



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **January 11, 2023** which reads as follows:*

“G.R. No. 245335 (Albert M. Adriano, Diego P. Africa, Jr., Rodenes P. Santiago, Jr., Arnel O. Pesio, Jurry Balmosen, Salvador Debolos, Afrinlicijen C. Fortugaliza, Rio G. Bios, Mechael* D. Tumampo, Saldy Dapitan, Daryl Arriescado, Roger Pagobo, Edwin Matin-Ao,** Alfie Saber, Juge Mirandilla, Rodel Salimbot,** Nel Borancia, Ludivico Gacer, James Catalan, Marvic Paningbatan, Mario Paningbatan, Gary Mahusay, and Edwin Flores, petitioners v. Smartlook Marketing Corp., Targetline Marketing Corp., Goldenwin Empire Marketing Corp., Wantofree Oriental Trading, Manny Co, and Allan Co, respondents).** – Assailed in this petition for review on *certiorari*¹ under Rule 45 of the Rules of Court are the Decision² dated December 13, 2018 and the Resolution³ dated February 21, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 155709 affirming the Decision⁴ dated November 21, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 04-001542-17, which held that petitioners Albert M. Adriano, Diego P. Africa, Jr., Rodenes P. Santiago, Jr., *et al.* (petitioners) were not illegally dismissed and not entitled to 13th month pay, overtime pay, holiday pay, holiday premium pay, rest day premium pay, Emergency Cost of Living Allowance (ECOLA), night shift differential pay, paternity leave, backwages, moral damages, exemplary damages, and attorney’s fees. The NLRC Decision affirmed the Decision⁵ dated December 30, 2016 of the Labor Arbiter (LA) in NLRC NCR Case No. 09-11525-16 dismissing petitioners’ complaint for lack of merit.

* “Michael” in some parts of the *rollo*.

** “Arriescado” in some parts of the *rollo*.

*** “Matinao” in some parts of the *rollo*.

**** “Salimbao” in some parts of the *rollo*.

¹ *Rollo*, pp. 24-49.

² *Id.* at 6-19. Penned by Associate Justice Fernanda Lampas-Peralta with Associate Justices Rodil V. Zalameda (now a member of the Court) and Henri Jean Paul B. Inting (now a member of the Court), concurring.

³ *Id.* at 20-21.

⁴ Not attached to the *rollo*. See *rollo*, pp. 12 and 1240-1241.

⁵ *Id.* at 53-65. Penned by Labor Arbiter Clarissa G. Beltran-Lerios.

11/23

The Facts

Petitioners were hired as drivers and delivery helpers by respondent Smartlook Marketing Corp. (SMC), a domestic corporation managed and owned by respondents Manny Co (Manny) and Allan Co (Allan), where they acted as general manager and assistant general manager, respectively. Petitioners' duties involved the delivery of goods and merchandise to SMC's clients and customers. Petitioners claim that they were transferred to SMC from respondent Wantofree Oriental Trading, a company also managed and owned by Manny and Allan. Respondents Targetline Marketing Corp. and Goldenwin Empire Marketing Corp. are also allegedly both owned and managed by Manny and Allan.⁶

SMC discovered rampant theft among their employees and decided to create new policies in the delivery of goods to its customers, among which were safety seals for containers and the issuance of "Individual Standard Accountability Forms" (ISAF) to all its drivers and delivery helpers. The ISAF provided, among others, that if a container's seal was damaged upon arrival in its destination, the driver or delivery helper would be responsible for whatever shortage of goods is found after the conduct of an audit. SMC began to implement this policy on September 10, 2016. However, some of the delivery crew – including petitioners Rodel Salimbot, Edwin Matin-ao, Rodenes P. Santiago, Jr., and Diego Africa (collectively, Salimbot, *et al.*) – refused to sign the ISAF and did not proceed with their deliveries.⁷

