Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court's First Division issued a Resolution dated **December 13, 2023**, *which reads as follows:*

"G.R. No. 266885 (REXZON A. MENGORIA, Petitioner, **v. EZJONES CONSTRUCTION, INC. (ECI), represented by GILDA UY-QUIDILLA,** Respondent). — This is a Petition for Review on *Certiorari*[1] assailing the November 23, 2022 Decision[2] and the March 13, 2023 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 15322. The CA ruled that Rexzon A. Mengoria (*Rexzon*) failed to establish the fact of his termination from employment, thereby reversing the February 28, 2022 Decision[4] and May 25, 2022 Resolution[5] of the National Labor Relations Commission (*NLRC*) in NLRC Case No. VAC-01-000025-2022.

Antecedents

In his Position Paper,[6] Rexzon averred that he started working as driver and operator of trucks/transit mixer and other heavy equipment vehicles for

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1 *Rollo*, pp. 12–42. Filed under Rule 45 of the Rules of Court.

2 *Id.* at 466–476. The Decision in CA-G.R. SP No. 15322 was penned by Associate Justice Eleuterio L. Bathan and concurred in by Associate Justices Bautista G. Corpin, Jr. and Mercedita G. Dadole-Ygnacio of the Twentieth Division, Court of Appeals, Cebu City.

3 *Id.* at 498. The Resolution in CA-G.R. SP No. 15322 was penned by Associate Justice Eleuterio L. Bathan and concurred in by Associate Justices Bautista G. Corpin, Jr. and Mercedita G. Dadole-Ygnacio of the Twentieth Division, Court of Appeals, Cebu City.

4 *Id.* at 162–172. The Decision in NLRC Case No. VAC-01-000025-2022 was penned by Commissioner Maria Joyce L. Seno-Kho and concurred in by Presiding Commissioner Julie C. Rendoque and Commissioner Nendell Hanz L. Abella of the Seventh Division of the National Labor Relations Commission, Cebu City.

5 *Id.* at 214–217. The Resolution in NLRC Case No. VAC-01-000025-2022 was penned by Commissioner Maria Joyce L. Seno-Kho and concurred in by Presiding Commissioner Julie C. Rendoque and Commissioner Nendell Hanz L. Abella of the Seventh Division of the National Labor Relations Commission, Cebu City.

6 *Id.* at 46–60.

EZJones Construction, Inc. (*ECI*) on February 21, 2018.[7] He claimed that on January 3, 2021, he received a text message from an unknown number (09770568043)[8] which reads:

> *"Good am! Rixzon siring ni ma'am dri kala ngon-a ginpapareport buwas, tawagan ka nalang. Fr. Eci office."* (Good morning! Rixzon, according to ma'am, do not report yet, will just call you. From ECI office[.])[9]

The following day, Rexzon reported to ECI's office in Tacloban City to clarify the message he received. On January 5, 2021, he was able to talk to Gilda Uy-Quidilla (*Gilda*), the owner/manager of ECI, who informed him that there is a plan to dismiss him. Gilda failed to provide any reason for the planned dismissal, but instructed Rexzon to report the following day at the ECI office in Catarman, Northern Samar, and look for her siblings, Jocelyn and Ruben Uy.[10]

Thus, on January 6, 2021, Rexzon traveled to Catarman. Upon reaching ECI's office, he was instructed to come back the following day. However, he was prevented by ECI's security guard from entering the premises on January 7, 2021 because of an alleged instruction from ECI management that he had already been dismissed from service. He claimed to have returned on January 8, 2021 to clarify the matter, but he was again barred from entering the premises. This prompted him to call the same number which previously sent him a text message, but his call was unanswered. Instead, he received a text message which triggered the following exchange of messages from Rexzon and the unknown sender:[11]

> [Sender]: *Maki text sa im tuyo bc ak kasi yana*[.] (Just send your concern through text because I am busy right now[.])
>
> Rexzon: *Mag kalro gad la ak maam kon nano gad, ky ade ak catarman*[.] (I just want to be clarified ma'am, what is the reason, I am here in [C]atarman[.])
>
> [Sender]: *Sugad kasi ni ma'am hulat nala sa tawag, kon mayda na ngadi sa tacloban*[.] (Because according to ma'am, just wait for the call, if there is available here in Tacloban[.])
>
> Rexzon: *Maam tage ak neyo pitsa kan san o*[.] (*Ma'am tell me when*[.])

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7 *Id.* at 46.
8 *Id.* at 47.
9 *Id.* at 48.
10 *Id.*
11 *Id.* at 48–49.

> *My man ket trbaho nga da, so ebeg sabehen tangal nak? [D]re mola mayakan*[.] (We have available work there, so meaning I am dismissed? You cannot just say it[.])[12]

Later in the afternoon, Rexzon received a message from a different number (09177937611), which reads:

> *"Rixzon dd pagtext sa office number nala, siring ni ma'am mga first week pa daw sa february ka makasulod*[.]" (Rixzon just send your text here in this Office number, according to ma'am you can get in around first week of February[.])

> *"Didi nala pagtext kay sa office ini phone. Adto kasi akon adto personal nga number*[.]" (Just send your text here because this is the office number. Because the other one is my personal number[.])

