

SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PRUDENCIO CLEMENTE, JR.,
Petitioner,

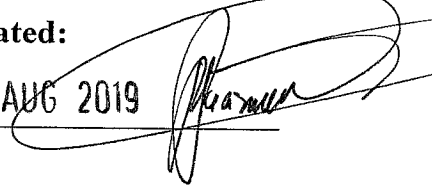
G.R. No. 228231
[Formerly UDK 15531]

Present:

- versus -

CARPIO, J., *Chairperson*,
CAGUIOA,
REYES, J. JR.,
LAZARO-JAVIER, and
ZALAMEDA, JJ.

**ESO-NICE TRANSPORT
CORPORATION,**
Respondent.

Promulgated:
28 AUG 2019 

X-----X

DECISION

REYES, J. JR., J.:

The Facts and The Case

Before the Court is a Petition for Review on *Certiorari*¹ seeking to reverse and set aside the October 30, 2015 Decision² and the February 5, 2016 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 138849 which nullified the September 29, 2014 Decision⁴ and the November 28, 2014 Resolution⁵ of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 08-002057-14 which affirmed *in toto* the July 16,

¹ *Rollo*, pp. 23-42.
² Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring; *id.* at 71-84.
³ *Id.* at 95.
⁴ *Id.* at 54-65.
⁵ *Id.* at 67-69.

✓

2014 Decision⁶ of the Labor Arbiter finding Prudencio Clemente, Jr. (petitioner) to have been illegally dismissed from employment.

Sometime in August 1998, ESO-Nice Transport Corporation (respondent) hired petitioner as bus dispatcher in its Baguio branch.⁷ When its Baguio branch operations was audited in August 2013, respondent found out that numerous collections were not deposited in its bank account.⁸ Thus, in an August 22, 2013 letter, the respondent gave the petitioner 72 hours to explain the following violations:

x x x x

- [a] Unremitted collection of payment of United Van Assoc. - dated August 3, 2013[,] ₱15,000.00
- [b] Unremitted payment of M. Kaley dated August 2013 – ₱60,000.00
- [c] Other sales[.]⁹

Petitioner also sent a similar letter to Alex Garcia (Garcia), who admitted using the money to pay the hospitalization bills of his father.¹⁰

In his Reply dated August 24, 2013 which was written by hand in the explanation portion of the August 22, 2013 letter, petitioner explained:

- Regarding all this [sic] matter [sic], August 03, 2013 was my day-off so, I don't have any knowledge about the collection or parking fee of the United Van Transport[.]
- The said collection payment of Mr. Kaley has been made a receipt by yours truly, honestly, and remitted to Alex Garcia to be delivered at the main office SFC[,] La Union as the person in authority to keep in safe such money for the company[.]
- So my duty is to dispatch buses as a dispatcher and authorized also to make a receipt and received [sic] parking fees and rental and later turned over to him whenever he (Alex Garcia) is absent or on his day-off. x x x
- On other sales, no knowledge at all[.]
- Hoping for your kind & consideration to my explanation.¹¹

On September 28, 2013, respondent called for a meeting to discuss the matter of undeposited collections. The meeting was attended by the petitioner and the other concerned employees of the respondent. Respondent claimed that during the said meeting, the petitioner admitted appropriating for himself numerous proceeds of the company.¹²

⁶ Id. at 46-51.

⁷ Id. at 72.

⁸ Id. at 102.

⁹ CA *rollo*, p. 39.

¹⁰ Id. at 40.

¹¹ *Supra* note 9.

¹² *Rollo*, p. 102.

Subsequently, respondent claimed that petitioner and Garcia admitted to having fraudulently taken the undeposited collections in the amount of ₱56,710.46 and ₱665,090.55, respectively. As proof, respondent submitted a document denominated as Eso-Nice Transport Corp., Undeposited Collections, January 1 to August 31, 2013, which shows the petitioner and Garcia's handwritten and signed confession dated October 3, 2013.¹³

By reason of petitioner's admission, respondent, on October 9, 2013, served upon the petitioner a Notice of Termination dated October 3, 2013. The same reads:

x x x x

In a notice dated September 28, 2013, you were required to submit your reply/explanation as to why you should not be terminated from stealing from the company particularly of unlawfully appropriating for your personal use and benefit from the daily collections and what is supposed to be deposited daily.

