



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BAGUIO CENTRAL UNIVERSITY,
Petitioner,

G.R. No. 188267

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

IGNACIO GALLENTE,
Respondent.

Promulgated:

DEC 02 2013

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DECISION

BRION, J.:

We resolve in this petition for review on *certiorari*¹ the challenge to the March 12, 2009 decision² and the May 26, 2009 resolution³ of the Court of Appeals (CA) in CA-G.R. Sp No. 104144. This CA decision vacated the November 28, 2007 decision⁴ of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 050099-06 (NLRC CASE NO. RAB-CAR-12-0657-05) which, in turn, modified the June 30, 2006 decision⁵ of the Labor Arbiter (LA) declaring that respondent Ignacio *Gallente* had been illegally dismissed.

The Factual Antecedents

In October 1991, petitioner Baguio Central University (BCU) hired Gallente as an instructor. The BCU subsequently promoted and appointed

¹ *Rollo*, pp. 3-21.

² Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Bienvenido L. Reyes and Isaias P. Dicdican, id. at 27-39.

³ Id. at 24-25.

⁴ Penned by Commissioner Perlita B. Velasco, id. at 40-49.

⁵ Penned by Labor Arbiter Monroe C. Tabingan, id. at 52-65.

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Gallente as Dean of the BCU's Colleges of Arts and Sciences and Public Administration.

On February 5, 2005, Gallente, using the name "Genesis Gallente," along with six other incorporators, organized the GRC Review and Language Center, Inc. (GRC).⁶ The GRC's Articles of Incorporation⁷ (AOI) listed its primary purpose as "to conduct review classes for teachers, nursing, engineering and other professional and technical for Board Licensure examinations and Civil Service Professional examination," and its secondary purpose as "to conduct tutorial and proficiency trainings for foreign languages." This AOI also listed the BCU as the GRC's primary address.

The BCU's President, Dr. Margarita *Fernandez*, subsequently called Gallente's attention regarding the establishment of the GRC and his use of the BCU as the GRC's address and of the BCU's resources. The BCU's officers conducted grievance meetings⁸ with Gallente to allow him to explain his side. On September 30, 2005, Gallente tendered his resignation by letter.⁹

On December 8, 2005, Gallente filed before the LA a complaint for illegal (constructive) dismissal, non-payment of vacation and sick leave pay for 2005, tax refund for the same year and attorney's fees.

In the June 30, 2006 decision,¹⁰ the LA found that Gallente was illegally dismissed and ordered the BCU and Fernandez to pay Gallente separation pay, backwages, 13th month pay, vacation and sick leave pay, service incentive leave benefits, tax refund for the year 2005 and attorney's fees. The LA essentially held that, *first* Gallente's resignation was not voluntary. The LA noted that while the BCU conducted grievance meetings, the BCU had already decided to terminate Gallente's employment and practically coerced him to resign. Thus, to the LA, the BCU constructively dismissed Gallente.

And *second*, the BCU's bases for the loss-of-trust-and-confidence charge did not sufficiently justify Gallente's dismissal. The LA pointed out that: (1) Gallente did not benefit from the GRC nor did the GRC's incorporation cause the BCU any damage or besmirch its reputation; (2) the claimed competition between the BCU and the GRC was highly speculative; (3) Gallente's position as Dean did not conflict with his position as organizer of the GRC since his intention was to help the BCU alumni; and (4) the BCU failed to show that Gallente's performance of his duties as Dean suffered when he organized the GRC.

⁶ Certificate of Incorporation issued by the Securities and Exchange Commission on March 31, 2005, CA *rollo*, p. 143.

⁷ Id. at 117-122.

⁸ Minutes of the three grievance meetings held on September 21, 23, and 29, 2005, id. at 135-140.

⁹ Id. at 141.

¹⁰ *Supra* note 5. The LA held the BCU's President, Dr. Fernandez, jointly and solidarily liable with the BCU.

The NLRC's Ruling

In its decision¹¹ of November 28, 2007, the NLRC partially granted the BCU's appeal. In contrast with the LA's ruling, the NLRC found justifiable grounds for the BCU's loss of trust and confidence that rendered Gallente's dismissal valid. The NLRC noted that Fernandez permitted Gallente only to conduct review classes for the Civil Service Examination, but not to organize the GRC or to conduct review courses for other government regulated examinations (that the BCU also offered) nor to give tutorial and proficiency trainings for foreign languages. The NLRC declared that by offering these other activities that were clearly beyond what Fernandez permitted, Gallente betrayed the BCU's trust and directly competed with the latter. Thus, Gallente was guilty of conflict of interest and disloyalty.

