G.R. No. 192571 - ABBOTT LABORATORIES, PHILS., CECILLE A. TERRIBLE, EDWIN D. FEIST, MARIA OLIVIA T. YABUT-MISA, TERESITA C. BERNARDO, AND ALLAN G. ALMAZAR, Petitioners, versus PEARLIE ANN F. ALCARAZ, Respondent.

Promulgated:

JULY 23, 2013

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DISSENTING OPINION

BRION, *J.:*

The Case

The case in caption was a Second Division illegal dismissal case that the Court *en banc* accepted for decision pursuant to Section 3, Rule 2 of the Internal Rules of the Supreme Court.

A. The Issues Posed

The case posed two issues to the Court for resolution. The ***first*** is the manner of review that the Court should undertake. This is an issue that underlies all the Court's decision making in light of the various modes of review and essentials that the Rules of Court require. The ***second*** and core issue relates to the merits of the legality or illegality of the dismissal: whether the Labor Code requirements governing the dismissal of a probationary employee had been complied with, *considered from the prism of the mode of review and the nature of the decision under review.*

B. The Factual Highlights

To briefly summarize the highlights of the case, Abbott Laboratories, Phils. (*petitioner*), Cecille A. Terrible, Edwin D. Feist, Maria Olivia T. Yabut-Misa, Teresita C. Bernardo, and Allan G. Almazar (*individual petitioners*) are the employer and its senior officials who dismissed respondent Pearlie Ann F. Alcaraz from employment within three (3) months from her engagement. The respondent complained against the petitioners on the ground that she had been illegally dismissed: (1) she was not informed of the standards that would govern her as a probationary employee, as required by the law (the Labor Code) and its implementing rules; (2) the petitioners even violated the company's own internal rules on

the manner of dismissing probationary employees; (3) substantively, her dismissal was without the required just cause as required by the law and the rules; and (4) her dismissal was done oppressively and in bad faith.

C. The Rulings Below

The **Labor Arbiter** ruled that the dismissal had been valid but the **National Labor Relations Commission** (*NLRC*) reversed the Labor Arbiter; found the dismissal illegal; and damages and attorney's fees because of the manner the dismissal was effected. The **Court of Appeals** (*CA*) found no grave abuse of discretion and accordingly denied the Rule 65 petition that the petitioner Abbott brought.

D. The Current Court Rulings

The *Ponencia*. In the present Rule 45 petition for review on *certiorari* before this Court, the *ponencia* undertook a ***weighing of the evidence in light of her own view of how the evidence should be interpreted***, and came out with her own ruling for the grant of the petition.

This Dissent. I vote to dismiss the petition before us as I agree with the decision of the CA that the ***NLRC did not commit any grave abuse of discretion*** **in concluding that respondent had been illegally dismissed from employment.**

Discussion of the Issues

I. The Procedural Issue

A. *The Preliminary Issue: Manner of Review*

A labor case finds its way into the judicial system from the NLRC whose decision is ***final and executory***. Finality simply means that the NLRC ruling is ***no longer appealable***; the legal intent is to confine adjudication of labor cases to labor tribunals with the expertise in these cases and thereby bring the resolution of the case to a close at the soonest possible time.

When an administrative ruling (or any ruling for that matter) is already final and unappealable, the only recourse open under the Rules of Court is through ***a limited review on jurisdictional grounds under Rule 65***. This has been the mode of review followed since the Labor Code took effect

in November 1974; labor cases were directly brought to this Court but only on jurisdictional grounds under Rule 65.[1]

In 1998, the Court – in lieu of directly acting on labor cases under Rule 65 of the Rules of Court – opted to change the ***procedure of review*** through its ruling in ***St. Martin Funeral Homes, Inc. vs. National Labor Relations Commission***,[2] taking into account the judicial hierarchy of courts and the growing number of labor cases elevated to the Supreme Court under Rule 65. The Court resolved that the proper recourse from the NLRC's final and executory ruling is to assail the ruling before ***the CA under Rule 65***. Thus, the unappealable character of the NLRC ruling (as declared by substantive law) did not change; only the process of review changed in terms of the court (from the Supreme Court to the Court of Appeals) to which the labor case can initially be brought.

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[1] The following explanation was made in my **Rejoinder to Reply** (On the manner of reviewing a Court of Appeals Labor Ruling) that was submitted to the Court En Banc in the course of the exchanges on this aspect of the case. The explanation distinguished between appealable cases and those that, while not appealable, can still be reviewed through a Rule 65 petition for certiorari.

"For a full understanding of these distinctions, it must be kept in mind that several levels of review may exist for rulings emanating from the lowest levels of adjudication before they reach the Supreme Court. The ruling of an inferior court or tribunal (*for example*, the Regional Trial Court [*RTC*]) is first reviewed by an appellate court (the CA) on questions of fact or mixed questions of fact and law; the CA decision may then in turn be reviewed by the Supreme Court under Rule 45.

Generally, two types of decisions or rulings may be brought to the appellate courts for review and decision; the appellate courts' decisions are in turn subject to review by the Supreme Court.

The ***first type*** relates to cases that come to the appellate court by way of **appeal** (*e.g.*, the ruling of the RTC in the exercise of its original jurisdiction that is appealed to the CA on issues of facts and law under Rule 41 of the Rules of Court). The ***second type*** involves the review by the CA of decisions of inferior courts or tribunals whose rulings, ***by law***, are final and executory (*e.g.*, the ruling of the National Labor Relations Commission [*NLRC*] that under the Labor Code is final and executory). *This is the review of rulings that, by law, is* **not appealable** *and thus can only be made* **on limited jurisdictional grounds**.