On September 15, 2016, SMC's Human Resources (HR) Department sent individual notices to explain with notices of preventive suspension⁸ to Salimbot, *et al.*, for engaging in unlawful work stoppage and insubordination. On September 22, 2016, Salimbot, *et al.* were sent individual notices of hearing.⁹ On September 26, 2016, SMC's Logistics Department submitted a report informing the HR Department of massive absences among the company's delivery crew, including petitioners Albert M. Adriano, Arnel O. Pesio, Jurry Balmosena, Salvador Debolos, Afrinlicijen C. Fortugaliza, Rio G. Bios, Mechael D. Tumampo, Saldy Dapitan, Daryl Arriescado, Roger Pagobo, Alfie Saber, Juge Mirandilla, Nel Borancia, Ludivico Gacer, James Catalan, Marvic Paningbatan, Mario Paningbatan, Gary Mahusay, and Edwin Flores (collectively, Adriano, *et al.*). Thus, on September 27, 2016, SMC sent individual return to work orders with notice to explain¹⁰ to Adriano, *et al.* The concerned petitioners neither reported for work nor submitted an explanation.¹¹

⁶ *Id.* at 7-8.

⁷ *Id.* at 8.

⁸ *Id.* at 640-643.

⁹ *Id.* at 650-653.

¹⁰ *Id.* at 656-666.

¹¹ *Id.* at 8-9.

On September 20, 2016, prior to the issuance of the return to work orders, petitioners filed with the LA a complaint against private respondents for illegal dismissal, illegal deductions for vehicular accidents, underpayment of salaries and 13th month pay, and nonpayment of overtime pay, holiday pay, holiday premium pay, rest day premium pay, ECOLA, night shift differential pay, and paternity leave, with prayer for reinstatement and payment of backwages, moral damages, exemplary damages, and attorney's fees.¹² In their position paper, petitioners alleged that: (i) they were actually terminated when SMC's Logistics and HR Departments advised them not to report for work and barred them from entering SMC's premises after they refused to sign the ISAF; (ii) petitioners are SMC's regular employees who enjoyed security of tenure and could not be terminated except for valid cause; (iii) petitioners were made to work beyond eight (8) hours a day without the corresponding payment of overtime pay, night shift differential pay, and holiday pay; (iv) they were not paid the proper amount of 13th month pay as they only received ₱2,500.00; and (v) petitioners were entitled to moral and exemplary damages because their dismissal was illegal and attended by bad faith.¹³

SMC, for its part, denied petitioners' allegations, stating the following: (i) petitioners are field personnel paid on a per trip basis at an average rate of ₱600.00 to ₱800.00 per trip for drivers, and ₱450.00 to ₱550.00 per trip for delivery helpers, depending on the distance and place of the delivery; (ii) since they are field personnel, they are not entitled to overtime pay, holiday premium pay, service incentive leave pay, and 13th month pay; (iii) before the end of 2015, SMC received complaints from its customers about shortages in the deliveries, prompting an investigation which led to the apprehension of some of its employees for theft; (iv) due to the rampant theft, SMC implemented the issuance of the ISAF which petitioners refused to sign without valid reason; (v) in addition to refusing to sign the ISAF, petitioners did not proceed with their scheduled deliveries and did not heed their notices to explain and to return to work.¹⁴ SMC also noted that it had received the Summons for the complaint only on September 28, 2016, after it had issued the return-to-work orders on September 27, 2016.¹⁵

The LA Ruling

In a Decision¹⁶ dated December 30, 2016, the LA dismissed petitioners' complaint for lack of merit and ordered SMC to continue the proceedings regarding Salimbot, *et al.* It further ordered the remaining petitioners to return to work.¹⁷

¹² Id. at 9.

¹³ Id.

¹⁴ Id. at 10.

¹⁵ Id. at 150.

¹⁶ Id. at 53-65. Penned by Labor Arbiter Clarissa G. Beltran-Lerios.

¹⁷ Id. at 65.

The LA opined that petitioners failed to prove the fact of their dismissal, noting that: (1) there were no notices of termination in the record; (2) petitioners failed to specify which managers told them they were terminated and the name of the guard who prevented them from entering the company premises, casting doubt on their story; and (3) it is highly incredible that SMC would issue a blanket dismissal of its drivers and helpers as this would impair its daily deliveries.¹⁸ Petitioners' argument that SMC is one and the same entity as Wantofree Oriental Trading, Targetline Marketing Corp., and Goldenwin Empire Marketing Corp. was not shown to be relevant to the case, but the LA held that in any case, petitioners failed to present convincing evidence of this assertion. The LA further held that petitioners are field personnel and are thus not entitled to overtime pay, holiday pay, rest day pay, and premiums for holidays and rest days.¹⁹

Aggrieved, petitioners appealed to the NLRC.

