



Republic of the Philippines  
 Supreme Court  
 Manila

P10

SUPREME COURT OF THE PHILIPPINES  
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**SECOND DIVISION**

**J' MARKETING CORPORATION,  
 ROGELIO U. SOYAO, EVP-General  
 Manager, PEPITO P. ESTRELLAN,  
 Kalibo Branch Manager,**  
 Petitioners,

**G.R. No. 211522**

Present:

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

- versus -

**FERNANDO S. IGUIZ,**  
 Respondent.

Promulgated:

04 SEP 2019  
*[Signature]*

x-----x

**DECISION**

**CARPIO, J.:**

**The Case**

This is a petition for review on certiorari<sup>1</sup> assailing the Decision<sup>2</sup> dated 16 July 2013 and the Resolution<sup>3</sup> dated 30 January 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 04657.

**The Facts**

Respondent Fernando S. Iguiz (Iguiz) was hired as a driver in September 1995 by petitioner J' Marketing Corporation (JMC). JMC is a company engaged in the business of selling appliances to the general public and has several branches in the Visayas region. After nine months in JMC's Kalibo Branch, Iguiz was promoted as a collector/credit investigator.

<sup>1</sup> Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

<sup>2</sup> *Rollo*, pp. 53-62. Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Ramon Paul L. Hernando (now a member of this Court) and Ma. Luisa C. Quijano-Padilla concurring.

<sup>3</sup> *Id.* at 64-65.

*[Handwritten mark]*

On 11 December 2006, Iguiz submitted a Daily Cash Collection Report<sup>4</sup> and remitted his collections for the week of 4-9 December 2006. JMC found that Iguiz was short in his remittance collection in the amount of ₱5,811.

Thereafter, through a Memorandum<sup>5</sup> dated 11 December 2006, petitioner Pepito P. Estrellan<sup>6</sup> (Estrellan), JMC's Kalibo Branch Manager, directed Iguiz to explain within 24 hours the reason for the ₱5,811 shortage and suspended Iguiz from his position as collector/credit investigator.

Iguiz sent a notarized letter-reply<sup>7</sup> dated 14 December 2006 and stated that he failed to make a complete remittance since the amount of ₱5,811, representing his collection for 8 December 2006, was lost. He said that this was due to the flood brought about by typhoon "Siniang" which affected his home. Iguiz also attached in his letter-reply the amount of ₱5,811 as tender of payment. JMC, in turn, did not pursue further investigation on the matter.

Thereafter, JMC conducted an audit of Iguiz's customers under his coverage area (Area 7). JMC's credit supervisor, Marlon Sonio (Sonio), issued a memorandum<sup>8</sup> dated 5 February 2007 to Estrellan. As per Sonio's audit report, JMC discovered that Iguiz had an unremitted collection in the amounts of ₱15,300 and \$29 from 14 customers, without the corresponding official receipts. The unremitted collection covered different months from April 2005 to December 2006. Sonio attached a summary list<sup>9</sup> of customers who made the payments to Iguiz without any receipts. Later, JMC collected the affidavits,<sup>10</sup> notarized on 28 February 2007, of the 14 customers.

On 8 February 2007, Estrellan issued a memorandum<sup>11</sup> to Iguiz asking him to explain within 24 hours why he should not be reprimanded for loss of trust and confidence for receiving payments of ₱15,300 and \$29 without issuing official receipts, as per Sonio's audit report. On the same date, Estrellan also conducted an administrative investigation. JMC submitted an Administrative Investigation Report,<sup>12</sup> both signed by Estrellan and JMC's Accounting Supervisor Sianita Nazareta, as witness, but without Iguiz's acknowledgment signature.

The next day, 9 February 2007, Iguiz received the memorandum dated 8 February 2007.

<sup>4</sup> Id. at 143.

<sup>5</sup> Id. at 144.

<sup>6</sup> Also referred to in the records as Pepito Estrella.

<sup>7</sup> *Rollo*, pp. 145-146.

<sup>8</sup> Id. at 148.

<sup>9</sup> Id. at 149.

<sup>10</sup> Id. at 150-163.

<sup>11</sup> Id. at 185.

<sup>12</sup> Id. at 165-166.