A CA ruling under the ***first type*** can be challenged by the aggrieved party before the Supreme Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Rule 45, the review is only on questions of law unless a review of questions of fact is allowed under the terms established by jurisprudence. This is the case in the example given above - an RTC ruling that is appealed to the CA on both factual and legal grounds and which CA decision on appeal is now before the Supreme Court for further review. *This may be the model of a Supreme Court review that the ponente might have had in mind in asserting that the Supreme Court should be able to undertake a review of the full range of legal issues before it.*

In the ***second type*** as exemplified above, a ruling by the NLRC, although final and executory, may be brought to the CA under Rule 65 of the Rules of Court, *i.e.*, on a petition for *certiorari*, limited to jurisdictional grounds, usually for grave abuse of discretion amounting to lack or excess of jurisdiction. The final and executory nature of the NLRC decision under review can best be appreciated when it is considered that the decision can immediately be implemented unless a temporary restraining order or injunction is issued by the CA; the Rule 65 mode of review is rendered necessary because the decision or ruling under review, by law, is already final. Finality1 means that the decision is no longer appealable1 and may be reviewed only when the ruling is void because of jurisdictional defects."

[2] 356 Phil. 811 (1998).

From the CA ruling, a dissatisfied party has the option to file ***an appeal with the Supreme Court*** through a petition for review on *certiorari* under Rule 45 of the Rules of Court. This mode of appeal limits the review to questions of law.

B. ***Standard of Review of a Labor Case under Rule 45 of the Rules of Court***

In ***Montoya v. Transmed***,[3] the Supreme Court (*the Court*), through its Second Division, clarified the approach that the CA and this Court should make in the handling of labor cases, among others, to ensure the prompt handling of these cases and thereby unclog our dockets. To quote our ruling in *Montoya*:

> In a Rule 45 review, we consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** 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. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[4] [emphases and italics supplied; citations omitted]

Thus, under the ***Rule 65 review by the CA***, *Montoya* reiterates that the sole ground or issue allowed is ***jurisdictional*** – *the presence or absence of grave abuse of discretion on the part of the NLRC in ruling on the case*. To state the obvious, this kind of review would have made it easier for the CA to handle the case; in the absence of a grave abuse of discretion, it can dismiss labor cases for lack of grave abuse of discretion as we do in this Court.

From the CA, further recourse is through a ***Rule 45 review by this Court on questions of law*** in accordance with prevailing rulings. The office of a petition for review on *certiorari* is not to examine and settle ***factual questions*** already ruled upon below. In this review, the Court simply determines whether the ***legal correctness of the CA's finding that the NLRC ruling of illegal dismissal had basis in fact and in law***.

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[3] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

[4] Id. at 342-343.

This manner of review is effectively a ***supervisory review*** by the courts that bears two significant characteristics: ***first***, it respects the mandate of the law that the decision below is final and is not for the courts to review *on appeal* for its legal and factual merits; and ***second***, review by the courts (particularly by the Supreme Court) in the exercise of their ***supervisory certiorari jurisdiction*** is mandated no less than by the Constitution and is intended to ensure that the deciding entity stayed within the due bounds of its authority or jurisdiction.[5]

Specifically, in reviewing a CA labor ruling under Rule 45 of the Rules of Court, the Court's review is limited to:

(1) **Ascertaining the correctness of the CA's decision in finding the presence or absence of a grave abuse of discretion**. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings; and

(2) **Deciding any other jurisdictional error** that attended the CA's interpretation or application of the law.

In this kind of limited review, the Court avoids reviewing a labor case by re-weighing the evidence or re-evaluating its sufficiency; the task of weighing or evaluation, as a rule, lies within the NLRC's jurisdiction as an administrative appellate body.

If the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, ***dismiss*** the petition. If grave abuse of discretion exists, then the CA must grant the petition and nullify the NLRC ruling, entering at the same time the ruling that is justified under the evidence and the governing law, rules and jurisprudence. In our Rule 45 review, this Court must ***deny*** the petition if it finds that the CA correctly acted.

In the context of the present case, the CA found no grave abuse of discretion committed by the NLRC; hence, the CA dismissed the Rule 65 petition before it. In our own ruling on the Rule 45 petition before us, we should evaluate the petition in this light, not in the manner that the ponencia did in concluding for the grant of the petition and ruling in favor of the petitioners.

By so doing, the *ponencia* undertook a factual appellate review that laid the whole case open for the detailed examination of every piece of

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[5] Rejoinder to Reply, *supra*, at Note 1.

evidence adduced in the case and for the evaluation of the correctness of the application of the law to the evidence found. This is a review that a Rule 45 petition does not allow.

II. The Substantive Issues

A. *The Respondent's Status of Employment*

II.A.1. *Standards to determine probationary employment*

While the respondent might have been hired as a probationary employee, ***the petitioners' evidence did not establish the employers' compliance with the probationary employment requirements under Article 281 of the Labor Code (as amended) and Section 6(d) of the Implementing Rules of Book VI, Rule I of the Labor Code (as amended)***. Thus, the respondent should be considered a regular employee and the case should be reviewed on this basis.

Article 281 of the Labor Code, as amended, provides:

> ART. 281. *Probationary employment.* - Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance **with reasonable standards made known by the employer to the employee at the time of his engagement.** An employee who is allowed to work after a probationary period shall be considered a regular employee. [italics supplied; emphasis ours]

Further, Section 6(d) of the Implementing Rules of Book VI, Rule I of the Labor Code, as amended, states:

> Sec. 6. *Probationary employment*. – There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on **reasonable standards made known to him at the time of engagement.** *[emphasis supplied*]
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> Probationary employment shall be governed by the following rules:
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> x x x x
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> **(d) In all cases** of probationary employment**, the employer shall make known** to the employee **the *standards under which he will qualify as a regular employee at the time of his engagement*. Where no**

> **standards are made known to the employee at that time, he** shall be ***deemed*** **a regular employee.** [emphases ours; italics supplied]

To sum up these provisions, a valid probationary employment requires the concurrence of two requirements. **First**, the employer shall make known the ***reasonable standard*** (*performance standard*) whose compliance will render the employee qualified to be a regular employee. **Second,** the employer shall ***inform*** the employee of the ***applicable performance standard*** at the ***time of his/her engagement.*** Failing in one or both, the employee, even if initially hired as a probationary employee, should be viewed and considered a regular employee.

