



Republic of the Philippines
Supreme Court
Manila
SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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MYRA M. MORAL,
Petitioner,

G.R. No. 226240

Present:

- versus -

CARPIO, J., Chairperson,
DEL CASTILLO,*
PERLAS-BERNABE,**
LEONEN,*** and
CAGUIOA, JJ.

**MOMENTUM PROPERTIES
MANAGEMENT CORPORATION,**
Respondent.

Promulgated:

06 MAR 2019

x ----- x

DECISION

CARPIO, J.:

The Case

For resolution is a petition for review on certiorari dated 23 September 2016 filed by Myra M. Moral (petitioner) assailing the Decision¹ dated 22 March 2016 and the Resolution² dated 19 July 2016 of the Court of Appeals in CA-G.R. SP No. 138704.

The Facts

On 5 March 2014, petitioner filed a Complaint³ for illegal dismissal against her employer, Momentum Properties Management Corporation (respondent) and/or its Chief Executive Officer, Steve Li (Li), before the National Capital Region (NCR) Arbitration Branch of the National Labor Relations Commission (NLRC).

* Designated additional member per Raffle dated 20 February 2019.

** On official leave.

*** Designated additional member per Special Order No. 2630-O dated 18 February 2019.

¹ Rollo, pp. 33-42. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Jose C. Reyes, Jr. and Ramon Paul L. Hernando concurring.

² Id. at 44-46.

³ Id. at 131-132.

In her Position Paper, petitioner alleged that, on 26 June 2013, respondent hired her as a probationary employee, with her designation being that of a Leasing Assistant. She worked eight hours a day from 9:00 a.m. to 6:00 p.m. Six months after her employment, specifically on 27 December 2013, she was informed of her dismissal and was advised to no longer report for work. According to petitioner, upon inquiring the reason for her dismissal, respondent coldly ignored her query and thereafter, no longer contacted her. She contended that respondent failed to provide any notice or justifiable cause as to why her employment was being severed. Because of respondent's failure to comply with both substantive and procedural due process requirements, as mandated by law, petitioner alleged that she was illegally dismissed.⁴

In its defense, respondent denied the illegal dismissal allegation of petitioner. Respondent acknowledged, however, that petitioner was hired by it as a probationary employee, particularly as a Leasing Assistant. Petitioner's probationary employment with respondent was for a period of six months, as indicated by the former's Employment Agreement with the latter. Petitioner was assigned by respondent to Solemare Parksuites, a condominium building in Bradco Avenue, Parañaque City, to render clerical and secretarial services necessary in the leasing operations of the building. As a Leasing Assistant, petitioner was required to report primarily at the project site in Parañaque City, under the supervision of the Leasing Manager, Elizabeth Tungol (Tungol).⁵

According to respondent, in line with the provisions of their Employment Agreement, petitioner was subjected to the respondent's evaluation procedure on the fifth month of her employment. Hence, sometime in November 2013, petitioner's over-all performance and capacity to meet the demands of her work were assessed by her immediate superiors.⁶

On 29 November 2013, petitioner was likewise asked to report to respondent's head office in Makati City to take the Verbal, Non-Verbal, and Numerical Examinations which were administered by the Human Resources (HR) Department. Petitioner garnered below average (BA) scores in the aforesaid tests, rendering her qualifications for regularization doubtful under HR Standards. In addition, petitioner's over-all performance and capacity to meet the demands of her work were assessed by her immediate superior, Tungol. Based on respondent's set criteria for quantitative and qualitative performance and developmental assessment, Tungol's findings indicated that petitioner failed to satisfactorily meet the level of performance expected from her position.⁷

According to respondent, petitioner's over-all rating indicated a BA score, which made her unqualified for regularization purposes. Hence, in

⁴ Id. at 134-137.

⁵ Id. at 142.

⁶ Id.

⁷ Id.



accordance with standard procedure, the HR and Administration Manager, Annie Ocampo (Ocampo), directed Tungol to advise petitioner to report to the head office, for the purpose of discussing her poor evaluation scores. Unfortunately, petitioner disregarded the aforesaid request.⁸ Thereafter, Tungol was instructed to talk to petitioner about possibly extending her employment contract and improving her performance, during such an extension period. Unexpectedly, however, petitioner no longer reported for work as of 27 December 2013. In line with standard procedure, on 7 January 2014, Ocampo prepared a Notice of Absence without Official Leave (NAWOL) requiring petitioner to submit a written explanation as to why her employment should not be considered terminated due to her absence within five days from receipt thereof. Petitioner was likewise invited to the head office for a meeting with Ocampo.⁹

Respondent averred that, on 13 January 2014, as it awaited petitioner's response to various invitations for her to report to the head office, petitioner filed a Request for Assistance (RFA) before the NCR Arbitration Branch of the NLRC.¹⁰ After conciliation and mediation efforts between petitioner and respondent failed, they submitted their respective Position Papers, Replies, and Rejoinders. Thereafter, the case was submitted for resolution.¹¹

The Ruling of the Labor Arbiter

On 31 July 2014, the Labor Arbiter rendered a Decision¹² in favor of petitioner. The dispositive portion of the Decision of the Labor Arbiter dated 31 July 2014 provides:

WHEREFORE, judgment is hereby rendered declaring that the Complainant was illegally dismissed. Consequently, Respondent MOMENTUM PROPERTIES MANAGEMENT CORP. is hereby ordered to pay the Complainant the following:

1. ₱124,280[.00] as her backwages;
2. ₱16,000.00 as her separation pay;
3. ₱20,000.00 as moral damages;
4. ₱20,000.00 as exemplary damages; and
5. Ten percent of the total monetary award or the amount of ₱18,028.00 as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.¹³

⁸ Id.

⁹ Id. at 143.

¹⁰ Id.

¹¹ Id. at 34.

¹² Id. at 208-214.

¹³ Id. at 214.



The Labor Arbiter found the allegation of respondent that petitioner was guilty of abandonment untenable. It emphasized that, in order for there to be abandonment, which is a just ground for dismissal, there must be a deliberate and unjustified refusal on the part of the employee to resume employment. It held that mere absence or failure to report for work, after a notice of return is given to such employee, is not enough to amount to abandonment. Hence, it held that petitioner was illegally dismissed by respondent.¹⁴

The Labor Arbiter noted that, because petitioner was illegally dismissed, it naturally follows that she would be entitled to reinstatement with the payment of backwages. However, because her relationship with respondent had already become strained, the Labor Arbiter ruled that separation pay of one month for every year of service, in lieu of reinstatement, was more proper. Hence, petitioner was awarded separation pay in addition to the payment of backwages. Petitioner was further awarded moral and exemplary damages and attorney's fees. With respect to the grant of moral and exemplary damages, the Labor Arbiter ruled that there was bad faith on the part of respondent when it dismissed petitioner, because it was carried out whimsically and capriciously.¹⁵

The Labor Arbiter held that Li could not be held solidarily liable with respondent, because no evidence was submitted to prove that the former was guilty of bad faith.¹⁶

Aggrieved, respondent filed an appeal with the NLRC.

The Ruling of the NLRC

On 30 September 2014, the NLRC rendered a Decision¹⁷ modifying the Decision of the Labor Arbiter dated 31 July 2014 removing the award of moral and exemplary damages from the judgment and reducing the entire amount to ₱154,308.00, viz:

WHEREFORE, the decision is hereby MODIFIED. Respondent Momentum Properties Management Corp. is ordered to pay complainant the following:

Backwages	₱124,280.00
Separation Pay	<u>16,000.00</u>
	140,280.00
Ten Percent (10%) Attorney's Fees	<u>14,028.00</u>
Total	₱154,308.00

¹⁴ Id. at 212.

¹⁵ Id. at 212-213.

¹⁶ Id. at 214.

¹⁷ Id. at 84-94.



The other findings are affirmed.

SO ORDERED.¹⁸

The NLRC upheld the view of the Labor Arbiter that respondent failed to defend its argument that it did not dismiss petitioner. It held that the payroll issued by respondent did not establish petitioner's employment beyond 27 December 2013, because the document merely covered the periods of 11 and 12 December 2013. On the other hand, petitioner presented the text messages she received from Tungol, informing her that she should no longer report for work and instructing her to report to the HR Department to process her clearance and backpay.¹⁹

The NLRC deleted the award of moral and exemplary damages granted by the Labor Arbiter, on the ground that petitioner failed to prove through clear and convincing evidence that her termination was "carried out in an arbitrary, capricious and malicious manner, with evident personal ill-will."²⁰ It ruled that "the award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without just cause or due process."²¹

Respondent moved for reconsideration, which was denied by the NLRC in a Resolution²² dated 18 November 2014. Thereafter, it sought to reverse the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively, by filing a petition for certiorari with the Court of Appeals.²³

The Ruling of the Court of Appeals

In its Decision dated 22 March 2016, the Court of Appeals granted the petition and annulled and set aside the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively. The dispositive portion of the Decision of the Court of Appeals dated 22 March 2016 provides:

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The assailed Decision and Resolution of the Third Division of the National Labor Relations Commission dated September 30, 2014 and November 18, 2014, respectively, are ANNULLED and SET ASIDE. However, for failure to observe procedural due process, the petitioner is hereby directed to pay nominal damages to private respondent in the amount of Php30,000.00.

