Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

W.M. MANUFACTURING, INC.,	**G.R. No. 209418**
Petitioner,	Present:
- versus -	VELASCO, JR., *J.*, Chairperson, PERALTA, VILLARAMA, JR., REYES, JARDELEZA, *JJ.*
RICHARD R. DALAG and GOLDEN ROCK MANPOWER SERVICES,	Promulgated:
Respondents.	December 7, 2015

x----------x

DECISION

VELASCO, JR., *J.*:

Nature of the Case

For consideration is the amended petition for review under Rule 45 of the Rules of Court, assailing the February 21, 2013 Decision[1] and September 17, 2013 Amended Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 122425,[3] which declared petitioner W.M. Manufacturing, Inc. (WM MFG) and respondent Golden Rock Manpower Services (Golden Rock) solidarily liable to respondent Richard R. Dalag (Dalag) for the latter's alleged illegal dismissal from employment.

The Facts

On January 3, 2010, petitioner, as client, and respondent Golden Rock, as contractor, executed a contract denominated as "Service Agreement,"[4] which pertinently reads:

---

[1] *Rollo*, pp. 489-500. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

[2] Id. at 58-61.

[3] Entitled *Richard R. Dalag v. National Labor Relations Commission, Golden Rock Manpower Services, W.M. Manufacturing, Inc., Jocelyn Hernando, and Watson Nakague.*

[4] *Rollo*, pp. 506-508.

SERVICE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS

x x x x

The CONTRACTOR shall render, undertake, perform and employ the necessary number of workers as the CLIENT may need, at such dates and times as the CLIENT may deem necessary.

The CLIENT shall have the right to request for replacement to relieve such workers as the need arises for any reason whatsoever and the CONTRACTOR undertakes to furnish a replacement immediately as possible.

x x x x

There shall be no employer-employee relationship between the CLIENT, on the one hand, and the persons assigned by the CONTRACTOR to perform the services called for hereunder, on the other hand.

In view of this, CONTRACTOR agrees to hold the CLIENT free from any liability, cause(s) o(f) action and/or claims which may failed (sic) by said workers including but not limited to those arising from injury or death of any kind of nature that may be sustained by them while in the performance of their assigned tasks.

The CONTRACTOR hereby warrants compliance with the provisions of the Labor Code of the Philippines as well as with all other presidential decrees, general orders, letters of instruction, laws rules and regulations pertaining to the employment of a labor now existing or which may hereafter be enacted, including the payment of wages, allowances, bonuses, and other fringe benefits, and the CLIENT shall not in any way be responsible for any claim for personal injury or death, for wages, allowances, bonuses and other fringe benefits, made either by the said personnel or by third parties, whether or not such injury, death or claim by third parties, whether or not such injury, death or claim arises out of, or in any way connected with, the performance of personnel's duties.

The CLIENT shall have the right to report to the CONTRACTOR and protest any untoward act, negligence, misconduct, malfeasance or nonfeasance of the said personnel and the contractor alone shall have the right to discipline the said personnel.

The CONTRACTOR shall fully and faithfully comply with the provisions of the New Labor Code, as well as with other laws, rules and regulations, pertaining to the employment of labor which is now existing or which hereafter be promulgated or enacted.

In relation to the Service Agreement, Golden Rock, on April 26, 2010, engaged the services of respondent Dalag as a factory worker to be assigned at petitioner's factory. For this purpose, respondents inked a five-month

Employment Contract For Contractual Employees (Employment Contract)[5] that reads:

> EMPLOYMENT CONTRACT FOR CONTRACTUAL EMPLOYEES
>
> Dear Mr./Ms. Richard Dalag,
>
> [Golden Rock] hire(s) you as a contractual worker/employee to work at WM MFG under these conditions:
>
> 1) You will hold the position as (sic) Factory Worker.
>
> 2) Your employment as a CONTRACTUAL EMPLOYEE takes effect on April 26, 2010 to Sept. 26, 2010. You will receive a salary of P328.00 per day payable weekly/15'h (sic) day monthly of the calendar month.
>
> x x x x
>
> 7) Your employment as a CONTRACTUAL EMPLOYEE may be terminated at any time for any cause, which may arise due to inability to learn and undertake duties and responsibilities of the position you are being employed for, inefficiency, violation of company rules, policies and regulations, personnel reduction and recession business. In either event, you will be given a notice of termination during your working hours/day.
>
> The company undertakes to pay your compensation for the days actually worked and the company shall not be liable for the period of the contract not run for any separation pay.