Instead of a reply/explanation, you submitted an acknowledgement wherein you stated that:

"That I admit to have fraudulently taken the money and that the initial undeposited collections amount to **Fifty Six thousand Seven hundred Ten & 46/100.**

In accordance with your admission, you are hereby terminated effective from notice for commission of qualified theft against the company. In addition you are ordered to restitute the amount of **Fifty Six thousand Seven hundred Ten & 46/100.**

This Notice is not a waiver of the right of the Company to file the necessary criminal case against you.¹⁴

x x x x

Garcia was likewise served on October 9, 2013 a Notice of Termination for having admitted to the taking of the initial undeposited collections in the amount of ₱665,090.55.¹⁵

On November 29, 2013, respondent filed with the Baguio City prosecutor's office a complaint against the petitioner and Garcia for qualified theft.

Meanwhile, the investigating prosecutor found probable cause for qualified theft against the petitioner and Garcia.¹⁶

¹³ CA *rollo*, pp. 37-38.

¹⁴ Id. at 44.

¹⁵ Id. at 45.

¹⁶ *Rollo*, p. 72.

In an Order dated January 10, 2014, the Regional Trial Court (RTC) of Baguio City agreed with the finding of probable cause by the investigating prosecutor and ordered the issuance of a warrant of arrest against the petitioner.¹⁷ A warrant for the arrest of Garcia was likewise issued.¹⁸ Despite the issuance of the warrant of arrest on even date,¹⁹ it was returned unserved as the petitioner was nowhere to be found in Sta. Lucia, Ilocos Sur.²⁰ Petitioner eventually surrendered voluntarily at the Sta. Lucia Police Station in Ilocos Sur on February 6, 2014.²¹

In the meantime, or on January 10, 2014, petitioner filed a complaint for illegal dismissal, underpayment of wages, non-payment of 13th month pay in 2013 and wages for September 15 to 30, 2013 and October 1 to 9, 2013, service incentive leave pay, overtime pay, separation pay in lieu of reinstatement, full backwages and attorney's fees.²²

In a Decision²³ dated July 16, 2014, the Labor Arbiter ruled that petitioner had been illegally dismissed given that respondent failed to show any valid cause for his termination. Respondent's claim that petitioner committed qualified theft had not been duly substantiated inasmuch as the prosecutor only found probable cause against Garcia. While respondent presented evidence showing that petitioner admitted to taking the amount of ₱56,710.46, the same becomes doubtful in light of his staunch denial of appropriating for himself the said amount in his August 24, 2013 written explanation. The Labor Arbiter also concluded that the signature of the petitioner in the said document where he allegedly admitted to pocketing the undeposited collections was forged because his handwriting therein was different from his penmanship in the document where he denied his liability for the missing collections. Furthermore, petitioner was not accorded his right to procedural due process. No hearing was conducted to investigate the alleged complicity of the petitioner for theft. As for petitioner's money claims, the same were granted by the Labor Arbiter for having been sufficiently proved.²⁴ Thus, the Decision disposed as follows:

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondents jointly and severally liable to:

- (1) Pay [the petitioner] separation pay at one (1) month pay for every year of service in the amount of **₱116,480.00**;
- (2) Pay [the petitioner] full backwages from the time he was illegally dismissed up to the finality of the judgment or decision in the amount of **₱73,616.15**;

¹⁷ CA rollo, p. 52.

¹⁸ Rollo, p. 62.

¹⁹ CA rollo, p. 51.

²⁰ Id. at 53.

²¹ Id. at 54.

²² Rollo, pp. 29, 46, 57, 74.

²³ Id. at 46-51.

²⁴ See also: id. at 58-59.

- (3) Pay [the petitioner] his unpaid wages as indicated in the amount of ₱6,440.00;
- (4) Pay [the petitioner] salary differentials on account of underpaid wages in the amount of ₱28,288.00;
- (5) Pay [the petitioner] his unpaid 2013 13th month pay in the amount of ₱4,870.10 and service incentive leave pay in the amount of ₱1,166.65; and
- (6) Pay [the petitioner] attorney's fees at 10% of the total monetary award to be recovered in the amount of ₱23,086.09.

