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Third Division
OCT 16 2015

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CONVOY MARKETING CORPORATION and/or ARNOLD LAAB, Petitioners,	**G.R. No. 194969**
	Present:
	PERALTA,** *J., Acting Chairperson*, VILLARAMA, JR., PERLAS-BERNABE,*** LEONEN,**** and JARDELEZA, *JJ.*
-versus-	
	Promulgated:
OLIVER B. ALBIA,* Respondent.	October 7, 2015

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DECISION

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to nullify and set aside the Court of Appeals (*CA*) Decision[1] dated May 31, 2010 and the Resolution[2] dated December 28, 2010 in CA-G.R. SP No. 98958.

The factual antecedents, as found by the CA, are as follows:

> Based on his *sinumpaang salaysay*, it appears that the petitioner Oliver Alvia started working as a common laborer for the respondent Convoy Marketing, a distributor of bottled wines, liquor and bottled water,

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* Also spelled as "Alvia" in some parts of the *rollo* and records.

** Per Special Order No. 2203 dated September 22, 2015.

*** Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2245 dated October 5, 2015.

**** Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2204 dated September 22, 2015.

1 Penned by Associate Justice Mario L. Guariña III, with Associate Justices Apolinario D. Bruselas, Jr. and Rodil V. Zalameda, concurring; *rollo*, pp. 543-551.

2 *Id.* at 541.

in 2001. He was assigned the job of a *pahinante*, or one who loads and unloads cargoes transported to customers by the delivery vehicles of the company. A year later, he was promoted to delivery van driver.

As a driver, he was paid a fixed salary of ₱290 per trip regardless of route. The delivery van he drove belonged to the company which shouldered its maintenance and gasoline costs. He was on the road from Mondays to Saturdays, observing working hours that often exceeded the usual 8 hours, and despite his perseverance, he was not given holiday pay, vacation leave with pay, service incentive leave pay and 13th month pay.

On July 22, 2004, he did something that cost him his job. He smelled of liquor upon his arrival from the delivery route. He gave the explanation that after completing the delivery, he and his two *pahinantes* decided to rest a little in a store outside the company compound. They drank several bottles of beer before going back to the compound to start loading for the next morning's delivery.

It was, however, reported to the logistics manager, the respondent Arnold Laab, that he was under the influence of liquor. As a result, he received his marching orders. In a memo on July 23, the next day, he was told – we regret to inform that management decided to terminate your delivery agency agreement with Convoy Marketing Corporation effective July 23, 2004. The petition was addressed in the communication signed by Laab as a per trip driver with notice to the HRAD manager, the present-day title for the company official who supervises the company's rank-and-file, the personnel manager.

The petitioner did not delay in protesting his dismissal, filing on July 26, 2004, only days later, a complaint for illegal dismissal and non-payment of wage benefits. The respondents Convoy Marketing and Laab joined issue by contending in substance that the petitioner was not an employee of the company but an independent contractor, and presenting papers to document it. x x x

The respondents came forward with a series of *delivery agency agreements* signed by the petitioner to correspond to particular periods of service. There are, on record, four of these agreements relating to the periods November 22, 2002 to April 22, 2003, May 29, 2003 to October 29, 2003, November 11, 2003 to April 10, 2004, and April 13, 2004 to September 13, 2004. In all these documents, it was made to appear that the respondent company would furnish the delivery vehicle and take care of its maintenance and upkeep and pay the petitioner a fixed per trip fee to drive the vehicle according to a schedule prepared by it. The petitioner, in turn, would post a cash bond of ₱3,000 to answer for damages to the vehicle and be responsible for such payments to the government as SSS premiums and Pag-IBIG contributions. The agreement ends with this stipulation – under no circumstance shall the driver be deemed an employee of the principal, and the driver shall not represent himself as an employee of the principal to any person, it being clearly understood that the driver is an independent service contractor for a fixed period.

