



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. 247445 (*Eduard Roque Mulleno v. TV5 Network, Inc., Emmanuel Lorenzana, Luchi Cruz Valdez, David Jude Sta. Ana, Leonarda Julita Francisco*). — This Court resolves a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner Eduard Roque Mulleno (*Mulleno*), assailing the Decision<sup>2</sup> dated October 2, 2018 and the Resolution<sup>3</sup> dated May 15, 2019 issued by the Court of Appeals (CA) in CA-G.R. SP No. 142100.**

***Facts***

The facts, as culled from the CA Decision, are as follows:

Mulleno had been a news assistant in the News and Public Affairs Department of respondent TV5 Network, Inc. (*TV5*) since January 18, 2010. Mulleno was part of a three-member news team together with a reporter and a camera operator. Concurrently, Mulleno was also the Press Relations Officer of ABC 5 Employee’s Union.<sup>4</sup>

As news assistant, Mulleno was in charge of the news team’s vehicle. Both Mulleno and TV5 affirmed that to be able to use or take out the team’s vehicle, it was necessary for Mulleno to accomplish a Vehicle Trip Ticket (*VTT*). A VTT should indicate vehicle details, driver details, trip approval, trip details, and fuel lever, among others.<sup>5</sup>

On August 30, 2014, Mulleno used a VTT allegedly signed by a certain Rey Visquera<sup>6</sup> (*Visquera*), a TV5 supervisor and dispatcher, enabling Mulleno to use and take out a Toyota Hi-Lux pickup from the TV5 Media Center in

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<sup>1</sup> *Rollo*, pp. 624-677.

<sup>2</sup> Penned by Justice Maria Elisa Sempio Diy, with Associate Justices Romeo F. Barza and Elihu A. Ybañez, concurring; *id.* at 27-40.

<sup>3</sup> *Id.* at 22-25.

<sup>4</sup> *Id.* at 28.

<sup>5</sup> *Id.*

<sup>6</sup> Also spelled as Visquerra in some parts of the *rollo*.

Mandaluyong City. Mulleno was also able to take out a number of camera equipment through a Custodian Checklist in the name of “D. Suing” referring to Dennis Suing (*Suing*), a camera operator in TV5. Notably, company policies dictate that only camera operators are authorized to withdraw from and return to the News Custodian all the equipment assigned to them.<sup>7</sup> Afterwards, Mulleno submitted an “Overtime Claim Form” showing that he had worked on his day off on August 30, 2014.<sup>8</sup>

The Human Resources Department (*HRD*) of TV5 later received reports that Mulleno allegedly violated company policies due to his activities on August 30, 2014, and thereafter conducted an investigation.<sup>9</sup>

During the investigation, it was discovered that Visquera was off duty on the said date. Visquera also denied that he issued a VTT to Mulleno on said date. Moreover, the investigating team found that Suing, whose name appeared at the “Custodian” portion of the Custodian Checklist, did not report for work on August 30, 2014.<sup>10</sup>

On September 12, 2014, TV5 issued a Notice to Explain<sup>11</sup> to Mulleno, directing him to answer the allegations against him. The pertinent portions indicated thus:

It is the policy of the Company to dispatch news crews composed of Asst. Cameraman and Cameraman (with or without the addition of a Reporter), but it is never allowed to dispatch an Asst. Cameraman alone. To this effect, procedures on equipment accountability and news team scheduling were established and made known to all concerned. There being no established requirement for you to render overtime work or any authorized or valid work product, your whereabouts, while in the possession of valuable company properties, on the said date is being questioned and therefore your claim for Overtime Pay is without basis.

The above acts/omissions may constitute three separate acts of falsification and, therefore, may be a violation of the TV5 Code of Conduct provision on falsification, to wit:

OFFENSES AGAINST INTEGRITY, OFFICE CONDUCT & DECORUM No. 14 Falsifying, assisting in falsifying or destroying Company records and documents.

This, in relation to the Labor Code, Art. 282. Under the provisions of [a] Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representation in connection with his work and [b]

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<sup>7</sup> *Id.* at 426.

<sup>8</sup> *Id.* at 28.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 29.

<sup>11</sup> *Id.* at 343-344.

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative[.]<sup>12</sup>

On September 16, 2014, Mulleno submitted his written explanation. It stated that August 30, 2014 was indeed his day off, but he still proceeded to the office thinking that there would be a prospective shoot. Since he was already there, Mulleno sought permission from the immediate supervisor, Roland Balito (*Balito*) to roam around and look for news worthy stories. Mulleno was allowed to do so and admitted that he was the one who obtained the camera being used by Suing. Mulleno also declared that in the past, he and other employees of TV5 practiced such actions which were never questioned by the management. Furthermore, Mulleno proposed that the charge against him was driven by politics because he was a member of the ABC 5 Employer's Union which was involved in a conflict with the Union President and TV5's counsel. In the conference conducted by the HRD, Mulleno claimed that a "cancelled day off" was the usual practice of TV5 employees, and that he went to several police stations in Quezon City but was not able to get any news on the said date.<sup>13</sup>

On October 14, 2014, TV5 issued a Notice of Termination,<sup>14</sup> which adopted the recommendation of the investigating committee to dismiss Mulleno.

Consequently, Mulleno, assisted by counsel, filed a Complaint<sup>15</sup> before the Labor Arbiter against respondents TV5, Emmanuel Lorenzana, Luchi Cruz Valdez, David Jude Sta. Ana, and Leonarda Julita Francisco (*TV5 et al.*) for unfair labor practices (*ULP*) and illegal dismissal. He likewise prayed for actual, moral, and exemplary damages.

On February 27, 2015, the Labor Arbiter (*LA*) rendered a Decision<sup>16</sup> finding that Mulleno was illegally dismissed, the dispositive portion of which reads:

**WHEREFORE**, respondent TV5 Network, Inc. is ordered to reinstate complainant Eduardo Roque Mulleno to his former position as News Assistant within ten (10) days from receipt hereof without loss of seniority rights, and to pay his backwages, benefits and attorney's fees.

Individual respondents Emmanuel Lorenzana, Luchi Cruz-Valdez, David Jude Sta. Ana and Leonardita Francisco are absolved from any liability.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 29

<sup>14</sup> *Id.* at 364.

<sup>15</sup> *Id.* at 310.

<sup>16</sup> Penned by Labor Arbiter Julia Cecily Coching Sosito; *id.* at 300-308.

The computation of the judgment award is hereto attached forming part of this Decision.

**SO ORDERED.**<sup>17</sup>

The LA, however, dismissed Mulleno's claim of ULP or union interference, thus:

As regards complainant's claim of unfair labor practice, despite being an officer of the Union, his dismissal did not constitute ULP. Neither can it be considered as interference in union affairs. The same therefore must be dismissed.<sup>18</sup>

This decision was elevated by TV5 *et al.* on appeal. Notably, Mulleno did not appeal the LA's dismissal of his claim of ULP.

On June 23, 2015, the NLRC rendered a Resolution,<sup>19</sup> the dispositive portion of which reads:

**WHEREFORE**, premises considered, the Appeal is **GRANTED** while the Motion to Expunge dated May 12, 2015 is **DENIED** for lack of merit. The appealed Decision dated February 27, 2015 is hereby **REVERSED** and **SET ASIDE** and a new is entered **DISMISSING** for lack of merit the complaint for illegal dismissal.

**SO ORDERED.**<sup>20</sup>

After a denial<sup>21</sup> of his Partial Motion for Reconsideration of the Resolution, Mulleno filed a Petition for *Certiorari* under Rule 65 with the CA.

The CA rendered the assailed Decision<sup>22</sup> denying the Petition. It held that Mulleno's dismissal from employment was warranted<sup>23</sup> and that there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC when it issued the assailed Decision and Resolution. Its factual findings stated thus:

Petitioner indicated in the Custodian Checklist that Suing requested to take out a number of camera equipment on August 30, 2014. However, the record shows that Suing was not even on duty on August 30, 2014. At this point, petitioner violated the company's policy that "[o]nly cameramen are

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<sup>17</sup> *Id.* at 308.

<sup>18</sup> *Id.* at 307.

<sup>19</sup> Penned by Commissioner Alan A. Ventura, with Presiding Commissioner Gregorio O. Bilog, III and Commissioner Erlinda T. Agus, concurring; *id.* at 276-298.

<sup>20</sup> *Id.* at 297-298.

<sup>21</sup> *Id.* at 272-274.

<sup>22</sup> Penned by Associate Justice Maria Elisa Sempio Diy, with Presiding Justice Romeo F. Barza and Associate Justice Elihu A. Ybañez, concurring; *id.* at 27-40.

<sup>23</sup> *Id.* at 39.

authorized to withdraw and return equipment from the News5 custodian. This was not refuted by petitioner, and thus, We just cannot ignore his violation of company policies and also his dishonesty when he falsified the Custodian Checklist.

It does not escape Us that a TV5 news team, per company policy, should be composed of a reporter, a cameraman, and a news assistant. Again, the record would show that petitioner was alone when he went out on roving duty using the company's vehicle. Truly, petitioner has no authority to be on duty on August 30, 2014.<sup>24</sup>

On May 15, 2019, the CA denied the Motion for Reconsideration filed by Mulleno.<sup>25</sup>

Hence, this recourse.

### *Issue*

The sole issue here is whether petitioner was validly dismissed by respondents.

### *Our Ruling*

*There is just cause behind petitioner's dismissal. This Court is not a trier of facts.*

The determination of whether an employee's dismissal constitutes illegal dismissal rests on whether such is grounded on a just or authorized cause. The Labor Code enumerates the instances when an employer may terminate an employment, thus:

**Art. 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;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e. Other causes analogous to the foregoing.

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<sup>24</sup> *Id.* at 38

<sup>25</sup> *Id.* at 22-25.

In dismissing petitioner from employment, respondents cite his grave misconduct in connection with the unauthorized deployment on August 30, 2014. The Notice of Termination, issued through the TV5 Head of News Operations, stated thus:

This is regarding the incident which happened on 30 August 2014, wherein you falsified (i) a Vehicle Trip Ticket to procure for yourself a fleet card and vehicle, making it appear that you had prior authority to go on "roving" duty/"cancelled day off" despite having no such prior authority to do so, (ii) the Custodian Checklist, making it appear that another employee, who was off-duty and did not report for work, requested for a camera unit and collateral equipment on August 30, 2014, and (iii) the subject Overtime Claim Form making it appear that you had prior authority to render overtime work on August 30, 2014, despite having no such prior authority, and making it appear that you are entitled to overtime pay, when in fact, you are not entitled to the same.

After a thorough investigation of the above-mentioned case, the company's investigating body has promulgated the attached resolution, its dispositive portion of which [sic] is quoted hereunder, to wit:

**For the reasons cited above, taking into consideration the result of the investigation, the Investigating Committee finds Mr. Eduard Mulleno, liable for violating the TV5 Code of Conduct provision on Falsification, to wit:**

**OFFENSES AGAINST INTEGRITY, OFFICE CONDUCT & DECORUM No. 14 Falsifying, assisting in falsifying Company records and documents.**

**In relation to the Labor Code, Mr. Mulleno's violations of the TV5 Code of Conduct fall under Just Causes under Art. 282., to wit: "(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work and (b) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."**

**As such, we hereby recommend the termination of Mr. Mulleno's employment from the company, effective 15 October 2014.<sup>26</sup>**

In citing their reasons, respondents refer to existing company procedures. This is evidenced in their Position Paper before the LA, where they attached a company Memorandum<sup>27</sup> dated June 15, 2010, years before the subject incident, indicating the procedures regarding equipment and vehicle accountability:

<sup>26</sup> *Id.* at 364.

<sup>27</sup> *Id.* at 426.

This is to remind all News Cameramen and News Assistant Cameramen of the procedures regarding the equipment and vehicle accountability.

The News Cameramen is [sic] accountable for all the equipment issued to him by News5 and is responsible for its safety and ensuring it is in the proper working condition. The News Cameramen are the only ones authorized to withdraw from and return to the News Custodian all the equipment assigned to them.<sup>28</sup>

They likewise attached company documents indicating that “offenses against integrity, office conduct and decorum” are punishable by dismissal on the first offense.<sup>29</sup>

In claiming that there was no just cause behind his termination, petitioner asserts that he was actually authorized by either Visquera, his supervisor, or Balito, the dispatcher for the day, to utilize the company vehicle and equipment on August 30, 2014.

At the outset, We must state the general rule that this Court does not review factual questions primarily because it is not a trier of facts.<sup>30</sup> Thus, it is generally not inclined to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary.<sup>31</sup> To reiterate the distinction, a question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.<sup>32</sup>

Here, it is disputed as to whether petitioner was authorized to conduct his activities on August 30, 2014. In his Notice to Explain<sup>33</sup> dated September 16, 2014 and consistent with his pleadings, petitioner insisted that he was authorized by Balito, the dispatcher for that day:

1. True, I was supposed to be on my day-off last August 30, 2014. However, I still went to the office because to my mind there is going to be a shoot with my partner cameraman.

2. However, when I arrived at the office at around 6:30 AM on the said date of August 30, 2014, I suddenly recalled that the coverage was actually set on Monday. Since I was already at the office, I immediately discussed the matter to [sic] my immediate supervisor, Mr. Roland Balito, and told him that: “Sir Balits, walang eyeball Monday pa coverage naming labas na lang ako.” **To this, Mr. Balito told me: “O sige.” Thus, right away, I got the camera**

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 425.

<sup>30</sup> *JR Hauling Services v. Solamo*, G.R. No. 214294, September 30, 2020.

<sup>31</sup> *Id.*

<sup>32</sup> *Calleja v. Executive Secretary*, G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 21, 2021. (Emphasis supplied)

<sup>33</sup> *Rollo*, p. 449.

being used by my cameraman, Mr. Dennis Suing, and complied with the order of my immediate supervisor to perform a roving on that day at Quezon City.<sup>34</sup>

This is directly refuted, however, by Balito himself. In a *Sinumpaang Salaysay*<sup>35</sup> (*Salaysay*) dated September 17, 2014, he denied giving any authority for petitioner to be dispatched. The *Salaysay* stated thus:

3. Noong ika-30 ng Agosto 2014, ako ay naka-duty sa TV5 Media Center sa Reliance;
4. Nakita ko si Eduard Mulleno sa basement ng TV5 Media Center;
5. Nakausap ko siya at tinanong ko kung ano ang ginagawa niya sa TV5 Reliance kasi hindi naman siya naka-duty noong araw na iyon;
6. Ang sabi niya sa akin, ay mayroon siyang interview at “eyeball” ng Cameraman;
7. Ang ibig sabihin ng “eyeball” ay magkita sa labas;
8. Noong sinabi niya sa akin yon, kampante naman ako kasi pag mga ganyan na pumasok sila ng Sabado ay nakatimbre na sa Desk;
9. **Noon araw na iyon, hindi ko dinispatch si Eduard Mulleno at wala palang utos ang Desk sa kanya.**<sup>36</sup>

In the same breath, petitioner also relies on the implied authority from Visquera, insisting that the “pre-signed” VTT was blanket authority for any employee’s use, thus:

47. (i) there were Vehicle Trip Tickets pre-signed by supervisor Rey [Visquera] which were being made available to those who will be rendering work in that day of August 30, 2014;

x x x x

49. More, petitioner’s request for payment of his Overtime work on said date of August 30, 2014 was duly approved by no less than Rey [Visquera], himself, the supervisor whose signature was allegedly falsified by herein petitioner in the Vehicle Trip Ticket. If it is true that Rey [Visquera] who, upon examination of the document, including the Vehicle Trip Ticket submitted by the petitioner to prove that he in fact rendered overtime work on the said date, must have examined the said document and found the same as falsified, then why did he approve the petitioner’s request for payment of overtime work on said date? x x x

50. If the intention of the pre-signed VTT is to specifically issue the same to a specific news personnel, Mr. [Visquera] should have specifically written the name of personnel he has intended for authorization to use of [sic] said VTTs. But it is not. The intention of the pre-signed VTT is a blanket authority to those who will report on Saturday.<sup>37</sup>

<sup>34</sup> *Id.* at 449. (Emphasis supplied)

<sup>35</sup> *Id.* at 450.

<sup>36</sup> *Id.* (Emphasis supplied)

<sup>37</sup> *Id.* at 640-641.

This was directly disputed by respondents who explained that the pre-signed VTTs were used by employees who are required and allowed to perform overtime work.<sup>38</sup> In their pleadings, they categorically stated that a pre-signed VTT is not a blanket authority to use the same whenever one pleases. Otherwise, the company will be at the mercy of its employees should they feel the need to take out a company vehicle to suit their needs.<sup>39</sup> They likewise produced a Certification issued by the Editor of TV5, indicating the teams, employees, their positions, and coverage duties which have been assigned on August 30, 2014.<sup>40</sup> Respondents claim that petitioner was the only one who was able to bring out a company vehicle by presenting a pre-signed VTT even if he was not on official duty.<sup>41</sup> This exposes him as the only person who abused the system.<sup>42</sup>

Finally, petitioner relies on a Custodian Checklist in the name of Dennis “D” Suing as his authority to take out a number of camera equipment on August 30, 2014. However, the record shows that Suing was not even on duty that day.<sup>43</sup>

Given the contradicting positions in relation to the truth or falsity of petitioner’s authority to utilize the company vehicles and equipment on August 30, 2014, this issue becomes a question of fact which is beyond the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45.

To quote the explanation of the Court in *Heirs of Villanueva v. Heirs of Mendoza, et al.*:<sup>44</sup>

It is a settled rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts. As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts. To do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law.<sup>45</sup>

With these principles in mind, the factual findings of the CA, which state that petitioner violated several company policies of TV5,<sup>46</sup> are adopted:

[T]here is substantial and credible evidence on record to prove that the complainant-appellee was not dispatched or given a vehicle trip ticket on

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<sup>38</sup> *Id.* at 164.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 375.

<sup>41</sup> *Id.* at 164.

<sup>42</sup> *Id.* at 163.

<sup>43</sup> *Id.* at 38.

<sup>44</sup> 810 Phil. 172 (2017).

<sup>45</sup> *Id.* at 177-178.

<sup>46</sup> *Rollo*, p. 38.

August 30, 2014 by supervisor Mr. Rey [Visquera], thereby establishing the fact that the former was able to take out a company vehicle on that day by using a falsified vehicle trip ticket. There is also substantial and credible evidence on record to prove that Complainant-Appellee was not dispatched by Mr. Roland Balito, on August 30, 2014, and that the former was not part of the dispatch schedule for TV5's news crew on that day. This establishes the fact that Complainant-Appellee was able to take out TV5's camera and related equipment on August 30, 2014 by using [a] falsified custodian checklist in the name of D. Suing. Anent the claim for overtime pay made by Complainant-Appellee for August 30, 2014, the same is undoubtedly fraudulent considering that he did not actually render roving work for that day, as proven by the evidence and sworn statements of Mr. Rey [Visquera] and Mr. Roland Balito.

x x x x

All told, contrary to the ruling of the Labor Arbiter, Respondents-Appellants were able to discharge their burden of proving that the dismissal was for cause as they presented "more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise and that Complainant-Appellee indeed violated Company rules when he committed acts of falsification. On 30 August 2014, although he was on his day-off Complainant-Appellee was able to take out from the company premises valuable company properties consisting of a company vehicle (with the use of a falsified Vehicle Trip Ticket), a camera and other collateral equipment (with the use of a falsified Custodian Checklist). He was able to do this under the guise of rendering authorized work when in fact, he tended only to personal matters.<sup>47</sup>

*Affidavits may be sufficient to establish substantial evidence in labor cases.*

As his defense against these findings, petitioner attacks the admissibility of the affidavits submitted by Visquera and Balito, upon which the NLRC and the CA heavily relied. He argues that these deserve scant consideration because they are self-serving and considered hearsay evidence.<sup>48</sup>

This point of law has already been decided upon by this Court. We have previously held that in labor cases, affidavits may be sufficient to establish substantial evidence.<sup>49</sup>

Although petitioner argues that the "affidavits, being self-serving, must be received with caution because the adverse party is not afforded any

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<sup>47</sup> *Id.* at 290, 293-294.

<sup>48</sup> *Id.* at 665.

<sup>49</sup> *JR Hauling Services v. Solamo*, *supra* note 30.

opportunity to test their veracity,"<sup>50</sup> such contention does not and cannot apply to labor cases.

The case of *JR Hauling Services v. Solamo (JR Hauling Services)*<sup>51</sup> reiterates that labor tribunals decisions may reach labor tribunals on the basis of position papers and supporting affidavits, thus:

The rules of evidence prevailing in courts of law do not control proceedings before the labor tribunals where decisions may be reached on the basis of position papers, accompanied by supporting documents, including affidavits of witnesses.

x x x x

Clearly, to disregard the affidavits on the ground that they were taken *ex-parte* would necessarily require the application of the technical rules of evidence and thereby negate the purpose of the summary nature of labor proceedings mandated by the Labor Code and the NLRC Rules of Procedure.

Clearly, given the nature of proceedings before labor tribunals, the NLRC cannot be said to have committed grave abuse of discretion for relying on the affidavits of Visquera and Balito. We likewise note that the subject affidavits are duly notarized. As stated in *JR Hauling Services*, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution.<sup>52</sup> The same case continues to state:

[A notarized document] has in its favor the presumption of regularity, which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies in the one contesting the same.<sup>53</sup>

Here, we note that petitioner does not present any evidence contrary to the statements contained in the subject affidavits, as he merely points out supposed inconsistencies between them. Absent any evidence from petitioner that contradicts these statements, the findings of the CA on the credibility of these affidavits shall stand.

*Petitioner was afforded substantial and procedural due process.*

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<sup>50</sup> *Rollo*, p. 668.

<sup>51</sup> *Supra* note 30.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Finally, petitioner bewails the alleged lack of due process in the proceedings due to the “variance between the charge of falsification of document as against in the judgment of the NLRC and Court of Appeals that there is unauthorized use of documents.”<sup>54</sup>

This grievance is misplaced.

Jurisprudence provides us with a discussion on substantial and procedural due process in the context of labor cases. The case of *Brown Madonna Press, Inc. v. Casas*<sup>55</sup> provides thus:

In determining whether an employee's dismissal had been legal, the inquiry focuses on whether the dismissal violated his right to substantial and procedural due process. An employee's right not to be dismissed without just or authorized cause as provided by law, is covered by his right to substantial due process. Compliance with procedure provided in the Labor Code, on the other hand, constitutes the procedural due process right of an employee.

The violation of either the substantial due process right or the procedural due process right of an employee produces different results. Termination without a just or authorized cause renders the dismissal invalid, and entitles the employee to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.<sup>56</sup>

The above discussion shows that substantial due process in the context of labor cases pertains specifically to the existence of a just or authorized cause as a ground for dismissal. As provided in the factual findings of the NLRC and CA, petitioner's activities on August 30, 2014 were contrary to their company policies and is considered serious misconduct under the Labor Code. Substantial due process, therefore, was accorded to petitioner.

As to procedural due process, the guidelines have been summarized in the case of *Distribution & Control Products, Inc. v. Santos*:<sup>57</sup>

[T]he settled rule is that in termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first appraises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as

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<sup>54</sup> *Id.* at 653.

<sup>55</sup> 759 Phil 479 (2015).

<sup>56</sup> *Id.* at 496-497. (Citation omitted).

<sup>57</sup> 813 Phil. 423 (2017).

there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.<sup>58</sup>

In this case, it is undisputed that the petitioner was given a Notice to Explain, followed by a conference where he was assisted by counsel, and lastly, a Notice of Termination which provided the grounds for dismissal. Following these premises, the NLRC and the CA found that procedural due process was afforded to petitioner. We adopt the NLRC's discussion:

Anent the issue of due process, Complainant-Appellee was fully accorded procedural due process by respondents. On 12 September 2014, complainant was served a Notice to Explain directing him to explain in writing within five (5) days why he should not merit any disciplinary action relative to the incident on 30 August 2014. Complainant-Appellee then submitted a written explanation and a conference was conducted on 19 September 2014. Complainant-Appellee then submitted a written explanation and a conference was conducted on 19 September 2014 **wherein he was not only given the opportunity to fully air his side, but even assisted by his counsel and supported by union officers during this conference.** It was only after due deliberation and evaluation of the evidence on record that Respondent TV5 decided that Complainant-Appellee's actions warranted the punitive action of dismissal thus it issued him a Notice of Termination dated 14 October 2014.<sup>59</sup>

In addition, we note the extensive nature of the investigation conducted by TV5's team, consisting of the HRD and the Legal Services Department. Their ascertainment of the facts in petitioner's case shows that he was indeed accorded a fair and fact-based proceeding. A portion of the investigating committee's report states that they even verified the police blotters of the police stations allegedly visited by petitioner on August 30, 2014 and found that he was not truthful in his statements, thus:

During the Conference, Mr. Mulleno alleged that – after withdrawing the equipment he went to Commonwealth, Elliptical Road (Circle), and areas in Quezon City... When asked if he ever experienced getting any news while on roving, he responded in the negative claiming that “eh wala pa po Ma'am, kung talagang walang makukunan, kahit nung may kasama ako, wala kaming nakunan.

x x x x

However, based on the findings of the Investigating Committee, Mr. Mulleno's alibi is not credible. A review of the Police Station Blotters of Batasan and Quirino Police Stations for the questioned date of August 30, 2014, reveals that the following news worthy events were reported to the stations [1] 1:30 PM: a shooting incident involving policemen manning a checkpoint and a lone gunman happened at 9:10 AM, along Tatlong Hari in Brgy. Sta. Monica, Novaliches; [2] 8:00AM: Mauling incident happened around 5:00AM in Brgy. Holy Spirit; [3] 8:30 AM: Stabbing incident

<sup>58</sup> *Id.* at 436. (Citations omitted).

<sup>59</sup> *Rollo*, p. 39. (Emphasis supplied).

happened at 1:30 AM in Brgy. Commonwealth, [4] 9:00 AM: Shooting incident, 1 man killed, incident happened 4:30 AM, Brgy. Payatas.<sup>60</sup>

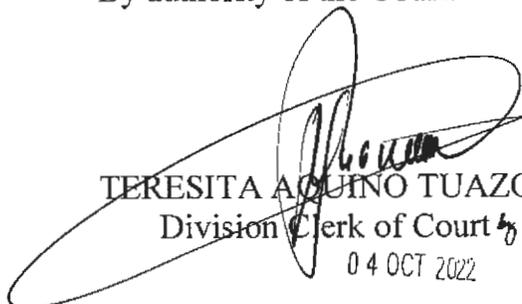
Given the respondents' observance of the twin notice requirement and the generous opportunities for petitioner to be heard, petitioner cannot be said to have been deprived of procedural due process.

Hence, based on the foregoing, it is all too clear that petitioner was not illegally dismissed because his employment termination was grounded on a just cause and was mindful of procedural due process. Accordingly, he is not entitled to back wages, or his claims for actual, moral, and exemplary damages.

**FOR THESE REASONS**, premises considered, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision dated October 2, 2018 and the Resolution dated May 15, 2019 of the Court of Appeals in CA-G.R. SP No. 142100 are **AFFIRMED**. Eduard Roque Mullenno's Complaint for Illegal Dismissal and actual, moral, and exemplary damages is **DISMISSED** for lack of merit.

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

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *by 10/4*  
04 OCT 2022

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<sup>60</sup> *Id.* at 465.

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(NLRC LAC No. 04-000872-15;  
NLRC-NCR Case No. 10-13152-14)

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