



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 27, 2022** which reads as follows:*

“G.R. No. 249870 (Joseph J. Huliganga, Jr. v. Baliwag Lechon Manok, Inc., Marcela Tayag and Sarabeth Soriano). - For this Court’s resolution is the Petition for Review on *Certiorari*¹ challenging the Decision² dated July 31, 2019 and the Resolution³ dated October 9, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 157871, which affirmed the Decision⁴ dated June 28, 2018 of the National Labor Relations Commission (NLRC), dismissing the complaint for illegal dismissal filed by Joseph J. Huliganga, Jr. (*Huliganga*).

Baliwag Lechon Manok, Inc. (*Baliwag*) is a domestic corporation engaged in the restaurant business, with Sarabeth Soriano (*Soriano*) as its Vice-President and Marcela Tayag (*Tayag*) as its Area Manager of a branch located inside a mall in Taguig City.⁵

Huliganga was hired to man the grill in Baliwag’s Taguig branch on January 31, 2015. His shift lasted 8 hours a day, receiving a total amount of Four Hundred and Ninety-One Pesos (₱491.00) in daily wages.⁶

On August 28, 2017, Huliganga was implicated in the commission of qualified theft against Baliwag, for which he was allegedly dismissed from service without just or authorized cause. Consequently, his salary and his 13th month pay were withheld.⁷ Thus, on September 26, 2017, Huliganga filed an instant complaint⁸ for illegal dismissal and non-payment of service incentive leave pay, 13th month pay, separation pay, and attorney’s fees.

¹ *Rollo*, pp. 13-33.

² Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Samuel H. Gaerlan (now a member of this Court) and Germano Francisco D. Legaspi, concurring; *id.* at 36-51.

³ *Id.* at 53-54.

⁴ Penned by Commissioner Agnes Alexis Lucero-De Grano, with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra, concurring; *id.* at 75-85.

⁵ *Rollo*, p. 37.

⁶ *Id.* at 95.

⁷ *Id.*

⁸ *Id.* at 91-93.

For failure of the parties to reach an amicable settlement, the Labor Arbiter (*LA*) directed the parties to file their respective position papers.⁹

In its Position Paper,¹⁰ Baliwag affirmed that Huliganga was employed on January 31, 2015 as a grill man in its Taguig branch.¹¹

On August 28, 2017, at around 7:30 a.m., Huliganga informed Tayag that the cash sales inside the office vault amounting to One Hundred Twenty-Eight Thousand Nine Hundred Sixty Pesos (₱128,960.00) was missing. He notified Tayag that their immediate supervisor, Mr. Arnel Abarrioa, was not responding to any of his messages. Alarmed, Tayag headed to the Taguig branch.¹²

Upon her arrival, Tayag noticed that there was no forced entry to the restaurant where the office vault was kept. Suspicious, she collected all the timecards of the employees to determine who had reported to work during the incident. She notified the mall security personnel to conduct an investigation by watching the CCTV footage of the restaurant. While watching the footage, she noticed that at around 6:29 a.m. of the day of the incident, Jhon Jhon Rigonan (*Rigonan*), one of their employees, entered the back door of the restaurant, after which the CCTV camera surprisingly turned off for approximately 4 minutes. When it switched back on, the footage revealed that Rigonan was already working in the kitchen. Tayag observed that Rigonan appeared to be nervous, as he kept glancing at the camera. At around 6:41 a.m., Huliganga came in for work and performed his regular duties.¹³

In light of the evidence culled from the CCTV footage, Tayag and the security personnel were constrained to question all the present employees and requested each of them to present their respective bags for inspection. Tayag noticed that Rigonan's bag was missing, which prompted her to call the latter's attention. It was then that she discovered that Rigonan had instead brought his bag inside the kitchen.¹⁴

Moments later, Tayag was informed by security personnel that they were taking Rigonan and Huliganga to the nearest police station for further investigation, having reason to believe that both employees had conspired to take the cash sales. Tayag resolved to accompany the officers to help with the investigation. Thereafter, Rigonan and Huliganga were transferred to the

⁹ *Id.* at 15.

¹⁰ *Id.* at 111-118.

¹¹ *Id.* at 112.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 113.

Taguig City Police Station. During such time, Tayag was allowed to speak with Rigonan, who bargained with her that if she would desist from filing a criminal case, he would return the missing cash sales. To this, Tayag pretended to agree.¹⁵

By reason of their agreement, Rigonan asked the officers to accompany him to his house. Upon returning, Tayag was informed that Rigonan surrendered and that his wife had returned a blue sling bag containing a portion of the cash sales amounting to Fifty-Nine Thousand Six Hundred Eighty-Five Pesos (₱59,685.00). Rigonan admitted that he only came into possession of the bag upon the instructions of Huliganga, who actually took the entire cash sales inside the office vault.¹⁶ On the basis of such admission and evidence, Huliganga and Rigonan were lawfully arrested and subjected to inquest proceedings.¹⁷

Upon posting bail, Huliganga immediately filed a Single-Entry Approach Complaint¹⁸ against Baliwag on September 16, 2017. Thereafter, Huliganga filed an Amended Complaint¹⁹ on September 26, 2017 for illegal dismissal.

In his Position Paper,²⁰ Huliganga countered that he was dismissed without any just or authorized cause. Following his release on bail, he was surprised to find out that Baliwag terminated his employment, in complete disregard of due process rules and in clear violation of his right to security of tenure. For being made to discontinue his employment without valid reason, he prayed that he be reinstated with full backwages or separation pay and other benefits.²¹

In a Decision²² dated April 25, 2018, the LA granted the complaint for illegal dismissal and ordered Baliwag to pay Huliganga One Hundred Forty Thousand Five Hundred Fifty-One Pesos and Eighteen Centavos (₱140,551.18) in monetary benefits. The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered declaring the illegality of complainant's termination from employment. Respondent Baliwag Lechon Manok, Inc. is hereby ordered to pay the following benefits to complainant:

¹⁵ *Id.*

¹⁶ *Id.* at 114.

¹⁷ Request for Inquest, *id.* at 119-120.

¹⁸ *Id.* at 46.

¹⁹ *Id.* at 91-93.

²⁰ *Id.* at 94-106.

²¹ *Id.* at 99.

²² Penned by Labor Arbiter Leah T. Fortuna: *id.* at 130-135.

Baliwag

1. Backwages inclusive of 13 th month pay and service incentive leave pay as components thereof 8.28.17 to 4.25.18 Php491 x 26 x 7.27 mos.	= Php 86,562.07	
2. Proportionate 13 th month pay for 2017 1.1.17 to 8.27.17	= Php 5,635.00	
3. Proportionate service incentive leave pay for 2017 1.1.17 to 8.27.17	= Php 1,280.69	
4. Separation pay 1.31.15 to 4.25.18	= <u>Php34,566.04</u>	Php127,773.80
5. Attorney's fees	=	Php 12,777.38
Total	=	<u>Php140,551.18</u> ²³

In arriving at such disposition, the LA held that Baliwag failed to discharge its burden of proving by substantial evidence the just cause for Huliganga's termination from employment, thereby rendering the same illegal.²⁴ The LA was also not convinced that Huliganga committed qualified theft, considering that the CCTV footage failed to show that he was caught *in flagrante delicto* of taking the cash sales from the office vault.²⁵ Finally, the LA ruled that mere filing of a criminal case against an employee would not suffice to warrant his dismissal from employment, as in this case.²⁶

Aggrieved, Baliwag interposed an appeal²⁷ with the NLRC.

On June 28, 2018, the NLRC rendered a Decision²⁸ which reversed and set aside the Decision of the LA, while dismissing Huliganga's complaint for illegal dismissal for lack of merit. The *fallo* provides:

WHEREFORE, the Appeal dated May 15, 2018 is **GRANTED**. The Decision dated April 25, 2018 rendered by Labor Arbiter Leah Fortuna is hereby **REVERSED AND SET ASIDE**. The Complaint for illegal dismissal is **DISMISSED** for lack of merit. Respondent **BALIWAG LECHON MANOK INC.** is **DIRECTED** to pay the complainant **JOSEPH JONIA HULIGANGA, JR.** the amount of **SIX THOUSAND NINE HUNDRED FIFTEEN and 69/100 ONLY (Php 6,915.69)**, representing his proportionate 13th month pay and service incentive leave pay.

SO ORDERED.²⁹

²³ *Id.* at 135. (Emphasis in the original)

²⁴ *Id.* at 132.

²⁵ *Id.*

²⁶ *Id.* at 133.

²⁷ Memorandum on Partial Appeal, *id.* at 136-151.

²⁸ *Id.* at 75-85.

²⁹ *Id.* at 84-85. (Emphasis in the original)

In reversing the Decision of the LA, the NLRC held that there was no dismissal, as Huliganga failed to preliminarily prove the fact of dismissal. It was convinced that Baliwag did not perform any overt act to constitute dismissal.³⁰ It added that the filing of a criminal complaint for qualified theft is not tantamount to an act of dismissal.³¹ Ultimately, there being no dismissal to speak of, the question regarding its legality need not be addressed.

Huliganga filed a Motion for Reconsideration,³² which the NLRC denied in a Resolution³³ dated July 31, 2018.

Undeterred, Huliganga filed before the CA a Petition for *Certiorari*³⁴ averring grave abuse of discretion, tantamount to lack or excess of jurisdiction on the part of the NLRC in issuing its Decision dated June 28, 2018 and Resolution dated July 31, 2018.

On July 31, 2019, the CA rendered its Decision³⁵ affirming the Decision of the NLRC and only modifying the same in terms of the award of monetary claims, to wit:

WHEREFORE, public respondent National Labor Relations Commission's Decision dated June 28, 2018 and Resolution dated July 31, 2018 are modified by ordering private respondents to reinstate petitioner, without payment of backwages. In all other respects, said Decision dated June 28, 2018 and Resolution dated July 31, 2018 stand.

SO ORDERED.³⁶

In fine, the CA concurred that Huliganga failed to prove the fact of dismissal, as there was no evidence proffered to show that he was dismissed or was prevented from returning to work.³⁷ Worse, Huliganga did not accord Baliwag ample opportunity to initiate any form of disciplinary action or perform any act tantamount to dismissal, as he immediately filed a complaint for illegal dismissal upon his release on bail.³⁸

Huliganga sought reconsideration,³⁹ but was denied in a Resolution⁴⁰ dated October 9, 2019.

³⁰ *Id.* at 84.

³¹ *Id.* at 83.

³² *Id.* at 152-165.

³³ *Id.* at 87-90.

³⁴ *Id.* at 55-73.

³⁵ *Id.* at 36-51.

³⁶ *Id.* at 50.

³⁷ *Id.* at 45.

³⁸ *Id.* at 47.

³⁹ Motion for Reconsideration dated August 29, 2019, *id.* at 206-215.

⁴⁰ *Id.* at 53-54.

Hence, the instant petition.

Petitioner Huliganga comes before this Court raising the issue of whether he was illegally dismissed and, therefore, entitled to money claims.

Petitioner questions the scant consideration given by the CA to his version of the facts. He avers that following his release from detention, he attempted to report back for duty, but he was no longer allowed to enter the company premises. To bolster the fact of dismissal, he maintains that notices were posted in the company premises with a warning to other employees: “*LAGING TANDAAN, MAHALIN ANG INYONG TRABAHO AT HUWAG MASILAW SA KAKARAMPOT NA HALAGA PARA IPAGPALIT ANG INYONG DANGAL AT DIGNIDAD.*” Similarly, the submitted payroll sheets dated August 2017 show that he was dropped from the payroll. Collectively, such acts undoubtedly demonstrate acts analogous to dismissal.⁴¹

For its part, respondent Baliwag, together with Tayag and Soriano, posits that the assailed Decision of the CA is consistent with fact and law. They reiterate that petitioner failed to prove the fact of dismissal, and hence, the Court should not be bothered with the question of its alleged illegality.⁴² They also argue that the notices posted on the company premises only served as a warning to all employees and nothing could be interpreted therein to mean that it was an act of dismissal. Similarly, respondents find dispute in the genuineness of the payroll sheet submitted by petitioner, considering that the same did not bear the signatures of the employees listed therein.⁴³

The petition lacks merit.

At the outset, it bears to point out that the issue set forth for resolution is factual in nature. Generally, this Court will not embark on an evaluation of the factual circumstances of petitions for review on *certiorari* before it.⁴⁴ The *raison de’etre* is that the Court is a trier of law and not of fact. Hence, it is not within its province to review or recalibrate the evidence on record.⁴⁵ This Court does not routinely undertake the re-examination of the evidence as the “factual findings of the labor officials who have acquired expertise in their own fields are accorded not only respect but even finality, and are binding upon this Court.”⁴⁶

⁴¹ *Id.* at 26.

⁴² *See* Comment dated May 29, 2020, *id.* at 230.

⁴³ *Id.* at 233.

⁴⁴ *Jao v. BCC Products Sales, Inc., et al.*, 686 Phil. 36, 41 (2012).

⁴⁵ *Dusit Hotel Nikko v. National Union of Workers in Hotel Restaurant and Allied Industries*, 503 Phil. 980, 992 (2005).

⁴⁶ *Ledesma, Jr. v. NLRC Second Division*, 562 Phil. 939, 948 (2007).

However, this rule is not without exceptions. It is well recognized that in cases where the factual findings of the LA, the NLRC, and the CA are at variance, this Court will not hesitate to exercise its authority to scrutinize the evidence all over again and draw its own conclusions therefrom.⁴⁷

Here, this Court is compelled to resolve the factual issues. To recall, the LA found that petitioner was illegally dismissed from employment warranting the payment of backwages and other monetary benefits, while the NLRC and the CA ruled otherwise. As established in *Aklan Electric Cooperative, Inc. v. NLRC*,⁴⁸ “where the findings of the NLRC contradict those of the labor arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.”⁴⁹

On the merits, there is cogent reason to affirm the factual findings of the NLRC, as concurred in by the CA.

Well entrenched is the rule that in illegal dismissal cases, it is incumbent upon the employer to prove that the termination of the employee was for a valid or authorized cause. However, before the employer bears such burden of proving that the dismissal was legal, it presupposes that the employee must first establish by substantial evidence the fact of such dismissal.⁵⁰ “If there is no dismissal, then there can be no question as to the legality or illegality thereof.”⁵¹

To be sure, substantial evidence is the quantum of evidence required to establish a fact before administrative or quasi-judicial bodies.⁵² As defined, substantial evidence is more than a mere scintilla and is “such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.”⁵³

Connectedly, basic is the rule in evidence that the burden of proof is on the part of the party who makes the allegations. In claiming a right granted by law, it is incumbent upon such party to prove their claim by competent evidence, “relying on the strength of [their] own evidence, and not upon the weakness of that of [their] opponent.”⁵⁴

⁴⁷ *Tiu v. Pusaol*, 450 Phil. 370, 379 (2003).

⁴⁸ 380 Phil. 225 (2000).

⁴⁹ *Id.* at 237.

⁵⁰ *Moll v. Convergys Philippines, Inc.*, G.R. No. 253715, April 28, 2021; *Exodus International Construction Corporation, et al. v. Biscocho, et al.*, 659 Phil. 142, 154 (2011).

⁵¹ *MZR Industries, et al. v. Colanbot*, 716 Phil. 617, 624 (2013).

⁵² *PAL, Inc. v. Court of Appeals*, 498 Phil. 278, 292 (2005).

⁵³ *Travelaire & Tours Corp. v. National Labor Relations Commission*, 355 Phil. 932, 936 (1998).

⁵⁴ *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 557 (2004).

In the extant case, petitioner utterly failed to discharge the onus, there being a glaring dearth of evidence to satisfy the quantum required. Woefully, petitioner's claim of illegal dismissal is supported by no other than his own bare, uncorroborated, and manifestly self-serving allegations.

As correctly found by the NLRC and the CA, there was no shred of evidence to corroborate petitioner's claim that he was prevented from entering the premises thereby preventing him from returning to work. As a matter of fact, petitioner did not even bother to detail the particular circumstances of such dismissal nor did he mention any particular person or officer who effected such dismissal.

Ineluctably, the fact that respondents did not order petitioner to return to work cannot be taken as an act of dismissal. As proven by the records, petitioner immediately filed a complaint of illegal dismissal upon his release on bail. Given such circumstances, as similarly held in *MZR Industries, et al. v. Colambot*,⁵⁵ it would be illogical to even require petitioner to return to work, given that the latter had already instituted a case for illegal dismissal.

Neither is this Court swayed that the notice⁵⁶ to respondents' employees dated August 29, 2017, or the purported payroll sheet⁵⁷ showing that petitioner was dropped from payroll, was tantamount to dismissal. A careful perusal of the notice would prove that it was merely a general reminder addressed to all employees to maintain their integrity at all times, as the commission of any criminal act shall not be condoned. Markedly, the notice makes no mention of petitioner's employment in the company, more so his alleged termination. Neither was there any indication that petitioner was prevented from resuming his work. On the other hand, the payroll presented by petitioner is speculative and raises much doubt, as it covers only the dates between August 12 and 26, 2017, or a period *much prior* to the theft incident which transpired on August 28, 2017. Stated differently, the fact that the payroll covers a date *before* the act from which his supposed termination stemmed belies any claim that the same would conclusively establish the fact of petitioner's dismissal.

Finally, the filing of a criminal complaint *per se* is not sufficient reason to engender a conclusion that respondents unduly terminated petitioner's employment. In other words, such act without more cannot be construed as a positive and overt act of dismissal. As held by the NLRC and the CA, records bear out that the mall security personnel and the police officers of the Taguig City Police Station took over the investigation immediately upon the report of the theft incident.⁵⁸ Uncontroverted by petitioner is the fact that the criminal complaint was thereafter instituted by

⁵⁵ *Supra* note 51, at 628.

⁵⁶ *Rollo*, p. 166.

⁵⁷ *Id.* at 167.

⁵⁸ *Id.* at 46.

the mall security personnel and the police officers of the Taguig City Police Station. Fatal to petitioner's cause, it appears that respondents did not even initiate any disciplinary action, nor were they given an opportunity to do so, as petitioner, without the knowledge of the respondents, prematurely filed a complaint for illegal dismissal upon posting bail.⁵⁹

Taking these circumstances together, petitioner's claim of illegal dismissal must fail, in light of the lack of substantial evidence to support his claim. To reiterate, the allegation of a critical fact must be corroborated with substantial evidence, "for any decision based on unsubstantiated allegation cannot stand without offending due process."⁶⁰

As a general rule, where there is no sufficient proof of illegal dismissal, as in this case, the remedy is reinstatement without backwages, not as a relief for illegal dismissal, but rather due to equitable grounds.⁶¹ In *Gososo v. Leyte Lumber Yard and Hardware, Inc., et al.*,⁶² citing *Dee Jay's Inn and Café, et al. v. Rañeses*,⁶³ the Court prescribed that "where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the tribunal to dismiss the complaint, direct the employee to return to work, and order the employer to re-accept the employee."⁶⁴

In the same vein, it is only when reinstatement is no longer practical or viable, as when the employee decides not to be reinstated, will the separation pay be considered as an acceptable substitute.⁶⁵ No such desire to be separated from employment lies in this case, as petitioner himself prayed for such reinstatement.⁶⁶ Thus, this Court concurs with the CA in ordering the reinstatement of petitioner to his former position *sans* the payment of backwages.⁶⁷

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated July 31, 2019 and the Resolution dated October 9, 2019 of the Court of Appeals in CA-G.R. SP No. 157871, which affirmed with modifications the Decision dated June 28, 2018 of the National Labor Relations Commission, are hereby **AFFIRMED**. Baliwag Lechon Manok, Inc. is **ORDERED** to **REINSTATE** Joseph J. Huliganga, Jr. without payment of backwages.

SO ORDERED."

⁵⁹

Id.

⁶⁰ *Macasero v. Southern Industrial Gases Philippines*, 597 Phil. 494, 499 (2009).

⁶¹ *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771 Phil. 391, 408-409 (2015).

⁶² G.R. No. 205257, January 13, 2021.

⁶³ 796 Phil. 574, 595-596 (2016).

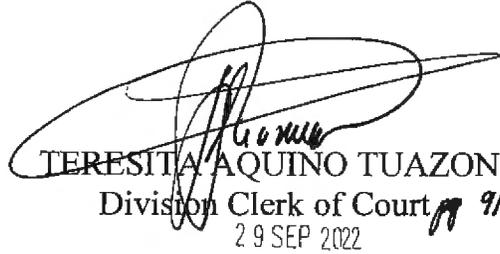
⁶⁴ *Gososo v. Leyte Lumber Yard and Hardware, Inc.*, *supra* note 62.

⁶⁵ *Velasco v. National Labor Relations Commission*, 525 Phil. 749, 762 (2006).

⁶⁶ Position Paper (for the Complainant), *rollo*, p. 99.

⁶⁷ *Id.* at 48.

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *pp 9/29*
29 SEP 2022

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
5th Floor, PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

JOSEPH J. HULIGANGA, JR. (reg)
Petitioner
01 Neptune St., Santana Subd.
Brgy. Dolores, Taytay, Rizal

RRV LEGAL CONSULTANCY FIRM (reg)
Counsel for Respondents
No. 12, Scout Rallos St.
Brgy. Laging Handa
1103 Quezon City

NATIONAL LABOR RELATIONS COMMISSION (reg)
PPSTA Building, Banawe Street cor. Quezon Avenue
1100 Quezon City
(NLRC LAC No. 06-001991-18;
NLRC NCR No. 00-09-14299-17)

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Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. SP No. 157871

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