Indeed, at the end of every service period stated in the contracts, the petitioner was studiedly made to sign a *quitclaim and release* in which he acknowledged receiving a certain sum, at most ₱5,172.28, in satisfaction of all claims that he may have against the company, and

> confirmed the termination of the agreement due to the expiration of the stated period. x x x
>
> The petitioner signed his last two quitclaims and releases in April and August 2004. The April 2004 quitclaim saw him receiving ₱2,716.42 for releasing the respondents forever from liability in connection with the contract ending April 10, 2004. When the petitioner signed the August 2004 quitclaim, on the other hand, his case against the respondents was already on-going. During the conference held that month before the Labor Arbiter, the petitioner was recorded as having admitted that his claim for non-payment of salaries and refund of the cash bond deposit were already settled. The minutes of the conference read – Non-payment of salaries and cash bond deposit as per manifestation of the complainant was already settled. The minutes also stated – By agreement of the parties, case reset on August 24, 2004 at 10 AM.
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> In the same month, the petitioner executed the *quitclaim and release* in connection with the termination of his agreement on July 23, 2004 accepting payment of the sum of ₱1,805.72. In spite of this development, the case went on to its conclusion.[3]

On January 10, 2006, the Labor Arbiter rendered a Decision[4] dismissing Albia's complaint for lack of merit, thus:

> Be it pointed out and emphasized that the record shows that herein complainant signed a Quitclaim and Release in favor of the respondent corporation on 19 April 2004. That during one of the settings herein (on 17 August 2004), complainant manifested in open proceedings that his claims for unpaid salaries and cash bond had already been settled.
>
> Indeed, although waivers[,] releases and quitclaims are generally looked down with disfavor as the workers concerned *either* are unaware of the consequences thereof or have signed the same under factors tending to vitiate consent, *not all* waivers and quitclaims are to be considered invalid. It is to be pointed out that absent any pellucid showing of the above-mentioned factors or variables surrounding the execution of said documents, the same must be deemed valid and binding between and among the parties.
>
> In the case at bench, there is absolutely nothing on record tending to show the existence of such factors or variables which may have the tendency of invalidating or affecting the validity and binding effect of the quitclaim and release executed by herein complainant in respondents' favor.
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> All told, complainant's cause for illegal dismissal must necessarily fail.[5]

Aggrieved, Albia appealed to the National Labor Relations Commission (*NLRC*).

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3 *Id.* at 543-546. (Citations omitted.)

4 *Id.* at 158-162.

5 *Id.* at 161-162. (Citations omitted.)

On November 28, 2006, the NLRC dismissed the appeal and affirmed the Labor Arbiter's Decision, thus:

> An examination of the minutes of the August 17, 2004 proceedings indeed shows that the admission by complainant as to the settlement of his claims merely referred to non-payment of salaries and refund of cash bond. However, the Quitclaim and Release executed by the complainant on August 4, 2004 clearly contained an admission of his engagement as an "independent service contractor" and the termination of the said contract on July 23, 2004. Such admission of the nature of complainant's work accords credence to the claim of the respondents that they acted upon complainant's representation as an independent contractor as he conducted his own business on his own account and free from their supervision and control. This is further supported by a contract otherwise being referred to as a "Delivery Agency Agreements."
>
> It is, therefore, incorrect for the complainant to state that the quitclaim only covered his money claims. Said quitclaim specifically made reference to the termination of the juridical relationship between the parties on July 23, 2004 which was the same date when complainant alleged that he was dismissed from employment. And, there being no contest raised by the complainant with respect to the genuineness and due execution of the said quitclaim, the presumption to that effect accorded to a public document, it being notarized, mu[s]t be acknowledged.[6]

Albia filed a motion for reconsideration which the NLRC denied in a Resolution[7] dated March 30, 2007.

Unfazed, Albia filed a petition for *certiorari* before the Court of Appeals.

On May 31, 2010, the CA reversed and set aside the NLRC's Resolutions, and ruled as follows:

> WHEREFORE, IN VIEW OF THE FOREGOING, the assailed NLRC resolutions of November 28, 2006 and March 30, 2007 are set aside. The private respondent Convoy Marketing Corporation is ordered to reinstate the petitioner to his former position and pay him full backwages from the date of his termination on July 23, 2004 until (sic) payment,[8] plus 10% of the monetary award of attorney's fees. This case is remanded to the NLRC for computation of the award.
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> SO ORDERED.[9]

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6 *Id.* at 184-185. (Citations omitted)
7 *Id.* at 453-455.
8 Should be "actual reinstatement."
9 *Rollo*, pp. 550-551.

Petitioners filed a motion for reconsideration, but the CA denied it in a Resolution dated December 28, 2010.

Hence, this petition for review on *certiorari* wherein petitioners raised two issues:

> I.
> WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED THE DECISION AND RESOLUTION OF BOTH THE HONORABLE LABOR ARBITER AND THE HONORABLE COMMISSION.
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> II.
> WITH ALL DUE RESPECT, THE DECISION DATED 31 MAY 2010, AND THE RESOLUTION DATED 28 DECEMBER 2010, OF THE HONORABLE COURT OF APPEALS, ARE CONTRARY TO LAW AND WELL-SETTLED JURISPRUDENCE.[10]

Petitioners insist that Albia was not a regular employee of Convoy, but merely a contractual one whose services ended upon the expiration of the period agreed upon. They aver that the activities which he was called upon to undertake are not necessary and/or desirable in the company business. They point out that Albia was only an on-call driver who did not have to report for work every day, but only when excess deliveries could no longer be made by Convoy's fifteen (15) regular drivers; that he was not even included in the company payroll because he was paid on a per trip basis; and that Convoy did not have control over him and his helpers.

To substantiate their claim that Albia was a mere contractual employee of Convoy, petitioners presented the affidavit of Ofelia B. Miranda, Convoy's Human Resources Administration Manager, and the Delivery Agency Agreements (*For Driver*)[11] executed between him and Convoy. Stating that such agreements are valid fixed-period employment contracts, they assert that Albia knowingly and voluntarily entered into them, without any force, duress or improper pressure or moral dominance brought upon him.

Petitioners also contend that Albia was dismissed for serious misconduct after admittedly having been caught under the influence of alcohol while in the discharge of his official functions.

Petitioners further argue that the quitclaims and releases executed by Albia on various occasions are valid and binding, and the fact that he

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10 *Id.* at 23.
11 *Id.* at 52-59.

executed one of such quitclaims after he had filed the illegal dismissal complaint on July 26, 2004 only shows that he was not forced to sign it nor was his consent thereto vitiated. Moreover, not having assailed the genuineness and authenticity of such quitclaim, Albia's bare allegation that he was constrained to sign it because he was in dire need of money and employment, will not suffice to invalidate the same.

Petitioners fault the CA for not giving weight to the fact that the quitclaim was voluntarily executed by Albia after he filed an illegal dismissal complaint. They argue that the issue of whether or not he is an employee of Convoy should have been laid to rest, since the validity of the quitclaim where he had admitted to be a mere independent contractor, was upheld by the Labor Arbiter and the NLRC. Noting that Albia even manifested in the proceedings before the Labor Arbiter that his claim for unpaid salaries and cash bond had already been settled, they claim that such act shows that he signed the quitclaim voluntarily and with the intention of fully discharging Convoy from any and all of his claims. In support of their contentions, they invoke the principle that factual findings of the NLRC affirming those of the Labor Arbiter – both bodies being deemed to have acquired expertise in matters within their jurisdictions – when supported by evidence on record, are accorded respect if not finality and are considered binding on the CA.

The core issues are: (1) whether Albia is a regular or a fixed-term employee of Convoy; (2) whether he was dismissed for a just cause; and (3) whether the quitclaims and releases he executed are valid.

The petition lacks merit.

It is well settled that the Court is not a trier of facts, and the scope of its authority under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact, which are for labor tribunals to resolve.[12] However, the rule is not cast in stone and admits of recognized exceptions, such as when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the CA.[13] When there is such a variance in the factual findings, as in this case, it is incumbent upon the Court to re-examine the facts.[14]

On the first issue, it bears emphasis that the existence of an employer-employee relationship cannot be negated by expressly repudiating it in a contract and providing therein that the employee is an independent

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[12] *Alberto J. Raza v. Daikoku Electronic Phils., Inc. and Mamoru Ono*, G.R. No. 188464, July 29, 2015.

