Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

UNITED TOURIST PROMOTIONS (UTP) and ARIEL D. JERSEY, Petitioners,	**G.R. No. 205453**
	Present:
	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO, BERSAMIN,
- versus -	VILLARAMA, JR., and REYES, *JJ.*
	Promulgated:
HARLAND B. KEMPLIN, Respondents.	FEB 05 2014

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DECISION

REYES, *J.*:

United Tourist Promotions (UTP), a sole proprietorship business entity engaged in the printing and distribution of promotional brochures and maps for tourists, and its registered owner, Ariel D. Jersey (Jersey), are now before us with a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court to assail the Decision[2] rendered by the Court of Appeals (CA) on June 29, 2012 and the Resolution[3] thereafter issued on January 16, 2013 in CA-G.R. SP No. 118971. The assailed decision and resolution affirmed *in toto* the rulings of the Sixth Division of the National Labor Relations Commission (NLRC) and Labor Arbiter Leandro M. Jose (LA Jose) finding that Harland B. Kemplin (Kemplin) was illegally dismissed as President of UTP.

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1 *Rollo*, pp. 3-26.

2 Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Amelita G. Tolentino and Ramon R. Garcia, concurring; id. at 29-39.

3 Id. at 287.

Antecedents

In 1995, Jersey, with the help of two American expatriates, Kemplin and the late Mike Dunne, formed UTP.

In 2002, UTP employed Kemplin to be its President for a period of five years, to commence on March 1, 2002 and to end on March 1, 2007, "renewable for the same period, subject to new terms and conditions".[4]

Kemplin continued to render his services to UTP even after his fixed term contract of employment expired. Records show that on May 12, 2009, Kemplin, signing as President of UTP, entered into advertisement agreements with Pizza Hut and M. Lhuillier.[5]

On July 30, 2009, UTP's legal counsel sent Kemplin a letter,[6] which, in part, reads:

> We would like to inform you that your Employment Contract had been expired since **March 1, 2007** and never been renewed. So[,] it is clear [that] you are no longer [an] employee as President of [UTP] considering the expiration of your employment contract. However, because of your past services to our client's company despite [the fact that] your service is no longer needed by his company[,] as token[,] he tolerated you to come in the office [and] as such[,] you were given monthly commissions with allowances.
>
> But because of your inhuman treatment x x x [of] the rank and file employees[,] which caused great damage and prejudices to the company as evidenced [by] those cases filed against you[,] specifically[:] (1) x x x ***for Grave Oral [T]hreat pending for Preliminary Investigation, Pasay City Prosecutor's Office*** x x x[;] (2) x x x ***for Summary Deportation[,] BID, Pasay City Prosecutor's Office***; and (3) x x x ***for Grave Coercion and Grave Threats***, we had no other recourse but to give you this notice to cease and desist from entering the premises of the main office[,] as well as the branch offices of [UTP] from receipt hereof for the protection and safety of the company[,] as well as to the employees and to avoid further great damages that you may cause to the company x x x.[7]

On August 10, 2009, Kemplin filed before Regional Arbitration Branch No. 111 of the NLRC a Complaint[8] against UTP and its officers, namely, Jersey, Lorena Lindo[9] and Larry Jersey,[10] for: (a) illegal dismissal;

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4 Please *see* Employment Contract, id. at 161-162.
5 Id. at 263-266.
6 Id. at 159-160.
7 Id.
8 Id. at 149.
9 Sales Manager
10 Marketing Manager

(b) non-payment of salaries, 13th month and separation pay, and retirement benefits; (c) payment of actual, moral and exemplary damages and monthly commission of ₱200,0000.00; and (d) recovery of the company car, which was forcibly taken from him, personal laptop, office paraphernalia and personal books.

In Kemplin's Position Paper,[11] which he filed before LA Jose, he claimed that even after the expiration of his employment contract on March 1, 2007, he rendered his services as President and General Manager of UTP. In December of 2008, he began examining the company's finances, with the end in mind of collecting from delinquent accounts of UTP's distributors. After having noted some accounting discrepancies, he sent e-mail messages to the other officers but he did not receive direct replies to his queries. Subsequently, on July 30, 2009, he received a notice from UTP's counsel ordering him to cease and desist from entering the premises of UTP offices.

