 4, 2008, they were told to wait at Foodbev's gate as they were to receive another memo. Foodbev's chairman and Lucila's husband, Elmo Dela Cruz (Elmo) confronted them. The following conversation transpired:[21]

SIR ELMO

:

Ikaw si Jever?

JEVER

:

Opo

SIR ELMO

:

Ikaw ang leader nila?

JEVER

:

Hindi po.

x x x x

SIR ELMO

:

So huwag mong iniinfluence itong mga tao na to.

JEVER

:

Ah di po Sir, kagustuhan po nila yan kahit kasusapin niyo po sila.

SIR ELMO

:

Ah, kagustuhan nila. Okay, basta't you follow instructions, and walang maa, walang maaano sa inyo. Sundin niyo lang ang instructions sa opisina. Hindi kayo pwedeng magmatigas.

x x x x

SIR ELMO

:

Di ka na naawa [sa] asawa mo, ikaw e, sinasayang mo lang yung papel ng asawa mo...

JEVER

:

Di naman po ganun ung usapan Sir

SIR ELMO

:

Ano?

JEVER

:

Di naman po ganun ung usapan.

SIR ELMO

:

Di naman ganun ang usapan? You talk to your wife and mag-usap kayong dalawa. Kasi, [sayang] yung asawa mo, siya pa naman ang manager dito. And you are jeopardizing her position.

JEVER

:

Di naman po ganun ung usapan

SIR ELMO

:

You are! I'm telling you. Sa amin, sa pag-uusap namin, talagang naapektuhan ... Useless... It's useless. It's non sense.[22]

The memo served to them placed them on preventive suspension for 48 hours pending an administrative hearing for insubordination for not proceeding to their designated work assignments.[23]

Around past 12 p.m. of August 4, 2008, Dela Cruz, Baldesco, Frederick Jimenez (Jimenez) and Angelito Fame (Fame) were prevented from entering Foodbev's gate and were told to time-in instead at EMI. They suspected that they were being transferred to EMI, and so they decided to take their lunch and report for work later.[24]

About 1 p.m. of the same day, Dela Cruz and Baldesco returned to Foodbev's office when Lucila's daughters, Merlinda Dela Cruz Carpio (Carpio) and Michelle Dela Cruz Brosas (Brosas), who are part of Foodbev's management, met them at the gate and angrily told them "Kasama ba kayo sa mga sira ulo? Hindi na [namin] kayo kailangan dito! Ano pa ang ginagawa niyo dito! Tatal hindi naman kayo sumusunod sa amin, bakit nabili ninyo ang Foodbev at gusto niyo kami ang sumunod sa inyo?" Carpio further asked "Ikaw anong pangalan mo?" Dela Cruz answered "Ako po si Eduardo Dela Cruz po. " Carpio commented "Dela Cruz kapa naman, kapal ng mukha mo!" Then Brosas told them to move away.[25]

Around 1:30 p.m., another incident occurred with a different group of respondents. While Jever, Galela, Gomez, Siscar, and Academia were having lunch at a restaurant, Carpio and Brosas barged in and hurled invectives at them. Carpio angrily shouted "Mga putang ina niyo, ang kakapal ng mukha niyo at wala kayong utang na loob!...Binastos niyo ang papa kol Wala kayong karapatan magsuot ng uniporme na yan." Then Carpio forcibly removed their polo jacket uniform. Brosas told them "Wag na kayong magpakita sa kumpanya hindi naming kayo kailangan! Mga putang ina niyo! Tatal nagmurahan na tayo dito, ano bang gusto niyo!"[26]

Galela responded that may God forgive them for what they had done. This further angered Carpio and retorted expletives at him. She grabbed a chair to hit him, but Brosas stopped her. The restaurant owner intervened and told Carpio and Brosas to leave. The respondents reported the incident to the barangay officials of Barangay Sta. Cruz and Barangay Tejeros, Makati.[27]

Still on August 4, 2008, when Bernadette returned from her lunch break, she found her personal belongings at the company's reception desk. Bernadette was told to wait for Carpio and Brosas. Upon their arrival, they began cursing her and told her that her husband, Jever, disrespected their father. Despite her explanations, Bernadette was fired, prompting her to file a complaint for illegal dismissal with money claims on August 11, 2008, docketed as NLRC NCR 08-11324-08. The case was assigned to LA Melquiades Sol D. Del Rosario, and was later consolidated with the complaints assigned to LA Que.[28]

The following day, August 5, 2008, Jever, Galela, Gomez, Siscar, Fame, Baldesco, Dela Cruz, Jimenez, and Academia filed a complaint for illegal dismissal with money claims, docketed as NLRC NCR 08-11081-08, and was assigned to LA Patricio P. Libo-on. It was also consolidated with the complaint pending with LA Que.[29]

On August 12, 2008, Eroles returned from Isabela and reported for work at Foodbev's office in Makati. He requested that his absence on August 11, 2008 be counted against his leave credits, and that he be permitted to go on leave on August 13, 2008 to attend a hearing on the unfair labor practice case before LA Azarraga. During the hearing, LA Azarraga advised the respondents to secure the services of a lawyer, move for the dismissal of the case before her, and to pursue the action filed before LA Que. On August 13, 2008, respondents filed a Notice of Dismissal or Withdrawal of Complaint without Prejudice.[30]

When Eroles returned to work on August 14, 2008, he was given a memo requiring him to explain his insubordination for being absent despite the disapproval of his application for leave.[31]

On August 19, 2008, Eroles filed his explanation stating that his absence on August 11, 2008, was due to exhaustion from his Isabela trip, while his absence on August 13, 2008 was because of a hearing before the LA.[32]

On the same day, Lucila summoned Eroles and told him to hand in his resignation, because he would be appointed at Greentech Inter-Phils., (Greentech) another Dela Cruz-owned company. He was offered two months salary, two sacks of rice, and two boxes of canned corned beef.[33] Eroles recounted the following:

Ang offer sa akin, wala naman daw ginagawa sa Foodbev, magkakaroon daw ako ng appointment letter sa Greentech, at magresign na ako sa Foodbev. Bale wala na daw as per mam Sonie ang length of service ko kasi bagong kumpanya na daw ito, at tinatanong ko kung ano ang option ko kung hindi ako napayag, wala daw tumingin daw ako sa salamin at magmunimuni.(Emphases supplied)[34]

Foodbev drew up a written offer of wage, sack of rice, and canned corned beef to the 13 union members in exchange for a waiver. Lucila instructed Eroles to take the day off the next day to convince the 13 respondents to accept their offer.[35]

On August 21, 2008, Eroles informed Foodbev that their offer was rejected.[36] Later that day, Foodbev issued a memo to Eroles informing him that the reasons for his absences do not constitute sufficient justification and that he was being suspended from work for 7 days.[37] After the lapse of the suspension period, he did not report back to work.[38]

On August 22, 2008, Eroles and the Samahan filed a complaint for unfair labor practice, illegal dismissal, and money claims with the NLRC, docketed as NLRC NCR 08-11868-08, and was assigned to LA Felipe T. Garduque II. The complaint was consolidated with the three other cases assigned to LA Que.[39] On the same day, the complaint docketed as NLRC NCR 07-10721-08 was amended to include unfair labor practice.[40]