Further, the NLRC pointed out that the absence of pecuniary loss on the BCU's part or the GRC's failure to fully operate did not excuse Gallente from culpability for his acts. To the NLRC, actual damage or loss is not necessary to render Gallente liable for willful breach of trust and confidence; as a Dean and as the holder of a responsible and sensitive position, he owed utmost fidelity to his employer's interests. Accordingly, the NLRC reversed the LA's illegal dismissal findings and deleted the award of backwages and separation pay.

Gallente moved to reconsider¹² this NLRC ruling, which the NLRC denied in its March 18, 2008 resolution.¹³

The CA's Ruling

In its March 12, 2009 decision,¹⁴ the CA reversed the NLRC's ruling and reinstated the LA's June 30, 2006 decision. The CA significantly affirmed the LA's findings on the insufficiency of the BCU's bases for the loss-of-trust charge. Additionally, the CA pointed out that at the time Gallente organized the GRC, the BCU's Review Center did not yet exist; also, the GRC did not successfully operate because it failed to comply with certain legal requirements. The CA submitted that even if it were to assume that Gallente committed a breach, this breach was ordinary and was not sufficient to warrant his dismissal; to be a legally sufficient basis, the employee's breach must be willful and intentional. Since the BCU failed to prove willful breach of trust, the CA declared Gallente's dismissal to be invalid.

¹¹ *Supra* note 4.

¹² *CA rollo*, pp. 26-30.

¹³ *Id.* at 23-25.

¹⁴ *Supra* note 2.

The BCU filed the present petition after the CA denied its motion for reconsideration¹⁵ in the CA's May 26, 2009 resolution.¹⁶

The Petition

The BCU argues that it validly dismissed Gallente for willful breach of trust and confidence.¹⁷ It points out that as Dean and, therefore, as a managerial employee, Gallente owed utmost fidelity to it as an educational institution and to its business interests. To the BCU, Gallente effectively competed with it and breached the trust that his position held when he organized the GRC that offered review courses for other government examinations, aside from the civil service examination and tutorial and proficiency training in foreign languages that BCU similarly offers. The BCU also claims that Gallente created a conflict of interest when he offered thesis dissertation courses in the GRC. Thesis dissertation was part of its (the BCU's) own graduate school program and Gallente, as Dean, sits as member of the judgment panel during oral defenses of thesis dissertations. The BCU thus maintains that regardless of the presence or absence of pecuniary benefit, it validly terminated Gallente's employment as these acts, alone, justified his dismissal.

The BCU adds that Gallente's use of the BCU, as the GRC's principal address in the AOI and his use of BCU's property when he posted the GRC's streamer advertisement outside the BCU's premises – both of which were made without its permission – negate Gallente's claim of good faith. The BCU argues that by doing so, Gallente not only lied before the Securities and Exchange Commission (*SEC*) but also represented to the public that BCU gave the GRC its imprimatur. Moreover, the BCU points out that while it did not yet have a review center when Gallente organized the GRC, it had, at this time, already been conducting review classes for the nursing examination and thesis dissertation. Although the GRC failed to fully operate, the BCU insists that Gallente unquestionably engaged in a venture that directly conflicted with its interests.

The BCU concludes that whether Gallente voluntarily resigned or was dismissed, the termination of Gallente's employment was valid for it was for a just cause, *i.e.*, loss of trust and confidence. Accordingly, since Gallente was validly dismissed, the BCU argues that Gallente is not entitled to the awarded separation pay, backwages, allowances and other benefits.

¹⁵ CA rollo, pp. 265-271.

¹⁶ *Supra* note 3.

¹⁷ *Supra* note 1.

The Case for the Respondent

In his comment,¹⁸ Gallente maintains that he was illegally dismissed as the ground on which the BCU relied for his dismissal had no basis. He argues that the BCU failed to prove that he willfully breached its trust and that he competed with it, intentionally or otherwise, when he organized the GRC. He points to the following reasons.

First, he never offered any review course; the most that the BCU could have used as basis for its claim of competition was the advertisement that he posted and handed out for the conduct of review courses for the civil service examination. Even then, the competition actually took place, as the GRC failed to fully operate.

Second, even if the civil service examination review course that he advertised pushed through, the BCU was not yet offering similar review courses that could have directly competed with it.

Third, although the GRC's AOI included programs or courses that the BCU had already been offering, he did not intend the GRC to offer these courses; if he did, he would have otherwise included these programs or courses in the advertisement.

Fourth, he merely included the review courses for other government examinations in the GRC's AOI on advice of the local SEC official.

Finally, the BCU did not yet have its own review center at the time he organized the GRC.

Procedurally, Gallente argues that the present petition's issues and arguments are factual and are not allowed in a Rule 45 petition. Moreover, the BCU's arguments fail to show that the CA gravely abused its discretion to warrant the CA decision's reversal.

The Issues

In sum, the core issue is the presence or absence of loss of trust and confidence as basis. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly found the NLRC in grave abuse of discretion in ruling that the BCU validly dismissed Gallente on this ground.

The Court's Ruling

We resolve to **GRANT** the petition.

¹⁸ Rollo, pp. 68-82.

Preliminary considerations; Nature of the issues; Montoya ruling and the factual-issue-bar rule

In this Rule 45 petition for review on *certiorari*, we review the CA's decision rendered under Rule 65 of the Rules of Court. Our power of review under the present petition is limited to legal errors that the CA might have committed in issuing its assailed decision,¹⁹ in contrast with the review for jurisdictional errors which we undertake in an original *certiorari* (Rule 65) action.²⁰

In reviewing the legal correctness of the CA decision in a labor case taken under Rule 65, we examine the CA decision based on how it determined the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits of the case was correct.²¹ In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.²²

Moreover, the Court's power in a Rule 45 petition limits us to a review of questions of law raised against the assailed CA decision.²³ A question of law arises when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts.²⁴ In contrast, a question of fact exists when a doubt or difference arises as to the truth or falsehood of facts.²⁵

In this petition, the BCU essentially asks the question – whether, under the circumstances and the presented evidence, the termination of Gallente's employment was valid. As framed, therefore, the question before us is a proscribed factual issue that we cannot generally consider in this Rule 45 petition, except to the extent necessary to determine *whether the CA correctly found the NLRC in grave abuse of its discretion in considering and appreciating this factual issue*.²⁶

All the same, we deem it proper to review the conflicting factual findings of the LA and the CA, on the one hand, and the NLRC, on the

¹⁹ *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA, 676, 683-684, citing *Montoya v. Transmed Manila Corporation*, *supra* note 19.

²³ See *Baron v. National Labor Relations Commission*, G.R. No. 182299, February 22, 2010, 613 SCRA 351, 359; *Oasay, Jr. v. Palacio Del Gobernador Condominium Corporation*, G.R. No. 194306, February 6, 2012, 665 SCRA 68, 76; and *Lima Land, Inc. v. Cuevas*, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 41.

²⁴ See *Cosmos Bottling Corp. v. Nagrama, Jr.*, 571 Phil. 281, 296 (2008).

²⁵ *Ibid.*

²⁶ *Montoya v. Transmed Manila Corporation*, *supra* note 19.

other, as an exception to the Rule 45 requirement²⁷ which allows us to undertake a factual review, based on the record, when the factual findings of the tribunals below are in conflict. This rule allows us to arrive at a complete resolution of this case's merits.

On the issue of whether Gallente's employment was validly terminated; Loss of trust and confidence as ground for dismissal

Our Constitution, statutes and jurisprudence uniformly guarantee to every employee or worker tenurial security. What this means is that an employer shall not dismiss an employee except for just or authorized cause²⁸ and only after due process is observed.²⁹ Thus, for an employee's dismissal to be valid, the employer must meet these basic requirements of: (1) just or authorized cause (which constitutes the substantive aspect of a valid dismissal); and (2) observance of due process (the procedural aspect).

1. Substantive aspect; dismissal based on loss of trust and confidence

Loss of trust and confidence is a just cause for dismissal under Article 282(c) of the Labor Code.³⁰ Article 282(c) provides that an employer may terminate an employment for "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." However, in order for the employer to properly invoke this ground, the employer must satisfy two conditions.

