REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **August 31, 2022** *which reads as follows*:

"G.R. No. 248041 (*Ronnie Buid, Melvin P. Fregillana, Emmanuel T. Egar, Ricardo S. Barrera, and Rolando Perez,* petitioners *v. GM Joe Tours and Transport Corp./Arfel Joseph Austria,* respondents.). – For this Court's resolution is the Petition for Review on *Certiorari*[1] dated August 20, 2019, assailing the Decision[2] dated October 16, 2018 and Resolution[3] dated June 17, 2019 of the Court of Appeals (*CA*) in CA-G.R. SP No. 154989, which partly reversed the Decision[4] dated October 27, 2017 and Resolution[5] dated December 29, 2017 of the National Labor Relations Commission (*NLRC*). The NLRC affirmed the Decision[6] dated May 30, 2017 of the Labor Arbiter (*LA*), which declared GM Joe Tours and Transport Corp. (*GM Joe*) and Arfel Joseph Austria (*Austria*), GM Joe's General Manager, to have illegally dismissed petitioners Ronnie Buid (*Buid*), Melvin P. Fregillana (*Fregillana*), Emmanuel T. Egar (*Egar*), Ricardo S. Barrera (*Barrera*), and Rolando *Perez* (Perez) [(*Buid et al.*)] and ordered GM Joe and Austria to pay Buid *et al.* their monetary claims.

GM Joe is engaged in the transportation business.[7] It caters to foreign and local tourists and employers who charter buses to transport their respective employees to and from the workplace.[8] Meanwhile, Buid *et al.* were bus drivers whom GM Joe employed on various dates.[9]

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1 *Rollo*, pp. 10-31.

2 Penned by Associate Justice Manuel M. Barrios, with Associate Justices Japar B. Dimaampao and Henri Jean Paul B. Inting (now members of this Court), concurring; id. at 229-242.

3 Penned by Associate Justice Manuel M. Barrios, with Associate Justices Japar B. Dimaampao (now a member of this Court) and Myra V. Garcia-Fernandez, concurring; id. at 255-257.

4 Penned by Commissioner Dolores M. Peralta-Beley, with Commissioners Grace E. Maniquiz-Tan and Mercedes R. Posada-Lacap, concurring; id. at 148-158.

5 Id. at 159-165.

6 Penned by Labor Arbiter Melchisedek A. Guan; id. at 135-140.

7 Id. at 231.

8 Id.

9 Id.

On January 21, 2016, Buid *et al.* instituted a Complaint against GM Joe and Austria for Underpayment of Thirteenth (13th) Month Pay, Service Incentive Leave Pay (*SILP*), and Illegal Deductions.[10] On February 12, 2016, Barrera, Perez, Rodrigo Gianan (*Gianan*), and Jimmy Jomanting (*Jomanting*) subsequently filed a complaint for illegal dismissal and underpayment of similar monetary benefits, where they averred that GM Joe has been deducting ₱500.00 to ₱1,000.00 from their bi-monthly salaries as "bus charge" and another ₱500.00 as cash bond, without their consent or authority.[11] They alleged that GM Joe has unlawfully deducted a total of ₱122,500.00 from them, as follows:

NAME	BUS CHARGE	CASH BOND	SUB-TOTAL
Ronnie Buid	₱11,000.00	-	₱11,000.00
Hilario Lucido	-	-	-
Emmanuel Egar	₱25,000.00	₱4,000.00	₱29,000.00
Melvin Fregillana	₱13,000.00	₱8,000.00	₱21,000.00
Ricardo Barrera	₱29,000.00	₱20,500.00	₱49,500.00
Rodrigo Gianan, Jr.	-	-	-
Rolando Perez	₱8,000.00	₱4,000.00	₱12,000.00
Jimmy Jomanting	-	-	-
		TOTAL:	**₱122,500.00**

Hilario Lucido (*Lucido*), Gianan, and Jomanting were not able to file their Position Papers or present evidence to substantiate their respective claims.[12] Thus, the LA dismissed their complaints. On February 23, 2016, Buid, Fregillana, and Egar filed an Amended Complaint to include illegal dismissal as one of their causes of action.[13] They averred that when GM Joe learned of the filing of the complaint, GM Joe no longer assigned them to any trips.[14]