Notwithstanding the five-month duration stipulated in the contract, respondent Dalag would allege in his complaint for illegal dismissal[6] that on August 7, 2010, one of WM MFG's security guards prevented him from going to his work station and, instead, escorted him to the locker room and limited his activity to withdrawing his belongings therefrom. Having been denied entry to his work station without so much as an explanation from management, Dalag claimed that he was illegally dismissed, his employment having been terminated without either notice or cause, in violation of his right to due process, both substantive and procedural.

Dalag further claimed that his assignment at WM MFG as side seal machine operator was necessary and desirable for the company's plastic manufacturing business, making him a regular employee entitled to benefits under such classification.[7] He likewise alleged that WM MFG and Golden Rock engaged in the illegal act of labor-only contracting based on the following circumstances: that all the equipment, machine and tools that he needed to perform his job were furnished by WM MFG; that the jobs are to be performed at WM MFG's workplace; and that he was under the supervision of WM MFG's team leaders and supervisors.

---

[5] Id. at 509.

[6] Id. at 513-516, as quoted in the January 24, 2010 Decision of Labor Arbiter Eduardo G. Magno.

[7] Respondent Dalag likewise alleged underpayment of wages below minimum wage, and underpayment of overtime pay.

The complaint, docketed as LAC No. 03-000673-11, was lodged against WM MFG, Golden Rock, Jocelyn Hernando (Hernando), Watson Nakague (Nakague) and Pablo Ong (Ong), the latter three individuals as officers of the impleaded companies. In their joint position paper, therein respondents argued that Dalag was not dismissed and that, on the contrary, it was he who abandoned his work. They offered as proof WM MFG's memos[8] addressed to Dalag, which ordered him to answer within 24-hours the accusations relating to the following alleged infractions: gross negligence, qualified theft, malicious mischief, incompetence, grave misbehaviour, insubordination, dishonesty, and machine sabotage.[9] Based on the memos and the affidavits submitted by his former co-workers,[10] Dalag repeatedly failed to immediately report to management the breakdowns of the side-seal machine he was assigned to operate; that he did not report that the machine's thermocouple wire and conveyor belt needed repair, causing the damage on the belt to worsen and for the wire to eventually break; and that he pocketed spare parts of petitioner's machines without company management's consent.

Memo 2010-19 dated August 7, 2010, the final memo WM MFG attempted to serve Dalag, pertinently reads:[11]

> Samakatuwid, matapos ang isinagawang imbestigasyon tungkol sa mga insidenteng kinasangkutan mo. Napagdesisyunan na ng Management na magbaba ng Final Decision na ikaw ay patawan ng suspension at pinagrereport sa Golden Rock Agency, ito ay dahil sa mga alegasyon na nagpapatunay na ikaw ay nagkasala at lumabag sa Patakaran ng kumpanyang ito.

Dalag, however, allegedly refused to receive the memos, and instead turned his back on his superiors, informing them that he will no longer return, and then walked away. And on that very same day, WM MFG, through a letter addressed to Golden Rock, informed the manpower company of its intention to exercise its right to ask for replacement employees under the Service Agreement. As per the letter, WM MFG no longer needed Dalag's services.[12]

The parties would later file their respective replies in support of the allegations and arguments raised in their position papers.[13]

Ruling of the Labor Arbiter

On January 24, 2011, Labor Arbiter Eduardo G. Magno rendered a Decision[14] in LAC No. 03-000673-11 dismissing Dalag's complaint. The dispositive portion of the Decision reads:

---

[8] *Rollo*, pp. 701-715.
[9] Id. at 688-692.
[10] Id. at 701-720.
[11] Id. at 707.
[12] Id. at 721.
[13] Id. at 665.
[14] Id. at 657-668.

