



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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SECOND DIVISION

LUCITA S. PARDILLO,  
Petitioner,

G.R. No. 224854

Present:

- versus -

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
J. REYES, JR., and  
LAZARO-JAVIER, JJ.

DR. EVELYN DUCAY  
BANDOJO, OWNER AND  
MEDICAL DIRECTOR OF E &  
R HOSPITAL,

Promulgated:

Respondent.

27 MAR 2019

x-----  
M. Cabalag Perfecto - x

DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review<sup>1</sup> on *Certiorari* under Rule 45 of the Rules of Court, filed by Lucita S. Pardillo (Pardillo) against Dr. Evelyn Ducay Bandojo (Dr. Bandojo), owner of E & R Hospital in Iligan City, assailing the Decision<sup>2</sup> dated September 17, 2015 and Resolution<sup>3</sup> dated May 4, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 05365-MIN which had overturned the Decision<sup>4</sup> of the National Labor Relations Commission (NLRC).

Facts

The facts, as summarized by the CA, are quoted below:

Sometime in November of 1990, x x x Lucita S. Pardillo was hired as midwife of E & R Hospital and Pharmacy in Iligan City, which is

<sup>1</sup> Rollo, pp. 3-41.  
<sup>2</sup> Id. at 43-61. Penned by Associate Justice Pablito A. Perez with the concurrence of Associate Justices Romulo V. Borja and Oscar V. Badelles.  
<sup>3</sup> Id. at 110-112. Penned by Associate Justice Romulo V. Borja with the concurrence of Associate Justices Edgardo T. Lloren and Oscar V. Badelles.  
<sup>4</sup> CA rollo, pp. 348-355. Penned by Presiding Commissioner Bario-Rod M. Talon with the concurrence of Commissioners Proculo T. Sarmen and Dominador B. Medroso, Jr.

owned and managed by spouses Prof. Rogelio B. Bandojo and x x x Dr. Evelyn D. Bandojo. In 1991, [Pardillo] was transferred to a new position as Billing Clerk/Cashier. In 2001, she was promoted and became the Business Office Manager and held such position until November 18, 2010 when her employment was terminated by [Dr. Bandojo].

According to [Pardillo], she was surprised when she received a Notice of Termination on November 18, 2010 which reads:

To: Ms. Lucita S. Pardillo  
From: The Medical Director

Subject: Notice of Termination of Service

You are hereby informed that your services as Business Office Manager will be terminated effective thirty (30) days from receipt of this memorandum.

Due to the following causes:

1. Loss of confidence
2. Habitual Tardiness
3. Texting insulting words to me, your employer
4. Uttering offensive words against me, your employer
5. Texting me, threatening to kill me or any of my family

Your (sic) need not report to work thirty days from today but you will still received(sic) your salary equivalent to one (1) month as if you were on regular duty.

You are advised to prepare all clearance as required from all terminated employees at the end of your tour of duty which is thirty (30) days from receipt of this notice.

For your proper guidance.

(SGD) Evelyn D. Bandojo, MD, DFM  
Medical Director

On the other hand, x x x Dr. Bandojo alleged that [Pardillo's] termination was brought about by several infractions she committed and her habitual tardiness totaling to about 16,000 minutes.

[Dr. Bandojo] avers that E & R Hospital suffered losses due to the negligence of [Pardillo] in failing to process and send the records of certain patients to PhilHealth for refund of their paid claims. [Dr. Bandojo] cited the case of a patient named Jamal Alim, whose claim was not processed or sent to PhilHealth; Moises Servano whose claim was returned to E & R Hospital due to the lack of original official receipt[;] and Stephen Chiu, a non-PhilHealth patient who was discharged from the



hospital on September 6, 2007 with an unsettled bill of Php 5[,]968.00 and with no promissory note on record.

Moreover, that sometime on August 2010, [Pardillo] allegedly tried to borrow, for her personal use the hospital's "Pay to Cash" check which was intended for the payment of the newborn screening kits.

The proverbial last straw that broke the camel's back was the incident on September 27, 2010 when [Pardillo] reported very late for work; specifically at past ten in the morning. [Dr. Bandojo] caught Mrs. Natividad Labadan, [Pardillo's] subordinate, punching [Pardillo's] time card in the bundy clock located at the pharmacy area.