On September 18, 2008, LA Azarraga dismissed the two complaints for unfair labor practice, namely: NLRC NCR 07-10332-08 and NLRC NCR 07-10360-08, as prayed for by respondents in their Notice of Dismissal or Withdrawal of Complaint without Prejudice.[41]

The Labor Arbiter's Decision

On July 16, 2009, LA Que rendered a decision dismissing the four consolidated complaints for violation of the rule against forum shopping.[42] The labor arbiter explained that while the filing of consolidated cases before his branch initially involved dissimilar causes of action from the cases filed before LA Azarraga, the subsequent amendment of the complaints to include unfair labor practice, and the failure to inform his branch of the status of the pending complaints was a violation of the rule against forum shopping.[43]

The LA pointed out that the respondents knew the pendency of the unfair labor practice case before LA Azarraga, and by not informing his branch of such pendency was an indication of their intention to trifle with the proceedings before his branch. This led to the dismissal of the four consolidated complaints: NLRC NCR 07-10721-08, NLRC NCR 08-11081-08, NLRC NCR 08-11324-08, and NLRC NCR 08-11868-08.[44]

The NLRC Decision

The respondents appealed to the NLRC, which rendered a decision on September 17, 2009, affirming the dismissal of the complaints with modification as to Michael Pimentel's (Pimentel) complaint.[45]

The NLRC established that respondents failed to disclose in their verification that there were other pending cases before LA Azarraga, which is a violation of the rule against forum shopping. The NLRC affirmed the dismissal of the four complaints.[46]

As for Eroles' complaint on behalf of the union, the NLRC determined that the complaint was filed not for the union but for the same union members, who earlier filed the complaints. The NLRC observed that the respondents merely changed the name into the Samahan to make it appear that the case did not involve the same parties, and added unfair labor practice as a new cause of action, but the allegations were the same as the earlier cases. Nevertheless, the NLRC concluded that the allegations against Foodbev did not constitute unfair labor practice.[47]

As for Bernadette's complaint, the NLRC held that she was not dismissed from the service but she abandoned her work, and that she filed a complaint to get hold of separation pay and not to regain her employment. The NLRC decided that her termination was warranted and she was not entitled to separation pay.[48]

As for Pimentel's complaint, the NLRC ruled in his favor. The NLRC ascertained that although he was negligent in the installation of the ice cream machine, his negligence could not be characterized as gross and habitual to justify dismissal from the service. There was no showing that he committed other infractions, and this single act could not be considered as habitual neglect of duty. Further, Foodbev's claim that Pimentel was guilty of habitual absences was not proven with substantial evidence. The NLRC declared that Pimentel's termination from employment was without valid or just cause. Considering that he was not interested in reinstatement, but only for separation pay, the NLRC awarded the same to him equivalent to one month salary for every year of service.[49]

The respondents moved for reconsideration, which the NLRC denied in its November 17, 2009 Resolution.[50]

The Court of Appeals Decision

Aggrieved, respondents elevated the case to the Court of Appeals (CA) through a petition for certiorari under Rule 65, as amended, alleging grave abuse of discretion on the part of the NLRC.

On November 28, 2012, the CA rendered a decision partly granting the petition.[51] The CA affirmed the labor tribunal's finding that respondents committed forum shopping. However, it deemed appropriate to resolve the substantial issues presented as a dismissal on pure technicalities was frowned upon.[52]

On the claim of unfair labor practice, the CA determined that Foodbev was discouraging the formation of a union,

and committed acts constituting unfair labor practice based on the following evidence: the union's application for registration, the minutes of the meeting between Foodbev's president and/or managers and union members, the affidavits of Aquino and Pario, the acts of Carpio and Brosas, the blotter report, the transfer of the union president to Isabela, the show cause memo, and the notices of termination. The CA ruled that the NLRC arbitrarily pronounced that there was no unfair labor practice despite the lack of factual and legal bases.[53]

On the claim of illegal dismissal, the CA resolved the issue individually.

As for Bernadette, the CA explained that a managerial employee married to a rank and file employee created issues within the company and was enough reason to dismiss her. However, there was nothing in the records that would show that she was given any termination notice or any chance to defend her side in a proper hearing. Foodbev was unable to support its allegation that Bernadette refused to receive the notice sent to her. The CA concluded that Foodbev failed to overcome the burden to prove that the dismissal was done in accordance with law.[54]

As for Aquino, Ferrer, Pario, and Trapago, the CA held that there was nothing in the records that would reflect any habitual and gross negligence on their part, and the NLRC did not cite any incident to support the same. The CA elucidated that it was incorrect to conclude that only the four technicians were grossly negligent and not Pimentel as they were part of same team with the task of installing the same machine at the same place. The CA stated that the NLRC could not justifiably single out Pimentel as having been illegally dismissed without any facts that would make his situation different from that of his teammates.[55]

As for the rest of the respondents, the CA resolved that the burden to prove the validity of the dismissal rests on the employer, and the proof must be based on substantial evidence. The CA found that there was a dearth of evidence to prove that respondents refused to follow instructions for their transfer to EMI. It was further revealed that nine of the 11 employees transferred to EMI were union members, which led the CA to believe that the transfer was made to prevent them from conducting union activities.[56]

In partly granting the petition, the CA reversed the September 17, 2009 NLRC Decision and November 17, 2009 NLRC Resolution, and ordered reinstatement or payment of separation benefits, as the case may be. The CA also awarded P50,000.00 as moral damages, P25,000.00 as exemplary damages to each respondent, and attorney's fees equivalent to 10% of the total amount awarded.[57]

Foodbev moved for reconsideration, which the CA denied in its April 8, 2013 Resolution.[58] Undaunted, Foodbev filed this petition before the Court. A summary of its arguments are as follows.

Whether or not the CA erred:

- In not dismissing the complaint due to forum shopping;
- In finding that the ice cream machine technicians were illegally dismissed from employment;
- In finding Foodbev guilty of unfair labor practice; and
- In awarding money claims, damages and attorney's fees to respondents.[59]

In their Comment, respondents enumerated the instances of union busting in support of the unfair labor practice allegation: the meetings between Foodbev president and/or managers and respondents were aimed on hindering union activities, Foodbev's directive to resign, the written examination initially given to union members only, the temporary transfer of union president to Isabela, the transfer of the rest of the respondents to EMI, and the termination from employment of union president, union officers (such as the ice cream machine technicians), union members, and Bernadette Belardo as spouse of a union member. Respondents narrated the circumstances

surrounding their respective termination.[60]

In their Reply, petitioners reiterated their arguments in the Petition.

The Issue to be Resolved

The issue to be resolved is whether or not the CA committed a reversible error in partly reversing the September 17, 2009 NLRC Decision and November 17, 2009 NLRC Resolution.

The Court's Ruling

The petition is denied.

The general rule in a petition for review on certiorari under Rule 45, as amended, is that only questions of law should be raised. In *Republic v. Heirs of Santiago*,[61] the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the labor arbiter, the NLRC and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented.