All other claims are dismissed for lack of merit.

SO ORDERED.²⁵

The NLRC affirmed *in toto* the July 16, 2014 Decision of the Labor Arbiter on appeal. In its Decision²⁶ dated September 29, 2014, the NLRC held that other than petitioner's purported admission, respondent miserably failed to adduce substantial evidence to justify his termination. The document²⁷ presented by the respondent detailing the company's undeposited collections for the period January 1 to August 31, 2013 does not substantiate the charge of qualified theft because the same is merely a list of undeposited collections. Even before conducting an exhaustive investigation among the bus dispatchers and bus inspectors in its Baguio branch, accountability for the missing funds was already heaped on the petitioner which shows that other than bare suspicion, respondent had nothing with which to pin down the petitioner for theft of company funds. The need for a thorough inquiry is brought to greater light by the fact that the petitioner is a mere dispatcher who is not charged with the custody of daily fare collections as such task belonged to Garcia being the company's cashier/teller. The NLRC also agreed with the Labor Arbiter that a marked variance exists between petitioner's supposed signature admitting the theft *vis-à-vis* his signature appearing on other documents submitted before it. The NLRC further ruled:

What writes *finis* to [respondent's] cause is the fact that the Office of the Baguio Prosecutor found probable cause for Qualified Theft against Alex Garcia only but not [petitioner] x x x. Furthermore, contrary to [respondent's] claim, the RTC of Baguio issued a warrant of arrest only against Alex Garcia and not [petitioner] x x x. At the risk of redundancy, the prosecutor did not find probable cause to indict [the petitioner] for Qualified Theft. To recall, the determination of probable cause by the public prosecutor requires a sufficient ground to engender a well-founded belief that a crime has been committed and that the person charged is probably guilty thereof and should be held for trial x x x. While a finding of probable cause need only rests on evidence showing that more likely than not a crime has been committed and was committed by the suspect, it demands more than bare suspicion x x x. As well ratiocinated in *Spouses Boyboy v. Yabut, Jr.*, x x x if [respondent] could not even hurdle the low

²⁵ Id. at 51.

²⁶ Id. at 54-65.

²⁷ CA *rollo*, pp. 101-102.

quantum and quality of proof necessary to sustain a finding of probable cause, how could they conclude with definiteness that their evidence has crossed the much more rigid threshold of substantial evidence?²⁸ (Citation omitted; underscoring in the original)

The NLRC added that petitioner's termination cannot be upheld for the additional ground of want of procedural due process. The first notice which required the petitioner to explain the unremitted collections not only for August 3, 2013, but also for "other sales" is akin to a shotgun approach which does not apprise the employee of the particular acts or omissions for which his dismissal is sought. The special meeting called by the respondent is not equivalent to the required hearing since no searching questions were propounded during the meeting to ferret out the truth behind the unremitted collections. The three days that petitioner was given to answer the charge was also not sufficient.²⁹

Respondent moved for reconsideration, but the NLRC denied it in a Resolution dated November 28, 2014.³⁰

Unfazed, respondent elevated the matter before the CA *via* a Petition for *Certiorari*, which ruled in its favor in a Decision³¹ dated October 30, 2015.

Unlike the NLRC, the CA ruled that respondent complied with the twin-notice requirement when it gave the petitioner a chance to be heard and subsequently informed him of his dismissal from employment for committing qualified theft against it. The CA also found the admission of the petitioner that he failed to deposit the collections in the amount of ₱56,710.46 coupled with the findings of probable cause for Qualified Theft by both the investigating prosecutor and the RTC as valid ground for the respondent to impose disciplinary action upon the petitioner. However, the CA found the penalty of dismissal imposed by the respondent upon the petitioner to be not commensurate to the offense committed. Thus, it ordered petitioner's reinstatement to his former position without loss of seniority rights, but without backwages or other monetary benefits.³²

Aggrieved, the petitioner moved for reconsideration, but the CA denied it in its February 5, 2016 Resolution.³³

Hence, the present Petition.

²⁸ *Rollo*, pp. 62-63.

²⁹ *Id.* at 63-64.

³⁰ *Id.* at 67-69.

³¹ *Id.* at 71-84.

³² *Id.* at 78-83.

³³ *Id.* at 95.

The Issues

Petitioner submits the following issues for this Court's consideration:

I

THE HONORABLE [CA] ERRED IN RULING THAT THE PETITIONER WAS LEGALLY DISMISSED BY THE RESPONDENT; [and]

II

THE [CA] ERRED IN RULING THAT THE PETITIONER IS ONLY ENTITLED TO REINSTATEMENT BUT NOT TO BACKWAGES OR OTHER MONETARY BENEFITS.³⁴

The Arguments of the Parties

Petitioner insisted that he was illegally dismissed because the twin-notice requirement prior to his dismissal was not observed. The first written notice given to him did not state with particularity the facts and circumstances that gave rise to the charge against him, but merely provided him with a general description of the charge. The notice also failed to state which company rule he violated or which among the grounds under Article 297 of the Labor Code was he being charged of. The three-day period he was given to prepare for his defense was also too short given that established jurisprudence has pronounced that the period should at least be five calendar days from receipt of notice. No hearing was likewise conducted to enable him to defend himself with the aid of his counsel or representative. There was no truth that he received a written notice of termination from the respondent as the signature appearing in the notice respondent claimed it served upon him was not his. As a matter of fact, he became aware of respondent's intention to dismiss him only on the same day he was informed that it will be his last day at work. Even assuming that the said notice of termination was duly received by him, the notice is still defective since it did not state the grounds relied upon by the respondent to justify his termination from the service. Furthermore, petitioner insisted that it was Garcia who took the missing funds, he being the cashier who had the custody thereof and who is in-charge of its safekeeping.³⁵

Petitioner likewise averred that the CA erred when it ordered his reinstatement to his previous post, but without right to backwages. According to petitioner, his reinstatement is no longer possible in view of their strained relations which was brought about by the filing of a criminal complaint against him by the respondent, and his filing of a case for illegal dismissal against the latter. As reinstatement would only exacerbate the

³⁴ Id. at 33.

³⁵ Id. at 33-39

tension and strained relations between them, the award of separation pay in his favor is more prudent and practical. Petitioner furthermore contended that he is entitled to backwages for being illegally dismissed. The awards granted in his favor by both the Labor Arbiter and the NLRC for unpaid wages, salary differentials, unpaid 13th month pay in 2013 and service incentive leave pay must be reinstated. Petitioner claimed that he must also be awarded overtime pay for rendering services beyond his working hours.³⁶

Respondent, for its part, maintained the validity of petitioner's dismissal from work. It explained that the finding of probable cause by the investigating prosecutor against the petitioner for the crime of qualified theft and the issuance of the corresponding warrant for his arrest by the trial court clearly show that the respondent indeed had sufficient ground to terminate him. Respondent claimed further that despite the ruling of the CA, the petitioner has not reported for work. As such petitioner should be deemed to have abandoned his job; the respondent should no longer be required to admit the petitioner in its employ; and the ruling of the CA as regards his reinstatement should be reversed by the actions of the petitioner himself.³⁷

The Ruling of the Court

For a dismissal to be valid, the rule is that the employer must comply with both the substantive and the procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 282, 283 or 284 (now Articles 297, 298 and 299, respectively) of the Labor Code. On the other hand, procedural due process in dismissal cases consists of the twin requirements of notice and hearing.³⁸

Article 297 of the Labor Code enumerates the just causes for the termination of an employment. It provides:

ART. 297. [282] *Termination by Employer*. — An employer may terminate an employment 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;

(b) Gross and habitual neglect by the employee of his duties;

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

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

³⁶ Id. at 39-41.

³⁷ Id. at 104-111.

³⁸ *Noblado. v. Alfonso*, 773 Phil. 271, 281-282 (2015).

