Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BOOKMEDIA PRESS, INC. and BENITO J. BRIZUELA, Petitioners,	**G.R. No. 213009**
	Present:
- *versus* -	PERALTA, *J.*, *Chairperson*, LEONEN, REYES, A., JR., HERNANDO, and INTING, *JJ.*
LEONARDO* SINAJON and YANLY ABENIR,** Respondents.	**Promulgated:** July 17, 2019

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DECISION

PERALTA, *J.*:

This case is an appeal[1] from the Decision[2] dated September 11, 2013 and Resolution dated June 9, 2014[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 127981.

The facts:

Petitioner Bookmedia Press, Inc. (*Bookmedia*) is a local printing company. Petitioner Benito J. Brizuela (*Brizuela*), on the other hand, is the president of Bookmedia.

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* Also referred to as Leonard in some parts of the *rollo*.

** "Sanin" in some parts of the *rollo*.

1 *Rollo*, pp. 10-29. The appeal was filed as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

2 *Id.* at 33-41. The decision was penned by Associate Justice Amelita G. Tolentino, with the concurrence of Associate Justices Ramon R. Garcia and Danton Q. Bueser.

3 *Id.* at 43-44.

Bookmedia hired respondents Yanly Abenir (*Abenir*) and Leonardo Sinajon (*Sinajon*) in 1995 and 1996, respectively, as in-house security personnel.[4] As in-house security personnel, respondents were tasked with "*secur[ing] the safety and well-being of x x x Brizuela [and also of] monitor[ing] the actuations and conditions of certain contractual workers within [Bookmedia's] plant while x x x Brizuela is not around[.]*"[5]

On July 20, 1997, Brizuela received a report from one Larry Valdoz (*Valdoz*), a security guard of Bookmedia, which claims that respondents, earlier in the day, had left the company premises moments after punching-in their respective time cards.[6] The report also alleges that Sinajon returned on the evening of the same day and punched-out his and Abenir's time cards.[7]

After receiving such report, Brizuela immediately summoned both respondents for an explanation.[8] Respondents, however, apparently ignored Brizuela.[9]

The following morning, however, respondents submitted their letters-explanations[10] to Brizuela. In the letters, the respondents admitted to punching-in their time cards and then leaving work early on July 20, 1997, but explained that they merely did so because they had to attend to some emergency in their respective homes on that day:[11]

a. For Abenir, he stated that he left early on July 20, 1997 because he received a call from his wife urging him to come home immediately because his brother was in trouble. Respondent Abenir said he left work at around 5:00 p.m., but as he forgot to punch-out his time card, he asked another person to do it for him;[12] and

b. For Sinajon, he stated that he had to leave work early on July 20, 1997 because of a call informing him that the roof of his house was destroyed and, as a storm is impending, is in urgent need of repair. Sinajon said that he also had to take care of his wife who was, at that time, suffering from a fever. He manifested that he tried to return to work immediately after attending to his concerns but, due to strong rains, was only able to make it back at around 6:00 p.m. He stayed and waited in the company premises until the arrival of his replacement, one named Abe.[13]

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4 *Id.* at 65.
5 *Id.* at 34.
6 *Id.* at 61.
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.* at 62-63.
11 *Id.*
12 *Id.* at 62.
13 *Id.* at 63.

The next day, or on July 22, 1997, Bookmedia fired both respondents.

Contending that their firing has been effected without cause and observance of due process, the respondents filed before the Labor Arbiter (*LA*) a complaint for illegal dismissal[14] against petitioners.

The petitioners, for their part, denied the contention. They alleged that the incident on July 20, 1997 was only the latest in a string of past incidents where respondents were caught skipping work after punching-in their time cards. Petitioners submit that the respondents' repeated infractions of the company's time policy thus made the latter susceptible to being dismissed on account of, among others, *serious misconduct*, *willful disobedience of an employer's lawful order*, or *fraud*.

To substantiate their allegation, the petitioners submitted before the LA the mentioned letters-explanations of the respondents.

On April 1, 1998, the LA rendered a Decision[15] finding as illegal the dismissal of the respondents due to the failure of the petitioners to prove otherwise. The LA pointed out that petitioners really presented no evidence to support their accusation that respondents have *repeatedly* been leaving work early after punching-in their time cards.[16]

According to the LA, the only evidence presented by the petitioners to fortify their allegations were the letters-explanations of the respondents which, as it happens, only contained the respondents' admissions with respect to the incident on July 20, 1997.[17] In the letters, the respondents did admit to punching-in their cards and then leaving work early — but only on July 20, 1997 — and merely because they had to attend to some emergency.[18] Hence, per the records, there was only one instance established where the respondents had actually committed an infraction of Bookmedia's time policy.[19]

The LA opined that a single instance of said infraction cannot be considered as a just cause for the dismissal of the respondents; the penalty itself being too harsh given the circumstances. According to the LA, a "*written reprimand with a warning that commission of the same offense would be dealt with more severely*" would have been the reasonable penalty to impose against the respondents.[20]

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14 The complaint also included claims for underpayment of salaries, and nonpayment of overtime, holiday and 13th month pay.

15 *Rollo*, pp. 65-75.

16 *Id.* at 68

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

Verily, the LA ordered the petitioners to, among others,[21] reinstate the respondents without loss of seniority rights and pay them backwages.

The petitioners appealed to the National Labor Relations Commission (*NLRC*).

The petitioners' appeal was initially dismissed by the NLRC on October 12, 1998 for their failure to file a bond along with such appeal. After an unsuccessful motion for reconsideration, the petitioners filed with the CA a petition for *certiorari* to challenge the dismissal of their appeal. On September 15, 2005, the CA granted such petition and ordered the reinstatement of petitioners' appeal with the NLRC.[22]

On July 25, 2012, the NLRC issued a Decision[23] denying, on the merits, the appeal of the petitioners and affirming the LA decision. Petitioners next filed a petition for *certiorari* before the CA.

On September 11, 2013, the CA rendered a Decision[24] dismissing petitioners' *certiorari* petition and affirming the NLRC decision. Petitioners moved for reconsideration, but the CA remained steadfast.[25]

Hence, this petition for review on *certiorari*.

OUR RULING

We deny the petition.

I

We emphasize, at the outset, that the LA's finding — that there was established only one instance (*i.e.*, on July 20, 1997) where respondents had left work early after having their time cards punched-in — was affirmed in the proceedings *a quo* by both the NLRC and the CA. Accordingly, and in the absence of compelling circumstances[26] that could cast doubt on its

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21 *See rollo*, pp. 131-137. The LA likewise awarded unpaid overtime pay, premium pay for holidays and rest days, holiday pay and 13th month pay in the aggregate amounts of ₱43,419.02 for Sinajon and ₱64,627.17 for Abenir. In addition, the LA also decreed payment of respondents' salaries from July 16 up to July 22, 1997 in the amounts of ₱1,470.00 for Sinajon and ₱1,498.00 for Abenir. Finally, the LA awarded attorney's fees of ₱10,594.35 for each of the respondents.

22 *See rollo*, p. 35.

23 *Rollo*, pp. 95-101.

24 *Id.* at 33-41.

25 *Id.* at 43-44.

26 The case of *The Insular Life Assurance Co., Ltd. v. Court of Appeals* (472 Phil. 11, 22-23 [2004]) enumerates the exceptions when factual findings affirmed by the CA may be disturbed by the Supreme Court, to wit: "(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4)

veracity, such finding, factual as it is, ought to be binding and conclusive upon us insofar as the present petition is concerned.

Thus, the only real issue left to be resolved here is whether the actions of the respondents on that solitary incident on July 20, 1997 constituted just causes for the dismissal of the respondents.

The law enumerates what it considers as just causes for the dismissal of an employee. Article 297 of the Labor Code[27] provides:

> ARTICLE 297. *Termination by Employer.* — An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct **or willful disobedience by the employee of the lawful orders of his employer** or representative in connection with his work;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (c) **Fraud** or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> (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
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> (e) Other causes analogous to the foregoing.

We agree with the LA, the NLRC and the CA in holding that the actions of the respondents on July 20, 1997 do not qualify as just causes for the latter's dismissal. Such actions, taken with the attendant circumstances of this case, cannot be considered as *serious misconduct*, *willful disobedience of an employer's lawful order,* or *fraud.*

In *Ha Yuan Restaurant v. NLRC*,[28] we defined the just cause of serious misconduct as:

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when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion."

[27] Presidential Decree No. 442, as amended. Article 297 of the Labor Code was originally Article 282, before being renumbered by DOLE Department Advisory No. 1, series of 2015.

[28] 516 Phil. 124 (2006).

> [T]he transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, **willful in character, and implies wrongful intent and not mere error of judgment**.[29] (Emphasis supplied.)

In *Gold City Integrated Port Services, Inc. (INPORT) v. NLRC*,[30] on the other hand, we described what willful disobedience of an employer's lawful order entails:

> Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two (2) requisites: **the employee's assailed conduct must have been willful or intentional, the wilfulness being characterized by a "wrongful and perverse attitude"**; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[31] (Emphasis supplied; citation omitted.)

Lastly, in *National Power Corp. v. Olandesca*,[32] we elucidated upon the concept of dishonesty — an allied notion of fraud — as follows:

> [D]ishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[33]

As can be observed from the foregoing pronouncements, the just causes of serious misconduct, willful disobedience of an employer's lawful order, and fraud all imply the presence of "*willfulness*" or "*wrongful intent*" on the part of the employee. Hence, serious misconduct and willful disobedience of an employer's lawful order may only be appreciated when the employee's transgression of a rule, duty or directive has been the product of "*wrongful intent*" or of a "*wrongful and perverse attitude*,"[34] but not when the same transgression results from simple negligence or "*mere error in judgment*."[35] In the same vein, fraud and dishonesty can only be used to justify the dismissal of an employee when the latter commits a dishonest act that reflects a disposition to deceive, defraud and betray his employer.[36]

The requirement of willfulness or wrongful intent in the appreciation of the aforementioned just causes, in turn, underscores the intent of the law to reserve only to the gravest infractions the ultimate penalty of dismissal. It is essential that the infraction committed by an employee is serious, not merely trivial, and be reflective of a certain degree of depravity or ineptitude on the

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29 *Id.* at 128.
30 267 Phil. 863 (1990).
31 *Id.* at 872.
32 633 Phil. 278 (2010).
33 *Id.* at 288, citing *Phil. Amusement and Gaming Corp. v. Rilloraza*, 412 Phil. 114 (2001).
34 *See* notes 29 and 31.
35 *See* note 29.
36 *The Hongkong & Shanghai Banking Corp v. NLRC*, 328 Phil. 1156, 1165 (1996).

employee's part, in order for the same to be a valid basis for the termination of his employment.[37]

The actions of the respondents on July 20, 1997, to our mind, lack the elements of willfulness or seriousness so as to warrant their dismissal.

The respondents' act of leaving the workplace early, though unauthorized and violative of company time policy, was certainly not motivated by any wanton desire to transgress said policy. As explained by the respondents in their letters, they only felt compelled to leave work early on July 20, 1997 because of emergencies they had to address in their respective homes. Viewed in such context, the failure of the respondents to seek permission prior to leaving early could thus be attributed to a momentary lapse of judgment on their part, rather than to some design to circumvent Bookmedia's time policy. For this reason, such transgression of a company policy cannot be characterized either as serious misconduct or a willful disobedience of the employer's order.

While Abenir may have also committed dishonesty when he had another person punch-out his (Abenir's) time card later in the day of July 20, 1997, we find that the same may be somewhat mitigated by the fact that Abenir did render work up until 5:00 p.m. of the same day. As Abenir explained, he only asked another person to punch-out his (Abenir's) time card because he forgot to do so when he left work at around 5:00 p.m. of July 20, 1997. Certainly, given such background, the dishonest act of Abenir does not equate to the fraud contemplated by the law that could warrant the imposition of the penalty of dismissal.

In *The Hongkong & Shanghai Banking Corp. v. NLRC*, we reminded that the penalty of dismissal authorized under the Labor Code should not be imposed on just "*any act of dishonesty*" committed by an employee, but only upon those whose depravity is commensurate to such penalty:[38]

> Like petitioner bank, this Court will not countenance nor tolerate ANY form of dishonesty. **But at the same time, we cannot permit the imposition of the maximum penalty authorized by our labor laws for JUST ANY act of dishonesty, in the same manner that death, which is now reinstated as the supreme sanction under the penal laws of our country, is not to be imposed for just any killing. The penalty imposed must be commensurate to the depravity of the malfeasance, violation or crime being punished. A grave injustice is committed in the name of justice when the penalty imposed is grossly disproportionate to the wrong committed.**
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> In the context of the instant case, dismissal is the most severe penalty an employer can impose on an employee. It goes without saying that care

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37 *Id. See* also *Farrol v. Court of Appeals*, 382 Phil. 212, 220-221 (2000).

38 *Id.*

> must be taken, and due regard given to an employee's circumstances, in the application of such punishment. **Moreover, private respondent's acts of dishonesty — his first offense in his seven years of employment, as noted by the respondent NLRC — did not show deceit nor constitute fraud and did not result in actual prejudice to petitioner. Certainly, such peremptory dismissal is far too harsh, too severe, excessive and unreasonable under the circumstances.** (Emphases supplied.)

On the other hand, no similar dishonesty could be attributed against Sinajon. Sinajon never admitted to punching-out his time card upon returning at 6:00 p.m. of July 20, 1997. Neither is there evidence on record that proves that he did. Hence, Sinajon cannot be said to have deceived Bookmedia with respect to his actual working hours on July 20, 1997.

All in all, and considering the fact that this is the first and only time that the respondents had committed any infraction against Bookmedia, we are constrained to approve the liberal stance of the LA, the NLRC and the CA. Respondents have been illegally dismissed.

II

Be that as it may, we are of the view that the reinstatement of the respondents would no longer be feasible or viable in this case. In coming to such conclusion, we took into account the understandable strained relations between the parties that no doubt had to fester because of the inordinate length of time that has passed — some 22 years in total — between the dismissal of the respondents and the promulgation of this decision. Given such strained relations, the reinstatement of the respondents is already rendered impractical considering that one of their duties as in-house security personnel is to secure the person of petitioner Brizuela.

Since separation pay *in lieu* of reinstatement is awarded, the end point of respondents' backwages will no longer be their actual reinstatement but the finality of the instant decision. In other words, respondents' backwages should now be reckoned from the time of illegal dismissal **up to the time the instant decision becomes final.**[39]

This case, therefore, has to be remanded to the LA for purposes of computing the amount of separation pay *in lieu* of reinstatement that each respondent is entitled to, and recomputing respondents' backwages in accordance with this decision.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**. The Decision dated September 11, 2013 and the

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39 *Bani Rural Bank, Inc., et al. v. De Guzman, et al.*, 721 Phil. 84, 104 (2013).

Resolution dated June 9, 2014 of the Court of Appeals in CA-G.R. SP No. 127981 are **AFFIRMED with MODIFICATION** in that the order directing petitioners Bookmedia Press, Inc. and Benito J. Brizuela to reinstate respondents Yanly Abenir and Leonardo Sinajon is **DELETED**.

Judgment is hereby rendered **DIRECTING PETITIONERS TO PAY EACH RESPONDENT SEPARATION PAY *IN LIEU* OF REINSTATEMENT**.

This case is remanded to the Labor Arbiter for purposes of computing the amount of separation pay *in lieu* of reinstatement that each respondent is entitled to, and recomputing respondents' backwages in accordance with this decision.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
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.

DIOSDADO M. PERALTA
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.

LUCAS P. BERSAMIN
Chief Justice