REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **January 16, 2023** *which reads as follows*:

"G.R. No. 206648 (PIERRE T. PEREZ and EDWIN A. MORILES, Petitioners **v. FIRESTAR SECURITY AGENCY/SM HYPERMARKET [VALENZUELA], and/or ENGR. JUBEN RAGOS/ENGR. ANTOLIN PAULE,** Respondents**).** — Without an employer-initiated dismissal, an employee cannot claim to have been illegally dismissed. Before the employer is burdened with proving just cause for terminating employment, the employee must first provide substantial evidence of actual termination from employment. Otherwise, the complaint will not prosper.[1]

This Court resolves a Petition for Review on *Certiorari*[2] assailing the Decision[3] and Resolution[4] of the Court of Appeals, which affirmed the National Labor Relations Commission's Decision and Resolution.[5] The Commission had affirmed the labor arbiter's dismissal[6] of Pierre T. Perez (Perez) and Edwin A. Moriles's (Moriles) Complaint for illegal dismissal.

Perez and Moriles were both employed with Firestar Security Agency (Firestar).[7] On November 25, 2008, they filed a Complaint against Firestar for nonpayment of salary, overtime pay, holiday pay, and service incentive leave pay before the labor arbiter.[8] On January 6, 2009, Perez and Moriles amended their Complaint to one for illegal dismissal and additionally

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1 *Remoticado v. Typical Construction Trading Corporation*, 830 Phil. 508 (2018) [Per J. Leonen, Third Division].

2 *Rollo*, pp. 8–53.

3 Id. at 55–68. The November 21, 2012 Decision in CA-G.R. SP No. 116413 was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao (now a member of this Court) and Victoria Isabel A. Paredes of the Fourteenth Division, Court of Appeals, Manila.

4 Id. at 71–72. The February 6, 2013 Resolution in CA-G.R. SP No. 116413 was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao (now a member of this Court) and Victoria Isabel A. Paredes of the Fourteenth Division, Court of Appeals, Manila.

5 The Decision and Resolution of the National Labor Relations Commission were not attached to the *rollo*.

6 CA *rollo*, pp. 136–141. The August 25, 2009 Decision was penned by Labor Arbiter Fedriel S. Panganiban.

7 *Rollo*, pp. 57–58.

8 Id. at 56.

impleaded SM Hypermarket Valenzuela and Engr. Juben Ragos/Engr. Antolin Paule as respondents.[9]

Perez asserted that he was employed with Firestar from February 27, 2006 until November 21, 2008, when he was told by a Firestar officer to resign for having reported late for duty.[10] For his part, Moriles alleged that he had been working for Firestar from October 1, 2005 until he was removed on December 24, 2008, after Firestar's operations manager went to SM Hypermarket Valenzuela with a Memorandum of Pull-out to remove him from his post there.[11]

Firestar denied the charges against it. It alleged that Perez stopped reporting to his security post and went on absence without official leave from November 21, 2008. This prompted Firestar to send him a December 8, 2008 Memorandum to report to its head office, but Perez failed to do so.[12] As for Moriles, Firestar alleged that it issued him a December 25, 2008 Memorandum, ordering him to explain his involvement in certain unspecified irregularities in his assigned post. Though Moriles received and signed this Memorandum, he did not reply; instead, he stopped reporting for duty.[13] Firestar insisted that the two were not dismissed, and instead, they never returned to their duties of their own volition.[14]

In an August 25, 2009 Decision,[15] the labor arbiter dismissed the Complaint for lack of merit,[16] saying that there was no substantial evidence showing that Perez and Moriles were illegally dismissed, and that they had voluntarily refused to report for work despite receiving written orders.[17]

The National Labor Relations Commission dismissed Perez and Moriles's appeal in a May 24, 2010 Decision.[18] It likewise found no evidence to support their claim for illegal dismissal.[19] They filed a Motion for Reconsideration, but this was denied in a July 30, 2010 Resolution.[20]

The two filed a Petition for *Certiorari* before the Court of Appeals.[21] They asserted that Firestar failed to prove that they had refused to go to work despite having been ordered to return.[22] They added that the National

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9 Id.
10 Id. at 57.
11 Id. at 58.
12 Id. at 59.
13 Id. at 60.
14 Id.
15 CA *rollo*, pp. 136–141.
16 *Rollo*, p. 61.
17 Id.
18 Id.
19 Id.
20 Id.
21 Id. at 62.
22 Id. at 112.