I. Procedural Issue: Forum Shopping

It is true that the Court is strict in dismissing a case when lawyers and/or litigants commit forum shopping. In *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*,[62] the Court emphasized that "procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."

However, it is likewise true that strict imposition of technical rules can result to miscarriage of substantial justice. The CMTC case recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.

The Court reiterates its pronouncement in *National Power Corp. v. Court of Appeals*?[63]

Notwithstanding the procedural lapse in this case, We opt not to deny the case based on merely technical grounds. We must be reminded that deciding a case is not a mere play of technical rules. If we are to abide by our mandate to provide justice for all, we should be ready to set aside technical rules of procedure when the same hampers justice rather than to serve the same.

Substantial justice is of paramount importance to the Court and it is our duty to uphold it. It has been the practice of the Court to set aside technical rules to give way to substantial justice, especially of those who are underprivileged or the disadvantaged, such as the workers.

Here, the respondents are at risk of losing their jobs after they were terminated from the service without factual basis and/or due process of law. Their years of service may be thrown away without getting a well-deserved compensation if the Court would favor technicality over resolving the substantive issues. Further, an employer may get away with unfair labor practice of union busting due to technicality.

The framers of our Constitution recognized the fragile position of workers in our society given their economic status. Thus, they drafted Article XIII to protect labor and the rights of workers.

ARTICLE XIII

x x x x

LABOR

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and

promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.[64]

The Court has the duty to uphold the Constitution and safeguard the rights it embodies. Here, the rights of workers to self-organization, security of tenure, and a living wage are at stake. A dismissal of the complaints due to technicalities would defeat these valuable rights of complaining workers, which the Constitution protects.

In *Nueva Ecija I Electric Cooperative, Inc. v. NLRC*,^[65] the Court explained the effect of unfair labor practice in the society.

Unfair labor practices violate the constitutional rights of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect; and disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. As the conscience of the government, it is the Court's sworn duty to ensure that none trifles with labor rights.

Therefore, the CA was correct in setting aside technical rules on forum shopping to give way to the more important Constitutional and statutory rights of respondent workers.

II. Substantive Issues

A. The dismissal of ice cream machine technicians

One of the technicians, Pimentel, obtained a favorable decision in the NLRC and has moved for its execution.^[66] The case now proceeds as to the four other technicians, Ferrer, Aquino, Trapago, and Pario, who complained of illegal dismissal with money claims.

Foodbev alleges that respondents' failure to follow the cleaning procedure of ice cream machine and habitual absences amount to gross negligence, serious misconduct, and willful disobedience, which compel a dismissal from the service.^[67] Pario has an additional infraction of gambling inside work premises.^[68]

It is settled that a valid dismissal mandates compliance with substantive and procedural requirements. In *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC*,^[69] the Court emphasized, "(a) there be just and valid cause as provided under Article 282 (now Art. 297) of the Labor Code; and (b) the employee be afforded an opportunity to be heard and to defend himself."

The Court further discussed the two facets of procedural due process in *New Puerto Commercial v. Lopez*^[70]

[Procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first appraises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with

as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted, x x x.

In *King of Kings Transport, Inc. v. Mamac*,^[71] the twin requirements of notice and hearing were further clarified below:

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 (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. 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. 282 is being charged against the employees.

After serving the first notice, the employers 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. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

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

1. 1st Notice - Notice of violation and order to explain

The records reveal that Ferrer, Aquino, Trapago, and Pario were individually served with a show cause memo notifying them of their violation of company rules with order to explain in writing. Ferrer, as supervisor and head of the installation team, received the following memo dated July 18, 2008.

x x x x

It has been found out that MSS Machine with serial no. 20050 installed at Don Bosco Makati has sightings of pest (cockroach), an indication that the machine was not properly cleaned and checked in the shop before it was installed.

You are the head of the MSS Team and one of those who cleaned the unit. As the Supervisor, it is your main responsibility to ensure that the machine to be installed is in good condition and passes [the] quality standards prior to installation and before leaving the outlet.

Please take note that this created an aggravating issue against us in terms of quality service.

In this regard, you are found guilty of violating the FBI Code Article VI Section 13 (Gross Negligence resulting to loss...which causes grave damage to our company's reputation and image) subject to penalty of Dismissal for first time offenders.

Please explain in writing within 48 hours why you should not be given disciplinary action on this regard.^[72] (Emphases supplied)

On the other hand, Aquino, Trapago, and Pario, as members of the installation team, received a similar memo also dated July 18, 2008.

x x x x

It has been found out that MSS Machine with serial no. 20050 installed at Don Bosco Makati has sightings of pest (cockroach), an indication that the machine was not properly cleaned and checked in the shop before it was installed.

You were one of those who installed the unit. This is to remind you that our SOP is to ensure that the machine to be installed is in good condition prior to installation and before leaving the outlet.

Please take note that this created an aggravating issue against us in terms of quality service.

In this regard, you are found guilty of violating the FBI Code Article VI Section 13 (Gross Negligence resulting to loss...which causes grave damage to our company's reputation and image) subject to penalty of Dismissal for first time offenders.

Please explain in writing within 48 hours why you should not be given disciplinary action on this regard.[73] (Emphasis supplied)

The Court observes several flaws in the show cause memo. First, the memo contains a general statement that a cockroach was found in the ice cream machine that respondents installed at Don Bosco Makati. It does not indicate when and how the pest was discovered, and/or in which part of the machine was it found.

Second, the memo draws a conclusion that the fault lies on the respondents in the absence of a proper investigation. It states that sightings of pest (cockroach), an indication that the machine was not properly cleaned and checked in the shop before it was installed, xxx. In this regard, you are found guilty of violating the FBI Code Article VI Section 13 (Gross Negligence resulting to loss . . . which causes grave damage to our company's reputation and image) subject to penalty of Dismissal for first time offenders. The purpose of the first notice is to inform the employee of his/her violation and to afford him/her of an opportunity to explain, and not to pass judgment.

Third, the memo failed to specify how the supposed negligence gravely damaged Foodbev's reputation and image. It does not declare a detailed narration of the facts and circumstances as basis for the charge of gross negligence resulting to loss and damage to the company's reputation and image.

Fourth, respondents were given 48 hours or two days to explain their side, which is too short compared to the 5-day period enunciated in the King of Kings Transport case.

Lastly, the memo does not include the charge of serious misconduct and willful disobedience, which Foodbev accuses respondents of, in this petition. Respondents only replied to the charge of gross negligence since it is the only charge they were informed of. By raising new charges in this petition, respondents were deprived of the opportunity to defend themselves at the first instance on the administrative level.

In sum, the memo does not comply with the requirements laid down by the King of Kings Transport case. The respondents' dismissal due to gross negligence resulting to loss and damage to the company's reputation and image, lacks factual foundation and disregards due process.

