



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES  
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LEPANTO CONSOLIDATED  
MINING COMPANY,

Petitioner,

- versus -

MAXIMO C. MAMARIL,  
EDUARDO C. FONTIVEROS,  
RICHARD PADONG, SHARWIN  
ESPIQUE, CLARITO ALBING,  
BALUDOY TOTANES, GERRY  
OLANIO, JOSEPH DUMANGENG,  
REYNALD MANUIT, NARDO  
SINGIT, MICHAEL PANGDA,  
BENJAMIN ASIDERA, ALVARO  
PATAGUE, JR., ANGELITO  
NAYRE, JR., JOSE MOJICA,  
and JOEL SILARAN,

Respondents.

G.R. No. 225725

Present:

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, J., JR., and  
HERNANDO,\* JJ.

Promulgated:

76 JAN 2019  
*[Signature]*

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DECISION

CARPIO, J.:

The Case

This is a petition for review on certiorari<sup>1</sup> assailing the Decision dated 21 October 2015<sup>2</sup> and the Resolution<sup>3</sup> dated 28 June 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 116677.

The Facts

Petitioner Lepanto Consolidated Mining Company (Lepanto) hired respondent Maximo C. Mamaril (Mamaril) as security guard on 14

\* Designated additional member per Special Order No. 2630 dated 18 December 2018.

<sup>1</sup> Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

<sup>2</sup> *Rollo*, pp. 10-28. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Melchor Quirino C. Sadang concurring.

<sup>3</sup> *Id.* at 29-30.

*[Handwritten mark]*

November 2003. Mamaril was assigned to the Security Reaction Force (SRF), a group of security guards tasked to do special duties and one that would “react” accordingly in case of any eventuality without pulling out posted security guards which would create a vacuum in the said posts.<sup>4</sup> The SRF was created by retired Col. Wilhelm D. Doromal, Lepanto’s Security Superintendent and Security and Communication Services Department Head, and composed of 14 members, who all used to be part of the military.

Due to the SRF’s small number and highly sensitive and critical duties, the members were required to be on duty and on call for 24 hours, seven days a week. They were posted alternately to sensitive postings and were not allowed to go home except for their rest day. When not on duty, the SRF members were required to stay at Victoria Hill, the resting quarters of the SRF, and were on call when not assigned to a particular guard detail. As compensation, the SRF members received free rice supply and housing, an additional rate of ₱20 to their daily rate, and overtime pay equivalent to one hour of overtime work.

Every day, members of the SRF were assigned to different posts consisting of eight hour shifts, as well as to daily gravity production transports done twice daily, in the morning and afternoon. Also, twice a week, the SRF secured the airstrip during the arrival and departure of the company plane. When the members were not posted on roving or on escort duties, they would usually rest at Victoria Hill but were still on call in case there would be reports of infiltration from outsiders or “highgraders.” Further, their movements were limited within company premises and they were not allowed to go home except on their scheduled rest days.

On 8 October 2006, at around 7:25 p.m., Lepanto Security Guard Intelligence Operatives Arthur Bangkilas (Bangkilas) and Romeo Velasco (Velasco) apprehended Eliseo Sumibang, Jr. (Sumibang), an employee of Lepanto Mine Division who worked as a mucker, for stealing skinned copper wires from the Lepanto Mine Division located in Sapid, Mankayan, Benguet. Mamaril, the guard on duty at that time, was also apprehended since he was the one who allegedly opened the man door of the Tubo Collar gate and allegedly conspired with Sumibang so that the wires would be brought out and loaded into a tricycle. Thereafter, Sumibang and Mamaril<sup>5</sup> were both placed under preventive suspension by the company for qualified theft of skinned copper wires.

Bangkilas and Velasco executed a Spot Report<sup>6</sup> dated 10 October 2006 and a Joint-Affidavit<sup>7</sup> dated 16 October 2006 regarding the qualified theft. They narrated that they were instructed by their supervisor, Paul

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<sup>4</sup> Id. at 261.

<sup>5</sup> Id. at 214.

<sup>6</sup> Id. at 210-211.

<sup>7</sup> Id. at 212-213.



Pespes, to do surveillance work at the Tubo Collar area, particularly the shaft gate, due to reliable information that pilferage of copper wires from the Tubo Collar shops and underground, involving some shaft men and electricians in connivance with the assigned duty guard, was rampant. The information disclosed that the pilferage would happen between 7:00 to 8:00 in the evening and a tricycle would be used to transport the pilfered items. On the night of 8 October 2006, Bangkilas and Velasco were positioned at the back of the store located along the national road, which was more or less 40 meters from the Tubo Collar gate, when the incident occurred. At around 7:20 p.m., they saw a person, later identified as Foreman Arceo Manginga, exit the man door. Then about five minutes later, Bangkilas and Velasco saw a tricycle, with two passengers onboard and with its headlights switched off, stop at the Tubo Collar gate. They saw that when the man door was opened by the assigned duty guard Mamaril, someone went out, and then something was loaded into the tricycle, which lasted for more or less a minute. Then Bangkilas and Velasco came out from hiding, tried to intercept, and chased the tricycle towards Tabbac Road. They caught up with the tricycle, with plate number AP-1586, and identified the passenger as Sumibang and the driver, a certain Tony Mendoza. Several other security officers followed and the physical evidence recovered, consisting of skinned copper wires weighing 110.45 kilograms and wrapped in four separate muddy and wet burlap sheets, were brought to the Office of the Mankayan Police Station.

At the formal hearing<sup>8</sup> held on 16 October 2006, Mamaril stated that he was the 3<sup>rd</sup> shift guard assigned from 3:00 p.m. to 11:00 p.m. at the Tubo Collar gate, consisting of a butterfly gate for vehicles and a man door gate for employees. Mamaril was assigned not only to guard the Tubo Collar gate but also to patrol and inspect the adjacent buildings such as the compressor, lamp house, hoist room, shaft and perimeter fence, and the National Power Corporation (NPC) gate. Mamaril denied that he was involved or that he conspired with Sumibang in the alleged qualified theft. Mamaril claimed that on 8 October 2006 he was on roving patrol at the NPC station when the theft occurred. He narrated that about past 7:00 in the evening, he opened the man door and allowed Foreman Arceo Manginga to exit the premises. Afterwards, NPC Security Guard Salvador Macaraeg arrived and together they conducted a roving inspection of the NPC and the compressor compound. Mamaril admitted that he left the man door hooked on its barrel bolt but did not padlock it since the employees of the Diamond Drilling Corporation of the Philippines, who were underground at that time, might come out anytime. At the back of the shaft, Mamaril came upon Rogelio Gao-an (Gao-an), Marcial Grupo (Grupo), Jose Van Ngalew (Ngalew), Rommel Anongos (Anongos), Tony Sabino (Sabino), and Vincent Eckwey (Eckwey), all mechanics working for NPC, attending to their welding job. Suddenly, Mamaril heard somebody blew a whistle at the direction of the Tubo Collar gate. Immediately, he went to his post and saw some security men headed by Security Guard Ernesto Fagela so he unhooked the barrel

<sup>8</sup> Id. at 215.



bolt of the man door and allowed them to enter. Mamaril denied having knowledge and participation in the theft of the skinned copper wires. Mamaril stated that his only fault, if any, was that he forgot to secure the man door. Padlocking the man door is a standard operating procedure of the company if the man door is not in use. Mamaril submitted the sworn affidavits of mechanics Gao-an, Grupo, Ngalew, Anongos, Sabino, and Eckwey, who all saw him on roving patrol, while the theft was taking place.

Tube Electrical Foreman Andrew Dacyon also gave a statement.<sup>9</sup> Dacyon stated that they had no losses of power line stock at the Tube Electrical storage and Tube Collar compound. Dacyon surmised that the skinned copper wires recovered by the security men might have come from the abandoned places in the mine underground. Security Guard Salvador Macaraeg and miner Nelson Badua also gave their own recollection of the events on the date in question.<sup>10</sup>

After the investigation, Lepanto's Security Investigator Jose Albing, Jr. submitted an Investigation Report<sup>11</sup> dated 19 October 2006. It was mentioned in the report, among other things, that the estimated value of the stolen items was worth ₱16,898.85. Thereafter, Lepanto's Legal Office submitted a Resolution<sup>12</sup> dated 4 November 2006 finding Mamaril guilty of qualified theft for conspiring with Sumibang in pilfering or stealing skinned copper wires on the night of 8 October 2006. Lepanto dismissed Mamaril from employment for dishonesty and breach of trust and confidence.

On 21 November 2006, Mamaril filed a complaint<sup>13</sup> against Lepanto with the National Labor Relations Commission Regional Arbitration Branch – Cordillera Administrative Region (NLRC RAB-CAR) for illegal dismissal with claims for payment of his full backwages or in lieu thereof, payment of separation pay, overtime pay, rest day pay, damages and attorney's fees.

On 22 January 2007, several security guards of Lepanto and members of the SRF also filed a complaint<sup>14</sup> with the NLRC RAB-CAR for payment of overtime pay, rest day pay, night shift differentials, moral and exemplary damages, and attorney's fees. The security guards who filed the complaint were Eduardo Fontiveros, Sharwin Espique, Baludoy Totanes, Gerry Olanio, Joseph Dumangeng, Reynald Manuit, Nardo Singit, Michael Pangda, Richard Padong, and Clarito Albing. The basis of their complaint revolved on the strike made by members of the Lepanto Employees Union which occurred from 2 June to 11 September 2005. During this three-month period, the members of the SRF, including Mamaril, were ordered to be on duty

<sup>9</sup> Id. at 219-A.

<sup>10</sup> Security Guard Salvador Macaraeg's statement, id. at 216-217; and miner Nelson Badua's statement, id. at 219.

<sup>11</sup> Id. at 218-220.

<sup>12</sup> Id. at 221-227.

<sup>13</sup> Docketed as NLRC Case No. RAB-CAR 11-0685-06.

<sup>14</sup> Docketed as NLRC Case No. RAB-CAR 03-0126-07.



around the clock, rendered overtime work, and were on call, even on holidays and rest days.

On 30 April 2007, more aggrieved members of the SRF, security guards Benjamin Asidera, Alvaro Patague, Jr., Angelito Nayre, Jr., Jose Mojica, and Joel Silaran, filed another complaint<sup>15</sup> against Lepanto with the NLRC RAB-CAR for payment of overtime pay, damages, and attorney's fees.

On 21 May 2007, the SRF was abolished and deactivated by Lepanto.

Upon motion of all the complainants, which Lepanto did not object to, the three separate cases were consolidated.

In its Answer, Lepanto declared that Mamaril was dismissed by the company for just and valid causes. Lepanto presented the Joint Affidavit of Bangkilas and Velasco who both positively identified Mamaril as the one who opened the man door for Sumibang and his companion. Lepanto asserted that Mamaril's infraction constituted dishonesty and breach of trust and confidence which are just causes for his termination. With regard to the monetary claims, Lepanto argued that complainants failed to establish that they rendered work (1) beyond the regular eight working hours a day, and (2) on holidays and rest days. Lepanto presented the daily time sheets, signed by respondents and countersigned by their supervisor, reflecting their hours worked, which they did not object to.

In a Joint Decision<sup>16</sup> dated 4 March 2008, the Labor Arbiter of the NLRC RAB-CAR ruled in favor of Lepanto. The Labor Arbiter declared that as a security guard in charge of the handling, custody, care, and protection of company property, Mamaril occupied a position of trust and confidence. Thus, he was terminated for a just cause. The Labor Arbiter gave credence to the testimonies of Bangkilas and Velasco and found the testimonies of Mamaril's witnesses, who did not have any knowledge of the fact of pilferage, as hearsay. With regard to the money claims, the Labor Arbiter declared that respondents failed to discharge the burden of proving that they are entitled to such money claims. The Labor Arbiter stated that (1) respondents did not specify the dates, months and years they rendered overtime services, as well as extra work during their holiday and rest days, and (2) the affidavit of their superior, retired Col. Wilhelm D. Doromal, failed to indicate that he had any authority to order respondents to render such overtime services. The dispositive portion states:

WHEREFORE, premises considered, judgment is hereby rendered  
DISMISSING the instant complaints for lack of merit.

<sup>15</sup> Docketed as NLRC Case No. RAB-CAR 05-0219-07.

<sup>16</sup> *Rollo*, pp. 257-274.

Other claims and charges are likewise dismissed finding no legal and factual basis.

SO ORDERED.<sup>17</sup>

The respondents filed an appeal to the NLRC. In a Resolution<sup>18</sup> dated 8 January 2010, the NLRC partially granted the appeal and declared that the dismissal of Mamaril from the service was without any valid and just cause. The NLRC found the claim of Bangkilas and Velasco that they recognized Mamaril as the one who opened the man door to be physically impossible, improbable and contrary to human experience given that (1) it was dark and the light at the guard post was switched off, (2) Bangkilas and Velasco were positioned at the back of the store located along the national road which was more or less 40 meters away from the man door, (3) the only illumination came from a bulb post along the left perimeter fence road near the outside gate nearer to the two guards, and (4) the incident happened in more or less a minute. The NLRC added that there was no reason to doubt the alibi of Mamaril that he was on roving duty when the incident occurred and his admission that he had been lax in leaving his post, under pain of possible sanction, without padlocking the man door first. The NLRC declared that Mamaril was entitled to separation pay and full backwages. However, with regard to other respondents, the NLRC found that they failed to present sufficient evidence to prove that they are entitled to overtime pay, holiday pay, and rest day pay. The dispositive portion states:

WHEREFORE, the appeal is PARTLY GRANTED. The assailed March 4, 2008 Decision of the Executive Labor Arbiter is AFFIRMED with MODIFICATION that the dismissal of complainant Maximo Mamaril from the service is illegal. And, accordingly, respondent Lepanto Consolidated Mining Co. is hereby ordered to pay complainant Mamaril the amount of ₱59,592.00 representing his separation pay; and, ₱480,149.87 representing his full backwages inclusive of allowances and other benefits.

SO ORDERED.<sup>19</sup>

Both parties filed Partial Motions for Reconsideration. In a Resolution<sup>20</sup> dated 13 August 2010, the NLRC partly granted the motion for reconsideration filed by respondents and ordered Lepanto to pay them overtime pay, holiday pay, and rest day pay. The dispositive portion states:

WHEREFORE, this Commission resolves to: (1) partly grant the motion for reconsideration filed by complainants and, thus, order the respondent to pay the following complainants in addition to the judgment awards as contained in our previous Resolution promulgated on January 8, 2010, to wit:

<sup>17</sup> Id. at 274.

<sup>18</sup> Id. at 275-286.

<sup>19</sup> Id. at 285.

<sup>20</sup> Id. at 289-297.



1. Eduardo Fontiveros:	₱26,997.42
2. Sharwin Espique:	₱26,997.42
3. Nardo Singit:	₱26,997.42
4. Michael Pangda:	₱26,997.42
5. Maximo Mamaril:	₱30,888.94
6. Benjamin Asidera:	₱29,056.54
7. Alvaro Patague, Jr.:	₱29,056.54
8. Angelito Nayre, Jr.:	₱29,056.54
9. Jose Mojica:	₱29,056.54

representing their overtime pay, rest day and holiday pays; and, (2) deny the motion for reconsideration of the respondent for lack of merit. The attached computation forms as an integral part hereof.

SO ORDERED.<sup>21</sup>

Lepanto filed a petition for certiorari under Rule 65 with the CA. In a Decision dated 21 October 2015, the CA decided in favor of Mamaril and the other respondents. The dispositive portion of the decision states:

WHEREFORE, in light of the foregoing disquisitions, We rule that—

- (1) The NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that private respondent Maximo Mamaril was not terminated for a just cause;
- (2) The following private respondents are entitled to the payment of their overtime pay for the overtime work they rendered while they were members of the Security Reaction Force:

- (a) Eduardo Fontiveros
- (b) Sharwin Espique
- (c) Nardo Singit
- (d) Michael Pangda
- (e) Maximo Mamaril
- (f) Richard Padong
- (g) Clarito Albing
- (h) Baludoy Totanes
- (i) Gerry Olanio
- (j) Joseph Dumangeng
- (k) Reynald Manuit

- (3) The following private respondents are entitled to the payment of their overtime pay and holiday for working beyond the regular eight working hours a day during the duration of the strike and holiday pay for working on June 12, 2005 (Independence Day), August 21, 2005 (Ninoy Aquino Day), and August 29, 2005 (National Heroes Day):

- (a) Eduardo Fontiveros
- (b) Sharwin Espique

<sup>21</sup> Id. at 296.

- (c) Nardo Singit
- (d) Michael Pangda
- (e) Maximo Mamaril
- (f) Benjamin Asidera
- (g) Alvaro Patague, Jr.
- (h) Angelito Nayre, Jr.
- (i) Jose Mojica
- (j) Joel Silaran

The Computation and Research Unit (CRU) of the NLRC is hereby directed to compute the overtime pay and holiday pay of the private respondents.

SO ORDERED.<sup>22</sup>

Lepanto filed a Motion for Partial Reconsideration which was denied by the CA in a Resolution dated 28 June 2016.

Hence, this petition.

### **The Issue**

Whether or not the appellate court committed reversible error in holding that (1) Mamaril was dismissed by Lepanto without a just and valid cause and thus entitled to separation pay and full backwages, and (2) Mamaril and the other respondents are entitled to be compensated for work rendered on overtime, holiday, and rest days.

### **The Court's Ruling**

The petition lacks merit.

In dismissal cases, the burden of proof is on the employer to show that the employee was dismissed for a valid and just cause. Here, Lepanto dismissed Mamaril based on loss of trust and confidence. To be a valid ground for dismissal, the loss of trust and confidence must be based on a willful breach and founded on clearly established facts.<sup>23</sup> A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. The employer, thus, carries the burden of clearly and convincingly establishing the facts upon which loss of confidence in the employee may be made to rest.<sup>24</sup>

<sup>22</sup> Id. at 25-26.

<sup>23</sup> *Surigao del Norte Electric Cooperative v. National Labor Relations Commission*, 368 Phil. 537, 553 (1999).

<sup>24</sup> *Pilipinas Bank v. National Labor Relations Commission*, 290 Phil. 244, 251 (1992).

Lepanto contends that Mamaril is not an ordinary outsourced security guard but an in-house security officer and a member of Lepanto's SRF, thus, holding a position of trust and confidence. Lepanto adds that Mamaril's duties and functions made him privy to company secrets and to confidential matters that are shared with management.

It is undisputed that Mamaril was hired by Lepanto as a security guard on 14 November 2003. He was assigned to the SRF, a group of security guards tasked to do special duties for the company. Lepanto asserts that as a member of the SRF, Mamaril was not an ordinary security guard but an in-house security officer privy to the workings of management, and thus, held a position of trust and confidence.

However, the records show that when the theft occurred on 8 October 2006, Mamaril was no longer a member of the SRF. Office Order No. 14-2005<sup>25</sup> dated 9 August 2005, attached to Mamaril's Position Paper filed with the NLRC, indicated that Mamaril and four other security guards were reassigned by Lepanto from the SRF to regular surface duty guards effective 20 August 2005. Thus, on the night in question, Mamaril was no longer a member of the SRF but was transferred to regular security duty in charge of securing the Tubo Collar gate as well as patrolling and inspecting adjacent buildings.

Also, even if Mamaril was occupying a position of trust as an ordinary security guard, to be a valid cause for termination of employment, the act or acts constituting breach of trust must have been done intentionally, knowingly, and purposely; and they must be founded on clearly established facts. In *Lopez v. Alturas Group of Companies and/or Uy*,<sup>26</sup> we held that loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer and must be based on substantial evidence and not on the employer's whims or caprices or suspicions.

Here, Lepanto asserts that the dismissal of Mamaril due to loss of trust and confidence was justified since the Tubo Collar gate was lit and that guards Bangkilas and Velasco positively identified Mamaril as the one who opened the man door since they were familiar with Mamaril's face, being their co-security guard. However, Lepanto relied heavily on the affidavit and report made by Bangkilas and Velasco. The two stated that while they were positioned at the back of a store along the national road about 40 meters away from the Tubo Collar gate, they saw Mamaril open the man door gate and then someone went out carrying something that was loaded into a tricycle, which lasted for more or less a minute.

We agree with the NLRC and the CA that this can hardly be believed as an accurate report or one founded on clearly established facts given that

<sup>25</sup> *Rollo*, p. 395.

<sup>26</sup> 663 Phil. 121, 128 (2011).



the incident occurred at night and the witnesses were at a considerable distance away from the man door. Also, the breach of trust was not shown to have been done intentionally, knowingly, and purposely. Here, Lepanto merely assumed that Sumibang, who was caught red-handed on the qualified theft of skinned copper wires, conspired with Mamaril to execute the wrongdoing. Aside from the report filed by Bangkilas and Velasco, Lepanto did not present an admission from Sumibang and his companion that Mamaril assisted them in any way to carry out their plan; neither did Lepanto produce any other evidence corroborating what Bangkilas and Velasco allegedly saw. Clearly, conspiracy cannot be readily presumed. It must be based on sufficient evidence to stand. As correctly observed by the CA in its Decision dated 21 October 2015:

Another, the allegation of qualified theft as justification for the loss of confidence was not founded on clearly established facts. The theft happened at night. Based from the pictures of the man door and the spot where Arthur Bangkilas and Romeo Velasco were hiding, there is a considerable distance between the two. Moreover, Arceo Manginga testified that the area is not well-lighted at night. He had to stand close to Maximo Mamaril in order to recognize him. It is highly unlikely for Arthur Bangkilas and Romeo Velasco to positively identify Maximo Mamaril at such distance and with poor lighting conditions.

Petitioner's argument that Maximo Mamaril was in cohorts with Eliseo Sumibang and his unidentified companion because he was on duty on the night of October 8, 2006 is speculative. As such, it deserves scant consideration. It has been consistently held that there must be proof of involvement in the events in question.

Maximo Mamaril's admission that he did not lock properly the man door before he went on his roving patrol does not also amount to a breach of trust and confidence. Such breach, to be a ground for termination, must be willful. That is, it must be done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.<sup>27</sup>

Also, the NLRC, in its Resolution dated 8 January 2010, aptly gave a vivid observation of the conditions of the place on the night in question:

Clearly, the testimony of the said witnesses could not be given any credence as it defies common human experience and observation, as it would, indeed, be physically impossible for the said witnesses to recognize complainant under the circumstances. Even the witnesses' allegation that the gate is well lighted is difficult to accept, as they did not elaborate the nature of the sources as well as the locations of the sources of the light that illuminate the place of the complainant. Nonetheless, available evidence established that the only source of light is a bulb on a long post along the left perimeter fence of the road which is already near the outside gate; meaning, the source of the light is located near the position of the witnesses in contrast to the location of the complainant, and as common experience would dictate, such makes the location of the

<sup>27</sup> *Rollo*, pp. 19-20.



complainant to appear even darker. It is obvious that their claim to have seen complainant open the man door is improbable and contrary to human experience.<sup>28</sup>

Thus, based on the findings of the NLRC and the CA, we find that Mamaril was dismissed without a just and valid cause and is thus entitled to be paid separation pay and full backwages, inclusive of allowances and other benefits.

Further, we see no reason to overturn the rulings of the NLRC and the CA in awarding overtime pay, holiday pay, and rest day pay to the other respondents. As enunciated by the NLRC in its Resolution dated 13 August 2010:

However, after a re-examination of the records which includes the testimony of Col. Doromal, this Commission is convinced that his testimony should have been viewed under the context that complainants actually rendered overtime work after their tour of duty and should not have accentuated on his failure to mention the number of hours the complainants had spent in rendering their overtime work. It must be observed that Col. Doromal, on direct examination, clearly testified that during the strike, complainants were tasked to deliver food and other necessary supplies that would provide continuous mining operation; they were also tasked to escort the tankers and cargo trucks to penetrate the strike area, assist the army in the conduct of the security patrol in the Lepanto area, secure VIPs going in and out of Lepanto, and secure the gold bullion from the refinery to the airport. He also admitted that the foregoing tasks were performed by the complainants beyond their eight-hour shift duties.

In his Affidavit, Col. Doromal also attested that the members of the SRF, of which the complainants were assigned, were not allowed to go home even during their rest days and were also required to be on duty/on call for 24 hours. The fact that complainants performed the above-mentioned tasks during the strike was also attested to by employees of Lepanto, in an Affidavit executed by them on September 10, 2007.

Complainants, nevertheless, admitted that they were only paid for an hour's overtime work per day.

This Commission has no reason to doubt the above attestation of complainants' witnesses especially with respondent's failure to present evidence to disprove the veracity of the said statements. Respondent's defense that there was no approval for members of the SRF to render overtime work, except those that had been duly documented and paid for by the company, or for being on call for 24 hours cannot also be given any merit noting that when Col. Doromal was subjected to a not too searching a cross-examination, it was elicited from him that there was a verbal instruction from the resident manager directing him to order his men to be on call.

Likewise, the occurrence of the labor strike threatened the orderly business operation of the respondent as well as the safety of its properties

<sup>28</sup> Id. at 281.



and work premises. Col. Doromal, who was then the Security Superintendent and Head, Security and Communications Services Department, was, therefore, in a position to call on the members of the SRF to render overtime work in order to augment its security to prevent any untoward incident that would hamper the operation of the respondent and to protect its properties and work premises as well. Thus, respondent cannot just disregard the services rendered by the complainants in overtime which undoubtedly benefited its business interest by simply invoking lack of authority, which respondent did not even [try] to prove.<sup>29</sup>

Also, the CA, in its Decision dated 21 October 2015, stated:

It appears uncontroverted that the members of the Lepanto Employees Union went on a strike from June 2, 2005 to September 11, 2005. Atty. Weldy U. Manlong, the Administrative Services Group Manager of petitioner and Capt. Edgar K. Langege, the Assistant Security Superintendent of Security and Communications Services Department, both manifested in their respective affidavits that the strikers committed illegal acts during the strike. This can be considered as a special circumstance where private respondents, as security guards and members of the Security Reaction Force, may be ordered to render work in order to prevent loss of life and property.

We also note that both Atty. Weldy Manlong and Capt. Edgar Langege hinted in their respective affidavits that private respondents were ordered to render overtime work and work during the holiday and their rest day. They pointed out that some of the security guards remained at their post beyond the regular eight working hours to keep an eye on the strikers. Capt. Edgar Langege specifically stated that the overtime work that the security guards rendered during the duration of the strike was approved by the Administrative Group Manager and Resident Manager of petitioner. x x x.<sup>30</sup>

In *Damasco v. NLRC*,<sup>31</sup> we held that an employer's formal admission that an employee worked beyond eight hours should entitle the employee to overtime compensation. In this case, such admissions, that respondents rendered overtime work and work during their holiday and rest days on the period specified therein, can be gleaned from the affidavits executed by Lepanto's managers, Atty. Weldy Manlong, and Capt. Edgar Langege. Thus, respondents are clearly entitled to these benefits.

This Court has repeatedly ruled that any doubt arising from the evaluation of evidence as between the employer and the employee must be resolved in favor of the latter.<sup>32</sup> As an employer, it is incumbent upon Lepanto to prove payment. In *G & M (Phils.), Inc. v. Cruz*,<sup>33</sup> we held that the burden of proving payment of monetary claims rests on the employer since the pertinent personnel files, payrolls, records, remittances and other similar

<sup>29</sup> Id. at 291-293.

<sup>30</sup> Id. at 21.

<sup>31</sup> 400 Phil. 568, 586 (2000).

<sup>32</sup> *Marival Trading, Inc. v. National Labor Relations Commission*, 552 Phil. 762, 783 (2007).

<sup>33</sup> 496 Phil. 119, 124-125 (2005).



documents — which will show that overtime, differentials, service incentive leave, and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer. Thus, the burden of showing with legal certainty that the obligation has been discharged with payment falls on the debtor, in accordance with the rule that one who pleads payment has the burden of proving it.

In this case, Lepanto failed to discharge such burden of proof. Lepanto submitted daily time sheets showing that respondents rendered eight-hour work days, signed by respondents and countersigned by Col. Doromal as the Department Head. However, as found by the CA in its Decision dated 21 October 2015:

Then again the daily time sheets presented by petitioner are not substantial proof that private respondents did not render overtime work. It can be plainly observed from these daily time sheets that the number of hours worked by private respondents were uniform and were written by the same hand. For this reason, these daily time sheets should be taken with [a] grain of salt x x x.

x x x x

It is also noticeable that these daily time sheets are incomplete as these only covered the following periods:

1. June 21 and 30, 2004
2. July 13 and 30, 2004
3. August 19, 2004
4. October 19, 2004
5. December 10, 2004
6. January 9, 2005
7. June 1-15, 2005
8. June 21, 2005 to August 20, 2005

Petitioner nonetheless insists that it paid private respondents' overtime pay and holiday pay. Hence, petitioner should have at least presented copies of its payroll or copies of the pay slips of respondents to show payment of these benefits. However, it failed to do so. Due to such failure of the petitioner, there arises a presumption that such evidence, if presented, would be prejudicial to it. Likewise, petitioner could be deemed to have waived its defense and admitted the allegations of the private respondents.<sup>34</sup>

In sum, we find that the appellate court did not commit any reversible error in holding that (1) Mamaril was dismissed by Lepanto without a just cause and is thus entitled to separation pay and full backwages, and (2) Mamaril and the other respondents are entitled to be compensated for the overtime, holiday and rest day work that they rendered during the period specified therein.

<sup>34</sup> *Rollo*, pp. 23-24.

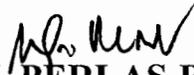
**WHEREFORE**, we **DENY** the petition. We **AFFIRM** the Decision dated 21 October 2015 and the Resolution dated 28 June 2016 of the Court of Appeals in CA-G.R. SP No. 116677.

**SO ORDERED.**

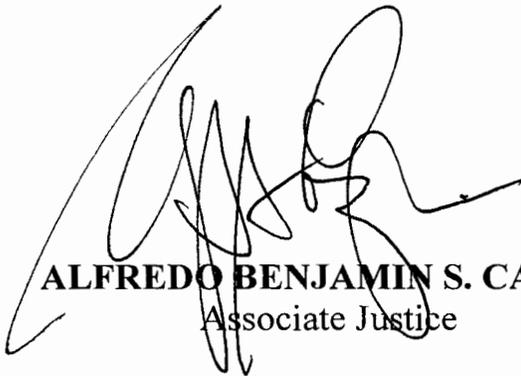


**ANTONIO T. CARPIO**  
Associate Justice

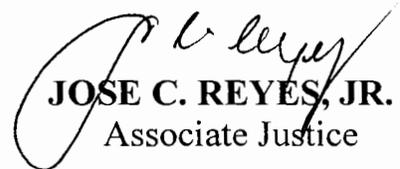
**WE CONCUR:**



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice



**RAMON PAUL L. HERNANDO**  
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.

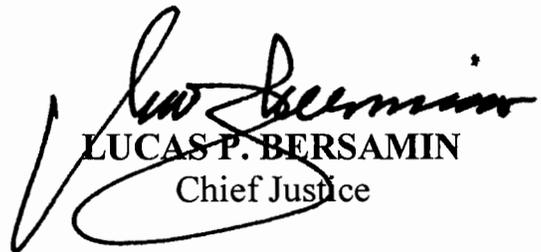


**ANTONIO T. CARPIO**

Associate Justice  
Chairperson

### 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