The *ponencia* apparently fully agrees with the above statement of the applicable law as it substantially recites the same requirements, including the consequence that upon failure to comply with these same requirements, "*the employee is deemed as a regular and not a probationary employee.*"[6] It continues, however, with a ***twist*** that effectively negates what it has stated and admitted about the need to communicate the regularization standards to the employee, thus:

> Keeping with these rules, an employees is deemed to have made known the standards that would qualify a probationary employee to be a regular employee when it has exerted reasonable efforts to apprise the employee of what he is expected to do to accomplish during the trial of probation. This goes without saying that the employee is sufficiently made aware of his probationary status as well as the length of time of the probation.
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> The exception to the foregoing is when the job is self-descriptive in nature, for instance, in the case of maids, cooks, drivers, or messengers. Also in Aberdeen Court, Inc v. Agustin, it has been held that the rule on notifying a probationary employee of the standards of regularization should not be used to exculpate an employee in a manner contrary to basic knowledge and common sense in regard to which there is no need to spell out a policy or standard to be met. In the same light, an employee's failure to perform the duties and responsibilities which have been clearly made known to him constitutes a justifiable basis for a probationary employee's non-regularization. [*footnotes from the original, omitted*]

Based on these premises, the *ponencia* then deftly argues that because the duties and responsibilities of the position have been explained to the respondent, an experienced human resource specialist, she should have known what was expected for her to attain regular status.

The *ponencia's* reasoning, however, is badly flawed.

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[6] *Decision*, at page 12.

1st. The law and the rules require that there ***performance standards communicated at the time of engagement*** to the probationary employee. The performance standards to be met are the employer's ***specific expectations*** of how the probationary employee should perform.

The *ponencia* impliedly admits that no performance standards were expressly given but argues that because the respondent had been informed of her duties and responsibilities (a fact that was and is not disputed), she should be ***deemed to know*** what was expected of her for purposes of regularization.

This is a major flaw that the *ponencia* satisfies only *via* an assumption. The *ponencia* apparently forgets that knowledge of duties and responsibilities is different from the measure of how these duties and responsibilities should be delivered. They are separate elements and the latter element is missing in the present case.

2nd. The *ponencia* glosses over the communication aspect. Not only must there be express performance standards (except in specific instances defined in the implementing rules, discussed below); there must be effective communication. If no standards were provided, what would be communicated?

3rd. The *ponencia* badly contradicts itself in claiming that actual communication of specific standards might not be necessary "*when the job is self-descriptive in nature, for instance, in the case of maids, cooks, drivers, or messengers*." The respondent, in the first place, was never a maid, cook, driver or a messenger and cannot be placed under this classification; she was hired and employed as a human resources manager, in short, a managerial employee. Plain and common sense reasoning by one who ever had been in an employment situation dictates that the job of a managerial employee cannot be self-explanatory, in the way the *ponencia* implied; the complexity of a managerial job must necessarily require that the level of performance to be delivered must be specified and cannot simply be assumed based on the communication of the manager's duties and responsibilities.

4th. The *ponencia* also forgets that what these "performance standards" or measures cannot simply be assumed because they are critically important in this case, or for that matter, in any case involving jobs whose duties and responsibilities are not simple or self-descriptive. If the respondent had been evaluated or assessed in the manner that the company's internal rules require, these standards would have been the basis for her performance or lack of it. Last but not the least, the respondent's services were terminated on the basis of the performance standards that, by law, the employer set or prescribed at the time of the employee's engagement. If

none had been prescribed in the first place, under what basis could the employee then be assessed for purposes of termination or regularization?

From these preliminary take-off points in the *ponencia's* premises, it can already be discerned that something is badly amiss and skewed in its appreciation and review of the rulings of the NLRC and the CA. It is an appreciation that goes beyond what a determination of grave abuse of discretion requires. It is an evaluation of the adduced evidence based on externalities beyond the face value of the presented evidence.

In this case, the *ponencia* simply disregarded the plain import of the evidence or the lack of it, and ventured into the realm of assumptions to justify its desired conclusions. In the mathematical realm of problem solving, it appears to have started from the conclusion and solved the problem backwards so that the conclusion would fit into its stretched reading of the evidence.

II.A.2. *The respondent should be deemed a regular employee*

In the context of this case, an initial determination of how the respondent's employment started and of her legal status at that point is the best starting point in determining the validity of her dismissal.

The respondent was indisputably initially hired as a probationary employee. This is not a contested point. The established facts and the applicable law, however, dictate otherwise from the perspective of law as the ***petitioners failed to show compliance with the two requirements*** of Article 281 of the Labor Code (as amended) and of Section 6(d) of the Implementing Rules of Book VI, Rule I of the Labor Code (as amended).

This was what the NLRC found, leading the CA to conclude that no grave abuse of discretion intervened in the NLRC's ruling because its findings were supported by the evidence on record and by the correctly-chosen applicable law. In stark contrast, the *ponencia's* reading, although based on the same legal premises, was based on shaky assumptions, not on the hard evidence that the tribunals below appreciated.

