Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court's First Division issued a Resolution dated **September 14, 2022** *which reads as follows:*

"G.R. No. 252725 ***(Continental Temic Electronics Phils., Inc. vs. Jeffrey N. Mortega).*** — The Court resolves the Petition for Review on *Certiorari*[1] filed by Continental Temic Electronics Phils., Inc. *(petitioner)*, assailing the May 23, 2019 Decision[2] and the June 16, 2020 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 155719, which affirmed the December 29, 2017 Decision[4] and the February 28, 2018 Resolution[5] of the National Labor Relations Commission *(NLRC)* in NLRC LAC No. 12-003662-17. The NLRC reversed and set aside the August 30, 2017 Decision[6] of the Labor Arbiter *(LA)* in NLRC Case No. RAB-IV-09-01306-16-L, which dismissed respondent's complaint for illegal dismissal.

Antecedents

Jeffrey N. Mortega *(respondent)* was hired by petitioner on January 7, 2005. He was promoted several times and eventually held the position of Assistant Production Supervisor II until his employment was terminated in September 2016. As a supervisor, he had his own log-in account which enabled him to access petitioner's network and database.[7]

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[1] *Rollo*, pp. 14-40.
[2] Id. at 262-272; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Edwin D. Sorongon and Tita Marilyn B. Payoyo-Villordon.
[3] Id. at 41-43.
[4] Id. at 242-255; penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Joseph Gerard E. Mabilog.
[5] Id. at 81-84.
[6] Id. at 237-241; penned by Labor Arbiter Renell Joseph R. Dela Cruz.
[7] Id. at 237-238.

Sometime in July 2016, petitioner came to know that respondent accessed and saved in his desktop confidential files from the folder reserved for the company's Human Resources *(HR)* personnel, entitled *HR Common*.[8] Petitioner issued a Notice to Explain with Preventive Suspension[9] dated August 5, 2016, which was received by respondent on the same day. Respondent was charged with "Accessing and copying programs or data that [he] has no authorization [for]" under petitioner's Code of Conduct "under Group IV, ITEM [#24], Page 46" and was asked to submit a written explanation within five days from receipt thereof.

A Second Notice to Explain,[10] dated August 17, 2016, was issued by petitioner stating that no written explanation had been received by the company. Respondent was again directed to submit a written explanation within five days from receipt of the second notice.

On August 30, 2016, respondent sent petitioner his written explanation through e-mail.[11] He reasoned that he was unaware that the common folder contained confidential files, believing that it was a public folder open to anyone. Respondent pointed out that the files contained salary movement for certain employees in 2012, meaning that the files had been sitting in the common folder for almost four years already. He denied copying programs and data, and claimed that he accidentally opened the files because he was looking for requirements for enrollment in a training program. Respondent likewise pointed out that in Group IV of the Code of Conduct, there is no Item #24. Lastly, respondent contended that the originator of the files should be punished instead.

On September 2, 2016, respondent received a Letter[12] informing him of the management's decision to terminate his employment. Firstly, it clarified that the offense is properly classified under Group VI, page 48 of the Code of Conduct. The company found respondent's explanation insufficient to justify his unauthorized access of files in the HR Common folder intended exclusively for HR personnel. Since he was looking for enrollment requirements in the Expanded Tertiary Education Equivalency and Accreditation Program *(ETEEAP)*, respondent should have inquired from his superior, or even directly, with the HR-Training Team. Petitioner said that respondent's reasoning showed his intention to open a file not intended for his viewing. Further, the management pointed out that upon respondent's discovery of the confidential file, he divulged to his colleagues

[8] Id. at 88.
[9] Id. at 104.
[10] Id. at 105.
[11] Id. at 106.
[12] Id. at 87 and 111.

at the production line, canteen area, and those he had drinking sessions with, that he was aware of their salaries. This information spread throughout the workplace, and respondent's acts disrupted the working atmosphere in the company.

