Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated **February 22, 2023**, *which reads as follows:*

G.R. No. 254065 – PAL EXPRESS/AIR PHILIPPINES CORP./LEONIDES PEÑA, *Petitioners*, **v. ANGELO RAYMUND S. SANTOS**, *Respondent.*

After a review of the Petition for Review on *Certiorari*,[1] including the Decision,[2] dated November 12, 2019, and the Resolution,[3] dated September 28, 2020, both of the Court of Appeals (**CA**), in CA-G.R. SP No. 161082, and the Decision,[4] dated December 28, 2018, and the Resolution,[5] dated March 20, 2019, of the National Labor Relations Commission (**NLRC**) in NLRC LAC No. 12-004523-18, and the Decision,[6] dated July 31, 2018, of the Labor Arbiter in NLRC NCR Case No. 04-06157-18, the Court resolves to **DENY** the same for failure of the petitioners PAL Express/Air Philippines Corporation and Leonides Peña (collectively, **the petitioners**),[7] to sufficiently show that the CA committed a reversible error to warrant the exercise of the Court's discretionary appellate jurisdiction.

When the Court is asked to review the ruling of the CA with respect to a Petition for *Certiorari via* a Rule 45 Petition, the Court's ambit of review is limited because such a Rule 45 Petition seeks to invoke the Court's discretionary appellate jurisdiction on the questions of law raised by an aggrieved party.[8] In labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC.[9]

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1 *Rollo*, pp. 15-55.
2 *Id.* at 56-78. Penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Pedro D. Corales and Louis P. Acosta.
3 *Id.* at 29-31.
4 *Id.* at 385-406.
5 *Id.* at 431-433.
6 *Id.* at 250-258.
7 Referred to as "Leonides **Pena**" in some portions of the *Rollo*.
8 RULES OF COURT, Rule 45, sec. 6, in relation to sec. 1.
9 *Seventh Fleet Security Services, Inc. v. Loque*, 929 SCRA 530 (2020).

A Petition for *Certiorari* may only correct errors of jurisdiction, or such grave abuse of discretion amounting to lack or excess of jurisdiction.[10] It is an extraordinary remedy specifically levied to keep lower courts and tribunals within the bounds of their jurisdiction.[11] It cannot be resorted to so as to correct perceived errors of judgment.[12] As such, the Court's review of the present case is limited and narrow.

In resolving the Petition, the Court is tasked to determine whether the CA erred in partially granting Santos' Petition for *Certiorari.*

Grave abuse of discretion is defined as "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."[13] It arises when a lower court or tribunal violates and contravenes the Constitution, the law or existing jurisprudence.[14]

The Court agrees with the CA that the NLRC did not capriciously or whimsically exercise its discretion in finding that Santos was illegally dismissed by the petitioners, albeit for a different reason.

Santos was illegally dismissed

It is settled that for a dismissal to be valid, the rule is that the employer must comply with both substantive and procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 297, 298, or 299 (formerly Articles 282, 283, and 284) of the Labor Code of the Philippines (**Labor Code**).[15] Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.[16]

Corollarily, in termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal was illegal.[17] Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence.[18] Substantial evidence is more than a

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10 *Espinosa v. Sandiganbayan and People*, 934 SCRA 295 (2020).
11 *Cruz and Cruz v. People*, 812 Phil. 166, 171 (2017).
12 *People v. Sandiganbayan and Abalos*, G.R. No. 228281, June 14, 2021.
13 *People v. Sergio and Lacanilao*, 923 SCRA 203 (2019).
14 *Id.*
15 *Almogera, Jr. v. A&L Fishpond and Hatchery, Inc. and Tycangco*, G.R. No. 247428, February 17, 2021.
16 *Id.*
17 *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423, 433 (2017), citing *Agusan del Norte Electric Cooperative, Inc. et al v. Cagampang et al.*, 589 Phil. 306 (2008).
18 *Id.*

mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[19]

The Labor Code provides:

> Art. 294. [279] *Security of Tenure*. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
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> ....
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> ART. 297. [282] *Termination by Employer*. – An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

No act or omission shall be considered as analogous causes unless expressly specified in the company rules and regulations or policies.[20] The petitioners' Manual of Discipline expressly provides that a 4th count of "No Show" merits the imposition of termination. Jurisprudence is instructive that violations of company policies, rules and regulations may be grounds for termination.

In terms of procedure, in *Unilever Philippines, Inc. v. Rivera*,[21] the Court clarified:

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19 *Id.*

20 Department of Labor and Employment, Department Order No. 147-15, Rule I-A, Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as Amended, Section 5(5.2), at <https://blr.dole.gov.ph/wp-content/uploads/2017/10/do_147-15_s2015.pdf> (last accessed on February 24, 2022).

21 710 Phil. 124 (2013).

> (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.[22]

There is no dispute that the petitioners complied with the two-notice requirements. What is disturbing, however, is the delay between the Notice of Administrative Charge, as the first written notice, requiring Santos to explain his "No Show" infractions in May 2016, and the January 8, 2018 Decision, as the second written notice, finally terminating him.

The gap between the dates when the infractions were committed and the date when the decision was handed is palpable – a total of one year, eight months and two days. Why did it take the petitioners so much time before resolving the issue of the "No Show" violations? Can an employer choose to delay the exercise of its prerogative to discipline and/or terminate an employee for an unexplained period of time, considering that it already had the written explanation of the employee?

To the Court's mind, the petitioners are already guilty of laches in disciplining Santos for his "No Show" violations. The petitioners did not act

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22 *Id.* at 136-137.

on the "No Show" charges because it had initially already terminated Santos on the ground of Abandonment of Post. In their view, a subsequent termination based on the "No Show" charges was a superfluity.

Laches has been defined as the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.[23]

The failure of the petitioners to decide on whether to sanction Santos on the basis of the "No Show" infractions implies that they have abandoned the same. The same should be true even if they later granted Santos' appeal for his termination on account of Abandonment of Post to be converted into suspension. Moreover, even after putting Santos under a one year preventive watch, there is no evidence that Santos had been guilty of other offenses from 2016 to 2018. The January 8, 2018 Decision to dismiss Santos clearly provides that it was grounded on the 2015 to 2016 "No Show" violations. The petitioners already had everything they needed as early as 2016 in order to come up with a decision, but they did not.

This practice cannot be countenanced because the employee is left wondering in the meantime that the employer fails to timely release a decision on his or her infractions. After all, the employee is already entitled to a reasonable period to explain or refute the charges brought by an employer. To sanction the petitioners' practice in this case would be to allow employers to abuse the time to decide by postponing their judgment as a way to reserve a means for terminating an employee it deems undesirable when convenient to the employer. Requiring that the employer resolve the disciplinary case within a reasonable period is to accord parity to the reasonable period afforded the employee to dispute the charges levied against him or her. That the petitioners spent one year, eight months and two days in between the "No Show" Notice of Administrative Charge and the Decision is plainly unjust.

In addition, the petitioners' actions effectively restricts the application of the writing-off policy because an offense can only be written off if the employee does not commit the same offense within a period of one or two years reckoned from the time the penalty for the second offense is served. How can an employee like Santos avail of the write-off policy if the employer purposedly delayed imposing the appropriate sanction for his past infractions? This difficulty gains prominence when the Court considers the Manual of Discipline which provides that a 2nd offense of "No Show" is punished by a 14-day suspension. The employer can easily circumvent the employee-favorable write-off policy by delaying the imposition of the suspension, preventing the 2-year period from running at all at the end of service of the

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23 *Philippine Carpet Manufacturing Corp. et al. v. Tagyamon et al.*, 723 Phil. 562, 571-572 (2013).

14-day suspension. The write-off policy was precisely issued to prevent old offenses from becoming aggravating circumstances against the employee.

The Court is genuinely troubled by the long period it took for the petitioners to act on the "No Show" charges. Both Notices of Administrative Charges were supposed to be taken up during the May 17, 2016 clarificatory hearing. Therefore, the resolution of both notices involving the "No Show" and Abandonment of Post violations should come thereafter as a matter of course.

Did the petitioners perhaps think that it would be wise to withhold action on the "No Show" infractions as a weapon against Santos should he commit another infraction? Was judgment on the "No Show" infractions reserved so that when Santos violates another company policy, the petitioners can easily bring up the same and cause his termination?

When the Court considers the allegations[24] of Santos that the petitioners have been undermining the efforts of the flight attendants to organize a union, the possible answers depict ill motives. The timing of the release of the January 8, 2018 Decision is perplexing, to say the least.

In summary, having been barred by laches, the petitioners no longer had any legal ground to terminate Santos. Had they acted seasonably, the petitioners would have had two grounds for the termination of Santos in 2016. But they chose to act only on the Abandonment of Post charges.

It is an entrenched principle that an employer enjoys a wide latitude in regulating, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.[25] For such management prerogative to be respected and be deemed valid, it must be pursued in good faith, for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[26]

The termination process under the Labor Code should not be abused to circumvent the constitutional guarantee of security of tenure. Delays in the issuance of the second written notice containing the employer's decision to terminate the employee is egregiously unfair and mocks the very essence of due process. The delay in this case is palpable and oppressive. The Court cannot suffer such an underhanded tactic.

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24 *Rollo*, pp. 227-230, and 242-243.
25 *Reyes-Rayel v. Philippine Luen Thai Holdings et al.*, 690 Phil. 533, 550 (2012).
26 *Id.*

In all, the Court finds that the CA did not commit any reversible error in affirming that Santos was illegally dismissed.

Separation pay in lieu of reinstatement and the doctrine of strained relations

The CA ordered that the petitioners reinstate Santos to his former position without loss of seniority rights.[27]

The petitioners submit, however, that reinstatement is no longer possible due to strained relations between them and Santos.[28] The petitioners do not deny that Santos was involved in union activities, and as such, his reinstatement "will create an atmosphere of antipathy and antagonism."[29] Invoking jurisprudence, the petitioners highlight that in such cases the correct recourse is to order the payment of separation pay in lieu of reinstatement.[30] On this score, the petitioners argue that the Labor Arbiter correctly awarded separation pay in lieu of Santos' reinstatement.[31]

Settled is the rule that an employee who was illegally dismissed from work is entitled to reinstatement without loss of seniority rights, and other privileges, as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[32] The right to be reinstated is predicated upon the restoration of the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal.[33]

Jurisprudence, however, has recognized that where reinstatement is not feasible, expedient or practical, as where reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and employee has been unduly strained by reason of their irreconcilable differences, it would be more prudent to order payment of separation pay instead of reinstatement.[34]

Nippon Express Philippines Corp. v. Daguiso[35] is instructive:

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27 *Rollo*, p. 77.
28 *Id.* at 44.
29 *Id.* at 45.
30 *Id.* at 44-45.
31 *Id.* at 45.
32 *Dumapis et al. v. Lepanto Consolidated Mining Co.*, G.R. No. 204060, September 15, 2020.
33 *Rodriguez v. Sintron Systems Inc. and/or Capaque*, 910 SCRA 498 (2019).
34 *Nippon Express Philippines Corp. v. Daguiso*, G.R. No. 217970, June 17, 2020.
35 *Id.*

> As reinstatement is the rule, for the exception of strained relations to apply, it should be proved that the employee concerned occupies a position where he/she enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned. Strained relations must be of such nature or degree as to preclude reinstatement.
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> Moreover, strained relations must be demonstrated as a fact, adequately supported by evidence on record. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relations must be supplemented by the rule that the existence of strained relations is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause. (Citations omitted)

The Court finds that the petitioners failed to prove the existence of strained relations as a matter of fact. Mere allegation that Santos' reinstatement will not be conducive to industrial harmony is not sufficient to defeat the categorical language of the Labor Code entitling an illegally dismissed employee to reinstatement. Moreover, that Santos was undeniably engaged in concerted union activities does not automatically give rise to strained relations, as it is within Santos' constitutionally protected right to pursue the same.

Although Santos himself prayed in the alternative for reinstatement or the payment of separation pay in his Position Paper before the Labor Arbiter,[36] on partial appeal to the NLRC, Santos limited his prayer to reinstatement only.[37] Clearly, the order of reinstatement by the NLRC, as affirmed by the CA, is correct.

WHEREFORE, the Petition for Review on *Certiorari* filed by the petitioners PAL Express/Air Philippines Corporation and Leonides Peña is **DENIED**. The Decision, dated November 12, 2019, and the Resolution, dated September 28, 2020, both of the Court of Appeals, in CA-G.R. SP No. 161082, are **AFFIRMED**.

SO ORDERED. (***Dimaampao, J.***, *recused himself from the case as respondent is related to Justice Dimaampao's Judicial Staff Head;* ***Kho, Jr. J.***, *designated as additional Member per Raffle, dated February 15, 2023.*)

By authority of the Court:

MisaDCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court JB 5/11/23

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36 *Rollo*, p. 207.
37 *Id.* at 367.

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