Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

INTERCONTINENTAL BROADCASTING CORPORATION, *Petitioner,*	**G.R. No. 229013**
	Present:
- *versus* -	PERALTA, *C.J. Chairperson,* CAGUIOA, REYES, J.C., JR., LAZARO-JAVIER, and LOPEZ, *JJ.*
ANGELINO B. GUERRERO, *Respondent.*	**Promulgated:** JUL 15 2020

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DECISION

LAZARO-JAVIER, *J.:*

The Case

This petition seeks to set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 136709:

1. Decision[1] dated July 19, 2016 finding respondent to have been illegally dismissed by petitioner; and

2. Resolution[2] dated November 24, 2016 denying petitioner's motion for reconsideration.

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[1] Penned by Associate Justice Ramon M. Bato, Jr. with the concurrences of Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy; *rollo*, pp. 28-42.
[2] *Rollo*, p. 53.

The Facts

On September 10, 1986, petitioner Intercontinental Broadcasting Corporation (IBC 13) hired respondent Angelino B. Guerrero as Technician in its Technical Operation Center (TOC).[3] His duties, among others, included monitoring the TOC equipment adjustment to attain the standard broadcast signal quality, sending audio/video signal to the transmitter, and reporting to the TOC Supervisor any malfunction of the equipment under their control.[4]

In 2009, IBC 13's switcher equipment for logos superimposition developed technical problems. To remedy the situation, the management transferred this task (superimposition of logos) to the TOC. It became an additional, nay, temporary task of the TOC personnel on top of their primary tasks. TOC Supervisor Arthur Guda and the Engineering Department agreed that should there be a conflict between the regular functions of the TOC personnel and their additional task, their regular TOC functions shall prevail.[5]

On July 10, 2012, Guda issued a memorandum to respondent directing him to explain why he should not be reprimanded for negligence of duty in the following instances: (1) on July 1, 2012, at 10:58:46 p.m., the icons of IBC, AKTV, and SPG logo were seen on-air during the commercial gap of Cooltura; (2) the same incident happened on July 4, 2012 while respondent was seen sleeping on duty; and (3) on July 8, 2012, the icons were not superimposed during Gap 14 of the Wimbledon program while respondent was again seen sleeping on duty.[6]

In his Reply[7] dated July 11, 2012, respondent invoked his "right to remain silent, as provided by law."

After nine (9) months, or on April 15, 2013, a Formal Charge was served on respondent for: (1) gross negligence of duty and/or gross misconduct committed on April 16, 2012 and on various days of July 2012 where he did the opposite of what was required of him during commercial breaks (either he wrongly superimposed logos or wrongly omitted it altogether);[8] (2) sleeping while on duty; (3) insubordination; (4) failure to report for work and tampering his Daily Time Record (DTR) on November 11, 2012; and (5) reporting late for work on November 12, 2012 resulting in late network sign-on.[9]

On April 29, 2013, respondent submitted his Affidavit in response to the charges against him.[10] He explained that the switchers, not the TOC personnel, had skills in the task of logos superimposition. Although the task

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[3] *Rollo*, p. 194.
[4] CA Decision, pp. 1-2.
[5] *Rollo*, p. 248.
[6] CA Decision, p. 2.
[7] *Id.*
[8] LA Decision, *rollo*, p. 202.
[9] *Rollo*, pp. 243-245.
[10] CA Decision, p. 4.

was temporarily assigned to the TOC personnel on top of their regular tasks, he still did his best to perform all these tasks. He was, however, not provided with the sequence guide and commercial cue sheets to enable him to determine when to superimpose logos and when not to superimpose them.[11]

At any rate, if he truly committed lapses in performing this new task, the same should have been reflected on the switcher's logbook and the Daily Discrepancy Report. But these records did not reflect anything against him except one (1) count of erroneous logos superimposition. He was made aware of his so-called lapses for the first time only when the Formal Charge was served on him.[12]

Respondent denied tampering his DTR on November 11, 2012. His original work schedule for that day was from 10 o'clock in the morning to 6 o'clock in the evening. He was not informed of any change in his work shift hours. But when he punched in at 10 o'clock in the morning on November 11, 2012, he got informed only then that his work shift hours had been changed by management to 6 o'clock in the morning until 2 o'clock in the afternoon. He also learned that his co-employee Leo Baterna already took over his new "6 to 2" shift. As he learned of these changes only on the very same day they were supposed to take effect, he decided to just go on leave on that day. He no longer punched out and informed the guard on duty he was going on leave. The next day, on November 12, 2012, he reported late for work.[13] He denied all the other charges against him.