Rexzon thus replied:

> *"Kay nanu nga first week pa maam ak masulod? Daritsoha naman la ak niyo kay kun na dire na kam haak sugara naman laak daritso kay para dire ak mag para laom kay kinahanglan ko an trabaho kay ak bata ginatas tas ak asawa na iskwela dire pwide nga matambay ak..."* (Why is it maam that it's on the first week that I could get in? Tell me directly if you do not want me anymore just tell me directly because I need a job for my child's milk and my wife is studying I should not be jobless[.])[13]

Rexzon no longer received any messages thereafter. On January 16, 2021, he tried to call ECI several times, but his calls were not answered.[14] Hoping that ECI would fulfill its promise, Rexzon waited until the first week of February, but still failed to receive any word or information. He went back to ECI's Catarman Office, but was again refused entry because, allegedly, there was an instruction from ECI management that he was already dismissed from service and can no longer be allowed to enter the premises.[15] Aggrieved, he filed a Complaint[16] for illegal dismissal against ECI.

On the other hand, ECI and Gilda presented a different narrative in their Position Paper.[17]

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12 *Id.* at 48–49.
13 *Id.* at 50–51.
14 *Id.* at 67.
15 *Id.* at 51.
16 *Id.* at 44.
17 *Id.* at 69–78.

According to Jerome Astorga (*Astorga)*, the personnel in charge of ECI's Maintenance and Motor Pool, he instructed Rexzon to drive a different truck on January 6, 2021 because the unit assigned to him was undergoing repair. Astorga then instructed Rexzon to transport construction materials to Salvacion, Tacloban City but the latter allegedly refused to drive a different truck, and instead, told Astorga that he would just go home to Catarman, Northern Samar.[18]

Mary Cris Repollo (*Repollo*), the officer-in-charge of ECI's Construction Materials Warehouse, narrated that on the same date, Rexzon returned his copy of the Borrower's Slip[19] and the tools[20] assigned to him. Since, under ECI policy, the assigned tools are only to be returned upon the driver's separation from service, she asked Rexzon the reason for returning the same. Allegedly, Rexzon only replied that he was going home to Catarman because he did not want to drive a different truck.[21]

ECI maintained that Rexzon did not ask permission to go home, but only called up a certain Rodolfo Quidlilla to say that he would just go home if his unit is replaced. ECI claimed to have attempted to contact Rexzon for his whereabouts, but to no avail.[22]

The above events prompted ECI to issue Memo TAC-002, dated January 8, 2021, which required Rexzon to submit a written explanation for his actuations on January 6, 2021. The said memorandum reads:

Petsa: Enero 08, 2021

Para kay: **REXZON MENGORIA**

Posisyon: Driver

Paksa: *Notice to Explain*

> Noong Enero 6, 2021 (Miyerkules), ay tumawag ka kay Sir Rody para sabihin sa kanya na kung papalitan ang unit na minamaneho mo ay uuwi ka na lang muna sa Catarman dahil ayaw mong magmaneho ng ibang unit. Noong araw ding iyon ay ibinalik mo sa Motorpool ang mga naka-borrower's slip sa pangalan mo. At ikaw ay sumama kina Jeffrey Nenial pabalik ng Catarman. Ang iyong ginawa ay nagpapatunay lang na hindi pagsunod sa lehitimong utos na may kinalaman sa iyong trabaho.

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18 *Id.* at 70.
19 *Id.* at 82.
20 Consisting of a jack, tire wrench, socket and handle for jack.
21 *Rollo*, p. 71.
22 *Id.*

> Ang iyong ginawa ay isang paglabag sa ating mga patakaran at mga regulasyon sa kumpanya. Sa ngayon ay binibigyan ka ng pagkakataong magpaliwanag tungkol dito sa pamamagitan ng "***written explanation***" na kailangan mong maipasa bago mag **Enero 11, 2021.**
>
> (Sgd.)
> **GILDA UY-QUIDILLA**
> Authorized Managing Officer[23]

ECI claimed that they personally served Memo TAC-002 on January 12, 2021 but Rexzon refused to receive it.[24] They no longer heard from Rexzon since then, until they were notified that he filed a Complaint for illegal dismissal.[25]

Ruling of the Labor Arbiter

On November 16, 2021, Labor Arbiter Amelia B. Docena (*LA Docena*) rendered a Decision[26] dismissing the Complaint for lack of merit. LA Docena concluded that Rexzon was not dismissed from his employment; that he refused to drive another unit assigned to him on January 6, 2021 and since then, he never reported for work at ECI; that Rexzon was not entertained at the Catarman Office because he did not work there; and that his insistence to drive the truck that was usually assigned to him was unjustified.[27]

Unsatisfied, Rexzon appealed the November 16, 2021 Decision of LA Docena before the NLRC.

Ruling of the NLRC

On February 28, 2022, the NLRC rendered a Decision granting Rexzon's appeal, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, Complainant's appeal is **GRANTED**, and the Decision of the Labor Arbiter, dated 16 November 2021, is[ ] hereby[ ] **REVERSED AND SET ASIDE**.

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[23] *Id.* at 95.
[24] *Id.* at 71.
[25] *Id.* at 71–72.
[26] *Id.* at 107–114.
[27] *Id.* at 112–113.