As for the allegation of habitual absences, the petition fails to specifically state the dates or circumstances constituting habitual absence. The petition states:

35. After concluding the administrative hearing on 26 July 2008, and considering further the habitual absences

and infractions committed against petitioner Foodbev rules, [e.g.] gambling inside petitioner Foodbev's premises, and the fact that they were not able to satisfactorily explain their failure to strictly adhere and abide with the standard operating procedures, petitioner Foodbev decided to dismiss the employment of respondents Trapago, Pario, Pimentel, Aquino and Ferrer.[74]

While the records show that Pario, Ferrer, and Aquino were served with individual memo dated July 23, 2008, for their absence on July 21, 2008, it is unclear if this is the particular absence that Foodbev is referring to as habitual absence.

To : Gaudencio Pario III

x x x x

This refers to your absence last July 21, 2008. You have been issued the memo regarding the MSS case last July 19, Saturday. It has been noted with regret that all of those who have been issued the memo absented after the memo was received. Total number of absences on that day has been very detrimental to our operations.

In view of the above, you are construed to have violated FBI Code of Discipline Article VI B13 (Engaging in sabotage or other acts inimical to the security or interest of the company) a type A offense subject to Dismissal.

Please explain in writing within 48 hours why you should not be given the disciplinary action cited above. [75]

To : Noli Ferrer

x x x x

This refers to your absences, which as of today, you have accumulated 3 days absences.

You have been issued the memo regarding the MSS case last July 19, Saturday. On July 21, 2008, you were absent. It has been noted with regret that all of those who have been issued a memo absented on the same day which has been very detrimental to our operations.

In view of the above, you are construed to have violated FBI Code of Discipline Article VI, Section A1(AWOL - incurring two absences without leave whether consecutive or not) a type B offense subject to penalty of 10-15 days suspension for 1[st] time offenders.

FBI Code of Discipline Article VI B13 (Engaging in sabotage or other acts inimical to the security or interest of the company) a type A offense subject to Dismissal.

Please explain in writing within 48 hours why you should not be given the disciplinary action cited above.[76]

To : Ryan Aquino

x x x x

This refers to your absences, which as of today, you have accumulated 3.5 days absences.

You have been issued the memo regarding the MSS case last July 19, Saturday. On July 21, 2008, you were absent, which is an unauthorized leave. It has been noted with regret that all of those who have been issued a memo absented on the same day which has been very detrimental to our operations.

In view of the above, you are construed to have violated FBI Code of Discipline Article VI, Section A1(AWOL - incurring two absences without leave whether consecutive or not) a type B offense subject to penalty of 15-20 days suspension for 2[nd] time offenders.

FBI Code of Discipline Article VI B13 (Engaging in sabotage or other acts inimical to the security or interest of the company) a type A offense subject to Dismissal.

Please explain in writing within 48 hours why you should not be given the disciplinary action cited above.[77]

The memo stated that the three respondents were absent on July 21, 2008. Ferrer and Aquino's memo stated their accumulated number of absences without indicating specific dates to establish habitual absence. As for Trapago, there is no record that he was served with a memo regarding his absence. The Court finds Foodbev's claim of habitual absences against Pario, Ferrer, Aquino, and Trapago to be too general and unsupported by evidence. The 48-hour period to explain is too short compared to the 5-day period as previously discussed. The memo failed to comply with the requirements of law and jurisprudence. The respondents' dismissal on the ground of habitual absence lacks factual basis and violates procedural requirements.

As for respondent Pario, who was caught gambling inside the work premises, it appears that the same is true as there was sufficient documentary evidence to support the charge. The records disclose that Foodbev sent a memo to Pario informing him of his violation, and after Pario admitted his misdeed in his written explanation, Foodbev issued another memo finding him guilty of violating the company rules and suspended him from work for three days. However, the Court will not rule on the validity of the Pario's suspension as the issue to be resolved is the legality of his dismissal.

2. 2[nd] Notice - Notice of opportunity to be heard

Foodbev sent individual memo to respondents for a scheduled administrative hearing on the charge of gross negligence in cleaning the ice cream machine. The memo reads:

As you maybe aware, the installation of MSS Machine bearing Serial No. 20050 at Don Bosco Makati had caused great damage to the prestige and reputation of the company to its client, because cockroach and other pests were sighted on the said machine.

The incident only showed your gross negligence in not checking and cleaning the machine prior to its installation, thus in violation of the company's policy of which you are very much aware of.

Consequently, your attention was called through a memorandum sent to you of which, you favor the company with a reply.

However, the company deems it proper to conduct an administrative hearing to determine your culpability on the charge against you. In this regard, you are invited to appear on July 24, 2008 at the Executive Office in the afternoon before the administrative body who will conduct the investigation. This hearing could likewise be the best avenue for you to air out your side as the truthfulness of the matter.

Your presence on the hearing is very important and is therefore highly appreciated. On the contrary, failure to appear on the scheduled hearing will constitute a waiver on your part to introduce evidence to exonerate or free you from possible liability.[78] (Emphases supplied)

This memo sufficiently satisfies the requirement of affording due process to the respondents in defending their side. However, this memo applies only to the charge of gross negligence, and does not include the charge of habitual absence, serious misconduct, and willful disobedience.

3. 3[rd] Notice - Termination notice with grounds

The King of Kings Transport case requires that the termination notice should state that (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

The termination notices, addressed separately to respondents, are similarly worded as follows:

Date : July 26, 2008

x x x x

This refers to the memo dated July 18, 2008 regarding your alleged negligence in your duty as evidenced by cockroaches found in the soft serve ice cream machine which you cleaned and installed at Don Bosco Makati.

In this regard an administrative consultation was held last July 25-26, 2008 to thresh out all issues. The totality of evidences gathered during the administrative investigation most especially your unequivocal admission that you, together with other technicians were indeed the one who prepared and installed the soft serve ice cream machines sufficiently established that you are guilty of serious misconduct, fraud and willful breach of trust and confidence causing serious damage and prejudice to the company. Our company, being in the Food and Beverage [I]ndustry should always see to it that above average due diligence be practiced lest the consumer public would suffer. Per our QA department, the most susceptible to food poisoning would be the school age children and the elderly. Our client's (Nestle) primary customers in Don Bosco Makati are school age children.

Thus effective upon receipt of this letter, your employment is hereby terminated for violating Foodbev International Code of Discipline Article VI Section 13 (Gross Negligence resulting to loss...which causes grave damage to our company's reputation and image), a type A violation with penalty of Dismissal for first time offenders. Please return immediately all company documents and materials that may have come into your possession as a consequence of your employment.[79] (Emphasis supplied)

Foodbev avers in this petition that management dismissed respondents because of gross negligence, habitual absence, infractions, serious misconduct, and willful disobedience. However, the first notice only charged respondents of gross negligence resulting to loss, which caused grave damage to the company's reputation and image. Subsequently, the termination notice stated that Foodbev found respondents "guilty of serious misconduct, fraud and willful breach of trust and confidence causing serious damage and prejudice to the company. " The same notice indicated that the ground for termination is a violation of Foodbev International Code of Discipline Article VI Section 13 (Gross Negligence resulting to loss...which causes grave damage to our company's reputation and image).

The inconsistencies in the charges, findings, and ground for termination make the termination notice substantially and procedurally defective. Since respondents were not formally charged of serious misconduct, fraud, and willful breach of trust and confidence causing serious damage and prejudice to the company, they were unable to defend their side and present evidence on their behalf. It is unfair and unjust to base a termination on a finding that had not undergone notice and hearing. The termination notice clearly violates respondents' rights to due process.