After clarificatory hearings, IBC 13's Administrative Committee (ADCOM) issued a Formal Report on August 2, 2013 recommending respondent's termination from employment on the following grounds, *viz.*:[14]

> 1) gross negligence and gross misconduct for his lapses in accomplishing the additional tasks of superimposition and no superimposition of logos;
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> 2) gross negligence and gross misconduct for reporting late on November 11 and 12, 2012;
>
> 3) breach of confidence for sleeping while on duty;
>
> 4) tampering with his DTR which falls within the offense of falsification of company records and reporting false information under Section 6 of IBC's procedures, and is analogous to the just causes to terminate an employee under Article 282 of the Labor Code.[15]

Petitioner approved the ADCOM's recommendation and terminated respondent's employment.

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[11] *Id.* at 4-5.
[12] *Rollo*, p. 197.
[13] *Id.*
[14] *Id.* at 245.
[15] CA Decision, p. 9.

Respondent thus sued for illegal dismissal, unpaid wages, damages, and attorney's fees.[16] He argued that petitioner failed to substantiate its claim that he was grossly negligent or that he committed gross misconduct in the performance of his duties.[17] Too, his termination due to his alleged lapses was unwarranted, if not too harsh a penalty considering his dedicated service for twenty-seven (27) years.

On the other hand, petitioner maintained that respondent's dismissal was valid based on the findings contained in the ADCOM's Formal Report.

The Ruling of the Labor Arbiter

By Decision[18] dated December 6, 2013, Labor Arbiter Remedios L.P. Marcos dismissed the complaint. She adopted the Formal Report of petitioner's ADCOM finding respondent guilty of gross negligence and/or gross misconduct for his supposed repeated mistakes in superimposing logos during commercial gaps. The labor arbiter noted that even on this ground alone, respondent's dismissal was already justified. As it was though, there was another ground which warranted respondent's dismissal, *i.e.*, tampering his DTR. As for the other charges, the labor arbiter found them inconsequential considering that the maximum penalty therefor was only suspension.[19]

The Ruling of the NLRC

On respondent's appeal, the NLRC affirmed under Decision[20] dated April 16, 2014. Respondent's motion for reconsideration was denied under Resolution[21] dated June 10, 2014.

The Ruling of the Court of Appeals

Undaunted, respondent further sought affirmative relief from the Court of Appeals which under its assailed Decision[22] dated July 19, 2016, nullified the NLRC's dispositions. It found that there was no substantial evidence to prove that respondent was validly dismissed from employment.[23]

The Court of Appeals noted that petitioner failed to show such pattern of negligence indicating that respondent was incapable of performing his

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[16] *Rollo*, p. 193.
[17] CA Decision, p. 5.
[18] Penned by Labor Arbiter Remedios L.P. Marcos, *rollo*, pp. 193-205.
[19] *Rollo*, p. 204.
[20] Penned by Commissioner Herminio V. Suelo and concurred in by Commissioners Angelo Ang Palana and Numeriano D. Villena, *rollo*, pp. 239-257.
[21] *Rollo*, pp. 274-276.
[22] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy; *rollo*, pp. 28-42.
[23] CA Decision, p. 8.

responsibilities.[24] As for serious misconduct, there was no clear showing either that respondent acted with bad faith or malice in the performance of his assigned tasks.[25] The Court of Appeals also emphasized that notwithstanding respondent's lapses in April and July 2012, petitioner still allowed him to continue performing the additional task of superimposing logos for several months more until he got formally charged on April 29, 2013. The fact that petitioner did not impose any sanction on respondent for any infraction or offense simply goes to show that petitioner did not consider respondent's lapses, if at all, equivalent to gross negligence or gross misconduct.

On respondent's failure to sign in on time on November 11 and 12, 2012, he admitted he was late on November 12, 2012. He, however, had a valid justification for failing to sign in on time the day before, November 11, 2012: petitioner did not priorly inform him of the change in his work shift hours.[26]

On the alleged tampering of respondent's DTR, petitioner pointed out that respondent erased his time-in on November 11, 2012. Respondent denied this. In any event, had respondent himself erased his initial time entry, it was only to correctly reflect the fact that he did not render service on November 11, 2012. Surely, there is no tampering to speak of when an entry in one's DTR was erased to reflect the truth that the employee did not report for work on that particular day.[27]

Lastly, on petitioner's statement that respondent breached the confidence reposed upon him as an IBC 13 employee when he failed to superimpose an icon on July 4, 2012 (because he was allegedly sleeping while on duty), the same was a bare allegation devoid of any probative value.[28]

In sum, the Court of Appeals found that even if respondent's lapses and infractions were taken as a whole, the same still did not fall under the just causes of termination provided under Art. 282 (now Art. 297) of the Labor Code.[29] Given the facts and circumstances proven, and in consideration of respondent's twenty-seven (27) years of service, a suspension of six (6) months was sufficient and commensurate penalty for respondent's infractions.