For its part, GM Joe denied having dismissed Buid *et al.*[15] It clarified that it urged them to return to work, but they refused to comply.[16] It then asserted that they paid Buid *et al.* their thirteenth month pay and presented a bank debit memo as proof.[17] Regarding the illegal deductions, GM Joe explained that Buid,

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10 Id.
11 Id. See also pp. 82-83.
12 Id. at 232.
13 Id.
14 Id.
15 Id.
16 Id.
17 Id.

et al. consented to the deductions as their recompense for expenses incurred due to damages to its buses or injuries caused to third parties from vehicular accidents or misdemeanors.[18]

On May 30, 2017, the LA rendered a Decision[19] declaring that Buid *et al.* were illegally dismissed from employment and directing GM Joe and Austria to jointly and severally pay ₱1,171,781.14.[20] Aggrieved, both parties appealed to the NLRC.[21] GM Joe questioned the declaration of illegal dismissal and award of money claims against it, while Buid *et al.* pointed out that an order for reinstatement should have been included.[22]

On October 27, 2017, the NLRC rendered a Decision[23] granting Buid, *et al.*'s appeal by directing their reinstatement. It also partly granted GM Joe's appeal by stating that the computation of service incentive leave pay should start one year after the start of Buid *et al.*'s employment.[24] GM Joe filed a Partial Motion for Reconsideration, which the NLRC partly granted in a Resolution[25] dated December 29, 2017 by exonerating Austria from personal liability.[26]

Undaunted, GM Joe filed a Petition for *Certiorari*[27] with the CA, where it argued that Buid, *et al.* failed to substantiate their allegation of illegal dismissal.[28] Buid, *et al.*'s bare allegations fell short of the jurisprudential requirement that an employee must show clear, positive, and convincing evidence of the fact of dismissal.[29] It also maintained that the bank debit memo proved that Buid *et al.*'s monetary claims were credited to them and that they authorized the deductions.[30]

In a Decision[31] dated October 16, 2018, the CA partly annulled the decisions of the LA and the NLRC. The CA dismissed the complaint for illegal dismissal and backwages but affirmed the award of Buid *et al.*'s other monetary claims like their thirteenth month pay, SILP, illegal deductions, and attorney's fees. The CA ruled that Buid *et al.* failed to prove their assertion that GM Joe no longer gave them any trip assignments after they filed the complaint before the LA.[32] On the contrary, the CA found that Buid, Egar, Lucido, and Fregillana abandoned their work after GM Joe issued to them a Memorandum dated January

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18 Id.
19 Id. at 135-139.
20 Id. at 232.
21 Id. at 233.
22 Id.
23 Id. at 148-158.
24 Id. at 233.
25 Id. at 159-165.
26 Id. at 233.
27 Id. at 173-221.
28 Id. at 233.
29 Id. at 234.
30 Id. at 235.
31 Id. at 229-242.
32 Id. at 236.

19, 2016 – which was prior to the filing of the labor complaint on January 21, 2016 – directing them to explain why all of them unilaterally and simultaneously aborted their newly-assigned bus trips from Pasay City to Toshiba Information Philippines earlier that month.[33]

As proof against the falsity of the illegal dismissal complaint, the CA also considered Buid's handwritten letter dated January 20, 2016 where Buid tried to justify his refusal to service the new route.[34] Regarding Egar, GM Joe issued to him a Memorandum dated January 25, 2016 asking for an explanation for his unauthorized absences allegedly due to his swollen feet.[35] GM Joe advised him to submit a Medical Certificate, but Egar did not.[36] In a handwritten report, GM Joe's Officer-in-Charge, Lorenzo Villanueva, stated that Egar informed him how the latter no longer wanted to drive GM Joe's bus.[37] Concerning Perez, he submitted a handwritten letter seeking permission to take a leave of absence for one month due to a chest illness. Taking all these pieces of evidence into consideration, the CA concluded that it could not rely on Buid *et al.*'s bare assertions that they were illegally dismissed because their evidence to support the contention has fallen short of the substantial evidence required by law.[38]

Hence, this petition.[39]

In the main, Buid *et al.* posit that substantial evidence supported their contention about how GM Joe summarily dismissed them by no longer assigning them to trips.[40] They cite how they positively alleged under oath in their Position Paper[41] that they were verbally and summarily dismissed by Villanueva.[42] They also maintain that the CA erred in relying upon the Memorandum dated January 19, 2016, as well as GM Joe's other letters, because it failed to prove that Buid *et al.* received these documents.[43] Moreover, they raise the inadmissibility of Villanueva's handwritten report because it was not in affidavit form.[44]

The sole issue before this Court is whether the CA correctly reversed the NLRC and LA by ruling that Buid *et al.* were not illegally dismissed and therefore, not entitled to backwages.

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33 Id. at 236-237.
34 Id. at 237.
35 Id. at 238.
36 Id.
37 Id.
38 Id. at 238-239.
39 Id. at 10-31.
40 Id. at 19-20.
41 Id. at 44.
42 Id. at 21.
43 Id. at 22 and 24-26.
44 Id. at 22.

We deny the petition.

While in illegal dismissal cases, the burden of proof is on the employer in proving the validity of dismissal, the fact of dismissal must be duly proven by the complainant.[45] In *Italkarat 18, Inc. v. Gerasmio*,[46] this Court explained:

> Indeed, in illegal dismissal cases, the burden of proof is on the employer in proving the validity of dismissal. However, the fact of dismissal, if disputed, must be duly proven by the complainant.
>
> We have held in *Machica v. Roosevelt Services Center, Inc.*:
>
> > The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners. (Emphasis and underscoring supplied)
>
> We have also clarified that there can be no question as to the legality or illegality of a dismissal if the employee has not discharged his burden to prove the fact of dismissal by substantial evidence, to wit:
>
> > It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. However, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence. Only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause. The logic is simple — if there is no dismissal, there can be no question as to its legality or illegality.[47]

Thus, petitioners had the burden of proving that GM Joe dismissed them, especially considering that it denied the dismissal. In fact, petitioners contend that they were no longer assigned trips after they filed the labor complaint. This is a clear allegation of constructive dismissal. Accordingly, it devolved upon petitioners to first prove the fact of their dismissal by substantial evidence. In the case at bench, we agree with the CA that the records are bereft of any evidence to prove that GM Joe dismissed petitioners. To be sure, aside from their bare allegations in their Position Paper, they did not present any other proof showing that GM Joe dismissed them. Mere allegation, however, is not evidence and is not equivalent to proof.[48]

We quote with approval the CA's disquisition on the matter:

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45 *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020.

46 Id.

47 Id. (Citations omitted)

48 *Menez v. Status Maritime Corporation, et al.*, 839 Phil. 360 (2018).

After a judicious review of the case records, We find that public respondent had overlooked relevant facts and circumstances in rendering its decision. Therein, public respondent stated that the basis for the complaint for illegal dismissal is the common assertion of private respondents that petitioner did not give them any more trip assignments after they filed the instant complaint before the labor arbiter. However, from the facts established, We cannot discern positive and convincing proof to validate this assertion. On the contrary, what seems apparent is that private respondents Buid, Egar, Lucido, and Fregillana have abandoned their work after petitioner issued to them a Memorandum dated 19 January 2016 for them to explain why all of them unilaterally and simultaneously aborted their newly-assigned bus trips from Pasay City to Toshiba Information Philippines (TIP) earlier that month. It is notable that this Memorandum was sent to private respondents even prior to their institution of the instant labor complaint on 21 January 2016, and more so, if reckoned from the time when petitioner learned of the complaint. This, in itself, belies private respondent's assertion that it was their filing of the complaint that ill-motivated petitioner to terminate their services.

More revealing of the falsity of private respondents' claim of illegal dismissal is the handwritten letter dated 20 January 2016 of private respondent Buid – in response to petitioner's aforesaid Memorandum – trying to justify his refusal to service the new route on the reasoning that he was unfamiliar with the same and, thus, was requesting that he be first considered as an apprentice and given sufficient time to study the new route, *viz*:

x x x x.

Related hereto, pursuant to company practice, becoming an apprentice means that a driver assigned to a new route will temporary ride along with a more-experienced driver in order to familiarize himself and become more acquainted with the aforesaid route. On 23 January 2016, petitioner acknowledged Buid's request and, thus, asked him to indicate the routes that he was unfamiliar with so as to preclude aborted trips in the future. Ironically, however, private respondent Buid informed the Officer-in-Charge, Lorenzo Villanueva, that he will no longer comply with the directive of management as he was planning to resign anyway. This was elucidated in Villanueva's handwritten report dated 26 January 2016 which states: "*[i]pinaaabot po ni Ronnie Buid na di na niya pipirmahan ang kanyang memo para mag apprentice sa mga ruta na di niya lam (sic), kasi raw mababaliawa (sic) rin daw po kasi sabi niya magre-resign na raw siya yon po ang dahilan kaya ayaw niya pirmahan ang memo niyo kaya po ako gumawa ng letter.*"

Now then, with respect to private respondent Egar, he was issued a Memorandum on 25 January 2016 asking for an explanation for his unauthorized absences for several days during that month supposedly due to his swollen feet. Egar was advised to submit a Medial Certificate to substantiate his excuse, but private respondent failed to do so. In his handwritten report, Officer-in-Charge Lorenzo Villanueva stated that private respondent Egar informed him that the latter no longer wanted to drive petitioner's bus.

With respect to private respondent Perez, he submitted a handwritten letter seeking permission to take a leave of absence for one (1) month supposedly due to his chest illness.

> Conformably with the doctrine enunciated in the Claudia's Kitchen, Inc. case aforecited, private respondents cannot just rely on their bare assertions that they were dismissed as this is not the "substantial evidence" contemplated by law and, thus, cannot suffice to shift the burden of proof to the petitioner to justify their dismissal. In any event, it seems apparent that it were private respondents who, for one reason or another, declined to report for work on their newly-assigned routes; and somehow tried to reverse the situation by commonly asserting that they were dismissed without cause, and demanding backwages in the process. For this reason, We find private respondents' imputation of illegal dismissal to be utterly without factual basis, and thus, it follows that their claim for backwages is also baseless and must be effaced as the same is merely ancillary to a finding of illegal dismissal.[49]

Then again, in its Resolution[50] dated June 17, 2019, the CA clarified:

> As We have ruled, the evidence showed that private respondents abandoned their work after petitioner issued to them a Memorandum dated 19 January 2016 for them to explain why they simultaneously aborted their newly-assigned bus trips. It was established that Officer-in-Charge Lorenzo Villanueva personally served upon private respondents the subject Memorandum, but that the latter refused to sign. Private respondents then did not ply their new routes, simply reasoning that they were unfamiliar with the new route. Subsequently, for one reason or another, they altogether refused to report for work, despite the directive to do so. Verily, petitioner cannot be imputed with the affirmative act of dismissal, since the clear evidence is that it were the private respondents themselves who refused to work.
>
> In this regard, let it be stated that the re-assignment of work station constitutes a valid exercise of the employer's management prerogative. As a rule, Courts will not interfere with an employer's judgment in conducting its business, especially when there is no diminution in the affected employees' benefits nor a demotion of their respective ranks, as in this instance.[51]

We do not find any reason to disturb the CA's findings.

Petitioners take issue about how the Memorandum dated January 19, 2016 and other letters were not shown to have been tendered and received by petitioners and the lack of admissibility of Villanueva's handwritten letter for not being in affidavit form. Needless to say, Villanueva wrote a note in the Memorandum dated January 19, 2016 that petitioners refused to sign it. And lest petitioners have forgotten, it is only when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause.[52] In other words, petitioners must first prove that they were actually dismissed by GM Joe before the legality of such dismissal can be raised as an issue. Here, petitioners failed to prove such dismissal.

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49 *Rollo*, pp. 236-239. (Citations end emphasis omitted)
50 Id. at 255-257.
51 Id. at 256. (Citations omitted)
52 *Italkarat 18, Inc. v. Gerasmio*, supra note 45. (Citations omitted)

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated October 16, 2018 and Resolution dated June 17, 2019 of the Court of Appeals in CA-G.R. SP No. 154989 are **AFFIRMED**. The Decision dated October 27, 2017 and Resolution dated December 29, 2017 of the National Labor Relations Commission are **PARTLY ANNULLED AND SET ASIDE** insofar as petitioners were declared to be illegally dismissed and ordered reinstated, as well as the corresponding award of backwages, are concerned. GM Joe Tours and Transport Corp. is **ORDERED** to pay petitioners the following amounts:

a) ₱84,130.49 representing unpaid thirteenth (13th) month pay;
b) ₱122,500.00 representing illegal deductions; and
c) ₱106,525.55 representing 10% attorney's fees.

The case is **REMANDED** to the Labor Arbiter for computation of petitioners' service incentive leave pay, which shall start one year after their commencement of their service with respondent company, in accordance with the NLRC's Decision dated October 27, 2017.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

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