REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **June 13, 2022** *which reads as follows*:

"G.R. No. 242556 (Formerly UDK-16291) (*Ramon Rubio, Bernie Maxilom, and Henry Cayabyab* v. *Lucky Star Service Placement/BLE Best Manpower International Services, Inc. and/or Elvie Esteras, Techtron Industries Corp., and/or Rolando Lim*). – This Court resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated May 18, 2018 and the Resolution[3] dated August 14, 2018 of the Court of Appeals (*CA*) in CA-G.R. SP No. 145015. The assailed Decision affirmed the Decision dated December 10, 2015 of the National Labor Relations Commission (*NLRC*), which likewise affirmed the ruling of the Labor Arbiter (*LA*) dismissing the complaint for illegal dismissal filed by Ramon Rubio (*Rubio*), Bernie Maxilom (*Maxilom*), and Henry Cayabyab (*Cayabyab*) (collectively, *Rubio, et al.*).

The instant controversy stemmed from a Complaint for illegal dismissal, underpayment of salary, non-payment of service incentive leave pay, and emergency cost of living allowance (*ECOLA*), and claims for damages and attorney's fees filed by Rubio, *et al.* against Lucky Star Service Placement (*Lucky Star*)/BLE Best Manpower International Services, Inc. (*BLE*), as represented by Elvie Esteras (*Esteras*), and Techtron Industrial Corporation (*Techtron*), as represented by Rolando Lim (*Lim*).[4]

Rubio, *et al.* were hired by Lucky Star to work at Techtron as machine operators, with a basic daily salary of ₱331.00. More particularly, Rubio, Maxilom, and Cayabyab alleged that they were employed on March 26, 2006, January 11, 1999, and March 3, 2003, respectively, having to suffer overtime work 4 to 5 times a week until midnight.[5]

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1 *Rollo*, pp. 20-46.
2 Penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a member of this Court), concurring; *id.* at 48-57.
3 *Id.* at 59-60.
4 See CA Decision; *id.* at 49.
5 *Id.*

Having discharged their duties faithfully, Rubio, *et al.* asserted that they were surprised when they were verbally informed by Lucky Star not to report for work because they have been separated from service on the following dates: May 26, 2014 for Rubio, June 21, 2014 for Maxilom, and July 26, 2014 for Cayabyab.[6] Rubio, *et al.* claimed that for the duration of their employment, they were not paid the following benefits due them, to wit: minimum wage, ECOLA, holiday premium pay, and service incentive leave pay. Moreover, they alleged that their Pag-IBIG and Philhealth contributions were not remitted and that the cash bond they posted was unduly deducted from their salaries.[7]

For its part, Lucky Star affirmed that Rubio, *et al.* were indeed hired to work as machine operators for Techtron. However, it argued that they were merely fixed-term employees who were only terminated from service by reason of the expiration of their respective contracts. On the other hand, Techtron sought the dismissal of the complaint as Rubio, *et al.* were not its employees, but that of its contractor, Lucky Star.[8]

After the conduct of several conferences, no amicable settlement was reached by the parties. Thus, they were requested to submit their respective position papers.[9]

On August 10, 2015, the LA rendered a Decision in favor of Lucky Star and Techtron, after finding that Rubio, *et al.* failed to present evidence to substantiate their claim of illegal dismissal.[10] Nevertheless, the LA held that Lucky Star is liable for the payment of service incentive leave pay, while Rubio and Cayabyab are entitled to salary differentials. The LA ultimately adjudged:

> ACCORDINGLY, the cause of action for illegal dismissal is DENIED for lack of merit.
>
> Respondent Lucky Star Placement is ordered to pay:
>
> Complainant Ramon M. Rubio:
> a) SALARY DIFFERENTIALS of PhP12,424.10; and
> b) SERVICE INCENTIVE LEAVE PAY of PhP905.03.
>
> The foregoing awards aggregate to PhP13,329.13. Only the awards for salary differentials shall be subject to 5% withholding tax upon payment/execution.

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6 *Id.*
7 *Id.*
8 *Id.* at 50.
9 *Id.*
10 *Id.*

> Complainant Henry A. Cayabyab
> a) SALARY DIFFERENTIALS of PhP12,275.90; and
> b) SERVICE INCENTIVE LEAVE PAY PhP933.95
>
> The foregoing awards aggregate to PhP13,209.85. Only the awards for salary differentials shall be subject to 5% withholding tax upon payment/execution.
>
> Complainant Bernie B. Maxilom [is entitled to] SERVICE INCENTIVE LEAVE [PAY] of P945.22.
>
> All other claims are DENIED for lack of merit.
>
> Respondents BLE Best Manpower International Services, Inc., Techtron Industrial Corporation, Elvie Esteras and Rolando Lim are EXONERATED from all liabilities.
>
> SO ORDERED.[11]