Anent the requirement of procedural due process, the Court elucidated on this matter in *Puncia v. Toyota Shaw/Pasig, Inc.*,³⁹ viz.:

Anent the issue of procedural due process, Section 2 (I), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides for the required standard of procedural due process accorded to employees who stand to be terminated from work, to wit:

Section 2. *Standards of due process; requirements of notice.* — In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 [now Article 297] of the Labor Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The foregoing standards were then further refined in *Unilever Philippines, Inc. v. Rivera* [710 Phil. 124, 136-137 (2013)], as follows:

To clarify, the following should be considered in terminating the services of employees:

(1) **The first written notice to be served on the employees should contain the specific causes or grounds for termination against them**, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. “Reasonable opportunity” under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. **Moreover, in order to**

³⁹ 788 Phil. 464, 479-481 (2016).

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enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. [297] is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) **After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.**
(Emphases and underscoring in the original)

In asserting the illegality of his dismissal, the petitioner harped on respondent's non-observance of his right to procedural due process.

A close scrutiny of the records of this case reveals that respondent indeed failed to comply with the due process requirement. The August 22, 2013 Notice given by respondent fell short of the standards set by the law and jurisprudence. In the said notice, petitioner was made to explain not only the unremitted collections for August 3, 2013 that was collected from the United Van Association and the unremitted payment of M. Kaley for August 2013, but also "other sales." Being made to account for "other sales" without more, clearly does not contain the required narration of facts and circumstances as would sufficiently apprise the petitioner of the grounds for which his dismissal was sought and thereby enable him to intelligently prepare his explanation and defense. In short, the blanket notice, instead of informing the petitioner of the violation for which his explanation is being required, creates confusion on the nature of the complaints against him. Aside from the said deficiency, the notice failed to mention which company rule petitioner violated or the just cause for which his termination is sought. Moreover, instead of five calendar days, he was given only 72 hours or three short days to explain his side. The September 28, 2013 meeting convened by the respondent also does not qualify as the hearing prescribed by jurisprudence since there is no showing that the petitioner was given the opportunity to explain his defenses to the charge hurled against him and to present evidence in support of his defenses, as well as rebut the evidence presented against him by the respondent.

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However, contrary to the view of the petitioner, violation of the due process requirement does not automatically result to the illegality of one's dismissal from work. The ruling of the Court in *Distribution & Control Products, Inc. v. Santos*⁴⁰ is on point:

In the case of *Brown Madonna Press, Inc. v. Casas*, [759 Phil. 479, 496-497 (2015)], this Court held:

In determining whether an employee's dismissal had been legal, the inquiry focuses on whether the dismissal violated his right to substantial and procedural due process. An employee's right not to be dismissed without just or authorized cause as provided by law, is covered by his right to substantial due process. Compliance with procedure provided in the Labor Code, on the other hand, constitutes the procedural due process right of an employee.

The violation of either the substantial due process right or the procedural due process right of an employee produces different results. Termination without a just or authorized cause renders the dismissal invalid, and entitles the employee to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

An employee's removal for just or authorized cause but without complying with the proper procedure, on the other hand, does not invalidate the dismissal. It obligates the erring employer to pay nominal damages to the employee, as penalty for not complying with the procedural requirements of due process.

Thus, two separate inquiries must be made in resolving illegal dismissal cases: *first*, whether the dismissal had been made in accordance with the procedure set in the Labor Code; and *second*, whether the dismissal had been for just or authorized cause.

Thus, in the case at bench, it behooves the Court to determine whether there exists a valid ground for petitioner's dismissal. If his dismissal was justified, but his right to procedural due process was transgressed, petitioner's dismissal will still remain valid, but respondent shall become liable for damages. Upon the other hand, if petitioner's termination is not for a just or authorized cause, his dismissal shall be invalid and he shall be entitled to reinstatement without loss of seniority rights, and other pertinent benefits and allowances.

⁴⁰ G.R. No. 212616, July 10, 2017, 830 SCRA 452, 458-459.

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To justify petitioner's dismissal from the service, respondent pointed to the finding of probable cause against him by the investigating prosecutor for the crime of qualified theft and the issuance of a warrant for his arrest by the trial court. For the respondent, such provided a valid cause for petitioner's termination.