In addition, the termination notice does not state habitual absence, and in Pario's case, his gambling activity as additional ground for dismissal from the service.

Noticeably, there are inconsistencies on the dates of the administrative hearing. In the July 22, 2008 notice of hearing, the administrative hearing was set on July 24, 2008. In the July 26, 2008, termination notice, the date of administrative hearing in the body of the letter is July 25-26, 2008. The petition also contains different dates of administrative hearing:

31. Notices of administrative investigation were then subsequently sent to the respondents and an administrative hearing was then conducted on 24 July 2008 at the Executive Office of petitioner Company.

x x x x

35. After concluding the administrative hearing on 26 July 2008, and considering further the habitual absences and infractions committed against petitioner Foodbev rules, [e.g.] gambling inside petitioner Foodbev's premises, and the fact that they were not able to satisfactorily explain their failure to strictly adhere and abide with the standard operating procedures, petitioner Foodbev decided to dismiss the employment of respondents

Trapago, Pario, Pimentel, Aquino and Ferrer.[80] (Emphasis supplied)

The discrepancies in the administrative hearing's date put doubt on Foodbev's claim that the date appearing on the termination notice was a typographical error. More so, when respondents alleged that they were served with the termination notice shortly after the administrative hearing. These observations lead the Court to ask whether the termination notices were prepared ahead of the administrative hearing with a decision to terminate respondents' employment, and whether the administrative hearing was a sham and was conducted only for compliance purposes.

An administrative hearing involves sorting of facts, evaluation of evidence, and assessment of the arguments presented by both management and employee/s. The actual hearing in the presence of both management and employee/s is time consuming. At times, it can take days to finish considering the number of parties involved. Moreover, there should be an actual deliberation by a panel or committee of persons who heard the charge/s and defense/s. With all the work that comes in an administrative hearing, it is hardly possible to finish the inquiry and decision-making process in one day. Applying this to the case at hand, the Court is suspicious of the integrity of the administrative hearing conducted on the charges against the respondents. It is unclear whether the respondents were assisted by a counsel or representative in the presentation of their defenses, or whether they waived such right. The numerous procedural violations alone make respondents' dismissal against the law. Yet, the Court has to determine if the charge of gross negligence against the respondents has merit.

4. Just and Valid Cause for Termination

Article 297[81] (formerly Art. 282) of the Labor Code listed gross and habitual neglect of duties by the employee as a ground for termination of his/her services. In *Publico v. Hospital Managers, Inc.*, [82] the Court declared that "gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances."

The notice of the administrative hearing and the respondents' written explanation reveal that respondents were tasked to clean and install an ice cream machine at Don Bosco Makati, which reported to Foodbev that cockroaches were found in the machine. Respondents cleaned the machine on July 7, 2008, and later wrapped and sealed it in plastic. The machine remained at Foodbev's office for 3 days before delivering it to Don Bosco Makati on July 11, 2008. On site, respondents tested the machine for two hours to ensure that it was functioning well. During the test run, no cockroach was found in the machine, thus respondents believed that they accomplished their work. Respondents mentioned that the machine should have passed through the Quality Assurance Department for checking before installation of the unit. Ferrer, as supervisor and head of the team, declared that it was the first time that he learned of the use of "robby vapor" on the machine, but it was not endorsed to him.[83]

From the narration, respondents did not exhibit acts constituting gross negligence, nor did Foodbev cite other instances when respondents failed to perform assigned task, signifying habitual negligence. There was no showing that respondents had deliberate or thoughtless disregard for the cleaning procedure. Foodbev failed to demonstrate gross and habitual negligence on the part of respondents. If at all, respondents are liable of simple negligence for failing to use robby vapor in sanitizing the machine.

In dismissing respondents, Foodbev cannot invoke the principle of totality of infractions considering that respondents' alleged previous acts of misconduct, such as habitual absence and gambling, serious misconduct, and willful disobedience, were not established in accordance with the requirements of procedural due process.[84]

While the Court understands that Foodbev is engaged in the food service industry, which is imbued with public interest, the penalty of dismissal from the service is too harsh as it involves the loss of income for the respondents,

who are rank and file employees. A less severe penalty of suspension should have been imposed considering that the respondents have been in the service for several years.[85] The Court also observes that this is the first time in the long years of service that respondents failed to follow the cleaning procedure. Thus, a more compassionate penalty of suspension is deemed appropriate.

In *Philippine Long Distance Company v. Teves*,^[86] the Court stressed that while it is the prerogative of the management to discipline its employees, it should not be indiscriminate in imposing the ultimate penalty of dismissal as it not only affects the employee concerned, but also those who depend on his livelihood.

While management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers, pursuant to company rules and regulations, however, such management prerogatives must be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements. The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.

Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps maybe committed by labor ought not to be visited with a consequence so severe. This is not only the laws concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.[87] (Emphases supplied)

The Court finds that respondent's dismissal from employment is illegal due to several violations of procedural and substantive requirements of the Labor Code and its Implementing Rules.

B. The verbal dismissal of respondents transferred to EMI

Both Foodbev and respondents Jever, Galela, Gomez, Siscar, Fame, Baldesco, Dela Cruz, Jimenez, and Academia admit that a verbal and physical altercation erupted between them and Foodbev's corporate officials. Foodbev specifically admitted the incident in its petition.

49. This untoward incident caused Mr. Elmo Dela Cruz' (sic) daughters, Mesdames Carpio and Brosas, extreme emotional anguish as they felt that their father was undeserving of respondent Belardo's disrespectful attitude and treatment. They then met with respondent Belardo and his group composed of respondents Gomez, Siscar, Academia and Galela, to demand an explanation for the said unpleasant incident. (Underscoring in the original)[88]

The tenor of Carpio and Brosas' statements (Hindi na namin kayo kailangan ditol Ano pa ang ginagawa niyo dito! Wag na kayong magpakita sa kumpanya hindi naming kayo kailangan!) during the confrontation in a restaurant leave no room for interpretation other than a verbal dismissal from the service.

Foodbev claims that they served notice to explain and notice of administrative hearing. However, the notices are futile because respondents were verbally dismissed from employment and were no longer reporting for work. Thus, it is not surprising that respondents did not submit their answers to the notice to explain and did not attend the supposed administrative hearing.

In *Reyes v. Global Beer Below Zero, Inc.*^[89] the Court held that "verbal notice of termination can hardly be considered as valid or legal." As previously discussed, the employer should comply with the substantive and procedural requirements in dismissing employees from the service. Here, Foodbev failed to abide by these

requirements in dismissing Jever, Galela, Gomez, Siscar, Fame, Baldesco, Dela Cruz, Jimenez, and Academia. Thus, their termination from employment is illegal.

C. The verbal dismissal of managerial employee, Bernadette Belardo, who was married to a union member

Foodbev avers in this petition that Bernadette's claim of unfair labor practice is unfounded because a managerial employee like her is prohibited from joining a union. Contrarily, the records show that Bernadette never joined the Samahan. Bernadette complained of illegal dismissal because she was unceremoniously terminated from employment without just or authorized cause and due process.