On 12 February 2007, before Iguiz could file an explanation for the memorandum dated 8 February 2007, Iguiz received another memorandum<sup>13</sup> dated 9 February 2007 from Estrellan asking him to sign the administrative investigation report within 12 hours; otherwise it would mean that Iguiz is waiving his right to be heard and JMC would be constrained to evaluate his case based on the evidence on hand.

In his reply-memorandum<sup>14</sup> dated 12 February 2007 addressed to Estrellan, Iguiz denied the allegation against him. Iguiz stated that there is no reason to accuse him of loss of trust and confidence since he never accepted payments from customers without issuing the corresponding official receipts. Iguiz added that there was no basis for the audit report since no formal complaint had been filed against him.

On the same date, in a letter<sup>15</sup> dated 12 February 2007, JMC, through Atty. Immanuel L. Sodusta, wrote Iguiz demanding the remittance of ₱15,300 and \$29 within five days from receipt, with a reminder that necessary action will be resorted to if Iguiz fails to remit the said amounts.

In a Joint Affidavit<sup>16</sup> dated 13 February 2007, Estrellan and Nazareta attested that Iguiz's remittance on 11 December 2006 was short of ₱5,811 and when asked to explain verbally, Iguiz answered that he used the money as payment for the hospitalization of his wife. They stated that when Iguiz submitted an explanation dated 14 December 2006, what was written was different from his earlier verbal explanation. They also added that the barangay captain where Iguiz lives issued a certification<sup>17</sup> that their place was not affected by typhoon Siniang on 10 or 11 December 2006. Further, Estrellan and Nazareta declared that there had been several instances in the past that Iguiz's remittances were short.

On 27 February 2007, JMC reported the matter of Iguiz's non-issuance of company receipts and non-remittance of collections to the Kalibo Police station for record purposes.<sup>18</sup>

On 7 March 2007, Vangie M. Tionko, JMC's Personnel Manager, issued a memorandum<sup>19</sup> informing Iguiz that because of (1) dishonesty for collecting ₱15,300 and \$29 without issuing official receipts, and (2) breach of trust and confidence, he is terminated from employment on the ground of

<sup>13</sup> Id. at 186.

<sup>14</sup> Id. at 168. See also p. 187.

<sup>15</sup> Id. at 169.

<sup>16</sup> Id. at 173-174.

<sup>17</sup> Id. at 147.

<sup>18</sup> See Certification dated 12 March 2007 of the PNP Chief of Police of Kalibo; id. at 170.

<sup>19</sup> Id. at 171-172.



violation of Article 282, paragraph (c)<sup>20</sup> of the Labor Code. The memorandum provides:

TO : FERNANDO IGUIZ (CI Collector – Kalibo Branch)  
DATE : MARCH 07, 2007

SUBJECT: CONCLUSION ON YOUR CASE

An investigation conducted by the company has indicated beyond any doubt that you collected the amount[s] of ₱15,300.00 and \$29.00 from our various customers without issuance of Official Receipts and the non[-] remittance of these collection[s] to our office.

This conclusion on your illegal activity is supported by the copy of the following:

1. Notarized affidavit of customers[.]
2. Administrative investigation report[.]
3. Audit Report from your Credit Supervisor Marlon Sonio[.]
4. Your Branch Manager memo dated February 08, 2007 instructing you to explain your receiving of payment[s] from customer[s] without issuance of Official Receipt[s].
5. Your response memo dated February 12, 2007.

You were given the opportunity to present your side, but it is very obvious that the versions you presented were not the truth. This are itself [sic] consist of dishonesty on your part.

Remember you also have another offense of short collection of ₱5,811.00 covering Dec. 04, 2006 to Dec. 09, 2006 in which case is supported by the following:

1. Your Branch Manager memo to you dated Dec. 11, 2006 with subject: Short Collection.
2. Your response memo dated Dec. 14, 2006 denying such misappropriation but claimed that same amount was washed out during the flood.
3. Certification from the Office of the Punong Barangay of Poblacion declaring that Barangay Poblacion, Numancia, Aklan was not affected by flood by typhoon “Siniang.”
4. Joint Affidavit of your BM Pepito Estrellan and your AS Sianita Nazareta declaring your contradicting reasons about the short collection.