II.A.2(a). *No specific employment standard on record.*

As the NLRC found (and as confirmed by the CA), no term or provision exists in the respondent's Employment Contract[7] relating to the ***performance standard*** that the respondent was expected to observe. The Employment Contract, duly presented as evidence, only proved the terms

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[7] *Rollo*, p. 174.

and conditions of the respondent's employment as therein indicated, *i.e.,* the *position title*, the *assigned department*, the *status of employment*, and the *period of employment*. Beyond these, the Employment Contract did not say anything more. To be sure, nothing more can be extracted from this piece of evidence except the facts stated and the inferences by implication from the expressly disclosed information. Significantly, none of these can be characterized or inferred by implication as performance standards.

The best evidence of what the *ponencia* did when it saw matters otherwise, is its own statement: its basis is not what the submitted evidence state but on what she was ***"largely impelled"*** to recognize. To quote the *ponencia*'s own words:

> A punctilious examination of the records reveals that Abbott had indeed complied with the above requirements. This conclusion is ***largely impelled*** by the fact that Abbott clearly ***conveyed to Alcaraz her duties and responsibilities as Regulatory Affairs Manager*** prior to, during the time of her engagement, and the incipient states of her employment. On this score, the Court finds it apt to detail not only of the incidents which point out to the efforts made by Abbott but also those circumstances which would show that Alcaraz was well-apprised of her employer's expectations that would, in turn determine her regularization:" [*emphasis supplied*]

The petitioner's other pieces of evidence that the *ponencia* cited and used to support its conclusion do not and cannot, however, satisfy the requirement for performance standards that must be communicated at the time of engagement.

Specifically, these were the **Offer Sheet** dated December 7, 2004, and the **pre-employment orientation** on the respondent's duty to implement the petitioner's Code of Conduct, office policies and training program.

The Offer Sheet was designed to inform the respondent of the compensation and benefits package offered to her by the petitioner and can in no way be read as a statement of the applicable probationary employment standard.[8] It was communicated even prior to engagement when the parties were negotiating, not at the point of engagement as the law requires.

The pre-employment orientation on the respondent's duty to implement the petitioner's Code of Conduct, office policies and training program likewise cannot be characterized as performance standards; they simply related to activities aimed at acquainting and training the respondent on her duties and not for the purpose of informing her of the performance standards applicable to her. What stands out is that **they do not pertain specifically to the respondent and the required performance standard applicable for her qualification for regular employment**; they related to

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[8] Id. at 77.

the staff the respondent managed and supervised. Additionally, these were all relayed prior to or after the respondent was engaged by the petitioner.

An important distinction to remember at this point is that the respondent's knowledge of the duties that her work entailed, and her knowledge of the employer's performance standard, are two distinct matters separately requiring the presentation of ***independent proof***.

The requirement of independent proof is found under Article 281 of the Labor Code, as amended, and its implementing rule that deem an employee to be regular ***if he/she was not informed of the performance standard for regularization***. Independent proof is likewise necessary as the law provides an additional ground for terminating a probationary employment, *i.e.*, when the employee "fails to qualify as a regular employee ***in accordance with the reasonable standards made known by the employer[.]***"[9]

The performance standard contemplated in law may be proven by evidence of how the employee's performance was intended to be or was, in fact, measured by the employer. The performance standard may be in the form of a clear set of the employer's expectations, or by a system of feedbacks (*e.g.*, comment cards) and document evaluation or performance evaluation and appraisals conducted by the employer.

These were the pieces of evidence that the NLRC, as confirmed by the CA, *did not see in the evidence or in the petitioners' presented case*. The *ponencia*, unfortunately, glossed over these gaps and omissions in the petitioners' case and chose to believe, even without evidentiary basis that –

> Considering the ***totality of the above-stated circumstances***, it cannot, therefore, be doubted that Alcaraz was well-aware that her regularization would depend on her ability and capacity to fulfill the requirements of her position as Regulatory Affairs Manager and that her failure to perform such would give Abbott a valid cause to terminate her probationary employment. [*emphasis supplied*]

From this strained and stretched reading that magically saw the required prescribed performance standards that – by the factual findings of the NLRC and the CA – never existed, the *ponencia* went on to conclude:

> Verily, basic knowledge and common sense dictate that the adequate performance of one's duties is, by and of itself, an inherent and implied standard for a probationary employee to be regularized; such is a regularization standard which need not be literally spelled out or mapped into technical indicators in every case. In this regard, it must be observed that the assessment of adequate duty performance is in the nature of a

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[9] See Article 281 of the Labor Code, as amended.

> management prerogative which when reasonably exercised – as Abbott did in this case –should be respected. This is especially true of a managerial employee like Alcaraz who was tasked with the vital responsibility of handling personnel and important matters of her department.

This conclusion, of course, simply extends the magic by using "basic knowledge and common sense" to dictate the existence of "inherent and implied standards" of a probationary employee, and even offers a view of "management prerogative" that is unusual in the given facts of this case. This approach eloquently exemplifies what I mentioned above as the "solving backwards" approach that the *ponencia* used.

II.A.2(b). *No specific performance standard communicated to the respondent.*

Complementing the requirement for the existence of performance standards is the required communication of the performance standard to the respondent. Again, ***nothing in the records*** shows that the petitioner ever communicated any performance standard to the respondent.

The *ponencia*, in building up a case contrary to what the NLRC and the CA found, cites the evidence the petitioners point to – the respondent's receipt of copies of the petitioner's Code of Conduct, Probationary Performance Standards and Evaluation, and Performance Excellence Orientation Modules. The ***NLRC and the CA***, looking at the same pieces of evidence, saw these in a different light as they ***did not only examine the documents themselves but went to the extent of examining and appreciating the circumstances surrounding the respondent's receipt of these documents***.