UTP, on its part, argued that the termination letter sent to Kemplin on July 30, 2009 was based on (a) the expiration of the fixed term employment contract they had entered into, and (b) an employer's prerogative to terminate an employee, who commits criminal and illegal acts prejudicial to business. UTP alleged that Kemplin bad-mouthed, treated his co-workers as third class citizens, and called them "brown monkeys". Kemplin's presence in the premises of UTP was merely tolerated and he was given allowances due to humanitarian considerations.[12]

The LA's Decision

On June 25, 2010, LA Jose rendered a Decision,[13] the dispositive portion of which reads:

> WHEREFORE, premises considered, the following findings are made:
>
> 1. [Kemplin] is found to be a regular employee;
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> 2. [Kemplin] is adjudged to have been illegally dismissed even as [UTP and Jersey] are held liable therefor;
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> 3. Consequently, [UTP and Jersey] are ordered to reinstate [Kemplin] to his former position without loss of seniority rights and other privileges, with backwages initially computed at this time at [₱]219,200.00;

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11 *Rollo*, pp. 165-183.
12 Please *see* UTP and Jersey's Position Paper, id. at 150-158.
13 Id. at 103-113.

4. The reinstatement aspect of this decision is immediately executory even as [UTP and Jersey] are enjoined to submit a report of compliance therewith within ten (10) days from receipt hereof;

5. [UTP and Jersey] are further ordered to pay [Kemplin] his salary for July 2009 of [₱]20,000.00 and 13th month pay for the year 2009 in the sum of [₱]20,000.00;

6. [UTP and Jersey] are assessed 10% attorney's fee of [₱]25,920.00 in favor of [Kemplin].

All other claims are dismissed for lack of merit.

SO ORDERED.[14]

LA Jose's ratiocinations are:

[Kemplin] was able to show that he was still officially connected with [UTP] as he signed in his capacity as President of [UTP] an (sic) advertisement agreement[s] with Pizza Hut and M. Lhuillier Phils. as late as May 12, 2009. This only goes to show that [UTP and Jersey's] theory of toleration has no basis in fact.

It would appear now, per record, that [Kemplin] was allowed to continue performing and suffered to work much beyond the expiration of his contract. Such being the case, [Kemplin's] fixed term employment contract was converted to a regular one under Art. 280 of the Labor Code, as amended (Viernes vs. NLRC, et al., G.R. No. 108405, April 4, 2003).

[Kemplin's] tenure having now been converted to regular employment, he now enjoys security of tenure under Art. 279 of the Labor Code, as amended. Simply put, [Kemplin] may only be dismissed for cause and after affording him the procedural requirement of notice and hearing. Otherwise, his dismissal will be illegal.

Be that as it may, [UTP and Jersey] proceeded to argue that [Kemplin] was not illegally terminated, for his termination was according to Art. 282 of the Labor Code, as amended, i.e., loss of trust and confidence allegedly for various and serious offenses x x x.

However, upon closer scrutiny, in trying to justify [Kemplin's] dismissal on the ground of loss of trust and confidence, [UTP and Jersey] failed to observe the procedural requirements of notice and hearing, or more particularly, the two-notice rule. It would appear that [UTP and Jersey's] x x x cease and desist letter compressed the two notices in one. Besides, the various and serious offenses alluded thereto were not legally established before [Kemplin's] separation. Ostensibly, [Kemplin] was not confronted with these offenses and given the opportunity to explain himself.

x x x [R]espondents miserably failed to discharge their onus probandi. Hence, illegal dismissal lies.

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14 Id. at 112-113.

x x x x

The claim for non-payment of salary for July 2009 appears to be meritorious for failure of [UTP and Jersey] to prove payment thereof when they have the burden of proof to do so.

The same ruling applies to the claim for 13th month pay.