The NLRC Ruling

In a Decision²⁰ dated November 21, 2017, the NLRC affirmed the LA's ruling and held that petitioners failed to present proof of positive and overt acts of dismissal. The NLRC reiterated that petitioners could not even substantiate their claim of being verbally dismissed as they could not name the managers who uttered such dismissal nor the name of the security guard who refused to let them enter the company premises.²¹

Petitioners moved for reconsideration,²² which was denied in a Resolution²³ dated March 8, 2018. Undaunted, petitioners filed a petition for *certiorari*²⁴ under Rule 65 of the Rules of Court with the CA.

The CA Ruling

In a Decision²⁵ dated December 13, 2018, the CA dismissed the petition for *certiorari* finding no grave abuse of discretion on the part of the NLRC.²⁶

The CA upheld the factual findings of the LA and the NLRC, reiterating that petitioners failed to prove the fact of their dismissal as they were unable

¹⁸ Id. at 63.

¹⁹ Id. at 63-64.

²⁰ Not attached to the *rollo*. See *rollo*, pp. 12 and 1240-1241.

²¹ Id. at 1240.

²² Id. at 70-79.

²³ Id. at 67-69. Penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Gina F. Cenit-Escoto, concurring.

²⁴ Id. at 80-103.

²⁵ Id. at 6-19.

²⁶ Id. at 18.

to name the managers who allegedly terminated them, nor were they able to provide any notices of termination. Petitioners cannot be said to have abandoned their work, however, as the records are bereft of any indication that they failed to report with intent to sever their relationship with SMC. Mere absence is not sufficient to be deemed abandonment of work. Finally, it held that petitioners, as field personnel, are not entitled to 13th month pay, overtime pay, night shift differential, holiday pay, holiday premium pay, rest day premium pay, and service incentive leave.²⁷

Petitioners moved for reconsideration,²⁸ but the motion was denied in a Resolution²⁹ dated February 21, 2019. Hence this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in finding that the NLRC did not commit grave abuse of discretion in holding that: (1) petitioners were not illegally dismissed; and (2) the petitioners are not entitled to the monetary benefits prayed for.

The Court's Ruling

The petition is denied.

“It must be stressed that to justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered ‘grave,’ discretion must be exercised in a despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.”³⁰

Thus, case law instructs that “[i]n labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the

²⁷ Id. at 13-18.

²⁸ Id. at 122-127.

²⁹ Id. at 20-21.

³⁰ *Jolo's Kiddie Curts v. Caballa*, 821 Phil. 1101, 1109 (2017) [Per J. Perlas-Bernabe, Second Division], citing *Gadia v. Sykes Asia, Inc.*, 752 Phil. 413, 419-420 (2015) [Per J. Perlas-Bernabe, First Division].

applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.”³¹

Guided by the foregoing considerations, the Court finds that the CA correctly found that the NLRC committed no grave abuse of discretion in holding that there was no illegal dismissal in this case. “In every employee dismissal case, the employer bears the burden of proving the validity of the employee’s dismissal, *i.e.*, the existence of just or authorized causes for the dismissal and the observance of the due process requirements. The employer’s burden of proof, however, presupposes that the employee had in fact been dismissed, with the burden to prove the fact of dismissal resting on the employee. Without any dismissal action on the part of the employer, valid or otherwise, no burden to prove just or authorized cause arises.”³² Thus, where the fact of dismissal is disputed by the employer, it must be duly proven by the employee.³³ Here, in its Comment,³⁴ SMC denies ever having dismissed petitioners, arguing that they had in fact ordered Adriano, *et al.* to return to work. As for Salimbot, *et al.*, their disciplinary cases were still pending when the complaint for illegal dismissal was filed. Thus, it was incumbent on petitioners to prove the fact of dismissal.

Notably, petitioners were not able to present as evidence any written notice of dismissal as in fact none was issued by SMC. Petitioners, however, allege that they were verbally terminated by SMC. By way of evidence, petitioners presented their bare testimonies, with no other evidence to substantiate their claim of verbal termination. Petitioners allege that managers from SMC’s Logistics and HR Departments had told them they should not report for work if they refuse to sign the ISAF. Petitioners claim that they could not identify the managers who told them not to report to work because the turnover of personnel in SMC was quick, and they only later learned that the managers who informed them of their termination were Regrer Perez from the Logistics Department and Helen Cruz from the HR Department.³⁵ It is worth noting, however, that in the sample SMC Truck Delivery Itinerary³⁶ submitted by petitioners themselves, they were required to get the signatures of the security guards, the logistics manager, and the branch supervisors at the place of dispatch, implying necessary familiarity with the people they claim to be unable to remember.

³¹ Id. at 1109-1110, citing *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, 809 Phil. 212, 220 (2017) [Per J. Perlas-Bernabe, First Division].

³² *Dec Jay’s Inn and Cafe v. Rañeses*, 796 Phil. 574, 592-593 (2016) [Per J. Leonardo-De Castro, First Division], citing *Nightowl Watchman & Security Agency, Inc. v. Lumuhan*, 771 Phil. 391, 403-404 (2015) [Per J. Brion, Second Division].

³³ *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020 [Per J. Hernando, Second Division]; and *Galang v. Boie Takeda Chemicals, Inc.*, 790 Phil. 582, 600 (2016) [Per J. Jardeleza, Third Division].

³⁴ *Rollo*, pp. 1238-1246.

³⁵ Id. at 1254.

³⁶ Id. at 363-368.

SMC not only denied the dismissal of petitioners, but also proved the pendency of the disciplinary cases against Salimbot, *et al.* and the issuance of return to work orders with notice to explain to Adriano, *et al.* prior to receiving notice of petitioners' complaint for illegal dismissal. Notably, the said return to work orders contained no words which may imply that petitioners' employment had been terminated, to wit:

TO : x x x
 FROM : x x x
 RE : **RETURN TO WORK ORDER with NOTICE TO EXPLAIN**

Ref. No. : x x x

Date : 27 September 2016

Cc : x x x

Our records show that you have not been reporting for work since September 14, 2016 up to present. You are hereby directed to Return to Work immediately upon receipt of this letter. You are also directed to show cause via written explanation why no administrative charge should be filed against you for Absence without Official Leave and/or Abandonment of work within Five (5) days of receipt of this letter.

Your compliance is highly expected.³⁷

The party who asserts dismissal – not the one who denies it – has the burden of proving it. In this case, the petitioners who claim that their employment has been terminated must prove such fact of termination. Unfortunately, petitioners have failed to discharge the onus of proving the fact of their dismissal. Thus, the Court agrees with the CA, NLRC, and LA that there is no illegal dismissal in this case.

On the issue of whether petitioners abandoned their work, case law instructs that that mere absence does not equate to abandonment. For a valid finding of abandonment, two (2) factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employee has no more intention to work.³⁸ “The intent to discontinue the employment must be shown by the employer through clear proof that it was deliberate and unjustified.”³⁹ In this case, the second factor needed to make a finding of valid abandonment – the intent to discontinue employment – was not proven. Although there was an order to

³⁷ Id. at 656-666.

³⁸ *Atienza v. Saluta*, G.R. No. 233413, June 17, 2019, 904 SCRA 320, 340 [Per J. J. Reyes, Jr., Second Division], citing *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 507 (2015) [Per J. Leonen, Second Division].

³⁹ Id.

return to work, and such order was issued by SMC prior to receiving notice of the complaint for illegal dismissal, from the point of view of petitioners, the return to work order of SMC was belated. Thus, from this perspective, the sincerity of SMC's return to work order would appear questionable at best to petitioners. Pursuing the complaint for illegal dismissal despite the return to work order could, therefore, not be construed as evidence of clear intent on the part of petitioners to sever the employer-employee relationship, especially considering that petitioners prayed for reinstatement. It would appear instead that petitioners mistook SMC's actions.