> Respondent [EZJones] Construction, Inc. is[ ] hereby[ ] **ORDERED** to pay Complainant's backwages, separation pay, moral and exemplary damages, and attorney's fees in the total sum of **PESOS: TWO HUNDRED FIFTY ONE THOUSAND TWO HUNDRED EIGHT and 54/100 ([PHP] 251,208.54)**, broken down as follows:
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> | | | |
> |---|---|---|
> | 1. Backwages | ---------- | [PHP] 169,491.40 |
> | 2. Separation Pay | ---------- | 48,880.00 |
> | 3. Moral Damages | ---------- | 5,000.00 |
> | 4. Exemplary Damages | ---------- | 5,000.00 |
> | **5.** Attorney's Fees | ---------- | 22,837.14 |
> | **TOTAL** | ---------- | **[PHP] 251,208.54** |
>
> **SO ORDERED.**[28]

The NLRC lent credence to the screenshots of the text messages between Rexzon and ECI, which showed that as early as January 3, 2021, Rexzon was instructed by ECI not to report for work and to just wait for their call. It noted that ECI did not deny the messages, or even clarified the same.[29]

The NLRC rejected the claim of abandonment and held that Rexzon's failure to report for work was due to ECI's instructions. It did not find any clear intention on the part of Rexzon to sever his employer-employee relationship with ECI considering that he immediately filed a Complaint for illegal dismissal after the latter failed to provide him work in February 2021.[30] The NLRC likewise disregarded Memo TAC-002 for being a mere afterthought. It noted that if Rexzon indeed refused to receive the said memo, ECI should have sent it through registered mail.[31]

ECI filed a Motion for Reconsideration[32] which the NLRC partially granted in its May 25, 2022 Resolution, by deleting the award for moral and exemplary damages. The dispositive portion of the said Resolution states:

> **WHEREFORE**, premises considered, the instant Motion for Reconsideration filed by Respondents is[ ] hereby[ ] **PARTIALLY GRANTED**, and the Decision of this Commission, dated 28 February 2022, is[ ] hereby[ ] **MODIFIED**, such that the award for moral and exemplary damages is **DELETED**.
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> Respondents are[ ] hereby[ ] **DIRECTED** to pay[ ] herein[ ] complainant the total amount of **PESOS: TWO HUNDRED FORTY**

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28 *Id.* at 171–172.
29 *Id.* at 167–168.
30 *Id.* at 168–169.
31 *Id.* at 169.
32 *Id.* at 173–194.

> **THOUSAND TWO HUNDRED EIGHT and 54/100 ([PHP] 240,208.54),** inclusive of separation pay, backwages[,] [and] attorney's fees equivalent to ten percent (10%) of the complainant's total monetary award.
>
> **SO ORDERED.**[33]

Undeterred, ECI filed a Petition for *Certiorari*[34] with the CA ascribing grave abuse of discretion on the part of the NLRC when it rendered its February 28, 2022 Decision and May 25, 2022 Resolution.

Ruling of the CA

On November 23, 2022, the CA rendered the now assailed Decision, finding that the NLRC had gravely abused its discretion in holding that ECI illegally dismissed Rexzon from the service. The CA decreed:

> **WHEREFORE**, foregoing premises considered, the *Petition for Certiorari* is **GRANTED**. The February 28, 2022 Decision of public respondent National Labor Relations Commission in NLRC Case No. VAC-01-000025-2022 and the consequent May 25, 2022 Resolution which partially granted petitioner EZJones [Construction], Inc.'s Motion for Reconsideration that deleted the award of moral and exemplary damages are hereby **NULLIFIED AND SET ASIDE** for having been issued with grave abuse of discretion. The Labor Arbiter's Decision in NLRC RAB Case No. VIII-06-0264-21 dated November 16, 2021, which dismissed private respondent Rexzon A. Mengoria's complaint for Illegal Dismissal is hereby **REINSTATED**.
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> With *Our* ruling on the main case, the application for the issuance of a Writ of Preliminary Injunction (WPI) becomes mooted [sic].
>
> **SO ORDERED.**[35]

The CA held that ECI cannot be held guilty of illegal dismissal because Rexzon failed to prove his claim of illegal dismissal. According to the CA, Rexzon refused to drive a different unit on January 6, 2021, and even returned the tools assigned to him which he could have used if the replacement vehicle would encounter any problems. He even failed to provide any written explanation for his insubordination.[36] The screenshots of the supposed text messages should not have been considered by the NLRC since Rexzon failed to establish that the cellphone numbers belonged to ECI.[37] The CA also took

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33 *Id.* at 216.
34 *Id.* at 218–265.
35 *Id.* at 475.
36 *Id.* at 472–473.
37 *Id.* at 474.

note of ECI's letter on December 12, 2021 ordering Rexzon to report for work, which indicated that ECI had no intention to terminate his employment.[38]

Rexzon timely filed a Motion for Reconsideration[39] but the same was denied by the CA in its March 13, 2023 Resolution. Hence, this recourse.

Issue

Rexzon raises the sole issue of whether the CA erred in finding that the NLRC gravely abused its discretion when it ruled that he was illegally dismissed by ECI. He maintains that he could not have exchanged text messages with any person other than an employee of ECI because the subject of the messages was his employment. He views ECI's version as contrived, because it is hard to believe that he would just return the tools and refuse to drive a different vehicle for no reason, and in the middle of health and economic crises.[40]

On the other hand, ECI argues that the present petition should be denied outright for raising factual questions which are not allowed in a petition for review under Rule 45.[41]

ECI also maintains that Rexzon's act of returning the tools indicated his intention to sever the employer-employee relationship since under its practice and policy, the same may only be returned upon termination of employment. Rexzon's refusal to drive another unit, his failure to submit a written explanation for his acts, and not reporting back for work, are indicative of his intention to abandon his employment.[42] Credence should not be accorded to the purported text messages since these were not properly authenticated, and Rexzon failed to prove that the cellphone numbers belonged to ECI or any of its authorized representatives. At any rate, the messages do not show that Rexzon was terminated from employment.[43]

Ruling of the Court

The Court finds merit in the Petition.

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38 *Id.* at 475.
39 *Id.* at 477–485.
40 *Id.* at 29.
41 *Id.* at 508–510.
42 *Id.* at 514–515.
43 *Id.* at 512–513.

At the outset, the Court finds that it may entertain the instant Petition despite presenting factual questions. Although questions of fact are not entertained in a Rule 45 review, this admits several exceptions, such as when the findings and conclusions of the CA differ from the labor tribunals,[44] or when the rulings of the antecedent deciding bodies are conflicting, or when there is a misapprehension of facts.[45] These exceptions are all present herein.

Moreover, the Court in labor cases, needs only to examine the assailed Decision of the CA under the prism of whether it had correctly concluded that grave abuse of discretion attended the NLRC's evaluation of facts and evidence.[46] As such, the Court will only examine the facts for the purpose of resolving the allegations and determining whether grave abuse of discretion was indeed committed by the NLRC.[47]

Rexzon proved the fact of his dismissal

Rexzon maintains that he was terminated without any sufficient justification, while ECI claims that Rexzon abandoned his employment. In this instance where the parties offer conflicting versions, the Court shall determine if there is substantial evidence to support their claims because a party alleging a critical fact must be able to substantially support its allegations.[48] The evidence submitted by the parties shall be weighed based on the burden of proof that they are expected to discharge.

It is doctrinal that in illegal dismissal cases, the employee must first prove the fact of dismissal[49] by substantial evidence.[50] If there is no dismissal, then there can be no question as to its legality or illegality.[51]

Upon proof of termination of employment, the employer shall then have the burden to prove that the dismissal was valid[52] and that due process

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44 *Citibank Savings, Inc. v. Rogan*, G.R. No. 220903, March 29, 2023 [Per J. Gaerlan, Third Division].

45 *Sermona v. Hacienda Lumboy*, G.R. No. 205524, January 18, 2023 [Per J. Leonen, Second Division].

46 *Maricalum Mining Corporation v. Florentino*, 836 Phil. 655, 677 (2018) [Per J. Gesmundo, Third Division], *citing Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 187 (2016) [Per J. Perlas-Bernabe, First Division].

47 *Maricalum Mining Corporation v. Florentino*, *id.* at 678.

48 *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771Phil. 391, 404 (2015) [Per J. Brion, Second Division], *citing De Paul/King Philip Customs Tailor v. National Labor Relations Commission*, 364 Phil. 91, 102 (1999) [Per J. Puno, Second Division].

49 *Nedira v. NJ World Corporation*, G.R. No. 240005, December 6, 2022 [Per C.J. Gesmundo, *En Banc*].

50 *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 794 (2017) [Per J. Mendoza, Second Division].

51 *Philippine Rural Reconstruction Movement v. Pulgar*, 637 Phil. 244, 256 (2010) [Per J. Brion, Third Division], *citing Ledesma, Jr. v. National Labor Relations Commission*, 562 Phil. 939, 951 (2007) [Per J. Chico-Nazario, Third Division].

52 *Spic N' Span Services Corporation v. Paje*, 643 Phil. 474, 485 (2010) [Per J. Brion, Third Division].

requirements were observed in conformity with the security of tenure provision of the Constitution.[53] If the employer fails to meet its burden of proving that the termination was for a just or authorized cause, the conclusion would be that the dismissal was unjustified, and therefore illegal.[54]

Based on the foregoing rules, the Court shall now determine whether Rexzon had sufficiently proved the fact of his dismissal.

The CA ruled that Rexzon failed in this regard, and that the NLRC gravely abused its discretion when it mainly relied on the screenshots of doubtful text messages between Rexzon and two unknown numbers.[55] The CA even faulted Rexzon for his failure to identify the persons behind the unknown numbers and to connect the numbers with respondent ECI. Meanwhile, ECI supports the ruling of the CA and posits that these text messages are unauthenticated under the Rules of Electronic Evidence, and therefore, inadmissible.

The Court sees otherwise.

It is doctrinal that technical rules of procedure are not binding in labor cases. The spirit and intention of the Labor Code mandates the labor officials to use all reasonable means to ascertain the facts expeditiously and objectively, without strictly adhering to technical rules of procedure.[56] This rule is embodied in Article 221[57] of the Labor Code and translated in Section 10 of the 2011 NLRC Rules of Procedure, which expressly provide that the rules of evidence do not strictly apply in labor cases. The spirit and intention of the Labor Code shall always be of primary importance in resolving labor cases.

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53 *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, 788 Phil. 62, 75 (2016) [Per J. Brion, Second Division], *see* Const., art. XIII, sec. 3.

54 *Maersk-Filipinas Crewing, Inc. v. Avestruz*, 754 Phil. 307, 318 (2015). [Per J. Perlas-Bernabe, First Division], *citing ALPS Transportation v. Rodriguez*, 711 Phil. 122, 131 (2013) [Per C.J. Sereno, First Division].

55 *Rollo*, p. 474.

56 *Dacut v. Court of Appeals*, 573 Phil. 392, 397–398 (2008) [Per J. Quisumbing, Second Division], *citing Industrial Timber Corporation v. Ababon*, 515 Phil. 805, 816–817 (2006) [Per J. Ynares-Santiago, First Division].

57 Article 221. *Technical rules not binding and prior resort to amicable settlement.* – In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest nf due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

Liberal application is accorded in labor cases to breathe life into the mandate that the welfare of the employee shall be of primordial and paramount consideration.[58] The rule means that procedural rules are not to be applied in a strict and technical sense,[59] which primarily favors the employee. The rationale behind this rule was expounded in *Reyes v. Rural Bank of San Rafael (Bulacan), Inc.*,[60] as follows:

> The measures embedded in our legal system which accord specific protection to labor stems from the reality that normally, the laborer stands on unequal footing as opposed to an employer. Indeed, the labor force is a special class that is constitutionally protected because of the inequality between capital and labor. In fact, labor proceedings are so informally and, as much as possible, amicably conducted and without a real need for counsel, perhaps in recognition of the sad fact that a common employee does not or have extremely limited means to secure legal services nor the mettle to endure the extremely antagonizing and adversarial atmosphere of a formal legal battle. Thus, **in the common scenario of an unaided worker, who does not possess the necessary knowledge to protect his rights, pitted against his employer in a labor proceeding, We cannot expect the former to be perfectly compliant at all times with every single twist and turn of legal technicality**. The same, however, cannot be said for the latter, who more often than not, has the capacity to hire the services of a counsel. As an additional aid therefore, a liberal interpretation of the technical rules of procedure may be allowed if only to further bridge the gap between an employee and an employer.[61] (Emphasis supplied, citation omitted)

Thus, strict adherence to technical rules of procedure is not required in labor cases. Caution must however be observed in resorting to this rule as it cannot be used to perpetuate injustice and hamper the just resolution of the case.[62]

On the other hand, the Rules on Electronic Evidence[63] (*Rules*) which applies to quasi-judicial and administrative cases,[64] provides that a person seeking to introduce an electronic document has the burden of proving its authenticity.[65] Text messages, which fall under ephemeral electronic

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58 *Philippine Airlines, Inc. v. Dawal*, 781 Phil. 474, 512 (2016) [Per J. Leonen, Second Division], *citing Bunagan v. Sentinel Watchman & Protective Agency, Inc.*, 533 Phil. 283, 291 (2006) [Per J. Puno, Second Division].

59 *Republic v. National Labor Relations Commission*, 783 Phil. 62, 77 (2016) [Per J. Leonen, Second Division], *citing Tres Reyes v. Maxim's Tea House*, 446 Phil. 388, 400 (2003) [Per J. Quisumbing, Second Division].

60 G.R. No. 230597, March 23, 2022 [Per J. Hernando, Second Division].

61 *Id.*

62 *Agapito v. Aeroplus Multi-Services, Inc.*, G.R. No. 248304, April 20, 2022 [Per J. Lazaro-Javier, Third Division].

63 A.M. No. 01-7-01-SC (2001).

64 *Id.*, Rule 1, sec. 2.

65 *Id.*, Rule 5, sec. 1.

communication,[66] shall be proven by the testimony of a person who was a party to or has personal knowledge of the communication. If the text messages are recorded or embodied in an electronic document, it shall be authenticated following Rule 5[67] of the Rules.

In *Reyes v. Global Beer Below Zero, Inc.*,[68] the text messages presented by the employee were admitted since they corroborate the factual antecedents and his narration in proving his dismissal from employment. The Court went on to state that despite the non-authentication of these text messages under the Rules, technical rules of procedure may be relaxed in labor cases to serve the demands of substantial justice:

> Furthermore, the "text" messages petitioner Reyes presented in evidence were corroborative. The CA however, held that those "text" messages could hardly meet the standard of clear, positive and convincing evidence to prove petitioner Reyes' dismissal from employment. It added that those conversations transpired more than ten (10) days after petitioner Reyes stopped reporting for work and that the Labor Arbiter and the NLRC took those messages out of context, the same having been lumped together for the purpose of supporting petitioner Reyes' claim of dismissal from employment. Such observation of the CA is more conjectural rather than factual. As rightly concluded by the NLRC, those "text" messages, viewed in connection with the factual antecedents and the narration of the petitioner, prove that there was indeed a dismissal from employment. As held by the NLRC:
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> . . . .
>
> Interestingly, the text message of respondent Co Say was followed by another message from Ms. Tet Manares which stated that: "*Kuya, pinaayos ko na kay gen salary mo.*" This is consistent with the first message that Tet will contact the complainant. True enough, Ms. Tet Manares contacted the complainant informing him that his salary was already being prepared. The two (2) text messages, when taken together, support complainant's insistence that he was actually dismissed from his work. Respondent Co Say's text message regarding "turnover" and Ms. Manares' text message regarding the preparation of the complainant's salary were quite consistent with the complainant's allegation that he was dismissed by respondent Co

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[66] *Id.*, Rule 2, sec. 1(k) provides that "ephemeral electronic communication" refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communication the evidence of which is not recorded or retained.

[67] *Id.*, Rule 5, sec. 2. *Manner of authentication.* – Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:
(a) by evidence that it had been digitally signed by the person purported to have signed the same;
(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
(c) by other evidence showing its integrity and reliability to the satisfaction of the [J]udge.

[68] 819 Phil. 483 (2017) [Per J. Peralta, Second Division].

> [Say] during their telephone conversation and during their meeting at Starbucks Waltermart.
>
> The respondent's assertion that the purported text messages submitted by the complainant should not be given credence as the complainant failed to authenticate the same in accordance with the Rules of Court, deserves scant consideration. It must be emphasized that in labor cases, the strict adherence to the rules of evidence may be relaxed consistent with the higher interest of substantial justice. In labor cases, rules of procedure should not be applied in a very rigid and technical sense. They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed. . . .
>
> It is well-settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases. Thus, the "text" messages may be given credence especially if they corroborate the other pieces of evidence presented. Again, while as a rule, the Court strictly adheres to the rules of procedure, it may take exception to such general rule when a strict implementation of the rules would cause substantial injustice to the parties.[69] (Citations omitted)

Verily, ECI's objection to the admissibility of the subject text messages cannot be sustained. *Reyes* made it clear that the strict rules on authentication of text messages may be set aside (1) following the rule on liberal application of technical rules of procedure to serve the demands of substantial justice, and (2) when the text messages tend to corroborate the factual antecedents and narration provided by the employee.[70]

The text messages presented by Rexzon clearly corroborate his version of the events behind his dismissal from employment. They cannot be appreciated by themselves without considering the context of when and how these messages were sent to Rexzon. The Court therefore concurs with the NLRC when it addressed this matter in its May 25, 2022 Resolution, hence:

> We, however, find these text messages warrant the appreciation of being credible, taking into consideration the totality of the circumstances. To reiterate, the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively.

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69 *Id.* at 496–498.

70 *Id.* at 498.

. . . .

> We highlight the fact that the text messages were timestamped with various dates and time, corresponding to the period wherein the reported dismissal took place. The contents of the conversation evidently relate to the work stoppage of Complainant wherein he was instructed not to report for work and just wait for a call when work is available. It is highly illogical for Complainant to have communicated regarding specific matters pertinent to his work from a sender who had no instructions from management, unless, of course, he designed the grand scheme of premeditatedly planning the filing of a labor complaint. No proof, or even a single circumstance, however, can be gleaned that this was the case.[71]

Indeed, the ends of substantial justice will be better served if the strict rules of procedure are set aside. To reiterate, the welfare of the working class is of paramount consideration in resolving labor cases, especially those involving unlawful termination from employment.

The Court also finds that the CA committed grave error in ruling that Rexzon failed to connect the unknown numbers with ECI. In ruling against Rexzon, the CA failed to bear in mind that employees, especially those like the latter who work as truck drivers, are not equipped with sufficient resources and technical knowledge to be fully compliant with technical rules on evidence. Rexzon also cannot be expected, at such times like when he was given instruction not to report for work, or to go to ECI's Catarman Office, or when he was prevented from entering ECI's premises, to properly document each incident and person he interacted with, in anticipation of a probable filing of a complaint for illegal dismissal.

Moreover, the CA did not take into consideration that when presented with these text messages, ECI did not specifically deny owning any of the cellphone numbers. Instead, it argued that:

> [T]hose messages were sent without the participation or knowledge of respondent Gilda Uy-Quidilla, the managing officer of the corporation, or any of the corporate officers of ECI. Respondents-appellees do not know who sent those messages and why those messages were even sent. . . . Hence, those messages cannot be regarded as company's notices terminating Mengoria's services.[72]

Patently, ECI's assertions have the characteristics of a negative pregnant – a denial that is replete with the admission of the substantial facts

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[71] *Rollo*, p. 215.

[72] *Id.* at 135, *see Reply to Complainant-Appellant's Memorandum of Appeal.*

in the pleading responded to which are not squarely denied.[73] In effect, ECI had admitted not only the existence of these messages, but also the fact that the unknown numbers belonged to or, at the very least, are connected to the company.

Additionally, the CA failed to consider that *all reasonable means* to expeditiously and objectively ascertain the facts of the case should be used in resolving labor cases. Thus, even if Rexzon failed to provide evidence that the unknown numbers belonged to ECI, a simple search on the internet would show that the number 09177937611 is the official number being used by ECI when posting vacancies on the Facebook page of the Tacloban City Public Employment Service Office.[74] Based on the evidence submitted by Rexzon, he received a message on January 8, 2021 at around 1:21 p.m. from 09177937611 which was referred therein as the "office number."[75]

For these reasons, the NLRC once again was correct in holding that ECI only provided bare denials of the text messages, and only argued that the same lacked context and were vague.[76] Ineluctably, Rexzon was able to discharge his burden of proving the fact of his dismissal. Following the rules, respondent ECI is now burdened to prove its allegations that it did not illegally dismiss Rexzon, and that the latter abandoned his employment.

ECI is liable for illegal dismissal; Abandonment was not proven

The Court notes that the CA did not conclude that Rexzon is guilty of abandonment. It merely found that the NLRC gravely abused its discretion when it disregarded evidence which established that Rexzon's dismissal from employment indeed took place.

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73 *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*, 287 Phil. 212, 223 (1992) [Per J. Regalado, Second Division], *citing Galofa v. Nee Bon Sing*, 130 Phil. 51, 54 (1968) [Per J.B.L Reyes].

74 https://www.facebook.com/TaclobanPESO/photos/a.282649135449030/1176279616085973/?type=3; https://www.facebook.com/TaclobanPESO/posts/ezjones-construction-inc-eci-job-vacancies-as-of-january-25-2021-accounting-cler/1398881290492470/; https://www.facebook.com/TaclobanPESO/photos/a.282649135449030/1233281863719081/?type=3; last accessed October 10, 2023 at 12:53 p.m.; The number also appears as the official number of ECI in the directory posted in the website of the Department of Public Works and Highways (DPWH) as of September 30, 2023 (https://www.dpwh.gov.ph/dpwh/sites/default/files/accreditation/for_posting-_directory_of_active_accredited_portland_cement_concrete_batching_plants_as_of_09-30-2023.pdf (last accessed October 19, 2023 at 1:06 p.m.).

75 *Rollo*, p. 66.

76 *Id.* at 215.

Again, the Court is not convinced that ECI has substantially proven its allegations, through clear and convincing evidence, that there was no dismissal because Rexzon abandoned his job.

To prove its allegations, ECI submitted the affidavits of Astorga and Repollo, who attested that Rexzon left on January 6, 2021 without any sufficient justification except that he refused to drive another vehicle. However, these affidavits, in the absence of other evidence to support ECI's claims, are too self-serving, having been executed by employees beholden to ECI for their employment.[77] The Court cannot just believe Astorga's assertions that the truck assigned to Rexzon was unserviceable and under repair as of January 6, 2021, in the absence of other evidence showing such fact.

Likewise, Repollo's claim that the return of the service tools under company policy signifies severance of employment, remained unsubstantiated. As an employer, ECI has the prerogative to implement policies, rules and regulations that would regulate its business, as well as the activities of its employees. However, for the Court, as well as labor tribunals, to appreciate these company policies, rules and regulations, there should be evidence of their existence, and that the employees were aware of the same. Here, ECI only submitted a copy of the Borrower's Slip issued to Rexzon which he purportedly returned together with the tools listed therein. Unfortunately, no probative value may be accorded the said document as it did not contain any statement that such may only be returned by Rexzon upon his resignation, dismissal or other circumstance of termination of employment.

There is likewise no persuasive reason for the Court to believe ECI's claim of abandonment.

It has been ruled that abandonment is a matter of intention, and cannot be lightly presumed from equivocal acts.[78] To prove the claim of abandonment, the burden is on the employer to show that the employee deliberately and unjustifiably refused to resume employment without any intention of returning. Hence, the following elements should be present in a claim of abandonment: (1) employee's failure to report for work or unjustifiable absence; and (2) a clear intention to sever the employer-

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[77] See *Tapia v. GA2 Pharmaceutical, Inc.*, G.R. No. 235725, September 28, 2022 [Per J. Lazaro-Javier, Second Division]; *Uy v. Centro Ceramica Corporation*, 675 Phil. 670, 683 (2011) [Per J. Villarama, Jr., First Division].

[78] *CRC Agricultural Trading v. National Labor Relations Commission*, 623 Phil. 789, 799 (2009) [Per J. Brion, Second Division], *citing Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 516 (2003) [Per J. Sandoval-Gutierrez, Third Division].

employee relationship. The second element is the more determinative factor, which is manifested by overt acts showing the employee's lack of intention to continue with the employment.[79] Absence by itself, is not sufficient.[80] It must be accompanied by overt acts unerringly pointing to the fact that the employee does not want to work with the employer anymore.[81]

ECI insists that Rexzon no longer reported for work after the January 6, 2021 incident and that it exerted efforts thereafter to determine his whereabouts. However, this assertion pales in comparison with Rexzon's averments that he was instructed by respondent Gilda to go to the Catarman Office, and eventually, to wait for ECI's call until February 2021. Notable also is that respondent Gilda did not deny talking to Rexzon on January 5, 2021 and instructing him to report to the Catarman Office and look for her siblings.

Further, the Court is also not persuaded by the bare claim of ECI that it attempted to contact Rexzon for his whereabouts. No evidence was presented to support such assertion.

The Court too is not convinced that Rexzon had no intention of returning to work because he did not submit a written explanation after being served with Memo TAC-002.

Firstly, Memo TAC-002 is not a valid show cause letter. Under Department of Labor and Employment (*DOLE*) Department Order 147-15 series of 2015, the first written notice should contain, among others, a directive to submit a written explanation within the reasonable period of at least five (5) calendar days from notice.[82] Memo TAC-002, dated January 8, 2021, contained an instruction for Rexzon to submit a written explanation within three days or until January 11, 2021. Clearly, it did not comply with the observance of due process as provided by DOLE Department Order 147-15.

Moreover, the Court agrees with the NLRC that Memo TAC-002 was issued as a mere afterthought on ECI's part. The letter itself had fixed the date for Rexzon to submit his written explanation on January 11, 2021, but the same was only received by ECI's Catarman Office on January 12, 2021. Also,

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79 *Philippine Pizza, Inc. v. Oraa*, G.R. Nos. 245982-83, January 11, 2023 [Per J. Inting, Third Division].

80 *Tatel v. JLFP Investigation Security Agency, Inc.*, 755 Phil. 171, 184 (2015) [Per J. Perlas-Bernabe, First Division].

81 *Roxas v. Baliwag Transit, Inc.*, 871 Phil. 427, 444 (2020) [Per J. Perlas-Bernabe, Second Division], *citing Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 400–401 (2013) [Per J. Perez, Second Division].

82 DOLE Department Order No. 147-15 (2015), sec. 5.1(a)(3).

based on ECI's allegation, it only personally served Rexzon the said memo on the same date. Clearly, there was no urgency on ECI's part to serve the memo to Rexzon so as to allow him reasonable time to submit a written explanation. There was even no indication that ECI still wanted Rexzon to work for the company. Memo TAC-002 did not contain any directive for him to immediately report for work in view of the alleged abandonment.

Secondly, there was no evidence that Memo TAC-002 was indeed personally served upon Rexzon. The mere notation of "refused to sign" without any details as to the circumstances behind such refusal is self-serving. Notably, the persons who purportedly made such annotation are employees of ECI who cannot go against the instructions of the latter without endangering their continued employment. Furthermore, while there are two ECI personnel who allegedly served the memo, only one of them signed as witness.[83]

Finally, Rexzon's absence from work alone does not signify his intention to sever his employment with ECI. On the contrary, his immediate filing of a complaint for illegal dismissal after February 2021 contravenes ECI's claim of abandonment.

All told, ECI failed to discharge its burden of proving the legality of Rexzon's dismissal from employment, or that the latter has abandoned his job. The reasonable conclusion therefore, is that ECI is guilty of illegally terminating Rexzon from his employment.

Reliefs awarded to Rexzon

In view of the illegality of Rexzon's dismissal from employment, he shall be entitled to the following reliefs: (1) backwages; (2) reinstatement,[84] or if not practicable, separation pay.[85]

As a rule, separation pay shall be awarded when reinstatement is no longer feasible due to the strained relations between the parties.[86] Separation pay is also appropriate when the employee prays for separation pay instead of reinstatement as it indicates the absence of any interest in being reinstated to the former position.[87]

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83 *Rollo*, p. 151.

84 Labor Code, art. 294.

85 *Monsanto Philippines, Inc. v. National Labor Relations Commission*, 880 Phil. 161, 178 (2020) [Per J. Reyes, J., Jr., First Division], *citing Symex Security Services, Inc. v. Rivera, Jr.*, 820 Phil. 653, 671 (2017) [Per J. Caguioa, Second Division].

86 *Globe Telecom, Inc. v. Ebitner*, G.R. No. 242286, January 16, 2023 [Per J. Hernando, First Division].

87 *Universal Robina Corporation v. Maglalang*, G.R. No. 255864, July 6, 2022 [Per J. Lopez, M., Second Division].

In *Genuino Agro-Industrial Development Corporation v. Romano*,[88] the Court laid down the guidelines in the computation of backwages and separation pay:

> Under Article 279 (now Article 294) of the Labor Code, backwages is computed from the time of dismissal until the employee's reinstatement. However, when separation pay is ordered in lieu of reinstatement, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay. Anent the computation of separation pay, the same shall be equivalent to one month salary for every year of service and should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible. In the present case, in allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[89] (Citations omitted)

When there is an order of separation pay because reinstatement is no longer feasible, the employer-employee relationship is deemed terminated upon the finality of the decision. Backwages shall no longer accumulate from thereon since an employee is no longer entitled to receive any compensation from the cessation of employment.[90]

Based on the above guidelines, the Court modifies the backwages and separation pay awarded by the NLRC.

In its February 28, 2022 Decision, the NLRC ordered payment of backwages from January 3, 2021 until the February 28, 2022 or the date of its Decision.[91] The period should be modified because (1) the accounts of both parties indicate that Rexzon's employment was terminated on January 6, 2021; and (2) the employer-employee relationship is deemed terminated only upon finality of this Resolution. Thus, Rexzon's backwages should commence from January 6, 2021 until the date of finality of this Resolution, instead of January 3, 2021 to February 28, 2022.

While the award of separation pay is proper because Rexzon's reinstatement may create an atmosphere of antipathy and antagonism as observed by the NLRC,[92] it should be modified in that its computation shall commence from the date of his hiring until finality of this Resolution. Hence,

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88 863 Phil. 360 (2019) [Per J. Reyes, J., Jr., Second Division].

89 *Id.* at 381.

90 *C.I.C.M. Mission Seminaries v. Perez*, 803 Phil. 596, 606 (2017) [Per J. Mendoza, Second Division], *citing Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 103 (2013) [Per J. Brion, Second Division].

91 *Rollo*, p. 170.

92 *Id.*

Rexzon's separation pay should be computed at the rate of one month per year of service from February 21, 2018, until this Resolution shall have become final and executory.

The award of attorney's fees equivalent to 10% of the total award is sustained since Rexzon was compelled to litigate and incur expenses to protect his rights.[93] Notably, while Rexzon was represented by the Public Attorney's Office (*PAO*), attorney's fees is still proper and will be received by the PAO as a trust fund in accordance with Chapter 5, Title III, Book IV of Executive Order No. 292, or the Administrative Code of 1987, as amended by Republic Act No. 9406.[94] The attorney's fees is awarded as a recompense against an employer who unjustifiably deprived the employee of a source of income.[95]

Finally, prevailing jurisprudence[96] provides that the monetary judgment awarded to Rexzon shall be subject to 6% interest per annum from finality of this Resolution until full payment.

In sum, the Court finds the CA to have committed grievous error in reversing and setting aside the February 28, 2022 Decision and May 25, 2022 Resolution of the NLRC based on grave abuse of discretion. There being no such abuse committed by the NLRC, its Decision and Resolution should be reinstated with the modifications earlier discussed.

ACCORDINGLY, the Court **GRANTS** the Petition. The November 23, 2022 Decision and March 13, 2023 Resolution of the Court of Appeals, Cebu City in CA-G.R. SP No. 15322 are **REVERSED** and **SET ASIDE**. The February 28, 2022 Decision and May 25, 2022 Resolution of the National Labor Relations Commission Seventh Division, Cebu City are **REINSTATED** with **MODIFICATIONS**.

EZJones Construction, Inc. is found liable for the illegal dismissal of Rexzon A. Mengoria. It is **ORDERED** to **PAY** him the following:

1. Full backwages from January 6, 2021 until finality of this Resolution; and

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93 *Agapito v. Aeroplus Multi-Services, Inc.*, *supra* note 62.

94 An Act Reorganizing and Strengthening the Public Attorney's Office (PAO), Amending for the Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known As the "Administrative Code of 1987", as Amended, Granting Special Allowance to PAO Officials and Lawyers, and Providing Funds Therefor (2007).

95 *Agapito v. Aeroplus Multi-Services, Inc.*, *supra* note 62.

96 *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013) [Per J. Peralta, *En Banc*].

2. Separation pay, equivalent to one (1) month per year of service, computed from February 21, 2018 until finality of this Resolution.

In addition, EZJones Construction, Inc. is **ORDERED** to **PAY** attorney's fees to the Public Attorney's Office, equivalent to ten percent (10%) of the total monetary award.

The total monetary award shall earn legal interest at six percent (6%) from finality of this Resolution until full payment.

SO ORDERED."

By authority of the Court:

MARIA TERESA B. SIBULO
Division Clerk of Court
576-I
JAN 0 5 2024

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