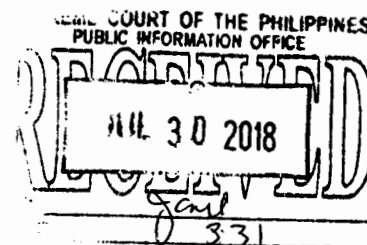




Republic of the Philippines
Supreme Court
Manila



SECOND DIVISION

MARLON L. ARCILLA,
Petitioner,

G.R. No. 225125

Present:

- versus -

CARPIO, J., Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., JJ.

ZULISIBS, INC., PIANDRE SALON,
and ROSALINDA FRANCISCO,
Respondents.

Promulgated:

06 JUN 2018

X-----X

RESOLUTION

CARPIO, J.:

The Case

This is a petition for review to set aside the 10 February 2016 Decision¹ of the Court of Appeals in CA-G.R. SP No. 141953 which affirmed with modifications the Resolutions dated 30 April 2015² and 26 June 2015³ of the National Labor Relations Commission (NLRC), Third Division, in NLRC LAC No. 04-001028-15/NLRC NCR No. 10-12582-14.

The Facts

Respondent Zulisibs, Inc. (Zulisibs) is a corporation organized and existing under Philippine laws with respondent Rosalinda Francisco (Francisco) as its President and Chief Executive Officer. Zulisibs operates respondent Piandre Salon (Piandre), an establishment engaged in the operation of beauty salons.

¹ *Rollo*, pp. 213-224. Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan concurring.

² *Id.* at 185-189. Penned by Commissioner Pablo C. Espiritu, Jr., with Presiding Commissioner Alex A. Lopez concurring.

³ *Id.* at 202-203.

Petitioner Marlon L. Arcilla (Marlon) was hired by Piandre on 8 February 2000 and was assigned to the Alabang, Muntinlupa City branch. Maricel Arcilla (Maricel), Marlon's wife, was hired on 12 November 2000 and was assigned to the Salcedo Village, Makati City branch. After several years, both Marlon and Maricel were promoted as senior hair stylists earning a monthly salary of ₱11,672.00 plus commissions from customers and sale of products.

Sometime in September 2014, Zulisibs, through its officers, received information that Marlon was establishing a beauty salon somewhere in Daang Hari, Alabang, Muntinlupa City, near the Piandre Salon where Marlon was working.

On 6 September 2014, Marlon received a notice from Piandre and Francisco placing Marlon under preventive suspension from 6 to 14 September 2014 and requiring him to appear on 12 September 2014 at Francisco's office in Sta. Ana, Manila.

During the 12 September 2014 investigative hearing, Marlon was accused of, among other things, being involved in the opening of a salon near Piandre Alabang. Marlon denied that he had an agreement or contract with the owner of the salon along Daang Hari, Alabang. However, he admitted the following: (1) that he extended help to the salon owner who happens to be his brother-in-law; (2) that he called up two former employees of Piandre and recommended them to his brother-in-law; and (3) that he gave ₱50,000.00 to the salon owner which amount was a portion of the ₱250,000.00 loan he borrowed from the employees' cooperative of Piandre.⁴

Further investigation revealed that Marlon was often absent from work and whenever he was working, he would entertain phone calls, thus, disrupting his work. He would be absent on days when he would be the only stylist available. Francisco and other supervisors of Piandre verified the existence of a new salon along Daang Hari, Alabang and alleged that "the interiors of said salon, already with equipment, mirrors and chairs, [sic] all set to operate, with towels folded and presented the 'Piandre' way."⁵ They also learned from neighboring establishments that the salon was set to open on 8 September 2014.

On 11 September 2014, Maricel received a notice from Piandre and Francisco, asking her to explain her alleged involvement with her husband, Marlon, in setting up a salon along Daang Hari, Alabang and requiring her to appear on 13 September 2014 at the Sta. Ana office. On 14 September 2014, Maricel received a notice placing her under preventive suspension from 14 September to 13 October 2014.

⁴ Id. at 215.

⁵ Id. at 215-216.



Marlon received a copy of his notice of termination on 14 September 2014. Maricel received her notice of termination on 26 September 2014. Both were found guilty of violating Piandre's Code of Discipline 3F No. 2: *Pagkawala ng tiwala dahil sa ginawang masama.*

Subsequently, Marlon and Maricel filed two separate complaints⁶ for illegal dismissal, underpayment of wages, non-payment of overtime pay, service incentive leave, 13th month pay, Emergency Cost of Living Allowance, and separation pay, and illegal suspension, with prayer for moral and exemplary damages, and attorney's fees.