However, the claims for commissions, company car, laptop, office paraphernalia and personal books may not be given due course for failure of [Kemplin] to provide the specifics of his claims and/or sufficient basis thereof when the burden of proof is reposed in him.[15]

The Decision of the NLRC

On January 21, 2011, the NLRC affirmed LA Jose's Decision.[16] However, Lorena Lindo and Larry Jersey were expressly excluded from assuming liability for lack of proof of their involvement in Kemplin's dismissal. The NLRC declared:

[A]fter the expiration of [Kemplin's] fixed term employment, his employment from March 2, 2007 until his separation therefrom on July 30, 2009 is classified as regular pursuant to the provisions of Article 280 of the Labor Code, to wit:

> **ART. 280.** ***Regular and casual employment.*** – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

The aforesaid Article 280 of the Labor Code, as amended, classifies employees into three (3) categories, namely: (1) regular employees or those whose work is necessary or desirable to the usual

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15 Id. at 110-112.

16 Please *see* the NLRC's Decision, id. at 66-73.

> business of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed [are] seasonal in nature and the employment is for the duration of the season; and (3) casual employees or those who are neither regular nor project employees. Regular employees are further classified into: (1) regular employees by nature of work; and (2) regular employees by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year. (Rowell Industrial Corporation vs. Court of Appeals, G.R. No. 167714, March 7, 2007)
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> Considering that he continued working as President for UTP for about one (1) year and five (5) months and since [his] employment is not covered by another fixed term employment contract, [Kemplin's] employment after the expiration of his fixed term employment is already regular. Therefore, he is guaranteed security of tenure and can only be removed from service for cause and after compliance with due process. This is notwithstanding [UTP and Jersey's] insistence that they merely tolerated [Kemplin's] "consultancy" for humanitarian reasons.
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> In termination cases, the employer bears the burden of proving that the dismissal of the employee is for a just or an authorized cause. Failure to dispose of the burden would imply that the dismissal is not lawful, and that the employee is entitled to reinstatement, back wages and accruing benefits. Moreover, dismissed employees are not required to prove their innocence of the employer's accusations against them. (San Miguel Corporation vs. National Labor Relations Commission and William L. Friend, Jr., G.R. No. 153983, May 26, 2009).
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> In this case, [UTP and Jersey] failed to prove the existence of just cause for his termination. Their allegation of loss of trust and confidence was raised only in their position paper and was never posed before [Kemplin] in order that he may be able to answer to the charge. In fact, he was merely told to cease and desist from entering the premises. He was never afforded due process as he was not notified of the charges against him and given the opportunity to be heard. Thus, there was never any proven just cause for [Kemplin's] termination, which makes it, therefore, illegal. x x x.[17] (Underscoring supplied)

The CA's Decision

On June 29, 2012, the CA rendered the herein assailed Decision[18] affirming the disquisitions of the LA and NLRC. The CA stated that:

> [Kemplin's] presence for humanitarian reasons is purely self-serving and belied by the evidence on record. In fact, [UTP and Jersey's] alleged

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17 Id. at 70-72.

18 Id. at 29-39.

> document denominated as *Revocation of Power of Attorney* (executed on November 24, 2008 or MORE THAN one year from the expiration of [Kemplin's] employment contract) will only confirm that [Kemplin] continued rendering work x x x beyond March 1, 2007. x x x.
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> x x x x
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> Moreover, if indeed [Kemplin's] relationship with UTP after the expiration of the former's employment contract was based on [UTP and Jersey's] mere tolerance, why then did [they] have to "dismiss" [Kemplin] based on alleged loss of trust and confidence? Clearly, [UTP's and Jersey's] allegation in their Position Paper (before LA Jose) that [Kemplin] was "*formally given notice of his termination as in* [sic] *indicated on the Notice of Termination Letter dated July 20, 2009*," is already an indication, if not an admission, that [Kemplin] was, indeed, still in the employ of UTP albeit without a new or renewed contract of employment.
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> x x x x
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> The validity of an employer's dismissal from service hinges on the satisfaction of the two substantive requirements for a lawful termination. x x x [T]he procedural aspect. And x x x the substantive aspect.
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> Records are bereft of any evidence that [Kemplin] was notified of the alleged causes for his possible dismissal. Neither was there any notice sent to him to afford him an opportunity to air his side and defenses. The alleged *Notice of Termination Letter* sent by [UTP and Jersey] miserably failed to comply with the twin-notice requirement under the law. x x x
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> x x x x
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> We likewise sustain the finding of the [NLRC] that [UTP and Jersey] failed to prove the existence of just cause for [Kemplin's] termination. [UTP and Jersey's] allegation of loss of trust and confidence was raised only in their Position Paper and was never posed before [Kemplin] in order that he may be able to answer to the charge. It is a basic principle that in illegal dismissal cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.[19] (Citations omitted)

