REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **27 January 2021** *which reads as follows*:

"G.R. No. 240377 ***(Moriroku Philippines, Inc. v. Rene S. Trienta)***. — The application of the "totality of infractions" principle is invoked to justify the dismissal of Rene S. Trienta (Rene) in this Petition for Review on *Certiorari*[1] filed by Moriroku Philippines, Inc. (MPI) assailing the Court of Appeals' (CA) Decision[2] dated September 13, 2017 and Resolution[3] dated June 27, 2018 in CA-G.R. SP No. 137683.

ANTECEDENTS

The case stemmed from a complaint filed on September 3, 2013 by Rene and two other complainants, Joseph Aplicador and Christopher Oraa, before the Labor Arbiter (LA), charging MPI and its President, Masahiro Takayama, with illegal dismissal, constructive dismissal, illegal suspension, damages, and attorney's fees.[4]

Rene alleged that MPI hired him on May 25, 2000 as Production Assistant.[5] Prior to the termination of his employment, Rene received several Notices to Explain (NTE) from MPI for allegedly violating company rules and regulations. The first NTE[6] was dated March 19, 2013 for allegedly sleeping during office hours and for leaving his work assignment without permission. Rene was reprimanded and suspended for three working days.[7] The second NTE[8] was issued on April 3, 2013 for allegedly stealing a two-kilogram pack of Nestea during a company outing without permission.

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1 *Rollo*, pp. 3-22.
2 *Id.* at 28-41; penned by Associate Justice Leoncia Real-Dimagiba, with the concurrence of Associate Justices Apolinario D. Bruselas, Jr., and Ma. Luisa Quijano-Padilla.
3 *Id.* at 43-44; penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Mariflor P. Punzalan Castillo, and Rodil V. Zalameda (now a Member of this Court).
4 *Id.* at 29.
5 *Id.*
6 *Rollo*, p. 297.
7 *Id.* at 299.
8 *Id.* at 301.

MPI suspended Rene for 15 working days with a warning that a repetition of any violation of the Employee Code of Conduct (ECOC) shall mean dismissal from the company.[9]

On July 24, 2013, Rene received the third NTE[10] for allegedly failing to check 450 pieces of 2AB Panel Center parts with gate excess produced at machine 650 Ton where he was the operator-in-charge. This was a violation of 1.C.1[11] and 2.B.10 b[12] of MPI's ECOC. Rene explained that he did not notice any defect or gate excess during his entire duty on July 17, 2013.[13] He presented a Daily Quality Control Routine Check signed by Quality Control Inspector Sanny Camunias showing that no gate excess incident was observed during the entire production. Further, he was not warned or reprimanded that he did something wrong during the routine checks that day.

Rene received the fourth NTE[14] on August 5, 2013. He allegedly did not join the daily morning assembly/exercise on two occasions. Rene explained that he attended the morning exercises and was even positioned at the front.[15]

On September 2 and 24, 2013, MPI conducted administrative hearings[16] on Rene's alleged violations. Pending investigation, Rene received the fifth NTE[17] on September 4, 2013 for allegedly using a cellular phone in the work area. Rene explained that he used his cellphone only during break time.[18]

On September 30, 2013, Rene received a Notice of Termination[19] dismissing him from service because of several violations of the ECOC:[20]

1. C.1,[21] C.4. a,[22] and C.5[23] for allegedly sleeping during office hours and for leaving work assignment without permission (subject of the first NTE);

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9 *Id.* at 304.
10 *Id.* at 317.
11 Administrative Offense against company interest
1. C.1. Insubordination or refusing to observe a company regulation or obey reasonable and official orders of superiors. *Id.*
12 Production Offense against company property
2. B.10 b. Negligence or improper use of tools, equipment or machines resulting to damage to company property (slight, no disruption of operations/ no downtime). *Id.*
13 *Rollo*, pp. 317-318.
14 *Id.* at 308.
15 *Id.* at 309.
16 *Id.* at 321-323, and 336-339.
17 *Id.* at 332.
18 *Id.* at 333.
19 *Id.* at 340-342.
20 *Id.* at 369-375.
21 C.1. Insubordination or refusing to observe a company regulation or obey reasonable orders of superiors to perform assigned work or render work or overtime. *Id.* at 370.
22 C.4. Leaving work assignment and or company premises during working hours without permission from supervisor.
a. Interruption of work or damage/loss to the company work. *Id.*

