



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**JR HAULING SERVICES and
OSCAR MAPUE,**
Petitioners,

G.R. No. 214294

Present:

- versus -

PERLAS-BERNABE, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
BALTAZAR-PADILLA,* JJ.

**GAVINO L. SOLAMO, RAMIL
JERUSALEM, ARMANDO
PARUNGAO, RAFAEL
CAPAROS, JR., NORIEL
SOLAMO, ALFREDO
SALANGSANG, MARK
PARUNGAO and DEAN V.
CALVO,**

Promulgated:

Respondents.

30 SEP 2020

X-----X

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ assails the September 5, 2014 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 128497, which set aside the August 28, 2012 Decision³ and November 15, 2012 Resolution⁴ of

* On leave.

¹ *Rollo*, pp. 3-47.

² *Id.* at 48-58; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rodil V. Zalameda (now a member of this Court) and Maria Elisa Sempio Diy.

³ *Id.* at 211-222; penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Dolores M. Peralta-Beley.

⁴ *Id.* at 223-224; penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Presiding Commissioner Leonardo L. Leonida.

the National Labor Relations Commission (NLRC) declaring herein respondents Gavino L. Solamo, Ramil Jerusalem, Armando Parungao, Rafael Caparos, Jr., Noriel Solamo,⁵ Alfredo Salangsang, Mark Parungao, and Dean⁶ V. Calvo to have been illegally dismissed from employment.

Factual Antecedents

This case stemmed from a complaint for illegal dismissal and underpayment/non-payment of salaries/wages, 13th month pay, holiday pay, rest day pay, Service Incentive Leave (SIL) pay, with prayer for reinstatement and payment of full backwages and attorney's fees,⁷ filed by the respondents, and Sofronio V. Acoba (Acoba), who eventually withdrew his complaint during the pendency of the case before the Labor Arbiter (LA), against petitioner JR Hauling Services (JR Hauling) and its manager, Oscar Mapue (Mapue).

JR Hauling is a domestic corporation engaged in the business of hauling and delivery of broiler chickens to its clients⁸ such as Magnolia Corporation and San Miguel Foods, Inc. (SMFI). Respondents are former drivers/helpers of JR Hauling. The details of their employment are as follows:⁹

EMPLOYEE	DATE EMPLOYED	PAYMENT PER TRIP
Gavino Solano	May 4, 2008	₱ 300
Ramil Jerusalem	October 2003	₱ 300
Armando Parungao	July 11, 2010	₱ 300
Rafael Caparos, Jr.	August 4, 2007	₱ 300
Nonel Solamo	November 10, 2007	₱ 300
Alfredo Salangsang	June 10, 2010	₱ 300
Mark Parungao	August 13, 2010	₱ 300
Dean V. Calvo	July 27, 2007	₱ 300

As drivers/helpers of JR Hauling, respondents were tasked to transport live chickens from broiler farms or contract growers to the processing plant of JR Hauling's clients. In the course of transporting broiler chickens, JR Hauling issues to respondents "receiving slips" or job orders containing the details of the deliveries, which include the number of live chickens to be loaded into the trucks for transport, and the delivery route from broiler farms located either in

⁵ The petition filed by JR Hauling Services indicates "Nonel Solamo." But see Complaint dated April 5, 2011 filed by respondents which indicates "Noriel Solamo" as one of the complainants in the instant case.

⁶ "Joean" B. Calvo in the August 28, 2012 Decision of the NLRC and December 9, 2011 Decision of Labor Arbiter Leondro M. Jose.

⁷ *Rollo*, pp. 275-277.

⁸ *Id.* at 4.

⁹ *CA rollo*, p. 10-12.

Pangasinan, Tarlac, Batangas, Bulacan, Zambales, or La Union, to the processing plant of its clients in Hermosa, Bataan.¹⁰

From JR Hauling's place of business in Bulacan, respondents proceed to the designated broiler farm indicated in their respective job orders. They then pick up and load the required number of broilers in the delivery trucks and immediately deliver the same to the processing plant. Authorized personnel in the broiler farms are tasked to ensure that the instructions and specifications indicated in the job orders are complied with. The same job orders are likewise presented to the processing plant for verification and checking, after which respondents return to Bulacan for another hauling job.¹¹

Since a number of broilers usually die in the course of their delivery, respondents secure from the farms additional broilers to serve as replacements for the dead broilers in order to ensure that the same quantity or number of broilers under the job order will be delivered to the processing plant.¹²

Respondents were required to make two trips per day and were thus paid Three Hundred Pesos (₱300.00) per trip or a total of Six Hundred Pesos (₱600.00) per day. Respondents averred, however, that considering that the broiler farms are located in remote and distant areas, they could only accomplish, on the average, one trip per day, and would thus earn only ₱300.00 per day. Respondents further alleged that from the time they were engaged by JR Hauling, they were not paid their respective 13th month pay, holiday pay, premium pay for holiday and rest day, and SIL.¹³

Respondents claimed that on April 3, 2011, JR Hauling dismissed them from employment without notice and hearing and/or investigation, and without any valid reason when the management allegedly displayed their pictures at the gate and barred them from entering the company premises.¹⁴

By way of defense, petitioners countered that respondents, in the course of their employment with JR Hauling, incurred shortages in their deliveries of broilers amounting to Three Hundred and Seventy One (371) pieces and Three Hundred and Seventy Seven (377) pieces in February 2011 and March 2011, respectively.¹⁵ In support thereof, petitioners presented a copy of a summary of short broilers delivery¹⁶ supposedly issued by SMFI for February 2011 and March 2011.

¹⁰ Id. at 11.

¹¹ Id.

¹² *Rollo*, p. 261.

¹³ Id. at 12.

¹⁴ Id. at 171 and 182.

¹⁵ Id. at 3.

¹⁶ *CA rollo*, p. 219.

Upon further investigation, petitioners discovered that respondents, without the knowledge or consent of JR Hauling, were committing anomalous transactions involving the sale of excess broilers and crates somewhere in Concepcion, Tarlac. In support thereof, petitioners presented the affidavits of Mapue,¹⁷ Pedro,¹⁸ a helper of Mapue, and respondents' co-employees, namely, Acoba,¹⁹ Leo Enriquez (Enriquez) and Marville Moratin (Moratin),²⁰ Hector Fuentes (Fuentes),²¹ Orlando Espares (Espares),²² and Roberto Sanico (Sanico).²³

The affidavits of Mapue, Pedro, Fuentes, and Espares also revealed that JR Hauling incurred shortages in the number of broiler crates totalling Two Hundred and Thirty Two (232) pieces.²⁴ The same were purportedly sold by the respondents together with the excess broilers at Concepcion, Tarlac.

Considering the foregoing circumstances, petitioners insisted that respondents' transgressions amounted to serious misconduct, and constituted fraud or willful breach of trust and confidence, which justified their dismissal from employment.

Petitioners also averred that respondents were field employees and/or workers who are paid by the results, and therefore, were not entitled to their monetary claims for underpayment of salaries, 13th month pay, holiday pay, premium pay for holiday and rest day, and SIL.²⁵

Respondents, by way of rebuttal, argued that the documentary and testimonial evidence presented by petitioners were purely self-serving and hearsay and, therefore, inadmissible to establish the validity of their dismissal. Respondents also insisted that the admissions of culpability made by their co-employees were binding only on those who made such admissions and were inadmissible against respondents for being hearsay evidence.²⁶

Ruling of the Labor Arbiter:

On December 9, 2011, the LA promulgated a Decision²⁷ the dispositive portion of which states:

¹⁷ Id. at 246-248.

¹⁸ Id. at 217-218.

¹⁹ Id. at 220.

²⁰ Id. at 221-222 and 273.

²¹ Id. at 255-256.

²² Id. at 257-258.

²³ *Rollo*, p. 226.

²⁴ *CA rollo*, p. 247.

²⁵ Id. at 241-242.

²⁶ Id. at 223-231.

²⁷ *Rollo*, pp. 152-164.

WHEREFORE, premises considered, complainants are found to have been illegally dismissed even as respondents are held liable therefor.

Consequently, respondents are ordered to reinstate complainants to their former positions without loss of seniority rights and other privileges with backwages initially computed at this time and reflected below.

The reinstatement aspect of this decision is immediately executory even as respondents are hereby enjoined to submit a report of compliance therewith within ten (10) days from receipt hereof.

Respondents are likewise ordered to pay complainants their salary differential and 10% attorney's fees x x x

x x x x

All other claims are hereby dismissed for lack of merit.

SO ORDERED.²⁸

The LA held that petitioners failed to discharge their burden of proving that respondents were dismissed for just cause, and that due process, namely, notice and hearing, was not observed when JR Hauling summarily terminated their employment.

The LA noted that the summary of short broilers delivery²⁹ supposedly issued by SMFI for February and March 2011 was not properly identified nor authenticated. Moreover, the sworn statements which respondents submitted in evidence were inadmissible for being hearsay and self-serving.

The LA awarded respondents salary differentials and attorney's fees. Noting, however, that respondents were field personnel, the LA denied their claims for payment of 13th month pay, holiday pay, premium pay for holiday and rest day, and SIL. The LA also ordered respondents' reinstatement and payment of backwages.

Ruling of the National Labor Relations Commission:

In their appeal³⁰ to the NLRC, petitioners averred that the statements made by Acoba, Enriquez, and Moratin in their respective affidavits were voluntary admissions akin or similar to declarations against interest³¹ and, thus, cannot be considered as hearsay or self-serving. Petitioners also argued that in examining the sworn statements of respondents' co-employees, the LA should

²⁸ Id. at 163-164.

²⁹ *CA rollo*, p. 219.

³⁰ Id. at 127-165.

³¹ Id. at 139.

not have confined himself to technical rules on evidence and should have, instead, liberally applied the same in deciding the instant case.³² In light of their testimonial and documentary evidence, petitioners insisted that there was substantial evidence to prove that the respondents' fraudulent acts constituted serious misconduct and willful breach of the trust reposed on them by JR Hauling which justified their dismissal from employment.

As to the respondents' monetary claims, petitioners claimed that respondents were receiving an average daily salary of ₱600.00 a day which exceeds the minimum daily wage rate under Wage Order No. RBIII-15, which states, among others, that the minimum wage in non-agricultural establishments, such as JR Hauling, whose total assets is less than Thirty Million Pesos (₱30,000,000.00), is Three Hundred Eight Pesos (₱308).³³

Considering the foregoing, the NLRC, in its August 28, 2012 Decision,³⁴ reversed the Decision of the LA and held that respondents' dismissal from employment was valid on the ground of loss of trust and confidence. The dispositive portion of the NLRC Decision states, as follows:

WHEREFORE, the instant appeal is GRANTED. The assailed DECISION of the Labor Arbiter is REVERSED and SET ASIDE and a new one entered dismissing the complaint for lack of merit.

SO ORDERED.³⁵

In ruling for the petitioners, the NLRC relied on the affidavits of Acoba, Enriquez, Moratin, and Sanico, and found adequate basis for JR Hauling's loss of trust and confidence on respondents. The NLRC explained that "as between the general denial of [respondents] as against the positive narration of facts of witnesses who also participated in selling the broilers in Concepcion, Tarlac which were suppose[d] to be delivered to Hermosa, Bataan, the latter prevails."³⁶ The NLRC also held that the respondents were estopped from claiming that JR Hauling denied them procedural due process of notice and hearing considering that they filed the instant complaint for illegal dismissal even before JR Hauling could terminate their services. The NLRC also denied respondents' claim for salary differentials and prayer for reinstatement.

Respondents, this time, filed a Motion for Reconsideration³⁷ which was, however, denied in a November 15, 2012 Resolution³⁸ of the NLRC.

³² Id. at 142.

³³ Id. at 151.

³⁴ *Rollo*, pp. 211-222.

³⁵ Id. at 221.

³⁶ Id. at 218.

³⁷ *CA rollo*, pp. 68-82.

³⁸ *Rollo*, pp. 223-224.

Ruling of the Court of Appeals:

Aggrieved, respondents filed a Petition for *Certiorari*³⁹ before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction when it found that they were validly dismissed from employment solely on the basis of the affidavits furnished by petitioners. Respondents mainly contended that: (1) the affidavits were taken *ex-parte* and, thus, incomplete and inaccurate; (2) statements therein are self-serving and hearsay, and unsubstantiated by concrete evidence; and (3) the admissions of culpability made by their co-employees are binding only on them and not on the respondents. They further argued that loss of trust and confidence as a just cause for dismissal under Article 297(c) of the Labor Code is not applicable to them considering that they do not hold positions of trust where fidelity to duty is expected from them.

Respondents also argued that they cannot be considered field personnel as their hours of work can be easily determined with reasonable certainty, and that they were under constant supervision while performing their work as drivers/helpers. On this point, respondents posited that they are regular employees of JR Hauling who are entitled to SIL and their other monetary claims.

In their Comment⁴⁰ to respondents' Petition for *Certiorari*, petitioners asserted that the findings of the NLRC in its August 28, 2012 Decision are supported by evidence and prevailing jurisprudence and that respondents failed to show that the NLRC committed grave abuse of discretion in reversing the December 9, 2011 Decision of the LA.

On September 5, 2014, the CA rendered its assailed Decision⁴¹ granting respondents' Petition for *Certiorari* and setting aside the August 28, 2012 Decision and November 15, 2012 Resolution of the NLRC. The dispositive portion of the September 5, 2014 Decision reads as follows:

WHEREFORE, the instant petition is GRANTED. The Decision dated August 28, 2012 and Resolution dated November 15, 2012 issued by the NLRC in NLRC LAC No. 04-001243-12 (NLRC RAB-III-04-17542-11) are REVERSED and SET ASIDE. The Decision dated December 9, 2011 rendered by the Labor Arbiter is hereby REINSTATED.

SO ORDERED.⁴²

³⁹ *CA rollo*, pp. 3-39.

⁴⁰ *Id.* at 566-584.

⁴¹ *Rollo*, pp. 48-58.

⁴² *Id.* at 58.

The CA concluded that petitioners failed to adduce substantial evidence to establish the charge against respondents which served as basis for JR Hauling's loss of trust and confidence that warranted their dismissal from employment. The CA explained, *viz.*:

While [petitioners] submitted a Summary of Short Broilers Delivery Based on Actual Counting at Receiving Area, the same, as correctly pointed out by [respondents], was neither signed nor authenticated by any personnel of [petitioners] or SMFI. Moreover, there is nothing on document that would remotely suggest that [respondents] had anything to do with the deliveries, much less with the alleged deficiencies purportedly summarized therein. Even the affidavits submitted by [petitioners] only contain mere allegations uncorroborated by any other evidence which, to this Court, clearly do not constitute substantial evidence to show [private respondents'] involvement in the alleged deliveries and deficiencies indicated in the summary of deliveries.

Aside from citing jurisprudence to support their position that an employer is justified in dismissing its employees on the basis of the latter's misconduct in the performance of their duties, a reading of the pleadings submitted by [petitioners] will reveal the glaring fact that the allegations made against [respondents] are unsubstantiated. Contrary to the claims of [petitioners], there is no showing that an investigation has indeed been conducted on the allegations against [respondents].

x x x x

x x x loss of trust and confidence as a valid cause to terminate [respondents] must rest on actual breach of duty committed by the, and not on [petitioners'] imagined whim or caprice. x x x For failure of [petitioners] to discharge their burden to prove the validity of [respondents'] dismissal, such dismissal is therefore illegal.⁴³

On the matter of JR Hauling's supposed failure to comply with procedural due process of notice and hearing, the CA disregarded petitioners' defense of abandonment and held that respondents' filing of a complaint for illegal dismissal negated any intent on their part to sever their employment with JR Hauling. Accordingly, the CA ordered respondents' reinstatement and payment of backwages.

Issues

Petitioners raised the following issues for resolution:

I.