On January 16, 2013, the CA issued the herein assailed Resolution[20] denying UTP and Jersey's Motion for Reconsideration.[21]

Hence, the instant petition anchored on the following issues:

Whether or not the CA erred when it:

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19 Id. at 36-38.
20 Id. at 287.
21 Id. at 272-284.

(a) ruled that the termination of [Kemplin] was invalid or unjust;

(b) invalidated the termination of [Kemplin] for [UTP and Jersey's] failure to afford him due process of law;

(c) stated that the issue [of] "loss of trust and confidence" cannot be raised for the first time on appeal; and

(d) failed to apply the doctrine of strained relations in *lieu* of reinstatement.[22]

UTP and Jersey's Allegations

In support of the instant petition, UTP and Jersey reiterate their averments in the proceedings below. They likewise emphasize that Kemplin is a fugitive from justice since warrants of arrest for grave oral defamation and grave coercion[23] had been issued against him by the Metropolitan Trial Court (MTC) of Pasay City, and for qualified theft by the Regional Trial Court (RTC) of Angeles City. Kemplin's co-workers likewise complained about his alleged improprieties, lack of proper decorum, immorality and grave misconduct. Kemplin also blocked UTP's website and diverted all links towards his own site. Consequently, UTP lost both its customers and revenues. UTP, then, as an employer, has the right to exercise its management prerogative of terminating Kemplin, who has been committing acts inimical to business.[24]

Further, citing *Wenphil Corporation v. National Labor Relations Commission*,[25] UTP and Jersey argue that even if it were to be assumed that procedural due process was not observed in terminating Kemplin, still, the dismissal due to just cause should not be invalidated. Instead, a fine should just be imposed as indemnity.[26]

UTP and Jersey also challenge the CA's holding that the court need not resolve the issue of loss of trust and confidence since it was only belatedly raised in the Position Paper filed before the LA. It is argued that the issue was timely raised before the proper forum and Kemplin had all the opportunity to contradict the charges against him, but he chose not to do so.[27]

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22 Id. at 12-13.
23 Dated November 26, 2009 and March 10, 2010, respectively; id. at 117, 118.
24 Id. at 16-19.
25 252 Phil. 73 (1989).
26 *Rollo*, p. 21.
27 Id. at 23-24.

UTP and Jersey likewise posit that a strained relationship between them and Kemplin had arisen due to the several criminal and civil cases they had filed and which are now pending against the latter. Hence, even if the CA were correct in holding that there was illegal dismissal, Kemplin's reinstatement is not advisable, practical and viable. A separation pay should just be paid instead.[28]

Kemplin's Comment

In Kemplin's Comment,[29] he sought the dismissal of the instant petition.

He insists that both procedural and substantive due process were absent when he was dismissed from service. Kemplin alleges that Jersey merely want to wrest the business away after the former initiated new checking and collection procedures relative to UTP's finances. Kemplin also laments that Jersey caused him to answer for baseless criminal offenses, for which no bail can be posted. Specifically, the indictment for qualified theft before the RTC of Angeles City involves a car registered in UTP's name, but which was actually purchased using Kemplin's money.[30]

Kemplin further emphasizes that "the doctrine of strained relations should not be applied indiscriminately,"[31] especially where "the differences of the employer with the employee are neither personal nor physical[,] much less serious in nature[.]"[32]

This Court's Ruling

The instant petition is partially meritorious.

The first two issues raised are factual in nature, hence, beyond the ambit of a petition filed under Rule 45 of the Rules of Court.

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28 Id. at 22-23.

29 Id. at 317-327.

30 Id. at 322-323; *see* also Acknowledgment Receipt dated March 22, 2005 issued to Kemplin by Asia International Auctioneers, Inc., id. at 232.

31 Id. at 325, citing *Capili v. National Labor Relations Commission*, 337 Phil. 210, 216 (1997).

32 Id., citing *Employees Association of the Phil. American Life Insurance, Co. (EMAPALICO) v. NLRC*, 276 Phil. 686 (1991).

It is settled that Rule 45 limits us merely to the review of questions of law raised against the assailed CA decision.[33] The Court is generally bound by the CA's factual findings, except only in some instances, among which is, when the said findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated.[34]

In the case before us now, the LA, NLRC and CA uniformly ruled that Kemplin was dismissed *sans* substantive and procedural due process. While we need not belabor the first two factual issues presented herein, it bears stressing that we find the rulings of the appellate court and the labor tribunals as amply supported by substantial evidence.

Specifically, we note the advertisement agreements[35] with Pizza Hut and M. Lhuillier entered into by Kemplin, who signed the documents as President of UTP on May 12, 2009, or more than two years after the supposed expiration of his employment contract. They validate Kemplin's claim that he, indeed, continued to render his services as President of UTP well beyond March 2, 2007.

Moreover, in the letter[36] dated July 30, 2009, Kemplin was ordered to cease and desist from entering the premises of UTP.

In *Unilever Philippines, Inc. v. Maria Ruby M. Rivera*,[37] the Court laid down in detail the steps on how to comply with procedural due process in terminating an employee, *viz*:

> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve

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33 Please *see Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 233, citing *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 343.

34 Please *see AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633.

35 *Rollo*, pp. 263-266.

36 Id. at 159-160.

37 G.R. No. 201701, June 3, 2013.

> as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
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> (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
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> (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. (Underlining ours)[38]

Prescinding from the above, UTP's letter sent to Kemplin on July 30, 2009 is a lame attempt to comply with the twin notice requirement provided for in Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code.[39]

The charges against Kemplin were not clearly specified. While the letter stated that Kemplin's employment contract had expired, it likewise made general references to alleged criminal suits filed against him.[40] One who reads the letter is inevitably bound to ask if Kemplin is being terminated due to the expiration of his contract, or by reason of the pendency of suits filed against him. Anent the pendency of criminal suits, the statement is substantially bare. Besides, an employee's guilt or innocence in a criminal case is not determinative of the existence of a just or authorized cause for his dismissal.[41] The pendency of a criminal suit against an

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[38] Id., citing *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-116 (2007).

[39] Sec. 2. *Standard 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, grounds have been established to justify his termination.
> x x x x

[40] We note that the charge of qualified theft involving a car registered in UTP's name was made subsequent and not prior to Kemplin's dismissal.

[41] *Chua v. National Labor Relations Commission*, G.R. No. 105775, February 8, 1993, 218 SCRA 545, 548-549, citing *Pepsi Cola Bottling Co. of the Phils. v. Guanzon*, 254 Phil. 578, 584 (1989).

employee, does not, by itself, sufficiently establish a ground for an employer to terminate the former.

It also bears stressing that the letter failed to categorically indicate which of the policies of UTP did Kemplin violate to warrant his dismissal from service. Further, Kemplin was never given the chance to refute the charges against him as no hearing and investigation were conducted. Corollarily, in the absence of a hearing and investigation, the existence of just cause to terminate Kemplin could not have been sufficiently established.

Kemplin should have been promptly apprised of the issue of loss of trust and confidence in him before and not after he was already dismissed.

UTP and Jersey challenge the CA's disquisition that it need not resolve the issue of loss of trust and confidence considering that the same was only raised in the Position Paper which they filed before LA Jose.

UTP and Jersey's stance is untenable.