> **WHEREFORE,** the Complaint is hereby DISMISSED for lack of merit.
>
> However, respondents are hereby ordered to pay his unpaid wages for three days in the amount of P1,212.00
>
> **SO ORDERED.**

Citing *Machica v. Roosevelt Center Services, Inc.*,[15] the Labor Arbiter ratiocinated that the burden of proving actual dismissal is upon the shoulders of the party alleging it; and that WM MFG and Golden Rock can only be burdened to justify a dismissal if it, indeed, took place. Unfortunately for Dalag, the Labor Arbiter did not find substantial evidence to sustain a finding that he was, in the first place, actually dismissed from employment. As observed by the Labor Arbiter:[16]

> Records show that complainant [Dalag] last reported for work on August 6, 2010 and filed his complaint for illegal dismissal on August 9, 2010. However, [Dalag] failed to establish the fact of his alleged dismissal on August 07, 2010.
>
> As established by respondents [WM MFG, Golden Rock, Hernando, Nakague, and Ong], [Dalag] was hired by [Golden Rock] as contractual employee on April 26, 2010 until September 26, 2010 and was assigned at its client [WM MFG].
>
> [Dalag] failed to present any letter of termination of his employment by his employer [Golden Rock].
>
> A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process.
>
> There is no illegal dismissal to speak of where the employee was not notified that he had been dismissed from his employment nor he was prevented from returning to his work. (words in brackets added, citations omitted)

Plainly, between WM MFG and Golden Rock, the Labor Arbiter considered the latter as Dalag's true employer. Thus, Dalag's termination from employment, if any, ought to come not from WM MFG but from Golden Rock. Without such termination, actual or constructive, Dalag's complaint cannot prosper for there was no dismissal to begin with, legal or otherwise.

Obviously aggrieved by the Labor Arbiter's ruling, Dalag interposed an appeal with the National Labor Relations Commission (NLRC).

---

[15] G.R. No. 168664, May 4, 2006, 489 SCRA 534.
[16] *Rollo*, pp. 666-667.

Rulings of the NLRC

On May 31, 2011, Dalag obtained a favorable ruling from the NLRC through its Decision[17] in NLRC NCR CASE NO. 08-11002-10, which granted his appeal in the following wise:

> WHEREFORE, in view of the foregoing premises, the appeal of the complainant is GRANTED. The assailed Decision dated January 24, 2011 is hereby REVERSED and SET ASIDE. Judgment is now rendered declaring complainant to have been illegally terminated from employment. Respondents W.M Manufacturing, Inc., et. al, are hereby ordered to reinstate immediately complainant to his former position without loss of seniority rights and privileges computed from the time he was actually dismissed or his compensation withheld up to the time of actual reinstatement, which as of the decision, amounted to a total of One Hundred Seven Thousand Seven Hundred Thirty-Nine and 73/100 Pesos (P107,739.73), as computed by the NLRC Computation Unit, exclusive of the complainant's unpaid wages from August 4-6, 2010, in the amount of P1,212.00 as previously awarded.
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.

In siding with respondent Dalag, the NLRC determined that Dalag's true employer was WM MFG, who merely engaged respondent Golden Rock as a labor-only contractor. To arrive at this conclusion, the NLRC utilized the control test, thusly:[18]

