Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CHARLIE HUBILLA, JOEL NAYRE, NENITA A. TAN, PEDRO MAGALLANES, JR., ARNEL YUSON, JANICE CABATBAT, JUDY PAPINA, VANESSA ESPIRITU, NOEMI YALUNG, GENALYN RESCOBILLO, FIDEL ZAQUITA, NYL B. CALINGASAN, JANICE MIRADORA, EVANGELINE CHUA, ROSCHELLE MISSION, MELANIE BALLESTEROS, MARILYN BACALSO, RENALYN ALCANTARA, FEDERICO B. VIERNES, CHRISTOPHER B. YARES, ANA MARY R. AGUILAR, MELANIE SAN MARCOS, EMERLOVE MONTE, CHONALYN LUCAS, THERESA MALICOSIO, MA. FE CERCARES, RUBELYN R. CLARO, JONALYN M. YALUNG, MARY ANN V. MACANAG, RESLYN L. FLORES, CRISTEL C. ROQUE, TERESA G. MUNAR, SUSAN A. DELA CRUZ, SHEENA KAY P. DE VERA, ARLENE R. ANES, GINA B. BINIBINI, CHERINE V. ZORILLA, MA. CRISTINE MAGTOTO, FRANCIS MARIE O. DE CASTRO, VANESSA R. ESPIRITU, RACHELLE V. QUISTORIA, JULIE ANN ILAN, ANGELIE F. PANOTES, ANABEL PAYOS, MELISSA M. PERLAS, MELANIE

G.R. No. 207354

Present:

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

B. BERSES, BARVI ROSE PERALTA, RESIE AQUE, ROWENA RIVERA, MELANIE M. DY, CHERYLYN CORO, RANELYN SUBONG, ANGELA SUBILLAGA, THELMA BARTOLABAC, MICHELLE C. ILAGAN, PRECIOUS MAE DE GUZMAN, MARY CAROLINE COLINA, FRELYN HIPOLITO, MYLINE A. CALLOS, JANETH B. SEMBILLO, LEA LYN F. FERRANCO, MAY C. SANTOS, ROSELLE A. NOBLE, JENNIFER D. SUYOM, WARREN PETCHIE C. CAJES, ROWELYN F. CATALAN, RIEZEL ANN A. ALEGRE, DEMETRIA B. PEREZ, GENALYN OSOC, JUVILYN N. NERI, JOY B. PIMENTEL, AIRENE LAYON, MARY JOY TURQUEZA, MARY ANN VALENTIN, ROSIE L. NIEBRES, MELCA MALLORCA, JOY CAGATCAGAT, DIANA CAMARO, MARIVEL DIJUMO, SHEILA DELA CRUZ, ELIZABETH ARINGO, JENALYN G. DISMAYA, MELANIE G. TRIA, GRETCHEN D. MEJOS, and JANELIE R. JIMENEZ,
Petitioners,

-versus-

HSY MARKETING LTD., CO., WANTOFREE ORIENTAL TRADING, INC., COEN FASHION HOUSE AND GENERAL MERCHANDISE, ASIA CONSUMER VALUE TRADING, INC., FABULOUS JEANS &

SHIRT & GENERAL MERCHANDISE, LSG MANUFACTURING CORPORATION, UNITE GENERAL MERCHANDISE, ROSARIO Q. CO, LUCIA PUN LING YEUNG, and ALEXANDER ARQUEZA,
Respondents.

Promulgated:
January 10, 2018

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DECISION

LEONEN, *J.*:

When the evidence in labor cases is in equipoise, doubt is resolved in favor of the employee.

This is a Petition for Review on Certiorari[1] assailing the February 25, 2013 Decision[2] and May 30, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 126522, which upheld the Labor Arbiter's finding that the employees voluntarily terminated their employment. The assailed judgments also set aside the National Labor Relations Commission's application of the principle of equipoise on the ground that the employees failed to present any evidence in their favor.

HSY Marketing Ltd., Co., Wantofree Oriental Trading, Inc., Coen Fashion House and General Merchandise, Asia Consumer Value Trading, Inc., Fabulous Jeans & Shirt & General Merchandise, LSG Manufacturing Corporation, Unite General Merchandise, Rosario Q. Co, Lucia Pun Lin Yeung, and Alexander Arqueza (respondents) are engaged in manufacturing and selling goods under the brand Novo Jeans & Shirt & General Merchandise (Novo Jeans).[4]

Sometime in May 2010 and June 2010, several Novo Jeans employees[5] went to Raffy Tulfo's radio program to air their grievances

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1 *Rollo*, pp. 10–51.

2 Id. at 53–64. The Decision was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Fifteenth Division, Court of Appeals, Manila.

3 Id. at 66–68. The Resolution was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Fifteenth Division, Court of Appeals, Manila.

4 Id. at 163, Labor Arbiter Decision.

5 Id. at 163–165, Labor Arbiter Decision and 205-207, NLRC Decision. These employees were Charlie Hubilla, Joel Nayre, Nenita A. Tan, Pedro Magallanes, Jr., Arnel Yuson, Janice Cabatbat, Judy Papina, Vanessa Espiritu, Noemi Yalung, Genalyn Rescobillo, Fidel Zaquita, Nyl B. Calingasan, Janice Miradora, Evangeline Chua, Roschelle Mission, Melanie Ballesteros, Marilyn Bacalso, Renalyn

against their employers for alleged labor violations. They were referred to the Department of Labor and Employment Camanava Regional Office.[6]

These employees claimed that on June 7, 2010, they were not allowed to enter the Novo Jeans branches they were employed in. They further averred that while Novo Jeans sent them a show cause letter the next day, they were in truth already dismissed from employment. They sent a demand letter on July 19, 2010 to amicably settle the case before the Department of Labor and Employment but no settlement was reached. They alleged that upon learning that the Department of Labor and Employment was not the proper forum to address their grievances, they decided to file a notice of withdrawal and file their complaint with the Labor Arbiter.[7]

On the other hand, Novo Jeans claimed that these employees voluntarily severed their employment but that they filed complaints later with the Department of Labor and Employment. They alleged that the employees' notice of withdrawal was not actually granted by the Department of Labor and Employment but that the employees nonetheless filed their complaints before the Labor Arbiter.[8]

On May 31, 2011, Labor Arbiter Arden S. Anni rendered a Decision[9] dismissing the complaints. He found that other than the employees' bare allegations that they were dismissed from June 6 to 9, 2010, they did not present any other evidence showing that their employment was terminated or that they were prevented from reporting for work.[10] The Labor Arbiter likewise ruled that the employees voluntarily severed their employment since the airing of their grievances on Raffy Tulfo's radio program "[was] enough reason for them not to report for work, simply because of a possible disciplinary action by [Novo Jeans]."[11] The dispositive portion of the Labor Arbiter Decision read:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby

Alcantara, Federico B. Viernes, Christopher B. Yares, Ana Mary R. Aguilar, Melanie San Marcos, Emerlove Monte, Chonalyn Lucas, Theresa Malicosio, Ma. Fe Cercares, Rubelyn R. Claro, Jonalyn M. Yalung, Mary Ann V. Macanag, Reslyn L. Flores, Cristel C. Roque, Teresa G. Munar, Susan A. Dela Cruz, Sheena Kay P. De Vera, Arlene R. Anes, Gina B. Binibini, Cherine V. Zorilla, Ma. Cristine Magtoto, Francis Marie O. De Castro, Vanessa R. Espiritu, Rachelle V. Quistoria, Julie Ann Ilan, Angelie F. Panotes, Anabel Payos, Melissa M. Perlas, Barvi Rose Peralta, Resie Aque, Rowena Rivera, Melanie M. Dy, Cherylyn Coro, Ranelyn Subong, Angela Subillaga, Thelma Bartolabac, Michelle C. Ilagan, Precious Mae De Guzman, Mary Caroline Colina, Frelyn Hipolito, Myline A. Callos, Janeth B. Sembillo, Lea Lyn F. Ferranco, May C. Santos, Roselle A. Noble, Jennifer D. Suyom, Warren Petchie C. Cajes, Rowelyn F. Catalan, Reizel Ann A. Alegre, Demetria B. Perez, Genalyn Osoc, Juvilyn N. Neri, Joy B. Pimentel, Airene Layon, Mary Joy Turqueza, Mary Ann Valentin, Rosie L. Niebres, Melca Mallorca, Joy Cagatcagat, Diana Camaro, Marivel Dijumo, Sheila Dela Cruz, Elizabeth Aringo, Melanie G. Tria, Gretchen D. Mejos, and Janelie R. Jimenez.

6 Id. at 166, Labor Arbiter Decision.

7 Id.

8 Id. at 166–167, Labor Arbiter Decision.

9 Id. at 161–172.

10 Id. at 169.

11 Id. at 170.

> rendered DISMISSING the above-captioned consolidated cases for utter lack of merit and for forum-shopping.
>
> SO ORDERED.[12]

The employees appealed to the National Labor Relations Commission.[13]

On June 25, 2012, the National Labor Relations Commission rendered a Decision[14] reversing that of the Labor Arbiter and finding that the employees were illegally dismissed. It ruled that the allegations of both parties "were unsubstantiated and thus [were] equipoised" and that "if doubt exists between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter."[15] The dispositive portion of the National Labor Relations Commission Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered finding the appeal meritorious with respect to the issue of illegal dismissal. Complainants-appellants' respective employers are hereby found liable, jointly and severally, to pay complainants-appellants their backwages and separation pay plus ten percent thereof as attorney's fees. Accordingly, the decision of the Labor Arbiter dated May 31, 2011 is hereby MODIFIED. All other dispositions STANDS (sic) undisturbed.
>
> The computation of the aforesaid awards is as follows:
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> . . . .
>
> TOTAL AWARD Php30,969,426.00
>
> SO ORDERED.[16]

Novo Jeans moved for partial reconsideration[17] but was denied by the National Labor Relations Commission in its August 24, 2012 Resolution.[18] Thus, it filed a Petition for Certiorari[19] with the Court of Appeals.

On February 25, 2013, the Court of Appeals rendered a Decision[20]

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12 Id. at 172.
13 Id. at 174–191.
14 Id. at 205–230. The Decision was penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Isabel G. Panganiban-Ortiguerra and Nieves E. Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.
15 Id. at 212.
16 Id. at 215–230.
17 Id. at 233–256.
18 Id. at 257–261. The Resolution was penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Isabel G. Panganiban-Ortiguerra and Nieves E. Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.
19 Id. at 275–325.
20 Id. at 53–64.

reversing the Decision of the National Labor Relations Commission and reinstating the Labor Arbiter Decision. The Court of Appeals found that Novo Jeans' counsel, as the affiant, substantially complied with the verification requirement even if his personal knowledge was based on facts relayed to him by his clients and on authentic records since he was not privy to the antecedents of the case.[21]

The Court of Appeals stated that while the employees merely alleged that they were no longer allowed to report to work on a particular day, Novo Jeans was able to present the First Notice of Termination of Employment sent to them, asking them to explain their sudden absence from work without proper authorization. It likewise found that the Notices of Termination of Employment (Notices) did not indicate that the employees were dismissed or that they were prevented from entering the stores.[22]

According to the Court of Appeals, the equipoise rule was inapplicable in this case since it only applied when the evidence between the parties was equally balanced. Considering that only Novo Jeans was able to present proof of its claims, the Court of Appeals was inclined to rule in its favor.[23] Thus, the Court of Appeals concluded that the case involved voluntary termination of employment, not illegal dismissal.[24] The dispositive portion of its Decision read:

> WHEREFORE, in view of the foregoing, the instant Petition is hereby GRANTED. The assailed Decision dated June 25, 2012 and Resolution dated August 24, 2012 rendered by the National Labor Relations Commission in NLRC LAC No. 07-001930-11/NLRC NCR Cases No. 08-10645-10, 08-10649-10, 08-10655-10, 08-10660-10, 08-10662–10, 08-10666-10 and 08-10670-10 are hereby REVERSED and SET ASIDE. Corollarily, the Decision dated May 31, 2011 rendered by the Labor Arbiter is hereby REINSTATED.
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> SO ORDERED.[25]

The employees filed a Motion for Reconsideration[26] but it was denied in the Court of Appeals May 30, 2013 Resolution.[27] Hence, this Petition[28] was filed before this Court.

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21 Id. at 61.
22 Id. at 61–62.
23 Id. at 62.
24 Id. at 63.
25 Id. at 63–64.
26 Id. at 467–473.
27 Id. at 66–68.
28 Id. at 10–51. Respondents filed their Comment on September 30, 2013 (*rollo*, pp. 494–524) to which petitioners filed their Reply on February 12, 2014 (*rollo*, pp. 526–541). The parties were then directed by this Court to submit their respective memoranda (*rollo*, pp. 544–582 and 583–607) on March 31, 2014 (*rollo*, pp. 543–543-A).

Petitioners point out that the Court of Appeals erred in not finding grave abuse of discretion, considering that the petition filed before it was a special civil action for certiorari. They aver that the Court of Appeals should not have used the special remedy of certiorari merely to re-evaluate the findings of a quasi-judicial body absent any finding of grave abuse of discretion.[29]

Petitioners likewise argue that respondents were unable to substantially comply with the verification requirement before the Court of Appeals. They submit that respondents' counsel would have been privy to the antecedents of the case so as to have personal knowledge and not merely knowledge as relayed by his clients.[30] They add that respondents "deliberately withheld the Annexes of the Position Paper of the Petitioners submitted to the Labor Arbiter[;] hence, said Position Paper cannot be considered authentic."[31]

Petitioners assert that the Court of Appeals had no factual basis to rule in respondents' favor since there was no evidence to prove that the Notices were sent to petitioners at their last known addresses. The evidence on record merely showed sample letters of the Notices.[32] Petitioners maintain that this is a situation where the employees allege that they were prevented from entering their work place and the employer alleges otherwise. They insist that if doubt exists between the evidence presented by the employer and the evidence presented by the employees, the doubt must be resolved in favor of the employees, consistent with the Labor Code's policy to afford protection to labor.[33]

On the other hand, respondents argue that a defect in the verification will not necessarily cause the dismissal of the pleading and that they had sufficiently complied with the requirement when the affiant attested that the petition was based on facts relayed by his clients and on authentic records.[34] They also point out that only relevant and pertinent documents should be attached to their pleadings before the courts; thus, the annexes of petitioner, not being relevant or pertinent, need not be attached to their pleadings.[35]

Respondents contend that the Court of Appeals recognized that the issue in their Petition for Certiorari concerned the alleged grave abuse of discretion of the National Labor Relations Commission and thoroughly discussed the issue in the assailed judgment.[36] They likewise submit that the

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29 Id. at 589–590.
30 Id. at 599-A–600.
31 Id. at 603.
32 Id. at 594–597.
33 Id. at 598–599.
34 Id. at 552–554.
35 Id. at 555–556.
36 Id. at 560–567.

Court of Appeals may review factual findings of the National Labor Relations Commission since the finding of grave abuse of discretion requires a re-examination of the sufficiency or absence of evidence.[37]

Respondents maintain that the receipt of the Notices was admitted and recognized by the parties before the Labor Arbiter and was never brought as an issue until the National Labor Relations Commission made a finding that the Notices were never received.[38] According to respondents, petitioners were estopped from questioning the receipt of the Notices when they already admitted to their receipt before the Labor Arbiter.[39] They argue that the Labor Arbiter and the Court of Appeals did not err in finding that the termination of employment was voluntary since petitioners failed to present evidence of the fact of their dismissal.[40]

The main issue before this Court is whether or not petitioners were illegally dismissed by respondents. However, there are certain procedural issues that must first be addressed, in particular: (1) whether or not the Court of Appeals may, in a petition for certiorari, review and re-assess the factual findings of the National Labor Relations Commission; and (2) whether or not verification based on facts relayed to the affiant by his clients is valid.

I

Before discussing the merits of the case, this Court takes this opportunity to clarify certain doctrines regarding the review of factual findings by the Court of Appeals.

Factual findings of labor officials exercising quasi-judicial functions are accorded great respect and even finality by the courts when the findings are supported by substantial evidence.[41] Substantial evidence is "the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion."[42] Thus, in labor cases, the issues in petitions for certiorari before the Court of Appeals are limited only to whether the National Labor Relations Commission committed grave abuse of discretion.

However, this does not mean that the Court of Appeals is conclusively bound by the findings of the National Labor Relations Commission. If the findings are arrived at arbitrarily, without resort to any substantial evidence, the National Labor Relations Commission is deemed to have gravely abused its discretion:

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37 Id. at 569–570.
38 Id. at 571.
39 Id. at 572.
40 Id. at 574.
41 *See Norkis Trading Corporation v. Buenavista*, 697 Phil. 74 (2012) [Per J. Reyes, First Division].
42 *Norkis Trading Corporation v. Buenavista*, 697 Phil. 74, 91 (2012) [Per J. Reyes, First Division].

> On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The [Court of Appeals] can then grant a petition for certiorari if it finds that the [National Labor Relations Commission], in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence. It is within the jurisdiction of the [Court of Appeals], whose jurisdiction over labor cases has been expanded to review the findings of the [National Labor Relations Commission].[43]

The Court of Appeals may also review factual findings if quasi-judicial agencies' findings are contradictory to its own findings.[44] Thus, it must re-examine the records to determine which tribunal's findings were supported by the evidence.

In this instance, the Labor Arbiter and the National Labor Relations Commission made contradictory factual findings. Thus, it was incumbent on the Court of Appeals to re-examine their findings to resolve the issues before it. The Court of Appeals also found that the findings of the National Labor Relations Commission were not supported by substantial evidence, and therefore, were rendered in grave abuse of discretion.

Thus, in the determination of whether the National Labor Relations Commission committed grave abuse of discretion, the Court of Appeals may re-examine facts and re-assess the evidence. However, its findings may still be subject to review by this Court.

This Court notes that in cases when the Court of Appeals acts as an appellate court, it is still a trier of facts. Questions of fact may still be raised by the parties. If the parties raise pure questions of law, they may directly file with this Court. Moreover, contradictory factual findings between the National Labor Relations Commission and the Court of Appeals do not automatically justify this Court's review of the factual findings. They merely present a prima facie basis to pursue the action before this Court. The need to review the Court of Appeals' factual findings must still be pleaded, proved, and substantiated by the party alleging their inaccuracy. This Court likewise retains its full discretion to review the factual findings.

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43 Id. *citing Prince Transport, Inc. v. Garcia*, 654 Phil. 296 (2011) [Per J. Peralta, Second Division] and *Emcor Incorporated v. Sienes*, 615 Phil. 33 (2009) [Per J. Peralta, Third Division].

44 *See General Milling Corporation v. Viajar*, 702 Phil. 532 (2013) [Per J. Reyes, First Division].

II

All petitions for certiorari are required to be verified upon filing.[45] The contents of verification are stated under Rule 7, Section 4 of the Rules of Court:

> Section 4. Verification. Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
>
> A pleading required to be verified which contains a verification based on "information and belief", or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

Thus, for a pleading to be verified, the affiant must attest that he or she has read the pleading and that the allegations are true and correct based on his or her *personal knowledge* or on *authentic records*. Otherwise, the pleading is treated as an unsigned pleading.

Shipside Incorporation v. Court of Appeals[46] required that the assurance should "not [be] the product of the imagination or a matter of speculation, and that the pleading is filed in good faith."[47] However, verification is merely a formal, not jurisdictional, requirement. It will not result in the outright dismissal of the case since courts may simply order the correction of a defective verification.[48]

Petitioners argue that respondents' verification was invalid since it was not based on authentic records, alleging that respondents' failure to attach petitioners' position paper annexes to their Petition for Certiorari before the Court of Appeals made their records inauthentic.[49]

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45 *See* RULES OF COURT, Rule 65, sec. 1 provides:
Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

46 404 Phil. 981 (2001) [Per J. Melo, Third Division].

47 Id. at 995.

48 *See Jimenez vda. De Gabriel v. Court of Appeals*, 332 Phil. 157 (1996) [Per J. Vitug, First Division].

49 *Rollo*, p. 603.

A pleading may be verified by attesting that the allegations are based either on personal knowledge *and* on authentic records, or on personal knowledge *or* on authentic records. The use of *either*, however, is not subject to the affiant's whim but rather on the nature of the allegations being attested to. Circumstances may require that the affiant attest that the allegations are based only on personal knowledge or only on authentic records. Certainly, there can be situations where the affiant must attest to the allegations being based on both personal knowledge and on authentic records, thus:

> A reading of the above-quoted Section 4 of Rule 7 indicates that a pleading may be verified under either of the two given modes or under both. The veracity of the allegations in a pleading may be affirmed based on either one's own personal knowledge or on authentic records, or both, as warranted. The use of the [conjunction] "or" connotes that either source qualifies as a sufficient basis for verification and, needless to state, the concurrence of both sources is more than sufficient. Bearing both a disjunctive and conjunctive sense, this parallel legal signification avoids a construction that will exclude the combination of the alternatives or bar the efficacy of any one of the alternatives standing alone.
>
> Contrary to petitioner's position, the range of permutation is not left to the pleader's liking, but is dependent on the surrounding nature of the allegations which may warrant that a verification be based either purely on personal knowledge, or entirely on authentic records, or on both sources.[50]

Authentic records may be the basis of verification if a substantial portion of the allegations in the pleading is based on prior court proceedings.[51] Here, the annexes that respondents allegedly failed to attach are employee information, supporting documents, and work-related documents proving that petitioners were employed by respondents.[52] The fact of petitioners' employment, however, has not been disputed by respondents. These documents would not have been the "relevant and pertinent"[53] documents contemplated by the rules.

Petitioners likewise contend that respondents' Petition for Certiorari[54] before the Court of Appeals should not have been given due course since the verification[55] signed by respondents' counsel, Atty. Eller Roel I. Daclan (Atty. Daclan), attested that:

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50 *Hun Hyung Park v. Eung Won Choi*, 544 Phil. 431, 438–439 (2007) [Per J. Carpio Morales, Second Division] *citing Bautista v. Sandiganbayan*, 387 Phil. 872, 881–882 (2000) [Per J. Bellosillo, Second Division] and *China Banking Corporation v. HDMF*, 366 Phil. 913 (1999) [Per J. Gonzaga-Reyes, Third Division].

51 *See Hun Hyung Park v. Eung Won Choi*, 544 Phil. 431 (2007) [Per J. Carpio Morales, Second Division]

52 *Rollo*, p. 102.

53 RULES OF COURT, Rule 65, sec. 1.

54 *Rollo*, pp. 275–325.

55 Id. at 313.

> 2. I caused the preparation of the foregoing petition and attest that, based upon facts relayed to me by my clients and upon authentic records made available, all the allegations contained therein are true and correct[.][56]

Thus, the issue on verification centers on whether the phrase "based upon facts relayed to me by my clients" may be considered sufficient compliance. To resolve this issue, this Court must first address whether respondents' counsel may sign the verification on their behalf.

The rules on compliance with the requirement of the verification and certification of non-forum shopping were already sufficiently outlined in *Altres v. Empleo*,[57] where this Court stated:

> For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:
>
> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
>
> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
>
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons".
>
> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
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> 6) Finally, the certification against forum shopping must be

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56 Id.

57 594 Phil. 246 (2008) [Per J. Carpio Morales, En Banc].

> executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[58]

The policy behind the requirement of verification is to guard against the filing of fraudulent pleadings. Litigants run the risk of perjury[59] if they sign the verification despite knowledge that the stated allegations are not true or are products of mere speculation:

> Verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice. For what is at stake is the matter of verity attested by the sanctity of an oath to secure an assurance that the allegations in the pleading have been made in good faith, or are true and correct and not merely speculative.[60]

Thus, for verification to be valid, the affiant must have "ample knowledge to swear to the truth of the allegations in the complaint or petition."[61] Facts relayed to the counsel by the client would be insufficient for counsel to swear to the truth of the allegations in a pleading. Otherwise, counsel would be able to disclaim liability for any misrepresentation by the simple expediency of stating that he or she was merely relaying facts with which he or she had no competency to attest to. For this reason, the Rules of Court require no less than *personal* knowledge of the facts to sufficiently verify a pleading.

Respondents' counsel, not having sufficient personal knowledge to attest to the allegations of the pleading, was not able to validly verify the facts as stated. Therefore, respondents' Petition for Certiorari before the Court of Appeals should have been considered as an unsigned pleading.

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58 Id. at 261–262 *citing Sari-Sari Group of Companies, Inc. v. Piglas-Kamao*, 583 Phil. 564 (2008) [Per J. Austria-Martinez, Third Division]; *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank*, 586 Phil. 810 (2008) [Per J. Velasco, Jr., Second Division]; *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320 (2008) [Per J. Austria-Martinez, Third Division]; *Juaban v. Espina*, 572 Phil. 357 (2008) [Per J. Chico-Nazario, Third Division]; *Pacquing v. Coca-Cola Philippines, Inc.*, 567 Phil. 323 (2008) [Per J. Austria-Martinez, Third Division]; *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415 (2004) [Per J. Callejo, Sr., Second Division]; *Fuentebella v. Castro*, 526 Phil. 668 (2006) [Per J. Azcuna, Second Division]; and *Eslaban, Jr. v. Vda. de Onorio*, 412 Phil. 667 (2001) [Per J. Mendoza, Second Division].

59 *See* REV. PEN. CODE, art. 183 which states:
Article 183. False Testimony in other cases and perjury in solemn affirmations. The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

60 *Hun Hyung Park v. Eung Won Choi*, 544 Phil. 431, 439 (2007) [Per J. Carpio Morales, Second Division] *citing Grogun, Incorporation v. National Power Corp.*, 458 Phil. 217, 230–231 (2003) [Per J. Ynares-Santiago, First Division] and *Clavecilla v. Quitain*, 518 Phil. 53 (2006) [Per J. Austria-Martinez, First Division].

61 *Altres v. Empleo*, 594 Phil. 246, 261 (2008) [Per J. Carpio Morales, En Banc].

Respondents' certification of non-forum shopping is likewise defective. The certification of non-forum shopping must be signed by the litigant, not his or her counsel. The litigant may, for justifiable reasons, execute a special power of attorney to authorize his or her counsel to sign on his or her behalf.[62] In this instance, the verification and certification against forum shopping[63] was contained in one (1) document and was signed by respondents' counsel, Atty. Daclan.

Corporations, not being natural persons, may authorize their lawyers through a Secretary's Certificate to execute physical acts. Among these acts is the signing of documents, such as the certification against forum shopping. A corporation's inability to perform physical acts is considered as a justifiable reason to allow a person other than the litigant to sign the certification against forum shopping.[64] By the same reasoning, partnerships, being artificial entities, may also authorize an agent to sign the certification on their behalf.

Respondents include three (3) corporations, one (1) partnership, and three (3) sole proprietorships. Respondents LSG Manufacturing Corporation, Asia Consumer Value Trading, Inc., and Wantofree Oriental Trading, Inc. submitted Secretary's Certificates[65] authorizing Atty. Daclan to sign on their behalf. On the other hand, respondent HSY Marketing Ltd., Co. submitted a Partnership Certification.[66] Meanwhile, respondents Alexander Arqueza (Arqueza), proprietor of Fabulous Jeans and Shirt and General Merchandise, Rosario Q. Co (Co), proprietor of Unite General Merchandise, and Lucia Pun Ling Yeung (Yeung), proprietor of Coen Fashion House & General Merchandise, submitted Special Powers of Attorney[67] on their behalf.

However, sole proprietorships, unlike corporations, have no separate legal personality from their proprietors.[68] They cannot claim the inability to do physical acts as a justifiable circumstance to authorize their counsel to sign on their behalf. Since there was no other reason given for authorizing their counsel to sign on their behalf, respondents Arqueza, Co, and Yeung's certification against forum shopping is invalid.

While courts may simply order the resubmission of the verification or its subsequent correction,[69] a defect in the certification of non-forum shopping is not curable[70] unless there are substantial merits to the case.[71]

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62 *See Altres v. Empleo*, 594 Phil. 246 (2008) [Per J. Carpio Morales, En Banc].
63 *Rollo*, p. 313.
64 *See BA Savings Bank v. Sia*, 391 Phil. 370 (2000) [Per J. Panganiban, Third Division].
65 *Rollo*, pp. 314–315, 320–321, and 322–323.
66 Id. at 317–318.
67 Id. at 316, 319, and 324.
68 *See Mangila v. Court of Appeals*, 435 Phil. 870 (2002) [Per J. Carpio, Third Division].
69 *See vda. De Gabriel v. Court of Appeals*, 332 Phil. 157 (1996) [Per J. Vitug, First Division].
70 *See Altres v. Empleo*, 594 Phil. 246 (2008) [Per J. Carpio Morales, En Banc].

However, respondents' Petition for Certiorari before the Court of Appeals was unmeritorious. Thus, its defective verification and certification of non-forum shopping should have merited its outright dismissal.

III

When the evidence of the employer and the employee are in equipoise, doubts are resolved in favor of labor.[72] This is in line with the policy of the State to afford greater protection to labor.[73]

Petitioners allege that they were illegally dismissed from service when they were prevented from entering their work premises a day after airing their grievance in a radio show. On the other hand, respondents deny this allegation and state that petitioners were never dismissed from employment.

In illegal dismissal cases, the burden of proof is on the employer to prove that the employee was dismissed for a valid cause and that the employee was afforded due process prior to the dismissal.[74]

Respondents allege that there was no dismissal since they sent petitioners a First Notice of Termination of Employment, asking them to show cause why they should not be dismissed for their continued absence from work. However, petitioners argue that this evidence should not be given weight since there is no proof that they received this Notice.

Indeed, no evidence has been presented proving that each and every petitioner received a copy of the First Notice of Termination of Employment. There are no receiving copies or acknowledgement receipts. What respondents presented were "Sample Letters of Respondents"[75] and not the actual Notices that were allegedly sent out.

While petitioners admitted that the Notices may have been sent, they have never actually admitted to receiving any of them. In their Position Paper before the Labor Arbiter and in their Memorandum of Appeal before the National Labor Relations Commission:

> On June 7, 2010, all employees who went to complain against the

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71 *See Sy Chin v. Court of Appeals*, 399 Phil. 442 (2000) [Per J. Kapunan, First Division].

72 *Mobile Protective & Detective Agency v. Ompad*, 494 Phil. 621, 635 (2005) [Per J. Puno, Second Division] *citing Asuncion vs. NLRC*, 414 Phil. 329 (2001) [Per J. Kapunan, First Division].

73 *See* LABOR CODE, sec. 4 and CONST., art. II, sec. 18.

74 *See Ledesma v. National Labor Relations Commission*, 562 Phil. 939 (2007) [Per J. Chico-Nazario, Third Division].

75 *Rollo*, p. 56, *see* footnote 3.

> respondent[s] were not allowed to enter the stores of respondent[s]. The next day, respondent[s] sent letter[s] to the employees purporting to be a show cause letter but the truth of the matter is that all employees who went to the office of Tulfo to complain against the respondent[s] were already terminated[.][76]

The lack of evidence of petitioners' receipts suggests that the Notices were an afterthought, designed to free respondents from any liability without having to validly dismiss petitioners.

There is likewise no proof that petitioners abandoned their employment. To constitute abandonment, the employer must prove that "first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, [that] there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act."[77]

Abandonment is essentially a matter of intent. It cannot be presumed from the occurrence of certain equivocal acts.[78] There must be a positive and overt act signifying an employee's deliberate intent to sever his or her employment. Thus, mere absence from work, even after a notice to return, is insufficient to prove abandonment.[79] The employer must show that the employee unjustifiably refused to report for work *and* that the employee deliberately intended to sever the employer-employee relation. Furthermore, there must be a concurrence of these two (2) elements.[80] Absent this concurrence, there can be no abandonment.

Respondents have not presented any proof that petitioners intended to abandon their employment. They merely alleged that petitioners have already voluntarily terminated their employment due to their continued refusal to report for work. However, this is insufficient to prove abandonment.

Where both parties in a labor case have not presented substantial evidence to prove their allegations, the evidence is considered to be in

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76 Id. at 103 and 177.

77 *MZR Industries v. Colambot*, 716 Phil. 617, 627 (2013) [Per J. Peralta, Third Division] *citing Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003) [Per J. Sandoval-Gutierrez, Third Division]; *MSMG-UWP v. Hon. Ramos*, 383 Phil. 329, 371–372 (2000) [Per J. Purisima, Third Division]; *Icawat v. NLRC*, 389 Phil. 441, 445 (2000) [Per J. Buena, Second Division]; *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*, 418 Phil. 411, 427 (2005) [Per J. Sandoval-Gutierrez, Third Division]; *Seven Star Textile Company v. Dy*, 541 Phil. 468 (2007) [Per J. Callejo, Sr., Third Division].

78 *See Samarca v. Arc-Men Industries*, 459 Phil. 506 (2003) [Per J. Sandoval-Gutierrez, Third Division].

79 *See Insular Life Assurance Co., Ltd. Employees Association-NATU v. The Insular Life Assurance Co., Ltd.*, 147 Phil. 194 (1971) [Per J. Castro, En Banc].

80 *See Hodieng Concrete Products v. Emilia*, 491 Phil. 434 (2005) [Per J. Sandoval-Gutierrez, Third Division].

equipoise. In such a case, the scales of justice are tilted in favor of labor. Thus, petitioners are hereby considered to have been illegally dismissed.

This Court notes that had petitioners been able to substantially prove their dismissal, it would have been rendered invalid not only for having been made without just cause[81] but also for being in violation of their constitutional rights. A laborer does not lose his or her right to freedom of expression upon employment.[82] This is "[a] political [right] essential to man's enjoyment of his [or her] life, to his [or her] happiness, and to his [or her] full and complete fulfillment."[83] While the Constitution and the courts recognize that employers have property rights that must also be protected, the human rights of laborers are given primacy over these rights. Property rights may prescribe. Human rights do not.[84]

When laborers air out their grievances regarding their employment in a public forum, they do so in the exercise of their right to free expression. They are "fighting for their very survival, utilizing only the weapons afforded them by the Constitution—the untrammelled enjoyment of their basic human rights."[85] Freedom and social justice afford them these rights and it is the courts' duty to uphold and protect their free exercise. Thus, dismissing employees merely on the basis that they complained about their employer in a radio show is not only invalid, it is unconstitutional.

However, there not being sufficient proof that the dismissal was meant to suppress petitioners' constitutional rights, this Court is constrained to limit its conclusions to that of illegal dismissal under the Labor Code.

Petitioners were not dismissed under any of the causes mentioned in Article 279 [282][86] of the Labor Code. They were not validly informed of the causes of their dismissal. Thus, their dismissal was illegal.

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81 *See* LABOR CODE, art. 282 on the acts and omissions constituting just causes for termination.

82 *See* CONST., art. III, sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

83 *Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.*, 151-A Phil. 656, 675 (1973) [Per J. Makasiar, En Banc].

84 *See Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.,* 151-A Phil. 656 (1973) [Per J. Makasiar, En Banc].

85 *Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.*, 151-A Phil. 656, 678 (1973) [Per J. Makasiar, En Banc].

86 LABOR CODE, art. 297 [282] provides:
Article 297 [282]. Termination by employer. An employer may terminate an employment for any of the following causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing.

An employee who is found to have been illegally dismissed is entitled to reinstatement without loss of seniority rights and other privileges.[87] If reinstatement proves to be impossible due to the strained relations between the parties, the illegally dismissed employee is entitled instead to separation pay.[88]

WHEREFORE, the Petition is **GRANTED**. The February 25, 2013 Decision and May 30, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 126522 are **SET ASIDE**. Respondents are **DIRECTED** to reinstate petitioners to their former positions without loss of seniority rights or other privileges.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

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87 *See* LABOR CODE, art. 294 [279]. *See also Pepsi Cola Products v. Molon*, 704 Phil. 120 (2013) [Per J. Perlas-Bernabe, Second Division].

88 See *Kingsize Manufacturing Co. v. National Labor Relations Commission*, 308 Phil. 367 (1994) [Per J. Mendoza. Second Division].

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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 09 2018