Foodbev alleges that: (1) Bernadette was not dismissed from the service, but rather she abandoned her job. (2) they served her with a notice to explain her absence, but she refused to receive it, and (3) they sent another notice through registered mail.

Bernadette narrated a different story of her dismissal on August 4, 2008, at Foodbev's office.

30.1 She was surprised to find out that her bag and jacket - items she left inside her table at the 2nd floor where she worked - were at the reception area of the building, at the ground floor;

30.2 Petitioner Bernadette was told to wait for Carpio and Brosas at the reception area. Minutes later, Carpio and Brosas arrived. Carpio began shouting: Putang ina ng tarantado mong asawa! Binastos niya ang papa ko, walang galang sa matanda!

30.3 Petitioner Bernadette tried to explain that she talked to her husband and who said that he (Jever) did not disrespect Sir Elmo;

30.4 Carpio and Brosas didn't believe Bernadette. Carpio countered that Jever was disrespectful even to managers. "Naglilider lideran!" Petitioner Bernadette denied that Jever was a leader in the union;

30.5 Carpio then proceeded to insult petitioner Bernadette by saying: ["] Tapos ko nang murahin yung tarantado mong asawa sa kainan... "Wala kayong kwentang mag-asawa, wala kayong utang na loob..." San ba galing ang pinapakain mo sa pamilya mo!" And, told Bernadette: "Ano pa ang ginagawa mo ditto!"

30.6 Brosas said that petitioner Bernadette Belardo was a problem because of the union activities of her husband. By then petitioner Bernadette was crying, even as she was being insulted in front of her co-workers;

30.7 Petitioner Bernadette Belardo later came to know that earlier during lunch break of August 4, 2008, Carpio (VP for Finance, Foodbev) was shouting inside the office where Bernadette worked and ordered that Bernadette's things be thrown out of the premises as she will no longer report to work starting the next day.[90] (Emphasis supplied.)

The Court observes that in its petition, Foodbev did not deny that there was an encounter between Bemadette, Carpio and Brosas, and claims that the meeting was cordial.[91]

The CA determined that "there is nothing in the records that would show that Bernadette was given any notice of termination or any chance to defend her side in a proper hearing."[92]

The Court agrees with the CA's findings. Carpio's own words (Tapos ko nang murahin yung tarantado mong asawa sa kainan. Wala kayong kwentang mag-asawa, wala kayong utang na loob. Saan ba galing ang pinapakain mo sa pamilya mo! Ano pa ang ginagawa mo dito?) convey a clear intent to sever employment ties with Bernadette. Carpio also ordered that Bernadette's things be thrown out of the premises because she would no longer report for work. Her actuations demonstrate that Bernadette was terminated from employment.

The Court does not consider Bernadette to have abandoned her work because her absences were a direct result of

Carpio and Brosas' conduct. There was no clear reason for her dismissal. It can only be inferred that her dismissal was due to her husband's membership in the union and participation in union activities. But that is not among the just causes of termination under Article 294 of the Labor Code. Bernadette's verbal termination from employment is a violation of her right to security of tenure, and was done without just cause and due process under Articles 294[93] and 297[94] of the Labor Code. Thus, the Court rules that Bernadette's dismissal from the service is illegal.

D. The dismissal of union president, Reynaldo Eroles

Eroles complained that he was illegally dismissed from the service, and that Foodbev is guilty of unfair labor practice. He claimed that Foodbev assigned him to their Isabela branch to isolate him from the union.[95] He alleged that Lucila asked him to resign at Foodbev in exchange for appointment at Greentech.[96]

For its part, Foodbev avers that Eroles' temporary transfer to Isabela was part of management practice to bring provincial employees for training in Makati, where the proper equipment and trainers are located. Then, an employee in Makati would be sent to the provincial branch to take over the trainee's job.[97]

Foodbev admits that in July 2008, there was an offer to its employees for voluntary resignation in exchange for pecuniary benefits in order to save the company from severe economic losses.[98] In August 2008, there was another offer for several months of pay and food supply.[99]

It is a rule that before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service.[100]

Here, there is no evidence on record that Eroles was directly terminated from the service. He simply failed to report for work after his suspension. But what prompted Eroles to stop reporting for work? The records show that in a meeting between him and Lucila on August 19, 2008, Eroles was told to resign at Foodbev in exchange for a job in Greentech.[101]

The Court observes that Foodbev did not deny the job offer, which has no specific position, rank, or salary. Eroles mentioned that once he accepts the job offer, his years of service in Foodbev would be worthless. These observations do not reflect Foodbev's sincere effort to provide job security for Eroles. They also failed to acknowledge his years of service in the company. Eroles was placed in a tight situation wherein he had to choose between staying in Foodbev and risk suffering the ire of management, or transfer to Greentech with an unspecified position and salary and forego his years of service at Foodbev. Neither of the options were favorable to him and pushed him instead not to report for work. This is constructive dismissal.

In *Doble, Jr. v. ABB, Inc.*, [102] the Court explained constructive dismissal.

To begin with, constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances. (Emphasis ours)

Here, Eroles is susceptible to being transferred to another branch or company in the guise of training or company practice, or verbal harassment similar to his dismissed co-workers. The insinuations to resign and the successive termination from employment of union members had created a hostile working environment, which convinced

him to sacrifice his employment and tantamount to constructive dismissal.

E. Unfair Labor Practice

Articles 258 and 259 of the Labor Code state the concept of unfair labor practice and enumerate the unfair labor practices committed by employers.

ART. 258. [247] Concept of Unfair Labor Practice and Procedure for Prosecution Thereof. — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

x x x x

ART. 259. [248] Unfair Labor Practices of Employers. — It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a)

To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

x x x x

(e)

To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization, x x x (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

The records reveal several instances to support unfair labor practice, specifically union busting, such as:

- Lucila's statements during the meetings in July 2008, discouraging employees from joining and engaging in union activities, and embarrassing union members by requiring them to stand in front of the employees during a meeting;
- Conducting written examinations on union members;
- Transferring the union president, Eroles, to the provincial branch to isolate him from the union;
- Transferring union members to another company;
- Company managers inquiring about loyalty of employees to the union as a factor whether to transfer the employee or not;
- Termination from employment of union members and union officers (Ferrer as Vice President, Aquino as Treasurer, Galela as Auditor, Academia as Sgt.-at-arms, and Pario, Gomez, Jever, and Dela Cruz as Board Members);[103]
- Foodbev President's (Elmo) statements during a confrontation with some respondents, inquiring about leadership in the union and discouraging them from influencing other employees to join the union; and
- Encouraging union members to voluntarily resign from the company in exchange for a measly salary and goods.

Foodbev argues that they became aware of the existence of the union sometime in August 2008, when they received summons in one of the complaints before the labor arbiter.[104] However, the Minutes of the

Meetings[105] disclose that as early as July 2008, Lucila and Espeña had been discouraging the employees from joining the union and in participating in union activities. These evidence on record belie Foodbev's claim of ignorance on the existence of the union.