Rubio, *et al.* interposed an appeal before the NLRC.[12] In a Decision dated December 10, 2015, the NLRC affirmed with modification the ruling of the LA, thus:

> **WHEREFORE,** the Appeal is **PARTLY GRANTED.** Accordingly, the decision of Labor Arbiter Galahad Makasiar is **MODIFIED** in that Techtron Industrial Corp. is made jointly and severally liable with Lucky Star Placement Inc. for the monetary benefits awarded to complainants-appellants [Rubio, *et al.*] in his Decision of 10 August 2015. Likewise, attorney's fees equivalent to ten percent (10%) of the total monetary award are hereby awarded to complainants-appellants. All other disquisitions not affected by the modification stay.
>
> **SO ORDERED.**[13]

The NLRC similarly found that there was no dismissal to speak of as Rubio, *et al.* failed to prove that they were dismissed, or at the very least, prevented from returning to work. With respect to the award of monetary benefits, the NLRC held that Techtron should likewise be held liable, as the law provides for the solidary liability of the principal and the independent contractor in case of non-payment of wages.[14]

Rubio, *et al.* filed a Motion for Reconsideration, which was denied by the NLRC in a Resolution dated January 22, 2016.[15]

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11 *Id.* at 51-52.
12 *Id.* at 52.
13 *Id.* (Emphasis in the original)
14 *Id.*
15 *Id.*

Undeterred, Rubio, *et al.* elevated the case to the CA *via* a Petition for *Certiorari*,[16] alleging that the NLRC gravely abused its discretion in ruling that they were not illegally dismissed. Likewise, they insisted that their arbitrary dismissal was done without due process of law in contravention to the requirements laid down in *Velarde v. Social Justice Society.*[17]

On May 18, 2018, the CA rendered the assailed Decision[18] which denied the petition for *certiorari* and affirmed the NLRC Decision. In finding the petition devoid of merit, the CA concurred with the LA and the NLRC's finding that no evidence was proffered to conclude that Rubio, *et al.* were indeed dismissed from work, or were prevented from returning to work, or at least not given any work assignment. As further explained by the CA, "absent any showing of an overt or positive act proving that private respondents [Lucky Star and Techtron] had dismissed petitioners [Rubio, *et al.*], the latter's claim of illegal dismissal cannot be sustained."[19] The CA further held that the NLRC had complied with the guidelines set out in *Velarde*, having sufficiently explained both its factual and legal reasons that led to its conclusion. Finally, for failure to establish dismissal, the CA ruled that Rubio, *et al.* were in no position to rightfully claim moral and exemplary damages.[20] The CA disposed in this wise:

> **WHEREFORE,** premises considered, the petition is **DISMISSED.** The Decision dated 10 December 2015 and the Resolution dated 22 January 2016 of the National Labor Relations Commission in NLRC LAC No. 10-002722-15 are **AFFIRMED.**[21]

Rubio, *et al.* filed a Motion for Reconsideration,[22] which was subsequently denied by the CA in a Resolution[23] dated August 14, 2018.

Hence, the instant petition.

Essentially, the issue for the Court's resolution is whether petitioners Rubio, *et al.* were illegally dismissed and entitled to their money claims.

It is the position of the petitioners that the CA gravely erred in affirming the findings of the LA and the NLRC, asseverating that they were dismissed without valid cause and without due process of law when they were not given any requisite notices and were told to cease reporting for work absent any

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16 *Id.* at 83-108.
17 472 Phil. 285 (2004).
18 *Rollo*, pp. 48-57.
19 *Id.* at 54-55.
20 *Id.* at 56.
21 *Id.* at 57.
22 *Id.* at 61-78.
23 *Id.* at 59-60.

sufficient basis.[24] By virtue of their illegal dismissal, petitioners assert that they are entitled to reinstatement with full backwages of a least three (3) years without qualification and deduction, as well as a twelve percent (12%) interest thereon.[25]

For their part, respondents Lucky Star and Techtron posit that while the employer has the burden of proving that the termination was for a valid or authorized cause, it is incumbent upon the employees to first establish by competent evidence the fact of their dismissal from employment.[26] Here, as found by the LA, the NLRC, and even the CA, no such evidence was presented. Respondents add that since there was no dismissal to speak of, there is no basis to award any backwages or separation pay in favor of petitioners.[27]

In their Reply,[28] petitioners essentially reiterate their arguments raised in the instant petition. They emphasize that respondents dismissed them without valid cause and without due process by not giving them assignments and telling them to cease reporting for work.[29]

The petition lacks merit.