> x x x [T]he employment contract of the complainant only showed that [Golden Rockl] hired [Dalag] as a factory worker to be assigned to [WM MFG] and by all indications, Golden Rock did not provide technical or special services [WM MFG]. Moreover, [WM MFG and Golden Rock] did not deny that the machines or tools used by the complainant, including the work premises, belonged to respondent [WM MFG], and not to the agency.
>
> [WM MFG]'s control and supervision over the work of [Dalag] is indeed explicit, and as stated by [Dalag] he was supervised not by Golden Rock but by the team leaders and supervisors of [WM MFG]. And not only that, based on the evidence submitted by respondent [WM MFG], it was the latter who even took the pains of investigating the alleged infractions of [Dalag]. By [WM MFG and Golden Rock]'s own allegation, it was [WM MFG] who issued memos to [Dalag] directing him to explain several infractions allegedly committed. All those notices and memoranda, which according to [WM MFG] [Dalag] refused to receive, emanated from [WM MFG], and not from Golden Rock. This only demonstrates that the complainant is not an employee of [Golden Rock] but of [WM MFG].
>
> The so-called "control test" in determining employer-employee relationship is applicable in the instant case. In this case, [WM MFG] reserved the right to control the complainant not only as to the result of the

---

[17] Id. at 627-655. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Teresita D. Castillon-Lora and Napoleon M. Meneses.

[18] Id. at 641-643.

> work to be done but also to the means and methods by which the same is to be accomplished. Hence, clearly, there is an employer-employee between [WM MFG] and [Dalag].

Aside from applying the control test, the Commission likewise gave credence to Dalag's postulation that several other factors point to Golden Rock's nature as a labor-only contractor, a mere agent. The NLRC outlined these considerations as follows: that Golden Rock supplied WM MFG with employees that perform functions that are necessary, desirable, and directly related to the latter's main business;[19] that there is an absence of proof that Golden Rock is involved in permissible contracting services[20] and that it carries on an independent business for undertaking job contracts other than to WM MFG;[21] and that both WM MFG and Golden Rock even jointly submitted pleadings to the NLRC, with the same submission and defenses, and even under the same representation.[22] On account of these circumstances, the NLRC deemed the contractual relation between WM MFG and Golden Rock as one of labor-only contracting, akin to that of a principal and his agent. In light of this determination, the NLRC held that they are, therefore, jointly and severally liable[23] to WM MFG's illegally dismissed employees that were supplied by Golden Rock.

Dalag, having been prevented from reporting to work without just cause and without being afforded the opportunity to be heard, is one of such illegally dismissed employees to whom Golden Rock and petitioner are solidarily liable, so the NLRC ruled. In its initial findings, the NLRC held that the attempt to serve Dalag copies of the memoranda did not constitute sufficient notice for there was no proof of service or even of an attempt thereof. The Commission explained that assuming for the sake of argument that Dalag, indeed, refused to receive copies of the memos personally served, WM MFG's remedy was then to serve them through registered mail in order to be considered as compliance with the procedural requirement of notice.[24] WM MFG's failure to comply with the same then resulted in Dalag being deprived of his procedural due process right.

Moreover, assuming even further that there was no deviation from procedure, the NLRC held that the contents of the memos offered by petitioner in evidence do not amount to valid cause for they merely constituted allegations, not proof, of Dalag's infractions. As noted by the NLRC, no formal investigation followed the attempt to serve Dalag copies of the memoranda. Thus, to the mind of the Commission, the veracity of the allegations in the memoranda were not verified and cannot, therefore, be taken at face value.[25]

---

[19] Id. at 643.
[20] Id. at 645.
[21] Id. at 641-642.
[22] Id. at 645.
[23] Id.
[24] Id. at 649-650.
[25] Id. at 648-649.

Dalag's legal victory, however, would be short-lived, for eventually, WM MFG and Nakague would jointly move for reconsideration, which would be granted by the NLRC.

In its second Decision[26] promulgated on September 20, 2011, the NLRC absolved Dalag's alleged employers from liability, as follows:

> **WHEREFORE**, in view of the foregoing premises, the Motion for Reconsideration is hereby, **GRANTED**. The assailed Decision dated May 31, 2011 is hereby **REVERSED** and **SET ASIDE**. The Decision of Labor Arbiter Eduardo G. Magno dated January 24, 2011 is hereby **REINSTATED**.
>
> **SO ORDERED.**

To justify the turnabout, the NLRC took into consideration Certificate of Registration No. NCR-CFO-091110-0809-003[27] dated August 27, 2009 and issued by the Department of Labor and Employment (DOLE) to Golden Rock pursuant to Department Order No. 18-02, s. 2002,[28] and Articles 106-109 of the Labor Code, on job-contracting.[29] The said certificate, along with the copy of the Service Agreement between WM MFG and Golden Rock and Dalag's Employment Contract, was submitted for the first time as attachments to WM MFG and Nakague's motion for reconsideration, but were, nevertheless, admitted by the NLRC in the interest of substantial justice.[30]

With the introduction of these new pieces of evidence, the commission ruled anew that its previous observation—that there was an absence of proof that Golden Rock is a legitimate job contractor—has effectively been refuted. What is more, the NLRC no longer relied solely on the control test and instead applied the four-fold test in ascertaining Dalag's true employer. And in reviewing its earlier Decision, the NLRC noted that it is Golden Rock who paid Dalag's salaries and wages; that under the Service Agreement, it reserved unto itself the power to dismiss Dalag; and that it has sole control over the exercise of Dalag's employment.[31]

The NLRC then proceeded to reiterate the Labor Arbiter's position that for the employer's burden to prove that its dismissal of an employee was for just cause to arise, the employee must first demonstrate that he was, in the first place, actually dismissed—a fact which Dalag failed to establish. Lastly, the NLRC noted that Dalag reported for work for only three (3) months and cannot, therefore, be considered a regular employee.[32]

---

[26] Id. at 615-625. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Teresita D. Castillon-Lora and Napoleon M. Meneses.

[27] Id. at 505.

[28] Rules Implementing Arts. 106-109 of the Labor Code, as amended.

[29] *Rollo*, p. 505.

[30] Id. at 577.

[31] Id. at 577-580.

[32] Id. at 581.

Rulings of the Court of Appeals

Expectedly, the September 20, 2011 NLRC Decision prompted Dalag to elevate the case to the CA via a Rule 65 petition for certiorari, docketed as CA-G.R. SP No. 122425, alleging that the commission committed grave abuse of discretion when it reversed its own ruling. Specifically, Dalag argued that it was highly irregular for the Commission to have admitted the documents belatedly offered by WM MFG as evidence,[33] and insisted that the NLRC did not err in its first Decision finding that he was illegally dismissed.[34] Meanwhile, WM MFG and Nakague would counter that the petition to the CA ought to be dismissed outright since Dalag failed to file a motion for reconsideration of the NLRC's second Decision, a condition sine qua non for filing a petition for certiorari under Rule 65. They likewise point to the Entry of Judgment[35] issued by the NLRC, signifying that the second Decision of the NLRC has already attained finality. To modify the same would then violate the doctrine on the immutability of judgments.

On February 21, 2013, the appellate court rendered a Decision favoring Dalag in the following wise:

> **WHEREFORE**, the petition is **GRANTED**. The Decision Dated September 20, 2011 of the National Labor Arbiter's Commission, Second Division in NLRC NCR 08-11002-10 (LAC No. 03-000673-11) is hereby **REVERSED** and **SET ASIDE**. The NLRC's Decision dated May 31, 2011 is **REINSTATED**.
>
> **SO ORDERED.**[36]

Dispensing with the procedural arguments, the CA struck down the contentions of both parties relating to the rigid application of procedural rules.[37] It held that rules of evidence prevailing in courts of law or equity are not binding in labor cases,[38] and allow the admission of additional evidence not presented before the Labor Arbiter, and submitted before the NLRC for the first time on appeal,[39] as in WM MFG's case.

As regards the alleged availability of a plain, speedy, and adequate remedy at Dalag's disposal that bars the filing of a petition for certiorari, the CA held that technical rules may be relaxed in this regard in the interest of substantial justice.[40] To quote the appellate court:

> In this case, a liberal construction of the rules is called for as records show that petitioner filed the petition as a pauper litigant. Technical rules of procedure may be relaxed to serve the demands of substantial justice particularly in labor cases, where the prevailing

---

[33] Id. at 492.
[34] Id. at 492-493.
[35] Id. at 585.
[36] Id. at 500.
[37] Id. at 493.
[38] Id.; citing *Andaya v. NLRC*, G.R. No. 157371, July 15, 2005, 463 SCRA 577, 584.
[39] Id.; citing *Sasan v. NLRC*, G.R. No. 176240, October 17, 2008,569 SCRA 670, 686.
[40] Id. at 494.

> principle is that technical rules shall be liberally construed in favor of the working class in accordance with the demands of substantial justice. Rules of procedure should also not be applied in a very rigid technical sense in labor cases in order that technicalities would not stand in the way of equitably and completely resolving the rights and obligations of the parties. (citations omitted)

On to the merits, the CA discussed that Golden Rock's Certificate of Registration is not conclusive evidence that the company is an independent contractor.[41] More controlling for the CA was the failure of Golden Rock to prove the concurrence of the requisites of a legitimate independent job contractor according to jurisprudence.[42] Absent proof that Golden Rock has substantial capital and that it exercised control over Dalag, the CA held that petitioner and Golden Rock miserably failed to establish the latter's status as a legitimate independent contractor.[43] Finally, the appellate court did not give credence to petitioner's claim of abandonment since it failed to discharge the burden of proving Dalag's unjustified refusal to return to work.[44]

Unfazed, WM MFG and Nakague moved for reconsideration of the CA's ruling. On September 17, 2013, the CA rendered an Amended Decision partially granting the motion and modifying the decretal portion of its earlier ruling in the following wise:

> **WHEREFORE**, the Motion for Reconsideration is **PARTIALLY GRANTED**. The Decision dated February 21, 2013 of this Court which reads:
>
> > WHEREFORE, the petition is GRANTED. The Decision Dated September 20, 2011 of the National Labor Arbiter's Commission, Second Division in NLRC NCR 08-11002-10 (LAC No. 03-000673-11) is hereby REVERSED and SET ASIDE. The NLRC's Decision dated May 31, 2011 is REINSTATED.
> >
> > SO ORDERED.
>
> is hereby **AMENDED** to read:
>
> > WHEREFORE, the petition is GRANTED. The Decision Dated September 20, 2011 of the National Labor Arbiter's Commission, Second Division in NLRC NCR 08-11002-10 (LAC No. 03-000673-11) is hereby REVERSED and SET ASIDE. The NLRC's Decision dated May 31, 2011 is REINSTATED <u>insofar as the liability of Golden Rock Manpower Services and W.M. Manufacturing, Inc. are concerned. The company officers, Watson Nakague and Pablo Ong are absolved of liability</u>.

---

[41] Id. at 496.

[42] Id.; citing *Babas v. Lorenzo Shipping Corp.*, G.R. No. 186091, December 15, 2010, 638 SCRA 735, 745.

[43] Id. at 496-498.

[44] Id. at 498.

SO ORDERED.

SO ORDERED.[45]

Citing *Delima v. Gois*,[46] the CA determined that the absence of malice or bad faith on the part of Nakague and Ong negated any possibility of liability for Dalag's illegal dismissal.

Grounds for the Petition

Unsatisfied with the outcome, petitioner WM MFG interposed a petition for review against respondent Dalag, anchored on the following assignment of errors:

I

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT GAVE DUE COURSE TO DALAG'S PETITION NOTWITHSTANDING THE FACT THAT HE FAILED TO FILE A MOTION FOR RECONSIDERATION OF THE NLRC'S 20 SEPTEMBER 2011 DECISION, A CONDITION *SINE QUA NON* FOR ONE TO AVAIL THE EXTRAORDINARY REMEDY OF CERTIORARI UNDER RULE 65 OF THE RULES OF COURT