Foodbev alleges that all employees, both union and non-union members, were required to take the written examination. This was true only after Galela complained why the examination was limited to union members. He added that the examination involved questions on machines, which were unrelated to their duties, and those who failed were considered guilty of violating Foodbev's Code of Discipline. Foodbev avers that no employee was sanctioned due to failure in the examination.[106] This is untrue, because the records show that Academia received a July 23, 2008 memo requiring him to explain why he failed in the exam for the second time.[107] The fact that the examination was at first limited to union members is in itself an unfair labor practice because it is discriminatory.

Foodbev claims that they announced the conduct of the written examination in May 2008, and that it is regularly done. This allegation is unsubstantiated as Foodbev failed to prove that the conduct of written examination is a customary company activity. The timing of the examination together with the respondents' complaints cast doubt on the truthfulness of Foodbev's justification.

The Court likewise, doubts the purpose for Eroles' transfer to Isabela. The memo informing him of his temporary assignment does not indicate a definite period. If indeed he was to temporarily take over the duties of employees in Isabela Branch undergoing training in Makati, the memo should have reflected the duration of the training. However, the memo sent to him only specified the effectivity of his transfer on July 25, 2008, without a completion date. This gives the employer the discretion to extend his assignment on the ground of management prerogative.

x x x x

This is to inform you that you will be temporarily assigned to Isabel branch effective Friday, July 25, 2008.

All Isabela branch personnel will have to report to Manila on Saturday as they will be scheduled for assessment and training.

All turnover procedures will have to be conducted prior to departure of Isabela personnel.

Please coordinate with provincial branch coordinators for further instructions.[108]

The Court is also skeptical of Foodbev's reason for reassigning respondents to EMI. Foodbev maintains that it had been a company policy to direct its employees to receive work instructions at its extension office. However, Foodbev failed to present proof that it is an established company policy. Foodbev's explanation appears to be made out of convenience rather than legitimate and valid company policy. Once again, the timing of the instructions and the series of complaints are not in favor of Foodbev's case.

Foodbev avers that the company suffered loss of substantial revenue when one of its clients terminated its contract. Thus, prompting it to propose voluntary resignation to its employees.[109] However, the allegation of loss of revenue remains unsubstantiated and cannot stand against the corroborated complaints of respondents. Article 298[110] of the Labor Code mandates the payment of separation pay to an employee terminated from the service. Here, Foodbev's offer does not include separation pay, which is contrary to law.

Lastly, the statements of Foodbev's chairman, Elmo, against Jever and his group show an intention to meddle with their right to organize.

The discussions above demonstrate Foodbev's unfair labor practices, which create an unpleasant working

atmosphere for respondent union members and officers. They were targeted to take part in a written examination, or prone to being transferred to another company or to another branch. They were urged to file for resignation and accept a measly compensation and goods, instead of full benefits under the law. If these will not work, their employment will be terminated in order to dissolve the union. The facts undeniably point to interference and restraining respondents' right to self-organization, and discriminate their terms and conditions of employment, as enumerated in paragraphs (a) and (e) of Article 259 of the Labor Code.

In addition, the Court observes that Foodbev did not charge Roseller Gabutero Semense with gross negligence along with the ice cream machine technicians, since he admitted in his affidavit that it is his responsibility to supervise the technicians' work/service of food dispensing machines. This further supports respondents' allegation that they were targeted because of their union membership, and confirms that Foodbev is liable for union busting.

In his sworn statement, Semense made the following declaration:

x x x x

- I am a Supervisor for processes in FoodBev International, x x x. As a Supervisor, I am responsible for, among others, the supervision of the Company's technicians with respect to their work/service of food dispensing machines, including soft serve machines, and ensuring that these technicians perform their tasks strictly in accordance with the procedures required by the Company.[111]

The numerous pieces of evidence prove that Foodbev is guilty of unfair labor practice.

III. CONCLUSION

In sum, the Court finds that the CA did not commit a reversible error in overturning the September 17, 2009 NLRC Decision and November 17, 2009 Resolution. The CA's findings of facts were based on record, and the ruling based on law and jurisprudence.

As for the rate of legal interest due on the monetary judgments, *Nacar v. Gallery Frames*, [112] provides that –

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[113]

WHEREFORE, the petition is DENIED. The Court of Appeals Decision[114] dated November 28, 2012 and Resolution[115] dated April 8, 2013 in CA G.R. SP No. 112620 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Lazaro-Javier, and Zalameda, JJ. concur.

Caguioa, J., see separate opinion.

[*] Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

[1] Rollo, pp. 19-20.

[2] Also "Jever N. Elardo" in some parts of the records.

- [3] Also "Felix Galera" in some parts of the records.
- [4] Also "Richard B. Eroles" in some parts of the records.
- [5] Rollo, p. 137.
- [6] Id. at 137-138 (CA Decision); at 631-638 (Minutes of the Meeting)s; at 891-893 (Labor Arbiter Decision), and at 1059 NLRC Decision).
- [7] Id. at 639 (office memo); at 893-894 (Labor Arbiter Decision); and at 1059 (NLRC Decision).
- [8] CA rollo, Vol. 1, p. 355.
- [9] Rollo, pp. 138-139 (CA Decision); pp. 647-661 (office memo and answers); and pp. 1059-1060 (NLRC Decision).
- [10] Id. at 37 (Petition), 139 (CA Decision); CA rollo, pp. 111-117 (Complaints).
- [11] Rollo, p. 139 (CA Decision).
- [12] Id. at 366.
- [13] Id. at 385.
- [14] Id. at 140 (CA Decision); at 894 (Labor Arbiter Decision).
- [15] Id. at 141 (CA Decision); at 897 (Labor Arbiter Decision), and CA rollo, pp. 118-120 (Complaint).
- [16] Rollo, p. 897 (Labor Arbiter Decision).
- [17] Id. at 898 (Labor Arbiter Decision).
- [18] Id. at 898-899 (Labor Arbiter Decision).
- [19] Id. at 141 (CA Decision); at 899 (Labor Arbiter Decision), 1531 (Comment).
- [20] Id. at 142 (CA Decision); at 899 (Labor Arbiter Decision), 1060 (NLRC Decision).
- [21] Id. at 899-900 (Labor Arbiter Decision); at 599-600 (Consolidated Position Paper for Complainants); and at 1539 (Comment).
- [22] Id. at 600 (Consolidated Position Paper for Complainants).
- [23] Id. at 142 (CA Decision).
- [24] Id. at 900 (Labor Arbiter Decision).
- [25] Id. at 601-602 (Consolidated Position Paper for Complainants); at 900-901 (Labor Arbiter Decision); and at 1060 (NLRC Decision).
- [26] Id. at 602-603 (Consolidated Position Paper for Complainants), 901 (Labor Arbiter Decision); at 1060 (NLRC Decision), 142-143 (CA Decision).
- [27] Id. at 603 (Consolidated Position Paper for Complainants), 902 (Labor Arbiter Decision).
- [28] Id. at 143 (CA Decision); at 902-903 (Labor Arbiter Decision); and CA rollo, pp. 125-128, Vol. 1 (Complaint and Motion for Consolidation).
- [29] Id. at 142-143 (CA Decision); at 902 (Labor Arbiter Decision); id. at 252-256 (blotter report), 121- 124, Vol.