Having been illegally dismissed, respondent was thus entitled to full backwages (not including the period of his six-month suspension) and reinstatement. For failure to prove bad faith on the part of petitioner, respondent was not entitled to moral damages. But since respondent was forced to litigate to protect his interest, he was awarded attorney's fees equivalent to ten percent (10%) of the total monetary award. The Court of Appeals ruled:

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[24] CA Decision, p. 10.
[25] *Id.* at 11.
[26] *Id.*
[27] *Id.* at 12.
[28] *Id.*
[29] CA Decision, p. 10.

> ***WHEREFORE***, the instant Petition is ***GRANTED***. The Decision dated April 16, 2014 and Resolution dated June 10, 2014 issued by public respondent National Labor Relations Commission in NLRC LAC Case No. 01-000416-14 (NLRC NCR Case No. 08-11880-13) are hereby ***REVERSED*** and ***SET ASIDE***.
>
> Private respondent Intercontinental Broadcasting Corporation is hereby ordered to reinstate Angelino B. Guerrero without loss of seniority rights and to pay backwages from the time of his dismissal up to the time he is reinstated, less the period of suspension of six (6) months, plus 10% attorney's fees.
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> ***SO ORDERED.***[30]

Petitioner's motion for reconsideration was denied under Resolution[31] dated November 24, 2016.

The Present Petition

Petitioner now invokes the Court's discretionary appellate jurisdiction to review and set aside the assailed dispositions of the Court of Appeals. Petitioner asserts that respondent's infractions constituted just causes for termination under Art. 282 (now Art. 297) of the Labor Code. In in this regard, petitioner essentially echoes the findings of the labor arbiter and the NLRC.[32]

Respondent ripostes that petitioner failed to substantiate its claim that he was grossly negligent or that he committed gross misconduct in the performance of his duties. His termination was not justified considering that his primary function was that of a TOC Technician and not the task of superimposing logos, relative to which he was charged with gross negligence and gross misconduct.[33]

Issue

Did the Court of Appeals commit reversible error in finding respondent to have been illegally dismissed from employment?

Ruling

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause. Failure to do so would necessarily mean that the dismissal was illegal. For this purpose, the employer

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[30] *Id.* at 14.
[31] *Rollo*, p. 53.
[32] *Id.* at 14-20.
[33] *Id.* at 348-353.

must present substantial evidence to prove the legality of the employee's dismissal.[34] Substantial evidence is defined as "such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[35] Here, we concur in the Court of Appeals' finding that petitioner failed to establish by substantial evidence that respondent was validly dismissed.

Article 297 (formerly 282) of the Labor Code enumerates the just causes for termination, *viz.*:

> Art. 297. Termination by employer. — An employee 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;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> (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 representative; and
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> (e) Other causes analogous to the foregoing.

Petitioner terminated respondent's employment based on the following grounds:[36]

> 1) gross negligence and gross misconduct for his lapses in accomplishing the additional tasks of superimposition and no superimposition of logos;
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> 2) gross negligence and gross misconduct for reporting late on November 11 and 12, 2012;
>
> 3) breach of confidence for sleeping while on duty;
>
> 4) tampering with his DTR which falls within the offense of falsification of company records and reporting false information under Section 6 of IBC's procedures, and is analogous to the just causes to terminate an employee under Article 282 of the Labor Code.[37]

To be a valid ground for dismissal, neglect of duty **must be both gross and habitual**. Gross negligence implies want of or failure to exercise slight

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[34] *Meco Manning & Crewing Services, Inc. v. Cuyos*, G.R. No. 222939, July 3, 2019.
[35] *Id.*
[36] *Rollo*, p. 245.
[37] CA Decision, p. 9.

care or diligence in the performance of one's duties.[38] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[39] Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time.[40]

As for misconduct, it is defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, **willful in character, and implies wrongful intent and not mere error of judgment**."[41] To constitute a valid cause for dismissal under Article 297 of the Labor Code, the employee's misconduct **must be serious**, *i.e.*, of such grave and aggravated character and not merely trivial or unimportant. Further, it is required that the act or conduct must have been **performed with wrongful intent**.[42]

As stated, petitioner failed to establish by substantial evidence that respondent committed gross negligence or serious misconduct in the performance of his duties.

