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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EVERY NATION LANGUAGE
INSTITUTE (ENLI) and RALPH
MARTIN LIGON,
Petitioners,

G.R. No. 225100

Present:

CAGUIOA, *Acting Chairperson*,
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, and
GAERLAN,* *JJ.*

- versus -

MARIA MINELLIE DELA
CRUZ,
Respondent.

Promulgated:

FEB 19 2020

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DECISION

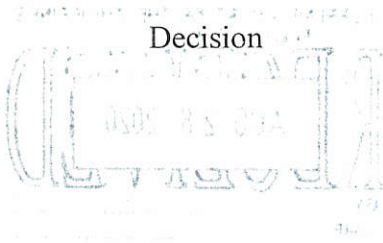
REYES, J. JR., *J.*:

Through this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, petitioners Every National Language Institute (ENLI) and its President, Ralph Martin Ligon (Ligon) (collectively, petitioners) seek the reversal of the Court of Appeals' (CA) Decision² dated September 18, 2015 and Resolution³ dated May 17, 2016. Review is urged on the grounds that the CA erred in not reviewing the conflicting rulings of the Labor Arbiter and the National Labor Relations Commission (NLRC) and, consequently, in not dismissing respondent Maria Minellie Dela Cruz's (Dela Cruz) complaint for illegal dismissal.

* Additional Member per Raffle of January 29, 2020 in lieu of Chief Justice Diosdado M. Peralta.
¹ *Rollo*, pp. 10-39.

² Penned by Associate Justice Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela; *id.* at 41-49.

³ *Id.* at 51-52.



Facts

ENLI is engaged in the business of teaching different languages to local and international students. In August 2011, ENLI hired Dela Cruz as Marketing Officer for its Calamba, Laguna branch. Dela Cruz later became Branch Administrator. As Branch Administrator, her duties include managing the daily operations of the branch, fixing the schedule of teachers, and handling of attendance sheets, cash disbursements, payroll, and financial reports. She was also responsible for closing the branch after business hours.⁴

Allegedly, ENLI received complaints from clients that calls and messages to the Calamba branch went unanswered and that Dela Cruz often arrives late for work. The financial reports of the Calamba branch were also not submitted prompting ENLI's Finance Officer to check the branch's income and expense reports.⁵ Orders were allegedly given to Dela Cruz to submit the financial reports, but the latter repeatedly failed to comply.⁶ Thus, through a Letter⁷ dated May 29, 2012, Dela Cruz was directed to submit the required documents for audit.⁸ Dela Cruz refused to acknowledge receipt of the letter and further disregarded ENLI's directive.⁹

On May 30, 2012, Dela Cruz reported to the barangay hall ENLI's non-payment of the teachers' salaries. On June 5, 2012, Dela Cruz filed the complaint *a quo* for underpayment of salaries and other money claims before the Labor Arbiter.

Meanwhile, ENLI continued investigating Dela Cruz which revealed that she committed various infractions such as non-issuance of official receipts, insubordination, gross disrespect to authorities, and frequent absences.¹⁰ Dela Cruz also allegedly received a check in the amount of ₱100,000.00 which was issued in her name instead of ENLI's.¹¹

On June 21, 2012, Dela Cruz accompanied a student to ENLI's Sta. Rosa, Laguna branch to demand for a refund of the tuition fee and while thereat, Dela Cruz allegedly caused a scene.¹² The next day, or on June 22, 2012, Ligon's mother received a report that someone will take company properties from the Calamba branch. This prompted Ligon's mother to report the matter to the barangay hall.¹³

⁴ Id. at 12-13.

⁵ Id.

⁶ Id. at 14.

⁷ Id. at 95.

⁸ Id. at 71 and 96.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 72.

¹² Id. at 73.

¹³ Id. at 18.