1 (Complaints and Motion for Consolidation).

[30] Id. at 143-144 (CA Decision); at 903 (Labor Arbiter Decision).

[31] Id. at 144 (CA Decision); at 903 (Labor Arbiter Decision), 1060 (NLRC Decision).

[32] Id. at 144-145 (CA Decision); at 904 (Labor Arbiter Decision); and at 1060 (NLRC Decision).

[33] Id. at 904 (Labor Arbiter Decision); at 1060 (NLRC Decision); and at 1532 (Comment).

[34] Id. at 1532.

[35] Id. at 904 (Labor Arbiter Decision).

[36] Id. at 904 (Labor Arbiter Decision); and at 1533 (Comment).

[37] Id. at 145 (CA Decision); and at 904 (Labor Arbiter Decision); and at 1061 (NLRC Decision).

[38] Id. at 23 (Petition); at 172 (Foodbev's Position Paper).

[39] Id. at 904 (Labor Arbiter Decision), 1061 (NLRC Decision), 1533 (Comment); CA rollo, pp. 137-139, Vol. 1 (Complaint and Motion for Consolidation).

[40] Id. at 1541.

[41] Id. at 915-916 (Labor Arbiter Decision), 1061, 1065-1066; CA rollo, pp. 142-143, Vol. 1.

[42] Id. at 918.

[43] Id. at 917.

[44] Id.

[45] Id. at 1068.

[46] Id. at 1066.

[47] Id.

[48] Id. at 1066-1067.

[49] Id. at 1067-1068.

[50] Id. at 1074.

[51] Id. at 159.

[52] Id. at 149.

[53] Id. at 149-153.

[54] Id. at 153-155.

[55] Id. at 155-156.

[56] Id. at 156-157.

[57] Id. at 157-158.

[58] Id. at 161-162.

[59] Id. at 41-44.

[60] Id. at 1525-1540.

[61] Republic v. Heirs of Santiago, 808 Phil. 1, 9-10 (2017).

[62] CMTC International Marketing Corp. v. Bhagis International Trading Corp., 700 Phil. 575 581 (2012).

[63] National Power Corp. v. Court of Appeals, G.R. No. 206167, March 19, 2018.

[64] 1987 CONSTITUTION.

[65] Nueva Ecija I Electric Cooperative, Inc. v. National Labor Relations Commission, 380 Phil. 57-58 (2000).

[66] Rollo, p. 24.

[67] Id. at 26, 79, 85-86, 90, 95 (Petition).

[68] Id. at 26 (Petition), 210 (Foodbev's Position Paper); 258 (Affidavit of Susan Ramos Mercado).

[69] 611 Phil. 570, 57 (2009).

[70] 639 Phil. 437, 445 (2010).

[71] 553 Phil. 108, 115-116 (2007).

[72] Rollo, p. 299.

[73] Id. at 295.

[74] Id. at 26 (Petition).

[75] Id. at 642.

[76] Id. at 643.

[77] Id. at 644.

[78] Id. at 305.

[79] Id. at 536.

[80] Id. at 25-26.

[81] LABOR CODE OF THE PHILIPPINES, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015.

[82] 797 Phil. 356, 367 (2016).

[83] Rollo, pp. 300-304, 310-318.

[84] Maula v. Ximex Delivery Express, Inc., 804 Phil. 365, 381 (2017).

[85] Trapago has been working in Foodbev since November 7, 2005; Pario since May 8, 2003; Aquino since October 1, 2000; and Ferrer since August 8, 1997; Rollo at 257, Affidavit of Susan Ramos Mercado.

[86] 649 Phil. 39 (2010); as cited in Universal Robina Sugar Milling Corp. v. Ablay, 783 Phil. 512 523 (2016).

[87] 649 Phil. 39, 51-52(2010).

[88] Rollo, p. 29.

[89] Reyes v. Global Beer Below Zero, Inc., G.R. No. 222816, October 4, 2017.

[90] Rollo, p. 1109.

[91] Id. at 32, 73.

[92] Id. at. 154.

[93] ARTICLE 298. [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. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

[94] ARTICLE 297. [282] Termination by Employer. — An employer may terminate an employment for any of the following causes:

(a)

Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b)

Gross and habitual neglect by the employee of his duties;

(c)

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d)

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e)

Other causes analogous to the foregoing. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

[95] Rollo, p. 1529 (Comment); 366 (Memo No. 1905 PMO8 351).

[96] Id. at 1532 (Reply).

[97] Id. at 21 (Petition).

[98] Id. at 34.

[99] Id. at 36-37.

[100] Reyes v. Global Beer Below Zero, Inc., G.R. No. 222816, October 4, 2017.

[101] Rollo, pp. 36 (Petition).

[102] Doble, Jr. v. ABB, Inc., 810 Phil. 210, 229 (2017).

[103] CA rollo, Vol. 1, p. 190.

[104] Rollo, p. 36 (Petition).

[105] Id. at 630-634 (Annexes C- F).

[106] Id. at 35 (Petition).

[107] Id. at 139 (CA Decision); CA rollo, Vol. 1 at 203 (office memo).

[108] Id. at 366.

[109] Id. at 20-21 (Petition).

[110] Article 298, Labor Code, x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015])

[111] Rollo, pp. 418-420.

[112] 716 Phil. 267 (2013).

[113] Id.

[114] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring; id. at 136-160.

[115] Id. at 161-162.

SEPARATE OPINION

CAGUIOA, J.:

As to the rate of legal interest due on the monetary judgments,[1] I note that paragraph II.3 of the guidelines laid down in *Nacar v. Gallery Frames*,[2] which was cited by the ponencia, has been superseded by *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*[3]

Nevertheless, I reiterate my position in my Concurring & Dissenting Opinion in *Lara's Gifts & Decors, Inc.* that contrary to the aforesaid paragraph of *Nacar*, the interim period between the finality of the judgment and its full satisfaction is not a forbearance of credit.[4]

Once a judgment becomes final and executory , all monetary claims that could not previously earn interest[5] because they were unliquidated and unknown, are established with reasonable certainty and thus become due and demandable. Hence, said amounts should begin to earn interest not because the interim period is a forbearance of credit, but because the non- payment of a final and executory decision constitutes delay under Article 2209 of the Civil Code. *Nakpil v. Court of Appeals*[6] is unequivocal that "[i]t is delay in the payment of such final judgment, that will cause the imposition of the interest." [7]

For the foregoing reasons, the monetary awards constituting respondents' separation pay, backwages, moral damages, exemplary damages and attorney's fees, which were previously unliquidated, should bear interest at the

6% legal rate under Article 2209 of the Civil Code from the time the decision becomes final and executory until full payment.

[1] Ponencia, p. 33.

[2] 716 Phil. 267(2013).

[3] G.R. No. 225433, August 28, 2019.

[4] See *Kay Lewis Enterprises v. Lewis-Marshall Joint Venture*, 59 Misc. 2d 862.

[5] See CIVIL CODE, Art. 2213.

[6] 243 Phil. 489 (1988).

[7] *Id.* at 498.

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