First, the employer must show that the employee concerned holds a position of trust and confidence. Jurisprudence provides for two classes of positions of trust. The first class consists of managerial employees, or those who by the nature of their position, are entrusted with confidential and delicate matters and from whom greater fidelity to duty is correspondingly

²⁷ See *Cosmos Bottling Corp. v. Nagrama, Jr.*, *supra*, note 24, at 298; *Jumud v. Hi-Flyer Food, Inc.*, G.R. No. 187887, September 7, 2011, 657 SCRA 288, 299; and *Lynvil Fishing Enterprises, Inc. v. Ariola*, G.R. No. 181974, February 1, 2012, 664 SCRA 679, 690.

²⁸ See Article 279 of the Labor Code.

²⁹ *Baron v. National Labor Relations Commission*, *supra* note 23, at 360. See also *Lima Land, Inc. v. Cuevas*, *supra* note 23, at 42-43; and *Oasay, Jr. v. Palacio del Gobernador Condominium Corporation*, *supra* note 23, at 77-78.

³⁰ Article 282 of the Labor Code reads in full:

Article 282. **TERMINATION BY EMPLOYER.** – An employer may terminate an employment for any of the following causes:

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

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

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

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

(e) Other causes analogous to the foregoing. (Emphasis ours)

expected.³¹ Article 212(m) of the Labor Code defines managerial employees as those who are “vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions.” The second class includes “cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer’s] money or property”³²

Second, the employer must establish the existence of an act justifying the loss of trust and confidence.³³ To be a valid cause for dismissal, the act that betrays the employer’s trust must be real, *i.e.*, founded on clearly established facts,³⁴ and the employee’s breach of the trust must be willful, *i.e.*, it was done intentionally, knowingly and purposely, without justifiable excuse.³⁵

In *Lopez v. Keppel Bank Philippines, Inc.*,³⁶ the Court repeated the guidelines for the application of loss of confidence as follows: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

As applied to the dismissal of managerial employees, employers – as a rule – enjoy wider latitude of discretion.³⁷ They are not required to present proof beyond reasonable doubt as the mere existence of a basis for believing that such employee has breached the trust of the employer would suffice for the dismissal.³⁸ Thus, as long as the employer “has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position,”³⁹ the dismissal on this ground is valid.

Applying these outlined legal parameters to the present case, we find sufficient basis to dismiss Gallente for loss of trust and confidence. For

³¹ *Supra* note 23, at 46.

³² *Lopez v. Keppel Bank Philippines, Inc.*, G.R. No. 176800, September 5, 2011, 656 SCRA 718, 727.

³³ *Philippine Plaza Holdings, Inc. v. Episcopo*, G.R. No. 192826, February 27, 2013.

³⁴ See *Bristol Myers Squibb (Phils.), Inc. v. Baban*, G.R. No. 167449, December 17, 2008, 574 SCRA, 198, 206.

³⁵ See *Baron v. NLRC*, *supra* note 23, at 362.

³⁶ *Supra* note 32, at 729 (citation omitted); *Ancheta v. Destiny Financial Plans, Inc.*, G.R. No. 179702, February 16, 2010, 612 SCRA 648, 660.

³⁷ See *Ancheta v. Destiny Financial Plans, Inc.*, G.R. No. 179702, February 16, 2010, 612 SCRA 648, 661; *Bristol Myers Squibb (Phils.), Inc. v. Baban*, G.R. No. 167449, December 17, 2008, 574 SCRA, 198, 208.

³⁸ See *Lina Land, Inc. v. Cuevas*, *supra* note 23, at 46-47; and *Ancheta v. Destiny Financial Plans, Inc.*, *supra* note 37, at 661.

³⁹ *Lina Land, Inc. v. Cuevas*, *supra* note 23, at 46-47; *Etcuban, Jr. v. Sulpicio Lines, Inc.*, 489 Phil. 483, 497 (2005). See also *Paulino v. National Labor Relations Commission*, G.R. No. 176184, June 13, 2012, 672 SCRA 234, 240.

greater clarity, we elaborate below on the application of the parameters to the present case.

1.A. Gallente held a position of trust and confidence

The established facts reveal that Gallente was the Dean of two of the BCU's departments. As Dean, Gallente was tasked, among others, to assist the school head in all matters affecting the general policies of the entire institution, to direct and advise the students in their programs of study, and to approve their subject load and exercise educational leadership among his faculty.⁴⁰ Undoubtedly, Gallente was a managerial employee as these duties involved the exercise of powers and prerogatives equivalent to managerial actions described above. Gallente, in short, clearly held a position of trust and confidence consistent with the first legal requirement.