One. It was not shown that respondent failed to exercise slight care or diligence and had deliberate or thoughtless disregard of consequences in the performance of his duties. In fact, none of the so-called lapses pertain to his primary tasks as TOC Technician.[43] True, respondent still owed the additional task assigned him (logos superimposition) the same fidelity expected of him in the discharge of his primary duties. But we note the undisputed fact that respondent was performing his primary duties at the same time, albeit the latter task should have been assigned to someone else. More, respondent admitted he had limited skill in logos superimposition since it was not really a part of his job description when he got hired and it was only meant to be a temporary assignment. Under these circumstances, respondent's lapses, if at all, appear more of his limited capacity for an additional technical task for which he was not skilled or trained. In this sense, his lapses did not equate to gross negligence.[44]

Two. Respondent was not shown to have willfully or wrongfully intended to cause harm to his employer when he made mistakes in superimposing logos during commercial breaks. In ***Bookmedia Press, Inc. v. Sinajon and Abenir***,[45] the Court stressed the requirement of *willfulness* or

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[38] *Publico v. Hospital Managers, Inc.*, 797 Phil. 356, 367 (2016); *Eastern Overseas Employment Center v. Bea*, 512 Phil. 749, 758 (2005).
[39] *Eastern Overseas Employment Center v. Bea*, 512 Phil. 749, 758 (2005).
[40] *CMP Federal Security Agency, Inc. v. Reyes*, Sr., G.R. No. 223082, June 26, 2019.
[41] *Bookmedia Press, Inc. v. Sinajon*, G.R. No. 213009, July 17, 2019, citing *Ha Yuan Restaurant v. NLRC*, 516 Phil. 124 (2006).
[42] *Imasen Philippine Manufacturing Corporation, v. Alcon and Papa*, 746 Phil. 172, 181 (2014).
[43] CA Decision, p. 10.
[44] *Id.*
[45] Supra, note 41.

wrongful intent in the appreciation of gross or serious misconduct as just cause for termination, *viz.*:

> Hence, **serious misconduct** and willful disobedience of an employer's lawful order **may only be appreciated** when the employee's transgression of a rule, duty or directive has been **the product of *"wrongful intent"* or of a *"wrongful and perverse attitude,"*** but not when the same transgression results from simple negligence or "*mere error in judgment*." (emphasis supplied)

The requirement of willfulness or wrongful intent underscores the intent of the law to reserve only to the gravest infractions the ultimate penalty of dismissal.[46] This petitioner failed to prove. As the Court of Appeals aptly found, petitioner failed to show that respondent has become unfit to continue working for IBC 13 as TOC Technician.[47]

At any rate, in ***CMP Federal Security Agency, Inc. v. Reyes, Sr.***,[48] the Court ruled that a finding of serious misconduct is incompatible with the charge of negligence which, by definition, requires lack of wrongful intent.

Three. Petitioner failed to prove that respondent's lapses were serious. Respondent's first listed lapse in his added task of logos superimposition happened on April 16, 2012.[49] Yet, petitioner allowed respondent to continue with this additional task for **over two (2) months** more before he was required to explain the alleged lapses he committed not on April 16, 2012 but on July 1, 4, and 8, 2012. Even then petitioner still continued to entrust respondent the additional task of logos superimposition for **another nine (9) months** before it finally initiated a formal administrative charge against him on April 29, 2013.[50] Clearly, petitioner's indifference for such a long period of time and the absence of any sanction imposed on respondent in the meantime strongly negates the existence of the so-called serious lapses imputed on respondent, let alone, gross negligence or gross misconduct.

As for reporting late on November 12, 2012, respondent himself admitted the same. But as to his failure to sign in on time on November 11, 2012, he had a valid excuse. He was not informed that his work shift schedule starting that day had been changed from 10 o'clock in the morning to 6 o'clock in the morning as time in. TOC Supervisor Arthur Guda himself admitted he only contacted respondent's co-employee regarding respondent's change of schedule but respondent himself was not

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[46] *Id.*
[47] CA Decision, p. 11.
[48] Supra, note 40.
[49] CA Decision, p. 3.
[50] *Id.*

informed.[51] Thus, respondent cannot be guilty of gross negligence or gross misconduct just because he reported late for work on November 11, 2012, not due to his fault but due to petitioner's failure to give him notice of the change in his work shift schedule. And for the single time that he reported late for work on November 12, 2012, without more, respondent cannot be held liable for gross negligence or gross misconduct either.

The next question: was respondent deemed to have tampered or falsified his DTR when he erased the entry of his time-in on November 11, 2012?

The answer is NO.