2. E.3[24] for allegedly stealing a two-kilogram pack of Nestea during a company outing without permission from his immediate superior (subject of the second NTE);

3. C.1 and B.10. a[25] for allegedly failing to check the production of defective 2AB Panel Center consisting of 450 pieces (subject of the third NTE);

4. C.1 for allegedly failing to attend daily morning assembly/exercise on two occasions (subject of the fourth NTE); and

5. C.23[26] for allegedly using cellular phone at the work area (subject of the fifth NTE).

Further, he was found to have violated Article 282 [now, Article 297] (a), (b), (c), and (e)[27] of the Labor Code.[28]

On February 24, 2014, the LA rendered its Decision[29] ordering MPI to reinstate Rene to his former position but without payment for backwages. The LA observed that the several memoranda issued against Rene were not immediately acted upon and he was dismissed only in October 2013 after being charged for unauthorized use of cellular phones. Dismissal is too harsh and that suspension is the more appropriate penalty considering Rene's employment since 2000. The LA noted that Rene was not entirely free from fault; thus, he is not entitled to backwages.

Unsatisfied, MPI appealed before the National Labor Relations Commission (NLRC). On July 17, 2014, the NLRC sustained the LA's

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[23] C.5. Sleeping on company time during assigned work hours. *Id.*

[24] E.3. Theft or robbery or attempting to commit theft and or robbery of any company property or other associate's property. *Rollo*, p. 372.

[25] B.10. Negligence or improper use of tools, equipment or machines resulting to damage to company property
a. major damage resulting in disruption of operations and/or downtime. *Id.* at 375.

[26] C.23. Bringing of cellular phone at office & production area. *Id.* at 371.

[27] Article 282 [now 297] of the Labor Code, as amended, provides:
ART. 297. *Termination by Employer.* — An employer may terminate an employment for any of the following causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
x x x x
(e) Other causes analogous to the foregoing.

[28] *Rollo*, p. 342.

[29] *Id.* at 106-119; penned by Labor Arbiter Enrico Angelo C. Portillo. The dispositive portion of the Decision reads:
WHEREFORE, premises considered, respondent Moriroku Philippines, Inc. is hereby ordered to immediately reinstate complainants [Joseph] and [Rene] to their former positions without loss of seniority rights but without backwages.
All other claims are hereby dismissed for lack of merit.
SO ORDERED. (Emphases in the original.). *Id.* at 119.

finding that Rene was illegally dismissed. The NLRC ruled that the production of defective products cannot be solely blamed on Rene. MPI failed to detect the production of defective parts and counter check the quality of the outputs.[30] The *fallo* reads:

> **WHEREFORE**, the herein appeal of respondents is **PARTLY GRANTED** and the x x x finding of the Labor Arbiter that complainant Rene S. Trienta was illegally dismissed from his job is sustained, including his reinstatement to his original post, but without backwages.
>
> **SO ORDERED**.[31] (Emphases in the original.)

When reconsideration was denied,[32] MPI filed a *certiorari* petition[33] with the CA. On September 13, 2017, the CA rendered the assailed Decision dismissing MPI's petition. It ruled that Rene already served his penalties of verbal reprimand and suspension in the first two offenses he was charged with and to use those same offenses to justify his dismissal from service is unfair and unjust because those offenses are not similar to the last three charges against him.[34] Also, there is a discrepancy in the third NTE received on July 24, 2013 and the Notice of Termination. In the NTE, Rene allegedly violated B.10 (b) there being slight damage on company property whereas in the Notice of Termination, Rene violated B.10 (a) indicating major damage.[35] Moreover, the violations in the last three NTEs were punishable only with suspension.[36] The CA disposed:

> **WHEREFORE**, premises considered, the instant petition is **DENIED**. Accordingly, the assailed 17 July 2014 Decision and the 27 August 2014 Resolution of the National Labor Relations Commission in NLRC LAC No. 03-000839-14 are hereby **AFFIRMED** insofar as private respondent Rene Trienta is concerned.
>
> **SO ORDERED**.[37] (Emphasis in the original.)