Such view is not entirely correct. In *Copy Central Digital Copy Solution v. Domrique*,⁴¹ this Court held that the fact that the investigating prosecutor found probable cause to indict the employee for the crime of qualified theft does not necessarily mean that there exists a valid ground for his termination from employment.⁴² Evidence submitted to support the charge should be evaluated to see if the degree of proof of substantial evidence is met to justify the petitioner's termination.⁴³

In ruling that the respondent had valid ground to terminate the employment of the petitioner, the CA placed a premium on his admission of pocketing ₱56,710.46 worth of collections, as well as the finding of probable cause by the investigating prosecutor against him for qualified theft and the issuance of a warrant for his arrest by the trial court. Such factual findings of the CA are generally not subject to this Court's review under Rule 45 of the Rules of Court. However, the general rule on the conclusiveness of the factual findings of the CA is also subject to well-recognized exceptions such as where the CA's findings of facts contradict those of the lower court, or the administrative bodies, as in this case. All these considered, the Court is compelled to make a further calibration of the evidence at hand.⁴⁴

A careful review of the records of this case would show that the purported admission of the petitioner which was presented by the respondent does not amount to substantial evidence, or that amount of evidence which a reasonable mind might accept to justify a conclusion,⁴⁵ as will give ground to petitioner's dismissal from work, not only by reason of petitioner's firm denial of pocketing the collections, but also in light of the evidence presented by the respondent itself.

While the respondent claimed that during the September 28, 2013 meeting "*petitioner admitted to not depositing numerous proceeds of the company and using the same for his personal gain and to the damage and prejudice of respondent,*"⁴⁶ the minutes of the said meeting which the respondent presented show otherwise. The minutes of the meeting reads as follows:

⁴¹ 764 Phil. 694 (2015).

⁴² Id. at 702.

⁴³ *Philippine Auto Components, Inc. v. Jumadla*, 801 Phil. 170, 185 (2016).

⁴⁴ *Grande v. Philippine Nautical Training Colleges*, 806 Phil. 601, 612 (2017).

⁴⁵ *Ting Trucking/Mary Violaine A. Ting v. Makilan*, 787 Phil. 651, 661 (2016).

⁴⁶ *Rollo*, p. 102; *CA rollo*, p. 40.

ESO-NICE TRANSPORT CORP.[.]
Meeting to [d]etermine whether collections from January 1 to
August 31, 2013 [were deposited or not]

Special meeting to determine whether collections from January 1 to August 31, 2013 were deposited or not at the Corporate office at Sevilla, San Fernando La Union at about 10:30 in the morning until 12:00 noon with the presence of Edward Lacsamana, Ador Mapalo, Gina Dio, Crisanta Arsitio, Erlindo N. Licup, Alex Garcia and Prudencio Clemente[.] Jr. and concluded **the following were not deposited by Alex Garcia, except as indicated the following:**

January 14, 2013	5,000.00
January 19, 2013	2,280.00
January 22, 2013	30,443.00
January 27, 2013	8,697.00

January 29, 2013	3,300.00
January 30, 2013	5,776.97
February 6, 2013	393.07
February 7, 2013	16,497.00
February 11, 2013	3,570.00
February 21, 2013	16,228.00
February 28, 2013	14,709.00
March 3, 2013	8,727.95
March 17, 2013	16,427.00
March 21, 2013	26,311.00
March 22, 2013	1,000.00

responsibility of Alex Garcia,
Prudencio Clemente Jr., Galdonez

April 8, 2013	1,620.00
April 9, 2013	12,000.00
April 15, 2013	4,502.75
April 22, 2013	4,269.00
April 29, 2013	15,373.00
May 4, 2013	5,700.00
May 9, 2013	17,318.00
May 16, 2013	5,700.00
May 17, 2013	2,500.00
May 18, 2013	464.00
May 19, 2013	4,706.00
May 20, 2013	9,000.00
May 21, 2013	8,730.00
May 25, 2013	700.00
May 30, 2013	32,471.30
June 5, 2013	18,763.00
June 6, 2013	15,000.00
June 10, 2013	25,742.50
June 11, 2013	722.75
June 13, 2013	18,795.00
June 14, 2013	15,675.00
June 17, 2013	19,725.00
June 18, 2013	12,059.00
June 19, 2013	3,989.75
June 20, 2013	9,997.30