[13] *Philippine Long Distance Telephone Company and/or Ernani Tumimbang v. Henry Estranero*, G.R. No. 192518, October 15, 2014.

[14] *General Milling Corporation v. Viajar*, G.R. No. 181738, January 30, 2013, 689 SCRA 598, 606-607.

contractor when the facts clearly show otherwise.[15] This is because the employment status of a person is defined and prescribed by law and not by what the parties say it should be.[16] Article 280 of the Labor Code, as amended, pertinently provides:

> Art. 280. *Regular and casual employment.* – **The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer,** except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That **any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.**[17]

Contrary to petitioners' claim, the fact that Convoy has fifteen (15) regular drivers only underscores that indeed, having been hired as a driver, Albia was engaged to perform an activity which is necessary or desirable in the usual company business of marketing and distribution of bottled wines, liquor and bottled water. No less than Convoy's daily trip summary breakdowns[18] contradict petitioners' allegation that Albia is only an on-call driver who does not have to report for work daily.

That Albia has become a regular employee is evident from the Delivery Agency Agreements (*For Driver*)[19] – executed for the periods of November 22, 2002 to April 22, 2003, May 29, 2003 to October 29, 2003, November 11, 2003 to April 10, 2004, and April 13, 2004 to September 13, 2004 – which indicate that he had rendered at least one year of broken service with respect to the same activity in which he was employed from the time he was hired as a driver on November 22, 2002 until he was terminated on July 23, 2004.

The Court cannot likewise sustain petitioners' claim that Albia is an independent contractor. The test of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the

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15 *Chavez v. NLRC*, 489 Phil. 444, 459 (2005).
16 *Id.*
17 Emphasis added.
18 *Rollo*, pp. 78-111, 125-130.
19 *Id.* at 52-59.

employer, except only as to the results of the work.[20] The criteria in determining the existence of an independent and permissible contractor relationship are as follows:

> x x x [W]hether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment.[21]

Applying the foregoing criteria, Albia cannot be considered as in independent contractor. There is no dispute that it was Convoy who engaged the services of Albia as a driver without the intervention of a third party, paid his wages on a per trip basis, and abruptly terminated his services the next day after admitting to have consumed three bottles of beer after finishing his deliveries on July 22, 2004. There is, likewise, no question that Convoy controls or has reserved its right to control Albia's conduct, not only as to the result of his work but also as to the means and methods by which such result is to be accomplished.[22] This is evident from the following express provisions of the Delivery Agency Agreements (*For Driver*)[23] executed between Convoy and Albia:

> 1. The truck/s being driven by Albia belongs to Convoy;
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> 2. The gasoline and fuel expenses, maintenance, repair and spare parts for the upkeep of the delivery truck, provided they are not abnormal and patently disproportionate to his gross sales for the month, are for the account of Convoy; but if the expenses and repair on the vehicle are caused by his carelessness or that of his helper, then he must assume full responsibility therefor;
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> 3. The truck assigned to him shall be used solely and exclusively to carry the products of Convoy, and that he cannot directly or indirectly handle/deliver products other than those which it is handling; and
>
> 4. Any violation of the said agreement, and any act of Albia against Convoy, its officers, employees and properties which shall result to harm or damage, directly or indirectly, shall be constituted as a violation thereof and shall give the company the right to unilaterally terminate him.

Further, as aptly ruled by the CA:

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[20] *Polyfoam-RGC International Corp. v. Concepcion*, G.R. No. 172349, June 13, 2012, 672 SCRA 148, 160.

[21] *Id.*, citing *San Miguel Corporation v. Semillano, et al.*, 637 Phil. 115, 126 (2010).