On June 27, 2018, the CA denied MPI's motion for reconsideration.[38] Hence, this petition.

MPI argues that given Rene's violations of the ECOC and the Labor Code, it had every right to terminate his services.[39] MPI faults the NLRC for allegedly compartmentalizing the issue regarding the failure to check the

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30 *Id.* at 99-100.
31 *Id.* at 100.
32 *Id.* at 103-104; penned by Commissioner Angelo Ang Palaña, with the concurrence of Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena.
33 *Id.* at 45-85.
34 *Id.* at 35-36.
35 *Id.* at 37.
36 *Id.* at 37-39.
37 *Id.* at 40.
38 *Id.* at 43-44.
39 *Id.* at 17.

production of defective products; the NLRC should consider the totality of Rene's offenses.[40]

RULING

The petition has no merit.

Foremost, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Court does not review questions of fact but only questions of law. Judicial review of labor cases does not go beyond evaluating the sufficiency of the evidence upon which the labor officials' findings rest. Hence, where the factual findings of the LA and the NLRC conform and are confirmed by the CA, the same are accorded respect and finality, and are binding upon this Court. It is only when the factual findings of the NLRC and the appellate court are in conflict that this Court will review the records to determine which finding should be upheld as being more in conformity with the evidentiary facts. Where the CA affirms the labor agencies' findings on review and there is no showing whatsoever that said findings are patently erroneous, this Court is bound by those findings.[41]

Here, the LA, the NLRC, and the CA are one in ruling that MPI illegally dismissed Rene. We see no reason to deviate from this finding of the labor tribunals especially when the CA affirmed such ruling.

At any rate, a review of the records revealed that MPI failed to establish by substantial evidence that Rene was dismissed from service with just cause under paragraphs (a), (b), (c), and (e), Article 282 [now Article 297] of the Labor Code, *viz.*:

> ART. 297. [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;
>
> x x x x
>
> (e) Other causes analogous to the foregoing.

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[40] *Id.* at 21.

[41] *Nippon Express Philippines Corp. v. Daguiso*, G.R. No. 217970, June 17, 2020, citing *Falco v. Mercury Freight International, Inc., and/or Coching*, 530 Phil. 42, 46 (2006).

Misconduct is a 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 misconduct to be considered as a just cause for termination, the misconduct must be serious; it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and it must have been performed with wrongful intent.[42] Except for the offense subject of the first and third NTEs, all other offenses (stealing a two-kilogram pack of Nestea, failing to attend daily morning assembly, using cellular phone at the work area) are not related to Rene's duties as a Production Assistant (and later as operator) which would render him unfit to continue working for MPI.

Meanwhile, gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[43] A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[44] Here, Rene's offenses portray neither gross negligence nor habitual neglect. Only the offense of non-attendance in the morning assembly was allegedly repeated and does not merit the penalty of dismissal from service.

Loss of trust and confidence is a valid cause of dismissal when it is shown that: (a) the employee holds a position of trust and confidence, and (b) he performs an act that would justify loss of trust and confidence. Rene does not occupy a position of trust and confidence. He is not a managerial employee whose primary duty consists of the management of the establishment in which he is employed or of a department or a subdivision, and to other officers or members of the managerial staff or a fiduciary rank-and-file employee who is charged with the care and custody of the employer's money or property, and thus, classified as occupying position of trust and confidence.[45] Rene was hired as Production Assistant and later re-assigned as Production Operator.

MPI attempts to justify Rene's dismissal from service by invoking the principle of totality of infractions. We agree with the following disquisition of the CA that invalidated MPI's invocation of the principle:[46]

> As [MPI]'s bare allegation of [Rene]'s violation of paragraphs (a), (b), (c), and (e), Article 282 of the Labor Code would not suffice, it

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[42] *Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr.*, 779 Phil. 563, 581 (2016), citing *Imasen Philippine Manufacturing Corp. v. Alcon*, 679 Phil. 97, 110-111 (2014).

[43] *Valiao v. CA*, 479 Phil. 459, 469 (2004), citing *JGB & Associates, Inc. v. National Labor Relations Commission*, 324 Phil. 747, 754 (1996).

[44] *Villanueva v. Ganco Resort and Recreation, Inc.*, G.R. No. 227175, January 8, 2020, citing *National Bookstore, Inc. v. CA*, 428 Phil. 235, 246 (2002).

[45] *Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr.*, *supra* at 583, citing *Alvarez v. Golden Tri Bloc, Inc.*, 718 Phil. 415, 425 (2013).

[46] *Rollo*, pp. 35-36.

appears that [MPI]'s primary basis for dismissing [Rene] from service was his alleged violation of its company rules and regulations. However, [MPI]'s reliance on the totality of infractions doctrine is misplaced. [Rene] had already served his penalties of verbal reprimand and suspension in the two previous offenses he was charged with, to wit:

> "*Violation of Company Interest C.1 Refusing to obey reasonable orders of Superiors and C.4 Leaving work assignment during working hours without permission from immediate Superior a. Interruption of work or damage/loss to the company work and C.5 Sleeping on company time during assigned work hours*" **for allegedly sleeping during office hours and for leaving work assignment without permission.**
>
> "*Offense against Company property E.3 Theft or Robbery or attempting to commit theft and[/]or robbery of any company property or other associates[']property*" **for allegedly stealing a pack of Nestea (2kg) during a company outing without permission from his immediate superior.**

To use said offenses to justify [Rene]'s dismissal from the service is unfair and unjust especially because those offenses are in no way similar to the present charges against him, to wit:

> "*Administration Offense against company interest C.1 Insubordination or refusing to observe a company regulation or obey reasonable and official orders of superiors and Production Offense against company property B.10 a. property major damage resulting to disruption of operations and/or downtime*" **for allegedly failing to check the production of defective 2AB Panel Center consisting of 450 pieces.**
>
> "*Administrative Offense against company interest C.1. Insubordination or refusing to observe a company regulation or obey reasonable and official orders of superiors*" **for allegedly failing to attend the daily morning assembly/exercise on two (2) occasions.**
>
> "*Administrative offense against company interest C.23 Bringing of cellular phone at office and production area*" **for allegedly using cellular phone at the work area.**

Instructive on this matter is the case of *De Guzman v. NLRC*, where it was held that:

> **The previous offense that DE GUZMAN had committed** on 3 July 1993 for willful refusal to perform one's assigned work or to comply with instruction of supervisor, **for which she had been administered a sufficient disciplinary sanction of six days suspension, could no longer be utilized to aggravate the present offense. Her**

> **previous offense was an entirely separate and distinct violation of company rules. The correct rule is that <u>previous infractions may be used as justification for an employee's dismissal from work in connection with a subsequent similar offense</u>.**[47] (Emphases, underscoring, and italics in the original; citations omitted.)

Definitely, in *Merin v. National Labor Relations Commission*,[48] the Court had the occasion to expound the principle of totality of infractions, thus:

> The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[49] (Citations omitted.)

The Court applied the totality of infractions doctrine in recent cases. In *Villanueva v. Ganco Resort and Recreation, Inc.*,[50] the Court upheld Villanueva's dismissal for "inhuman and unbearable treatment to person in authority; abuse of authority; serious misconduct — insubordination by not accepting her memorandum of re-assignment by the Executive Committee; and gross and habitual neglect of duties — AWOL." For the first two infractions, Villanueva threatened the assistant resort manager with physical harm, and she rejected walk-in guests without management approval. The Court held that totality of infractions may be considered to determine the imposable sanction for her current infraction.

In *De Guzman v. Kforce Global Solutions*,[51] De Guzman was placed twice in the company's Performance Improvement Plan for twice failing his performance evaluations. He committed several infractions of the company's rules and regulations, specifically: (1) failure to send clients' invoices on time and sending clients incomplete and inaccurate invoices; (2) failure to

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47 *Id.*
48 590 Phil. 596 (2008).
49 *Id.* at 602-603.
50 *Supra* note 44.
51 G.R. No. 229844 (Notice), July 10, 2019.

reply to clients' invoice reminders; (3) failure to reply to clients' urgent emails within required period; (4) failure to follow company's *pro-forma* checklist in sending auto-emails; (5) lying about sending invoices to clients when in fact the invoices had not been sent; and (6) failure to check the status of client invoices which had been previously placed on hold and failure to follow specific instructions in dealing and communicating with clients. The Court upheld De Guzman's dismissal from employment.

In *Sy v. Neat, Inc.*,[52] however, the Court ruled that the principle of totality of infractions cannot be used because Sy's infractions for wearing of improper uniform are not related to his latest infractions of insubordination and purported poor performance evaluation. Previous offenses may be used as valid justification for dismissal only if they are related to the subsequent offense upon which the basis of termination is decreed, or if they have a bearing on the proximate offense warranting dismissal.[53]

In the foregoing cases, the Court applied the totality of infractions doctrine when the employee's infractions are directly related to the performance of his functions. In other words, the previous offenses must be related or have a bearing on the subsequent offense which will be used as the basis for dismissal.

The totality of Rene's infractions cannot justify his dismissal from service. The infractions of stealing a two-kilogram pack of Nestea, failing to attend daily morning assembly, using cellular phone at the work area (subject of the second, fourth, and fifth NTEs), are not directly related to the performance of Rene's work as Production Assistant and later as Production Operator. Meanwhile, Rene was already punished for sleeping on duty and leaving the workplace (first NTE). As regards the third NTE where Rene allegedly produced 450 defective 2AB Panel Centers, two other employees were bound to check his outputs. Remarkably, the infractions contained in all the NTEs are not related to each other; hence, they should not be considered as justification for dismissal. Further, the punishment for the infractions subject of the third and fourth NTEs is only suspension[54] and using a cellular phone in the work area is only punishable by written reprimand for the first offense.[55] The Court has ruled that there must be a reasonable proportionality between the offense and the penalty.[56] The penalty must be commensurate to the offense involved and to the degree of the infraction.[57] Even for MPI's standards as contained in the ECOC, dismissal is too harsh a penalty for Rene's infractions. Indeed, Rene's infractions are not grave enough to deserve the ultimate penalty of dismissal.

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[52] 821 Phil. 751 (2017).
[53] *Id.* at 769, citing *Salas v. Aboitiz One, Inc.*, 578 Phil. 915, 929 (2008); and *McDonald's (Katipunan Branch) and/or McGeorge Food Industries, Inc. v. Alba*, 595 Phil. 44, 54 (2008).
[54] *Rollo*, p. 370.
[55] *Id.* at 371.
[56] *Philippine Long Distance Telephone Co. v. Teves*, 649 Phil. 39, 51 (2010).
[57] *Cavite Apparel, Inc. v. Marquez*, 703 Phil. 46, 56 (2013).

Given our finding of the absence of just cause, we find it unnecessary to discuss the parties' arguments regarding procedural due process.

In sum, MPI failed to substantially prove that Rene was dismissed from service for a just cause. Dismissal as a penalty is not commensurate to the alleged numerous infractions he committed; suspension would have sufficed. The CA is correct in not finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in rendering the assailed Decision. Rene is entitled to be reinstated but without backwages since he is not without fault.[58]

FOR THESE REASONS, the petition is **DENIED**.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
19 MAR 2021

JUDGMENT DIVISION (x)
Supreme Court, Manila

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GR240377. 1/27/2021(176)URES

[58] See *Federated Distributors, Inc. v. CA*, G.R. No. 235512 (Notice), November 28, 2019, citing *Pepsi-Cola Products Philippines, Inc. v. Molon*, 704 Phil. 120, 144 (2013).