June 21, 2013	11,231.00
June 22, 2013	7,510.00
June 27, 2013	8,197.00
June 28, 2013	14,832.00
July 1, 2013	8,000.00
July 2, 2013	16,281.00
July 4, 2013	700.00
July 5, 2013	8,260.00
July 6, 2013	30,000.00
July 14, 2013	16,737.00
July 16, 2013	4,000.00
July 17, 2013	12,791.00
July 19, 2013	9,078.00
July 20, 2013	11,220.00
July 28, 2013	7,500.00
July 29, 2013	21,964.00
August 1, 2013	8,370.00
August 3, 2013	15,000.00
August 12, 2013	1,000.00
August 20, 2013	17,523.00
August 24, 2013	17,878.00
August 27, 2013	8,500.00
Total	<u>681,455.34</u> ⁴⁷

Nothing in the minutes indicates that it had been shown during the said meeting or that the petitioner admitted appropriating for himself any amount that was collected from January 1 to August 31, 2013. What the minutes only establish is that a portion of the March 22, 2013 collection in the amount of ₱1,000.00 was not deposited by the petitioner to respondent's bank account. This amplifies the denial of the petitioner of pocketing company funds, puts the veracity of the alleged admission in question, and creates serious doubt on the sufficiency of such admission to conclude that the petitioner indeed committed an infraction against the respondent which necessitated his removal therefrom. It must be taken into account that the meeting, which the respondent claimed was an administrative investigation, took place on September 28, 2013,⁴⁸ while the purported admission was made on October 3, 2013.⁴⁹ It is contrary to human experience that an employee would admit to the taking of company funds which was not even established during the investigation initiated by the company. If at all, petitioner's liability would only amount to negligence for not ensuring that funds that came to his possession was immediately deposited to respondent's bank account or turned over to the personnel in-charge of collections. Negligence, however, is not among the just cause under Article 297 which would validate respondent's act of terminating the petitioner from employment.

⁴⁷ CA *rollo*, pp. 41-43.

⁴⁸ *Id.* at 43.

⁴⁹ *Id.* at 38.

Such being the case, the finding of probable cause for the crime of qualified theft without more, as discussed above, does not meet the required degree of proof of substantial evidence as would justify petitioner's dismissal from work.

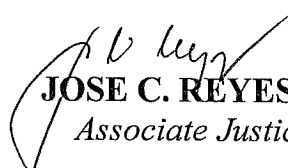
Given that the petitioner was dismissed without just cause and without due process, he is entitled to reinstatement, without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement under Article 294 of the Labor Code. However, considering the strained relationship now existing between the parties, the grant of separation pay in lieu of reinstatement is justified.⁵⁰ In *Bank of Lubao, Inc. v. Manabat*,⁵¹ this Court pronounced:

Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right. However, if reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order payment of separation pay instead of reinstatement.

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed October 30, 2015 Decision and the February 5, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 138849 are **REVERSED** and **SET ASIDE**. The September 29, 2014 Decision and the November 28, 2014 Resolution of the National Labor Relations Commission in NLRC LAC Case No. 08-002057-14 are **REINSTATED**.

SO ORDERED.



JOSE C. REYES, JR.
Associate Justice

⁵⁰ *Macasero v. Southern Industrial Gases Philippines and/or Lindsay*, 597 Phil. 494, 501 (2009).
⁵¹ 680 Phil. 792, 800-801 (2012).

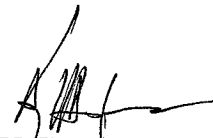
WE CONCUR:



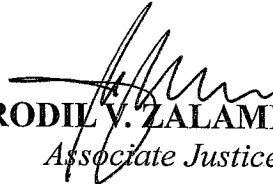
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

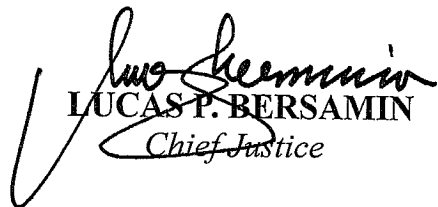
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.


LUCAS P. BERSAMIN
Chief Justice