[22] *Javier v. Fly Ace Corporation, et al.*, 682 Phil. 359, 374 (2012), citing *Avelino Lambo and Vicente Belocura v. NLRC and J.C. Tailor Shop and/or Johnny Co.*, 375 Phil. 855, 862 (1999), and *Makati Haberdashery, Inc. v. NLRC*, 259 Phil. 52, 60 (1989).

[23] *Rollo*, pp. 52-59.

> The petitioner [Albia] is not an independent contractor of the respondent [Convoy] but only a regular rank-and-file employee. He has been hired for a fixed wage, and the means and methods of his work are absolutely controlled by the respondent which exercises full power to discipline and terminate him. He has none of the qualifications of an independent contractor. He is only a paid hand. He has no independent resources to conduct the business of contracting, and, in fact, works for no one else but the respondent. The vehicle he operates belongs and is maintained by the respondent, and his *pahinantes* are the respondents' admitted employees.[24]

Neither could Albia be deemed a fixed-term contractual employee, as the Delivery Agency Agreements executed between him and Convoy fall short of the requisites for such fixed-term contracts to be valid.

Considered to be legitimate under the Labor Code,[25] fixed-term employment contracts terminate by their own terms at the end of a definite period.[26] The fact that the service rendered by the employees is usually necessary and desirable in the business operations of the employer will not impair the validity of such contracts.[27] For, the decisive determinant in the term employment is not the activities that the employee is called to perform, but the *day certain* agreed upon by the parties for the commencement and termination of their employment relationship.[28]

Aware of the possible abuse of fixed-term employment contracts, the Court stressed in *Brent School, Inc. v. Zamora* that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals.[29] The Court thus laid down indications or criteria under which the term "employment" cannot be said to be in circumvention of the law on security of tenure, namely:

> 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
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> 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.[30]

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24 *Id.* at 549.

25 *AMA Computer College Parañaque and/or Amable C. Aguiluz IX v. Austria*, 563 Phil. 745, 757 (2007); *Brent School, Inc. v. Zamora*, 260 Phil. 747 (1990).

26 *Brent School, Inc. v. Zamora, supra,* at 755.

27 *Palomares v. NLRC*, 343, Phil. 213, 223 (1997).

28 *Brent School, Inc. v. Zamora, supra* note 25, at 757.

29 *GMA Network, Inc. v. Pabriga*, G.R. No. 176419, November 27, 2013, 710 SCRA 690, 700.

30 *Id.*, citing *Romares v. National Labor Relations Commission*, 355 Phil. 835, 847 (1998) and *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, 471 Phil. 355, 372-373 (2004).

In *GMA Network, Inc. v. Pabriga*,[31] the Court stated that "these indications, which must be read together, make the *Brent* doctrine applicable only in a few special cases wherein the employer and employee are on more or less in equal footing in entering into the contract. The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee."[32]

Neither of the said two indications was proven in this case. Petitioners failed to show that Convoy and Albia dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter who, as a plain wage earner with low educational attainment, having only reached grade 4 in the elementary level,[33] cannot be presumed to be fully aware of the effects of the *pro forma* and English-written Delivery Agency Agreements (*For Driver*).[34]

On the second issue, the Court agrees with the CA that Albia was dismissed without a just cause.

While an employee's right to security of tenure does not give him such a vested right to his position, it bears stressing that employment is not merely a contractual relationship. In the life of most workers, it assumes the nature of a property right which may spell the difference of whether or not a family will have food on their table, roof over their heads and education for their children.[35] In termination cases, therefore, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause, and failure to do so would necessarily mean that the dismissal was illegal.[36] For an employee's dismissal to be valid, it must comply with both procedural and substantive due process, *viz.*:[37]

> For a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process. The legality of the manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process.
>
> Procedural due process in dismissal cases 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 notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second

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31 *Supra* note 29.
32 *GMA Network, Inc. v. Pabriga, supra* note 29, at 710.
33 *Rollo*, pp. 148, 155.
34 *Id.* at 52-59.
35 *Gonzales v. NLRC*, 372 Phil. 39, 46 (1999).
36 *Alberto J. Raza v. Daikoku Electronic Phils., Inc. and Mamoru Ono, supra* note 12.
37 *First Philippine Industrial Corporation v. Calimbas*, G.R. No. 179256, July 10, 2013, 701 SCRA 1.

> notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.
>
> Substantive due process, on the other hand, requires that dismissal by the employer be made under a just or authorized cause under Articles 282 to 284 of the Labor Code.[38]

Serious misconduct is a valid ground for termination of the services of an employee as provided for under Article 282 (a) of the Labor Code, as amended, to wit:

> ART. 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; x x x

Misconduct is defined as the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[39] In order for a misconduct to justify dismissal, these requisites must be present: (1) it must be serious; (2) it must relate to the performance of the employee's duties; and (3) it must show that the employee has become unfit to continue working for the employer.[40] Petitioners failed to establish these requisites.

It must be noted that Albia's termination came as a result of a lone incident on July 22, 2004 when he admitted that after finishing their deliveries, he and his helpers decided to drink bottles of beer at a store outside the company compound before returning to work to finish loading the deliveries for the next day. While an employer is given a wide latitude of discretion in managing its own affairs, in the promulgation of policies, rules and regulations on work-related activities of its employees, and in the imposition of disciplinary measures on them, the exercise of disciplining and imposing appropriate penalties on erring employees must be practiced in good faith and for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of employees under special laws or under valid agreements.[41] While it is true that under Convoy's code on employee discipline, the penalty for "performing work while under the influence of liquor"[42] is "suspension to dismissal depending upon the gravity of the offense,"[43] nothing in the records would support the imposition of the

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38 *Id.* at 17.
39 *Alberto J. Raza v. Daikoku Electronic Phils., Inc. and Mamoru Ono*, *supra* note 12.
40 *Id.*
41 *Id.*
42 *Rollo*, p. 516.
43 *Id.* at 517.

supreme penalty of dismissal against Albia. Having finished his driving duty when he was reported at about 6:20 p.m.[44] of July 22, 2004 to have admitted drinking beer, Albia cannot be faulted with gross misconduct on account of "the danger that he may cause to himself, to his passengers and to the goods he is transporting."[45] Thus, the Court finds no compelling reason to disturb the CA ruling:

> It is also clear that there was no valid grounds for the termination of petitioner. His misconduct was not gross. He was not guilty of any seriously offensive conduct, nor was there any untoward incident that occurred. The penalty of dismissal was certainly not commensurate to the infraction committed. It has not been shown that he has by his conduct become unfit to continue working for the respondents.[46]

Aside from its failure to accord Albia his right to substantive due process, petitioners were also unable to show that his right to procedural due process was observed. In *Realda v. New Age Graphics, Inc.,*[47] the Court explained the manner by which the procedural due requirements of due process can be satisfied:

> To clarify, the following should be considered in terminating the services of employees:
>
> (1)The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (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.
>
> (2)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

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44 *Id.* at 60; 1820Hours.

45 *Id.* at 513.

46 *Id.* at 549-550.

47 G.R. No. 192190, April 25, 2012, 671 SCRA 410, 421-422, citing *King of Kings Transport, Inc. v. Mamac,* 553 Phil. 108, 115-116 (2007).

> 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.

Convoy terminated Albia without the requisite first notice apprising him of the particular acts or omissions for which his dismissal is sought, as well as the requisite hearing or conference. Convoy thus failed to afford Albia with a reasonable opportunity to be heard and defend himself when he was issued a termination letter on July 23, 2004, the following day after he admitted having consumed bottles of beer after finishing his driving duty before the security department and the logistics manager, Laab.

On the third issue, the Court finds that the quitclaims and releases Albia executed are invalid.

Cases abound where the Court gave effect to quitclaims executed by the employees when the employer is able to prove the following requisites, to wit: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.[48]

In this case, however, petitioners failed to prove that the ₱1,805.72 consideration for the Quitclaim and Release[49] dated August 4, 2004 is credible and reasonable *vis-à-vis* what Albia should receive in full as a regular employee who was illegally dismissed. The same holds true with respect to the Quitclaim and Release[50] dated November 21, 2003 and April 19, 2004 with considerations of ₱5,712.28 and ₱ 2,716.42, respectively. That all the said waivers and quitclaims are agreements between two (2) intelligent parties who are, more or less, in the same footing cannot also be sustained because of Albia's low educational attainment, having finished only grade 4 in the elementary level,[51] as well as his status as a plain wage earner.

Moreover, all the quitclaims and releases executed by Albia upon the termination of the five-month Delivery Agency Agreements (*For Driver*)[52]

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48 *Goodrich Manufacturing Corp. et al. v. Ativo, et al.*, 625 Phil. 102, 108 (2010), citing *Periquet v. National Labor Relations Commission*, 264 Phil. 1115, 1122 (1990).

49 *Rollo*, p. 62.

50 *Id.* at 63-64.

51 *Id.* at 148, 155.

52 *Id.* at 52-59.

are contrary to law and public policy, as they preclude him from becoming a regular employee and acquiring tenurial security. As correctly observed by the CA:

> Indeed, at the end of every service period stated in the contracts, the petitioner [Albia] was studiedly made to sign a *quitclaim and release* in which he acknowledged receiving a certain sum, at most ₱5,712.28, in satisfaction of all claims that he may have against the company, and confirmed the termination of the agreement due to the expiration of the stated period. On overview, the quitclaim was nothing but a formality, because as soon as one delivery agency agreement terminates, another is signed to replace it and reflect the continuity of the petitioner's service.[53]

It may not be amiss to state that a deed of release or quitclaim, like those executed between Convoy and Albia, does not bar an employee from demanding benefits to which he is legally entitled. Employees who received their separation pay are, in fact, not barred from contesting the legality of their dismissal, and the acceptance of such benefits would not amount to estoppel. As held in *Sari-Sari Group of Companies v. Piglas Kamao, et al.*:[54]

> Acceptance of those benefits would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. x x x[55]

Having been illegally dismissed from work, Albia is entitled to reinstatement without loss of seniority rights, and other privileges, as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[56] Backwages include the whole amount of salaries plus all other benefits and bonuses and general increases to which Albia would have been normally entitled had he not been illegally dismissed,[57] such as the legally-mandated Emergency Cost of Living Allowance (*ECOLA*), 13th month pay, and service incentive leave pay, as well as the unpaid holiday pay for such holidays that he worked based on Convoy's daily trip summary breakdowns.[58] Hence, the Court upholds the CA in ordering Convoy to reinstate Albia and pay his full backwages from the date of his termination on July 23, 2004 until his actual reinstatement.

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53 *Id.* at 545. (Citation omitted)

54 583 Phil. 564 (2008).

55 *Sari-Sari Group of Companies v. Piglas Kamao, et al., supra,* at 581, citing *Cariño v. Agricultural Credit and Cooperative Financing Administration,* 124 Phil. 782, 790 (1966).

56 Article 279 of the Labor Code, as amended; *Polyfoam-RGC International Corp. v. Concepcion, supra* note 20, at 164.

57 *Tangga-an v. Philippine Transmarine Carriers, Inc.,* G.R. No. 180636, March 13, 2013, 693 SCRA 340, 354.

58 *Rollo*, pp. 78-111; 125-130.

Finally, the Court sustains the CA in holding Albia entitled to attorney's fees in the amount of ten percent (10%) of the total monetary award, pursuant to Article 111[59] of the Labor Code. Where an employee was forced to litigate and incur expenses to protect his rights and interest, the award of such fees is legally and morally justifiable.[60]

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision dated May 31, 2010 and the Resolution dated December 28, 2010 in CA-G.R. SP No. 98958, are **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARTIN S. VILLARAMA, JR.
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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[59] Art. 111. Attorney's fees.

a. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

b. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[60] *Cheryll Santos Leus v. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*, G.R. No. 187226, January 28, 2015.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ARTURO D. BRION
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
OCT 16 2015