Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

STEVEN ROUCHE, Petitioner, -versus- **FRENCH CHAMBER OF COMMERCE IN THE PHILIPPINES-LE CLUB, CHRISTOPHE[1] RIOUT, AND RAYMOND LIONS,** Respondents.	**G.R. No. 238581** Present: LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.* **Promulgated:** DEC 07 2022

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DECISION

LEONEN, *J.*:

An alien employee who was illegally dismissed and whose visa and permit were not processed solely due to the negligence of their employer's counsel, should not be barred from seeking relief under the Labor Code.

This Court resolves a Petition for Review on Certiorari[2] filed under Rule 45 of the Rules of Court, assailing the Court of Appeals Decision[3] and Resolution[4] in CA-G.R. SP No. 150115. The Court of Appeals found no grave

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1 Referred to as "Christopher" in some parts of the *rollo*.

2 *Rollo*, pp. 11–101.

3 *Id.* at 643–653. The September 28, 2017 Decision was penned by Associate Justice Leoncia Real-Dimagiba, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Henri Jean Paul B. Inting (now a Member of this Court) of the Twelfth Division, Court of Appeals, Manila.

4 *Id.* at 663–664. The March 22, 2018 Resolution was penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court), and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Rodil V. Zalameda (now a Member of this Court) of the Special Former Twelfth Division, Court of Appeals, Manila.

abuse of discretion on the part of the National Labor Relations Commission when it dismissed Steven Rouche's (Rouche) complaint for illegal dismissal for failure to comply with the requirements of the Labor Code on the work visa and employment permit for non-resident aliens.

The French Chamber of Commerce in the Philippines-Le Club (French Chamber of Commerce) engaged Rouche as a Consultant under a Consultancy Agreement executed on December 11, 2013.[5] Part of the agreement specified that "it shall become effective upon approval of pre-arranged employment visa 9(g) from the Bureau of Immigration and Alien Employment Permit (AEP) from the Department of Labor and Employment."[6] Rouche was able to secure the visa as a Consultant, which was valid until December 18, 2014.[7]

However, on May 1, 2014, the Consultancy Agreement was replaced by an Employment Contract between the French Chamber of Commerce and Rouche, where the latter was engaged as Managing Director under a three-year contract.[8] Despite this development, no renewal of Rouche's employment visa or Alien Employment Permit was secured for the change in his role to Managing Director.[9]

A year later, on May 4, 2015, Christophe Riout (Riout), then President of the French Chamber of Commerce, terminated Rouche's services on the ground of loss of trust, without specifying particular acts Rouche committed. He only mentioned that this was the collective decision of the Executive Committee and the Board.[10] Offering a more graceful exit, Riout advised Rouche to tender his resignation so he can be given better compensation than that required under Philippine labor laws. Rouche refused this offer.[11]

Two days after, the French Chamber of Commerce organized a special board meeting to confirm Rouche's termination and appoint Vanessa Hans (Hans), who was then Head of Business Support, as Managing Director. Riout informed Hans of Rouche's termination and that she had to assume the latter's position.[12]

On May 12, 2015, at an event, Riout publicly announced Rouche's stepping down as Managing Director and that Hans had assumed the position. After the event, Rouche again inquired about the basis for his dismissal but was only told that it was because of loss of trust. Rouche protested this

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5 *Id.* at 647.
6 *Id.*
7 *Id.* at 647 & 588.
8 *Id.* at 644.
9 *Id.* at 647.
10 *Id.* at 644.
11 *Id.*
12 *Id.*

decision by sending a letter to the French Chamber of Commerce's Board of Directors.[13]

The following day, Riout sent an email to Rouche confirming the Board's decision to terminate his services. Hans also accepted her new position through an email to the Board of Directors.[14]

On May 28, 2015, Rouche's counsel requested a meeting to settle the issues surrounding Rouche's dismissal, but this did not push through.[15]

On June 1, 2015, Rouche filed a case for illegal dismissal before the Department of Labor and Employment Single Entry Approach desk, claiming non-payment of his salary for the unexpired portion of his contract in the amount of PHP 193,124.40 per month for 24 months, commissions, 13th month pay, paternity leave benefits, and relocation cost.[16]

The French Chamber of Commerce and its officers sought the dismissal of the complaint, claiming among others that Rouche had not renewed his alien employment permit and that he only held a tourist visa, which disqualifies him from working in the Philippines and renders his employment as Managing Director void.[17]

In a May 30, 2016 Decision, the labor arbiter found that Rouche had been illegally dismissed by the French Chamber of Commerce. The labor arbiter found that the French Chamber of Commerce and its officers had not proven their charges of gross and habitual neglect of duties and willful breach of trust. Further, they had already shown their intention to terminate Rouche's services for loss of trust without first giving him the chance to explain his side. All these happened even before they served Rouche a Notice to Explain.[18]

As to the lack of a valid visa at the time of the filing of the complaint, the Labor Arbiter found both parties *in pari delicto*. The French Chamber of Commerce was aware of the expiration of Rouche's visa but allowed him to continue working and this was only raised during the proceedings before the labor arbiter as a bar for relief. Rouche likewise never denied not having renewed the required permits, but that he had engaged Paras & Manlapaz Lawyers (Paras & Manlapaz), now his opposing party's counsel, to process his visa revalidation.[19]

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13 *Id.* at 644–645.
14 *Id.* at 645.
15 *Id.*
16 *Id.*
17 *Id.* at 500.
18 *Id.* at 503.
19 *Id.* at 505.

The dispositive portion of the labor arbiter's Decision states:

> **WHEREFORE**, premises considered, judgment is hereby rendered, finding the **COMPLAINANT** illegally dismissed. Respondent **FRENCH CHAMBER OF COMMERCE IN THE PHILIPPINES-LE CLUB, INC.** is **ORDERED** to pay **COMPLAINANT** the total amount of **ONE MILLION NINE HUNDRED THIRTY-NINE THOUSAND NINE HUNDRED FORTY-SIX PESOS and 53/100 (₱1,939,946.53)**, representing his Backwages and Attorney's Fees, as afore-discussed.
>
> SO ORDERED.[20] (Emphasis in the original)

Both parties appealed the case before the National Labor Relations Commission which reversed and set aside the Labor Arbiter's Decision and dismissed the complaint for illegal dismissal due to lack of merit. The dispositive portion of its Decision reads:

> WHEREFORE, respondents' appeal is hereby granted while the partial appeal filed by the complainant (petitioner) is hereby DENIED for being moot and academic.
>
> The decision of Labor Arbiter Remedios Tirad-Capinig dated 30 May 2016 is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the complaint for lack of merit.
>
> SO ORDERED.[21]

Relying on *WPP Marketing Communications, Inc. v. Galera*[22] and *McBurnie v. Ganzon*,[23] the National Labor Relations Commission denied Rouche's motion for reconsideration.[24] He then filed a petition for certiorari before the Court of Appeals.

The Court of Appeals found no grave abuse of discretion on the part of the National Labor Relations Commission when it dismissed Rouche's complaint for illegal dismissal. It held that the law requires non-resident aliens to secure the necessary permit before seeking employment in the Philippines. Particularly, Article 41 of the Labor Code prohibits the transfer of employment without approval of the secretary of labor.[25]

It affirmed the National Labor Relation Commission's finding that Rouche had initially been hired as a Consultant for the French Chamber of Commerce. For this employment, Rouche needed a 9(g) visa from the Bureau

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20 *Id.* at 506.
21 *Id.* at 646.
22 630 Phil. 410 (2010) [Per Acting C.J. Carpio, Second Division].
23 719 Phil. 680 (2013) [Per J. Reyes, *En Banc*].
24 *Id.*
25 *Rollo*, p. 648–650.

of Immigration and an Alien Employment Permit from the Department of Labor and Employment. As Consultant, Rouche was able to secure these documents. However, no renewal of the 9(g) visa and Alien Employment Permit were issued for the change in his employment status to Managing Director. When Rouche became a Managing Director, it was without the approval of the Department of Labor and Employment as required by the Labor Code. Thus, his employment contract as Managing Director was void.[26]

Also citing *WPP Marketing Communications*, the Court of Appeals ruled that Rouche had come to court with unclean hands and should not be allowed to profit from his wrongdoing. Hence, his complaint for illegal dismissal was dismissed.

The dispositive portion of the Court of Appeals Decision reads:

> **WHEREFORE**, foregoing considered, the petition is **DENIED**. The assailed Resolutions dated October 28, 2016 and January 18, 2017 of the National Labor Relations Commission in NLRC LAC Case No. 07-002156-16 / NLRC NCR Case No. 06-00637-15 are hereby **AFFIRMED** en toto.
>
> **SO ORDERED**.[27] (Emphasis in the original)

A subsequent motion for reconsideration was likewise denied.[28]

Hence, Rouche filed a Petition for Review before this Court.

Petitioner argues that the Court of Appeals erred in strictly applying *WPP Marketing Communications* and *McBurnie* as these have different factual circumstances compared to his case.[29] He also argues that this is an opportunity for this Court to revisit these cases "[f]or the benefit of all stakeholders in the ever-growing sectors employing foreign nationals[.]"[30] He prays for clear cut-guidelines in the disqualification of foreign nationals from seeking redress in our labor tribunals.[31]

Moreover, he states that respondent's counsel, Paras & Manlapaz, was the firm that helped him secure his 9(g) visa and Alien Employment Permit as Consultant. Petitioner claims that he was unable renew his visa and Alien Employment Permit for his new position as Managing Director due to the firm's failure to do so despite its reassurances that everything was in order.[32]

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26 *Id.* at 651–652.
27 *Id.* at 653.
28 *Id.* at 663–664.
29 *Id.* at 47–50.
30 *Id.* at 51.
31 *Id.*
32 *Id.*

According to petitioner, as early as December 1, 2014 and before the expiration of his permit and visa, Paras & Manlapaz through Atty. Vincent M. Dayao (Atty. Dayao), advised him to file a one-year extension of his 9(g) working visa so he could continue working in the Philippines and subsequently change his visa to a 13(a) one after marrying his Filipino spouse.[33] Petitioner agreed to proceed with the renewal of his pre-arranged 9(g) working visa upon Paras & Manlapaz's recommendation.[34] Two days later, Paras & Manlapaz informed him of the documentary requirements to process his 9(g) visa. Upon noting that his existing Alien Employment Permit and visa were for his position as consultant, the firm advised him to have the same position reflected in the Employment Contract which was to be submitted to the Department of Labor and Employment. It claimed that indicating a change in position would entail an entirely new application and take a lot longer compared to simply renewing his existing permit and visa.[35]

On March 5, 2015, petitioner followed up with Atty. Dayao regarding the renewal of his visa, as well as his Alien Employment Permit as he needed copies of them for a trip to Australia.[36] However, he discovered that the renewal of his 9(g) visa was not processed by Paras & Manlapaz.[37]

On March 12, 2015, Paras & Manlapaz confirmed that they were unable to timely process the downgrading of his visa and advised petitioner to instead pursue an application for a 13(a) visa on the basis of his marriage to his Filipino spouse.[38] On March 13, 2015, Atty. Siddharta Penaredondo apologized to petitioner for Atty. Dayao's failure to process his visa.[39] Two months later, his employment as Managing Director was terminated.[40] Petitioner submits that Paras & Manlapaz represented conflicting interests without his consent, contrary to the Code of Professional Responsibility.[41]

As to the termination of his services, petitioner maintains that he was illegally dismissed. He says that the charges of gross neglect and breach of trust were only raised in a Notice to Explain after the filing of the complaint for illegal dismissal and respondents' receipt of the Notice of Conference for the Single Entry Approach proceedings. He claims that the alleged offenses are mere afterthought, and were made up to cover and rectify the illegality of his dismissal from service.[42]

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33 *Id.* at 65–66.
34 *Id.* at 67.
35 *Id.* at 67–68.
36 *Id.* at 69.
37 *Id.*
38 *Id.* at 69–70.
39 *Id.* at 70.
40 *Id.* at 71.
41 *Id.* at 73.
42 *Id.* at 75.

Nevertheless, petitioner disputes the charges against him as being "general, broad, and imprecise" as they do not "state the specific instances and acts of Petitioner forming basis of the decision to terminate his services. Respondents failed to particularize the sweeping charges."[43] He alleges that he was never charged of any misconduct, inefficiency, or irregularity during his employment with respondent.[44]

Further, petitioner denies the charge of breach of trust. He argues that for it to be a valid cause for dismissal, the conduct "must be based on a willful breach of trust and founded on clearly established facts. Such 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."[45] However, petitioner claims he was never informed of the specific acts that led to respondents' loss of trust despite his repeated inquiries.[46]

Petitioner likewise contests the finding that he was not entitled to backwages and other benefits. He argues that the labor arbiter already found that he was illegally dismissed, and such fact of illegal dismissal was never contested by respondents.[47] He prays that he be awarded backwages, which includes not only his basic pay, but also allowances he regularly and periodically received, such as housing allowance, transportation allowance, and representation allowance, which were provided in his Employment Contract.[48] All in all, he maintains that he should be entitled to a total salary of PHP 193,124.40 per month, as opposed to the initial award by the labor arbiter of only PHP 80,163.08.[49]

As to the monetary awards, petitioner claims moral and exemplary damages, attorney's fees, 13th month pay, and commissions which he would have earned if not for his illegal dismissal.[50] Finally, he claims that respondents Riout and Raymond Lions, then Vice President of the French Chamber of Commerce,[51] should be held solidarily liable with respondent French Chamber of Commerce for these amounts as they personally orchestrated his dismissal without lawful cause.[52]

In their Comment, respondents claim that the Petition for Review should be treated as an unsigned pleading due to petitioner's counsel's lack of authority to sign the verification and certification.[53] They also claim that

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43 *Id.* at 77–80.
44 *Id.* at 77.
45 *Id.* at 80.
46 *Id.* at 81.
47 *Id.* at 87.
48 *Id.* at 87–89.
49 *Id.* at 90.
50 *Id.* at 91–94.
51 *Id.* at 497.
52 *Id.* at 94–97.
53 *Id.* at 668–670.

petitioner's Petition for Review is a verbatim reproduction of his Petition for Certiorari before the Court of Appeals.[54]

On the issues raised in the Petition, respondents reiterate the rulings in *WPP Marketing Communications* and *McBurnie*. They point out that in *WPP Marketing Communications*, the foreigner's failure to secure an employment permit prior to their employment prevented them from seeking redress from the labor tribunals. To allow them to seek reliefs would sanction violation of Philippine labor laws.[55] They add that *McBurnie* ruled that the absence of an employment permit voids the employment relationship between a foreign national and their employer for being contrary to law.[56]

Respondents also claim that petitioner "consciously refused to process and comply with Philippine labor and immigration laws[,]" since he withdrew his application and retrieved his records from Paras & Manlapaz and did not himself apply for the required visa and permit.[57]

As to the issue of conflict of interest, Paras & Manlapaz disowns the attorney-client relationship with petitioner. The firm claims that it is the French Chamber of Commerce which is its client, and not petitioner.[58]

In his Reply, petitioner argues that his counsel was properly authorized through a Special Power of Attorney to file a Petition for Review before this Court.[59] Moreover, petitioner points out the differences between the present Petition and the Petition for Certiorari filed before the Court of Appeals, belying respondents' claim that the Petition is a verbatim reproduction of the one filed before the Court of Appeals.[60]

He also restates his argument that a strict application of *WPP Marketing Communications* and *McBurnie* would violate his rights because his situation is factually different from the cited cases.[61] Petitioner again submits that Paras & Manlapaz represented conflicting interest without his consent.[62]

The issues for resolution are as follows:

First, whether petitioner Steven Rouche can seek redress from our labor tribunals despite his lack of a valid visa and Alien Employment Permit.

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54 *Id.* at 672–673.
55 *Id.* at 677.
56 *Id.* at 675.
57 *Id.* at 678.
58 *Id.*
59 *Id.* at 699–702.
60 *Id.* at 702–704.
61 *Id.* at 707.
62 *Id.* at 712–713.

Second, whether petitioner Steven Rouche was illegally dismissed for respondents' failure to substantiate their charges of gross and habitual negligence and willful breach of trust at the time petitioner's services were terminated.

Third, whether respondents' counsel should be held administratively liable for representing conflicting interests in violation of the Code of Professional Responsibility.

I

The Labor Code governs the employment of aliens. Article 40 requires non-resident aliens to secure a permit when seeking admission to the country for employment purposes:

> ARTICLE 40. *Employment Permit of Non-Resident Aliens.* — Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor.
>
> The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.
>
> For an enterprise registered in preferred areas of investments, said employment permit may be issued upon recommendation of the government agency charged with the supervision of said registered enterprise.

The requirement to obtain the permit applies before a foreigner enters the country and commences their employment.[63]

In ruling against petitioner, the Court of Appeals and the National Labor Relations Commission relied on the rulings in *WPP Marketing Communications, Inc. v. Galera*[64] and *McBurnie v. Ganzon*,[65] where relief was denied to employees who did not possess an alien employment permit.

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[63] Omnibus Rules Implementing the Labor Code, Book I, Rule XIV, sec. 4 provides:
SECTION 4. *Employment permit required for entry.* — No alien seeking employment, whether on resident or non-resident status, may enter the Philippines without first securing an employment permit from the Department of Labor and Employment. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may only be allowed to be employed upon presentation of a duly approved employment permit.

[64] 630 Phil. 410 (2010) [Per Acting C.J. Carpio, Second Division].

[65] 719 Phil. 680 (2013) [Per J. Reyes, *En Banc*].

In *WPP Marketing Communications*, despite a finding that respondent Galera, a foreign national, had been illegally dismissed, this Court ruled that she was not entitled to employee's benefits under Philippine law. This was because Galera had worked in the Philippines without a proper work permit, and only acquired it four months after her employment began. This Court held:

> This is Galera's dilemma: Galera worked in the Philippines without a proper work permit but now wants to claim employee's benefits under Philippine labor laws.
>
> Employment of GALERA with private respondent WPP became effective on September 1, 1999 solely on the instruction of the CEO and upon signing of the contract, without any further action from the Board of Directors of private respondent WPP.
>
> Four months had passed when private respondent WPP filed before the Bureau of Immigration an application for petitioner GALERA to receive a working visa, wherein she was designated as Vice President of WPP. Petitioner alleged that she was constrained to sign the application in order that she could remain in the Philippines and retain her employment.
>
> The law and the rules are consistent in stating that the employment permit must be acquired prior to employment. The Labor Code states: "Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor." Section 4, Rule XIV, Book 1 of the Implementing Rules and Regulations provides:
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> > *Employment permit required for entry.* — No alien seeking employment, whether as a resident or non-resident, may enter the Philippines without first securing an employment permit from the Ministry. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may only be allowed to be employed upon presentation of a duly approved employment permit.
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> Galera cannot come to this Court with unclean hands. To grant Galera's prayer is to sanction the violation of the Philippine labor laws requiring aliens to secure work permits before their employment. We hold that the status quo must prevail in the present case and we leave the parties where they are. This ruling, however, does not bar Galera from seeking relief from other jurisdictions.[66]

This ruling was affirmed in *McBurnie*, wherein this Court dismissed the labor complaint of a foreign national upon finding that he had failed to establish that he was qualified and authorized to be employed in the Philippines.

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[66] *WPP Marketing Communications, Inc. v. Galera*, 630 Phil. 410, 430–431 (2010) [Per Acting C.J. Carpio, Second Division].

Aside from the Alien Employment Permit issued by the Department of Labor and Employment, an alien seeking employment in the Philippines shall likewise secure a working visa from the Bureau of Immigration. The Alien Employment Permit is a documentary requirement for the issuance of such visa.[67] In petitioner's case, he had to secure a pre-arranged employment visa under Section 9(g) of the Philippine Immigration Act of 1940 or Commonwealth Act No. 613, as amended.[68] The provision reads:

> SECTION 9. Aliens departing from any place outside the Philippines, who are otherwise admissible and who qualify within one of the following categories, may be admitted as nonimmigrants:
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> . . . .
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> (g) An alien coming to prearranged employment, for whom the issuance of a visa has been authorized in accordance with section twenty of this Act, and his wife, and his unmarried children under twenty-one years of age, if accompanying him or if following to join him within a period of six months from the date of his admission into the Philippines as a nonimmigrant under this paragraph.

What makes petitioner's case different from the cases cited above is that he was a holder of both a valid Alien Employment Permit from the Department of Labor and Employment and a 9(g) visa from the Bureau of Immigration before he began his employment with respondent French Chamber of Commerce.

His problems arose when his employment was changed from Consultant to Managing Director of respondent French Chamber of Commerce without yet acquiring the necessary documents. Under Article 41 of the Labor Code, the transfer of an alien's employment without prior approval is prohibited:

> ARTICLE 41. *Prohibition against Transfer of Employment.*— (a) After the issuance of an employment permit, the alien shall not transfer to another job or change his employer without prior approval of the Secretary of Labor.
>
> (b) Any non-resident alien who shall take up employment in violation of the provision of this Title and its implementing rules and regulations shall be punished in accordance with the provisions of Articles 289 [now 303] and 290 [now 304] of the Labor Code.

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[67] Bureau of Immigration Memorandum Circular No. AFF-05-001 (2005), sec. 5 provides:
SECTION 5. *Requirements for the 9(g) Working Visa.* — A working visa application under Section 9(g) of the Philippine Immigration Act shall be accepted upon submission of the minimum requirements, as follows: a) duly accomplished and notarized general application form showing that applicant has no derogatory record with the Bureau; b) petition or application letter signed by the authorized representative of the petitioning company or entity; c) a valid contract of employment and; d) *AEP together with the documents submitted to DOLE for the issuance thereof.*
All applications shall be subject to the evaluation and verification of the assigned Legal Officer. Additional documents may be required of the applicant if the need therefor arises. (Emphasis supplied)

[68] The amendment to include paragraph (g) was introduced in Republic Act No. 503 (1950), sec. 3.

> In addition, the alien worker shall be subject to deportation after service of his sentence.

Nevertheless, even prior to the expiration of his 9(g) visa for his Consultant position, he had already been in contact with respondent's counsel Paras & Manlapaz. Paras & Manlapaz assured him that it was processing the renewal of his 9(g) visa so that he could apply for a change of visa status to a 13(a) permanent resident visa afterwards. However, Paras & Manlapaz later said it was unable to renew his 9(g) visa due to the negligence of its lawyers, and advised him to file the 13(a) visa immediately.

This information regarding the failure to secure petitioner's visa came only on March 12, 2015, and after the expiration of the original visa on December 18, 2014 and the beginning of petitioner's engagement as Managing Director on May 1, 2014. This too was only made known to petitioner because he inquired about it due to an upcoming overseas trip. Petitioner was not remiss in following up his concern with Paras & Manlapaz. By the time he was informed about the true status of his visa application, petitioner was already left with no choice but to remedy his situation.

What makes matters worse is that Paras & Manlapaz, which had earlier handled petitioner's visa concerns, is now using the fact that it was unable to secure petitioner's 9(g) visa against him. The fact that it had processed petitioner's visa requirements was never denied by Paras & Manlapaz. Now, as respondent's counsel, it argues that petitioner's employment as Managing Director should be considered void due to the lack of the necessary documents.

Generally, the negligence of counsel binds the client.[69] However, there are exceptions to this rule, namely: "(1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when [its] application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require."[70]

Here, respondents raise petitioner's non-entitlement to the benefits under the Labor Code due to the non-renewal of his work visa and failure to secure the necessary permit, which is attributed to the negligence of respondents' own counsel. In the interest of justice, respondents should not be able to use the negligent acts of their own counsel to evade its responsibility to an employee. To allow petitioner's defeat based on the actions of the opposing party's lawyer, and especially where he was left without further

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[69] *Sps. Sarraga v. Banco Filipino Savings & Mortgage Bank*, 442 Phil. 55, 66 (2002) [Per J. Sandoval-Gutierrez, Third Division].

[70] *Id.* at 66.

recourse to rectify the problem caused by respondents' own counsel, would be unjust.

Thus, in the interest of justice, this Court finds that the negligence of respondents' counsel, Paras & Manlapaz, resulting in the failure to secure petitioner's work visa and work permit, cannot be used as basis to deny petitioner of protection under the Labor Code. All these peculiar circumstances considered, we find *WPP Marketing Communications* and *McBurnie* inapplicable to this case.

II

Terminating an employee's services requires both substantive and procedural due process. There must be just cause for dismissal, and the manner by which the dismissal is carried out must comply with the twin-notice rule. These two requirements are complementary to allow employees the opportunity to defend themselves and refute the charges against them. Thus, the bases for the grounds for dismissal should be made known to the employee prior to the termination of their services.

In this case, petitioner was charged with two grounds for dismissal in the Notice to Explain: gross and habitual neglect of duty, and loss of trust and confidence.

Gross and habitual neglect of duty is a just cause for dismissal under the Labor Code.[71] "[T]o be a ground for dismissal . . . [it] must be both gross and habitual. Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances."[72]

On the other hand, loss of trust and confidence has been described as follows:

> [W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But, as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for [their] dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the

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71 LABOR CODE, art. 297 [282], par. (b).

72 *Cavite Apparel v. Marquez*, 703 Phil. 46, 54–55 (2013) [Per J. Brion, Second Division].

> purported misconduct, and the nature of [their] participation therein renders [them] unworthy of the trust and confidence demanded by [their] position.[73]

Pertinent to this case is that managerial employees may be dismissed on this ground if their employer can show a "reasonable ground to believe that the employee concerned is responsible" for conduct that renders them unworthy of their employer's trust and confidence.[74] Even if dismissal for managerial employees under this ground is less restrictive as compared with rank-and-file employees, the law does not allow an arbitrary assertion of loss of trust and confidence without proper substantiation.

Moreover, in *San Miguel Corp. v. Gomez*:[75]

> The language of Article [297](c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Such 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.[76] (Citations omitted)

Both grounds require the employer to allege specific acts which can be the basis for the employee's dismissal from service. We find that respondents failed to do this.

Petitioner was only informed by respondent Riout that his services were being terminated due to loss of trust. The particular acts that led to such loss of trust, however, were not made known to petitioner. Several days after, and despite multiple correspondences between petitioner and respondents, the charge of loss of trust was not substantiated. Worse, the charge of gross and habitual neglect of duty was never mentioned.

The twin-notice rule was likewise not complied with. No notice was sent to petitioner requiring him to explain why his services should not be terminated. As pointed out by petitioner, it was only after a complaint for illegal dismissal before the Single Entry Approach desk was filed that respondents sent him a Notice to Explain. The final Notice of Termination was dated July 3, 2015, which is after the filing of the complaint filed on June 1, 2015.[77] Certainly, the belated attempt to comply with the required processes cannot remedy the violation of petitioner's rights to due process. The labor arbiter was therefore correct to find that petitioner was illegally dismissed.

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73 *Bravo v. Urios College*, 810 Phil. 603, 621–622 (2017) [Per J. Leonen, Second Division] citing *Caoile v. National Labor Relations Commission*, 359 Phil. 399 (1998) [Per J. Quisumbing, First Division].

74 *Id.*

75 G.R. No. 200815, August 24, 2020 [Per J. Hernando, Second Division].

76 *Id.* at 5. This pinpoint citation refers to a copy of the Decision uploaded to the Supreme Court website.

77 *Rollo*, p. 493.

The damages awarded by the labor arbiter should also be revisited. The initial award was only based on petitioner's base pay worth PHP 80,163.08 monthly, but the amount excluded the regular allowances that petitioner received under his Employment Contract.

Article 294 [279] of the Labor Code provides:

> ARTICLE 294. [279] *Security of tenure.* — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause of when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his [or her] *full backwages, inclusive of allowances, and to his [or her] other benefits, or their monthly monetary equivalent* from the time his [or her] compensation was withheld from him [or her] up to the time of his [or her] actual reinstatement. (Emphasis supplied)

In *United Coconut Chemicals v.* Valmores:[78]

> The base figure for the computation of backwages should include not only the basic salary but also the regular allowances being received, such as the emergency living allowances and the 13th month pay mandated by the law. The purpose of this is to compensate the worker for what he [or she] has lost because of his [or her] dismissal, and to set the price or penalty on the employer for illegally dismissing his [or her] employee.[79] (Citations omitted)

In this case, the labor arbiter only granted backwages covering petitioner's basic salary, but excluded allowances that petitioner regularly received under his Employment Contract due to "lack of particulars."[80] However, the Employment Contract which was the labor arbiter's basis for awarding the base salary of PHP 80,163.08 likewise includes the other allowances that petitioner received, such as housing allowance.[81] While, transportation and representation allowances were granted, these were subject to reimbursement requirements.[82]

Thus, in conformity with an employee's right to security of tenure under Article 294 [279] of the Labor Code, the monetary award should be recomputed to include the housing allowance, which petitioner was expected to regularly receive without need to comply with reimbursement requirements.

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78 813 Phil. 685 (2017) [Per J. Bersamin, Third Division].
79 *Id.* at 698.
80 *Id.* at 506.
81 *Id.* at 447.
82 *Id.* at 447–448.

As to the prayer for other damages, this Court has ruled that "the termination of employment without just cause or due process does not immediately justify the award of moral and exemplary damages."[83] To award these damages, the "dismissal must be attended with bad faith, or fraud or was oppressive to labor or done in a manner contrary to morals, good customs or public policy and, of course, that social humiliation, wounded feelings, or grave anxiety resulted therefrom. Similarly, exemplary damages are recoverable only when the dismissal was effected in a wanton, oppressive or malevolent manner."[84] These must be separately pleaded and proven. While petitioner alleged that there was concerted effort on the part of respondents to dismiss him from service, we find that he has failed to prove such allegations. Thus, the prayer for these damages must be denied.