The following facts are undisputed: On November 11, 2012, he punched in at 10 o'clock in the morning, the start of his shift. But shortly after, he got informed his shift had been changed from time in at 10 o'clock in the morning to time in at 6 o'clock in the morning. He also found out that his co-employee Leo Baterna already took over his new work shift schedule. So he decided to just go on leave but on that day only.

Respondent, though, denied he erased his 10 o'clock punch in. He claimed he no longer punched out and just informed the guard on duty he was going on leave. But even if respondent had indeed erased the entry of his time-in, the erasure correctly reflected the fact that he did not render service on November 11, 2012.[52] How can this be fraud or tampering or falsification? Fraud and dishonesty can only be used to justify the dismissal of an employee when the latter commits a dishonest act that reflects a disposition to deceive, defraud, and betray his employer.[53] This is not the case here.

Finally, for allegedly sleeping while on duty, we quote with approval the finding of the Court of Appeals' disquisition on the matter, *viz.*:

> xxx suffice that loss of confidence as a just cause for termination is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody handling or care and protection of the property and assets of the employer. In order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer.
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> Aside from a sweeping statement that respondent "breached the confidence reposed in him as an IBC-13 employee," when he failed to superimpose an icon on July 4, 2012 because he was sleeping while on duty, no other evidence

[51] LA Decision, p. 5; *rollo*, p. 197.
[52] CA Decision, p. 12.
[53] Supra, note 41.

> was presented by petitioner to justify his termination based on loss of confidence.[54]

In sum, the Court of Appeals did not commit reversible error when it nullified the dispositions of the labor tribunals. Its factual findings conformed with the evidence on record, and its ruling, with law and jurisprudence.[55]

While we recognize that respondent committed infractions as an employee when he made mistakes in superimposing logos and reported late for work on November 12, 2012, the ultimate penalty of dismissal from service is too harsh a penalty considering that these infractions do not constitute gross negligence or serious misconduct. Too, we have to consider that respondent has been employed with petitioner for twenty-seven (27) long years, without any record of previous infraction or misbehavior. Thus, we agree with the Court of Appeals that a suspension of six (6) months would suffice.

In ***Philippine Long Distance Company v. Teves***,[56] the Court stressed that while it is the prerogative of the management to discipline its employees, it should not be indiscriminate in imposing the ultimate penalty of dismissal as it not only affects the employee concerned, but also those who depend on his or her livelihood, thus:

> **Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe**. This is not only the laws concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner. (Emphasis supplied)

Verily, therefore, respondent's dismissal from employment was illegal for which he is rightfully entitled to reinstatement without loss of seniority rights and full backwages computed from the time of his dismissal up to the time of his actual reinstatement.[57] His suspension for six (6) months should be deducted from the computation of his backwages.[58]

We also affirm the grant of attorney's fees since respondent was compelled to litigate to protect his interest.[59] As for damages, we agree with

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[54] CA Decision, p. 12.

[55] *Foodbev International v. Ferrer*, G.R. No. 206795, September 16, 2019.

[56] 649 Phil. 39 (2010); as cited in *Universal Robina Sugar Milling Corp. v. Ablay*, 783 Phil. 512, 523 (2016); also cited in *Foodbev International v. Ferrer, Id.*

[57] Art. 294 of the Labor Code provides that "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."

[58] See *Manila Broadcasting Co. v. National Labor Relations Commission*, 355 Phil. 910, 922 (1998).

[59] See *Tangga-an v. Philippine Transmarine Carriers, Inc, et al. v. Salinas*, 706 Phil. 339, 352 (2013).

the Court of Appeals that the same cannot be granted to respondent as no evidence was adduced to prove bad faith on the part of petitioner.

Finally, we impose legal interest on the total monetary awards due to respondent at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid.

ACCORDINGLY, the petition is **DENIED**. The Decision dated July 19, 2016 and Resolution dated November 24, 2016 of the Court of Appeals in CA-G.R. SP No. 136709 are **AFFIRMED** with **MODIFICATION**.

Respondent Angelino B. Guerrero is declared to have been illegally dismissed. Petitioner Intercontinental Broadcasting Corporation is ordered to immediately **reinstate and/or restore** Angelino B. Guerrero to his former position as Technician without loss of seniority rights and to **pay** him the following amounts:

1. Full backwages computed from the time of his dismissal up to the time of his actual reinstatement less his suspension of six (6) months;

2. Attorney's fees of ten percent (10%) of the total award; and

3. Legal interest of six percent (6%) per annum on the total monetary awards from finality of this Decision until fully paid.

In light of the fact that this case has long pended for over seven (7) years, the labor arbiter is **ORDERED** upon finality of this Decision, to execute the same, with utmost dispatch and without further delay.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice