



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

SPC POWER CORPORATION, G.R. No. 202379
 JOCELYN O. CAPULE, and
 ALFREDO S. BALLESTEROS,
Petitioners, Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
 GISMUNDO,*
 INTING,
 DELOS SANTOS, and
 BALTAZAR-PADILLA, JJ.

- versus -

GERARDO A. SANTOS,
Respondent.

Promulgated:
 27 JUL 2020

X-----X

DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari* (With Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction)¹ under Rule 45 of the Rules of Court assailing the Decision² dated July 28, 2011 and the Resolution³ dated June 8, 2012 of the Court of Appeals (CA), Cebu City in CA-G.R. SP No. 05401 which reversed and set aside the Decision⁴ dated April 30, 2010 of the National Labor Relations Commission (NLRC), Cebu City in NLRC VAC-06-000758-2009/RAB Case No. VII-07-1769-2008.

* Designated additional Member per Raffle dated June 22, 2020 in lieu of Associate Justice Ramon Paul L. Hernando.

¹ *Rollo*, Vol. 1, pp. 3-140

² *Id.* at 147-160; penned by Associate Justice Pampio A. Abarintos with Associate Justices Ramon Paul L. Hernando (now member of the Court) and Gabriel T. Ingles, concurring.

³ *Id.* at 162-163.

⁴ *Rollo*, Vol. 2, pp. 681-697; penned by Commissioner Julie C. Rendoque with the concurrence of Presiding Commissioner Violeta Ortiz-Bantug while Commissioner Aurelio D. Menzon took no part.

The Antecedents

Gerardo A. Santos (respondent) was hired by SPC Power Corporation (SPC) in 1997. He was assigned as a stock keeper in SPC's Warehouse Department. In 2002, the petitioners offered him the position of security officer, but respondent was hesitant to accept the position because he had no background or training as a security officer. The job was offered three times to him; on the third time, respondent accepted the position.⁵

In 2005, SPC gave respondent a regular appointment as security officer. However, SPC neither informed nor gave him a job description to guide him in his duties. Such being the case, his tasks were unrelated to his job as security officer, like being a personal aide of Raul Estrelloso (Estrelloso), his immediate supervisor. SPC also ordered him to conduct activities designed to prevent employees from forming a union.⁶

Sometime in 2006 and 2007, SPC ordered respondent and other employees of SPC to engage in activities that would undermine the 2007 certification election. They did as instructed, but still failed to prevent the employees from forming a union. Soon after the union was formed, the respondent noticed a change of treatment from SPC against him and the other personnel who actively participated in preventing the formation of a union. True enough, SPC took an action against Estrelloso by asking the latter to take a leave of absence. Subsequently, Estrelloso's close aides, including the respondent, were served notices to show cause why they should not be terminated from their employment. Later on, SPC asked Estrelloso to resign from the company.⁷

Meanwhile, SPC began to seek favorable dialogue with the newly formed union. In order to make it appear that they were not involved in union busting activities, SPC took steps to get rid of the respondent and his group.

⁵ *Rollo*, Vol. 1, p. 148.

⁶ *Id.*

⁷ *Id.* at 148-149.

Alfredo S. Ballesteros (Ballesteros), Senior Vice President for Finance and Administrator of SPC, issued to respondent a show cause letter⁸ dated January 15, 2008. In no time, Ballesteros placed respondent under preventive suspension for 30 days effective January 16, 2008. On January 17, 2008, respondent submitted his written explanation. In a letter⁹ dated January 28, 2008, SPC directed the respondent to attend a formal investigation and hearing. On January 31, 2008, a formal hearing was conducted. In a letter¹⁰ dated February 12, 2008, SPC extended the respondent's preventive suspension from February 14, 2008 to March 13, 2008. On March 12, 2008, the respondent requested additional time to submit supporting documents to answer the allegations hurled against him. SPC granted respondent's request. Thus, his preventive suspension was further extended from March 14, 2008 to March 31, 2008. Thereafter, respondent's preventive suspension was subjected to series of extensions: (1) from April 1 to April 30, 2008;¹¹ (2) from May 1 to May 15, 2008;¹² and (3) from May 16 to May 31, 2008.¹³ Eventually, in a Notice of Dismissal¹⁴ dated May 30, 2008, signed by Jimmy Balisacan, Vice President for Finance, and Jocelyn O. Capule (Capule), Senior Manager for Human Resources, SPC informed the respondent of their decision to terminate the latter's services. Consequently, the respondent filed a Complaint¹⁵ for illegal dismissal, separation pay, unpaid salaries, moral and exemplary damages, and attorney's fees against SPC, Ballesteros and Capule (collectively, petitioners).

For their part, the petitioners argued: (1) that the respondent was validly dismissed due to several infractions he caused while still engaged as the company's security officer; (2) that due to the gravity of the charges against him, he was immediately placed under preventive suspension pending investigation; and (3) that after being found guilty of the charges hurled against him, the respondent was terminated from services.

⁸ *Rollo*, Vol. 1, pp. 233-235.

⁹ *Id.* at 241.

¹⁰ *Id.* at 242.

¹¹ *Id.* at 246.

¹² *Id.* at 247.

¹³ *Id.* at 248.

¹⁴ *Id.* at 253-260.

¹⁵ *Id.* at 408.

The Ruling of the Labor Arbiter (LA)

On April 1, 2009, the LA ruled in favor of the respondent.¹⁶ He found that the respondent was not afforded the procedural due process because the Uniform Code of Conduct was not observed in the initiation of the termination proceedings. He likewise ruled that the petitioners miserably failed to prove the substantive aspect of termination. According to the LA, the respondent's termination was not based on just or authorized cause. He found the petitioners' accusations against the respondent baseless and unsubstantiated. The dispositive portion of the Decision reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered declaring the respondents guilty of illegally dismissing the complainant from his employment. Respondents are therefore, directed to jointly and severally pay complainant the following:

I. Separation Pay	-----	P156,000.00
II. Backwages	-----	145,500.00
III. 30-day Salary (Preventive suspension)-----		<u>13,000.00</u>
Total		<u>P314,500.00</u>

The amount of P3,050,000.00 as MORAL DAMAGES and of P3,050,000.00 as EXEMPLARY DAMAGES, plus P641,450.00 ten (10%) percent attorney's fees or the total aggregate amount of PESOS: SEVEN MILLION FIFTY FIVE THOUSAND NINE HUNDRED FIFTY & 00/100 (7,055,950.00).

SO ORDERED.¹⁷

Undaunted, the petitioners appealed to the NLRC.

The Ruling of the NLRC

On April 30, 2010, the NLRC promulgated the Decision¹⁸ reversing the LA's ratiocination. It ruled that the respondent's dismissal was for just causes. The NLRC found that the respondent failed to perform his duty in accordance with the standards expected of him as a security officer. It further stated that the respondent failed to prevent or at least to investigate several incidents which affected the property and security of the company such as stolen grounding cluster cables,

¹⁶ *Rollo*, Vol. 2, pp. 517-531; penned by Labor Arbiter Jose Gutierrez.

¹⁷ *Id.* at 531.

¹⁸ *Id.* at 681-697.

pilfered/lost good lumber, missing/pilfered coal mill part, unaccounted stolen copper wire, ignored and disregarded security measures, unresolved murders inside the complex, and habitual neglect/gross incompetence. It ruled that with the gravity and seriousness of respondent's infractions, the petitioners were justified in terminating his services.¹⁹ It disposed the case as follows:

WHEREFORE, PREMISES CONSIDERED, this appeal is given due course. The decision of the Labor Arbiter is hereby REVERSED and VACATED and a new one entered declaring complainant to have been VALIDLY DISMISSED.

SO ORDERED.²⁰

Subsequently, the respondent moved for reconsideration,²¹ but the NLRC denied it.²² Aggrieved, he filed a Petition for *Certiorari*²³ under Rule 65 of the Rules of Court before the CA.

The Ruling of the CA

On July 28, 2011, the CA issued the assailed Decision granting the petition and reversing the NLRC's ruling, to wit:

WHEREFORE, finding the petition to be impressed with merit, the same is hereby GRANTED. The challenged NLRC's Decision and Resolution dated April 30, 2010 and June 29, 2010 are hereby ANNULLED and SET ASIDE. Accordingly, the Labor Arbiter's Decision dated April 1, 2009 is REINSTATED with MODIFICATIONS such that the award of moral damages and exemplary damages are reduced to P50,000.00 and P25,000.00 respectively. Private respondents are likewise ordered to pay attorney's fees in the amount of ten (10%) of the total monetary award due to the petitioner. In all other respects, the April 1, 2009 decision of the Labor Arbiter STANDS.

SO ORDERED.²⁴

The CA found that the substantive aspect of due process in respondent's dismissal was not observed. It emphasized that the

¹⁹ *Id.* at 694.

²⁰ *Id.* at 697.

²¹ *Id.* at 698-705.

²² *Id.* at 768-769.

²³ *Id.* at 773-806.

²⁴ *Rollo*, Vol. 1, pp. 159-166.

respondent was not negligent in his duties as the petitioners' security officer. It clarified that the alleged incidents, like the loss of company properties and the crimes committed inside the company premises, cannot be attributed to the respondent as there was no single piece of evidence that he committed the lapses. On the contrary, as it pointed out that the lapses were committed by the petitioners' security guards and negligent employees. It noted that the petitioners did not even file criminal charges for theft, pilferage or murder against the respondent, if indeed, the latter was responsible for the incidents.

Likewise, the CA stressed that it is highly suspicious that the alleged varied infractions of the respondent spanning over two years were lumped together and raised for the first time to bring about the latter's termination. It concluded that the respondent was terminated because of his failure to prevent the employees from forming a labor union.

The petitioners then filed a Motion for Reconsideration, which the CA denied in its assailed Resolution dated June 8, 2012.

Undeterred, the petitioners filed the instant petition before the Court raising the following grounds, to wit:

I. The [CA] erred in finding that the admitted and incontrovertible actions and/or omissions of respondent that prompted his dismissal are not attributable to him.²⁵

II. The [CA] palpably erred in ruling that respondent was dismissed as a result of the union busting activities allegedly pursued by [SPC].²⁶

III. The [LA] and the [CA] erred in ruling that respondent's 30-day preventive suspension was invalid.²⁷

IV. The [CA] erred in holding petitioners Ballesteros and Capule personally liable for respondent's claims.²⁸

V. The [CA] committed grave and reversible errors in ruling that the dismissal of the respondent was without just cause despite the existence of clear and indisputable evidence and respondent's own incriminating admissions.²⁹

²⁵ *Id.* at 70-71.

²⁶ *Id.* at 88.

²⁷ *Id.* at 97.

²⁸ *Id.* at 100.

²⁹ *Id.* at 102.

VI. The [CA] erred in ruling that SPC is liable to pay respondent backwages and separation pay despite respondent's valid dismissal.³⁰

[VII.] The [CA] erred in ruling that the respondent is entitled to moral and exemplary damages, and attorney's fees without any basis in fact and in law.³¹

The basic contention of the petitioners is that the respondent was validly dismissed after he was afforded the substantive and procedural aspects of due process. They argue: (1) that the respondent was grossly incompetent and negligent as a security officer; (2) that such incompetence resulted in the consummation of theft, pilferage, and murder inside the company's premises; (3) that the respondent was not terminated as a result of union busting, but rather as a result of his negligence as security officer; (4) that the respondent's preventive suspension is not illegal as it is part of employer's prerogative during an investigation; (5) that the respondent already admitted that his negligence resulted in the alleged incidents; and (6) that they should not be held liable to pay backwages, separation pay, damages, and attorney's fees as they acted within the bounds of the law in dismissing him.

In his Comment³² dated September 19, 2012, the respondent counters that he was dismissed as a scapegoat of the petitioners' union busting activities. He asseverates: (1) that there was no shade of proof of the alleged just causes *i.e.*, gross and habitual neglect of duty, serious misconduct, willfull disobedience, and violation of the company's Uniform Code of Conduct for his termination; (2) that he cannot be faulted for the alleged incidents that happened in the company *i.e.*, stolen grounding cables, pilfered/lost good lumber, missing/pilfered coal mill part, unaccounted stolen copper wire, and unsolved murders inside the company premises; (3) that it is questionable why it took so long for the petitioners to address his alleged shortcomings; (4) that there are documents evidencing the petitioners' union busting activity; (5) that he was not afforded the procedural due process of law when he was terminated as the company's Uniform Code of Conduct was not strictly complied with in the initiation of the termination proceedings; and (6) that since he was illegally dismissed from his job he is entitled to backwages, separation pay, moral damages, exemplary damages, and attorney's fees.

³⁰ *Id.* at 124.

³¹ *Id.* at 132.

³² *Rollo*, Vol. 3, pp. 1132-1163.

Our Ruling

The petition is without merit.

In a nutshell, the main issue in this case is whether respondent's dismissal is legal.

At the outset, the Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. It must be emphasized that the Court is not a trier of facts, and this applies with greater force in labor cases.³³ It is well-settled that findings of fact of an administrative agency, like the LA and the NLRC, which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal. The Court has consistently ruled that the factual findings and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on the Court as long as they are supported by substantial evidence.³⁴ Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest.³⁵ However, the rule, is not absolute and admits of certain well recognized exceptions. Thus, when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals,³⁶ as in the present case, the Court may make an independent factual determination based on the evidence of the parties.³⁷

Article 294³⁸ of Presidential Decree No. 442, also known as the Labor Code of the Philippines, as amended and renumbered, protects the employee's security of tenure by mandating that “[i]n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title.” A lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and

³³ *Doctor, et al. v. NII Enterprises, et al.*, 821 Phil. 251, 264 (2017).

³⁴ See *Peckson v. Robinsons Supermarket Corp., et al.*, 713 Phil. 471, 486 (2013), citing *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007).

³⁵ *Id.*

³⁶ *Marlow Navigation Philippines, Inc., et al. v. Heirs of Ricardo S. Ganal, et al.*, 810 Phil. 956, 961 (2017), citing *General Milling Corporation v. Viajar*, 702 Phil. 532, 540 (2013).

³⁷ *AMA Computer College-East Rizal, et al. v. Ignacio*, 608 Phil. 436, 454 (2009), citing *Cadiz v. Court of Appeals*, 510 Phil. 721, 728 (2005).

³⁸ Formerly Article 279.

hearing.³⁹ Here, it cannot be denied that the respondent is a regular employee of the petitioners; thus, he is entitled to a security of tenure. The bone of contention here is whether his dismissal was lawful or that the petitioners complied with the due process of law.

It bears stressing that in termination cases, the *onus* of proving the validity of dismissal lies with the employer.⁴⁰ The quantum of proof which the employer must discharge is *substantial evidence* or that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.⁴¹ In the absence of a clear, valid, and legal cause for the termination of employment, the law considers the dismissal illegal and the burden is on the employer to prove that the termination was for a valid or authorized cause under the Labor Code. Also, it is not incumbent upon dismissed employees to prove their innocence of the employer's accusations against them.⁴² In other words, they have no mandatory duty to forward evidence to prove that they did not commit any misfeasance or malfeasance in the office.

It is already doctrinal that an employee may only be dismissed for just or authorized causes.⁴³ Thus, the legality of dismissal of an employee hinges on: (a) the legality of the act of dismissal; that is dismissal on the grounds provided for under the Labor Code and (b) the legality in the manner of dismissal.⁴⁴ Hence, before the employer may terminate the services of the employee he must comply with the substantive and procedural aspects of due process. Clearly, in order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both *substantive and the procedural requirements* thereof. *Substantive due process* refers to the intrinsic validity of a law that interferes with the rights of a person to his property.⁴⁵ In labor cases, it refers to the grounds/basis of terminating an employee. On the other hand, *procedural due process* means compliance with the procedures or steps prescribed by the law.⁴⁶ This refers to the

³⁹ *Venzon, et al. v. Zameco II Electric Cooperative, Inc., et al.*, 799 Phil. 342, 364 (2016).

⁴⁰ *University of Manila v. Pinera*, G.R. No. 227550, August 14, 2019.

⁴¹ *Id.*

⁴² See *Garcia v. NLRC*, 351 Phil. 960, 972 (1998); *Skippers United Pacific, Inc. v. Maguad*, 530 Phil. 367, 387 (2006).

⁴³ *Cruz v. National Labor Relations Commission*, 381 Phil. 775, 789 (2000), citing *Shoemart, Inc. v. NLRC*, 257 Phil. 396, 402 (1989).

⁴⁴ *Id.*

⁴⁵ *Republic of the Phils. v. Sandiganbayan*, 461 Phil. 598, 609 (2008).

⁴⁶ *Id.*

employer's act of affording the employee to explain his/her side through the two notices required by the law (notice to explain and notice to terminate).

Here, while the LA was correct in his observation that the petitioners' Uniform Code of Conduct was not strictly complied with in the initiation of the termination proceedings and in the eventual termination of the respondent, the Court nonetheless agrees with the CA's findings that the procedural aspect of due process was observed. The petitioners sent a Show Cause Letter⁴⁷ dated January 15, 2008 to the respondent informing the latter of the charges leveled against him. On January 17, 2008, the respondent submitted his written explanation. On January 28, 2008 the petitioners directed the respondent to attend a meeting.⁴⁸ On January 31, 2008, a formal hearing was conducted. Then, in a Letter⁴⁹ dated February 12, 2008, the petitioners extended the respondent's preventive suspension from February 14, 2008 to March 13, 2008.

The respondent's preventive suspension was subjected to a series of extensions: (1) from April 1 to April 30, 2008;⁵⁰ (2) from May 1 to May 15, 2008;⁵¹ and (3) from May 16 to May 31, 2008.⁵²

Finally, in a Letter⁵³ dated May 30, 2008, the petitioners notified the respondent of their decision to terminate the latter's services which prompted him to file a complaint for illegal dismissal, separation pay, unpaid salaries, moral and exemplary damages, and attorneys fees against the petitioners. Evidently, the procedural aspect of due process was complied with by the petitioners. The respondent was notified of the reasons of his preventive suspension and his eventual termination from services. While being investigated, the respondent was likewise heard in a meeting conducted by the petitioners.

However, after judiciously reviewing the records of the case at bench and the pieces of evidence presented by the parties, the Court finds that the petitioners failed to afford the respondent of the substantive aspect of due process in terminating the latter's services. The

⁴⁷ *Rollo*, Vol. 1, pp. 233-235.

⁴⁸ *Id.* at 241.

⁴⁹ *Id.* at 242.

⁵⁰ *Id.* at 246.

⁵¹ *Id.* at 247.

⁵² *Id.* at 248.

⁵³ *Id.* at 253-260.

Court agrees with the CA's disquisition that the respondent was illegally dismissed as the termination was not based on any just or authorized causes alleged in the petitioners' petition using as basis the respondent's alleged admission of his incompetence in discharging his duty as security officer. Without any valid ground for terminating the respondent, his dismissal is considered illegal under the eyes of the law.

A careful scrutiny of the records would show that the petitioners dismissed the respondent based on the following grounds: (a) gross and habitual neglect of duty; (b) serious misconduct; (c) willful disobedience; and (d) violation of the company's Uniform Code of Conduct. All of the grounds are premised on his alleged failure to prevent, investigate, and resolve the issues on the stolen grounding cables, pilfered good lumber, missing coal mill part, stolen copper wire, and unsolved murders inside the company premises. The foundation of the enumerated grounds for his dismissal is his alleged incompetence as security officer. The respondent was basically thrown every charge in the book. Apparently, this is a fault-finding mission if not a fishing expedition on petitioners' part to get rid of the respondent. The wholesale accusation made it difficult for the respondent to rebut the charges, but more difficult on the petitioners' part to prove each and every ground for terminating the services of the former.


It is worth noting that not a shade of evidence can be gleaned supporting the petitioners' allegations that the respondent is incompetent as a security officer for his alleged failure to prevent, investigate, and resolve the issues on the stolen grounding cables, pilfered good lumber, missing coal mill part, stolen copper wire, and unsolved murders inside the company premises.

Records show that the respondent did not admit neglecting his duty. What he admitted was the fact that he had no background, knowledge, skills, or training to qualify for the position of security officer when the position was offered to him. Factual evidence shows that it was only when the petitioners offered the position for the third time that the respondent accepted the job despite the fact that he does not possess any knowledge about the basics of a security officer. Likewise, he was not given a job description when he assumed his position in the company. Be that as it may, the petitioners regularized the respondent as a security officer based on his excellent performance as such. If he really was incompetent, the respondent should not have been regularized. If he really committed infractions within two years of

service, the respondent should have been investigated and notified immediately of any violation of their Uniform Code of Conduct. But within two years, instead of being investigated, the respondent was even regularized from his job, and the petitioners emphasized that the regularization was a result of his excellent performance in the company.

Moreover, the charges hurled against the respondent allegedly happened between 2005 to 2007; thus, it is questionable if not quite surprising why the charges were acted upon by the petitioners only on January 15, 2008. The petitioners accused the respondent of stealing cluster cable between November 2005 to February 2007, pilfering good lumber during an unspecified period of time, stealing coal mill part in July 2007 and copper wires since 2005, and failing to investigate murders on two occasions in 2007. The petitioners even dredged up past transgressions of the respondent way back in 1994 and 1998 before he became a security officer. The incidents were lumped together and were raised to eventually terminate the respondent. Not a single explanation was offered by the petitioners why for a period of two years respondent was not investigated and charged to answer for each transgression. Not a single affidavit or statement of a witness was presented by the petitioners to corroborate their allegations that the respondent has direct participation in the malfeasance and misfeasance. Neither was the respondent directly charged with theft, pilferage or murder. Logically, if the petitioners' allegations were true they could have criminally charged the respondent for him to answer for the criminal acts. However, there was none. The Court is of the view that the alleged lapses were committed by the company's security guards and negligent employees and not by the respondent as a security officer. There is no shadow of proof that respondent should be held accountable for the incidents which brought about his eventual termination from service. In fine, there is no evidence to support the finding of the existence of just cause to terminate the respondent's employment.

Another damning evidence against the legality of the respondent's dismissal is the fact that only the members of respondent's group who tried to prevent the formation of the union were investigated. Admittedly, the members of the respondent's group were the active participants in the union busting efforts. The timing of respondent's termination is likewise another circumstance which supports the fact that the respondent was terminated for failure to prevent the formation of the union. The pieces of evidence reveal that he was investigated and eventually terminated immediately after the formation of the union.



When the respondent failed to grant the petitioners' wish to obviate the formation of the union, he was investigated and several charges were lumped together and hurled against him which eventually resulted in his dismissal from service. All of respondent's actions became suspect to the company and he was investigated for a wide-ranging number of unrelated charges immediately after the union won the certification election. The respondent consistently averred that he cannot be held accountable for the lost company properties and especially the murders inside the company premises as there are employees or proper authorities who can directly answer for the incidents. In fact, it is highly suspicious why the property custodian of the enumerated company properties and the security guards, who were on duty at the time of the commission of the alleged murders, were not investigated by the company. Only the respondents' group were isolated, targeted, and subjected to different charges.

Furthermore, there is no categorical denial on petitioners' part of the union busting efforts. They merely contended that the issue on union busting is irrelevant to the issue on illegal dismissal. The Court cannot subscribe to petitioners' argument. The respondent's premise that a deeper and malevolent reason behind his dismissal is more believable and reasonable version. The petitioners cannot categorically deny the union busting effort because it is supported by two pieces of evidence. One, in a letter⁵⁴ dated September 1, 2006, Antonio T. Corpuz, the company's Senior Vice President and Chief Operating Officer, and Ballesteros informed the company's executive committee that the best way to sway the employees to vote for "NO" in the certification election is to monetize the unused leave credits of the employees. The move is clearly to prevent the formation of the union. And two, the letter was accompanied by an attachment⁵⁵ detailing the activities conducted by the petitioners to prevent the formation of a labor union. The document reveals the different activities done by the petitioners to counter the moves of the union in the years 2000 and 2006 which include, but not limited to, hiring of a lawyer to delay the election, convening the managers, and convincing their subordinates to vote for "NO" in union formation and monetization of the unused sick leave benefits. Evidently, the union busting efforts were substantiated by pieces of evidence. The Court is persuaded by the findings of the LA and the CA that the respondent was terminated not based on just or authorized cause because the timing of the investigation and his dismissal happened after the management lost in the certification election. Obviously, it does not

⁵⁴ *Id.* at 288.

⁵⁵ *Id.* at 289-294.

need a sharp mind to logically conclude that the respondent was terminated because he failed to successfully prevent the formation of the union.

In view of the findings, the Court is convinced that the respondent, a regular employee entitled to security of tenure, was illegally dismissed from his employment due to the failure of the petitioners to comply with the substantive aspect of due process. Respondent was dismissed not based on the grounds as provided by law.

Thus, the Court sustains the CA's declaration that the respondent be reinstated, if possible, and that he must be paid full backwages. Likewise, the CA is correct in reducing the award of moral and exemplary damages for being exorbitant and excessive. The Court is aware that there may be instances where reinstatement is not a viable remedy or where the relations between the employer and employee have been so severely strained that it is not advisable to order reinstatement, or where the employee decides not to be reinstated. In those situations, the employer will instead be ordered to pay separation pay.⁵⁶ Thus, the Court finds it appropriate to remand the case to the NLRC for execution and determination of whether or not any of the foregoing instances obtain so as to render reinstatement nonviable, and hence, instead order the petitioners to pay respondent separation pay as may be deemed appropriate.

Lastly, considering that the respondent was forced to litigate to protect his right and interest, he is entitled to a reasonable amount of attorney's fees pursuant to Article 2208(8) of the Civil Code.⁵⁷ The Court finds that payment of attorney's fees is warranted in an amount equivalent to 10% of the total amount to be recovered by the respondent.

WHEREFORE, the petition is **DENIED**. The Decision dated July 28, 2011 and the Resolution dated June 8, 2012 of the Court of Appeals, Cebu City in CA-G.R. SP No. 05401 are **AFFIRMED in toto**.

⁵⁶ *F.F. Cruz & Co., Inc. v. Galandez*, G.R. No. 236496, July 8, 2019.


⁵⁷ Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

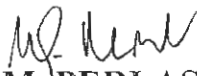
(8) In actions for indemnity under workmen's compensation and employer's liability laws;

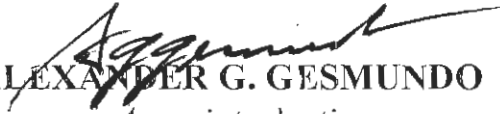
The case is hereby **REMANDED** to the National Labor Relations Commission, Cebu City for execution proceedings in accordance with the Decision.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

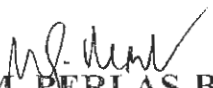

ALEXANDER G. GESMUNDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

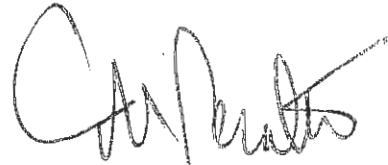
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior 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.



DIOSDADO M. PERALTA
Chief Justice