On the matter of the monetary benefits claimed by petitioners, the Court finds that they are not entitled to 13th month pay and to the other monetary benefits prayed for before the LA. The CA, NLRC, and LA uniformly found that petitioners are field personnel. "Field personnel" refers to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.⁴⁰ In order to conclude whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.⁴¹ Thus, to be considered field personnel, the employee's actual hours of work should not be determinable with reasonable certainty, and the time and performance of the employee's work should not be supervised.⁴²

Here, SMC did not have supervision over the time and performance of petitioners' duties. Notably, SMC only monitors petitioners' departure and arrival from SMC's place of business. The Monthly Delivery Route Reports⁴³ served only as "a way to monitor the scheduled trips of the truck and the incoming and outgoing time of the vehicle in the store."⁴⁴ Even in the creation of the ISAF, SMC only sought to ensure that their goods were timely delivered in the correct quantity and quality. Petitioners were not monitored for the duration of their trips. Thus, petitioners are field personnel.

As field personnel, petitioners are not entitled to most of the monetary awards prayed for before the LA,⁴⁵ except for paternity leave which all male employees, regardless of employment status, may avail of under the

⁴⁰ *Marby Food Ventures Corporation v. Dela Cruz*, G.R. No. 244629, July 28, 2020 [Per J. J. Reyes, Jr., Second Division]; *David v. Macasio*, 738 Phil. 293, 312 (2014) [Per J. Brion, Second Division].

⁴¹ *Dasco v. Philtranco Service Enterprises Inc./Centurion Solano*, 788 Phil. 764, 772 (2016) [Per J. Reyes, Third Division], citing *Auto Bus Transport Systems, Inc. v. Bautista*, 497 Phil. 863, 873-874 (2005) [Per J. Chico-Nazario, Second Division].

⁴² *David v. Macasio*, supra at 316.

⁴³ *Rollo*, pp. 341-361.

⁴⁴ *Id.* at 480.

⁴⁵ *David v. Macasio*, supra at 314, citing Article 82 of the LABOR CODE.

circumstances provided for in Republic Act No. (RA) 8187.⁴⁶ Article 82 of the Labor Code states:

Art. 82. Coverage. **The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to** government employees, managerial employees, **field personnel**, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

As used herein, “managerial employees” refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

“Field personnel” shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.
(emphases and underscoring supplied)

The “Title” referred to in the above provision is Title I, Book 3 of the Labor Code, which includes the provisions on: night shift differential pay (Article 86), overtime pay (Article 87), rest day premium pay (Article 93), holiday pay (Article 94), and service incentive leave pay (Article 85). Similarly, employees “paid on a task basis” (both field personnel and not) are not entitled to 13th month pay under Section 3 (e) of the Rules and Regulations Implementing Presidential Decree No. 851.⁴⁷ Thus, field employees are not entitled to these monetary benefits.

Petitioners are likewise not entitled to moral damages⁴⁸ and exemplary damages⁴⁹ considering that the requisites for the grant of such damages/fees

⁴⁶ Entitled “AN ACT GRANTING PATERNITY LEAVE OF SEVEN (7) DAYS WITH FULL PAY TO ALL MARRIED MALE EMPLOYEES IN THE PRIVATE AND PUBLIC SECTORS FOR THE FIRST FOUR (4) DELIVERIES OF THE LEGITIMATE SPOUSE WITH WHOM HE IS COHABITING AND FOR OTHER PURPOSES,” approved on June 11, 1996.

⁴⁷ *David v. Macasio*, supra at 318, citing the Rules and Regulations Implementing Presidential Decree No. 851 entitled “REQUIRING ALL EMPLOYERS TO PAY THEIR EMPLOYEES A 13TH-MONTH PAY,” (December 16, 1975).

⁴⁸ To award moral damages, the following must be established: (1) there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases in Article 2219 of the New Civil Code. (Aquino, Timoteo B., *Torts and Damages*, p. 877, citing *Ching v. Quezon City Sports Club*, 798 Phil. 45 (2016) [Per J. Leonardo-De Castro, First Division]; *Regala v. Carin*, 662 Phil. 782 (2011) [Per J. Carpio-Morales, Third Division]; *Delos Santos v. Papa*, 605 Phil. 460 (2009) [Per J. Brion, Second Division]; *Nazareno v. City of Dumaguete*, 777 Phil. 169 (2009) [Per J. Leonardo-De Castro, *En Banc*]; *B.F. Metal (Corporation) v. Lomoton*, 574 Phil. 740 (2008) [Per J. Tinga, Second Division]; *Philippine Telegraph & Telephone Corp. v. Court of Appeals*, 437 Phil. 76 (2002) [Per J. Vitug, First Division]; *Expert Travel & Tours, Inc. v. The Hon. Court of Appeals*, 368 Phil. 444 (1999) [Per J. Vitug, Third Division].

⁴⁹ The requirements for an award of exemplary damages to be proper are as follows: First, they may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant. Second, the claimant must first establish his right to moral,

are unproven and inexistent in this case. Petitioners failed to prove the existence of any injury to them caused by a culpable act of SMC; and hence, they are not entitled to moral damages. Since they are not entitled to moral damages, they are also not entitled to exemplary damages.

Regarding the paternity leave benefits, RA 8187 does not distinguish as to the class or employment status of employees who may avail of the said benefit. Hence, even field employees such as petitioners may be entitled to paternity leave benefits. However, while paternity leave benefits were prayed for in the initial complaint filed with the LA, it was not mentioned nor discussed in the position paper petitioners filed with the LA.⁵⁰ No evidence was presented in relation to petitioners' entitlement to paternity leave benefits before the LA or NLRC. Hence, said benefits cannot be granted.

In cases where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee.⁵¹ As a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by their employer.⁵² Thus, petitioners may return to work since they were not dismissed, but for this same reason, they are not entitled to separation pay if they chose not to return. They are also not entitled to backwages.⁵³ In the event that petitioners chose not to return, they shall be deemed to have voluntarily terminated their employment.⁵⁴

FOR THESE REASONS, the petition is **DENIED**. The Decision dated December 13, 2018 of the Court of Appeals in CA-G.R. SP No. 155709 is hereby **AFFIRMED**. Petitioners Albert M. Adriano, Diego P. Africa, Jr., Rodenes P. Santiago, Jr., *et al.* (petitioners), should they choose to return to work with respondent Smartlook Marketing Corp. (SMC), are hereby **ORDERED** to report for work with SMC within thirty (30) days from the finality of this Resolution, and SMC is hereby **ORDERED** to reinstate petitioners to their former positions in accordance with this Resolution. In the event that any of petitioners chose not to return to work within the period provided, they shall be deemed to have voluntarily resigned from SMC.

SO ORDERED.”

temperate, liquidated, or compensatory damages. And third, the wrongful act must be accompanied by bad faith; and the award would be allowed only if the guilty party acted in a wanted, fraudulent, reckless, oppressive, or malevolent manner. (*Spouses Timado v. Rural Bank of San Jose, Inc.*, 789 Phil. 453, 459 [2016] [Per J. Brion, Second Division])

⁵⁰ *Rollo*, pp. 161-178.

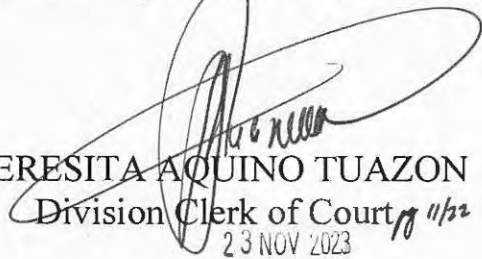
⁵¹ *Dee Jay's Inn and Cafe v. Rañeses*, *supra* note 32, at 595-596.

⁵² *Rodriguez v. Sintron Systems, Inc.*, G.R. No. 240254, July 24, 2019, 910 SCRA 498, 516-517 [Per J. Caguioa, Second Division], citing *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 799 (2017) [Per J. Mendoza, Second Division].

⁵³ *Id.* at 514; citations omitted.

⁵⁴ *Id.* at 519.

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
23 NOV 2023

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NLRC NCR Case No. 09-11525-16)

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