Preliminarily, it is well settled that this Court's power to decide Rule 45 petitions in labor cases is not unlimited.[30]

It must be remembered that labor cases are elevated to this Court through petitions for review on *certiorari* under Rule 45, following petitions for *certiorari* under Rule 65 as decided by the CA on the rulings of the NLRC. Given that the CA may only decide on errors of jurisdiction, as the decision of the NLRC might only be set aside if it committed grave abuse of discretion amounting to lack or excess of jurisdiction, certain implications arise as to how this Court should review Rule 45 petitions.[31] As explained by this Court in *Paragele v. GMA Network, Inc.*,[32] "in labor disputes then, this Court may only resolve the matter of whether the CA erred in determining the presence or absence of grave abuse of discretion and deciding jurisdictional errors of the NLRC."[33]

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24 *Id.* at 28.
25 *Id.* at 30.
26 *Id.* at 236.
27 *Id.* at 237.
28 *Id.* at 242-253.
29 *Id.* at 244.
30 *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 502 (2015).
31 *The Heritage Hotel, Manila v. Sio*, G.R. No. 217896, June 26, 2019, 906 SCRA 167, 178.
32 G.R. No. 235315, July 13, 2020.
33 *Id.*

In *Montoya v. Transmed Manila Corporation,*[34] this Court elaborated on its approach in reviewing Rule 45 decisions of the CA, *viz.*:

> In a Rule 45 review, we consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[35]

Correspondingly, it behooves this Court to stay its hand from re-evaluating the evidence and going over the factual determination of the administrative tribunals, which have considerable expertise entrusted in their jurisdiction, especially if they have been affirmed by the CA. As such, this Court is under no obligation to "re-examine conflicting evidence, reevaluate the credibility of witnesses, or substitute the findings of fact of the NLRC."[36] After all, factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court."[37]

With these principles serving as guideposts, this Court is tasked to determine whether the CA correctly ruled that the NLRC did not commit grave abuse of discretion in affirming the findings of the LA and holding that petitioners were not illegally dismissed. To be sure, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions reached are "not supported by substantial evidence or are in total disregard of evidence material to or even decisive of the controversy; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case."[38]

In the extant case, this Court finds the NLRC's disposition was consistent with law and the evidence on record. Accordingly, it did not

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34 613 Phil. 696 (2009).

35 *Id.* at 707. (Emphasis in the original; citations omitted)

36 *Site for Eyes, Inc. (formerly Delos Reyes Optical City, Inc.) v. Daming*, G.R. No. 241814, June 20, 2021.

37 *Career Philippines Shipmanagement, Inc., et al. v. Serna*, 700 Phil. 1, 10 (2012).

38 *E. Ganzon, Inc., et al. v. Ando*, 806 Phil. 58, 65 (2017).

commit grave abuse of discretion when it dismissed the complaint of Rubio, *et al.*

An oft-repeated principle in labor is that, in illegal dismissal cases, "the burden of proof is on the employer in proving the validity of dismissal. However, the fact of dismissal, if disputed, must be duly proven by the complainant."[39] To iterate the ruling in *Noblejas v. Italian Maritime Academy Phils., Inc., et al.*:[40]

> Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence the fact of his or her dismissal. **The Court is not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause. It is likewise incumbent upon the employees, however, that they should first establish by competent evidence the fact of their dismissal from employment.** It is an age-old rule that the one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. Mere allegation is not evidence.[41]

Establishing the fact of dismissal does not require proof beyond reasonable doubt; neither does it require preponderance of evidence. In labor cases, as with other administrative and quasi-judicial proceedings, substantial evidence is sufficient, which is defined to be "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[42]

To illustrate, in *Basay v. Hacienda Consolacion*,[43] the petitioners were hired by the respondent to work as tractor operators and laborers in a hacienda devoted for sugarcane plantation. In a complaint before the LA, the petitioners alleged that they were separated from service after being verbally informed to stop working and not given work assignments despite their status as regular employees. This Court, in sustaining the findings of the LA, the NLRC, and the CA, ruled that there was no illegal dismissal to speak of, as the petitioners failed to establish by competent evidence the fact of their dismissal from employment; in stark contrast, the respondents were able to prove that they insisted the petitioners to return to work. Records likewise showed that the petitioners' names continued to appear on the payroll even after several months from the filing of the illegal dismissal case.