III

Petitioner's allegations of professional misconduct on the part of respondents' counsel, Paras & Manlapaz, fail to escape this Court's attention. The attorney-client relationship is fiduciary in nature, and it is one "imbued with utmost trust and confidence."[85]

Canon 17 of the Code of Professional Responsibility provides that a lawyer owes fidelity to their client's cause, and they must be mindful of the trust reposed in them by their client. More specifically, Rule 15.03 states:

> RULE 15.03. – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The prohibition against representing conflicting interests is discussed in *Hornilla v. Atty. Salunat*:[86]

> There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. *The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his [or her] duty to oppose it for the other client. In brief, if he or [she] argues for one client, this argument will be opposed by him [or her] when he [or she] argues for the other client."* This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his [or her] first client in any matter in which he [or she] represents him [or her] and also

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83 *Abuda v. L. Natividad Poultry Farms*, 835 Phil. 554, 573 (2018) [Per J. Leonen, Third Division].

84 *Id. citing Philippine School of Business Administration v. National Labor Relations Commission*, 329 Phil. 932 (1996) [Per J. Bellosillo, First Division].

85 *Caranza vda. De Saldivar v. Cabanes*, 713 Phil. 530, 537 (2013) [Per J. Perlas-Bernabe, Second Division].

86 453 Phil. 108 (2003) [Per J. Ynares-Santiago, First Division].

> whether he [or she] will be called upon in his [or her] new relation to use against his [or her] first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his [or her] duty of undivided fidelity and loyalty to his [or her] client or invite suspicion of unfaithfulness or double dealing in the performance thereof.[87] (Emphasis supplied, citations omitted)

This rule prevents lawyers from representing contrary interests because to do so would inevitably result to the betrayal of a client's cause. The conflict exists because the lawyer is left with no choice but to go against a previous interest which they had earlier prosecuted. Consequently, a client previously represented is left at a disadvantageous position because their previous relationship with their counsel and the advice they relied on are now being used against them.

Respondents' counsel Paras & Manlapaz claims that its client is the French Chamber of Commerce and not petitioner. It rejects the theory that it was engaged as petitioner's counsel and insists that it was acting for the French Chamber of Commerce when it processed petitioner's visa.

However, when Paras & Manlapaz was processing petitioner's visa and permit, it was acting not only for respondent French Chamber of Commerce's interest, but also for petitioner's interest. At that time, there was no conflict because respondent French Chamber of Commerce was petitioner's employer and securing petitioner's requirements would be for everyone's interest.

However, when the complaint for illegal dismissal was filed and respondents sought to raise petitioner's lack of work visa and permit as their defense, the conflict of interest clearly existed because it was Paras & Manlapaz's own advice and negligence that resulted in such scenario. This situation, which practically left petitioner at the mercy of his opposing party's counsel, must not be overlooked. After all, this Court, in the exercise of its authority to discipline members of the Bar,[88] can *motu proprio* investigate the conduct of its officers for potential violations of the Code of Professional Responsibility.

Therefore, to allow all parties to prove their claims and raise their defenses on this issue in the proper forum, further administrative proceedings are necessary.

The full protection afforded to labor is a constitutional policy that extends to all workers, even to aliens engaged for local employment.[89] They,

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87 *Id.* at 111–112.

88 CONST., art. VIII, sec. 5(5).

89 CONST., art. XIII, sec. 3 provides:

too, have the right to security of tenure. That alien employment is regulated by the State does not remove them from constitutional and statutory protections.

ACCORDINGLY, the Petition is **GRANTED**. The Court of Appeals September 28, 2017 Decision and March 22, 2018 Resolution in CA-G.R. SP No. 150115 are **REVERSED and SET ASIDE**. The May 30, 2016 Decision of the labor arbiter is **AFFIRMED with MODIFICATION**. The case is **REMANDED** to the labor arbiter for the computation of full backwages and other monetary awards due to petitioner Steven Rouche.

Further, the Office of the Bar Confidant is **DIRECTED** to conduct an **INVESTIGATION** on the alleged violations of the Code of Professional Responsibility for the purpose of filing an administrative case against erring lawyers **ATTY. VINCENT M. DAYAO** and **ATTY. SIDDHARTA JP III S. PEÑAREDONDO**, if necessary. Let a copy of this Decision be furnished to the Office of the Bar Confidant.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ALEXANDER G. GESMUNDO
Chief Justice