Thus, on September 30, 2010, an administrative investigation was conducted. In the said investigation, [Pardillo] denied [the] accusations against her.

Due to the alleged incessant breach of trust exhibited by [Pardillo], [Dr. Bandojo] issued the memorandum dated November 18, 2010 terminating the employment of [Pardillo] as Business Office Manager of E&R Hospital.

On April 5, 2011, Pardillo filed a Complaint for Illegal Dismissal with the Labor Arbiter. x x x<sup>5</sup>

### ***Findings of the labor tribunals***

In its Decision<sup>6</sup> dated October 24, 2011, Labor Arbiter Nicodemus G. Palangan (LA) dismissed Pardillo's complaint for lack of merit. The LA held that Pardillo was a managerial employee whose employment may be terminated on the ground of loss of trust and confidence.<sup>7</sup> The LA held that Pardillo committed several infractions inimical to the business of Dr. Bandojo such as failing to process PhilHealth refunds, allowing the release of a patient with unpaid hospital bills without a promissory note, trying to take a personal loan on the "pay to cash" check intended for payment of newborn screening kits, and tardiness. The LA also found that Dr. Bandojo had observed procedural due process in dismissing Pardillo as an administrative hearing was conducted.

On appeal the NLRC, reversed and set aside the ruling of the LA in its Decision dated July 31, 2012. The NLRC held that Pardillo was dismissed without substantive and procedural due process. Pardillo was able to explain the alleged infractions levelled against her by Dr. Bandojo. With regard to patient Moises Servano, he had died and his relatives could no longer find the original receipt so that upon instruction of Dr. Bandojo, Pardillo did not refile the claim to PhilHealth.<sup>8</sup> As to patient Jamal Alim, he had no financial obligation to the hospital, a fact which was not controverted by Dr. Bandojo.

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<sup>5</sup> *Rollo*, pp. 43-45.

<sup>6</sup> *CA rollo*, pp. 124-132.

<sup>7</sup> *Id.* at 129.

<sup>8</sup> *Id.* at 351.

As regards to patient Adam Stephen Chiu, his grand uncle Victor Chiu, hospital accountant, executed an affidavit alleging that he was responsible for his nephew's hospitalization and that the balance of his unpaid medical bills were to be offset against his professional fees.<sup>9</sup> The NLRC concluded that Pardillo caught the ire of Dr. Bandojo when the latter witnessed Pardillo's subordinate Natividad Ladaban punched in her superior's time card. The NLRC held that while such act was a violation of the hospital's policies, it did not amount to the wilful breach of trust that would justify dismissal from employment. The NLRC also noted that during the time-card incident, Pardillo was actually present in the hospital premises. This negated the perception that she had the intention to be absent that day and directed her subordinate to punch in her time card to make it appear that she was present.<sup>10</sup>

On the issue of tardiness, the NLRC found that Pardillo was able to explain the same. The NLRC noted a memorandum<sup>11</sup> dated October 30, 2010 issued by Dr. Bandojo to Pardillo stating that her usual 8:00 A.M. to 12:00 noon; 1:00 P.M. to 5:00 P.M. schedule will resume on November 1, 2010 in lieu of other schedules granted or allowed previously. The NLRC held that the memorandum bolstered Pardillo's claim that she was allowed to arrive late because she first attended to outside activities related to her functions like PhilHealth and bank transactions. The NLRC ordered Pardillo's reinstatement with full backwages, inclusive of allowances and other benefits and attorney's fees.

Dr. Bandojo filed a Motion for Reconsideration<sup>12</sup> (MR) which was denied by the NLRC in its Decision<sup>13</sup> dated December 12, 2012. The NLRC however, modified its earlier Decision as to the order of reinstatement. Pardillo had manifested that her relationship with her former employer Dr. Bandojo had become strained and prayed for separation pay in lieu of reinstatement. Dr. Bandojo did not controvert this. Thus, the NLRC granted her prayer for separation pay in lieu of reinstatement.

Aggrieved, Dr. Bandojo elevated the case to the CA via petition for *certiorari*<sup>14</sup> under Rule 65 of the Rules of Court.

### ***The CA Decision***

The CA granted the petition. The CA held that Dr. Bandojo was able to prove with substantial evidence that Pardillo's termination was for a just cause. The CA ruled that Dr. Bandojo was able to prove the habitual tardiness of Pardillo which resulted in her neglect of duties and poor work performance. As a managerial employee, the CA held that Pardillo should be

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<sup>9</sup> Id.

<sup>10</sup> Id. at 352.

<sup>11</sup> Id. at 287.

<sup>12</sup> Id. at 357-367.

<sup>13</sup> Id. at 387-390.

<sup>14</sup> Id. at 2-25.



a sterling example of honesty, trustworthiness, and efficiency in the workplace. The CA also found that Pardillo's act of ordering her subordinate to punch in her time card was an act of falsification.<sup>15</sup>

On the issue of procedural due process, the CA held that Dr. Bandojo was able to comply with the two-notice rule. Pardillo was given a chance to present her side, numerous memoranda and warnings were issued to her due to tardiness, as well as a separate memorandum regarding the time-card incident. Two administrative conferences were held where Pardillo was given a chance to explain her side. Finally, a notice of termination<sup>16</sup> was sent to Pardillo on November 18, 2010.<sup>17</sup> Thus, the CA overturned the findings of the NLRC and reinstated the LA Decision. Pardillo's MR was denied by the CA in the Assailed Resolution.

Pardillo filed the instant petition alleging that there were no valid grounds for her dismissal.<sup>18</sup> As well, Pardillo claims that Dr. Bandojo failed to comply with procedural due process. She did not receive any notice to explain prior to receiving the notice of termination.<sup>19</sup> Dr. Bandojo filed her Comment<sup>20</sup> praying for the dismissal of the petition.

### Issue

Whether the CA committed reversible error in reversing the NLRC Decision and reinstating the LA Decision.

### The Court's Ruling

At the outset, the Court notes that Rule 45 petitions are generally limited to questions of law, as the Court is not a trier of facts.<sup>21</sup> However, an exceptional circumstance exists when the findings of the LA, NLRC, and CA are conflicting, as in this case.<sup>22</sup>

### *Requirements of substantive and procedural due process*

In determining the legality of an employee's dismissal, the Court must determine the legality of the act of dismissal which pertains to substantive due process, and the manner of dismissal which constitutes procedural due process.

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<sup>15</sup> *Rollo*, p. 58.

<sup>16</sup> *CA rollo*, p. 234.

<sup>17</sup> *Rollo*, pp. 59-60.

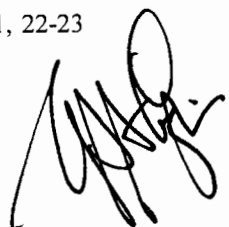
<sup>18</sup> *Id.* at 16-27.

<sup>19</sup> *Id.* at 34-37.

<sup>20</sup> *Id.* at 129-146.

<sup>21</sup> *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 211-213 (2005).

<sup>22</sup> *Id.* at 212-213, citing *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).



Under Article 294 of Presidential Decree No. 442 or the Labor Code of the Philippines (Labor Code),<sup>23</sup> the employer shall not terminate the services of an employee except for a just or authorized cause.

The just causes for dismissal are listed under Article 297:

*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.

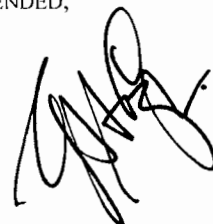
Anent the procedural aspect, the employer must comply with the two-notice rule, as mandated under the Implementing Rules of Book VI of the Labor Code.<sup>24</sup> The employer must serve the erring employee a first notice which details the ground/s for termination, giving the employee a reasonable opportunity to explain his side. In practice, this is commonly referred to as the notice to explain (NTE). The second notice pertains to the written notice of termination indicating that upon due consideration of all circumstances, the employer has decided to dismiss the employee.

### ***Loss of trust and confidence as ground for dismissal***

Article 297(c) allows an employer to terminate the services of an employee on the ground of loss of trust and confidence. There are two requisites for this ground: first, the employee must be holding a position of trust and confidence; and second, there must be a willful act that would

<sup>23</sup> As renumbered by Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also Department of Labor and Employment, Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," dated July 21, 2015.

<sup>24</sup> "For termination of employment based on just causes as defined in Article 282 of the Labor Code:  
"(i) A written notice served on the employee specifying the ground or grounds for termination and giving said employee reasonable opportunity within which to explain his side;  
"(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.  
"(iii) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.  
(AMENDING THE RULES IMPLEMENTING BOOKS III AND VI OF THE LABOR CODE AS AMENDED, Department Order No. 010-97 [1997], Art. III).



justify the loss of trust and confidence which is based on clearly established facts.<sup>25</sup>

Pardillo's status as a managerial employee holding the position of Business Office Manager was never disputed in this case. The pivotal issue thus before the Court is the existence of the second requisite.

In *Prudential Guarantee and Assurance Employee Labor Union v. NLRC*,<sup>26</sup> the Court expounded on loss of trust and confidence as a ground for dismissal:

While the law and this Court recognize the right of an employer to dismiss an employee based on loss of trust and confidence, the evidence of the employer must clearly and convincingly establish the facts upon which the loss of trust and confidence in the employee is based.

To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would remain eternally at the mercy of the employer. Further, in order to constitute a just cause for dismissal, the act complained of must be work-related and show that the employee concerned is unfit to continue working for the employer. Such ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature.<sup>27</sup>

Jurisprudence has also distinguished the treatment of managerial employees and rank-and-file personnel with regard to the ground of loss and trust and confidence. In *Etcuban Jr. v. Sulpicio Lines*,<sup>28</sup> the Court held:

x x x [W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.<sup>29</sup>

<sup>25</sup> *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628-629 (2008).

<sup>26</sup> 687 Phil. 351 (2012).

<sup>27</sup> *Id.* at 368-369.

<sup>28</sup> 489 Phil. 483 (2005).

<sup>29</sup> *Id.* at 496-497.

Thus, there must be some basis or reasonable ground to believe that the employee is responsible for the misconduct and the breach or act complained of must be related to the work performed by the employee. Although the employer is given more leeway in the dismissal of managerial employees on the ground of loss of trust and confidence, the dismissal must not be based on the mere whims or caprices of the employer. The dismissal must have reasonable basis.

In illegal dismissal cases, the burden to prove that the termination of employment was for a just and valid cause is on the employer.<sup>30</sup> In this case, the Court holds that the CA committed reversible error in overturning the findings of the NLRC. After a judicious review of the facts as borne by the records, the Court finds that Dr. Bandojo failed to prove with substantial evidence Pardillo's alleged acts which led to loss of trust and confidence.

The records show that in a NTE<sup>31</sup> dated November 5, 2010, Pardillo was made to explain her alleged tardiness committed on November 4 and 5, 2010. Pardillo replied in a letter<sup>32</sup> dated November 6, 2010, apologizing for her tardiness. However, in the notice of termination dated November 18, 2010, Dr. Bandojo indicated the following grounds for Pardillo's dismissal:

You are hereby informed that your services as Business Office Manager will be terminated effective thirty (30) days from receipt of this memorandum.

Due to the following causes:

1. Loss of trust and confidence
2. Habitual [t]ardiness
3. Texting insulting words to me, your employer
4. Uttering offensive words against me, your employer
5. Texting me, threatening to kill me or any of my family[.]<sup>33</sup>

The inclusion of the new allegations in the notice of termination was not sufficiently explained by Dr. Bandojo. The notice does not also state the alleged acts purportedly committed by Pardillo which resulted in loss of trust and confidence. Pardillo was not served with any NTE so that she could proffer her defense with regard to the new allegations. Dr. Bandojo also did not expound on the allegations regarding the insults and threats to her life and her family, in the pleadings that she filed before the labor tribunals and the courts. To the mind of the Court, these circumstances cast serious doubt on the veracity of Dr. Bandojo's contentions in the notice of termination.

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<sup>30</sup> LABOR CODE, Art. 292 (277).

<sup>31</sup> CA *rollo*, p. 288.

<sup>32</sup> Id. at 379.

<sup>33</sup> Id. at 234.





The Court also affirms the findings of the NLRC regarding the allegation of habitual tardiness. In order to justify the dismissal of Pardillo, Dr. Bandojo submitted several notices from as early as 1994 addressed to Pardillo regarding her tardiness which allegedly amounted to 16,333 minutes.<sup>34</sup> However, as correctly held by the NLRC, Pardillo was able to explain the reason why she could not come to the office on the scheduled time because it was necessary for her to go directly to the bank or to the PhilHealth office to perform official business for the hospital. Moreover, the letter dated October 30, 2010 sent by Dr. Bandojo to Pardillo supports Pardillo's claim that she had a flexible work schedule. The letter states:

**TO: MS. LUCITA S. PARDILLO, B.O Manager**  
**FROM: THE MEDICAL DIRECTOR**  
**SUBJECT: IMPLEMENTATION OF THE SCHEDULE OF DUTY HOURS**

In our latest conversation, we have agreed that your usual 8am-12pm, 1pm-5pm schedule of duty hours will **resume** effective November 1, 2010.

**All other schedules granted or allowed in the past** per your various requests and which have been granted and adjusted to suit your past request in your schedule of duty hours shall now become moot and academic.

To reiterate what we have agreed, your **new schedule** of duty hours will be 8- 12 in the morning and 1- 5 in the afternoon, Monday to Saturday.

For your guidance.

(Sgd.)  
Dr. Evelyn [Ducay] Bandojo, DFM<sup>35</sup>  
(Emphasis supplied)

The records do not indicate when Pardillo's flexible schedule was granted, but the above letter satisfactorily confirms that Pardillo was allowed some leeway in her work schedule as her job required her to go to government agencies and banks to process transactions of the hospital. The tardiness of Pardillo earlier than October 30, 2010 cannot thus be taken against her because prior thereto, she was not strictly required to be at the office from 8:00 A.M. to 12:00 noon and 1:00 P.M. to 5:00 P.M. The letter refers to the 8:00 A.M. to 5:00 P.M. scheme as Pardillo's "new" schedule.

Pardillo was also sent a document entitled "Warning: This is your n<sup>th</sup> offense" on August 10, 2010 regarding her tardiness on several dates. However, the warning itself contains the following proviso: "Suspension to

<sup>34</sup> Id. at 270-271.

<sup>35</sup> Id. at 287.



Termination will be meted out to erring personnel who incurred tardiness beyond the allowable limit unless you can prove to management that your tardiness was due to laudable acts beneficial to [the] hospital business and service.<sup>36</sup> This confirms that the hospital policy recognized that there may be reasonable grounds for an employee's tardiness, which includes performing tasks beneficial to the hospital outside of its premises. The Court also observes that the warning did not contain a notice to explain but was merely a notice to Pardillo that she had been tardy on specific dates.

With regard to the other allegations of Pardillo, the Court quotes with approval the findings of the NLRC:

x x x The supposed claims of patients Moises Servano and Jamal Alim have been adequately explained by complainant. x x x [T]he Phil[H]ealth claim of patient Moises Servano, who is her relative, was returned to the hospital because only the machine copy of the original receipt of the blood purchased by the patient was submitted. Servano died and his relatives could no longer find the original copy of the official receipt so that upon [the] instruction of [Dr. Bandojo], complainant did not refile the claim to P[hil]H[ealth]. As to patient Jamal Alim, complainant averred that Mr. Alim has no financial obligation to the [h]ospital, which is not being controverted by [Dr. Bandojo] x x x In the case of patient Adam Stephen Chiu, his grand uncle Victor L. Chiu, who was responsible for his hospitalization, duly executed a statement under oath contesting as without bases the charges levelled by [Dr. Bandojo] against complainant and categorically declared that Mr. Chiu's balance of P 4,968.16 with the hospital has been offsetted (*sic*) with his professional fees as an accountant of the hospital.<sup>37</sup>

The absence of any NTEs on the new allegations (*i.e.*, failure to process PhilHealth claims, attempting to borrow money for personal use, and allowing the release of patients with unpaid hospital bills without any promissory note, uttering offensive words and making death threats) can only be described as bemusing. If the less serious offense of tardiness merited the sending of several NTEs to Pardillo, why was it that Dr. Bandojo did not send any NTEs for the more serious allegations? In her position paper,<sup>38</sup> Dr. Bandojo admitted that the derogatory text messages she received were from an unknown number. She concluded that the sender was Pardillo merely because the messages stopped after Pardillo stopped reporting for work.<sup>39</sup> Dr. Bandojo likewise did not submit these text messages to the labor tribunals or the courts. All in all, it is quite apparent that the loss of trust and confidence in this case was not genuine and was merely used as a convenient means to dismiss Pardillo.

Considering the foregoing, the Court finds that Dr. Bandojo failed to prove with substantial evidence the acts constituting willful breach of

<sup>36</sup> Id. at 509; underscoring supplied

<sup>37</sup> Id. at 351.

<sup>38</sup> Id. at 37-55.

<sup>39</sup> Id. at 40.



company policy, resulting to loss of trust and confidence. Thus, Pardillo's dismissal was illegal.

The Court is not unaware of its Decision in *Alvarez v. Golden Tri Bloc, Inc.*,<sup>40</sup> in which a supervisory employee was also caught directing his subordinate to punch-in his time card and the Court upheld the validity of his dismissal. However, in *Alvarez*, the incident for which the employee was disciplined was already his second offense and the Court also considered the totality of circumstances that included several prior offenses committed by the employee relating to product shortages, negligence, and tardiness, which were duly proven with substantial evidence. Thus, it is not on all fours with this case.

***Non-compliance with procedural due process***

Dr. Bandojo also failed to comply with the requirements of procedural due process. As discussed above, Pardillo was served with an NTE that charged her only with tardiness on two dates. However, the notice of termination charged her with additional and more serious grounds of loss of trust and confidence, habitual tardiness, texting insulting words and uttering offensive words to Dr. Bandojo, and threatening to kill Dr. Bandojo and her family. The additional grounds cited in the notice of termination which were not mentioned in the NTE violated Pardillo's right to be informed of the administrative charges against her. The NTE and the notice of termination did not state the specific acts that constituted breach of company policies resulting in loss of trust and confidence and the specific company policies that were violated.

The Court notes that there was an earlier memorandum<sup>41</sup> dated September 27, 2010 (memorandum) addressed to Pardillo and other officers requesting them to attend a conference on September 28, 2010 to explain the incident in which Pardillo's subordinate, Mrs. Natividad Ladaban, was caught punching Pardillo's time card in the Bundy clock. However, this cannot be considered the NTE required under the Labor Code. In *King of Kings Transport, Inc. v. Mamac*,<sup>42</sup> the Court elucidated on the required contents of an NTE:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5)

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<sup>40</sup> 718 Phil. 415 (2013).

<sup>41</sup> CA rollo, p. 518.

<sup>42</sup> 553 Phil. 108 (2007).

calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.<sup>43</sup>

The memorandum did not state the grounds for dismissal or disciplinary action, the specific acts of Pardillo constituting breach of company policy, and the actual company policy violated. The memorandum did not also direct Pardillo to submit a written explanation within a reasonable period of time. In fact, the conference was scheduled on the very next day.<sup>44</sup> Thus, the said memorandum was not a proper NTE. Moreover, after the conference, Dr. Bandojo did not inform Pardillo of her findings or impose any disciplinary action against Pardillo with regard to the allegations about the time-card incident. It was only on November 18, 2010 that Dr. Bandojo sent the notice of termination which included new allegations.

In fine, Dr. Bandojo failed to comply with the requirements of procedural and substantive due process in effecting the termination of Pardillo's employment. There was no substantial evidence to prove that she committed serious breaches of company policy resulting in loss of trust and confidence. Moreover, Pardillo was not afforded procedural due process.

***Pardillo is entitled to backwages and separation pay***

The Court affirms the NLRC's award of backwages and separation pay. Article 294 of the Labor Code grants to an employee who is unjustly dismissed from work, reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

In *Aliling v. Feliciano*,<sup>45</sup> citing *Golden Ace Builders v. Talde*,<sup>46</sup> the Court awarded both backwages and separation pay:

The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that

<sup>43</sup> Id. at 115-116.

<sup>44</sup> The actual meeting was conducted on September 30, 2010 after a postponement, see Minutes of Meeting dated September 30, 2010, *CA rollo*, pp. 279-281.

<sup>45</sup> 686 Phil. 889 (2012).

<sup>46</sup> 634 Phil. 364 (2010).



should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.<sup>47</sup>

The relationship between the parties in the case are undoubtedly strained and reinstatement would no longer be viable. Thus, the grant of separation pay is fully justified.

However, the Court modifies the NLRC award and deletes the award of attorney's fees. The award of attorney's fees is the exception rather than the general rule based on the policy that no premium should be placed on the right to litigate.<sup>48</sup> That a party was compelled to initiate an action does not automatically entitle them to attorney's fees. In *ABS-CBN Broadcasting Corp. v. CA*,<sup>49</sup> the Court ruled:

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.<sup>50</sup>

Thus, in the absence of any factual, legal, or equitable basis for the award of attorney's fees, the Court denies the same. Finally, the monetary award herein granted shall earn legal interest of 12% per annum from November 18, 2010, the date of illegal dismissal, until June 30, 2013 in line with the Court's ruling in *Nacar v. Gallery Frames*.<sup>51</sup> From July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%.<sup>52</sup>

**WHEREFORE**, premises considered, the petition is **GRANTED**. The Court further **RESOLVES** to:

1. **REVERSE** and **SET ASIDE** the assailed Court of Appeals Decision dated September 17, 2015 and Resolution dated May 4, 2016 in CA-G.R. SP No. 05365-MIN;
2. **AWARD** petitioner Lucita S. Pardillo the following:

<sup>47</sup> *Aliling v. Feliciano*, supra note 45, at 916, citing id. at 369.

<sup>48</sup> *ABS-CBN Broadcasting Corp. v. CA*, 361 Phil. 499, 529 (1999).

<sup>49</sup> Id.

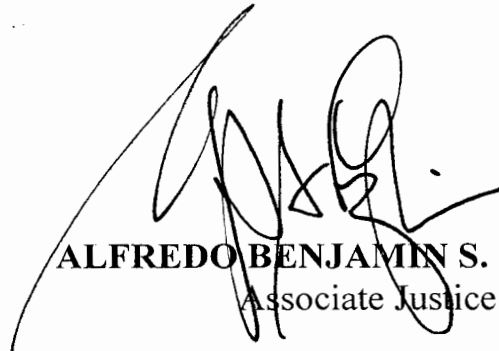
<sup>50</sup> Id. at 529.

<sup>51</sup> 716 Phil. 267, (2013). Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable* (Id. at 281).

<sup>52</sup> Id.

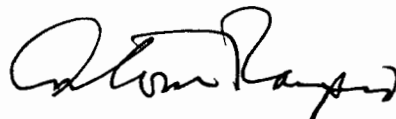
- a. **FULL BACKWAGES**, inclusive of allowances, and other benefits or their monetary equivalent from November 18, 2010 until finality of this judgment;
  - b. **SEPARATION PAY** in lieu of reinstatement at one-month salary for every year of service, with a fraction of at least six (6) months considered as one whole year computed from November 1990 (the date of hiring) until finality of this judgment;
3. The monetary award shall earn legal interest of 12% per annum from November 18, 2010 until June 30, 2013 and 6% from July 1, 2013 until full satisfaction of the award; and
  4. **REMAND** the case to the Labor Arbiter for the proper computation of backwages and separation pay and for execution of the award.

**SO ORDERED.**




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

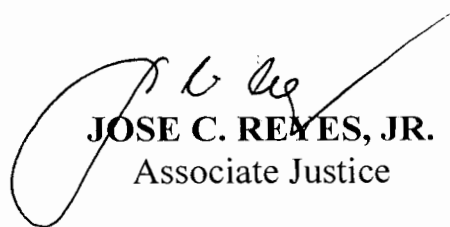
WE CONCUR:



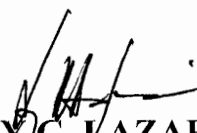
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second 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