1.B. Gallente committed willful breach of trust sufficient to justify dismissal

In finding Gallente illegally dismissed, the LA essentially weighed the sufficiency of the claimed conflict-of-interest acts in terms of the presence or, as the LA eventually concluded, the absence of damage caused to the BCU and its interests. The NLRC, on the other hand, found these same acts legally sufficient to support the loss-of-trust-and-confidence charge as it considered the presence/absence-of-damage test to be irrelevant.

This reversal of the LA ruling made by the NLRC led the CA to conclude that grave abuse of discretion intervened in the NLRC's ruling. To the CA, this ruling was unsupported by established facts and contrary to settled jurisprudence. In so ruling, the CA similarly put premium on the presence/absence-of-damage test on which the LA relied upon. The CA likewise found Gallente's good-faith claim to be significantly persuasive.

We cannot support these CA's reasons on several points.

First, that the BCU suffered no damage or, conversely, that Gallente obtained no pecuniary benefit were clearly beside the point. The heart of the loss-of-trust charge is the employee's betrayal of the employer's trust.⁴¹ "Damage aggravates the charge but its absence does not mitigate nor negate the employee's liability."⁴² Thus, in assessing whether Gallente's purported breach-of-trust acts warrants dismissal, the LA, and the CA as it affirmed the LA, needed to consider only Gallente's position as Dean and the correlative fidelity that this position called for; whether Gallente was indeed responsible

⁴⁰ CA rollo, p. 98.

⁴¹ See *Lopez v. NLRC*, 513 Phil. 731, 738 (2005); *Lima Land, Inc. v. Cuevas*, *supra* note 23, at 46.

⁴² *Lopez v. NLRC*, *supra* note 41, at 738. See also *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM) – Katipunan*, G.R. No. 164016, March 15, 2010, 615 SCRA 240, 252, quoting *United South Dockhandlers, Inc. v. National Labor Relations Commission*, 335 Phil. 76, 81-82, (1997).

for the alleged acts; and whether the nature of his participation rendered him unworthy of the vested trust.

To reiterate, as long as the act that breached the employer's trust is founded on established facts, the employee's dismissal on this ground is justified. After all, the BCU could not be expected to wait until Gallente has caused actual and irreparable material damage before it had taken steps to protect its interests.

Second, that the GRC failed to fully operate or that the BCU did not yet have its own review center at the time Gallente organized the GRC are factual considerations we likewise deem immaterial. Gallente betrayed his owed fidelity the moment he engaged in a venture that required him to perform tasks and make calculated decisions which his duty to the BCU would have equally required him to perform or would have otherwise required him to oppose. In fact, we are convinced that actual conflict of interest existed when Gallente sought to conduct review courses for nursing examination (as included in the GRC's primary purpose), knowing that the BCU was already offering similar class. We are likewise convinced that, far from being voluntary, Gallente discontinued the GRC's operation plainly because of the legal and procedural obstacles.

Further, had Gallente really no intention of having the GRC offer review courses for the other government examinations, he should not have included these in the GRC's AOI, notwithstanding the local SEC official's advice. As matters then stood, he included them in the GRC's AOI so that he could have offered these other courses had the GRC continued in its operation. We are, therefore, inclined to believe that he had every intention to pursue these other course offerings had it not been for the legal and procedural obstacles that prevented the GRC from successfully operating.

Third, Gallente's good intentions, assuming them to be true, were beside the point. Ultimately, the determinant is his deliberate engagement in a venture that would have directly conflicted with the BCU's interests. If Gallente merely intended to help the BCU and its students in increasing their chances of passing the Civil Service Examination, he could have just offered, as part of the BCU's course curriculum, review classes for the Civil Service Examination instead of altogether organizing a review center that obviously will offer the course to everyone minded to enroll. Incorporating review classes in the BCU's course curriculum would have been easier – as he no longer had to go through the required procedures for incorporation. It would also have been more effective in achieving the intended assistance to the BCU students – as the review effort would obviously be focused on these students. It would have also been the more appropriate course of action considering the nature of his position.

As Dean, Gallente was responsible for the over-all administration of his departments. This responsibility includes ensuring that his departments'

curriculum and program of study, to be adopted by the BCU, are up to date, relevant and reflective of the scholastic requirements for the respective fields. And, to say the least, this curriculum and program of study should be sufficient so that students would pass the requisite government examination, even without enrolling in any review course. This responsibility also involves formulating the educational policies in his departments as well as enforcing the BCU's policies, rules and regulations on subject loads, subject sequence and subject pre-requisites and on admission and registration of students. In short, as Dean, Gallente was duty-bound to uphold the BCU's interest above all.

Obviously, these duties will conflict with his responsibilities as organizer and President of the GRC. In these latter positions, Gallente would have likewise been obligated to recommend or formulate the GRC's program of study as well as the hiring of reviewers and regulating their topical or subject assignments. He would have also been compelled to secure the numerical sufficiency of the enrollees. After all, the review center was still a business venture that required, for its guaranteed success, enrollees as the source of its income. Most of all, he would have likewise been duty-bound to uphold the GRC's interests above all. Clearly, therefore, he could not have upheld the interest of either the BCU's or the GRC's, above all, without sacrificing the interest of the other.

Last, Gallente appropriated for his and the GRC's benefit the BCU's property when he did not secure prior authority in using the BCU as the GRC's primary address in the AOI and in posting the GRC's streamer advertisement outside the BCU's main gate. What is worse, by these acts, Gallente represented to the public that the GRC is a BCU-sponsored venture, which clearly it was not. In our view, these acts showed dishonesty and negates Gallente's claim of good faith. While Gallente maintains that he properly secured prior authority, yet he fatally failed to substantiate this allegation which he was obligated to prove.

Under the prevailing factual circumstances, we find that Gallente's acts rendered him unworthy of the BCU's trust and confidence. Hence, we find the BCU's termination of his employment reasonable and appropriate, and a valid exercise of management prerogative. An employer may not be compelled to continue in its employ a person whose continuance in the service would patently be inimical to its interests.⁴³

Thus, from the perspective of this Rule 45 petition, the CA's findings on the matter of the BCU's loss-of-trust charge clearly lacked factual and legal basis; hence the CA's ruling must fall.

⁴³ See *Lopez v. NLRC*, *supra* note 41, at 737.

2. *Procedural aspect*

“The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or x x x to seek a reconsideration of the action or ruling complained of.”⁴⁴ Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, in relation to Article 282 of the Labor Code, provides the due process requirements prior to the termination of employment, namely: (1) a written notice specifying the ground or grounds for termination; (2) a hearing or conference to give the employee concerned the opportunity to respond to the charge; and (3) a written notice of termination.⁴⁵

The LA, the NLRC and the CA in this case unanimously declared that Gallente did not voluntarily resign and that the BCU failed to observe the due process requirements as outlined above. We agree and we will not disturb their findings on this point. We, therefore, find proper the NLRC's award of ₱30,000.00 as nominal damages in accordance with this Court's ruling in *Agabon v. NLRC*.⁴⁶

In sum, we find the NLRC's appreciation of the parties' arguments and presented evidence in this case to be proper, as its findings were supported by the established facts, the law and jurisprudence. The CA, on the other hand, incorrectly found grave abuse of discretion in appreciating the NLRC's rulings.

WHEREFORE, in light of these considerations, we hereby **GRANT** the petition. We **REVERSE** and **SET ASIDE** the decision dated March 12, 2009 and the resolution dated May 26, 2009 of the Court of Appeals in CA-G.R. Sp No. 104144 and accordingly **REINSTATE** the decision dated November 28, 2007 of the National Labor Relations Commission in NLRC NCR CA No. 050099-06 (NLRC CASE NO. RAB-CAR-12-0657-05).

⁴⁴ *Lima Land, Inc. v. Cuevas*, *supra* note 23, at 43.

⁴⁵ Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, in part, provides:
Section 2. Security of tenure. – xxx

xxxx

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

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

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

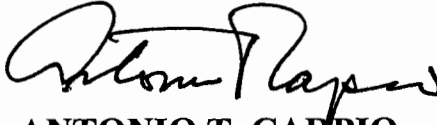
(iii.) **A written notice of termination** served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. [Emphasis ours]


⁴⁶ 485 Phil. 248, 288 (2004). See also *Concepcion v. Minex Import Corporation/Minerama Corporation*, G.R. No. 153569, January 24, 2012, 663 SCRA 496, 512.

SO ORDERED.



ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

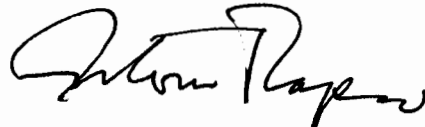

MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELLA M. PERLAS-BERNABE
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, Second Division

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice