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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MICHELLE* TAY,
Petitioner,

G.R. No. 241360*

Present:

GESMUNDO, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

APEX 8 STUDIOS, INC. AND
CRISTINA** MARTINEZ,
Respondents.

Promulgated:

JUL 06 2021 *[Signature]*

X-----X

DECISION

CAGUIOA, J.:

This is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court filed by Michelle Tay (petitioner) assailing the Court of Appeals (CA) Decision² dated February 6, 2018 and Resolution³ dated June 26, 2018 in CA-G.R. SP No. 141218.

The Antecedent Facts

Petitioner was hired by Apex 8 Studios, Inc. (Apex), represented herein by its human resource (HR) manager, Cristina Martinez (Martinez), (collectively respondents), as administrative manager on September 20, 2013.

* "Mizzie," "Mizzy," and "Missy" in some parts of the *rollo*.

** "Tina" in some parts of the *rollo*.

• Formerly UDK 16271.

¹ *Rollo*, Vol. I, pp. 2-44.

² *Rollo*, Vol. II, pp. 646-665. Penned by Associate Justice Nina G. Antonio-Valenzuela with the concurrence of Associate Justices Priscilla J. Baltazar-Padilla (a retired Member of the Court) and Germano Francisco D. Legaspi.

³ *Id.* at 682-683.

[Signature]

Several notices to explain (NTE) for violation of company policy were issued to petitioner. A summary of the NTEs and petitioner's Replies thereto are narrated below:

1. Memorandum⁴ dated May 15, 2014 re: "Offenses against person" based on a complaint from Nino Lanohan⁵ (Lanohan) for unannounced employee evaluation, utterance of foul words, and throwing of ball pen and paper at the person evaluated on May 13, 2014 (First NTE).⁶

In her Reply⁷ to the First NTE, petitioner asserted that Lanohan was aware of the evaluation and the same was documented, submitting the post evaluation report⁸ signed by Lanohan dated May 13, 2014 and previous evaluations of Lanohan.⁹ She denied the allegations of an altercation and claimed that these were false accusations of Lanohan who had become emotional after his evaluation.¹⁰

2. Memorandum¹¹ dated May 15, 2014 re: "Offenses against Company Code of Conduct" based on a complaint from Benjalyn¹² Nicanor (Nicanor) who alleged that petitioner committed unpleasant, unprofessional, and inappropriate behavior in the workplace and acted in an aggressive tone as if provoking a fight (Second NTE).¹³ Nicanor alleged that he received reports of an earlier commotion between petitioner and Lanohan in the common area of the office. Nicanor also alleged that petitioner aggressively confronted Nicanor and other employees in the office pantry when she overheard them talking about the earlier commotion between petitioner and Lanohan.¹⁴

In her Reply¹⁵ dated May 19, 2014, petitioner denied that she acted in an aggressive, inappropriate, unpleasant, or unprofessional manner toward Nicanor and other employees in the pantry. With regard to the previous incident between petitioner and Lanohan, petitioner claimed that what happened was a typical office interaction between her and Lanohan as she tried to address his inadequacies at work. She calmly reacted and tried to give instructions for the proper execution of his job.¹⁶

⁴ *Rollo*, Vol. I, pp. 146-147.

⁵ "Niño Lanohan" and "Niño Lañohan" in some parts of the *rollo*.

⁶ *Rollo*, Vol. I, p. 146.

⁷ *Id.* at 148.

⁸ *Id.* at 220-221.

⁹ *Id.* at 149-157.

¹⁰ *Id.* at 148.

¹¹ *Id.* at 160-161.

¹² "Gigi" in some parts of the *rollo*.

¹³ *Rollo*, Vol. I, p. 160.

¹⁴ *Id.*

¹⁵ *Id.* at 162-163.

¹⁶ *Id.* at 162.



3. Memorandum¹⁷ dated May 15, 2014 re: “Offenses against attendance and punctuality” for failure to notify of inability to report and absence without leave or call (Third NTE).¹⁸

Petitioner submitted a Reply¹⁹ asserting that she was sick on May 7, 2014 and attached thereto an email²⁰ dated May 7, 2014 where she explained that she was not feeling well and apologized for the late notice.

4. Memorandum²¹ dated May 15, 2014 re: “Offenses against person” for asking the Chief Operating Officer Thorsten Hillebrecht (COO Hillebrecht) to talk to a food delivery personnel in a high voice without introducing COO Hillebrecht and asking for an unannounced meeting on May 14, 2014 (Fourth NTE).²²

Petitioner submitted a Reply²³ dated May 19, 2014 alleging that she did not act in a disrespectful manner as she introduced COO Hillebrecht to the food delivery personnel inside the boardroom which is the proper venue for the introduction. As to the meeting, she merely requested the same to discuss a violation committed by an employee but the request was denied.²⁴

5. Memorandum²⁵ dated May 16, 2014 re: “Work Responsibility” for failure to stock snacks and food supplies (Fifth NTE) on May 16, 2014.²⁶

Petitioner submitted a Reply²⁷ dated May 20, 2014 asserting that the issue had been addressed after she had received a report of “missing ‘popcorn’” requested by the Chief Executive Office (CEO).²⁸ She was requested to send one box of popcorn from the Apex’s Zuellig office to the PBCom office which she complied with. She also requested for a budget to replenish the supplies and immediately procured snacks upon release of the check.²⁹

6. Memorandum³⁰ dated May 21, 2014 re: “Insubordination and work responsibility” for failing to comply with duties and responsibilities, abrasive attitude towards staff, tardiness, delayed submission of management reports, and inefficiency (Sixth NTE).³¹ In the Sixth NTE,

¹⁷ Id. at 297-298.

¹⁸ Id. at 297.

¹⁹ Id. at 299-300.

²⁰ Id. at 301-303.

²¹ Id. at 164-165.

²² Id. at 164.

²³ Id. at 166-167.

²⁴ Id. at 166.

²⁵ Id. at 312-313.

²⁶ Id. at 312.

²⁷ Id. at 314.

²⁸ Id.

²⁹ Id.

³⁰ Id. at 171-173.

³¹ Id. at 171-172.



petitioner was also informed that she would be placed under preventive suspension for a period of 30 days without pay or until June 20, 2014.³²

Petitioner answered the Sixth NTE in a Reply³³ dated May 28, 2014 denying that she had acted in an abrasive manner, and asserting that she had maintained camaraderie and cooperation with her co-workers.³⁴ Petitioner denied the allegation that she was failing in the performance of her tasks. She answered that she had emailed the status updates of her weekly tasks to the COO and attached an email thereof.³⁵ She admitted that she had submitted a Report requested from all department heads regarding development of fiscal goals and objectives, plans and strategies, and averred that she had advised the financial manager ahead of time that there would be delay as she was on bereavement leave at the time.³⁶

7. Memorandum³⁷ dated June 10, 2014 re: "Offenses against company property/property of others/offenses against company interest, dishonesty, and disloyalty" for allegedly allowing makeup artist Raven³⁸ Agarpao (Agarpao) to take an eyeshadow makeup palette without company consent (Seventh NTE).³⁹

Petitioner denied the accusation that she allowed Agarpao to take an eye shadow makeup palette. In the first place, petitioner asserted that the handling of the makeup supplies was the task of Nicanor. She also attached a letter⁴⁰ from Agarpao who denied taking home any makeup product.⁴¹

8. Memorandum⁴² dated June 10, 2014 re: "Offenses against company interest, dishonesty, and disloyalty" for consenting to give food to the guard on duty as a bribe in order to waive the gate pass requirement for the company's food concessionaire (Eighth NTE).⁴³

Petitioner denied consenting to giving food to the guard on duty and submitted a statement from the food concessionaire alleging that it was Lanohan who gave food to the guards and that petitioner had no participation in or knowledge of said act.⁴⁴

An administrative hearing was conducted on June 10, 2014 and petitioner submitted a Supplemental Explanation⁴⁵ thereafter. On June 20,

³² Id. at 172.

³³ Id. at 174-177.

³⁴ Id. at 175.

³⁵ Id. at 174, 178-184.

³⁶ Id. at 176.

³⁷ Id. at 189-190.

³⁸ "Rea" in some parts of the *rollo*.

³⁹ *Rollo*, Vol. 1, p. 189.

⁴⁰ Id. at 223.


⁴¹ Id. at 209.

⁴² Id. at 193-194.

⁴³ Id. at 193.

⁴⁴ Id. at 210.

⁴⁵ Id. at 196-214.



2014 respondents extended petitioner's suspension but with pay.⁴⁶ On June 23, 2014, respondents served a Notice of Termination⁴⁷ to petitioner, finding her guilty of the infractions contained in the the First, Second, Fourth, Fifth, Sixth, Seventh, and Eighth NTEs on the grounds of violation of code of conduct, serious misconduct, fraud or willful breach of trust, gross and habitual neglect of duties, and loss of trust and confidence.

Thus, petitioner filed a complaint⁴⁸ before the Labor Arbiter (LA) for illegal suspension, illegal dismissal, payment of backwages, separation pay, moral and exemplary damages, attorney's fees, and costs of suit.

In her Position Paper,⁴⁹ petitioner alleged that her dismissal was a retaliatory act of Apex's Global Director for Talent Resources, Jonathan Sullivan (Sullivan) after the latter read a Facebook post on May 15, 2014 made by petitioner's husband which indicated the qualities of a good leader.⁵⁰ Petitioner averred that Sullivan interpreted the Facebook post as a criticism of his management style and he sent text messages to petitioner asking about the post.⁵¹ Sullivan, in connivance with HR Manager Martinez, used the Facebook post as a ground to dismiss petitioner from employment.⁵² On the other hand, respondents maintained that petitioner was validly dismissed for just cause and with observance of procedural due process.⁵³

The LA Decision

The LA held that petitioner, a managerial employee, was validly suspended and dismissed on the ground of loss of trust and confidence due to her actions and aggressive behavior. The LA found that petitioner's conflicts with her co-workers showed that she was "totally incapable of peaceful co-existence"⁵⁴ in the workplace.⁵⁵

The LA also held that petitioner was unable to prove that her dismissal was motivated by revenge due merely to her husband's Facebook post. Moreover, there was no showing that her co-workers Lanohan and Nicanor were merely coerced or motivated by malice in reporting her infractions. The LA also held that procedural due process was observed in the implementation of the dismissal.⁵⁶ The LA did not discuss the other grounds cited in the Notice of Termination. Thus, petitioner appealed the case to the National Labor Relations Commission (NLRC).

⁴⁶ Id. at 365.

⁴⁷ Id. at 362-375.

⁴⁸ Id. at 112-113.

⁴⁹ Id. at 246-276.

⁵⁰ Id. at 250; see also, *rollo*, Vol. II, p. 536.

⁵¹ Id. at 250-251, 278-279; *rollo*, Vol. II, id.

⁵² Id. at 251; *rollo*, Vol. II, id.

⁵³ *Rollo*, Vol. II, id.

⁵⁴ See LA Decision, *rollo*, Vol. I, p. 458.

⁵⁵ Id. at 456-460.

⁵⁶ Id.

The NLRC Decision

The NLRC reversed the LA Decision⁵⁷ and held that petitioner's suspension and subsequent dismissal were illegal. With regard to the suspension, the NLRC held that it was baseless because respondents were unable to prove that petitioner's presence in the workplace posed an imminent or serious threat to the life and/or property of respondents and its employees.⁵⁸

On the issue of illegal dismissal, the NLRC held that the charges against petitioner were not proven with substantial evidence, thus, there was no just cause for her dismissal. The complaints against petitioner were based on unverified emails and unsigned letters from employees as respondents did not submit the affidavits of the said employees.⁵⁹ The NLRC, however, agreed with the LA that respondents complied with procedural due process in terminating petitioner's employment.⁶⁰

The dispositive portion of the NLRC Decision⁶¹ reads:

WHEREFORE, premises considered, the appeal of [petitioner] is hereby granted. The Decision of the Labor Arbiter dated 08 October 2014 is **REVERSED** and **SET ASIDE**. [Petitioner] is declared to have been illegally dismissed and [respondents] are hereby ordered to pay jointly and severally [petitioner] her wages during the time of illegal preventive suspension from 21 May 2014 to 22 June 2014; full backwages from 23 June 2014 until the finality of this Decision; separation pay in lieu of reinstatement equivalent to one month pay for every year of service with a fraction of at least six (6) months to be considered as one whole year to be computed from date of employment on 20 September 2013 until the finality of this Decision; moral damages in the amount of P25,000.00; exemplary damages of P25,000.00; and ten percent (10%) attorney's fees on the monetary award.⁶² (Emphasis in the original)

Respondents filed a Motion for Reconsideration⁶³ (MR) attaching thereto, the affidavits of employees Lanohan, Nicanor, and COO Hillebrecht.⁶⁴ However, the NLRC denied the MR in its Resolution⁶⁵ dated April 30, 2015, and did not give credence to the affidavits as they were belatedly filed. The NLRC held that while technical rules of procedure are not binding in administrative cases, the delayed submission of relevant documents must be justified. Respondents did not present a justifiable reason for the late submission of the affidavits of their witnesses. The failure to produce the said documents was clearly their own fault as the witnesses were at their disposal from the beginning. They would not suffer any

⁵⁷ Id. at 441-461. Penned by LA Benedict G. Kato.

⁵⁸ *Rollo*, Vol. II, pp. 539-545.

⁵⁹ Id. at 541-545.

⁶⁰ Id. at 541.


⁶¹ Id. at 533-548.

⁶² Id. at 547.

⁶³ Id. at 550-568.

⁶⁴ See id. at 588 & 595.

⁶⁵ Id. at 587-601.



deprivation of due process as they had ample opportunity to submit the affidavits with their Position Paper before the LA and their Memorandum of Appeal before the NLRC, but they neglected to do so.⁶⁶

The CA Decision

The CA reversed the NLRC Decision and agreed with the LA Decision that there was just cause for petitioner's dismissal. Contrary to the NLRC's findings, the CA held that there was substantial evidence to prove that petitioner committed serious misconduct, gross neglect of duties, and breach of trust and confidence. The CA found that petitioner's utterance of foul words, throwing of pen and paper, aggressive behavior aimed at provoking a fight, and disrespectful behavior towards fellow employees Lanohan and Nicanor and the company COO Hillebrecht constituted serious misconduct. The CA held that petitioner only proffered denials and alibis which impliedly admitted that the incidents indeed transpired. The CA further ruled that petitioner's actions resulted in the loss of trust and confidence in her as a managerial employee. The CA also held that the NLRC is not bound by technical rules of evidence even during the appeal and filing of MR. Thus, the NLRC should have allowed the belated filing of the affidavits as part of respondents' evidence.⁶⁷

Petitioner filed an MR,⁶⁸ which was denied by the CA in its Resolution dated June 26, 2018. Thus, petitioner filed the instant Petition imputing reversible error on the CA in reversing the NLRC Decision and holding that her suspension and dismissal were valid.

Respondents filed their Comment,⁶⁹ asserting that the CA correctly ruled in reversing the NLRC Decision. They argue that petitioner merely rehashed the arguments she raised before the CA which have been already properly addressed. Respondents also contend that the Petition is defective as the Verification and Certification of Non-Forum Shopping⁷⁰ (Verification and Certification) was signed by petitioner's husband Eugenio Tay (Eugenio) who presented no proof that he was authorized to sign on behalf of petitioner.

Petitioner filed a Reply⁷¹ asserting that a Special Power of Attorney⁷² (SPA) dated May 8, 2015 is attached to the Verification and Certification, paragraph 6 of which expressly authorizes Eugenio to file the instant Petition before the Court.

⁶⁶ Id.

⁶⁷ Id. at 655-664

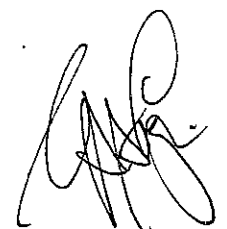
⁶⁸ Id. at 666-680.

⁶⁹ Id. at 687-704.

⁷⁰ Id. at 720.

⁷¹ Id. at 714-719.

⁷² Id. at 721-722.



Issue

Whether the CA committed reversible error in reversing the NLRC Decision and Resolution.

The Court's Ruling

The petition is meritorious.

In determining the issue of whether petitioner was validly dismissed on the grounds of serious misconduct, fraud or willful breach of trust, gross and habitual neglect of duties, and loss of trust and confidence, the Court was compelled to re-examine the factual issues in the case. Generally, petitions for review on *certiorari* under Rule 45 are limited to questions of law as factual findings of administrative agencies are accorded great weight and respect due to their specific expertise and jurisdiction. In exceptional cases, however, a review of the records may be warranted when the factual findings of the LA, NLRC, and CA are contradictory, as in this case.⁷³

In labor disputes, the employer has the burden to prove that the disciplinary action imposed on the employee was done with just cause. The quantum of proof required is substantial evidence, which is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁷⁴

Upon a judicious review of the case, the Court finds that the CA committed reversible error in overturning the NLRC Decision. The NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in holding that there was no valid ground for the preventive suspension, and no just cause for the dismissal of petitioner.

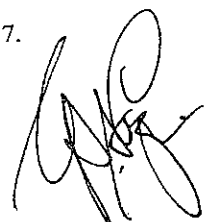
Before proceeding to discuss the substantive issues in the case, the Court first determines the issue of the validity of the Verification and Certification. The SPA executed by petitioner clearly and categorically authorizes Eugenio to represent her in this labor dispute and to perform acts in pursuance of the case, including the signing of pleadings and verification and certification of non-forum shopping of such pleadings and the filing of the Petition before the Court.⁷⁵ Thus, contrary to respondents' contention, the Verification and Certification is valid as Eugenio is clothed with authority to sign the Verification and Certification.

There was no valid ground for the preventive suspension

⁷³ *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189.

⁷⁴ *Maula v. Ximex Delivery Express, Inc.*, G.R. No. 207838, January 25, 2017, 816 SCRA 1, 17.

⁷⁵ *Rollo*, Vol. II, p. 721.



Under Sections 8 and 9, Rule XXIII, Book V of the Omnibus Rules to Implement the Labor Code, as amended,⁷⁶ the employer may place the employee under preventive suspension for a maximum period of 30 days if his or her continued presence in the workplace poses a serious and imminent threat to the life or property of his or her co-workers.

Preventive suspension is a disciplinary measure for the protection of the company and its employees pending investigation of the alleged wrongdoing committed by the employee. However, when it is found that the preventive suspension was without sufficient basis, the employee is entitled to the payment of salaries during the preventive suspension.⁷⁷ In cases involving dishonesty, the Court has held that preventive suspension is an acceptable precautionary measure in order to preserve the integrity of vital papers and documents that may be material and relevant to the case and which the employee may have access to by virtue of his or her position.⁷⁸

As correctly noted by the NLRC, the preventive suspension was imposed on petitioner on May 21, 2014 before the issuance of the Memorandum dated June 10, 2014 which contained the charge of alleged consent to theft and bribery. Thus, there was no charge of dishonesty or fraud yet when the preventive suspension was imposed. The grounds relied upon by respondents in imposing the preventive suspension referred to the infractions detailed in the First to Fifth NTEs which involved the charges of (1) rude behavior towards Lanohan; (2) unpleasant, unprofessional, and inappropriate behavior towards Nicanor; (3) absence without official leave; (4) rude behavior towards COO Hillebrecht; and (5) no stock of food and snacks.

The Court is not convinced that the above incidents are justifiable basis for preventive suspension. Respondents failed to present any substantial evidence of how petitioner's presence in the work place posed a serious and imminent threat to the life and property of the company and its employees to justify petitioner's suspension for 30 days. Respondents likewise did not prove that petitioner's presence would hinder or obstruct the investigation. Thus, the preventive suspension imposed on petitioner was illegal and she is entitled to her unpaid salaries for the period that she was preventively suspended without pay.

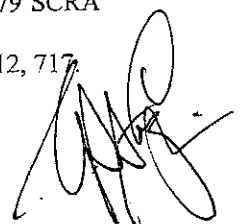
There was no just cause for illegal dismissal

The charges in the First, Second and Fourth NTEs which were upheld in the Notice of Termination, will be discussed together as they refer to

⁷⁶ AMENDING THE RULES IMPLEMENTING BOOK V OF THE LABOR CODE AS AMENDED, DOLE Department Order No. 09, s. 97, approved on May 1, 1997.

⁷⁷ *Gatbonton v. National Labor Relations Commission*, G.R. No. 146779, January 23, 2006, 479 SCRA 416, 421-422.

⁷⁸ *Dayan v. Bank of the Philippine Islands*, G.R. No. 140692, November 20, 2001, 369 SCRA 712, 717.



similar allegations regarding petitioner's behavior and interactions with her co-workers.

The NLRC did not give credence to the allegations in the NTEs because they were not supported by affidavits of the complainants Lanohan, Nicanor, and COO Hillebrecht. The affidavits were submitted belatedly as attachments to respondents' MR before the NLRC. On the other hand, the CA took a liberal approach and appreciated the belatedly submitted affidavits reasoning that the NLRC is not bound by technical rules of evidence.

The Court does not agree with the CA. The NLRC cannot be faulted for disregarding the belatedly submitted affidavits in the absence of any adequate reason for their late submission. While it is true that strict adherence to technical rules of procedure is not required in labor cases, liberality may be allowed only when the errant party is able to adequately explain the delay in the submission of evidence and sufficiently prove the allegations sought to be proven.⁷⁹ Section 11, Rule V of the NLRC Rules of Procedure requires the parties to submit their verified position papers with supporting documents and affidavits of witnesses, which shall take the place of their direct testimony.⁸⁰ It is clear that the affidavits should be submitted with the position paper, at the initial stage of the case. In this case, respondents' witnesses were its own employees and COO. Thus, they could have easily submitted their affidavits with their Position Paper filed before the LA. Respondents, however, failed to provide any justifiable reason for the delay of the submission of said documents. As the employer, it was incumbent upon respondents to prove their allegations with substantial evidence.

In any case, even if the Court were to consider the unverified statements against petitioner, the allegations contained in the First, Second, and Fourth NTEs do not constitute serious misconduct to justify the harsh penalty of dismissal. In *Maula v. Ximex Delivery Express, Inc.*,⁸¹ the Court explained the definition and elements of serious misconduct. The Court held:

⁷⁹ *Princess Talent Center Production, Inc. v. Masagca*, G.R. No. 191310, April 11, 2018, 860 SCRA 602, 633.

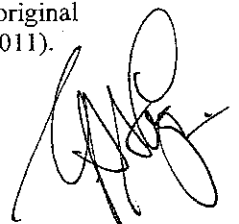
⁸⁰ SECTION 11. SUBMISSION OF POSITION PAPER AND REPLY. — a) Subject to Sections 9 and 10 of this Rule, the Labor Arbiter shall direct the parties to submit simultaneously their verified position papers with supporting documents and affidavits, if any, on a date set by him/her within ten (10) calendar 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. (7a) (approved on May 31, 2011).

⁸¹ *Supra* note 74.



Misconduct is improper or wrong conduct; it is 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. The misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. **Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.**⁸² (Emphasis supplied)

The First NTE⁸³ contained Lanohan's report that petitioner conducted an unannounced evaluation without proper documentation, uttered foul words, and threw a pen and paper on May 13, 2014. While the Court has previously ruled that the utterance of obscene, insulting, and offensive words and fighting in company premises⁸⁴ may be valid grounds for termination, the allegations in the NTEs are too broad and general to be interpreted as serious misconduct. The First NTE alleged that petitioner uttered foul words but it does not state the words that were actually uttered. The description of the utterances as "foul word"⁸⁵ is a conclusion and not a mere factual narration. The interpretation of words is highly subjective and the Court cannot just accept one party's description of utterances without a specification of the actual words uttered. It was also alleged that petitioner conducted an unannounced evaluation but respondents were unable to prove how the said act was a violation of the company's code of conduct or procedures in evaluation of employees. The allegation that petitioner threw a pen and paper at Lanohan deserves scant consideration as this was unverified and unsubstantiated.

The Second NTE⁸⁶ alleged that petitioner acted in an unpleasant, unprofessional and inappropriate manner toward Nicanor, based on an unsigned letter which stated:

"This morning, I [Nicanor] got a report from my Pitboss Rio and Make-up artist Elaine that there was a commotion between [petitioner] (Admin Manager) and [Lanohan] (cleaner supervisor) during clean ups that leads to walking out of the latter from the room.

Such acts should not be done in a common area as this may create emotional distress to the staff that may disrupt organizational functions. This kind of behavior is unpleasant, unprofessional, and inappropriate in a workplace wherein we are promoting harmonious relationships between staff in the operations department.

In lieu with (sic) the above mentioned report, [petitioner] popped in the pantry area at around 10[:]30am coming from outside saying "are you talking behind my back" and "I heard my name being mentioned here as I

⁸² Id. at 17-18.

⁸³ Rollo, Vol. I, pp. 146-147

⁸⁴ *Autobus Workers' Union (AWU) v. NLRC*, G.R. No. 117453, June 26, 1998, 291 SCRA 219, 228; *Naguit v. San Miguel Corporation*, G.R. No. 188839, June 22, 2015, 759 SCRA 535, 546.

⁸⁵ Rollo, Vol. I, p. 146.

⁸⁶ Id. at 160-161.

walked in” pertaining to Me [Nicanor] (Operations Manager), Tina (HR Manager), [Lanohan] (cleaner supervisor)[,] Laila (project coordinator) and Venus (cleaner). Her tone was very aggressive as if she is provoking into a fight.

Silence comes after the resounding voice and staffs (sic) were frightened because of this.”⁸⁷ (Italics in the original)

The allegations in the Second NTE, even if taken to be true, likewise do not constitute serious misconduct. The utterances “*are you talking behind my back?*” and “*I heard my name being mentioned here as I walked in*”⁸⁸ cannot, by themselves, be interpreted as aggressive and provocative. The statements were merely questions propounded to the persons present in the pantry. As stated in the NTE, there was silence after, which signifies that there was no altercation or commotion that ensued after the utterances. As to the allegation of the separate commotion between petitioner and Lanohan, the same deserves no consideration as it was merely relayed to Nicanor by other employees. Significantly, Lanohan himself did not report the incident.

With regard to the charges in the Fourth NTE,⁸⁹ the Court does not find that petitioner’s failure to introduce the COO Hillebrecht to the food delivery personnel and requesting for an unannounced meeting, constitute serious misconduct. The said imputed acts do not constitute misconduct so grave to justify dismissal. Respondents failed to prove that the purported acts were violations of the company code of conduct. Respondents alleged in the Notice of Termination that other employees attested that petitioner did not introduce COO Hillebrecht to the delivery personnel and acted in a condescending manner,⁹⁰ yet they did not submit affidavits of the other employees who witnessed the incident. Moreover, asking for a meeting, whether announced or unannounced, does not constitute misconduct.

Respondents were unable to substantiate that the above acts constituted just causes for dismissal. They failed to prove that petitioner committed serious misconduct relating to her duties which demonstrated unfitness to continue working for the company. Respondents attempted to depict petitioner as an employee who did not get along well with her colleagues, akin to an allegation of having an “attitude problem.” While the Court has previously held that an employee’s attitude problem may be a valid ground for termination as it is detrimental to the company, cause strain at the working environment, and affect teamwork,⁹¹ respondents were unable to prove with substantial evidence that this was the situation in this case. Such an allegation must be proven with substantial evidence detailing the specific acts of the employee which demonstrate negative behavior to such a degree that it negatively affects the other employees, the work environment, and impacts on the employee’s work.

⁸⁷ Id. at 160.

⁸⁸ Id.; italics in the original.

⁸⁹ Id. at 164-165.

⁹⁰ Id. at 368.

⁹¹ *Heavylift Manila, Inc. v. Court of Appeals*, G.R. No. 154410, October 20, 2005, 473 SCRA 541, 549.

In *Sy v. Neat, Inc.*,⁹² where one of the grounds for dismissal was also the employee's alleged attitude problem, the Court held:

With respect to Sy's attitude problem, the Court finds no evidence to substantiate such allegation. Aside from the allegations in the August 5, 2012 memorandum to the effect that the Operations Managers have complained about his attitude problem, nothing in the records show that Sy was previously warned for not following instructions, and for arguing with or disrespecting his superiors. **Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules. To be sure, unsubstantiated suspicions, accusations and conclusions of employers do not provide for legal justification for dismissing an employee.** Respondents failed to present reports or sworn statements of the Operations Managers, narrating the instances when he displayed attitude problems at work, as well as his previous Performance Appraisal indicating unsatisfactory evaluation of his work.⁹³ (Emphasis supplied)

The CA also committed reversible error in holding that petitioner's denial of the charges regarding her attitude constituted an implied admission. The evidence must be weighed based on the strength of the employers' evidence as the burden is on them to prove that the dismissal as valid.

In *Heavylift Manila, Inc. v. Court of Appeals*,⁹⁴ the Court held

However, we are not convinced that in the present case, petitioners have shown sufficiently clear and convincing evidence to justify Galay's termination. Though they are correct in saying that in this case, proof beyond reasonable doubt is not required, still there must be substantial evidence to support the termination on the ground of attitude. The mere mention of negative feedback from her team members, and the letter dated February 23, 1999, are not proof of her attitude problem. **Likewise, her failure to refute petitioners' allegations of her negative attitude does not amount to admission. Technical rules of procedure are not binding in labor cases. Besides, the burden of proof is not on the employee but on the employer who must affirmatively show adequate evidence that the dismissal was for justifiable cause.**⁹⁵ (Emphasis supplied)

The charge in the Third NTE⁹⁶ relating to petitioner's attendance, was not included in the Notice of Termination as a ground for dismissal. Accordingly, it will no longer be discussed.

The Notice of Termination also found petitioner guilty of the charges in the Fifth and Sixth NTEs for gross inefficiency in her work performance. Under Section 297 of the Labor Code, gross and habitual neglect of duties is

⁹² G.R. No. 213748, November 27, 2017, 846 SCRA 612.

⁹³ Id. at 636.

⁹⁴ Supra note 91.

⁹⁵ Id. at 549-550.

⁹⁶ *Rollo*, Vol. I, pp. 297-298.

a just cause for dismissal. In *Cavite Apparel, Incorporated v. Marquez*⁹⁷ the Court held:

Neglect of duty, to be a ground for dismissal under Article 282 of the Labor Code, must be both gross and habitual. Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances. x x x.⁹⁸

The charges in the Fifth NTE⁹⁹ pertain to petitioner's alleged failure to monitor the supply of snacks in Apex's PBCom office despite repeated reminders. Petitioner admitted that there were no snacks in the PBCom office on May 16, 2014 but proffered that she was able to send snacks from the Zuellig Office to the PBCom office and to purchase more snacks on the same day.

Under the standards in *Cavite Apparel*, the Court finds that petitioner did not commit gross and habitual neglect of duty. The lack of snacks was reported only on May 16, 2014. Respondents alleged that repeated reminders were given to petitioner regarding the snacks, yet they failed to submit any proof that petitioner had been previously reminded or reprimanded for the same act. Moreover, as explained by petitioner, the situation was immediately remedied as she was able to replenish the supply of snacks. As correctly held by the NLRC, the failure to monitor the snacks in the PBCom office was not so crucial for the business operation of Apex to make it a terminable offense. Thus, the said act does not constitute gross negligence.

The Sixth NTE¹⁰⁰ accused petitioner of failing to comply with duties and responsibilities, abrasive attitude towards staff, tardiness, delayed submission of management reports, and inefficiency. However, respondents did not specify the acts of petitioner constituting said infractions and they failed to submit any substantial evidence to prove these allegations. The general allegations in the Sixth NTE were also not individually addressed in the Notice of Termination. Mere general recitations of an employee's infractions are not sufficient to convince the Court. The employer must allege and prove the specific acts of the employee which violated the company's code of conduct. Mere allegation is not evidence.¹⁰¹ As the employer, respondents failed to discharge the burden of presenting substantial evidence to prove the allegations in the Sixth NTE.

Respondents also found petitioner guilty of committing fraud and willful breach of trust, based on the allegations in the Seventh and Eighth NTEs. In the Seventh NTE,¹⁰² it was alleged that petitioner allowed a

⁹⁷ G.R. No. 172044, February 6, 2013, 690 SCRA 48.

⁹⁸ Id. at 57.

⁹⁹ *Rollo*, Vol. I, pp. 312-313.

¹⁰⁰ Id. at 171-173.

¹⁰¹ *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 67.

¹⁰² *Rollo*, Vol. I, p. 189-190.

makeup artist, Agarpao, to take an eyeshadow makeup palette without company consent. The charge was based on an email¹⁰³ from Therese Angela Jose (Jose) who alleged that she last saw the missing eyeshadow palette in the possession of Agarpao, who declared that she had asked permission from petitioner to take the item since it had been already used up. Agarpao allegedly told Jose that she offered to pay for the item but petitioner refused and just gave her the eyeshadow palette. Respondents also submitted a handwritten letter¹⁰⁴ from another makeup artist, Elaine Robles (Robles) who alleged that she overheard Agarpao telling another make-up artist that petitioner gave Agarpao the make-up palette since it was already used up.

The allegations contained in the email and letter deserve scant consideration as respondents did not submit the affidavits of Jose and Robles to confirm their statements. In any case, even if the Court were to accept the unverified statements, still there would be no substantial evidence against petitioner because the statements are mere hearsay. Jose did not see the actual taking of the item or petitioner's alleged consent to the taking thereof, she only averred that Agarpao told her that petitioner allowed her to take the item. Meanwhile, Robles merely averred that she overheard Agarpao say that petitioner gave her the make-up palette. Both had no personal knowledge of the allegation that petitioner gave her consent to the taking of the item. Respondents did not conduct any investigation on the alleged incident and merely relied on the hearsay statements of Jose and Robles. The NTE did not even indicate the date of the alleged theft.

The Eighth NTE¹⁰⁵ charged petitioner with consenting to the act of Lanohan in giving of food as a bribe to the security guards in PBCom to allow Apex's food concessionaire to enter the building without a gate pass. This is another baseless and unsubstantiated charge against petitioner. The NTE alleged that the report was "[b]ased on the information turned over to us,"¹⁰⁶ and yet, no affidavit or report was submitted to support the charge. In the Notice of Termination, respondents declared that the company had directed Lanohan to explain his side, but did not elucidate on Lanohan's explanation. It is therefore apparent that respondents did not have any substantial evidence to prove that petitioner had consented to the giving of food to the guards. The Court notes that respondents were unable to directly impute any act of fraud or willful breach of trust against petitioner and merely tried to implicate her in alleged infractions of other employees.

Lastly, respondents also used loss of trust and confidence as basis for termination of employment in the Notice of Termination. The Court finds that there is no substantial evidence to prove that petitioner committed acts which could have resulted in loss of trust and confidence in petitioner as a managerial employee. The Court has previously ruled that loss of trust and

¹⁰³ Id. at 191.

¹⁰⁴ Id. at 192.

¹⁰⁵ Id. at 193-194.

¹⁰⁶ Id. at 193.



confidence may be a basis for the dismissal of managerial employees owing to the confidential and fiduciary nature of their position. However, the loss of trust and confidence must have real basis and not be based on mere suspicions or speculations. In *Lima Lands, Inc. v. Cuevas*,¹⁰⁷ the Court held:

x x x [T]he loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence. Moreover, the burden of proof required in labor cases must be amply discharged.¹⁰⁸

In sum, respondents miserably failed to prove that petitioner's suspension and subsequent dismissal were based on any just cause. Respondents failed to discharge the burden of proving with substantial evidence the alleged infractions of petitioner to justify the imposition of preventive suspension and the ultimate penalty of dismissal.

Petitioner is entitled to unpaid wages, backwages, separation pay, moral and exemplary damages, and attorney's fees

The Court reinstates the NLRC's monetary awards.

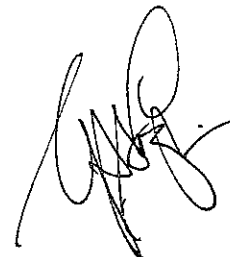
Petitioner is entitled to her unpaid wages for the period of her illegal preventive suspension from May 21 to June 20, 2014 and for the period of extension on June 21, 2014 until June 22, 2014. An employee is entitled to the payment of salaries during the preventive suspension when it is found that the imposition thereof was without sufficient basis.¹⁰⁹ The Court notes that petitioner's suspension was extended beyond June 20, 2014, but with pay. If her salary for June 21 and 22, 2014 has already been paid, the same shall be excluded in the computation of unpaid salaries for the period of illegal preventive suspension.

The NLRC also correctly ruled that petitioner is entitled to backwages and separation pay, in lieu of reinstatement due to the strained relations

¹⁰⁷ G.R. No. 169523, June 16, 2010, 621 SCRA 36.

¹⁰⁸ *Id.* at 47-48.

¹⁰⁹ *Gatbonton v. National Labor Relations Commission*, supra note 77, at 422.



between the parties. In *Aliling v. Feliciano*,¹¹⁰ the Court distinguished the two awards:

“The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee’s service while that for separation pay is the actual period when the employee was unlawfully prevented from working.[”]¹¹¹

Undoubtedly, the relationship between petitioner and respondents is strained and reinstatement would not be viable. Thus, the grant of separation pay is justified.

The NLRC’s award of moral and exemplary damages is also justified as petitioner’s dismissal was attended with bad faith. In *Daguinod v. Southgate Foods, Inc.*,¹¹² the Court held:

x x x Moral damages are awarded in illegal termination cases when the employer acted (a) in bad faith or fraud; (b) in a manner oppressive to labor; or (c) in a manner contrary to morals, good customs, or public policy. In addition to moral damages, exemplary damages may be imposed by way of example or correction for the public good. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.¹¹³

Respondents clearly acted in bad faith in implementing petitioner’s dismissal. Respondents bombarded petitioner with eight (8) NTEs which contained baseless allegations and dismissed her without a proper investigation of the complaints against her. They implicated petitioner in fraudulent and dishonest acts without any substantial basis, disparaged her work performance without conducting a proper assessment, and trampled on her character. The NLRC awarded moral and exemplary damages of ₱25,000.00 each. The Court deems it appropriate to raise the amounts to ₱50,000.00 each, considering that respondents’ treatment of petitioner was blatantly unfair and very oppressive.

The Court also affirms the NLRC’s award of attorney’s fees of ten percent (10%) of the total monetary award. In cases for recovery of wages or when an employee was compelled to file suit to protest his or her rights, the award of attorney’s fees is justifiable.¹¹⁴

¹¹⁰ G.R. No. 185829, April 25, 2012, 671 SCRA 186.

¹¹¹ Id. at 213.

¹¹² G.R. No. 227795, February 20, 2019, 894 SCRA 172.

¹¹³ Id. at 201.

¹¹⁴ *Rutaquio v. National Labor Relations Commission*, G.R. Nos. 97652-53, October 19, 1999, 317 SCRA 1, 12-13.

WHEREFORE, premises considered, the Petition is **GRANTED**.
The Court further **RESOLVES** to:

1. **REVERSE** and **SET ASIDE** the CA Decision dated February 6, 2018 and Resolution dated June 26, 2018 in CA-G.R. SP No. 141218.
2. **REINSTATE** the Decision of the NLRC in NLRC LAC No. 11-002899-14 with modification as to the amount of moral and exemplary damages.
3. Respondents Apex 8 Studios, Inc. and Cristina Martinez are **DIRECTED** to **PAY** petitioner Michelle H. Tay the following monetary awards, which shall be their joint and solidary liability:
 - a) unpaid salaries for the period of preventive suspension without pay from May 21 to June 20, 2014 and for the period of extension on June 21, 2014 until June 22, 2014, if unpaid;
 - b) full backwages from the date of dismissal on June 23, 2014 until finality of this judgment;
 - c) separation pay in lieu of reinstatement computed from the beginning of employment on September 20, 2013 until finality of this judgment;
 - d) moral damages of ₱50,000.00;
 - e) exemplary damages of ₱50,000.00; and
 - f) attorney's fees of 10% of the monetary award.

The total monetary award shall be subject to legal interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full payment.¹¹⁵

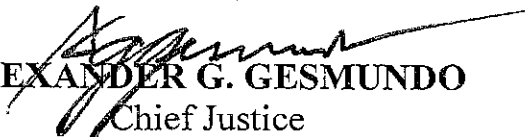
SO ORDERED.



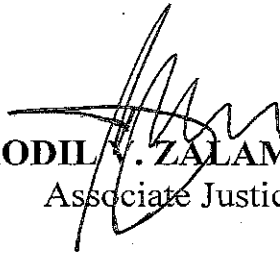
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


¹¹⁵ *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

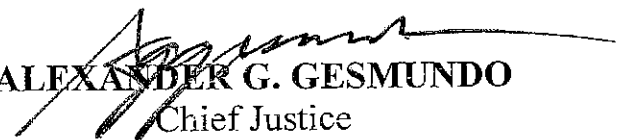

ROSMARI D. CARANDANG
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.


ALEXANDER G. GESMUNDO
Chief Justice