Be informed, dishonesty is an offense under our Company’s Code of Ethics Class D offense with disciplinary measure of termination for the commission of first offense.

<sup>20</sup> Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

x x x x

c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

x x x x

Also, your position as Credit Investigator/Collector required trust and confidence relating to the financial interest of the company and your non[-]observance to this procedure with respect to the fund under your control and custody constitutes breach on your part of the trust and confidence reposed to you by the management.

In this connection, be informed that your services as CI Collector of our Kalibo Branch is terminated with cause effective upon receipt of this memo, on the ground that you violated Art. 282, paragraph c of the Labor Code.<sup>21</sup> (Underscoring in the original)

On 12 March 2007, Iguiz received the memorandum of termination. Aggrieved, Iguiz filed a Complaint<sup>22</sup> for illegal dismissal with money claims with the National Labor Relations Commission (NLRC) Sub-Regional Arbitration Branch No. VI in Kalibo, Aklan.

In a Decision<sup>23</sup> dated 15 July 2008, Labor Arbiter Rene G. Eñano dismissed the complaint for lack of merit. The Labor Arbiter stated that Iguiz's bare, unsubstantiated and uncorroborated denial of the charges of unremitted collections and non-issuance of receipts justified his dismissal as a valid exercise of JMC's management prerogative for loss of trust and confidence.

Iguiz filed an appeal with the NLRC.<sup>24</sup> In a Decision<sup>25</sup> dated 27 February 2009, the NLRC, 4<sup>th</sup> Division of Cebu City reversed the decision of the Labor Arbiter. The dispositive portion of the decision states:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby ANNULLED and SET ASIDE. A NEW Decision is entered declaring the illegal dismissal of complainant.

Respondents J['] Marketing Corporation/Rogelio Soyao, EVP-General Manager/Pepito Estrellan, Kalibo Branch Manager are hereby ordered to jointly and severally pay complainant the following:

1. Backwages	₱ 131,606.00
2. Separation Pay	69,264.00
3. Moral Damages	20,000.00
4. Exemplary Damages	<u>20,000.00</u>
	₱ 240,870.00
5. Attorney's Fees	<u>24,087.00</u>
TOTAL	₱ 264,957.00

SO ORDERED.<sup>26</sup>

<sup>21</sup> *Rollo*, pp. 171-172.

<sup>22</sup> *Id.* at 135-136. Docketed as NLRC SRAB VI Case No. 06-03-026-Aklan-2007.

<sup>23</sup> *Id.* at 193-196.

<sup>24</sup> *Id.* at 197.

<sup>25</sup> *Id.* at 114-130.

<sup>26</sup> *Id.* at 129.

JMC filed a motion for reconsideration which was denied by the NLRC in a Resolution<sup>27</sup> dated 31 July 2009.

JMC then filed an appeal with the CA. In a Decision dated 16 July 2013, the CA affirmed the NLRC. The dispositive portion of the decision states:

WHEREFORE, the petition is DENIED. The February 27, 2009 Decision and July 31, 2009 Resolution of public respondent in NLRC Case No. VAC 09-000592-2008 are hereby AFFIRMED.

SO ORDERED.<sup>28</sup>

JMC filed a motion for reconsideration which was denied by the CA in a Resolution dated 30 January 2014.

Hence, this petition.

### **The Issue**

Whether or not the appellate court committed reversible error in upholding the finding of the NLRC that Iguiz was illegally dismissed from his employment and is entitled to backwages, separation pay, damages and attorney's fees.

### **The Court's Ruling**

The petition lacks merit.

Petitioner JMC asserts that Iguiz was dismissed for a just and valid cause due to dishonesty and willful breach of trust. JMC submits that the Labor Arbiter gave credence to the audit memorandum dated 8 February 2007 and the affidavits of 14 disinterested persons who attested to Iguiz's guilt that Iguiz collected payments without issuing official receipts.

JMC insists that the company followed procedural due process and complied with the twin requirements of two notices and a hearing. JMC submits that Iguiz was sent two notices – Memorandum to Explain dated 11 December 2006 and Memorandum to Explain dated 8 February 2007 for which Iguiz replied in his two letters-reply dated 14 December 2006 and 12 February 2007. JMC also submitted an Administrative Investigation Report dated 8 February 2007, sent Iguiz a Memorandum to Sign Administrative Investigation dated 9 February 2007, and gave Iguiz a Notice of Termination

<sup>27</sup> Id. at 132-134.

<sup>28</sup> Id. at 61.

dated 7 March 2007. Thus, JMC contends that Iguiz was given an opportunity to explain his side and to answer the charges against him.

It must be stressed that this Court only entertains questions of law under Rule 45 of the Rules of Court. However, the Court admits of exceptions when the factual findings of the Labor Arbiter, NLRC or the CA are in conflict with each other, such as in this case.<sup>29</sup>

Under the Labor Code, the dismissal of an employee has a two-fold due process requirement: one is substantive and the other, procedural. For substantive due process, the dismissal must be for a just and authorized cause as provided under Articles 282, 283, and 284 of the Labor Code; and for procedural due process, the opportunity to be heard and to defend oneself must be observed.

An employer may terminate the services of an employee for just causes under Article 282 of the Labor Code which provides:

Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b. Gross and habitual neglect by the employee of his duties;
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e. Other causes analogous to the foregoing.

In the present case, JMC terminated the employment of Iguiz due to dishonesty and fraud or willful breach of the trust reposed in him as provided under Article 282(c). The Labor Arbiter found that Iguiz was validly dismissed for loss of trust and confidence while the NLRC and the CA found that JMC failed to provide the burden of proof necessary to show that the dismissal was for a just cause.

In *Tiu v. NLRC*,<sup>30</sup> we held that the language of Article 282(c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly,

<sup>29</sup> *Tagud v. BSM Crew Service Center Phils, Inc.*, G.R. No. 219370, 6 December 2017, 848 SCRA 176, 185.

<sup>30</sup> 290 Phil. 15, 24 (1992).

heedlessly or inadvertently. Stated otherwise, it must be based on substantial evidence.

In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence. Substantial evidence is the relevant evidence a reasonable mind might accept as adequate to support a conclusion.

In the present case, both the NLRC and CA found that JMC failed to provide the requisite substantial evidence to terminate Iguiz's employment. In its Decision dated 16 July 2013, the CA declared:

[T]here is no substantial evidence that private respondent failed to issue official receipts for his collections totaling ₱15,300.00 and \$29.00. The memorandum sent to private respondent enumerating supposed collections are bereft of transactional details. Moreover, as pointed out by private respondent who had denied the allegation, none of the supposed affected customers had ever filed any complaint against him for his purported failure to issue official receipts for the payments they made. The affidavits supposedly executed by the customers were belatedly obtained.

While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must have some basis. Proof beyond reasonable doubt is not required. It is sufficient that there must only be some basis for such loss of confidence or that there is reasonable ground to believe, if not to entertain, the moral conviction that the concerned employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.

Aside from the memorandum and the affidavits belatedly executed by supposed complainants, no other evidence had been adduced by petitioners to substantiate their allegation that private respondent committed the act imputed to him.<sup>31</sup>

We agree with the appellate court that JMC failed to prove by substantial evidence the loss of trust and confidence in Iguiz based on willful breach of trust. Aside from the summarized list submitted by JMC's credit supervisor Sonio on the alleged customer collection and incomplete remittance amounts of Iguiz, no other details were provided by JMC. Iguiz was not given an opportunity to question the report of Sonio and to check if there were supporting documents attached to the list. Neither were the customers affected presented nor did they come forward to personally attest to the collection and non-issuance of receipts. Also, JMC belatedly obtained the affidavits of said customers on 28 February 2007 or more than three weeks after the said report was given by Sonio to Estrellan. By then, the purported administrative investigation conducted by Estrellan on 8 February 2007 had already been concluded. Clearly, Iguiz was not sufficiently

<sup>31</sup> *Rollo*, p. 58.





apprised of the allegations against him. He was also not given an opportunity to present his side, refute the charges, and confront the witnesses against him. Thus, JMC's justification for willful breach of trust as the basis for the dismissal was not convincingly established.

It bears stressing that in illegal dismissal cases, the employer bears the burden of showing that the dismissal was for a just or authorized cause. Not only must the reasons for dismissing an employee be substantiated, the manner of his dismissal must be in accordance with governing rules and regulations. Failure by the employer to discharge this burden would necessarily mean that the dismissal is not justified, and therefore illegal.<sup>32</sup> This means that the requirements of due process must be observed.