The evidence on record suggests, as the respondent directly testified to, that the cited documents were not given to her for the purpose of complying with the petitioner's obligation to inform her of the performance standards applicable to her. The documents were, in fact, given by the petitioner ***to assist her in monitoring the employees assigned to her department, i.e., as the documents she must rely on in conducting the performance evaluations of the staff assigned to her department.*** In short, the respondent received the documents because they were necessary in the discharge of her functions.

From the point of law, compliance with the first requirement is not also satisfied by the petitioner's assertion that the respondent knew that only one performance standard applied to all employees. Notably, the law requires proof that the employer specifically made known to her the performance standards applicable to her to enable her to qualify for regular

employment. **The required communication must be an effective one if the law were to be given meaningful substance, not a mere perfunctory transmission of information.**

Faced with these opposing claims, the CA apparently weighed matters in the respondent's (and effectively in the NLRC's) favor. In this situation of possible equipoise, the CA did not rule incorrectly from the point of law when it acted as it did.

Two factors tilt the balance in favor of the legal correctness of the CA's ruling. The ***first*** is that the respondent's position (found by the NLRC to be meritorious) was ***not without any basis in fact and in law***. The ***second*** is from the latter perspective; ***Article 4 of the Labor Code*** and established jurisprudence hold that any doubt in a labor situation must be resolved in the employee's favor.

Thus, again, the *ponencia's* case and its conclusion must fail.

II.A.2(c). *Performance standards and the internal procedures for their evaluation were not applied to the respondent.*

I can only agree with one aspect of the *ponencia* — its admission that Abbott's internal procedures were not applied to the respondent. I cannot dispute and I fully agree with the following passages of the *ponencia*:

> Records show that Abbott's PPSE procedure mandates, *inter alia*, that the job performance of a probationary employee should be formally reviewed and discussed with the employee at least twice: first on the third month and second on the fifth month from the date of employment. Abbott is also required to come up with a Performance Improvement Plan during the third month review to bridge the gap between the employee's performance and the standards set, if any. In addition, a signed copy of the PPSE form should be submitted to Abbott's HRD as the same would serve as basis for recommending the confirmation or termination of the probationary employment.
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> In this case, as it is apparent that Abbott failed to follow the above-stated procedure in evaluating Alcaraz. For one, there lies a hiatus of evidence that a signed copy of Alcaraz PPSE form was submitted to the HRD. It was not even shown that a PPSE form was completed to formally assess her performance. Neither was the performance evaluation discussed with her during the third and fifth months of her employment. Nor did Abbott come up with the necessary Performance Improvement Plan to properly gauge Alcaraz performance with the set company standards.
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> While it is Abbott's management prerogative to promulgate its own company rules and even subsequently amend them, this right equally

> demands that when it does create its own policies and thereafter notify its employees of the same, it accords upon itself the obligation to faithfully implement them. Indeed, a contrary interpretation would entail a disharmonious relationship in the work place for the laborer should never be mired by the uncertainty of flimsy rules in which the latter's labor rights and duties would, to some extent, depend.[10] [*footnotes in the original omitted*]

Internal processes, however, cannot be dissociated from the substance that the processes seek to achieve. **This is the essence of due process**. There is the requirement for the observance of proper procedures, hand in hand with the substance of what the law seeks – to level the playing field between the all-powerful employer and the vulnerable employee who lies at the mercy of the employer if he or she can be dismissed on the basis of the latter's whim. This attempt at leveling is the reason for the requirements for duly disclosed performance standards and their communication to the probationary employee at the very beginning of the relationship. Reason, experience and common sense dictate that the substance of the law carry more weight than the process component so that any violation of the substantive portion is a transgression that mere obeisance to the process or the recognition of the failure of process, cannot cure. From this perspective, the laudable quotation above loses its luster.

Lusterless or otherwise, the *ponencia's* admission of Abbott's procedural inadequacies is not without significance in terms of the present case as a whole. Notably, the above quotation expressly and impliedly admits that no effort at all was ever made for the conduct of an assessment or evaluation of the respondent's performance; in fact, no performance evaluation forms appear to have been submitted by the company. The dearth of evidence on this point (described by the *ponencia* as a "hiatus of evidence") is completely consistent with what the *ponencia* explicitly and impliedly admits from the very beginning: ***there was no evidence of any performance standard furnished the respondent so that the ponencia could only deduce the existence of performance standards from its assumptions and stretched rationalizations; much less was there any communication of performance standards qua performance standards, as this is a matter that was also assumed***.

I draw attention, too, to another unusual feature of this case indicating, not only the omissions that the *ponencia* already cited, but the implication as well that the respondent had been singled out for special treatment by the petitioner officers. At the very least, this incident indicates that the petitioner did not apply the same standards and processes to the respondent's work. The petitioner's prescribed procedure was narrated in an earlier version of the *ponencia* in this wise:

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[10] Decision, at pp. 16 – 17.

> On April 20, 2005, Alcaraz had a meeting with petitioner Cecille Terrible (Terrible), Abbott's former HR Director, to discuss certain issues regarding staff performance standards. In the course x x x thereof, Alcaraz accidentally saw a printed copy of an e-mail sent by Walsh to some staff members which essentially contained queries regarding the former's job performance. **Alcaraz asked if Walsh's action was the normal process of evaluation. Terrible said that it was not**.[11] (emphasis ours)

This allegation by the respondent in this regard in her pleadings was impliedly admitted by the petitioner when it failed to offer any refutation. Interestingly, ***the above allegation was included in the narration of facts of the Labor Arbiter, the NLRC, the CA and an earlier version of the ponencia***, although they arrived at two (2) different conclusions.

The respondent's unrefuted allegation was not considered at all in the conclusions of the Labor Arbiter and of the *ponencia*.[12] On the other hand, the NLRC and the CA concluded that a different performance standard and evaluation process was applied to the respondent in light of the circumstances of the case, gleaned from the evidence submitted.[13]

In my view, the NLRC and the CA were not without basis in making their conclusion as the incident, taken together with the facts supported by the available evidence, is vital in appreciating the nature of the respondent's employment.

Since the respondent, as the incident suggests, was bound by a different set of standards and procedures, and since no evidence of record existed showing what these standards were or that the required procedures were observed, the petitioners' theory that the respondent was informed of, and was evaluated pursuant to, the performance standards applicable to her position, is effectively negated. ***This leads to the conclusion that the respondent, from the beginning, had been a regular employee as a result of the failure of Abbott's HR processes***. A much simpler view, related this time to the manner of her termination, is that the respondent was simply differently treated.

B. *"Just Cause" for Dismissal Must Exist*

To justify the dismissal of an employee, the employer carries the burden of proving that the dismissal was for a just cause and with the observance of due process prior to dismissal.[14] The employer has to discharge this burden by clear, accurate, consistent and convincing

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11 Pages 4-5 of the *ponencia.*
12 Ibid.; *rollo*, pp. 260 and 271.
13 *Rollo*, pp. 1044-1045.
14 *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 205.

evidence;[15] in case of doubt, the presumption in the employee's favor under Article 4 of the Labor Code should apply.

II.B.1. *The petitioner had no valid cause to dismiss the respondent's employment*

The respondent was dismissed as she "failed to qualify as regular employee in accordance with the prescribed standards set by the Company."[16] Even granting for the sake of argument that the petitioner had apprised the respondent of an applicable performance standard, the evidence failed to show that the respondent did not meet this standard in a manner and to the extent equivalent to the "just cause" that the law requires.

II.B.1(a). *Just cause requirement for employees, whether probationary or regular*.

An important legal point that should not be lost in considering this case is that **a probationary employee does not have lesser rights than a regular employee under the Labor Code in terms of the just cause for the termination of an employment**. While the strict application of Article 282 of the Labor Code may be relaxed because the employee is still under probation (so that analogous probationary status rules may apply), the same essential just cause for dismissal must be present and must be proven. In other words, probationary employment does not mean that the employee is under an *"employment at will"* situation as that phrase is understood in American jurisprudence. To reiterate, the fact that the respondent was still in her probationary period of employment did not lessen the burden of proof that the law imposed on the petitioners to prove the just cause for her dismissal.[17] Probationary employees are protected by the security of tenure provision of the Constitution and they cannot be removed from their position except only for cause.[18]

II.B.1(b). *The evidentiary status of the just cause for dismissal*

In the present case, the evidence did not show the just cause that Article 282 of the Labor Code requires. No evidence on record showed the commission by the respondent of any of the following acts or omissions:

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

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15 Ibid.
16 *Rollo*, p. 78.
17 *Aberdeen Court, Inc. v. Agustin, Jr.*, 495 Phil. 706, 712 (2005).
18 Ibid.

(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 representatives; and

(e) Other causes analogous to the foregoing.

On the contrary, the records disclose that the respondent performed her duties under the guidance of the petitioner's management and worked in line with the tasks assigned to her.[19] The petitioner's allegation of the respondent's "poor performance" could not have been substantiated considering the lack of any clear performance standard in evaluating the respondent's work.

II.B.2. ***The petitioner violated its own procedural requirements in the performance evaluation***

A first instance when the discussion related to "process" was with respect to the ***communication of performance standards***. This topic also relates to process, but this time on the matter of the ***procedure to be taken in performance evaluation***: the petitioner failed to observe ***its own procedural requirements*** in evaluating the respondent's probationary employment.

The petitioner's prescribed procedure gives probationary employees two (2) opportunities to meet and qualify for regularization. As mentioned before, the reviews were aimed at informing the employees of their work performance based on the petitioner's standard and on how they can improve it to qualify for regularization. For reasons not disclosed in the records, the prescribed procedure was not followed by the petitioner in the respondent's case. She was immediately terminated from employment without having been evaluated and without undergoing the evaluation process under the petitioner's prescribed procedure.

While the petitioner's failure to observe its own procedures is not disputed in the *ponencia*, the implication of Abbott's failure cannot simply be glossed over. Abbott's non-compliance should be viewed from the ***point of fairness or lack of it***, that attended the respondent's dismissal. This

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[19] See page 4 of the *ponencia.*

circumstance should be considered together with the other circumstances of the case, if only because the petitioner's basic unfairness rendered doubtful the real cause in the termination of her employment.

In other words, any deviation from the prescribed procedures must be sufficiently explained to remove doubts on the genuineness of the cause of dismissal. In this case, not only did the petitioner fail to observe its own prescribed procedure; more importantly, it also ***failed to provide an explanation*** on why the prescribed procedure was not followed in the respondent's case.

Significantly, the NLRC appreciated all these in this case and this appreciation was duly noted and evaluated by the CA. As there was in fact basis in fact and in law in the NLRC's findings on this aspect of the case, again the CA correctly found no grave abuse of discretion in the NLRC's actions.

II.B.3. *Violation of the Labor Code's procedural requirements*

Additionally, the petitioner failed to comply with the procedural due process of the Labor Code when it terminated the respondent's employment. The ***two-written notice requirement*** under Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended, was never observed. To quote this provision:

> Section 2. **Standards of due process; requirements of notice.** — In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) **A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side**;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (c) **A written notice of termination served on the employee indicating that upon due consideration of all the circumstance[s], grounds have been established to justify his termination**.
>
> In case of termination, the foregoing notices shall be served on the employee's last known address. [emphasis supplied]

The ***first notice*** is complied with when the employee is properly apprised of the charges brought against him/her so that he/she can properly prepare for his/her defense.[20] The ***second notice*** is complied with when the employee is informed of the employer's intention to terminate the employment.[21] A formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard. In *Perez v. Philippine Telegraph and Telephone Company*,[22] the Court laid down the following guiding principles in connection with the hearing requirement in dismissal cases:

> a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.
>
> b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.
>
> c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.

From the records, the ***respondent received only one notice and was not given ample opportunity to be heard*** before her employment was terminated. The respondent was not served a first written notice indicating: (1) the grounds for terminating her employment; and (2) a directive giving her the opportunity to submit a written explanation within a reasonable period. Neither was the respondent given the ample opportunity to be heard as required by law. There was only compliance with the second notice requirement through the petitioner's letter dated May 19, 2005 which was already a written notice of termination of employment.[23]

In defense of Abbott's failure to observe the two-notice requirement, the *ponencia* argues that a different procedure applies when terminating a probationary employee; the usual two-notice requirement does not govern, citing for this purpose Section 2, Rule I, Book VI of the Implementing Rules of the Labor Code.

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20 *Dolores T. Esguerra v. Valle Verde Country Club, Inc., et al.*, G.R. No. 173012, June 13, 2012.
21 *Ibid.*
22 G.R. No. 152048, April 7, 2009, 584 SCRA 110, 127.
23 *Rollo*, p. 78.

The *ponencia*, however, forgets that the single notice rule applies only if the employee is validly on probationary basis; ***it does not apply where the employee is deemed a regular employee for the company's failure to provide and to communicate a prescribed performance standard applicable to the probationary employee***. The *ponencia* itself admits that in such a case, the employee would then be a regular employee. Since the petitioner utterly failed to support by evidence its compliance with the legal requirements on performance standards, the two-notice requirement for regular employees must perforce fully apply.

C. ***The Consequences of the Respondent's Illegal Dismissal***

The above analysis shows that the respondent had been illegally dismissed from her employment. The petitioner failed to show that her dismissal was for a valid cause. The petitioner also failed to respect the respondent's procedural due process rights under the law.

As a consequence, the NLRC and the CA, thereafter, correctly ordered the respondent's reinstatement and the payment of the monetary awards of backwages, moral damages, exemplary damages and attorney's fees. The CA and the NLRC also correctly held that the individual petitioners (*i.e.*, the corporate officers of the petitioner) should be solidarily liable with the petitioner for the respondent's monetary awards.

II.C.1. *The recoverable reliefs*

Article 279 of the Labor Code, as amended, provides the following awards to an illegally dismissed employee:

> Art. 279. *Security of tenure*. - In 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. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

"By jurisprudence derived from [the above] provision, separation pay may be awarded to an illegally dismissed employee in lieu of reinstatement."[24] Under Section 4(b), Rule I of the Rules Implementing Book VI of the Labor Code, separation pay is awarded, in lieu of reinstatement, to an illegally dismissed employee when reinstatement is no longer possible, *i.e.*, when the dismissed employee's position is no longer

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[24] *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*, G.R. No. 172149, February 8, 2010, 612 SCRA 10, 25, citing *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

available, or the continued relationship between the employer and the employee would no longer be viable due to the strained relations between them, or when the dismissed employee opts not to be reinstated, or when the payment of separation benefits would be for the best interest of the parties involved.

"Thus, an illegally dismissed employee is ***entitled to two reliefs***: ***backwages and reinstatement***. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages."[25]

II.C.2. *Other awards as a consequence of the damages suffered*

In addition to these basic awards, an illegally dismissed employee may also be awarded ***moral and exemplary damages and attorney's fees.*** Jurisprudence holds that moral and exemplary damages are awarded when the illegal dismissal is attended by bad faith.[26] The Court has also ruled that corporate officers are solidarily liable with the employer company for the employees' termination of employment done with malice or bad faith.[27]

A review of the facts of the case shows ample evidence supporting the petitioner's bad faith, as shown by the manner in which the respondent's employment was terminated. The NLRC, in its decision, exhaustively discussed the petitioner's bad faith, as demonstrated by the actions of the individual petitioners:

> The records show that complainant-appellant's dismissal was effected by individual respondents-appellees in a capricious and high-handed manner, anti-social and oppressive, fraudulent and in bad faith, and contrary to morals, good customs and public policy. Bad faith and fraud are shown in the acts committed by respondents-appellees before, during and after complainant-appellant's dismissal in addition to the manner by which she was dismissed. First, complainant-appellant was pressured to resign: (1) she was threatened with termination, which will surely damage her reputation in the pharmaceutical industry; (2) she was asked to evacuate her Commission and ordered not to enter the Company's premises even if she was still an Abbott employee; and (3) individual respondents Ms. Terrible and Ms. Walsh made a public announcement to the staff that complainant-appellant already resigned even if in reality she did not. All

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[25] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

[26] *Nazareno v. City of Dumaguete*, G.R. No. 177795, June 19, 2009, 590 SCRA 110, 141-142. See also Civil Code, Articles 2208, 2217, 2219 and 2232.

[27] *MAM Realty Development Corporation v. NLRC*, G.R. No. 114787, June 2, 1995, 244 SCRA 797, 803.

