Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CARLOS R. SAUNAR,
Petitioner,

- *versus* -

EXECUTIVE SECRETARY EDUARDO R. ERMITA AND CONSTANCIA P. DE GUZMAN, CHAIRPERSON OF THE PRESIDENTIAL ANTI-GRAFT COMMISSION,
Respondents.

G.R. No. 186502

Present:

VELASCO, JR., J.
Chairperson,
BERSAMIN,*
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

December 13, 2017

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DECISION

MARTIRES, *J.*:

This petition for review on certiorari seeks to reverse and set aside the 20 October 2008 Decision[1] and the 17 February 2009 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 100157 which affirmed the 19 January 2007 decision[3] of the Office of the President *(OP)* dismissing petitioner Carlos R. Saunar *(Saunar)* from government service.

* On Official Leave
1 *Rollo*, pp. 8-19.
2 Id. at 21-22.
3 Id. at 168-172; issued by Executive Secretary Eduardo R. Ermita.

THE FACTS

Saunar was a former Regional Director of the National Bureau of Investigation *(NBI)*, which he joined as an agent in 1988. Through the years, he rose from the ranks and eventually became the Chief of the Anti-Graft Division. During his time as chief of the said division, Saunar conducted an official investigation regarding the alleged corruption relative to the tobacco excise taxes and involving then Governor Luis "Chavit" Singson, former President Joseph E. Estrada *(President Estrada)*, and former Senator Jinggoy Estrada. President Estrada's assailed involvement in the tobacco excise tax issue became one of the predicate crimes included in his indictment for plunder.[4]

In Special Order No. 4003[5] dated 27 August 2004, Saunar was reassigned as regional director for Western Mindanao based in Zamboanga City. During his stint as such, he received a subpoena *ad testificandum* from the Sandiganbayan requiring him to testify in the plunder case against President Estrada. After securing approval from his immediate supervisor Filomeno Bautista *(Bautista)*, Deputy Director for Regional Operation Services *(DDROS)*, Saunar appeared before the Sandiganbayan on several hearing dates, the last being on 27 October 2004.[6]

On 29 October 2004, then NBI Director Reynaldo Wycoco *(Wycoco)* issued Special Order No. 005033[7] informing Saunar that he was relieved from his duties as regional director for Western Mindanao and was ordered to report to the DDROS for further instructions. Pursuant thereto, he reported to Bautista on the first week of November 2004. Bautista informed Saunar that an investigation was being conducted over his testimony before the Sandiganbayan and that he should just wait for the developments in the investigation. In the meantime, Bautista did not assign him any duty and told him to be available at any time whenever he would be needed. He made himself accessible by staying in establishments near the NBI. In addition, he also attended court hearings whenever required.[8]

On 6 October 2006, Saunar received an order from the Presidential Anti-Graft Commission *(PAGC)* requiring him to answer the allegations against him in the PAGC Formal Charge dated 3 October 2006. The charge was based on a letter, dated 19 August 2005, from Wycoco recommending an immediate appropriate action against Saunar for his failure to report for

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4 Id. at 34-36.
5 Id. at 226.
6 Id. at 38-39.
7 Id. at 225.
8 Id. at 41-44.

work since 24 March 2005, without approved leave of absence for four (4) months.[9]

On 23 October 2006, Saunar was reassigned as regional director of the Bicol Regional Office. On 29 January 2007, he received a copy of the OP decision dismissing him from service.

The OP Decision

In its 19 January 2007 decision, the OP found Saunar guilty of Gross Neglect of Duty and of violating Section 3(e) of Republic Act *(R.A.)* No. 3019, and dismissed him from service. It pointed out that Saunar failed to report for work for more than a year which he himself admitted when he explained that he did not report for work because he had not been assigned any specific duty or responsibility. The OP highlighted that he was clearly instructed to report to the DDROS but he did not do so. It added that it would have been more prudent for Saunar to have reported for work even if no duty was specifically assigned to him, for the precise reason that he may at any time be tasked with responsibilities. The OP, however, absolved Saunar from allegedly keeping government property during the time he did not report for work, noting that he was able to account for all the items attributed to him. The dispositive portion reads:

> **WHEREFORE**, premises considered, and as recommended by PAGC, Atty. Carlos R. Saunar, Regional Director, NBI, for Gross Neglect of Duty under Section 22(b), Rule XIV of the Omnibus Rules Implementing Book V of EO 292 in relation to Section 4(A) of RA 6713 and for violation of Section 3(e) of RA 3019, is hereby **DISMISSED** from government service with cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.[10]

Saunar moved for reconsideration but it was denied by the OP in its 12 June 2007 resolution.[11] Undeterred, he appealed before the CA.

The CA Ruling

In its assailed 20 October 2008 decision, the CA affirmed *in toto* the OP decision. The appellate court ruled that Saunar was not deprived of due process because he was informed of the charges against him and was given the opportunity to defend himself. It expounded that the absence of formal hearings in administrative proceedings is not anathema to due process.

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9 Id. at 51-52.
10 Id. at 172.
11 Id. at 173-174.

On the other hand, the CA agreed that Saunar was guilty of Gross Neglect of Duty as manifested by his being on Absence Without Leave *(AWOL)* for a long period of time. The appellate court disregarded Saunar's explanation that he stayed in establishments nearby and that he had attended court hearings from time to time. In addition, the CA found that Saunar violated Section 3(e) of R.A. No. 3019 because public interest was prejudiced when he continued to receive his salary in spite of his unjustified absences. Thus, it ruled:

> **WHEREFORE**, in view of the foregoing premises, the petition for review filed in this case is hereby **DENIED** and, consequently, DISMISSED for lack of merit, and the assailed Decision of the Executive Secretary Eduardo R. Ermita dated January 19, 2007 is hereby **AFFIRMED in toto**.[12]

Saunar moved for reconsideration but it was denied by the CA in its assailed 17 February 2009 resolution.

Hence, this appeal raising the following:

ISSUES

I

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER WAS NOT DENIED DUE PROCESS AND THAT RESPONDENTS DID NOT VIOLATE PETITIONER'S RIGHT TO SECURITY OF TENURE AS GUARANTEED IN THE CONSTITUTION; AND

II

WHETHER THE HONORABLE COURT OF APPEAELS GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF RESPONDENTS THAT PETITIONER COMMITTED GROSS NEGLECT OF DUTY, HAD ABANDONED HIS POST AND WENT ON AWOL FOR HIS ALLEGED FAILURE TO REPORT FOR WORK FROM MARCH 24, 2005 TO MAY 2006.[13]

THE COURT'S RULING

The petition is meritorious.

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[12] Id. at. 18.
[13] Id. at 66.

Administrative due process revisited

Saunar bewails that he was deprived of due process, pointing out that no real hearing was ever conducted considering that the clarificatory conference conducted by the PAGC was a sham. In addition, he asserts that he was not notified of the charges against him because he was only made aware of the allegations after the PAGC had formally charged him. Further, Saunar highlights the delay between the time PAGC received Wycoco's letter-complaint and when he received the formal charge from the PAGC.

Section 1, Article III of the Constitution is similar with the Fifth and Fourteenth Amendment of the American Constitution in that it guarantees that no one shall be deprived of life, liberty or property without due process of law. While the words used in our Constitution slightly differ from the American Constitution, the guarantee of due process is used in the same sense and has the same force and effect.[14] Thus, while decisions on due process of American courts are not controlling in our jurisdiction, they may serve as guideposts in the analysis of due process as applied in our legal system.

In American jurisprudence, the due process requirement entails the opportunity to be heard at a meaningful time and in a meaningful manner.[15] Likewise, it was characterized with fluidity in that it negates any concept of inflexible procedures universally applicable to every imaginable situation.[16]

In *Goldberg v. Kelly (Goldberg)*,[17] the United States *(U.S.)* Supreme Court ruled that due process requires the opportunity for welfare recipients to confront the witnesses against them at a pre-termination hearing before welfare benefits are terminated, to wit:

> The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard. It is not enough that a welfare recipient may present his position to the decision maker in writing or second hand through his caseworker. x x x Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are wholly unsatisfactory basis for decision.

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14 *Smith, Bell and Co v. Natividad*, 40 Phil. 136, 144-145 (1919).
15 *Goldberg v. Kelly*, 397 U.S. 267 (1970).
16 *Arnett v. Kennedy*, 416 U.S. 155 (1974).
17 *Goldberg v. Kelly*, supra note 15 at 269.

In *Goldberg*, the U.S. Supreme Court went on to highlight the importance of confronting the witnesses presented against the claimant, *viz:*

> In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. x x x What we said in Greene v McElroy, 360 US 474, 496-497, 3 L ed 2d 1377, 1390, 1391, 79 S Ct 1400 (1959), is particularly pertinent here:
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> > Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment ... This Court has be zealous to protect these rights from erosion. It has spoken out not only in criminal cases, but also in all types of cases where administrative actions were under scrutiny.
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> Welfare recipients must therefore be given an opportunity to confront and cross-examine the witnesses relied on by the department.[18]

In subsequent decisions, the U.S. Supreme Court clarified that a lack of formal hearing in the administrative level does not violate procedural due process. In *Arnett v. Kennedy (Arnett)*,[19] a case involving the dismissal of a non-probationary federal employee, the US Supreme Court ruled that a trial-type hearing before an impartial hearing officer was not necessary before the employee could be removed from office because the hearing afforded by administrative appeal procedures after the actual dismissal is a sufficient requirement of the Due Process Clause.

In *Mathews v. Eldridge (Mathews)*,[20] the U.S. Supreme Court explained that an evidentiary hearing prior to termination of disability benefits is not indispensable, to wit:

> Only in Goldberg has the Court held that due process requires an evidentiary hearing prior to a temporary deprivation. It was emphasized

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18 Id.

19 *Arnett v. Kennedy*, supra note 16 at 164.

20 424 U.S. 341-342, 349 (1976).

there that welfare assistance is given to persons on the very margin of subsistence:

> The crucial factor in this context x x x is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits.
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> Eligibility for disability benefits, in contrast, is not based upon financial need. x x x
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> x x x x
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> All that is necessary is that the procedures be tailored, in light of the decision to be made, to the "capacities and circumstances of those who are to be heard to insure that they are given a meaningful opportunity to present their case. In assessing what process is due in this case, substantial weight must be given to the good-faith judgments of the individuals charged by Congress with the administration of social welfare programs that the procedures they have provided assure fair consideration of the entitlement claims of individuals. This is especially so where, as here, the prescribed procedures not only provide the claimant with an effective process for asserting his claim prior to any administrative action, but also assure a right to an evidentiary hearing, as well as to subsequent judicial review, before the denial of his claim becomes final.[21]

It is true that in both *Arnett and Mathews*, the U.S. Supreme Court ruled that due process was not violated due to the lack of a formal hearing before the employee was dismissed and welfare benefits were cancelled in the respective cases. Nevertheless, in both cases it was recognized that the aggrieved party had the opportunity for a hearing to settle factual or evidentiary disputes in subsequent procedures. In our legal system, however, the opportunity for a hearing after the administrative level may not arise as the reception of evidence or the conduct of hearings are discretionary on the part of the appellate courts.

In our jurisdiction, the constitutional guarantee of due process is also not limited to an exact definition.[22] It is flexible in that it depends on the circumstances and varies with the subject matter and the necessities of the situation.[23]

In the landmark case of *Ang Tibay v. The Court of Industrial Relations*,[24] the Court eruditely expounded on the concept of due process in administrative proceedings, to wit:

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21 Citations omitted.

22 *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009).

23 Bernas, The 1987 Constitution of the Republic of the Philippiness: A Commentary (2003), p. 114.

24 69 Phil. 635 (1940).

The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character. There are cardinal primary rights which must be respected even in proceedings of this character:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, in Morgan v. U. S., 304 U. S. 1, 58 S. Ct. 773, 999, 82 Law. ed 1129, "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. (Chief Justice Hughes in Morgan v. U. S. 298 U. S. 468, 56 S. Ct. 906, 80 Law. ed. 1288.) In the language of this Court in Edwards vs. McCoy, 22 Phil., 598, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached." (Edwards vs. McCoy, *supra.*) This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion (City of Manila vs. Agustin, G. R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), but the evidence must be "substantial." (Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. 142, 147, 57 S. Ct. 648, 650, 81 Law ed 965.) "Substantial evidence is more than a mere scintilla It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.) . . . **The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order.** (Interstate Commerce Commission v. Baird, 194 U. S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U. S. 88, 93, 33 S. Ct. 185, 187, 57

> Law. ed. 431; United States v. Abilene & Southern Ry. Co., 265 U. S. 274, 288, 44 S. Ct. 565, 569, 68 Law. ed. lola; Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 442, 50 S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)"
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> (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (Interstate Commence Commission vs. L. & N. R. Co., 227 U. S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. **It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.** Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute of any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers (Section 10, *ibid.*)
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> (6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally impossible for the titular heads of the Court of Industrial Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with right to appeal to board or commission, but in our case there is no such statutory authority.
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> (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.[25] (emphases supplied)

From the pronouncements of the Court in *Ang Tibay*, the fluid concept of administrative due process continued to progress. In *In Re: De Borja and*

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[25] Id. at 641-644.

Flores,[26] the Court ruled that there was no denial of due process when the Public Service Commission cancelled the certificate of Jose de Borja to operate an ice plant without prior notice or hearing because a hearing was conducted after the applicant filed a motion for reconsideration. In *Manila Trading Supply Co. v. Philippine Labor Union*,[27] the Court ruled that due process was observed even if the report of the investigating officer was not set for hearing before the Court of Industrial Relations because during the investigation stage, the parties were given the opportunity to cross-examine and present their side to the case. It is noteworthy that in both cases due process was observed because the parties were given the chance for a hearing where they could confront the witnesses against them.

In *Gas Corporation of the Phils. v. Minister Inciong*,[28] the Court explained that there is no denial of due process when a party is afforded the right to cross-examine the witnesses but fails to exercise the same, to wit:

> 1. The vigor with which counsel for petitioner pressed the claim that there was a denial of procedural due process is inversely proportional to the merit of this certiorari and prohibition suit as is quite evident from the Comment of the office of the Solicitor General. **It is undoubted that the due process mandate must be satisfied by an administrative tribunal or agency. So it was announced by Justice Laurel in the landmark case of *Ang Tibay v. Court of Industrial Relations*. That is still good law**. It follows, therefore, that if procedural due process were in fact denied, then this petition must prosper. **It is equally well-settled, however, that the standard of due process that must be met in proceedings before administrative tribunals allows a certain latitude as long as the element of fairness is not ignored**. So the following recent cases have uniformly held: *Maglasang v. Ople, Nation Multi Service Labor Union v. Agcaoili, Jacqueline Industries v. National Labor Relations Commission, Philippine Association of Free Labor Unions v. Bureau of Labor Relations, Philippine Labor Alliance Council v. Bureau of Labor Relations, and Montemayor v. Araneta University Foundation.* From the Comment of the office of the Solicitor General, it is quite clear that no imputation of arbitrariness can be justified. **The opportunity to present its side of the case was given both parties to the controversy. If, for reasons best known to itself, petitioner did not avail of its right to do so, then it has only itself to blame. No constitutional infirmity could then be imputed to the proceeding before the labor arbiter.**[29] (emphasis supplied)

Again, there was no denial of due process in the above-mentioned case because the parties were ultimately given the chance to confront the

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[26] 62 Phil. 106 (1935).
[27] 70 Phil. 539 (1940).
[28] 182 Phil. 215 (1979).
[29] Id. at 220-221.

witnesses against them. It just so happened that therein petitioner failed to promptly avail of the same.

In *Arboleda v. National Labor Relations Commission (Arboleda)*,[30] the Court expounded that administrative due process does not necessarily connote full adversarial proceedings, to wit:

> **The requirement of notice and hearing in termination cases does not connote full adversarial proceedings as elucidated in numerous cases decided by this Court.** Actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies. **This is a procedural right which the employee must ask for since it is not an inherent right, and summary proceedings may be conducted thereon.**[31] (emphasis supplied)

Thus, while the Court in *Arboleda* recognized that the lack of a formal hearing does not necessarily transgress the due process guarantee, it did not however regard the formal hearing as a mere superfluity. It continued that it is a procedural right that may be invoked by the party. It is true that in subsequent cases,[32] the Court reiterated that a formal hearing is not obligatory in administrative proceedings because the due process requirement is satisfied if the parties are given the opportunity to explain their respective sides through position papers or pleadings. Nonetheless, the idea that a formal hearing is not indispensable should not be hastily thrown around by administrative bodies.

A closer perusal of past jurisprudence shows that the Court did not intend to trivialize the conduct of a formal hearing but merely afforded latitude to administrative bodies especially in cases where a party fails to invoke the right to hearing or is given the opportunity but opts not to avail of it. In the landmark case of *Ang Tibay*, the Court explained that administrative bodies are free from a strict application of technical rules of procedure and are given sufficient leeway. In the said case, however, nothing was said that the freedom included the setting aside of a hearing but merely to allow matters which would ordinarily be incompetent or inadmissible in the usual judicial proceedings.

In fact, the seminal words of *Ang Tibay* manifest a desire for administrative bodies to exhaust all possible means to ensure that the decision rendered be based on the accurate appreciation of facts. The Court

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30 362 Phil. 383 (1999).

31 Id. at 389.

32 *Mateo v. Romulo*, 799 Phil. 569 (2016); *Samalio v. Court of Appeals*, 494 Phil. 456 (2005); *Artezuela v. Maderazo*, 431 Phil. 15 (2002), citing *Arboleda v. National Labor Relations Commission*, id at 141, and *Padilla v. Sto. Tomas*, 243 SCRA 155.

reminded that administrative bodies have the active **duty to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy**. As such, it would be more in keeping with administrative due process that the conduct of a hearing be the general rule rather than the exception.

The observance of a formal hearing in administrative tribunal or bodies other than judicial is not novel. In *Perez v. Philippine Telegraph and Telephone Company*,[33] the Court opined that in illegal dismissal cases, a formal hearing or conference becomes mandatory when requested by the employee in writing, or substantial evidentiary disputes exists, or a company rule or practice requires it, or when similar circumstances justify it.

In *Joson v. Executive Secretary Torres (Joson)*,[34] the Court ruled that the respondent was denied due process after he was deprived of the right to a formal investigation with the opportunity to face the witnesses against him, to wit:

> The rejection of petitioner's right to a formal investigation denied him procedural due process. Section 5 of A.O. No. 23 provides that at the preliminary conference, the Investigating Authority shall summon the parties to consider whether they desire a formal investigation. **This provision does not give the Investigating Authority the discretion to determine whether a formal investigation would be conducted**. The records show that petitioner filed a motion for formal investigation. As respondent, he is accorded several rights under the law, to wit:
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> x x x x
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> **Petitioner's right to a formal investigation was not satisfied when the complaint against him was decided on the basis of position papers.** There is nothing in the Local Government Code and its Implementing Rules and Regulations nor in A.O. No. 23 that provide that administrative cases against elective local officials can be decided on the basis of position papers. A.O. No. 23 states that the Investigating Authority may require the parties to submit their respective memoranda but this is only after formal investigation and hearing. **A.O. No. 23 does not authorize the Investigating Authority to dispense with a hearing especially in cases involving allegations of fact which are not only in contrast but contradictory to each other**. These contradictions are best settled by allowing the examination and cross-examination of witnesses. **Position papers are often-times prepared with the assistance of lawyers and their artful preparation can make the discovery of truth difficult**. The jurisprudence cited by the DILG in its order denying petitioner's motion for a formal investigation applies to *appointive* officials and employees. Administrative disciplinary proceedings against elective government officials are not exactly similar to those against

[33] 602 Phil. 522, 542 (2009).
[34] 352 Phil. 888 (1998).

> appointive officials. In fact, the provisions that apply to elective local officials are separate and distinct from appointive government officers and employees. This can be gleaned from the Local Government Code itself.[35] (emphases and underlining supplied)

Thus, administrative bodies should not simply brush aside the conduct of formal hearings and claim that due process was observed by merely relying on position papers and/or affidavits. Besides, the Court in *Joson* recognized the inherent limitations of relying on position papers alone as the veracity of its contents cannot be readily ascertained. Through the examination and cross-examination of witnesses, administrative bodies would be in a better position to ferret out the truth and in turn, render a more accurate decision.

In any case, the PAGC violated Saunar's right to due process because it failed to observe fairness in handling the case against him. Its unfairness and unreasonableness is readily apparent with its disregard of its own rules of procedure.

The procedure to be observed in cases of clarificatory hearings is set forth under the PAGC rules of procedure. Rule III, Section 3 of its 2002 New Rules of Procedure states:

> SECTION 3. *Action After Respondent's Response.*— If, upon evaluation of the documents submitted by both parties, it should appear either that the charge or charges have been satisfactorily traversed by the respondent in his Counter-Affidavit/verified Answer, or that the Counter-Affidavit/verified Answer does not tender a genuine issue, the Commissioner assigned shall forthwith, or after a clarificatory hearing to ascertain the authenticity and/or significance of the relevant documents, submit for adoption by the Commission the appropriate recommendation to the President.
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> The Commissioner assigned may, at his sole discretion, set a hearing to propound clarificatory questions to the parties or their witnesses if he or she believes that there are matters which need to be inquired into personally by him or her. **In said hearing, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine. If they so desire, they may submit written questions to the Commissioner assigned who may propound such questions to the parties or witnesses concerned**. Thereafter, the parties be required, to file with the Commission, within an inextendible period of five (5) days,and serve on the adverse party his verified Position Paper. (emphasis and underlining supplied)

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[35] Id. at 923-925.

On the other hand, the 2008 Rules of Procedure amended the said provision to read as follows:

> **SECTION 7.** *Clarificatory Hearings and Position Papers.* – After the filing of the Answer, the Commission may, at its discretion, conduct Clarificatory Hearings, in which case, subpoenas may be issued for the purpose. Should a Clarificatory Hearing be conducted, all parties relevant to the case shall be notified at least five (5) days before the date thereof. Failure of a party to appear at the hearing is not necessarily a cause for the dismissal of the complaint. A party who appears may be allowed to present evidence, even in the absence of the adverse party who was duly notified of the hearing.
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> During a Clarificatory Hearing, the Commission or the Hearing Officer, as the case may be, shall ask clarificatory questions to further elicit facts or information. **The parties shall be afforded the opportunity to be present and shall be allowed the assistance of counsel, but without the right to examine or cross-examine the party/witness being questioned. The parties may be allowed to raise clarificatory questions and elicit answers from the opposing party/witness, which shall be coursed through the Commission or the Hearing Officer, as the case may be, for determination of whether or not the proposed questions are necessary and relevant.** In such cases, the Commission or the Hearing Officer, as the case may be, shall ask the question in such manner and phrasing as may be deemed appropriate. (emphasis and underlining supplied)
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> x x x x

Under the PAGC rules of procedure, it is crystal clear that the conduct of clarificatory hearings is discretionary. Nevertheless, in the event that it finds the necessity to conduct one, there are rules to be followed. *One*, the parties are to be notified of the clarificatory hearings. *Two*, the parties shall be afforded the opportunity to be present in the hearings without the right to examine witnesses. They, however, may ask questions and elicit answers from the opposing party coursed through the PAGC.

To reiterate, due process is a malleable concept anchored on fairness and equity. The due process requirement before administrative bodies are not as strict compared to judicial tribunals in that it suffices that a party is given a reasonable opportunity to be heard. Nevertheless, such "reasonable opportunity" should not be confined to the mere submission of position papers and/or affidavits and the parties must be given the opportunity to examine the witnesses against them. The right to a hearing is a right which may be invoked by the parties to thresh out substantial factual issues. It becomes even more imperative when the rules itself of the administrative body provides for one. While the absence of a formal hearing does not necessarily result in the deprivation of due process, it should be acceptable only when the party does not invoke the said right or waives the same.

The Court finds that Saunar was not treated fairly in the proceedings before the PAGC. He was deprived of the opportunity to appear in all clarificatory hearings since he was not notified of the clarificatory hearing attended by an NBI official. Saunar was thus denied the chance to propound questions through the PAGC against the opposing parties, when the rules of the PAGC itself granted Saunar the right to be present during clarificatory hearings and the chance to ask questions against the opposing party.

Even assuming that Saunar was not deprived of due process, we still find merit in reversing his dismissal from the government service.

Gross neglect of duty negated by intent of the government employee concerned

It is true that the dropping from the rolls as a result of AWOL is not disciplinary in nature and does not result in the forfeiture of benefits or disqualification from re-employment in the government.[36] Nevertheless, being on AWOL may constitute other administrative offenses, which may result in the dismissal of the erring employees and a forfeiture of retirement benefits.[37] In the case at bar, Saunar was charged with the administrative offense of gross neglect of duty in view of his prolonged absence from work.

The OP found Saunar guilty of Gross Neglect of Duty and of violating Section 3(e) of R.A. No. 3019 because he was on AWOL from March 2005 to May 2006. He, however, bewails that from the time we was directed to report to the DDROS, he was never assigned a particular duty or responsibility. As such, Saunar argues that he cannot be guilty of gross neglect of duty because there was no "duty" to speak of. In addition, he assails that he had made himself readily available because he stayed in establishments near the NBI.

Gross Neglect of Duty, as an administrative offense, has been jurisprudentially defined. It refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, **but willfully and intentionally**; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.[38]

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[36] *Municipality of Butig, Lanao del Sur v. Court of Appeals*, 513 Phil. 217, 235 (2005).

[37] *Masadao, Jr. v. Glorioso*, 345 Phil. 859, 864 (1997); Loyao *v. Manatad*, 387 Phil. 337, 344 (2000); *Leave Division-O.A.S, Office of the Court Administrator v. Sarceno*, 754 Phil. 1, 11 (2015)

[38] *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014).

When Saunar was relieved as regional director of Western Mindanao and was ordered to report to the DDROS, he was obligated to report to the said office. He, however, was not assigned any specific task or duty and was merely advised to make himself readily available. Saunar often stayed in establishments near the NBI because he was also not provided a specific station or office. The same, nonetheless, does not establish that he willfully and intentionally neglected his duties especially since every time he was required to attend court hearings through special orders issued by the NBI, he would do so. Clearly, Saunar never manifested any intention to neglect or abandon his duties as an NBI official as he remained compliant with the lawful orders given to him. In addition, when he received the order reassigning him as the regional director for the NBI Bicol Office, he also obeyed the same. Saunar's continued compliance with the special orders given to him by his superiors to attend court hearings negate the charge of gross neglect of duty as it evinces a desire to fulfil the duties and responsibilities specifically assigned to him.

The Office of the Solicitor General *(OSG)*, however, argues that Saunar's attendance at several court hearings pursuant to special orders does not exculpate him from the charge of gross neglect of duty. As highlighted by the OSG, the certificate of appearances Saunar presented account only for fourteen (14) days.[39]

Notwithstanding, Saunar's conduct neither constitutes a violation of Section 3(e) of R.A. No. 3019. In order to be liable for violating the said provision, the following elements must concur: (a) the accused must be a public officer discharging administrative, judicial or official functions; (b) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[40] As discussed above, Saunar's action was not tantamount to inexcusable or gross negligence considering that there was no intention to abandon his duty as an NBI officer.

Illegally dismissed government employees entitled to full back wages and retirement benefits

On 11 August 2014, Saunar reached the compulsory age of retirement from government service.[41] In view of Saunar's retirement, reinstatement to

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39 *Rollo,* p. 484.
40 *Consigna v. People*, 731 Phil. 108, 123-124 (2014).
41 *Rollo*, p. 637.

his previous position had become impossible. Thus, the only recourse left is to grant monetary benefits to which illegally dismissed government employees are entitled.

In *Campol v. Balao-as*,[42] the Court extensively expounded the rationale behind the grant of full back wages to illegally dismissed employees, to wit:

> **An employee of the civil service who is invalidly dismissed is entitled to the payment of backwages.** While this right is not disputed, there have been variations in our jurisprudence as to the proper fixing of the amount of backwages that should be awarded in these cases. We take this opportunity to clarify the doctrine on this matter.
>
> *Ginson* and *Regis* also involved the question of the proper fixing of backwages. Both cases awarded backwages but limited it to a period of five years. *Ginson* does not provide for an exhaustive explanation for this five-year cap. *Regis*, on the other hand, cites *Cristobal v. Melchor*, *Balquidra v. CFI of Capiz, Branch II,* 32 *Laganapan v. Asedillo*, *Antiporda v. Ticao*, and *San Luis v. Court of Appeals*, in support of its ruling. We note that these cases also do not clearly explain why there must be a cap for the award of backwages, with the exception of *Cristobal.* In *Cristobal,* a 1977 case, we held that the award of backwages should be for a fixed period of five years, applying by analogy the then prevailing doctrine in labor law involving employees who suffered unfair labor practice. We highlight that this rule has been rendered obsolete by virtue of Republic Act No. 6175 which amended the Labor Code. Under the Labor Code, employees illegally dismissed are entitled to the payment of backwages from the time his or her compensation was withheld up to the time of his or her actual reinstatement.
>
> In 2005, our jurisprudence on backwages for illegally dismissed employees of the civil service veered away from the ruling in *Cristobal.*
>
> Thus, in *Civil Service Commission v. Gentallan,* we categorically declared —
>
> > An illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of her illegal dismissal up to her reinstatement. This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left her office and should be given the corresponding compensation at the time of her reinstatement.
>
> We repeated this ruling in the 2005 case *Batangas State University v. Bonifacio*, in the 2007 case *Romagos v. Metro Cebu Water District,* and in the 2010 case *Civil Service Commission v. Magnaye, Jr.*

[42] G.R. No. 197634, 28 November 2016.

> Thus, the Decision, in refusing to award backwages from Campol's dismissal until his actual reinstatement, must be reversed. There is no legal nor jurisprudential basis for this ruling. **An employee of the civil service who is ordered reinstated is also entitled to the full payment of his or her backwages during the entire period of time that he or she was wrongfully prevented from performing the duties of his or her position and from enjoying its benefits**. This is necessarily so because, in the eyes of the law, the employee never truly left the office. **Fixing the backwages to five years or to the period of time until the employee found a new employment is not a full recompense for the damage done by the illegal dismissal of an employee. Worse, it effectively** punishes an employee for being dismissed without his or her fault. In cases like this, the twin award of reinstatement and payment of full backwages are dictated by the constitutional mandate to protect civil service employees' right to security of tenure. Anything less than this falls short of the justice due to government employees unfairly removed from office. This is the prevailing doctrine and should be applied in Campol's case.
>
> This entitlement to full backwages also means that there is no need to deduct Campol's earnings from his employment with PAO from the award. The right to receive full backwages means exactly this — that it corresponds to Campol's salary at the time of his dismissal until his reinstatement. **Any income he may have obtained during the litigation of the case shall not be deducted from this amount. This is consistent with our ruling that an employee illegally dismissed has the right to live and to find employment elsewhere during the pendency of the case. At the same time, an employer who illegally dismisses an employee has the obligation to pay him or her what he or she should have received had the illegal act not be done**. It is an employer's price or penalty for illegally dismissing an employee.
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> x x x x
>
> **We rule that employees in the civil service should be accorded this same right**. It is only by imposing this rule that we will be able to uphold the constitutional right to security of tenure with full force and effect. **Through this, those who possess the power to dismiss employees in the civil service will be reminded to be more circumspect in exercising their authority as a breach of an employee's right to security of tenure will lead to the full application of law and jurisprudence to ensure that the employee is reinstated and paid complete backwages.** (emphasis supplied)

As it stands, Saunar should have been entitled to full back wages from the time he was illegally dismissed until his reinstatement. In view of his retirement, however, reinstatement is no longer feasible. As such, the back wages should be computed from the time of his illegal dismissal up to his compulsory retirement.[43] In addition, Saunar is entitled to receive the retirement benefits he should have received if he were not illegally dismissed.

[43] *Paz v. Northern Tobacco Redrying Co, Inc.*, 754 Phil. 251 (2015).

WHEREFORE, the petition is **GRANTED.** The 20 October 2008 Decision of the Court of Appeals in CA-G.R. SP No. 100157 is **REVERSED and SET ASIDE.** Petitioner Carlos R. Saunar is entitled to full back wages from the time of his illegal dismissal until his retirement and to receive his retirement benefits.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(On Official Leave)
LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.

MARIA LOURDES P. A. SERENO
Chief Justice

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Division Clerk of Court
Third Division

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