Labor Relations Commission erred when it denied their claim for reinstatement with full backwages and damages.[23]

In a November 21, 2012 Decision,[24] the Court of Appeals dismissed the Petition for lack of merit.[25] It ruled that for a claim of illegal dismissal to prosper, an employee must first establish having been dismissed, which Perez and Moriles failed to do.[26] It found no showing that Perez resigned or was forced to resign, saying that if Perez were truly dismissed, he should have included this allegation in his original Complaint.[27] The same was true for Moriles—the Court of Appeals found no evidence of his dismissal, there being no termination letter or any other indication.[28]

The Court of Appeals found that Firestar had no intention of terminating Perez and Moriles when they issued Memoranda ordering them to explain their absences.[29] The two chose to ignore its directives and instead filed a case for illegal dismissal.[30]

Perez and Moriles filed a Motion for Reconsideration,[31] but because it was belatedly filed, the Court of Appeals denied it in a February 6, 2013 Resolution.[32] Hence, the two filed their Petition[33] before this Court.

Petitioners assert that the Court of Appeals misconstrued the applicable laws and gravely erred in its appreciation of the evidence.[34] It allegedly erred when it found that petitioners failed to substantiate any of their claims for illegal dismissal.[35]

In a July 8, 2013 Resolution, this Court ordered respondents to comment on the Petition.[36] It later found that the directive was deemed unserved[37] and required petitioners to inform it of the present addresses of respondents and their counsel.[38]

Petitioners filed a Compliance.[39] They later manifested that they had furnished both respondent Firestar and its counsel copies of their

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23 Id. at 62–63.
24 Id. at 55–68.
25 Id. at 67.
26 Id. at 63–64.
27 Id. at 64.
28 Id. at 64–65.
29 Id. at 66.
30 Id.
31 Id. at 74–97.
32 Id. at 71–72.
33 Id. at 8–50.
34 Id.
35 Id. at 15.
36 Id. at 136.
37 Id. at 146.
38 Id.
39 Id. at 156.

Compliance, but both were returned to sender. As for respondent SM Hypermarket Valenzuela, petitioners said that it refused to receive the copy.[40] Noting these, this Court deemed the unserved July 8, 2013 Resolution as served by substituted service.[41]

This Court then repeatedly required the general manager of respondent SM Hypermarket Valenzuela to file a comment and to show cause why they should not be disciplinarily dealt with or held in contempt for failing to file a comment despite receiving the directive.[42] Each time the general manager failed to comply, this Court imposed a fine.[43] In the meantime, considering respondents' noncompliance, this Court resolved to order the elevation of the case records.[44]

This Court later requested petitioners to inform it anew of the correct and present address of respondents.[45] Petitioners failed to comply, prompting this Court to order its counsel to show cause.[46]

The counsel later manifested that all their efforts to find respondents' and their counsels' addresses have become futile. The registered addresses of respondent Firestar and its counsel, as found on the internet, have not changed from the time they first informed this Court of these addresses.[47] The counsel added that they have attempted to furnish copies of their pleadings and this Court's Resolutions to respondent SM Hypermarket Valenzuela, but the latter refused receipt every time.[48]

To this day, respondents have not commented on the Petition. Appropriately, this Court holds that respondents have no interest in participating in the case. Thus, this case must be dispensed with despite respondents' lack of comment.

The primary issue for this Court's resolution is whether the Court of Appeals erred in affirming the National Labor Relations Commission's dismissal of the illegal dismissal case.

The Petition has no merit.

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40 Id.
41 Id. at 164, 168.
42 Id. at 169.
43 Id. at 170, 173, 190–191.
44 Id. at 199.
45 Id. at 204.
46 Id. at 220.
47 Id. at 223.
48 Id.

I

Petitioners primarily allege that they were terminated from employment without cause, and thus, are entitled to their monetary claims.

This Court's authority to decide a petition for review on *certiorari* is limited to purely legal questions.[49] While this Court may exercise its power to review the facts of a case and reexamine the evidence submitted before the lower tribunals, this is permitted only in exceptional cases. In *Medina v. Mayor Asistio, Jr.*,[50] the recognized exceptions were enumerated:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[51] (Citations omitted)

Here, petitioners seek the reversal of the National Labor Relations Commission's and the Court of Appeals' factual findings. Yet, none of the jurisprudential exceptions exist for this Court to thresh out the facts. Hence, we are limited to determining whether the Court of Appeals gravely abused its discretion.

In *Montoya v. Transmed Manila Corporation*,[52] this Court held that in Rule 45 petitions for labor cases, its review is limited to examining the assailed Court of Appeals decision "from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission's] decision before it, not on the basis of whether the [Commission's] decision on the merits of the case was correct."[53] Thus, this Court determines the legal correctness of the Court of Appeals' finding that the National Labor Relations Commission's ruling had basis in fact and in law.[54] This determination is made by examining whether the Court of Appeals correctly determined that all the adduced pieces of

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49 *Insurance Company of North America vs. Asian Terminals, Inc.*, 682 Phil. 213, 224 (2012) [Per J. Peralta, Third Division].
50 269 Phil. 225 (1990) [Per J. Bidin, Third Division].
51 Id. at 232.
52 613 Phil. 696 (2009) [Per J. Brion, Second Division].
53 Id. at 707. (Citations omitted)
54 Id.

evidence were considered; that no evidence which should not have been considered was considered; and that the evidence presented supports the National Labor Relations Commission's findings.[55]

Here, we see no reason to disturb the ruling of the Court of Appeals.

The labor arbiter, the National Labor Relations Commission, and the Court of Appeals had uniform findings, not only in their understanding of the facts, but also in their assessment of the sufficiency of the evidence.

The factual findings of an administrative agency that has expertise in a particular field are granted substantial weight.[56] This Court has always held that, so long as they are supported by substantial evidence, the National Labor Relations Commission's factual findings and conclusions are not only afforded weight and deference, but are also final and binding on this Court.

II

Petitioners assert that the Court of Appeals and the labor tribunals erred in finding no illegal dismissal to speak of here. Instead, they allege that their dismissal was attended with gross and evident bad faith.[57]

This claim has no merit.

In illegal dismissal cases, the burden of proof that an employee's dismissal was for a valid cause lies with the employer.[58] However, before this burden falls on the employer, the employee must first prove having been dismissed.[59] In *Remoticado v. Typical Construction Trading Corporation*,[60] this Court held:

> It is true that in illegal termination cases, the burden is upon the employer to prove that termination of employment was for a just cause. Logic dictates, however, that the complaining employee must first establish by substantial evidence the fact of termination by the employer. If there is no proof of termination by the employer, there is no point in even considering the cause for it. There can be no illegal termination when there was no termination:
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> > Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish

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55 *See Hubilla v. HSY Marketing Ltd., Co.*, 823 Phil. 358 (2018) [Per J. Leonen, Third Division].
56 Id. at 374–375.
57 *Rollo*, p. 17.
58 *Atienza v. Saluta*, G.R. No. 233413, June 17, 2019 [Per J. J.C. Reyes, Second Division] at 8. This pinpoint citation refers to a copy of the decision uploaded to the Supreme Court website.
59 Id.
60 830 Phil. 508 (2018) [Per J. Leonen, Third Division].

> by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[61] (Citations omitted)

This follows the principle that the burden of proof rests on the party who asserts the affirmative of an issue.[62] Since petitioners were the ones claiming that they were illegally dismissed, they must first prove the fact of their dismissal.[63]

Unfortunately, petitioners failed to hurdle the burden of proof.

Petitioners allege that on November 21, 2008, Perez was reprimanded and told to resign due to his habitual tardiness.[64] As for Moriles, petitioners allege that on December 20, 2008, a Firestar representative pulled him out of duty and told him that he was dismissed.[65] Both claim that they questioned their dismissal but were no longer allowed to report for work after being verbally removed from employment.[66]

These are bare, self-serving statements, which are insufficient to establish the fact of dismissal. They have no probative value and cannot be seen as *prima facie* evidence of petitioners' dismissal. Aside from their allegations that they were directed to resign and prevented from returning to work, they failed to present any competent evidence showing that they indeed submitted a letter of resignation or that they were forced out of their assignment.

In contrast, the records show that the company sent petitioner Perez, through registered mail, a December 8, 2008 Memorandum requiring him to report to the head office to explain his absences.[67] It also issued petitioner Moriles a December 25, 2008 Memorandum ordering him to go to the office to explain a number of irregularities that occurred in his assigned post.[68] Yet, both petitioners refused to heed these orders.[69] Notably, the Memoranda were issued to petitioners before they amended their Complaint from that of nonpayment of salary and monetary benefits to illegal dismissal.[70] Had petitioners reported for work anytime between filing the original Complaint in November 2008 and its amendment in January 2009,

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61 Id. at 515.
62 *Ginta-Ason v. J.T.A. Packaging Corporation*, G.R. No. 244206, March 16, 2022 [Per J. Hernando, Second Division] at 5. This pinpoint citation refers to a copy of the decision uploaded to the Supreme Court website.
63 Id.
64 *Rollo*, p. 29.
65 Id.
66 Id.
67 Id. at 68.
68 Id. at 69.
69 Id.
70 Id. at 56.

they would have been informed that their Complaint was premature since, to begin with, they had not been terminated.

Furthermore, respondents sent petitioners three Memoranda through registered mail dated January 6, 15, and February 3, 2009, reiterating their order for petitioners to report for work and informing them that they have been reassigned to a new security post. This indicates respondents' lack of intention to terminate petitioners' employment. Conversely, petitioners' intention to relinquish their employment was demonstrated when they unheeded all letters sent to their recorded addresses.[71]

Petitioners claim that the Memoranda should not be considered as they had never received them. However, the records show that petitioner Moriles received and signed the December 25, 2008 Memorandum,[72] while the December 8, 2008 Memorandum was sent to petitioner Perez's residence through registered mail. Then again, if petitioners had reported for work, the Memoranda and succeeding letters would need not be issued and sent as these could have been given to them personally.

Petitioners further assert that the letters sent after they had filed the original Complaint were merely done in bad faith to make it appear that they severed their own employment.[73] The contention is not well taken. It is difficult to assume the intentions behind respondents' actions as petitioners never reported for work to confirm their speculations. If petitioners had attempted to visit the company headquarters but had been denied entry, there would be no disputing respondents' malicious actions. But these scenarios did not transpire. Evidently, petitioners' claims remain pure speculation.

Without any showing of an overt or positive act proving that they were terminated from employment, petitioners' claim of dismissal cannot be sustained.[74] If anything, their actions showed their own disinterest in resuming their employment with respondent Firestar.

Petitioners also claim that respondent SM Hypermarket Valenzuela is liable to pay their monetary claims. They claim that it and Henry Sy are the principal respondents in this case.[75] Notably, this allegation was only raised in the Court of Appeals level.[76] In any case, it is untenable given that the labor tribunals and the Court of Appeals have all adjudged petitioners as not being dismissed, and thus, were not entitled to any of their monetary claims.

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71 CA *rollo*, p. 102.
72 Id. at 99.
73 Id. at 108.
74 *See Leopard Integrated Services, Inc. v. Macalinao*, 588 Phil. 495 (2008) [Per J. Austria-Martinez, Third Division].
75 *Rollo*, p. 16.
76 Id. at 20.

III

Petitioners also assert that filing the illegal dismissal case is proof of their desire to return to work.[77]

The argument cannot stand. In cases such as this, *Leopard Integrated Services, Inc. v. Macalinao*[78] teaches that the totality of an employee's acts should be considered:

> The fact that respondent filed a complaint for illegal dismissal, as noted by the CA, is not by itself sufficient indicator that respondent had no intention of deserting his employment since the totality of respondent's antecedent acts palpably display the contrary. In *Abad v. Roselle Cinema*, the Court ruled that:
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> > The filing of a complaint for illegal dismissal should be taken into account together with the surrounding circumstances of a certain case. In *Arc-Men Food Industries, Inc. v. NLRC,* the Court ruled that the substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. "This is clearly a *non sequitur* reasoning that can never validly take the place of the evidence of both the employer and the employee."[79] (Emphasis supplied, citations omitted)

Here, petitioners actions prove that they decided to sever their employment relations with respondent Firestar. No shred of evidence supports their claim of dismissal other than their self-serving conjectures. With no proof to speak of, this Court sees no reason to reverse the consistent findings of the Court of Appeals and the labor tribunals.

FOR THIS REASON, the Petition is **DENIED**. The November 21, 2012 Decision and February 6, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 116413 are **AFFIRMED**. The Complaint for illegal dismissal is **DISMISSED**.

SO ORDERED." (**KHO, JR., *J.*,** *on leave*)

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77 Id. at 49.
78 588 Phil. 495 (2008) [Per J. Austria-Martinez, Third Division].
79 Id. at 504.

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By: 

MA. CONSOLACION GAMINDE-CRUZADA
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14 APR 2023

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