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Because of the above events, a Notice to Suspend¹⁴ dated June 22, 2012 was issued to Dela Cruz requiring her to explain the following infractions: non-issuance of official receipts, supporting juvenile delinquents' activities, insubordination, constant absence in the office resulting to serious loss of income, disrespect to authorities, and dishonesty in corporate transaction amounting to over ₱100,000.00. She was also placed under "temporary suspension" for 30 days for the conduct of the investigation.¹⁵ Dela Cruz refused to acknowledge receipt of the Notice to Suspend.¹⁶

The day after, Ligon took over the Calamba branch where he met three students who demanded for a refund of their tuition fees. The refund was allegedly sought upon the advice of Dela Cruz who represented that she would, instead, send someone to teach them in their houses.¹⁷

In July 2012, ENLI learned of Dela Cruz's complaint before the Labor Arbiter. On July 22, 2012, and while the complaint was pending, the 30-day suspension period lapsed but Dela Cruz did not report back for work.¹⁸

In her complaint, Dela Cruz averred that for the month of June 2012, she received only ₱500.00 instead of her salary of ₱12,000.00. It was because of her complaint at the barangay hall that Ligon began accusing her of receiving the fees paid by the students for her own benefit. She also averred that she was suspended without having been issued any suspension letter.¹⁹ Because of these, she claims to have been illegally suspended and illegally terminated.

In their Position Paper dated September 24, 2012,²⁰ petitioners argued that Dela Cruz was not dismissed but was only preventively suspended.²¹ They contended that the preventive suspension was justified because as branch manager, Dela Cruz had access to all confidential reports and financial documents which she can alter to cover her infractions.²² ENLI also attached affidavits executed by its employees attesting to Dela Cruz's alleged infractions.²³

Ruling of the Labor Arbiter

On February 21, 2013, the Labor Arbiter dismissed Dela Cruz's complaint. According to the Labor Arbiter, Dela Cruz's admission that she was terminated only after she filed her complaint show that at the time the

¹⁴ Id. at 104-109.

¹⁵ Id. at 109.

¹⁶ Id. at 110.

¹⁷ Id. at 20.

¹⁸ Id.

¹⁹ Id. at 116-117.

²⁰ Id. at 67-90.

²¹ Id. at 77.

²² Id. at 73.

²³ Id. at 97, 99, and 100.

complaint was filed on June 5, 2012, she was not yet dismissed but merely suspended.

The Labor Arbiter also denied Dela Cruz's complaint for underpayment of salary for the month of June 2012 since she was supposed to receive her salary every 15th and 30th of the month. Thus, at the time the complaint was filed on June 5, 2012, she had no cause of action for underpayment of salary.²⁴ The Labor Arbiter also dismissed Dela Cruz's money claims on the ground that as a managerial employee, Dela Cruz is not entitled to premium pay for holiday, rest day, overtime and service incentive leave pay.²⁵

Ruling of the NLRC

On appeal, Dela Cruz claimed that the letters executed by ENLI's employees as witnesses for her alleged infractions were fabricated as these were executed in September and October 2012 or months after she was dismissed.

The NLRC granted Dela Cruz's appeal in its Decision dated June 28, 2013. The NLRC held that petitioners failed to present more convincing evidence other than the letters executed by ENLI's employees which the NLRC regarded as merely self-serving.²⁶ According to the NLRC, it is clear that when ENLI failed to pay the teachers' salaries, including that of Dela Cruz's, the latter reported the matter to the *barangay* hall which angered Ligon. It was because of this that Dela Cruz was suspended and eventually dismissed. The NLRC also noted that despite the expiration of the illegal suspension period, ENLI did not require Dela Cruz to report back to work.²⁷ On the other hand, the NLRC ruled that Dela Cruz's claims were "substantiated by clear and convincing documentary evidence."²⁸

The NLRC thus found Dela Cruz to have been illegally dismissed and ordered the payment of backwages and separation pay in lieu of reinstatement.

The NLRC disposed:

WHEREFORE, the appeal is GRANTED. The Decision is REVERSED and SET ASIDE, and a new one issued ordering [petitioners] to pay to [respondent Dela Cruz], jointly and severally, [sic] computed as follows:

²⁴ Id. at 117.

²⁵ Id. at 118.

²⁶ Id. at 123.