In *Tri-C General Services v. Matuto, et al.*,[44] this Court held that the respondents' mere assertions and their submission of a joint affidavit insisting that they were dismissed were insufficient. Aside from having failed to

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39 *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020.
40 735 Phil. 713 (2014).
41 *Id.* at 721. (Emphasis supplied; citations omitted)
42 *Domasig v. National Labor Relations Commission*, 330 Phil. 518, 524 (1996).
43 632 Phil. 430 (2010).
44 770 Phil. 251 (2015).

adduce corroborative and competent evidence, they likewise failed to present any alleged notice of termination. This Court added that "in the absence of any showing of an overt or positive act proving that petitioner had dismissed respondents, the latter's claim of illegal dismissal cannot be sustained as the same would be self-serving, conjectural, and of no probative value."[45]

Echoing *Noblejas*, this Court, in *Mehitabel, Inc. v. Alcuizar*,[46] did not give credence to the asseveration of dismissal by the respondent due to his failure to establish positive and overt acts of petitioner that would indicate its intention to dismiss him. The Court pointed out that such dismissal must first be established before "the burden is shifted to the employer to prove that such a dismissal was indeed legal."[47]

The facts in the afore-cited cases hew closely to the case at bench. Regrettably, aside from petitioners' mere assertions, no corroborative and competent evidence was adduced to substantiate their claim that they had indeed been severed from employment. Records are bereft of any documentary evidence showing that petitioners were not given any work assignment, or worse, prevented from returning to work. As pointed out by respondents, petitioners could not even name any particular officer or employee authorized to verbally inform them of their dismissal.[48]

As underscored in *Tri-C General Services* and *Mehitabel, Inc.*, the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss. Here, there is no sufficient proof of such acts by respondents. Militating against petitioners' argument is the very declaration of respondents, as employers engaged in the business of manpower, that it would be illogical for them to unduly and haphazardly dismiss petitioners, considering that as their employees engaged in manual labor, they were "their very source of income."[49]

Clearly, petitioners' allegations fall short of the evidentiary requirement to prove their dismissal. Indeed, "a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process."[50]

Withal, given the failure of petitioners to discharge the onus of proving the fact of dismissal, there is no necessity to determine its legality or illegality. As emphasized in *Galang v. Boie Takeda Chemicals, Inc., et al.*:[51]

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45 *Id.* at 262.

46 822 Phil. 863 (2017).

47 *Id.* at 873, citing *Exodus International Construction Corporation, et al. v. Biscocho*, 659 Phil. 142, 146 (2011).

48 *See* Comment/Opposition dated September 7, 2021; *rollo*, p. 235.

49 *Id.*

50 *Macasero v. Southern Industrial Gases Philippines*, 597 Phil. 494, 499 (2009).

51 790 Phil. 582 (2016).

> It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. However, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence. Only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause. The logic is simple — **if there is no dismissal, there can be no question as to its legality or illegality.**[52]

It bears to stress that petitioners may not even find succor in the instant complaint as proof of their illegal dismissal. Such filing, "irrespective of whether reinstatement or separation pay was prayed for, could not by itself be the sole consideration in determining whether he has been illegally dismissed."[53]

Given that there was no illegal dismissal, there is no justification to grant separation pay or backwages, as correctly held by the labor tribunals and the CA. Neither is there any reason to grant damages on behalf of petitioners. As this Court has time and again declared, "where there is neither termination nor abandonment involved, there is no occasion to grant separation pay and backwages, nor to allow collection of any other monetary claims absent evidence to substantiate the same. The employer and the employee do not have any obligation one to the other."[54]

Be that as it may, the only monetary claims that can be awarded are those actually owing to the employee.[55] Accordingly, petitioners are entitled to their respective salary differentials and service incentive leave pay as held by the labor tribunals and as affirmed by the CA. Given that petitioners were forced to litigate and incur expenses in order to recover monetary claims due them, this Court likewise sustains the award of attorney's fees.[56]

In fine, this Court affirms the Decision of the CA for being in accord with fact and law. While there may be cases where circumstances warrant favoring labor over the interests and pursuits of management, "never should the scale [of justice] be so tilted if the result is an injustice to the employer."[57]

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52 *Id.* at 599. (Emphasis supplied; citations omitted)

53 *Noblejas v. Italian Maritime Academy Phils., Inc., et al.*, *supra* note 40, at 723.

54 *Radar Security & Watchman Agency, Inc. v. Castro*, 774 Phil. 185, 197 (2015).

55 *Maria De Leon Transportation, Inc. v. Macuray*, 832 Phil. 554, 568 (2018).

56 *Philippine Military Veterans Security and Investigation Agency v. Court of Appeals*, 516 Phil. 530, 539 (2006).

57 *JPL Marketing Promotions v. Court of Appeals*, 501 Phil. 440, 452 (2005).

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED.** The Decision dated May 18, 2018 and the Resolution dated August 14, 2018 of the Court of Appeals in CA-G.R. SP No. 145015, which sustained the Decision dated December 10, 2015 of the National Labor Relations Commission, are hereby **AFFIRMED.**

SO ORDERED." (*Lazaro-Javier, J., on official leave*)

By authority of the Court:

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Division Clerk of Court 6/5/18

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