In *Lawrence v. National Labor Relations Commission*,[42] the Court is emphatic that:

> Considering that Lawrence has already been fired, the belated act of LEP in attempting to show a just cause in lieu of a nebulous one cannot be given a semblance of legality. The legal requirements of notice and hearing cannot be supplanted by the notice and hearing in labor proceedings. The due process requirement in the dismissal process is different from the due process requirement in labor proceedings and both requirements must be separately observed x x x. Thus, LEP's method of "Fire the employee and let him explain later" is obviously not in accord with the mandates of law. x x x.[43]

Clearly then, UTP was not exempted from notifying Kemplin of the charges against him. The fact that Kemplin was apprised of his supposed offenses, through the Position Paper filed by UTP and Jersey before LA Jose, did not cure the defects attending his dismissal from employment.

While we agree with the LA, NLRC and CA's findings that Kemplin was illegally dismissed, grounds

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42 G.R. No. 87421, February 4, 1992, 205 SCRA 737.

43 Id. at 748.

exist compelling us to modify the order of reinstatement and payment of 13th month benefit.

UTP and Jersey lament that the CA failed to apply the doctrine of strained relations to justify the award of separation pay in *lieu* of reinstatement.

APO Chemical Manufacturing Corporation v. Bides[44] is instructive anent the instances when separation pay and not reinstatement shall be ordered. Thus:

> The Court is well aware that reinstatement is the rule and, for the exception of "strained relations" to apply, it should be proved that it is likely that, if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned.
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> Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. Moreover, the doctrine of strained relations has been made applicable to cases where the employee decides not to be reinstated and demands for separation pay.[45] (Citations omitted)

Considering that Kemplin's dismissal occurred in 2009, there is much room to doubt the viability, desirability and practicability of his reinstatement as UTP's President. Besides, as a consequence of the unsavory accusations hurled by the contending parties against each other, Kemplin's reinstatement is not likely to create an efficient and productive work environment, hence, prejudicial to business and all the persons concerned.

We likewise find the award of 13th month benefit to Kemplin as improper.

In *Torres v. Rural Bank of San Juan, Inc.*,[46] we stated that:

> Being a managerial employee, the petitioner is not entitled to 13th month pay. Pursuant to Memorandum Order No. 28, as implemented by the Revised Guidelines on the Implementation of the 13th Month Pay Law

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44 G.R. No. 186002, September 19, 2012, 681 SCRA 405.
45 Id. at 412.
46 G.R No. 184520, March 13, 2013, 693 SCRA 357.

> dated November 16, 1987, managerial employees are exempt from receiving such benefit without prejudice to the granting of other bonuses, in lieu of the 13th month pay, to managerial employees upon the employer's discretion.[47] (Citation omitted)

Hence, Kemplin, who had rendered his services as UTP's President, a managerial position, is clearly not entitled to be paid the 13th month benefit.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision on June 29, 2012 and the Resolution thereafter issued on January 16, 2013 rendered by the Court of Appeals in CA-G.R. SP No. 118971 finding that **Harland B. Kemplin** was illegally dismissed are **AFFIRMED with MODIFICATIONS**. The award to Harland B. Kemplin of a 13th month benefit is hereby **DELETED**. In *lieu* of his reinstatement, he is **AWARDED SEPARATION PAY** to be computed at the rate of one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one whole year to be reckoned from the time of his employment on March 1, 2002 until the finality of this Decision.[48] **United Tourist Promotions and Ariel D. Jersey** are further **ORDERED TO PAY** Harland B. Kemplin legal interest of six percent (6%) *per annum* of the total monetary awards computed from the finality of this Decision until full satisfaction thereof.[49]

The **Labor Arbiter** is hereby **DIRECTED** to re-compute the awards according to the above.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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47 Id. at 382.

48 Please *see Aliling v. Feliciano,* G.R. No. 185829, April 25, 2012, 671 SCRA 186.

49 Please *see S.C. Megaworld Construction and Development Corporation v. Engr. Luis U. Parada,* G.R. No. 183804, September 11, 2013.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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