Subsequently, respondent filed a complaint for illegal dismissal, illegal suspension, nonpayment of service incentive leave, 13th month pay, separation pay, and retirement benefits, with prayer for moral and exemplary damages, and attorney's fees, against petitioner, Branch Manager Bernard Klump *(Klump)*, and General Manager Glenn Everett *(Everett)*.[13]

In his Position Paper,[14] respondent denied having committed any wrongdoing or infraction of company rules and regulations. He narrated in his *Sinumpaang Salaysay*[15] the circumstances surrounding the incident of alleged unauthorized access of company files. Being among the pioneer employees in petitioner's Calamba plant, respondent said that he worked as production operator, material handler/lead operator, technical operator, maintenance technician, and assistant production supervisor. When the company opened the position of production supervisor, he applied for it but did not qualify since he did not possess a bachelor's degree. He was supposedly advised by the company's recruitment staff to enroll in the ETEEAP.[16]

Respondent searched for the requirements for enrollment in said program. Using his personal log-in account as supervisor, respondent began searching the common folder. While doing so, he accidentally opened the 2012 Salary Movement pertaining to the company's supervisors and engineers. He became curious because the file was in a common folder. He told his superior about the matter, as well as his close friends. In turn, they explored the common folder and were able to view the 2016 salary file.[17]

To respondent's surprise he was summoned by the HR Department a week later and was meted a one-month preventive suspension despite the confusing and erroneous designation of the offense he was charged with, which appears to be a mix-up of a Group IV (Against Company Property) and a Group VI (Information Technology) offense. Respondent claimed that upon his preventive suspension, he did not receive any notice of hearing from the management, so instead, he voluntarily sent his written explanation

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[13] Id. at 116-117.
[14] Id. at 115-127.
[15] Id. at 128-129.
[16] Id. at 128.
[17] Id.

through e-mail. He then received a letter of termination through courier on September 2, 2016.[18]

Respondent pointed out that his act of opening a common folder was part of his job as Assistant Production Supervisor II and that such common folder is available to all departments, which can equally access it without violating any company rule. He insisted that it was not his fault that he was able to view the common folder, which unfortunately included the salary rates of supervisors, managers, and engineers. It is, rather, the fault of the HR Department for storing the salary file under the common folder. There is no basis for his termination considering that he was not the only one who viewed the HR Common folder, and that he did not at all copy any program considering that the salary rate file is only a document. Clearly, petitioner failed to establish any just or authorized cause for his dismissal.[19]

In their Position Paper,[20] petitioner and its co-respondents before the regional arbitration branch claimed that employees are advised during orientations and reminded every now and then that they may only access folders in the company files where they have clearances and that they may only open files which are intended for them. No one is allowed to copy files without clearance from the company. Each folder is named according to the group of persons who are cleared to access the same. Respondent was dismissed because he was found to have illegally accessed company files, even copying them. Investigation ensued to determine what other files were accessed by respondent to check which files had become vulnerable. As to the notices issued by management in relation to this incident, petitioner insisted that respondent duly received them and belatedly submitted his written explanation. In addition, respondent leaked confidential information by telling his co-workers that he knew their salaries. Three employees reported this to the management. This aggravated the offense committed by respondent.[21]

In effecting the dismissal, petitioner claimed to have complied with the twin notice requirement and provided respondent with the opportunity to present his side and answer the charges against him. It also contended that respondent was not entitled to backwages and separation pay, and that the

[18] Id. at 129.
[19] Id. at 119-120.
[20] Id. at 91-103.
[21] Id. at 93-95.

inclusion of Klump and Everett as respondents is a misjoinder, being merely officers of the company.[22]

Ruling of the LA

After further exchange of pleadings between the parties, the LA dismissed respondent's complaint for lack of merit. He ruled that the issuance of a preventive suspension order against respondent was proper, given the serious violation of company rules, the corresponding penalty for which is dismissal for the first offense. The preventive suspension order was therefore a measure of self-protection meant to secure vital records of the company from being accessed by respondent.[23]

The dismissal of respondent was likewise upheld as valid. The LA reasoned that having inadvertently stumbled onto the HR Common folder, respondent should have refrained from viewing and copying the files it contained. Respondent should have immediately reported the matter to his superiors so that the management could have secured the vulnerabilities of the system. But respondent, not content with viewing the files, even copied some of them and divulged their contents to his colleagues. By doing so, respondent demonstrated that his continued employment was inimical to the interest of his employer, which placed a great deal of effort in maintaining the security of its database.[24]

Ruling of the NLRC

On appeal, the NLRC reversed and set aside the decision of the LA. The dispositive portion of the NLRC's decision reads:

> **WHEREFORE**, premises considered, the appeal is GRANTED and the August 30, 2017 Decision of the Labor Arbiter is REVERSED and SET ASIDE and a new one entered declaring that complainant Jeffrey N. Mortega was illegally dismissed and ordering respondent Continental Temic Electronic [Phils.], Inc. to immediately reinstate complainant to his former position without loss of seniority rights and other benefits, pay him backwages reckoned from the date of his dismissal on September 1, 2016 up to the time of his actual reinstatement.
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> Complainant's preventive suspension is declared valid, hence he is not entitled to his salary for the period of his preventive suspension.

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[22] Id. at 97-99.
[23] Id. at 89-90.
[24] Id. at 90.

> Respondent company is also ordered to pay complainant his 13th month pay for the year 2016 and service incentive leave pay reckoned from the date the employer failed to pay such amount. Respondent company is likewise ordered to pay complainant 10% of the monetary award as attorney's fees.
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> **SO ORDERED.**[25]

According to the NLRC, petitioner should have called for a clarificatory hearing in order to afford respondent an opportunity to be heard and to explore the possibility of mitigating the sanction to be meted against him. It said that an employer's unsubstantiated suspicions, accusations, and conclusions are not sufficient to justify an employee's dismissal. There must be a thorough investigation to establish the guilt of the employee whose dismissal is sought, where such employee is given the chance to participate and defend himself. Absent the conduct of an impartial and orderly investigation, it cannot be concluded that the guilt of respondent has been established.[26]

On the charge against respondent, the NLRC declared that his act of opening company files may not be considered a serious malfeasance as to merit dismissal from work. It said that files intended by the company to be kept confidential must be password-protected. Since respondent was able to access the HR files, the presumption is that any employee who has a log-in account may also gain access to the same. The penalty of dismissal is grossly disproportionate to the offense committed by respondent, more so that the file he opened contained information that had already been existing four years before. Moreover, respondent had been working with the company for almost 12 years without any derogatory record. It was likewise noted that petitioner failed to present evidence of its claim that respondent's misdeed prejudiced its business interest or caused the company to sustain damages.[27]

Respondent was awarded attorney's fees, having been compelled to hire the services of counsel in order to enforce his right to security of tenure and to recover his lawful wages. On the other hand, the claim for moral and exemplary damages was denied as respondent failed to prove bad faith on the part of petitioner in effecting his dismissal. Lastly, the case against the

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[25] Id. at 254-255.
[26] Id. at 247-249.
[27] Id. at 251-253.

company officers was dismissed for lack of showing that they committed any wrongdoing as to hold them personally liable.[28]

Petitioner filed a motion for reconsideration, but the NLRC denied the same in a Resolution dated February 28, 2018. Dissatisfied, petitioner filed before the CA a Petition for *Certiorari*[29] under Rule 65 of the Rules of Court.