> of which caused complainant-appellant much humiliation, serious anxiety and besmirched reputation. [28]

The CA also described in detail the abrupt and oppressive manner in which the respondent's employment was dismissed by the petitioner:

> On May 23, 2005, the private respondent still reported for work since petitioner Abbott had not yet handed the termination notice to her. However, the security guard did not allow her to enter the Hospira ALSU office pursuant to Ms. Walsh[']s instruction. She requested Ms. Walsh that she be allowed to enter the company premises to retrieve her last remaining things in her office which are mostly her personal belongings. She was allowed to enter. However, she was surprised to see her drawers already unlocked and, when she opened the same, she discovered that her small brown envelope x x x, white pouch containing the duplicate keys, and the staff's final evaluation sheets were missing. The private respondent informed Ms. Bernardo about the incident. The latter responded by saying she was no longer an employee of the company since May 19, 2005.
>
> The private respondent reported the matter to the Pasig Police Station and asked for help regarding the theft of her properties. The Pasig Police incident report stated as follows:
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> x x x x
>
> When confronted by the suspect, in the presence of one SOCO officer and staff, named Christian Perez. Kelly Walsh allegedly admitted that she was the one who opened the drawer and got the green folders containing the staff evaluations. The Reportee, was told by Kelly Walsh that her Rolex wristwatch will be returned to her provided that she will immediately vacate her office.
>
> On the same date, the private respondent's termination letter dated May 19, 2005 was handed to her by Ms. Walsh, Mr. Almazar and Ms. Bernardo. On May 27, 2005, the private respondent received another copy of the said termination notice via registered mail.[29]

These explanations for the actions taken show that the NLRC's recognition of the bad faith was not without basis and was in fact supplemented by the CA in the appellate court's own confirmatory explanation.

D. ***Application of the Rule 45 Standard of Review***

Under the evidentiary situation that prevailed in this case as described above in some detail, an expression of wonder cannot be helped, particularly

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[28] *Rollo*, pp. 375-376.

[29] Id. at 1046-1047.

on how the *ponencia* could conclude that the CA committed a reversible error when it found no grave abuse of discretion in the NLRC's actions on the case. In contrast with the findings of the Labor Arbiter, the findings and conclusions of the NLRC, as affirmed on a Rule 65 review by the CA, were based on the law and jurisprudence as properly applied to the established set of facts and evidence.

First, while the respondent, from the petitioner's standpoint, was hired as a probationary employee, she was deemed a regular employee pursuant to the clear provisions of Article 281 of the Labor Code, as amended and Section 6(d) of the Implementing Rules of Book VI, Rule I of the Labor Code, as amended. The evidence adduced failed to show that the petitioner ever apprised the respondent at the time of her engagement of the standards she must meet to qualify for regular employment.

Second, the respondent's termination from employment had no basis in fact and in law. Since the records failed to support the petitioner's allegation that the respondent's alleged poor performance and tardiness were proven by evidence and, in fact, fell within the enumeration in Article 281 and Article 282 of the Labor Code, reason dictates that the present petition be denied.

At the risk of repetition, the adduced evidence, in the first place, did not prove that the respondent's work failed to comply with the petitioner's performance standard as no proof of the performance standard applied to the respondent's work was actually presented. The respondent's employment was also terminated without undergoing any performance evaluation.

The evidence adduced did not also prove any act of omission under Article 282 of the Labor Code committed by the respondent. No evidence was presented on the respondent's actual work so as to determine whether her acts/omissions constituted a just cause for termination, such as serious misconduct or gross or habitual neglect of duty or any other analogous cause to the just causes mentioned in the law.

As the records show, neither was there compliance with the respondent's own internal procedures nor with the law's procedural due process. The respondent was not served the two-notice required by law before her employment was terminated by the petitioner.

Third, the NLRC's monetary awards, as affirmed by the CA, were appropriate consequences of the respondent's illegal dismissal from employment. The payment of the respondent's backwages and the order of reinstatement were consistent with the provisions of Article 279 of the Labor Code. Jurisprudence also provides the award of moral and exemplary

damages, as well as attorney's fees, when bad faith is proven in the termination of employment.

In this case, the bad faith exhibited by the individual petitioners was clearly established in the records. The individual petitioners' bad faith was demonstrated by the evidence of how they unfairly effected the termination of the respondent's employment.

The narration of facts of the Labor Arbiter, the NLRC and the CA shows, among others, that: (1) the individual petitioners did not follow the petitioner's prescribed procedure performance evaluation as, in fact, the respondent's work was not evaluated; (2) the individual petitioners, through their concerted actions, ganged up on the respondent in forcing her to resign from employment; (3) the individual petitioners pressured the respondent to resign by announcing her resignation to the office staff, thereby subjecting her to unwarranted humiliation; and (4) they blackmailed the respondent by withholding her personal possessions until she resigned from employment.

Bad faith can also be inferred from the lack of fairness and underhandedness employed by the individual petitioners on how they informed the respondent of the termination of her employment. The records disclose that the respondent was lured into a meeting on the pretext that her work performance was to be evaluated; she was caught off-guard when she was informed that her employment had been terminated. Aside from the abrupt notification, bad faith can also be deduced from the fact that the termination was made immediately effective; the respondent was immediately banned from the petitioner's premises after she was informed that her employment had been terminated.

To my mind, the NLRC correctly ruled that the individual petitioners were solidarily liable, together with the petitioner, to pay the monetary awards. The cited circumstances constitute sufficient evidence of their bad faith in terminating the respondent's employment. Verily, corporate officers are solidarily liable with the corporation to pay monetary awards in illegal dismissal cases when their bad faith is established in the termination of the employment.

III. Conclusion

I close this Dissent with the note that the constitutional protection of security of tenure is a right enjoyed by every employee. Employment, regardless of the employment status, may only be terminated for cause and within the procedure prescribed by law and jurisprudence. A review of the records shows that no reversible error was committed by the CA in finding the NLRC free from any taint of grave abuse of discretion in ruling

on the respondent's illegal dismissal. This conclusion is what the Court should reflect in its Decision if it is to discharge in good faith its duty to adjudicate.

ARTURO D. BRION
Associate Justice