Article 277(b) of the Labor Code contains the procedural due process requirements in the dismissal of an employee:

Art. 277. Miscellaneous Provisions. — (a) 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 without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes 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. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

x x x.

On the other hand, Section 2, Rule XXIII, Book V of the Implementing Rules and Regulations of the Labor Code states:<sup>33</sup>

SEC. 2. Standards of due process; requirements of notice. — In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving

<sup>32</sup> *Floren Hotel v. National Labor Relations Commission*, 497 Phil. 458, 472 (2005), citing *Gabisay v. National Labor Relations Commission*, 366 Phil. 593, 601 (1999).

<sup>33</sup> Cited in *Naranjo v. Biomedica Health Care, Inc.*, 695 Phil. 551, 563 (2012); *Aliling v. Feliciano*, 686 Phil. 889, 912-913 (2012); *Perez v. Phil. Telegraph and Telephone Co.*, 602 Phil. 522, 536-537 (2009); *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115 (2007).

- said employee reasonable opportunity within which to explain his side.
- (b) 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.
  - (c) 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.

The law and the rules provide that the employer must furnish the employee with two written notices before dismissal from employment: (1) notice to apprise the employee of the particular acts or omissions for which the dismissal is sought, and (2) subsequent notice to inform him of the employer's decision to dismiss him. In addition to the notices, the employer must set a hearing or conference to give the employee an opportunity to present evidence and rebut the charges against him. The requirement of two notices and a hearing is mandatory; otherwise the order of dismissal is void.


The case of *King of Kings Transport, Inc. v. Mamac*<sup>34</sup> enumerated the proper steps an employer should take in terminating the services of an employee:

[T]he following should be considered in terminating the services of employees:

(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) 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.  
x x x.

(2) After serving the first notice, the employers should schedule and conduct a **hearing or conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given

<sup>34</sup> Supra note 33, at 115-116. See also *Perez v. Phil. Telegraph and Telephone Co.*, supra note 33.



the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. (Boldfacing in the original)

In the present case, JMC sent Iguiz the first notice – a memorandum dated 8 February 2007 asking Iguiz to explain why he should not be reprimanded for loss of trust and confidence for receiving payments of ₱15,300 and \$29 without issuing official receipts. Iguiz received this notice on 9 February 2007 and he was able to file a written reply on 12 February 2007 denying the allegation. JMC then sent Iguiz another notice – a memorandum dated 7 March 2007 terminating his employment. Iguiz received the termination notice on 12 March 2007.

At first glance, it seems that JMC complied with the two notice requirement. However, the succession of events would show that JMC actually railroaded the termination of Iguiz from the start.

*First*, JMC, through Estrellan, issued the first written notice – the memorandum dated 8 February 2007 stating “you are instructed by the undersigned to explain within 24 hours why you should not [be] reprimanded for los[s] of trust and confidence.”<sup>35</sup> The notice clearly says reprimand and not termination from employment. Also, the 24 hour notice does not give Iguiz ample time to study the accusation against him, consult a union official or lawyer, gather data, and decide on what defenses to raise. In *Naranjo v. Biomedica Health Care, Inc.*,<sup>36</sup> we held that the period of 24 hours allotted to answer the notice was severely insufficient and in violation of the implementing rules of the Labor Code. Under the implementing rule of Article 277, an employee should be given “reasonable opportunity” to file a response to the notice. The case of *King of Kings Transport, Inc.* states that “reasonable opportunity” should be a period of at least five calendar days from receipt of the notice. Iguiz failed to comply with the 24 hour deadline and only filed his reply-memorandum to the first notice on 12 February 2007 denying the allegations against him.

*Second*, even before Iguiz could file an explanation to the first notice, Iguiz received another memorandum dated 9 February 2007 from Estrellan

<sup>35</sup> *Rollo*, p. 185.

<sup>36</sup> *Supra* note 33, at 565.

asking him to sign the administrative investigation report conducted on 8 February 2007. The report consists of a two-page transcript of a hearing conducted by Estrellan and witnessed by Nazareta. However, not knowing the basis of the investigation and the charges against him, Iguiz could not have participated in this so-called hearing or conference.

The records reveal that Iguiz denied having participated in said administrative investigation. In Iguiz's position paper<sup>37</sup> filed with the NLRC, Iguiz stated that no formal investigation and hearing were conducted by JMC where he could have an opportunity to defend himself, present evidence in support of his defense and confront the witnesses against him. JMC countered this argument by saying that Iguiz refused to sign the administrative investigation report as indicated in the memorandum dated 9 February 2007 where JMC reiterated to Iguiz that failure to sign the administrative investigation conference within 12 hours would mean waiving his right to be heard. This period of 12 hours given by JMC to Iguiz is again not the "reasonable opportunity" contemplated by the rules. Without any chance for Iguiz to know the basis for the investigation and to defend himself personally, with the assistance of a representative or counsel of his choice, the 12-hour notice is evidently deficient. Thus, the administrative investigation purportedly conducted was not in accordance with the hearing or conference contemplated in Section 2, Rule XXIII, Book V of the implementing rules.

*Third*, in the second notice – memorandum dated 7 March 2007 informing Iguiz of his termination from employment – JMC mentioned that Iguiz had another offense previously for shortage in his collection in the amount of ₱5,811. However, while an employer may take into consideration an employee's past offenses<sup>38</sup> as part of his just or valid cause for termination, JMC, in this case, cannot invoke Iguiz's shortage of ₱5,811 pertaining to a past collection, through memorandum dated 11 December 2006, since Iguiz was not censured, reprimanded or even investigated for this shortage after he had explained his side and tendered full payment. Iguiz's previous act of alleged dishonesty cannot be made as a corroborating evidence for another supposed infraction absent the requirement of procedural due process.

Accordingly, given the illegality of Iguiz's dismissal without just cause and the non-observance of procedural due process, Iguiz is entitled to reinstatement and backwages as provided in Article 279 of the Labor Code, which states:

x x x. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his

<sup>37</sup> Rollo, p. 173.

<sup>38</sup> See *Santos v. Integrated Pharmaceutical, Inc.*, 789 Phil. 477, 493 (2016).




other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

However, since reinstatement is no longer feasible, such as in the case of a clearly strained employer-employee relationship (limited to managerial positions and contracts of employment predicated on trust and confidence, such as in this case) or when the work or position formerly held by the dismissed employee simply no longer exists, separation pay can substitute for reinstatement.

Also, the NLRC awarded moral and exemplary damages since JMC acted in bad faith in terminating Iguiz and the illegal termination violated his right to security of tenure, as well as attorney's fees for engaging the services of counsel to protect his rights and interest. Thus, we sustain the amount of backwages, separation pay, moral damages, exemplary damages and attorney's fees awarded by the NLRC, as affirmed by the CA.

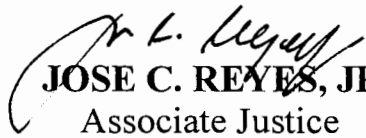
**WHEREFORE**, we **DENY** the petition. We **AFFIRM** the Decision dated 16 July 2013 and the Resolution dated 30 January 2014 of the Court of Appeals in CA-G.R. SP No. 04657.

**SO ORDERED.**

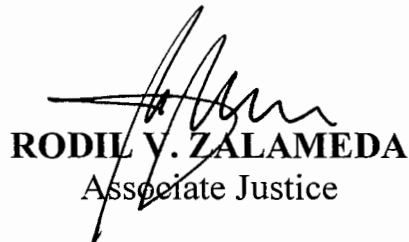
  
**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

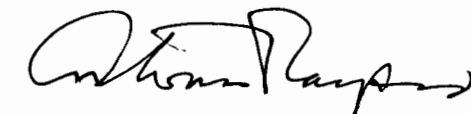
  
**JOSE C. REYES, JR.**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

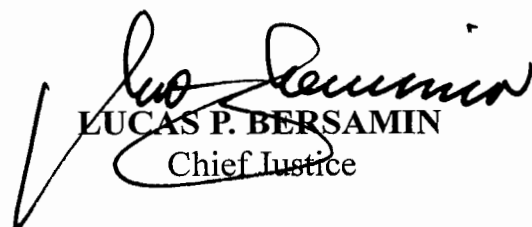
**ATTESTATION**

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