¹⁸ Id. at 93.
¹⁹ Id. at 35-36.
²⁰ Id. at 92.
²¹ Id.
²² Id. at 81-82.
²³ Id. at 36.



SO ORDERED.²⁴

Respondent argued that petitioner failed to show through substantial evidence that she was dismissed from work. It contended that the text messages purportedly from Tungol were not verified or authenticated in accordance with the Rules on Electronic Evidence. It averred that, while technical rules of procedure are not strictly observed by the NLRC, the latter remains to have a duty to comply with certain procedures, in order to determine the admissibility and probative value of the evidence sought to be presented. It further alleged that, assuming *arguendo*, that such text messages were from Tungol, the same cannot be regarded as a formal notice of petitioner's termination, because the authority to do so fully resides with the HR Department.²⁵

Respondent likewise argued that it was improper for the NLRC to consider the payroll for December 2013 as basis for petitioner's dismissal. It averred that such document was merely meant to negate her claim for payment of salary and was not to be used as evidence to show that she remained under its employ beyond the covered date.²⁶

The Court of Appeals held that the status of petitioner as a probationary employee was established and not contested. Hence, her employment was under respondent's observation for a period of six months. It ruled that respondent had the option of hiring petitioner or terminating her services, because she failed to qualify as a regular employee in accordance with the reasonable standards made known to her at the time of her engagement.²⁷

The Court of Appeals ruled that, based on the evidence, petitioner's performance evaluation was not up to par. It was established that petitioner received abysmal scores in a series of aptitude tests that she took before her six months of probationary employment were done.²⁸ In the same manner, petitioner's Performance Appraisal Report (PAR) indicated that she did not meet respondent's expectations when it came to her performance at work. In most of the components of the subject PAR, petitioner received BA scores.²⁹ Furthermore, the Court of Appeals noted that petitioner's tests were given "appropriately, fairly and with proper notice before they were taken."³⁰

Given the abovementioned circumstances and the fact that petitioner was duly apprised of her probationary status at the time of her hiring and was made aware of the evaluation that she had to undergo in order for her to become a regular employee of respondent, the Court of Appeals held that

²⁴ Id. at 41.

²⁵ Id. at 36-37.

²⁶ Id. at 37.

²⁷ Id.

²⁸ Id.

²⁹ Id. at 38.

³⁰ Id. at 39.



respondent had every right to refuse petitioner's regularization. However, it ruled that, while respondent had the right to terminate petitioner's employment, such termination was carried out in a manner not in accordance with the standards set forth under the law. Instead of dismissing petitioner through a formal written notice within a reasonable time, petitioner was informed of her dismissal by respondent via a series of text messages.³¹ Due to the aforementioned procedural infirmity, the Court of Appeals ruled that petitioner was entitled to nominal damages.³²

Petitioner moved for reconsideration, which the Court of Appeals denied in its Resolution dated 19 July 2016. Hence, the instant petition before this Court.

The Issue

The issue in this case is whether or not petitioner was illegally dismissed by respondent.

The Court's Ruling

The Court finds the instant petition bereft of merit.

It is a well-established rule that the Court is not a trier of facts. The function of the Court in a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions, to wit: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.³³

The present case qualifies as an exception to the aforementioned rule. In the instant case, the Labor Arbiter and the NLRC, on one hand, and the Court of Appeals, on the other hand, arrived at divergent factual findings, with respect to petitioner's termination. Hence, the Court deems it necessary to re-

³¹ Id.

³² Id. at 40.

³³ *Enchanted Kingdom, Inc. v. Verzo*, 775 Phil. 388, 400 (2015); *Eastern Telecommunications, Phils., Inc. v. Diamse*, 524 Phil. 549, 555 (2006).

examine such findings and determine whether or not the Court of Appeals had sufficient basis to annul and set aside the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively, declaring that petitioner was illegally dismissed from work.