The Ruling of the Labor Arbiter

On 9 March 2015, the Labor Arbiter rendered a Decision⁷ dismissing Marlon and Maricel's complaints for lack of merit. The Labor Arbiter held that:

WHEREFORE, the complaint[s] for illegal dismissal and x x x money claims [are] DISMISSED for lack of merit.⁸

The Ruling of the NLRC

On 30 April 2015, the NLRC denied Marlon and Maricel's appeal and affirmed the Labor Arbiter's decision. The NLRC held that:

WHEREFORE, premises considered, Complainants-Appellants' appeal is hereby DENIED. The March 9, 2015 Decision of Labor Arbiter Gaudencio P. Demaisip, Jr. is hereby AFFIRMED.⁹

On 26 June 2015, Marlon and Maricel's Motion for Reconsideration¹⁰ was denied by the NLRC for lack of merit, holding that "The resolution of [the] Commission dated April 30, 2015 STANDS undisturbed."¹¹

The Ruling of the Court of Appeals

On 10 February 2016, Marlon and Maricel's petition for certiorari under Rule 65 was partially granted. Marlon's termination was held to be valid. As to Maricel, the Court of Appeals held that the NLRC and the Labor Arbiter erred in upholding the legality of her dismissal. The dispositive portion of the Decision¹² reads:

⁶ Id. at 56-58.
⁷ Id. at 132-147.
⁸ Id. at 145.
⁹ Id. at 189.
¹⁰ Id. at 202-203.
¹¹ Id. at 202.
¹² Id. at 213-224.

WHEREFORE, the petition is PARTIALLY GRANTED. The Resolutions dated April 30, 2015 and June 26, 2015 of public respondent National Labor Relations Commission, Third Division, in NLRC LAC No. 04-001028-15/NLRC NCR No. 10-12582-14 are hereby AFFIRMED with MODIFICATIONS, in that the private respondents are ORDERED to pay MARICEL ARCILLA the following:

- 1) Backwages and all other benefits from September 26, 2014 until finality of this Decision;
- 2) Separation pay equivalent to one (1) month salary for every year of service;
- 3) Moral and exemplary damages in the amount of Php 50,000.00
- 4) Attorney's fees equivalent to ten percent (10%) of the total monetary award; and
- 5) Legal interest of six percent (6%) *per annum* on the total monetary awards from the finality of this Decision until full payment thereof.

The appropriate Computation Division of the National Labor Relations Commission is hereby ordered to COMPUTE and UPDATE the award as herein determined WITH DISPATCH.

All other aspects of the assailed Resolutions STAND.

SO ORDERED.¹³

The Issues

Marlon presents the following issues:

1. Whether the Court of Appeals erred in upholding the two resolutions of the NLRC, finding Marlon's dismissal to be valid and for just cause, and effected after due notice and hearing; and
2. Whether the Court of Appeals gravely erred in upholding the two resolutions of the NLRC, finding that Marlon was not entitled to his money claims.

The Ruling of this Court

We deny the petition.

Dismissals under the Labor Code have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process.¹⁴

¹³ Id. at 223-224.

¹⁴ *NDC Tagum Foundation, Inc. v. Sumakote*, 787 Phil. 67 (2016), citing *Lopez v. Alturas Group of Companies and/or Uy*, 663 Phil. 121, 127 (2011).



In this case, we do not dispute the findings of the Labor Arbiter, the NLRC, and the Court of Appeals that the manner of Marlon's dismissal was legal and in accordance with law.¹⁵ The requirement of procedural due process was met when Marlon was served with a first written notice containing the specific causes or grounds for his termination, when Marlon was called to attend an investigative hearing to explain his side, and when Marlon was served with a second written notice containing the justification for his termination.

Thus, the only issue to be resolved is the legality of the act of dismissal by re-examining the facts and evidence on record. Given that this Court is not a trier of facts, and the scope of its authority under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact, which are for labor tribunals to resolve, one of the recognized exceptions to the rule is when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the Court of Appeals.¹⁶ In this case, however, the factual findings and conclusion of the labor tribunals and the Court of Appeals regarding Marlon's dismissal are consistent and one. As to Maricel, the decision in her favor was not appealed to us anymore. Thus, the decision of the Court of Appeals insofar as Maricel is concerned is final and executory.

¹⁵ Section 5.1, Rule 1-A of Department Order No. 147-15 (Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as amended) reads:

As defined in Article 297 of the Labor Code, as amended, the requirement of two written notices served on the employee shall observe the following:

(a) The first written notice should contain:

1. The specific causes or grounds for termination as provided for under Article 297 of the Labor Code, as amended, and company policies, if any;
2. Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice; and
3. A directive that the employee is given opportunity to submit a written explanation within a reasonable period.

"Reasonable period" should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult or be represented by a lawyer or union officer, gather data and evidence, and decide on the defenses against the complaint.

(b) After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 292 (b) of the Labor Code, as amended.

"Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him/her and submit evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) After determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that: (1) all circumstances involving the charge against the employee have been considered; and (2) the grounds have been established to justify the severance of [his/her] employment.

The foregoing notices shall be served personally to the employer or the employee's last known address.

¹⁶ *Sy v. Neat, Inc.*, G.R. No. 213748, 27 November 2017, citing *Raza v. Daikoku Electronics Phils. Inc.*, 765 Phil. 61, 75 (2015) and *Philippine Long Distance Telephone Company v. Estrañero*, 745 Phil. 543, 550 (2014).

Respondents Zulisibs, Francisco, and Piandre alleged that Marlon committed serious misconduct or willful disobedience of the company's lawful orders, and of fraud or willful breach of the trust reposed in him by the company when he helped his brother-in-law open a salon along Daang Hari, Alabang. They justified Marlon's dismissal by citing paragraphs (a) and (c), Article 297 of the Labor Code.¹⁷ The provision reads:

Article 297. *TERMINATION BY EMPLOYER.* An employer may terminate an employee for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

The Labor Arbiter, the NLRC, and the Court of Appeals all held that the respondents presented substantial evidence to justify Marlon's dismissal. We affirm all the rulings. We adopt *in toto* the Court of Appeals' decision with regard to Marlon's dismissal. It held:

From the facts and circumstances obtaining with respect to petitioner Marlon Arcilla, there exists a valid cause in terminating his employment. It was clearly stated in paragraph 8 of the Agreement or "*Kasunduan*" signed by petitioners that they are prohibited from setting up or being involved in a business similar to that of private respondents' during the course of their employment. Considering that the petitioners have neither controverted nor denied the existence of the *Kasunduan*, they are therefore bound by the terms and conditions thereof. Petitioners cannot likewise deny the existence of the Code of Discipline and feign ignorance of the offense they committed and its corresponding penalty by holding that the private respondents did not present a copy of said Code in the proceedings below. They are deemed to have acknowledged the existence of said Code and presumed to have understood the provisions contained therein when they signed the *Kasunduan* and agreed to abide by the Code of Discipline and the rules and regulations of the company in paragraph 2 of their agreement. **As private respondents' trusted Senior Hairstylists for quite a number of years, it is incumbent upon them to have read and understood its provisions and be fully aware of the prohibitions and penalties imposed upon erring employees.**



¹⁷ Formerly numbered as Article 282 of the Labor Code.

Collorarily, as briefly summed up by the public respondent, petitioners were later discovered to be involved in setting up another salon near the private respondents' salon in Alabang, albeit the involvement was only indirect by means of extending a Php50,000.00 financial assistance to the owner of the new salon who happens to be the brother-in-law of Marlon or his wife Maricel's brother. We agree with public respondent that it is immaterial whether the new salon was under the petitioners' name or not, or that they established a salon of their own. **The important fact remains that petitioner Marlon made an admission that he gave funds to his brother-in-law for the new salon in Alabang which directly competes with the business of his employer. It is not disputed that the new beauty salon is located less than a kilometer away from Piandre Salon in Alabang.**

Furthermore, Marlon's admission substantially proves two things: 1) that a new salon has indeed been established; and 2) that he willfully disobeyed his contract of employment with the private respondents. **His involvement in setting up a competing salon, which albeit indirect, constitutes serious misconduct because of his blatant disregard [of] the terms and conditions of his contract/agreement with the private respondents. His act of allowing himself to be involved with his brother-in-law's business displays an act of disloyalty to the company which is likewise sufficient to warrant his dismissal for loss of trust and confidence.** To our mind, his apology in his written letter to private respondent Francisco [was] a mere afterthought after realizing the gravity of his offense after he became the subject of an investigation by the private respondents. Substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is a sufficient basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct that renders the latter unworthy of the trust and confidence demanded by his or her position.¹⁸ (Emphasis supplied)

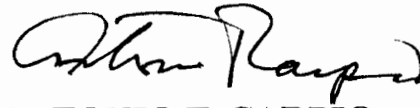
All told, there is sufficient basis to dismiss Marlon on the grounds of serious misconduct or willful disobedience of the company's lawful orders, and of fraud or willful breach of the trust reposed in him by the company when he helped his brother-in-law open a salon along Daang Hari, Alabang. The Court of Appeals acted in accordance with the evidence on record and case law when it affirmed and upheld the resolutions of the NLRC.



¹⁸ *Rollo*, pp. 218-220.

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.



ANTONIO T. CARPIO
Senior Associate Justice

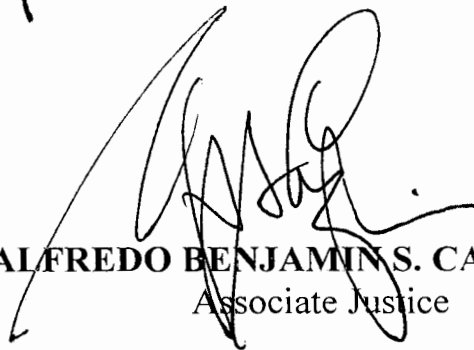
WE CONCUR:




DIOSDADO M. PERALTA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMINS S. CAGUIOA
Associate Justice



ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)