Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

VIRGEL DAVE JAPOS, *Petitioner,*	**G.R. No. 208000***
	Present:
- versus -	SERENO, *C.J., Chairperson,* LEONARDO-DE CASTRO, DEL CASTILLO, PERLAS-BERNABE, *and* CAGUIOA, *JJ.*
FIRST AGRARIAN REFORM MULTI-PURPOSE COOPERATIVE (FARMCOOP) and/or CRISLINO BAGARES, *Respondents.*	Promulgated: JUL 2 6 2017

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* (With Supplemental Allegations In Support Of The Application To Litigate As An Indigent)[1] assails the July 29, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 03319-MIN which reversed and set aside the August 27, 2009 and October 15, 2009 Resolutions[3] of the National Labor Relations Commission (NLRC) in NLRC Case No. MAC-09-010462-08, and the CA's subsequent September 18, 2012 Resolution[4] denying herein petitioner's Motion for Reconsideration.[5]

Factual Antecedents

Respondent First Agrarian Reform Multi-Purpose Cooperative (FARMCOOP) is a registered domestic cooperative doing business in Kisolon, Sumilao, Bukidnon as a banana contract grower for DOLE Philippines, Inc. Respondent Crislino Bagares is FARMCOOP's chairman/

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* Formerly UDK 14762.

1 *Rollo*, pp. 11-26.

2 Id. at 28-45; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles.

3 CA *rollo*, pp. 18-22, 37-38; penned by Commissioner Proculo T. Sarmen and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Dominador B. Medroso, Jr.

4 *Rollo*, pp. 47-48; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Marilyn B. Lagura-Yap and Renato C. Francisco.

5 Id. at 49-54.

executive officer.

Petitioner Virgel Dave Japos was employed by FARMCOOP in 2001 as gardener. Under FARMCOOP's Personnel Policies and Procedures,[6] it is provided that:

> 11. Absences
>
> In order not to disrupt the operations due to absences, prior authorization or permission from the immediate superior must be secured. A Personnel Leave Authority (PLA) form must be properly filled up/[sic]approved to be submitted to the Personnel Section. The immediate superior shall have the discretion to allow or [disapprove] leave applications depending on the work/activity schedules at the particular time. However, leave of absence for any personal reason may be granted up to a maximum of 20 days only for every year, subject to our disciplinary action policies.
>
> x x x x
>
> 14. Attendance and Punctuality
>
> The Cooperative expects all its members and non-members to be in their work place regularly and at the time designated in the schedule.
>
> *Note: AWOL*[7] *RULE*
>
> An employee/worker is subject to disciplinary action if he/she incures [sic] the following COMMULATIVE [sic] ABSENCES:
>
> x x x
>
> 1st Offense - Written Warning
> 2nd Offense - 1 to 7 days suspension (Notice shall be prepared by Personnel)
> 3rd Offense - 8 to 15 days suspension (Notice shall be prepared by Personnel)
> 4th Offense - DISMISSAL
>
> x x x x
>
> I. ATTENDANCE
>
> 1. UNAUTHORIZED LEAVE OF ABSENCE
>
> An employee who wants to be absent from work must seek previous approval from his/her supervisor by applying for leave using the prescribed [form] for application for leave.

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6 CA *rollo*, pp. 56-60.

7 Absent Without Official Leave.

An employee/worker is subject to discharge if he/she incurs six (6) or more absences without permission within one employment year.

FIRST INFRACTION - suspension 1 to 7 days
SECOND INFRACTION - suspension 8 to 15 days
THIRD INFRACTION - dismissal

Note: AWOP[8] *RULE*

An employee is subject to disciplinary action if he/she incurs the following CONSECUTIVE ABSENCES:

x x x

First three (3) days - Written Warning

4th day - 1 to 7 days suspension (Notice shall be prepared by Personnel)

5th day - 8 to 15 days suspension (Notice shall be prepared by Personnel)

6th day - DISMISSAL[9]

During his stint with FARMCOOP, petitioner incurred the following absences:[10]

1. May 2-15, 2003 – which is covered by a Medical Certificate dated May 16, 2003;

2. December 18-27, 2003 – for which no doctor's certificate was submitted;

3. January 26, 2005 – absence without permission, for which petitioner was issued a Written Warning dated January 28, 2005;

4. February 28, 2005 – absence without permission, for which petitioner was issued a 2nd Written Warning dated March 2, 2005;

5. May 24, 2005 – absence without permission, for which petitioner was issued a Last Warning dated June 9, 2005; and

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8 Absent Without Permission.
9 CA *rollo*, pp. 57-60.
10 Id. at 6, 25.

6. June 22-28, 2005 – absence without permission, but which is supposedly covered by a Medical Certificate[11] issued on July 7, 2005 by a certain Dr. Carolyn R. Cruz (Dr. Cruz), Medical Officer IV of the Philhealth Center, certifying that petitioner was diagnosed and given treatment for respiratory tract infection, although the document did not indicate the period during which petitioner was ill, diagnosed, or had undergone treatment.

With regard to his June 22-28, 2005 absences, petitioner received on June 28, 2005 an inter-office memorandum[12] giving him until July 4, 2005 to explain the same in writing. On June 30, 2005, he personally submitted his signed written explanation[13] of even date, which states, in part:

> SIR, MADAM,
>
> SORRY, I WAS NOT ABLE TO REPORT ON JUNE 22, 2005 UNTIL NOW BECAUSE I'M SUFFERING ENFLUENZA [sic]. I'M SORRY IF I DIDN'T REPORT TO THE OFFICE FOR FILLING [sic] LEAVE.
>
> HOPING FOR YOUR KIND CONSIDERATION OF THIS MATTER.[14]

On July 5, 2005, petitioner reported back to work, but he was not admitted by FARMCOOP as he did not present a medical certificate. It was only on July 7, 2005 that petitioner was able to secure Dr. Cruz's Medical Certificate and submit the same to his employer. Also, on July 5, 2005, FARMCOOP issued a Notice of Termination[15] informing petitioner that effective July 6, 2005, his employment would be terminated.

On July 8, 2005, petitioner submitted a Personnel Leave Authority Application Form[16] of even date, which was not acted upon by FARMCOOP as petitioner was already considered dismissed as of July 6, 2005. In said application, petitioner sought approval of his leave/absence from June 22 to July 7, 2005.

Ruling of the Labor Arbiter

On February 6, 2008, petitioner filed a complaint against respondents before the Labor Arbiter for illegal dismissal, separation pay, underpayment

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11 Id. at 35.
12 Id. at 54.
13 Id. at 55.
14 Id.
15 Id. at 61.
16 Id. at 34.

of salaries, and other monetary claims, which was docketed as NLRC Case No. RAB 10-02-00116-2008. He claimed that his dismissal was effected without due process and, thus, illegal.

On July 21, 2008, the Labor Arbiter issued a Decision[17] finding that petitioner was legally terminated for the unauthorized June 22-28, 2005 absences. He ruled that petitioner was dismissed for cause; that petitioner's past infractions, his unauthorized January 26, February 28, and May 24, 2005 absences for which written warnings were issued against him, were justifiably considered by FARMCOOP in arriving at the decision to dismiss petitioner; that procedural due process was observed by respondents; and that petitioner failed to prove that he is entitled to monetary claims, except for wage differential. Thus, the Labor Arbiter ruled:

> WHEREFORE, in view of all the foregoing, judgment is hereby entered ordering the respondent FCI-FARM Coop., Inc. [sic] to pay the complainant in the sum of ₱8,739.00 representing wage differential plus 10% of the total award in the sum of ₱873.90 representing attorney's fees.
>
> SO ORDERED.[18]

Ruling of the National Labor Relations Commission

Petitioner appealed before the NLRC which overturned the Labor Arbiter. In its August 27, 2009 Resolution in NLRC Case No. MAC-09-010462-08, it ruled as follows:

> The complainant being able to present a Personnel Leave Authority and a Medical Certificate for his absences on June 22 to July 5, 2005, his termination from employment cannot be said to be justified. While the Labor Arbiter is correct in citing and we quote:
>
> > 'Generally, absences, once authorized or with prior approval of the employer, irrespective of length thereof, may not be invoked as ground for termination of employment. Consequently, dismissal of an employee due to his prolonged absence with leave by reason of illness duly established by the presentation of a medical certificate, is not justified x x x. however [sic], unauthorized absences or those incurred without official leave, constitute gross and habitual neglect in the performance of work x x x.'
>
> We cannot sustain his conclusion that '*complainant was dismissed for a valid cause and after observance of due process.*' The Labor Arbiter

[17] Id. at 23-26; penned by Labor Arbiter Leon P. Murillo.
[18] Id. at 26.

> should have followed the doctrine laid down in the case of *Oriental Mindoro Electric Cooperative, Inc. v. NLRC* and not that of *Cando v. NLRC* considering that a Personnel Leave Authority and a Medical Certificate was [sic] submitted by the complainant. The prolonged absence of complainant cannot be construed as abandonment of work when said absences was [sic] due to a justifiable reason.
>
> The fact that, in complainant's July 7, 2005 medical certificate, he was diagnosed to have "*acute respiratory tract infection*" while in his letter of explanation dated June 30, 2005, complainant mentioned "*influenza*" should not militate against him. Complainant is not a medical practitioner as to be in a position to know how to diagnose his illness. The date of medical certificate, July 7, 2005, is likewise of no serious concern since it merely refers to the date when said medical certificate was executed and not to the date complainant was ill.
>
> In fine, we find the complainant's dismissal illegal.
>
> WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and VACATED, except as regards the award of wage differentials, and a new one is entered declaring the dismissal of complainant as ILLEGAL. Consequently, respondent is hereby ordered to forthwith reinstate complainant to his former or equivalent position without loss of seniority rights and other privileges and to pay his full backwages, inclusive of allowances and to his other benefits or its [sic] monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
>
> The respondent is likewise ordered to pay complainant's attorney's fees equivalent to ten (10%) percent of the total awards herein granted.
>
> The Regional Arbitration Branch is hereby directed to cause the computation of the awards granted in this Resolution.
>
> The award of wage differentials granted in the appealed decision stays.
>
> SO ORDERED.[19] (Citations omitted)

Respondents moved to reconsider,[20] but the NLRC stood its ground.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[21] filed with the CA and docketed as CA-G.R. SP No. 03319-MIN, respondents sought to reverse the above dispositions of the NLRC and reinstate the Labor Arbiter's July 21, 2008 Decision, arguing that the NLRC committed grave abuse of discretion in

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19 Id. at 19-21.
20 Id. at 28-33.
21 Id. at 2-17.

ruling that petitioner was illegally dismissed and was entitled to his money claims; that the NLRC wrongly appreciated the evidence and the facts; that the medical certificate submitted by petitioner, which stated that petitioner was diagnosed and treated for respiratory tract infection, could not be given credence because it conflicted with petitioner's own claim that he was sick with influenza; that petitioner's supposed illness was an obvious fabrication to cover up for his unauthorized absences; that the medical certificate was of doubtful veracity; and that overall, petitioner's case was not covered by substantial evidence.

Petitioner submitted his Comment,[22] wherein he argued that the NLRC committed no error; that it would be absurd under FARMCOOP's rules and policies to require an employee to submit a Personnel Leave Authority prior to contracting illness when it could not be known or planned precisely when he might get sick; that his past infractions could not be used to justify the penalty of dismissal since he was penalized therefor with mere warnings, thus, the penalty for the latest infraction should have been mere suspension only and not dismissal; and that the penalty of dismissal was not commensurate to his infraction, which did not involve moral turpitude nor gross misconduct.

On July 29, 2011, the CA issued the assailed Decision containing the following pronouncement:

> We find the dismissal of private respondent Japos valid.
>
> For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause and (b) the employee must be afforded due process.
>
> In the case at bench, records indubitably show that Japos incurred several absences without authority or permission from his immediate supervisor even before he was terminated from service in violation of FARMCoop's policy. Records likewise show that FARMCoop was quite lenient and considerate to Japos as he was not penalized for his previous unauthorized absences despite its policy providing for the suspension and dismissal of its employee in case of infraction thereto. In fact, before he was terminated and despite his unauthorized absences he was only served with written warnings instead of immediate suspension. FARMCoop's policy further provides that if an employee incurs six (6) or more absences without permission within one (1) employment year, the employee could be validly dismissed from employment. In the year 2005, and prior to his dismissal, he already incurred three (3) unauthorized absences where he was served with three (3) written warnings with a warning that should he incur further unauthorized absences, the same would be dealt with seriously. Nonetheless, despite said warning, he was again absent for more than six (6) consecutive days from June 22, 2005 until he reported

[22] Id. at 101-108.

back to work on July 5, 2005 allegedly for being sick with influenza without any medical certificate to substantiate the same. It was only on July 7, 2005 when he submitted a medical certificate dated on even date certifying that he was examined and found to have acute respiratory tract infection.

It should be emphasized however, that the said medical certificate did not indicate the period within which he was examined by the physician and the period he was to rest due to his illness. It fails to refer to the specific period of his absences. It should likewise be emphasized that in the absence of evidence indicating that he was indeed sick before the date stated in the medical certificate, his alleged sickness/illness ought not be considered as an excuse for his excessive absences without leave. In the case of *Filflex Industrial & Manufacturing Corp. vs. NLRC*, the Supreme Court ruled that if the medical certificate fails to refer to the specific period of the employee's absence, then such absences are not supported by competent proof and hence, unjustified.

Corollarily, under Article 282(b) of the Labor Code, gross and habitual neglect of duty by the employee of his duties is a just cause for the termination of the latter's employment. Settled is the rule that an employee's habitual absenteeism without leave, which violated company rules and regulation, is sufficient to justify termination from the service. In the case of *R.B. Michael Press vs. Galit*, it was ruled that habitual tardiness and/or absenteeism is a form of neglect of duty as the same exhibit the employee's deportment towards work and is therefore inimical to the general productivity and business of the employer. This is especially true when the tardiness and/or absenteeism occurred frequently and repeatedly within an extensive period of time. In the instant case, Japos failed to refute and controvert the fact of his habitual absenteeism. Instead, he admitted his absences though he tried to justify the same by belatedly submitting a medical certificate. Unfortunately, said medical certificate did not help his case.

Moreover, it should be noted that Japos' previous infractions, past and present absences considered, can be used collectively by petitioner as a ground for his dismissal. As held in a case, '[P]revious infractions may be used as justification for an employee's dismissal from work in connection with a subsequent similar offense.'

Furthermore, in the case of *Valiao vs. Court of Appeals*, the Supreme Court ratiocinated that:

> x x x x
>
> x x x Petitioner's repeated acts of absences without leave and his frequent tardiness reflect his indifferent attitude to and lack of motivation in his work. More importantly, his repeated and habitual infractions, committed despite several warnings, constitute gross misconduct unexpected from an employee of petitioner's stature. This Court has held that habitual absenteeism without leave constitute gross negligence and is sufficient to justify termination of an employee.'

Thus, private respondent Japos was validly dismissed for a cause.

Anent the requirement of due process, we find that Japos was afforded the same. Law and jurisprudence require an employer to furnish the employee two written notices before termination of his employment may be ordered. The first notice must inform him of the particular acts or omissions for which his dismissal is sought; the second, of the employer's decision to dismiss the employee after he has been given the opportunity to be heard and defend himself.

In the case at bench, records show that the first notice requirement was complied with by FARMCoop when prior to his termination, an inter-office memorandum was sent to him asking him to explain in writing why he was absent. It should be noted however that this notice was sent to Japos after he was already warned three (3) times in writing that a similar offense in the future would be dealt with severely. On July 30, 2005 he submitted his written explanation but FARMCoop found it implausible and without basis as he failed to substantiate his allegation that he was sick.

Corollarily, the second notice requirement was again complied with when FARMCoop sent another notice to Japos informing him of his termination. Consequently, private respondent and his father sent a letter to FARMCoop's BOD questioning private respondent's termination. In a letter dated August 8, 2005 the BOD explained to Japos why he was terminated. Hence, we hold that such notices sent to Japos and the opportunity to thereafter assailed [sic] his termination before the FARMCoop's BOD satisfy the due process requirement.

It should be stressed that the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held. Even if no hearing or conference was conducted, the requirement of due process had been met since private respondent was accorded a chance to explain his side of the controversy.

Finally, notice and hearing in termination cases does [sic] not connote full adversarial proceedings as elucidated in numerous cases decide [sic] by the Supreme Court. In a case, it was held that due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential, as the due process requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice and hearing.

Thus, in this case, private respondent Japos was given ample opportunity to be heard, and his dismissal was based on valid grounds.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Resolutions dated August 27, 2009 and October 15, 2009 of the National Labor Relations Commission are hereby REVERSED and SET ASIDE. The Decision dated July 21, 2008 of the Labor Arbiter is REINSTATED.

SO ORDERED.[23] (Citations and emphases omitted)

Petitioner filed his Motion for Reconsideration, which was denied by the CA in its September 18, 2012 Resolution. Hence, the instant Petition.

In a July 15, 2013 Resolution,[24] this Court granted petitioner's application to litigate as an indigent. And in June 15, 2015 Resolution,[25] the Court resolved to give due course to the Petition.

Issues

Petitioner claims that:

FIRST

THE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING AND SETTING ASIDE THE RESOLUTIONS OF THE NATIONAL LABOR RELATIONS COMMISSION AS THE DISMISSAL OF THE PETITIONER WAS ILLEGAL FOR FAILURE OF THE RESPONDENT TO ESTABLISH JUST CAUSE.

SECOND

GRANTING, *ARGUENDO*, THAT THE PETITIONER WAS LIABLE IN SOME RESPECT, THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE APPLICATION OF THE PENALTY OF DISMISSAL AS A LESS GRAVE PENALTY WOULD HAVE BEEN MORE APPROPRIATE UNDER THE CIRCUMSTANCES.[26]

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and the NLRC dispositions be reinstated instead, petitioner maintains in his Petition and Reply[27] that the CA should not have disregarded Dr. Cruz's July 7, 2005 Medical Certificate; that the CA's reliance on *Filflex Industrial & Manufacturing Corporation v. National Labor Relations Commission*[28] is misplaced because the declaration therein, to the effect that if the medical certificate fails to refer to the specific period of the employee's absence, then such absence is not supported by competent proof, is mere *obiter dicta*, and thus not persuasive; that throughout the proceedings, respondents did not dispute the fact that he was ill during the period covering June 22-28, 2005;

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23 *Rollo*, pp. 38-44.
24 Id. at 71-72.
25 Id. at 99-100.
26 Id. at 15-16.
27 Id. at 87-91.
28 349 Phil. 913 (1998).

that there is no valid cause to fire him, as he was able to prove his illness through the documentary evidence he submitted; and that even assuming that he was liable for his absences, the dismissal was not the proper penalty, but rather suspension instead.

Respondent's Arguments

In their joint Comment,[29] respondents maintain that the Petition raises factual issues which are not the proper subject of a current remedy sought; that, as correctly held by the CA, the medical certificate in issue is not credible evidence that may be considered to justify petitioner's June 22-28, 2005 absences; and that petitioner's plea for a lesser penalty is unavailing, considering that in the past, he was treated with considerable leniency, yet in spite of this, he continues to flout the cooperative's policies and regulations.

Our Ruling

The Court denies the Petition.

First off, it must be noted that there is no issue relative to the observance of procedural due process; while it has been raised during the proceedings below, it was not made an issue in the present Petition. Petitioner merely questions the propriety of his dismissal on the ground of excessive unauthorized absences; he argues that his June 22-28, 2005 absences are excusable as they are justified by his illness, which in turn was duly proved by substantial evidence. On the other hand, respondents contend that petitioner's illness is fabricated, as is the documentary evidence presented to support it.

The evidence shows that prior to his June 22-28, 2005 absences, petitioner already incurred several unauthorized absences for 2005, specifically on January 26, February 28, and May 24, 2005, for which written warnings were issued against him. While FARMCOOP opted not to penalize petitioner with suspension for the February 28 and May 24 absences, as mandated under the AWOL and AWOP Rules of FARMCOOP's Personnel Policies and Procedures, this does not take away the fact that these prior absences are nonetheless infractions – three in all, to be exact. This being the case, petitioner's June 22-28, 2005 absences become significant because if it is found to be unauthorized and thus inexcusable; it would constitute a fourth infraction which merits the penalty of dismissal under the AWOL Rule, as well as an infraction that merits dismissal under the AWOP Rule, for being an unauthorized absence of at

[29] *Rollo*, pp. 76-80.

least six consecutive days.

The Court agrees with the CA's pronouncement that Dr. Cruz's July 7, 2005 Medical Certificate does not constitute reliable proof of petitioner's claimed illness during the period June 22-28, 2005. The said document states, as follows:

MEDICAL CERTIFICATE

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that I, the undersigned, personally saw and examined Virgilio Japos, 22 y/o, of LF, Impasugong, Bukidnon and I found him to have acute respiratory tract infection. He was given medication.

THIS CERTIFICATION is issued this 7th day of July 2005 at Impasugong, Bukidnon.

(signed)
CAROLYN R. CRUZ, MD
Medical Officer IV[30]

The certificate does not indicate the period during which petitioner was taken ill. It does not show when he consulted with and was diagnosed by Dr. Cruz. And it does not specify when and how petitioner underwent treatment, and for how long. Without these relevant pieces of information, it cannot be reliably concluded that indeed, petitioner was taken ill on June 22-28, 2005. All that can be assumed from a reading of the document is that on July 7, 2005, Dr. Cruz issued a certification that she treated petitioner for a respiratory tract infection. She might have done so in 1995, or maybe even earlier, but not necessarily on June 22-28, 2005. The document is open to interpretation in every manner, in which case this Court cannot be sufficiently convinced that petitioner became ill and was treated specifically on June 22-28, 2005.

One may argue that in the interest of justice and in order to uphold the rights of labor, this Court must simply accept the medical certificate as proof that indeed, petitioner became ill and required rest and treatment during the questioned period. But this cannot be done without lowering the standards required for the presentation of proof in courts of justice and even in administrative bodies such as the labor tribunals. We cannot dignify the July 7, 2005 Medical Certificate simply because it is too broad and sweeping that it borders on prevarication and forgery; it goes against the basic common sense, logic, experience, and precision required and expected of every

[30] CA *rollo*, p. 35.

trained physician who, apart from saving human lives on a daily basis, must issue such important document with full realization that they are to be utilized in key proceedings. To put it more bluntly, evidence, to be believed, must be credible in itself. "We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside judicial cognizance."[31]

With the finding that Dr. Cruz's certification is of doubtful veracity, petitioner's claim of illness is left with no leg to stand on. Besides, the Court notes that while petitioner claims to have been ill until June 28, 2005, still he reported for work only on July 5, 2005, thus making him absent for several more days. Knowing, by his receipt on June 28, 2005 of an inter-office memorandum giving him until July 4, 2005 to explain his absence since June 22, that he was already on the verge of being fired from work for his unexplained and prolonged absence, he could have made an effort to report back to work on June 29, 2005 if only to show good faith, sincerity, and concern for his employer, if not contrition for not timely informing the latter of his illness so that substitute workers may be obtained in his stead. But he did not. His actions betray an utter lack of concern for his work which, needless to say, is fundamentally inimical to his employer's interest.

The Court thus concludes that petitioner's June 22 to July 5, 2005 absences are unauthorized and inexcusable. Consequently, under FARMCOOP policy, petitioner is deemed to have committed a fourth infraction, which merits the penalty of dismissal under the AWOL Rule, as well as an infraction that merits dismissal under the AWOP Rule, for being an unauthorized absence of at least six consecutive days without prior notice.

Next, there is no truth to petitioner's claim that respondents did not dispute his claim of illness. On the contrary, they precisely contend that such claim is a lie, and that the medical certificate submitted to corroborate it was manufactured.

Finally, petitioner's contention that, if at all, he should be penalized only with suspension, considering that he was not punished for his January 26, February 28, and May 24, 2005 unauthorized absences. Quite the contrary, he was penalized with written warnings for these infractions. The fact that he was not suspended is of no moment; FARMCOOP management merely exercised its prerogative to choose which penalty to impose upon him. Respondents' explanation that they took care not to impose severe penalties upon petitioner out of respect for his father, who was a founding

[31] *Castañares v. Court of Appeals*, 181 Phil. 121, 134 (1979).

member of the cooperative, is well taken. Nonetheless, as elsewhere stated herein, while FARMCOOP opted not to penalize petitioner with suspension for his February 28 (second infraction) and May 24 (third infraction) absences as mandated under the AWOL and AWOP Rules of FARMCOOP's Personnel Policies and Procedures, these prior absences remain to be infractions that may be considered in treating his unauthorized June 22 to July 5, 2005 absences as his fourth infraction.

WHEREFORE, the Petition is **DENIED**. The July 29, 2011 Decision and September 18, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 03319-MIN are **AFFIRMED *in toto***.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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