Petitioner maintains that she was constructively dismissed, because the reason for her termination from employment was not due to poor performance or her failure to meet the regularization standards set by respondent at the time of her engagement. In the instant petition, petitioner alleges that “she was not dismissed by the respondent on the ground of poor performance but for reasons only known to the respondent, which do not constitute as just or authorized cause of termination.”³⁴

On the other hand, respondent insists that it was within its power to refuse petitioner’s regularization. Respondent avers that petitioner was hired as a probationary employee and was made aware of the evaluation that she had to undergo to attain regularization. According to respondent, petitioner failed to comply with the regularization standards made known to her at the time of her employment, as indicated by her poor ratings in both her performance evaluation and PAR. Hence, it had every right to dismiss petitioner.³⁵

A probationary employee is one who is placed on trial by an employer, during which the latter determines whether or not the former is qualified for permanent employment.³⁶ By virtue of a probationary employment, an employer is given an opportunity to observe the fitness and competency of a probationary employee while at work. During the probationary period of employment, an employer has the right or is at liberty to decide who will be hired and who will be denied employment.³⁷

The essence of a probationary period of employment lies primordially in the purpose or objective of both the employer and the employee during such period. While the employer observes the fitness, propriety, and efficiency of a probationary employee, in order to ascertain whether or not such person is qualified for regularization, the latter seeks to prove to the former that he or she has the qualifications and proficiency to meet the reasonable standards for permanent employment.³⁸

As a general rule, probationary employment cannot exceed six months. Otherwise, the employee concerned shall be regarded as a regular employee. Moreover, it is indispensable in probationary employment that the employer informs the employee of the reasonable standards that will be used as basis

³⁴ *Rollo*, p. 20.

³⁵ *Id.* at 332-333.

³⁶ *Canadian Opportunities Unlimited, Inc. v. Dalangin, Jr.*, 681 Phil. 21, 33 (2012), citing *International Catholic Migration Commission v. NLRC*, 251 Phil. 560 (1989).

³⁷ *Oyster Plaza Hotel v. Melivo*, 796 Phil. 800, 813 (2016).

³⁸ *Canadian Opportunities Unlimited, Inc. v. Dalangin, Jr.*, *supra* note 36, at 34.



for his or her regularization at the time of his or her engagement. In the event that the employer fails to comply with the aforementioned, then the employee is considered a regular employee.³⁹

A probationary employee enjoys security of tenure, although it is not on the same plane as that of a permanent employee. Other than being terminated for a just or authorized cause, a probationary employee may also be dismissed due to his or her failure to qualify in accordance with the standards of the employer made known to him or her at the time of his or her engagement.⁴⁰ Hence, the services of a probationary employee may be terminated for any of the following: (1) a just cause; (2) an authorized cause; and (3) when he or she fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.⁴¹

In connection with the abovementioned, Section 6(d), Rule I, Book VI, as amended by Department Order No. 147-15, of the Omnibus Rules Implementing the Labor Code of the Philippines (Labor Code) provides the following:

x x x x

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

In other words, the employer is mandated to comply with two requirements when dealing with a probationary employee, *viz*: (1) the employer must communicate the regularization standards to the probationary employee; and (2) the employer must make such communication at the time of the probationary employee's engagement. If the employer fails to abide by any of the aforementioned obligations, the employee is deemed as a regular, and not a probationary employee. An employer is deemed to have made known the regularization standards when it has exerted reasonable efforts to apprise the employee of what he or she is expected to do or accomplish during the trial period of probation. The exception to the foregoing is when the job is self-descriptive in nature, such as in the case of maids, cooks, drivers, and messengers.⁴²

In the instant case, the evidence is clear that petitioner is a probationary employee of respondent. Evidently, an examination of the Employment Agreement dated 28 June 2013 executed by petitioner and respondent positively indicates the hiring of the former by the latter as a probationary

³⁹ *Philippine National Oil Company-Energy Development Corporation v. Buenviaje*, 788 Phil. 508, 529 (2016).

⁴⁰ *Id.* at 536.

⁴¹ *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 533 (2013).

⁴² *Id.* at 533-534.

employee, to wit:

EMPLOYMENT AGREEMENT

x x x x

EMPLOYER shall employ the EMPLOYEE based on the following terms and conditions:

1. Employment & Duties

- a) *Momentum Properties Management Corp.*/EMPLOYER hereby employs the services of the EMPLOYEE as Leasing Assistant to perform the function of his/her position and such other duties at such times and in such manner as the company and/or its officers may direct him/her from time to time;
- b) EMPLOYEE agrees to perform duties assigned to him/her as stated in his/her job description, to the best of his/her ability, to maintain an account of his/her work, to devote hi[s]/her full and undivided time to the transaction of company's business;
- c) EMPLOYEE expressly understood that he/she must refrain and should not engage in any other business during the tenure of his/her employment with the company that may jeopardize his/her performance and create a conflict with the interest of the company;
- d) EMPLOYEE agrees to comply with all stated standards of performance, policies, rules and regulations that is set and/or thereafter may be promulgated by the company.

2. Terms of Employment

The term of employment governing the EMPLOYEE shall be the following:

- 2.1 Probationary status – for six (6) months commencing on June 26, 2013 until December 26, 2013.

During the probationary status, the EMPLOYEE shall be appraised on the following schedule:

- a) 3rd month of employment – to determine EMPLOYEE's ability to carry the tasks assigned to him/her, assess culture fit and consideration to other growth areas of the EMPLOYEE that is necessary for continued progress
- b) 5th month of employment – prior to regularization to fully determine EMPLOYEE's over-all performance and output including but not limited to the improvement on the growth areas of the EMPLOYEE during the first evaluation schedule

2.2. EMPLOYEE shall be given a notice of employment status before the 6th month of employment.

2.3 EMPLOYEE expressly agree[d] and understood that his/her employment with the company may be terminated at any given time for a cause.

x x x x⁴³ (Boldfacing and underscoring in the original)

Petitioner was well-aware that her regularization would depend on her ability and capacity to fulfill the requirements of her position as a Leasing Assistant and that her failure to perform such would give respondent a valid cause to terminate her probationary employment.

A thorough examination of the records of the instant case reveals that petitioner failed to comply with the regularization standards of respondent made known to her at the time of her engagement. Petitioner's performance evaluation was substandard, as evinced by her dismal scores in a series of aptitude tests she took before the end of her six-month probationary period. In her PTI-Numerical Examination, which consisted of 30 items, petitioner only garnered a raw score of six. Noticeably, petitioner left 10 items blank in her PTI-Numerical Examination.⁴⁴ With respect to her PTI-Verbal Examination, which consisted of 50 items, petitioner only received a raw score of 19.⁴⁵

With the objective of testing her language skills, petitioner was asked to write about herself and where she saw herself in the future. She was likewise asked to discuss other matters which she believed would help strengthen her application for regular employment. Strikingly, her answers to the aforesaid were marked as questionable by the HR Department.⁴⁶ In addition, petitioner was asked to draft a memorandum for a given situation. Her written memorandum was peppered with grammatical errors and erasures and was likewise marked as questionable by the HR Department.⁴⁷

In her PAR, petitioner received the following ratings in the key results areas portion, which measured her quantitative performance: (1) Contract Management – BA; (2) Lease Administrative Functions – average (A); (3) Basic Financial/Accounting Functions – BA; (4) General Administration – A; and (5) Customer Service/Communication Skills – BA. In the same PAR, petitioner received the following marks in the behavioral factors portion, which measured her qualitative performance: (1) Job Knowledge and Quality of Work – A; (2) Service Orientation – BA; (3) Communication – BA; (4) Judgment – BA; (5) Attendance and Punctuality – A; (6) Risk Control –

⁴³ *Rollo*, p. 114.

⁴⁴ *Id.* at 115.

⁴⁵ *Id.* at 116.

⁴⁶ *Id.* at 118.

⁴⁷ *Id.* at 119-120.

BA; (7) Use of Technology – A; (8) Process Improvement – BA; (9) Planning and Organization – A; and (10) Training – BA. In the Employee's Performance Summary part of her PAR, petitioner's scores for her quantitative and qualitative performance and results under the developmental assessment portion were analyzed. For her overall grade, petitioner received a 1.43 score, which fell under the rating norm for BA.⁴⁸

Based on the abovementioned test results, respondent was only exercising its statutory hiring prerogative when it refused to hire petitioner on a permanent basis, upon the expiration of her six-month probationary period. It is a well-established principle that an employer has the right or is at liberty to choose who will be hired and who will be denied employment. Accordingly, it is within the exercise of the right to select one's employees that an employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before the former is hired on a permanent basis.⁴⁹ As long as the employer has made known to the employee the regularization standards at the time of the employee's engagement, the refusal of the former to regularize the latter, by reason of the latter's failure to comply with the regularization standards, is within the ambit of the law.⁵⁰

All the same, while respondent had the right to terminate petitioner's employment, and not to accord her the status of a regular employee, the manner by which petitioner's dismissal was carried out was not in accordance with the standards set forth under the law.

With respect to the termination of a probationary employee, a different procedure is applied – the usual two-notice rule does not govern.⁵¹ The aforesaid two-notice rule is that which is found under Article 292(b) of the Labor Code, as amended by Section 33 of Republic Act No. 10151, viz:

Article 292. Miscellaneous Provisions. —

x x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 (now, Article 298) of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x.

⁴⁸ Id. at 121-125.

⁴⁹ *Philippine Daily Inquirer, Inc. v. Magtibay, Jr.*, 555 Phil. 326, 333-334 (2007), citing *International Catholic Migration Commission v. NLRC*, 251 Phil. 560 (1989).

⁵⁰ *Abbott Laboratories, Philippines v. Alcaraz*, supra note 41, at 532-533.

⁵¹ *Abbott Laboratories, Philippines v. Alcaraz*, supra note 41, at 537.

The aforementioned procedure is also found in Section 2, Rule I, Book VI, as amended by Department Order No. 147-15, of the Omnibus Rules Implementing the Labor Code which states:

Section 2. Security of Tenure. —

x x x x

In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 288 (now, Article 297) 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 so 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.

x x x x

Section 2, Rule I, Book VI, as amended by Department Order No. 147-15, of the Omnibus Rules Implementing the Labor Code governs the procedure for the termination of a *probationary employee*, to wit:

Section 2. Security of Tenure. —

x x x x

If the termination is brought about by the x x x failure of an employee to meet the standards of the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.

A perusal of the records reveals that petitioner's dismissal was effected through a series of text messages from Tungol, instead of the abovementioned mandated procedure. As correctly pointed out by the Court of Appeals, the NAWOL issued by Ocampo was nothing more than an afterthought, considering it was furnished to petitioner on 7 January 2014 or five days after she was informed of her dismissal.⁵² Hence, in view of the procedural infirmity attending the termination of petitioner, respondent is liable to pay nominal damages.

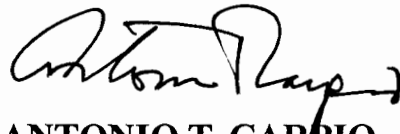
⁵² Rollo, p. 40.

In the case of *Agabon v. National Labor Relations Commission*,⁵³ the Court pronounced that, where the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. Nevertheless, the employer should indemnify the employee for the violation of his statutory rights. The violation of the employee's right to statutory due process by the employer warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. The payment of nominal damages would serve to deter employers from future violations of the statutory due process rights of employees. It likewise provides a vindication or recognition of the fundamental right to due process accorded to employees under the Labor Code and its Omnibus Implementing Rules.⁵⁴

With respect to the proper amount of damages to be awarded in the instant case, the Court notes that petitioner's dismissal proceeded from her failure to comply with the standards required for her regularization. Hence, it is indisputable that the dismissal process was, in effect, initiated by an act imputable to the employee, akin to dismissals due to just causes under Article 297 of the Labor Code. Therefore, the Court deems it appropriate to fix the amount of nominal damages in the sum of ₱30,000.00, consistent with its ruling in *Agabon v. National Labor Relations Commission*.⁵⁵

WHEREFORE, the petition is **DENIED**. The Decision dated 22 March 2016 and the Resolution dated 19 July 2016 of the Court of Appeals in CA-G.R. SP No. 138704 are **AFFIRMED**.

SO ORDERED.


ANTONIO T. CARPIO
Associate Justice

⁵³ 485 Phil. 248 (2004).


⁵⁴ Id. at 288.

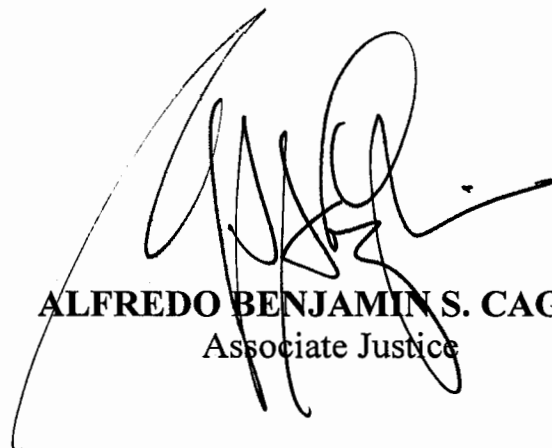
⁵⁵ Id. at 291.

WE CONCUR:


MARIANO C. DEL CASTILLO
Associate Justice


(on official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
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

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