Ruling of the CA

In its assailed decision, the CA concurred with the NLRC's ruling that petitioner failed to observe procedural due process when it failed to conduct a hearing and investigation on its accusation against respondent. Even assuming that there was compliance with the due process requirements and that respondent was guilty of violating the company rule against unauthorized accessing and copying of program or data, the CA held that his dismissal was unjustified. The pertinent portion of the CA decision reads:

> Here, Mortega may have been guilty of violating company rules, but still, We find the penalty of dismissal unjustified under the circumstances. To reiterate, Mortega had been with Continental for almost 12 years, with no derogatory record. Employers are cautioned that although they enjoy a wide latitude of discretion in the formulation of work-related policies, rules and regulations, their directives and the implementation of their policies must be fair and reasonable; at the very least, penalties must be commensurate to the offense involved and to the degree of the infraction.
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> **As aptly held by the NLRC, Mortega should not be penalized for something as trivial as having opened a folder he considered as public since the same was not marked as confidential. Indeed, files intended by the company to be confidential must be password-protected. Since Mortega was able to access the files, the presumption is that any employee who can log in to the system may, at one time or the other, has also gained access to the same.**
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> Finally, there is likewise no finding that Mortega's above-mentioned infractions prejudiced Continental's operations. Apart from the company's allegations that Mortega's misdeed prejudiced its business interest, there is no indication in the records of any damage Continental sustained because of such alleged violations.
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> x x x x

[28] Id. at 253-254.
[29] Id. at 44-79.

> In sum, while we recognize management's prerogative to discipline its employees, the exercise of this prerogative should at all times be reasonable and should be tempered with compassion and understanding. Dismissal is the ultimate penalty that can be imposed on an employee. Where a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe for what is at stake is not merely the employee's position but his very livelihood and perhaps the life and subsistence of his family.
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> **FOR THESE REASONS**, the petition is **DISMISSED**.
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> **SO ORDERED**.[30] (Emphasis supplied)

Petitioner filed its Motion for Reconsideration,[31] but the same was denied by the CA, hence, this petition.

Issue

The Court is tasked to determine whether the CA erred in not finding grave abuse on the part of the NLRC when it reversed the LA's ruling and declared the dismissal of respondent illegal.

Petitioner's Arguments

Petitioner maintains that it complied with the procedural requirements in terminating the employment of respondent, who was given sufficient time to respond to the charge after he was issued the notice to explain with preventive suspension and the second notice to explain. In fact, it was only on August 30, 2016, or almost 30 days after the first notice, that respondent submitted a written explanation. Despite his denials, he never requested for the conduct of a hearing even after submitting his written explanation.

As to the propriety of the penalty of dismissal as prescribed by company rules, petitioner contends that it was not excessive. Contrary to the pronouncement of the CA, respondent's length of service should not accord him leniency, especially since the company had been very fair and generous to him, affording him training and promotion opportunities. These facts were related by respondent himself in his position paper.

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[30] Id. at 270-271.
[31] Id. at 273-280.

As an assistant supervisor, respondent is no ordinary rank-and-file employee, and hence, more is expected of him. Having been with the company for over 10 years, respondent should have known better. It has been a long-time practice of the company to label folders with the name of the group allowed access to a particular folder. It has also been long-time policy for files not to be opened and copied without authority. Petitioner possesses state-of-the-art technology, and as such, information security is very vital and sensitive. Not only did respondent view and access the files of the HR Common folder, he also copied some of them and divulged the information contained therein to other persons; thus, demonstrating that he could no longer be trusted. Moreover, contrary to the rulings of the NLRC and the CA, petitioner argues that pecuniary damage is not a requirement before an employee can be dismissed for betraying the trust and confidence of the employer.

Finally, petitioner prays in the alternative for the mitigation of monetary awards to respondent considering that the lower tribunals did not find it having acted in bad faith.

Respondent's Arguments

In his Comment,[32] respondent stated that the CA's decision to dismiss the petition for *certiorari* was anchored on established facts contained in the records of the case.

In termination for just causes, the employer must first serve written notice to the employee, containing the specific causes or grounds for termination against the latter. Next, the employer should schedule and conduct a hearing or conference to give the employee an opportunity to explain and clarify the latter's defenses, present evidence, and rebut evidence presented against him or her. After determining that termination is justified, the employer shall serve a written notice of termination on the employee. The lack of due process here is apparent, as there was no investigation conducted by petitioner.

Respondent further argues that he did not violate company rules. The opening of the salary file was unintentional. The HR Common folder containing salary rates is not a program or data, but may be categorized as "white papers" only. As the file was dated 2012, it was no longer significant by the time it was accidentally opened. Furthermore, the subject file was

[32] Id. at 326-341.

placed in a common folder, which, under petitioner's company rules and regulations, can be accessed by all employees who have a log-in account. Thus, there is no truth to petitioner's claim that it placed a great deal of effort in maintaining the security of its database.

The company rules and regulations do not specifically say that the HR Common folder is limited to HR personnel only. It was not shown that the employee's handbook, presented by petitioner listing the offense charged, was true and correct, and that its contents were well-communicated to the employees prior to their engagement. Respondent also points out that the other employees, who similarly accessed and viewed the same file, were not terminated.

Lastly, respondent argues that the penalty of dismissal was not commensurate to the act allegedly committed.

Ruling of the Court

The petition is meritorious.

In labor cases, the Court's power of review is limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion on the part of the NLRC.[33] As the Court explained in *Montoya v. Transmed Manila Corporation*:[34]

> We review in this **Rule 45 petition** the decision of the CA on a Rule 65 petition filed by Montoya with that court. 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**

[33] *Paragele v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020.
[34] 613 Phil. 696 (2009).

committed grave abuse of discretion in ruling on the case?[35]
(Emphases in the original)

In *E. Ganzon, Inc. v. Ando*,[36] the Court held that "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."[37]

Respondent violated the prescribed code of conduct.

In illegal dismissal cases, the employer bears the burden of proof to show that the employee's termination from service is for a just and valid cause. "The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them."[38]

The fact that respondent opened the HR Common folder is not seriously disputed. In any case, petitioner presented a Printout[39] of the logs of respondent's account, showing he accessed the HR Common folder *and* copied the spreadsheet file named "SALARY MOVEMENT.xls" to his desktop. A screenshot of these logs was attached to the Notice to Explain with Preventive Suspension dated August 5, 2016.

Petitioner also submitted in evidence a joint *Salaysay*[40] executed by respondent's co-employees, Florencio M. Huelba, Teodor Reginio, Jr., and Eduard Villanueva. They attested to having heard respondent telling others that he knew about other employees' salaries and, sometime in the last week of July 2016, respondent himself told them he knew about their salaries and the salaries of other employees. Respondent revealed to them that he was able to open an excel file from the network folder. They verified the same for themselves, and were also able to find the file in the HR Common folder. As far as they know, the HR Common folder is for HR personnel only, and

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[35] Id. at 706-707.
[36] 806 Phil. 58 (2017).
[37] Id. at 65.
[38] *Prudential Guarantee and Assurance Employee Labor Union v. NLRC*, 687 Phil. 351, 369 (2012).
[39] *Rollo*, p. 107.
[40] Id. at 108-110.

during orientation, employees are made aware that they are prohibited from accessing files from folders which are not meant for them. They reported the incident to their manager, Julius Dela Cruz, who told them that management was already aware of the situation.

Petitioner likewise submitted, as an annex to its position paper, a copy of its employee handbook.[41] Group VI of the handbook lists "IT (INFORMATION TECHNOLOGY) OFFENSES." Item No. 24 thereof, which reads "Accessing and copying programs or data that he has no authorization for" is classified as a Type "F" offense, punishable by dismissal for the first offense.[42]

Considering the foregoing, petitioner satisfactorily proved that there was just cause for terminating respondent's employment.

The Court takes exception to the characterization by the CA and the NLRC of the unauthorized access by respondent as trivial and the contents viewed by him as irrelevant, as it had already been existing four years back. Said tribunals apparently misappreciated the context of the company rule pertaining to enforcement of database access controls.

Indeed, the workplace has changed tremendously since the advent of information technology that companies had to undergo digital transformation to stay competitive. The "use of digital technology to re-engineer business processes, organizational structures and customer experiences to meet today's competitive demands – is creating a sea of change in companies large and small."[43] But "[t]he more companies depend on technology, the more they need to focus on security measures – how to ensure the confidentiality, integrity and availability of data on premises and off."[44]

Even if respondent has a log-in account to the office network, he is authorized to access folders and files related only to his specific work duties; which means he can open *only* those folders and files necessary to the performance of his work functions. Contrary to his defense that the HR Common is a common folder, the title of the folder itself signifies that it is intended only for HR personnel, and is not necessary for the performance of

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[41] Id. at 112-114.
[42] Id. at 113-114.
[43] The impact of digital transformation on the workplace, available at <https://imaginenext.ingrammicro.com/data-center/the-impact-of-digital-transformation-on-the-workplace> (last accessed on August 5, 2022).
[44] Id.

respondent's work duties as assistant production supervisor. His denial of the standing company policy on database access is contradicted by his co-employees' *Salaysay*, confirming the policy of management against the accessing of files and folders which they, as production personnel, have no business opening or viewing.

Respondent's posture that he should not be blamed for "accidentally" opening files in the HR Common folder deserves scant consideration. The evidence tends to show that such access was not accidental because he even copied and saved the files on his desktop. His position is further belied by his behavior and attitude afterwards. In touting to his co-workers that he accessed the salary file, respondent demonstrated that he knew he was not privy to such information.

Dismissal is an appropriate penalty under the circumstances.

In finding for respondent, both the NLRC and the CA opined that if the HR Common folder accessed by respondent was indeed confidential, it should have been password-protected so unauthorized employees would not be able to open or view the files contained therein. Moreover, they held that dismissal was too harsh a penalty and not commensurate to the infraction committed.

The Court disagrees.

It is the prerogative of management to adopt policies and rules on data security. While it is true that there are more sophisticated measures to secure a company's database like encryption, key management, data redaction, data subsetting, and data masking, it bears stressing that it is well within the prerogative of management to adopt and institute the appropriate level of security for its database. That petitioner focused on user access control and simple segregation of folders in accordance with the specific requirements of employee groups, without inclusion of more complex technologies, did not make its policies against unauthorized access any less valid.

As already mentioned, data security is crucial for employers in this age of information technology. A data breach, whether from an insider or outside agent, poses great risks for the security of personal data, financial data, trade secrets, and other regulated data. The CA and the NLRC erred in

taking against petitioner the latter's failure to prove the damage it sustained on account of the unauthorized access. Said tribunals completely missed the point of strict access controls, which is to minimize the risk of data breach to forestall damaging consequences to one's business (*e.g.*, loss of revenue and of client trust, damage to brand reputation and intellectual property). Whether the unauthorized access actually resulted in quantifiable damage is of no moment. Respondent violated a basic *reasonable* policy which potentially compromises the integrity and confidentiality of information in his employer's database. Hence, the penalty of dismissal on first offense is commensurate to the nature of the infraction.

Petitioner observed procedural due process requirements.

The Court likewise finds that petitioner observed procedural due process in the termination of respondent's employment. In *Skippers United Pacific, Inc. v. Doza*,[45] the Court explained:

> Procedural due process in dismissal cases 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 notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. x x x[46]

The standards of due process are spelled out under Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code.[47] These standards were refined in *King of Kings Transport, Inc. v. Mamac*:[48]

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[45] 681 Phil. 427 (2012).

[46] Id. at 439.

[47] Section 2. *Standard of due process: requirements of notice.* — In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

[48] 553 Phil. 108 (2007).

> [T]he following should be considered in terminating the services of employees:
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> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
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> (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
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> (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[49]

Petitioner issued the first notice to explain with preventive suspension on August 5, 2016, which was received by respondent on the same day. Although there was an error in the numbering of the offense charged (Group IV, page 46, instead of Group IV, page 48), the infraction imputed was clearly identified as "Accessing and copying programs or data that he has no authorization for." Additionally, attached to the notice were screenshots of the audit logs showing respondent's network activity, specifically identifying the file he allegedly copied. Respondent was, thus, clearly apprised of the violation with which he was being charged. To the Court's

[49] Id. at 115-116.

mind, such notice was sufficiently detailed as to allow respondent to intelligently prepare his explanation and defense.

In the first notice, respondent was given a five-day period within which to submit his written explanation, which should already be considered a reasonable period under the circumstances. Yet, when respondent failed to respond, petitioner sent the Second Notice to Explain dated August 17, 2016, giving respondent another five days to reply. Respondent sent his written explanation through e-mail only on August 30, 2016. Even though this was submitted beyond the period given to respondent, petitioner still went over his explanation and defense.

On September 1, 2016, petitioner issued the notice of decision informing respondent of the infraction he committed, the reasons why management found his explanation unsatisfactory and the ultimate decision to terminate his employment. Thus, it cannot be gainsaid that petitioner complied with the two-notice requirement.

On the matter of the requirement of a hearing, the Court reiterates that it must be complied with by giving the worker an opportunity to be heard. Contrary to the pronouncement of the lower tribunals, the conduct of an actual hearing and investigation is not an indispensable requirement. It is settled that a formal hearing is not necessary as long as the employee is given an ample opportunity to be heard.[50] As held in *Perez v. Philippine Telegraph and Telephone Company*:[51]

> Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient." In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).
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> Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code **should not be taken to mean that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in termination of employment**. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination

[50] *Philippine Long Distance Telephone Co. v. Domingo*, G.R. No. 197402, June 30, 2021.
[51] 602 Phil. 522 (2009).

> confrontation between the employer and the employee. **The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing.** To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."*
>
> x x x x
>
> Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed "*substantially*," not strictly. **This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process*.**
>
> x x x x
>
> **A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy.** x x x[52] (Emphases supplied)

Thus, the Court finds that the NLRC gravely erred in taking against petitioner the lack of any formal conference or hearing. As discussed, respondent was given the opportunity to give his explanation and submit evidence in his defense, which he in fact did. Notably, respondent never asked for the conduct of a formal hearing or investigation. Indeed, it is not necessary that an actual hearing be conducted.[53]

Petitioner went over respondent's allegations and defense, and found the justifications insufficient. Clearly, respondent had been afforded a "hearing" as contemplated by law and jurisprudence, and the NLRC committed grave abuse of discretion in ruling otherwise. Thus, the CA committed reversible error in affirming the ruling of the NLRC.

Monetary Awards

Insofar as the monetary awards granted by the NLRC and affirmed by the CA are concerned, petitioner sought for mitigation of the backwages, but no longer questioned the other amounts awarded, particularly the 13th month

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[52] Id. at 537-538.
[53] *Skippers United Pacific, Inc. v. Doza*, supra note 45.

pay, service incentive leave, and attorney's fees. With the exception of backwages – which respondent is no longer entitled to as a consequence of the finding that his dismissal was valid – the Court affirms the remaining awards as granted by the NLRC. In addition, such monetary awards shall earn 6% interest *per annum* from the finality of this judgment, until fully paid, pursuant to the Court's ruling in *Nacar v. Gallery Frames*.[54]

WHEREFORE, the petition is **GRANTED**. The May 23, 2019 Decision and the June 16, 2020 Resolution of the Court of Appeals in CA-G.R. SP No. 155719 are hereby **REVERSED** and **SET ASIDE**. The August 30, 2017 Decision of the Labor Arbiter in NLRC Case No. RAB-IV-09-01306-16-L is **REINSTATED**.

In addition, petitioner Continental Temic Electronics Phils., Inc. is **ORDERED** to **PAY** respondent Jeffrey N. Mortega his 13th month pay *pro rata* for the year 2016 and service incentive leave pay. Petitioner is likewise **ORDERED** to **PAY** respondent 10% of the total monetary awards as attorney's fees. All amounts shall earn interest at 6% *per annum*, from finality of this judgment until fully paid. For this purpose, this case is hereby **REMANDED** to the Labor Arbiter for computation and execution of the proper amounts due respondent.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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OCT 10 2022

[54] 716 Phil. 267, 283 (2013).

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