THE HONORABLE [CA] GRAVELY ABUSED ITS DISCRETION IN REVERSING OR SETTING ASIDE THE DECISION OF THE NLRC BY

⁴³ Id. at 54-55.

CONCLUDING THAT PETITIONERS FAILED TO SUFFICIENTLY [ESTABLISH] THAT THE CHARGE AGAINST RESPONDENTS WHICH WAS THE BASIS FOR ITS LOSS OF TRUST AND CONFIDENCE BY IGNORING OR THRUSTING ASIDE THE EVIDENCE AND JURISPRUDENCE APPLICABLE TO THIS CASE, CONSIDERING THAT PETITIONERS' DEFENSES INCLUDE SERIOUS MISCONDUCT, FRAUD AND COMMISSION OF CRIME AND NOT LIMITED TO BREACH OF TRUST AND CONFIDENCE ALONE.

II.

THE HONORABLE [CA] GRAVELY ABUSED ITS DISCRETION IN CONCLUDING THAT ABANDONMENT IS ONE OF THE DEFENSE RAISED BY THE PETITIONERS.

III.

THE HONORABLE [CA] GRAVELY ABUSED ITS DISCRETION IN DISREGARDING OR IGNORING THAT IF DISMISSAL IS FOUNDED ON AUTHORIZED OR VALID CAUSE, THE SANCTION THAT CAN BE IMPOSED UPON IS IN THE NATURE OF INDEMNIFICATION OR PENALTY AS RULED IN [AGABON V. NATIONAL LABOR RELATIONS COMMISSION] WHICH CASE DISREGARDED THE EARLIER CASE OF [SERRANO V. NATIONAL LABOR RELATIONS COMMISSION]

IV.

THE HONORABLE [CA] GRAVELY ABUSED ITS DISCRETION IN REINSTATING THE DECISION OF THE [LA] AWARDING RESPONDENTS WITH SALARY DIFFERENTIAL WITHOUT CITATION OF SPECIFIC EVIDENCE ON WHICH IT IS BASED.⁴⁴

Simply stated, the issues before us are: (1) whether there is substantial evidence to prove that respondents were validly dismissed from employment; and (2) whether they are entitled to their claims for payment of salary differentials.

Our Ruling

Supreme Court not a trier of facts; Exceptions

Generally, the Court does not review factual questions primarily because it is not a trier of facts. Thus, as a general rule, it is not inclined to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary. This Court may, however, in the exercise of its equity jurisdiction, review the facts and re-examine the records of the case, where, like in the instant case, there is a conflict between the factual findings of the

⁴⁴ Id. at 18-19.

LA and the CA, on one hand, and those of the NLRC, on the other. In the present case, the NLRC and the CA have opposing views. Moreover, the instant petition presents not only a situation where the LA and the CA, and the NLRC, differ in their understanding of the facts presented by the parties, but also in assessing the sufficiency of evidence which prove the commission of respondents' alleged transgressions.

Considering the foregoing premises, this Court shall take cognizance of and resolve the factual issues involved in this case.

Quantum of proof required in illegal dismissal cases.

The fact of respondents' dismissal from service is undisputed by the parties. The crux of the issue therefore lies on whether the supposed transgressions of respondents are supported by substantial evidence, and whether they are considered just causes for their dismissal.

In this regard, it is a well-established rule that the party-litigant who alleges the existence of a fact or thing necessary to establish his/her claim has the burden of proving the same by the amount of evidence required by law, which, in labor proceedings, is substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁴⁵ To be clear, in the hierarchy of evidentiary values, "proof beyond reasonable doubt is placed at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order."⁴⁶ Thus, in the hierarchy of evidence, it is the least demanding.⁴⁷ "Corollarily, the ground for the dismissal of an employee does not require proof beyond reasonable doubt."⁴⁸ The quantum of proof required is merely substantial evidence - which only entails evidence to support a conclusion, "even if other minds, equally reasonable, might conceivably opine otherwise."⁴⁹ Accordingly, requiring a quantum of proof that is over and above substantial evidence is contrary to law. As held in *Manila Electric Company v. National Labor Relations Commission*:⁵⁰

And this Court has ruled that the ground for an employer's dismissal of an employee need be established only by substantial evidence, it not being required that the former's evidence 'be of such degree as is required in criminal cases, i.e., proof beyond reasonable doubt.' It is absolutely of no consequence that the misconduct with which an employee may be charged also constitutes a criminal offense: theft, embezzlement, assault on another employee or company officer, arson, malicious mischief, etc. The proceedings being administrative, the quantum of proof is governed by the substantial evidence rule and

⁴⁵ *Functional, Inc., v. Granfil*, 676 Phil. 279, 287 (2011).

⁴⁶ *Spouses Manalo v. Hon. Roldan-Confesor*, 290 Phil. 311, 323 (1992).

⁴⁷ *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 889 (2003).

⁴⁸ *Lopez v. Alturas Group of Companies*, 663 Phil. 121, 131 (2011).

⁴⁹ *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423, 433 (2017).

⁵⁰ 275 Phil. 746 (1991).

not, as the respondent Commission seems to imagine, by the rule governing judgments in criminal actions.⁵¹

Considering the foregoing recitals, this Court shall first delve into the evidentiary issues in evaluating the evidence submitted by petitioners.

Sufficiency of evidence proving respondents' alleged transgressions.

As discussed above, petitioners impute on respondents the commission of the following transgressions: (1) incurring shortages in the number of broilers delivered to the processing plant in Bataan; and (2) unauthorized selling of excess broilers and broiler crates in Concepcion, Tarlac. To prove their allegations, petitioners presented to the labor tribunals their documentary and testimonial evidence.

Shortages in broiler deliveries.

In particular, as to the supposed shortages in the number of broilers incurred by the respondents, petitioners furnished a copy of an unsigned and unilaterally prepared summary of short broilers delivery⁵² supposedly issued by SMFI for February 2011 and March 2011.

The CA, on its part, found no evidentiary value in the summary as it was neither signed nor authenticated by any personnel of petitioners or SMFI.⁵³ Moreover, both the CA and the respondents emphasized that nothing in the summary suggests respondents' involvement in the alleged listings of deliveries, more so the deficiencies indicated therein. Thus, the summary alone cannot prove with certainty that respondents had any part in, or were responsible for, the shortages of broilers amounting to Seven Hundred Forty Eight (748) pieces.⁵⁴

We agree.

Verily, the summary furnished by petitioners afford no assurance of their authenticity as they were unsigned. While the summary delineates broiler shortages for the months of February and March 2011, the summary itself is uncorroborated and could have been easily concocted to suit the personal interest and purpose of petitioners. Notably, neither the petitioners, or any personnel from SMFI or JR Hauling for that matter, attested to the genuineness of the document, or that the same was executed in their presence. Petitioners did not even disclose the maker of the summary. Clearly, the summary is uncertain

⁵¹ Id. at 754.

⁵² CA *rollo*, p. 219.

⁵³ *Rollo*, p. 54.

⁵⁴ Id. at 54-55 and 243.

as to its origin and authenticity and therefore inadmissible to prove respondents' involvement in the deficiencies indicated therein.⁵⁵

Even if the summary is admissible, it would not suffice to show that respondents were indeed responsible for the alleged shortages in the delivery of broilers to SMFI. In the first place, the summary itself does not identify any of the respondents as the assigned driver/helper at the time broiler deliveries were made to SMFI. In fact, the summary itself did not indicate that it was JR Hauling who was responsible for the broiler deliveries at the time the alleged shortages were incurred.

Petitioners, on this point, bring to fore sworn statements or affidavits of Mapue,⁵⁶ Pedro,⁵⁷ and petitioners' co-employees, namely, Acoba,⁵⁸ Enriquez and Moratin,⁵⁹ Fuentes,⁶⁰ Espares,⁶¹ and Sanico⁶² to corroborate the fact of deficiencies in the deliveries supposedly caused by herein respondents. A perusal of the affidavits, however, readily shows that the statements therein referred only to the respondents' alleged involvement in the unauthorized sale of excess broilers and broiler crates, and not as to their involvement in the delivery shortage of 748 broilers.

Nor was there a reasonable connection between the shortages incurred by SMFI and the unauthorized sale of broilers and broiler crates. To be clear, the parties are not in dispute on the fact that the sale of live chickens came from the excess or replacement broilers secured by respondents from the farms. Accordingly, the logic is simple – if what were sold by respondents were the excess broilers from the farms not otherwise accounted for under the job orders, then respondents would have not incurred short deliveries of broilers to SMFI.

Considering the foregoing premises, this Court finds no cogent basis to impute such transgression on respondents absent any substantial proof of their participation in the alleged act in question.

Unauthorized sale of excess broilers and broiler crates.

As discussed above, to prove respondents' involvement in the unauthorized sale of excess broilers and broiler crates, petitioners presented the affidavits of Mapue, Pedro, and respondents' co-employees, namely, Acoba, Enriquez and Moratin, Fuentes, Espares, and Sanico.

⁵⁵ See *IBM Philippines, Inc. v. National Labor Relations Commission*, 365 Phil. 137, 147-152 (1999).

⁵⁶ Supra note 17.

⁵⁷ Supra note 18.

⁵⁸ Supra note 19.

⁵⁹ Supra note 20.

⁶⁰ Supra note 21.

⁶¹ Supra note 22.

⁶² Supra note 23.

Notably, respondents argued before the CA that the affidavits presented by petitioners were inadmissible to prove their culpability which would justify their dismissal from employment. Particularly, respondents averred that: (1) the affidavits were taken *ex-parte* and, thus, incomplete and inaccurate; (2) statements therein are self-serving and hearsay, and unsubstantiated by concrete evidence; and (3) the admissions of culpability made by their co-employees are binding only on them and not on respondents. It is for these reasons that the CA, in finding that respondents were illegally dismissed, disregarded these affidavits and held as follows:

Even the affidavits submitted by [petitioners] only contain mere allegations uncorroborated by any other evidence which, to this Court, clearly do not constitute substantial evidence to show [respondents'] involvement in the alleged deliveries and deficiencies indicated in the summary of deliveries.⁶³

It is noteworthy, however, that although the affidavits do not address respondents' participation in the delivery shortages of broilers, it is apparent that the statements in the same affidavits attest to their involvement in the unauthorized sale of excess broilers and broiler crates. We now address the next issue - Are the affidavits sufficient to establish respondents' involvement in the alleged acts in question? We answer in the affirmative.

This Court has held that in labor cases, “[a]ffidavits may be sufficient to establish substantial evidence.”⁶⁴ Respondents argued, however, that affidavits taken *ex-parte* should not be given due weight for being self-serving, hearsay and inadmissible in evidence. By citing pertinent provisions on the rules on evidence, respondents insisted that any admissions made therein cannot be used to establish their culpability, but only of the confessants themselves.

The argument that the affidavits are hearsay for having been taken *ex parte i.e.*, that the affiants were not presented for cross-examination, does not persuade us. The rules of evidence prevailing in courts of law do not control proceedings before the labor tribunals where decisions may be reached on the basis of position papers, accompanied by supporting documents, including affidavits of witnesses, and other allied pleadings.⁶⁵ Thus, in *Bantolino v. Coca Cola Bottlers Phils. Inc.*,⁶⁶ this Court held that:

[A]dministrative bodies like the NLRC are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Indeed, the Revised Rules of Court and prevailing jurisprudence may be given only stringent application, i.e., by analogy or in a suppletory

⁶³ *Rollo*, p. 55.

⁶⁴ *Punongbayan and Araullo (P&A) v. Lepon*, 772 Phil. 311, 323 (2015).

⁶⁵ *Bantolino v. Coca Cola Bottlers Phils. Inc.* 451 Phil. 839, 845 (2003) citing *Rabago v. National Labor Relations Commission*, G.R. No. 82868, August 5, 1991, 200 SCRA 158.

⁶⁶ *Id.* at 846.

character and effect. The submission by respondent, citing *People v. Sorrel*, that an affidavit not testified to in a trial, is mere hearsay evidence and has no real evidentiary value, cannot find relevance in the present case considering that a criminal prosecution requires a quantum of evidence different from that of an administrative proceeding. x x x⁶⁷ (Citation omitted)

Along the same lines, we held in *Southern Cotabato Development and Construction Inc. v. National Labor Relations Commission*⁶⁸ that Article 221 (now 227) of the Labor Code, as amended, provides that “the rules of evidence prevailing in courts of law or equity [shall not be controlling]” and that the LA and the NLRC shall “use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law and procedure, all in the interest of due process.” Clearly, to disregard the affidavits on the ground that they were taken *ex-parte* would necessarily require the application of the technical rules of evidence and thereby negate the purpose of the summary nature of labor proceedings mandated by the Labor Code and the NLRC Rules of Procedure.

At any rate, we find that the affidavits executed by various co-employees constitute substantial evidence to prove respondents' involvement in the unauthorized sale of excess broilers and broiler crates.⁶⁹ We are inclined to give them evidentiary weight absent any evidence to rebut their validity. It is well settled that “a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution.”⁷⁰ The case of *Gabunas, Sr. v. Scanmar Maritime Services Inc.*⁷¹ is instructive:

We also note that even the Labor Arbiter's Decision on this matter is wanting in reference to any evidence that would support findings in favor of petitioner. As between petitioner's bare allegation and the Affidavit of a witness to the contrary, we give credence to the latter.

In *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals, et al.*, we held that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution. It has in its favor the presumption of regularity, which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies in the one contesting the same.

⁶⁷ Id. at 846.

⁶⁸ 345 Phil 1110 (1997).

⁶⁹ This Court, however, is inclined to disregard the affidavit of Roberto Sanico as a copy thereof was only presented to this Court by petitioners as an attachment to their Petition filed before us on October 7, 2014.

⁷⁰ *Ocampo v. Land Bank of the Philippines*, 609 Phil. 337, 348 (2009).

⁷¹ 653 Phil. 457 (2010).

Petitioner failed to present convincing evidence to rebut the assertions made by Mr. Esta on a crucial point. The CA stated that while it was ready to construe in favor of labor in case of doubt, and **while the Affidavit of Mr. Esta could be considered self-serving, there was absolutely no evidence to rebut this Affidavit; hence, the Affidavit must be believed.**⁷² (Emphasis supplied)

The case of *Cañete v. National Labor Relations Commission*⁷³ is also instructive, viz.:

Petitioner now contends that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that he was validly dismissed despite the failure of private respondents to sufficiently prove just cause. He argues that the unsworn statements and documents they submitted are inadmissible as evidence as they are mere hearsay and without probative value.

The contention is without merit. **The documents submitted by private respondents before the Labor Arbiter are not hearsay and can be accorded probative value because Sec. 3, Rule V, of the New Rules of Procedure of the NLRC specifically allows the parties to submit position papers accompanied by all supporting documents including the affidavits of their respective witnesses which take the place of their testimony.** It is not necessary that the affidavits and other documents presented conform with the technical rules of evidence since in labor cases the rules of evidence prevailing in courts of law or equity are not controlling. **It is sufficient that the documents submitted by the parties have a bearing on the issue at hand and support the positions taken by them.** x x x⁷⁴ (Emphasis supplied)

Notably, while respondents underlined the supposed irregularities which attended the execution of the affidavits, it bears emphasis that at no time in the proceedings before the labor tribunals did respondents present contrary proof to petitioners' testimonial evidence other than their mere denials of culpability. Moreover, the affidavits presented by petitioners cannot simply be disregarded absent any proof that petitioners exerted undue pressure on the affiants,⁷⁵ or that they committed falsehood in their statements.⁷⁶

On this point, we give emphasis and credence to the affidavit of Acoba and the joint affidavit of Enriquez and Moratin, respondents' co-employees, and who, by their own admissions, were among those similarly involved in the unauthorized sale of excess broilers together with respondents. Equally important is the affidavit of Fuentes, another co-employee of respondents, who attested to respondents' participation in the unauthorized sale of broiler crates. It is not without precedent in jurisprudence that affidavits of various co-employees constitute substantial evidence to prove the charge against the

⁷² Id. at 465.

⁷³ 374 Phil 272 (1999).

⁷⁴ Id. at 277-288.

⁷⁵ *Capitol Medical Center, Inc. v National Labor Relations Commission*, 496 Phil. 704, 720 (2005).

⁷⁶ *INC Shipmanagement, Inc. v. Moradas*, 724 Phil 374, 396 (2014).

employee subject of the illegal dismissal case. The statements of co-employees, are, in fact, given utmost weight and credence, and cannot simply be set aside.⁷⁷ Thus, in *Punongbayan and Araullo (P&A) v. Lapon*,⁷⁸ this Court held that the affidavits of co-employees are sufficient basis for the employer's loss of trust and confidence on the dismissed employee:

Here, respondent did not adduce evidence to show that the affiants, including Ramilito L. Nanola (Nanola), Wendell D. Ganhinhin (Ganhinhin), Sophia M. Verdida (Verdida), and Cielo C. Diano (Diano), all of whom were employed by P&A, were coerced to execute an affidavit prejudicial to respondent.

x x x x

As correctly held by both the Labor Arbiter and the NLRC, these affidavits constitute substantial evidence to prove that respondent committed acts breaching the trust and confidence reposed on him by P&A. The colleagues and subordinates of respondent executed the affidavits based on their personal knowledge, and without any proof of coercion. Their statements, as discussed below, corroborate each other and leave no room for doubt as to the acts committed by respondent.⁷⁹

Considering the foregoing premises, we hold that petitioners had sufficiently discharged its burden in proving that respondents were indeed involved in the unauthorized sale of excess broilers and broiler crates. By regarding the various affidavits supporting respondents' transgressions as unsubstantial, it appears that the CA is requiring petitioners to prove respondents' culpability over and above the quantum of proof of substantial evidence, which, as discussed above, is contrary to law and settled jurisprudence. "The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of the trust and confidence demanded by his position."⁸⁰

Substantive Due Process.

Proceeding from the above conclusion, the pivotal question that must be answered now is whether respondents' acts amounted to serious misconduct, fraud or willful breach of trust and confidence, or were tantamount to a commission of a crime, which justified their dismissal from employment.

It is worth noting at this point that it was error on the part of the CA to discuss the propriety of petitioners' dismissal on the ground of abandonment as such defense was never raised by petitioners during the proceedings before the LA and the NLRC.

⁷⁷ *Lopez v. Alturas Group of Companies*, *supra* note 48 at 129.

⁷⁸ *Supra* note 64.

⁷⁹ *Id.* at 324-325.

⁸⁰ *Falguera v. Linsangan*, 321 Phil. 736, 748 (1995).

At any rate, Article 297 of the Labor Code enumerates the just causes for termination. It provides:

ARTICLE 297. Termination *by employer*. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

x x x

(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 representative; x x x

The CA held in its September 5, 2014 Decision that “[petitioners] failed to sufficiently establish the charge against [respondents] which was the basis for [their] loss of trust and confidence that warranted their dismissal.”⁸¹ In this regard, petitioners argued that their defenses are not limited to breach of trust and confidence but also serious misconduct, fraud, and commission of a crime under Article 282 (now Article 297) of the Labor Code.

We have defined misconduct as “the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. For serious misconduct to justify dismissal under the law, “(a) it must be serious, (b) must relate to the performance of the employee’s duties; and (c) must show that the employee has become unfit to continue working for the employer.”⁸²

In this regard, we opine that respondents’ acts constitute Serious Misconduct which would warrant the *supreme penalty* of dismissal. Notably, the facts of the case reasonably establish with certainty: (1) that excess broilers and crates were being illegally sold in Tarlac; and (2) that respondents were involved in the anomalous transaction.

We agree, likewise, with the petitioners that the unauthorized sale of excess broiler and broiler crates constitutes an act of dishonesty, a breach of trust and confidence reposed by JR Hauling upon them.

⁸¹ *Rollo*, p. 54.

⁸² *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation*, 641 Phil. 300, 310 (2010).

Loss of trust and confidence as a ground for dismissal of employees covers employees occupying a position of trust who are proven to have breached the trust and confidence reposed on them. Moreover, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized.”⁸³ In this regard, it is not the job title but the nature of the work that the employee is duty-bound to perform which is material in determining whether he holds a position where greater trust is placed by the employer and from whom greater fidelity to duty is concomitantly expected.⁸⁴

Petitioners, as drivers/helpers, were entrusted with the custody, delivery and transportation of the broilers and broiler crates, including their proper handling and protection, in accordance with the directives of JR Hauling and instructions of its clients. To stress, respondents are performing the core business of JR Hauling. Thus, even on the premise that respondents were not occupying managerial or supervisory positions, they were, undoubtedly, holding positions of responsibility. As to respondents' transgressions *i.e.*, the unauthorized sale of broilers and broiler crates, the same are clearly work-related as they would not have been able to perpetrate the same were it not for their positions as drivers/helpers of JR Hauling.

In fine, we hold that there is just cause for respondents' dismissal from the service.

Procedural Due Process.

The Implementing Rules in relation to Article 297 of the Labor Code provides for the procedure that must be observed in order to comply with the required procedural due process in dismissal cases, *to wit*:

a) 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.

b) A written notice of termination served on the employee indicating that upon due consideration of all circumstances, grounds have been established to justify his termination.

⁸³ *Cruz, Jr. v. Court of Appeals*, 527 Phil. 230, 243 (2006).

⁸⁴ *Abel v. Philex Mining Corporation*, 612 Phil. 203, 215 (2009).

Petitioners admit that no written notice to explain and written notice of termination were served upon respondents. Their defense, however, is premised on their assertion that it was respondents themselves which prevented JR Hauling from serving upon them the written notices when they failed to report for work after they were confronted by management of their alleged transgressions. We are not persuaded.

At the outset, respondents were adamant in their pleadings before the LA and the NLRC that JR Hauling dismissed them from employment without notice and hearing and/or investigation when management allegedly displayed their pictures at the gate and barred them from entering the company premises.⁸⁵ Interestingly, petitioners failed to categorically deny these allegations. It is worth noting that Section 11, Rule 8 of the Rules of Court, which supplements the NLRC Rules of Procedure,⁸⁶ provides that allegations which are not specifically denied are deemed admitted.⁸⁷

Even on the premise that it was the respondents who refused to report for work, the same does not exculpate petitioners from observing the basic principles of due process before respondents can be dismissed from employment. To be clear, if petitioners were adamant to give respondents the opportunity to explain their side and refute the accusations made against them, petitioners should have served the notices personally to respondents, or where their whereabouts are unknown, such as in this case, by courier or registered mail at their last known addresses indicated in their employee file maintained or in the possession of JR Hauling. This, however, petitioners failed to do.

In light of the above premises, there being just cause for the dismissal but considering petitioners' non-compliance with the procedural requisites in terminating respondents' employment, the latter are entitled to nominal damages in the amount of ₱30,000.00 each in line with existing jurisprudence.⁸⁸

Respondents claims for salary differentials.

In determining an employee's entitlement to his monetary claims, the burden of proof is shifted from the employer to the employee depending on the nature of the money claim prayed for. In claims involving payment of salary differentials, this Court has held that the burden rests on the employer to prove payment following the basic rule that "in all illegal dismissal cases, the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment."⁸⁹ This rationale is supported by the fact that all

⁸⁵ *Rollo*, pp. 171 & 182.

⁸⁶ 2011 NLRC RULES OF PROCEDURE, AS AMENDED, Rule 1, Sec. 3.

⁸⁷ *Traders Royal Bank v. National Labor Relations Commission*, 378 Phil. 1081, 1087 (1999).

⁸⁸ *Dela Rosa v. ABS-CBN Corporation*, G.R. No. 242875, August 28, 2019.

⁸⁹ *Minsola v. New City Builders*, G.R. No. 207613, January 31, 2018.

pertinent personnel files, payrolls, records, remittances and other similar documents which show that the salary differentials have in fact been paid are not in the possession of the worker but are in the custody and control of the employer

In this regard, petitioners claimed that respondents were receiving an average daily salary rate of ₱600 a day which is beyond the minimum daily wage rate under Wage Order No. RBIII-15, which supposedly states, among others, that the minimum wage in non-agricultural establishments, such as JR Hauling, whose total assets is less than Thirty Million Pesos (₱30,000,000.00), is Three Hundred Eight Pesos (₱308).⁹⁰ Petitioners then presented copies of JR Hauling's audited financial statements⁹¹ which indicated that their total assets for 2010 only amounted to Twenty Four Million Forty Nine Thousand Nine Hundred Five and 51/100 Pesos (₱24,049,905.51).

In any case, petitioners failed to present evidence to disprove respondents' allegations that they were merely completing one trip per day, and would thus earn only ₱300 per day, which is clearly below the minimum wage rate provided for by law. We thus find no reversible error in the Decision of the CA granting respondents' claim for salary differentials, subject to the applicable prescriptive periods.

As regards respondent Mapue, he should be dropped as party-respondent there being no proof that he acted in bad faith or with malice vis-à-vis the dismissal of the respondents.

WHEREFORE, the Petition is **PARTLY GRANTED**. Respondents Gavino L. Solamo, Ramil Jerusalem, Armando Parungao, Rafael Caparos, Jr., Noriel Solamo, Alfredo Salangasang, Mark Parungao, and Dean V. Calvo are hereby **DECLARED** to have been **DISMISSED FOR CAUSE**. However, for failure of petitioner JR Hauling Services to comply with procedural due process requirements, it is **ORDERED TO PAY** the respondents the sum of ₱30,000.00 each by way of nominal damages. Moreover, JR Hauling Services is held **LIABLE TO PAY** respondents' salary differentials subject to applicable prescriptive periods.

Respondent Oscar Mapue is **DROPPED** as party-respondent there being no showing that he acted in bad faith or with malice.

The case is **REMANDED** to the Labor Arbiter for the re-computation of respondents' salary differentials subject to applicable prescriptive periods.

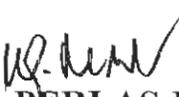
⁹⁰ CA *rollo*, p 151.

⁹¹ *Id.* at 160-163.

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

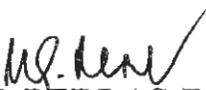

HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

On leave.
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

ATTESTATION

I attest that 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.


ESTELA M. PERLAS-BERNABE
Senior 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.


DIOSDADO M. PERALTA
Chief Justice