²⁷ Id.

²⁸ Id.

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A) Backwages		
1.) Basic Salary		
6/22/12 – 7/3/13		
12[,]000 x 12.40	[P]148,800.00	
2.) 13 th month pay		
148,800/12	12,400.00	[P]161,200.00
3.) Separation [p]ay		
8/11 – 7/13/13 ²⁹		
12,000 x 2		<u>24,000.00</u>
		[P]185,200.00

SO ORDERED.³⁰

An entry of judgment was then issued on November 11, 2013. Petitioners moved to set aside the entry of judgment considering that they did not receive a copy of the NLRC's Decision dated June 28, 2013. They also moved that the NLRC's Decision dated June 28, 2013 be reconsidered as Dela Cruz's appeal was filed out of time. According to petitioners, since Dela Cruz received a copy of the Labor Arbiter's Decision on April 1, 2013, as stated in her Notice of Appeal, her appeal which was filed on April 25, 2013 was filed beyond the 10-day reglementary period.

In its Resolution dated January 23, 2014, the NLRC partly granted ENLI's motion by setting aside the entry of judgment but nevertheless denying ENLI's motion for reconsideration as Dela Cruz seasonably filed her appeal. The NLRC disposed:

WHEREFORE, premises considered, [petitioners] Motion to Set Aside Notice of Entry of Final Judgment is GRANTED.

The Entry of Judgment dated 11 November 2013 is hereby SET ASIDE.

Let a copy of the 28 June 2013 Decision be sent to [petitioners'] counsel, Domingo and Associates Law Office.

The Motion to Set Aside Judgment on the ground that [Dela Cruz's] appeal was filed out of time is DENIED for lack of merit.

SO ORDERED.³¹

Petitioners' motion for reconsideration was denied by the NLRC in its Resolution dated March 31, 2014. It observed that in her Memorandum of Appeal, Dela Cruz stated that she received a copy of the Labor Arbiter's decision on April 15, 2013. As between the differing dates of receipt as contained in the Notice of Appeal and the Memorandum of Appeal, the NLRC gave more weight to the latter as a Memorandum of Appeal is what is

²⁹ The NLRC Decision dated June 28, 2013 did not state the reason for fixing the last day of Dela Cruz's employment to "7/3/13" or "7/13/13"; *id.* at 124.

³⁰ *Id.*

³¹ *Id.* at 41-42.

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necessary to perfect an appeal. Having received a copy of the appealed decision on April 15, 2013, the NLRC ruled that Dela Cruz seasonably filed her appeal on April 25, 2013.³²

Proceedings before the CA

Assailing the NLRC's Resolutions dated January 23, 2014 and March 31, 2014, petitioners lodged a *certiorari* petition before the CA. They argued that the NLRC gravely abused its discretion when it gave due course and granted Dela Cruz's appeal despite having been filed beyond the reglementary period.

The CA initially dismissed the petition for being defective. Upon curing the defects through an Amended Petition, the CA reinstated the petition. Petitioners also filed a Manifestation and Supplemental Motion for Reconsideration³³ wherein they pointed out the conflicting factual findings of the NLRC in its Decision dated June 28, 2013 and that of the Labor Arbiter in his Decision dated February 21, 2013. Dela Cruz filed her comment arguing that the factual findings of the NLRC can no longer be disturbed. Petitioners replied and reiterated that the NLRC gravely abused its discretion when it did not give credit to petitioners' pieces of evidence. In any case, petitioners raised the argument that Dela Cruz abandoned her employment since she failed to report for work despite the lapse of her preventive suspension on July 22, 2012.³⁴

Ruling of the CA

In its presently assailed Decision dated September 18, 2015, the CA dismissed the *certiorari* petition.

In its Decision, the CA enumerated the following issues for resolution:

ISSUE[S]

I

ADMISSION OF FACT IS AN ESTABLISHED FACT AND THE SAME CANNOT BE THE SUBJECT OF THE COURT'S DISCRETION.

II

PUBLIC RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AND IN EXCESS OF JURISDICTION OR AUTHORITY WHEN IT REVERSED THE LABOR ARBITER'S DECISION AND DENIED PETITIONER'S MOTION FOR RECONSIDERATION AND OTHER PLEADINGS.

³² Id. at 128-129.

³³ Id. at 160-166.

³⁴ Id. at 183.

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III
PUBLIC RESPONDENT COMMISSION'S DECISION AND
RESOLUTIONS SHOULD BE REVERSED AND THE LABOR
ARBITER'S DECISION SHOULD BE AFFIRMED.³⁵

Despite having enumerated three issues for resolution, the CA only resolved the issue of whether the NLRC gravely abused its discretion in giving due course to Dela Cruz's appeal despite having been filed out of time. The CA resolved this issue by ruling that contrary to petitioners' claims, Dela Cruz indeed seasonably filed her appeal. Petitioners did not present contrary evidence, such as the return card, showing when Dela Cruz received the Labor Arbiter's Decision. According to the CA, the NLRC cannot be faulted for having relied on the allegations contained in Dela Cruz's Memorandum of Appeal.³⁶

Petitioners moved for reconsideration pointing that the CA failed to discuss the issue as to whether the NLRC's Decision dated June 28, 2013 should be reversed due to its erroneous finding of illegal dismissal.

In its second assailed Resolution dated May 17, 2016, the CA denied reconsideration on the ground that it found no "convincing or impelling reason" to do so.³⁷

Petitioners thus resort to the instant petition raising the following:

Issues

- I. The Court of Appeals erred in not reviewing the records of the case despite the conflicting rulings between the Labor Arbiter and the National Labor Relations Commission's decision as enunciated in the cases [of] *Phil. Employ Services and Resources, Inc. vs. Paramio*, 427 SCRA 732 and *Agabon vs. NLRC, et al.*, G.R. No. 158693, 17 November 2004.
- II. The Court of Appeals erroneously sustained the National Labor Relations Commission's Decision despite failure to muster the quantum of proof required in administrative proceedings, *i.e.*, substantial evidence.³⁸

In her Comment,³⁹ Dela Cruz sought the denial of the petition for having raised the issue concerning the legality of her dismissal which issue was not raised in petitioners' *certiorari* petition before the CA.

³⁵ Id. at 44.

³⁶ Id. at 47.

³⁷ Id. at 51-52.

³⁸ Id. at 22.

³⁹ Id. at 144-154.

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Ruling of the Court

Upon expiration of the 30-day suspension period without Dela Cruz having been reinstated, we find that the preventive suspension has ripened into constructive dismissal as of July 22, 2012. Thus, we affirm the ruling of the NLRC with the modification that the award for backwages should only be reckoned from July 22, 2012 up to the finality of this decision.

I.

Preliminarily, it has not escaped the Court's attention of petitioners' attempt to camouflage its misstep of not raising the issue respecting the legality of Dela Cruz's dismissal in their motion to set aside the entry of judgment and motion for reconsideration filed before the NLRC. To recall, reconsideration of the NLRC's Decision dated June 28, 2013 was sought on the ground that Dela Cruz allegedly appealed out of time. It was for this reason that the NLRC's subsequent Resolutions dated January 23, 2014 and March 31, 2014 resolved only the issue of whether Dela Cruz's appeal was seasonably filed.

In fact, petitioners' *certiorari* petition filed before the CA specifically assailed the NLRC Resolutions dated January 23, 2014 and March 31, 2014 (not the NLRC Decision dated June 28, 2013) on the ground that the NLRC gravely abused its discretion in allowing Dela Cruz's appeal. Petitioners' narration of procedural antecedents⁴⁰ conveniently omitted these facts.

To recover this misstep, the issue as regards the legality of Dela Cruz's dismissal was resurrected by the petitioners in their subsequent pleadings, specifically in their Manifestation and Supplemental Motion for Reconsideration and Reply, filed before the CA. Notably, it was also only in their Reply that petitioners raised abandonment as a defense.

In *St. Martin Funeral Home v. NLRC*,⁴¹ we held that the decision of the NLRC may be reviewed by the CA through a special civil action for *certiorari* under Rule 65. But because *certiorari* is not the same as an appeal, it is not a means to review the entire decision of the NLRC for reversible errors on questions of fact and law.⁴² Apparently limiting itself to the arguments contained in the *certiorari* petition, the CA resolved only the issue of whether the NLRC committed grave abuse of discretion in admitting Dela Cruz's appeal.

The limits of the review under Rule 65 affect the Court's review under Rule 45 assailing the CA's ruling in cases involving alleged grave abuse of

⁴⁰ Par. 28 of the Petition states:

28. Petitioners moved [for] the reconsideration of the adverse Decision [dated June 28, 2013], however, the same was denied by [the NLRC] in the Resolution dated 31 March 2014.

⁴¹ 356 Phil. 81, 824 (1998).

⁴² *Philippine National Bank v. Gregorio*, 818 Phil. 321, 334 (2017).

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discretion by the NLRC.⁴³ Given that a review under Rule 45 is limited only to questions of law, the question of law that must be resolved is whether the CA correctly ruled on the presence or absence of grave abuse of discretion on the part of the NLRC.⁴⁴

In this case, therefore, the task of the Court is to determine whether the CA was correct in holding that the NLRC did not gravely abuse its discretion in finding that Dela Cruz seasonably filed her appeal. We find no whim or caprice on the part of the NLRC when it relied on Dela Cruz's allegation as contained in her Memorandum of Appeal that she received the Labor Arbiter's Decision dated February 21, 2013 on April 15, 2013, especially when there was no contrary proof presented by petitioners. The CA thus correctly denied the *certiorari* petition on this ground.

II.

In the present petition, petitioners resurfaced its arguments on the legality of Dela Cruz's dismissal, and surrendered the issue on the timeliness of Dela Cruz's appeal. The Court is thus called to resolve the issues of whether Dela Cruz was terminated or suspended; whether, in either case, the substantive and procedural requirements were met; and whether Dela Cruz abandoned her employment. These issues are factual in nature⁴⁵ and should have been raised by the petitioners in their motion for reconsideration from the NLRC's Decision dated June 28, 2013, and should have been pleaded by petitioners before the CA if only to aid the appellate court in determining the paramount issue of whether the NLRC acted capriciously or despotically.

The Court generally does not entertain questions of fact in a petition for review on *certiorari*.⁴⁶ Because the rulings of the Labor Arbiter and the NLRC are conflicting,⁴⁷ and, to write an end to the controversy, we deem it of sound judicial economy⁴⁸ to proceed with the issue as regards the legality of Dela Cruz's dismissal.

⁴³ Id.

⁴⁴ Id. at 335.

⁴⁵ See *Canedo v. Kampilan Security and Detective Agency, Inc.*, 715 Phil. 625 (2013) and *Pure Blue Industries, Inc. v. National Labor Relations Commission*, 337 Phil. 710, 716 (1997).

⁴⁶ *Arriola v. Pilipino Star Ngayon, Inc.*, 741 Phil. 171 (2019).

⁴⁷ *Macasero v. Southern Industrial Gases Philippines*, 597 Phil. 494, 498 (2009) cites the following exceptions:

(1) the findings are grounded entirely on speculations, surmises, or conjectures; (2) the inference made is manifestly mistaken, absurd, or impossible; (3) there is a grave abuse of discretion; (4) the judgment is based on misappreciation of facts; (5) the findings of fact are conflicting; (6) in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

⁴⁸ Or, "the goal to have cases prosecuted with the least cost to the parties" cited in *Heirs of Loyola v. Court of Appeals*, 803 Phil. 143, 157 (2017).

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III.

The facts of the case are fairly straightforward. ENLI undertook preliminary investigation on the alleged infractions committed by Dela Cruz while the latter initiated a complaint for underpayment of salaries with the Labor Arbiter. Dela Cruz was later on placed under preventive suspension. The Labor Arbiter was correct insofar as he ruled that, at the time Dela Cruz filed her complaint on June 5, 2012, she was not yet terminated from service as she was placed under preventive suspension only on June 22, 2012.

Placing an employee under preventive suspension is allowed under Section 8, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended. This section provides:

Section 8. Preventive suspension. The employer may place the worker concerned under preventive suspension only if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

Preventive suspension is not a penalty but a disciplinary measure to protect life or property of the employer or the co-workers pending investigation of any alleged infraction committed by the employee.⁴⁹ Thus, it is justified only when the employee's continued employment poses a serious and imminent threat to the employer's or co-workers' life or property. When justified, the preventively suspended employee is not entitled to the payment of his salaries and benefits for the period of suspension.⁵⁰

Here, Dela Cruz's preventive suspension was justified considering that, as branch manager, she had unlimited access to the Calamba branch's finances, property, and records. As Dela Cruz herself admitted, she managed the Calamba branch as if she were the owner thereof.⁵¹

Nevertheless, the management's prerogative of placing an employee under preventive suspension is further temporally limited. Section 9 of the Omnibus Rules Implementing the Labor Code limits the duration of the preventive suspension to a maximum of 30 days:

Section 9. Period of suspension. No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker.

Section 9 is clear that the employer had the positive duty of reinstating the preventively suspended employee upon the lapse of the 30-day period *sans* extension. When the period of preventive suspension exceeds the maximum period allowed without reinstating the employee actually or

⁴⁹ *Gatbonton v. National Labor Relations Commission*, 515 Phil. 387, 398 (2006).

⁵⁰ *Id.*

⁵¹ *Rollo*, p. 116.

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through payroll, or when the preventive suspension is for an indefinite period, constructive dismissal sets in.⁵²

*Agcolicol, Jr. v. Casiño*⁵³ cites instances considered as amounting or tantamount to constructive dismissal such as: where the employee's prolonged suspension was due to the employer's neglect to conclude the investigation;⁵⁴ where the employer's imposition of preventive suspension pending final investigation was coupled with the employer's lack of intention to conduct such final investigation;⁵⁵ where placing the employee under preventive suspension in excess of the 30-day limit was a predetermined effort to dismiss the latter from service in the guise of preventive suspension;⁵⁶ and where the employer failed to recall the employee to work after the expiration of the suspension taken together with the employer's precondition that the employee withdraw the complaints against it.⁵⁷

In this case, it is admitted that while Dela Cruz's complaint before the Labor Arbiter was pending, the 30-day preventive suspension period expired without ENLI causing its extension. Despite the expiration of the preventive suspension period, Dela Cruz did not report for work.

However, we note that there was nary an effort on the part of ENLI to reinstate Dela Cruz to her former position either actually or through payroll. Neither did ENLI require Dela Cruz to report for work either through a return to work notice or similar correspondence, or at least manifested the same during the proceedings before the Labor Arbiter. There was also no conclusion as to the result of the investigation which necessitated the preventive suspension. These circumstances, taken together, inevitably lead to the conclusion that upon the expiration of the preventive suspension on July 22, 2012, constructive dismissal had set in.⁵⁸

While it is true that Dela Cruz could not have included in her complaint the charge of illegal dismissal as she was preventively suspended (which Dela Cruz claimed to be illegal dismissal) only thereafter, the Labor Arbiter could nevertheless have resolved the issue of whether the preventive suspension ripened into constructive dismissal, especially considering that respondents filed their position paper in September 2012 and the Labor Arbiter released his decision in February 2013, or well after the period of suspension expired.

Thus, the NLRC was correct in reversing the Decision dated February 21, 2013 of the Labor Arbiter not because Dela Cruz was illegally dismissed on June 22, 2012, but because her preventive suspension which was initially

⁵² *Pido v. National Labor Relations Commission*, 545 Phil. 507, 517 (2007).

⁵³ 787 Phil. 516, 529-530 (2016).

⁵⁴ *Supra* note 49.

⁵⁵ *C. Alcantara & Sons, Inc. v. National Labor Relations Commission*, 299 Phil. 116, 121 (1994).

⁵⁶ *Premiere Development Bank v. National Labor Relations Commission*, 354 Phil. 851, 862 (1998).

⁵⁷ *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295, 306-307 (2001).

⁵⁸ *Agcolicol, Jr. v. Casiño*, 787 Phil. 516, 530 (2016).

valid had ripened into constructive dismissal upon the lapse thereof on July 22, 2012 without Dela Cruz having been reinstated actually or in the payroll.

Having been constructively dismissed, Dela Cruz is entitled to the payment of backwages from the time of her dismissal on July 22, 2012 up to the finality of this decision. Dela Cruz is likewise entitled to reinstatement but considering that seven years have lapsed, it is more in consonance with substantive justice to award her with separation pay computed at one month pay for every year of service.⁵⁹

IV.

Finally, we address petitioners' defense of abandonment.

Petitioners originally argued that Dela Cruz was not terminated as she was merely suspended and that the latter did not report back to work after having been preventively suspended. Petitioners raised abandonment as a defense only in their Reply before the CA. Such is not allowed. Section 12, Rule V of the 2011 NLRC Rules of Procedure, as amended, proscribes the parties from alleging and/or proving facts and any cause or causes of action not referred or included in the complaint or raised in the parties' position papers. Thus:

SECTION 12. SUBMISSION OF POSITION PAPER AND REPLY. –

(a) Subject to Sections 9 and 10 of this Rule, the Labor Arbiter shall direct the parties to submit simultaneously their verified position papers with supporting documents and affidavits, if any, on a date set by him/her within ten (10) calendar days from the date of termination of the mandatory conciliation and mediation conference.

(b) No amendment of the complaint or petition shall be allowed after the filing of position papers, unless with leave of the Labor Arbiter.

(c) The position papers of the parties shall cover only those claims and causes of action stated in the complaint or amended complaint, accompanied by all supporting documents, including the affidavits of witnesses, which shall take the place of their direct testimony, excluding those that may have been amicably settled.

(d) Within ten (10) days from receipt of the position paper of the adverse party, a reply may be filed on a date agreed upon and during a schedule set before the Labor Arbiter. The reply shall not allege and/or prove facts and any cause or causes of action not referred to or included in the original or amended complaint or petition or raised in the position paper.

At any rate, to constitute abandonment there must be a clear and deliberate intent to discontinue one's employment without any intention of returning.⁶⁰ To successfully raise abandonment as a just cause for dismissal,

⁵⁹ *Dee Jay's Inn and Café v. Rañeses*, 796 Phil. 574, 596 (2016).


⁶⁰ *Tan Brothers Corp. of Basilan City v. Escudero*, 713 Phil. 392, 400 (2013).

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two elements must concur: *first*, failure to report for work or absence without valid or justifiable reason, and *second*, a clear intention to sever the employer-employee relationship. The second element, being manifested by overt acts, is the more determinative factor.⁶¹ In this case, Dela Cruz ceased reporting for work as a result of her suspension which she claimed to constitute illegal dismissal. Upon the lapse of the preventive suspension period, she was no longer reinstated by ENLI. Thus, her absence from work was not due to a deliberate act of abandonment on her part but an act of constructive dismissal on the part of ENLI. Also telling is the fact that ENLI did not comply with the requisite notices of explanation and termination, thus, indicating that the defense of abandonment was a mere afterthought.

WHEREFORE, the petition is **DENIED**. The award of the NLRC for backwages in favor of respondent Maria Minellie Dela Cruz is **MODIFIED** such that the computation thereof should be reckoned from July 22, 2012. The Labor Arbiter is **DIRECTED** to re-compute the proper amount of backwages and separation pay due to respondent Dela Cruz in accordance with this Decision.

SO ORDERED.



JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

⁶¹ *Columbus Philippine Bus Corp. v. National Labor Relations Commission*, 417 Phil. 81, 100 (2001).

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.



ALFREDO BENJAMIN S. CAGUIOA
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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.



DIOSDADO M. PERALTA
Chief Justice