II

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT GAVE DUE COURSE TO DALAG'S PETITION FOR CERTIORARI NOTWITHSTANDING THE FACT THAT THE NLRC'S 20 SEPTEMBER 2011 DECISION HAD LONG BECOME FINAL AND EXECUTORY

III

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT IN FINDING THAT RESPONDENT WAS AN EMPLOYEE OF THE COMPANY AND THAT HE WAS ILLEGALLY DISMISSED[47]

Petitioner maintains that the filing of a motion for reconsideration prior to resorting to certiorari cannot be dispensed with merely on account of the filer's status as a pauper litigant; that the CA violated the doctrine on the immutability of judgments when it reversed the NLRC's second final and executory Decision; that Golden Rock is Dalag's true employer, not WM

---

[45] Id. at 60-61.
[46] G.R. No. 178352, June 17, 2008, 554 SCRA 731, 737.
[47] *Rollo*, pp. 462-463.

MFG; that Golden Rock is a legitimate independent contractor with whom WM MFG cannot be held solidarily liable; and that Dalag abandoned his work, and was not in any way dismissed.

In his Comment, Dalag, substantially reiterating the May 31, 2011 Decision of the NLRC in NLRC NCR CASE NO. 08-11002-10 as affirmed by the appellate court, maintained that the non-filing of a motion for reconsideration in this case falls under one of the recognized exceptions in jurisprudence, and is, therefore, excused; that the CA did not err in finding that WM MFG and Golden Rock engaged in labor-only contracting and should be considered solidarily liable; and that he was illegally dismissed.

By claiming that Golden Rock is an independent contractor, the Court noted that petitioner's claim could potentially shift liability to Golden Rock alone, should the Court maintain the finding that Dalag was illegally dismissed. Given this circumstance, and the fact that Golden Rock has actively participated in the proceedings *a quo*, the Court, by its November 24, 2014 Resolution,[48] directed petitioner to implead Golden Rock in the instant case. Petitioner, on January 28, 2015, complied with the directive and impleaded Golden Rock in its Amended Petition for Review on Certiorari.

On June 23, 2015, Golden Rock submitted its Comment alleging that all the elements of legitimate contracting are present in this case. Moreover, it joined petitioner in its claim that Dalag was not terminated, illegally or otherwise, but abandoned his post.

The Issues

The issues in this case can be summarized, thusly:

1. Whether or not Dalag is excused from not moving for reconsideration before filing a petition for certiorari;
2. Whether or not WM MFG and Golden Rock engaged in labor-only contracting;
3. Whether or not Dalag was illegally dismissed; and
4. What monetary award/s is Dalag entitled to, if any, and at what amount.

The Court's Ruling

The petition is meritorious.

Respondent Dalag was excused from filing a Motion for Reconsideration before filing a Petition for Certiorari under Rule 65 with the CA

[48] Id. at 440-442.

As a general rule, a motion for reconsideration is a prerequisite for the availment of a petition for certiorari under Rule 65. The intention behind the requirement is to afford the public respondent an opportunity, the NLRC in this case, to correct any error attributed to it by way of re-examination of the legal and factual aspects of the case.[49] The Court, however, has declined from applying the rule rigidly in certain scenarios. The well-recognized exceptions are enumerated in *Romy's Freight Service v. Castro*,[50] viz:

> (a) Where the order is a patent nullity, as where the court a quo has no jurisdiction;
>
> **(b) Where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;**
>
> (c) Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
>
> (d) Where, under the circumstances, a motion for reconsideration would be useless;
>
> (e) Where petitioner was deprived of due process and there is extreme urgency for relief;
>
> (f) Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
>
> (g) Where the proceedings in the lower court are a nullity for lack of due process;
>
> (h) Where the proceedings were ex parte or in which the petitioner had no opportunity to object; and
>
> (i) Where the issue raised is one purely of law or where public interest is involved. (emphasis added)

Verily, the CA is mistaken in looking to respondent Dalag's indigency to exempt the latter from complying with procedural rules. Under the Rules of Court, a pauper or indigent litigant is exempted from the payment of legal fees,[51] but not from filing a motion for reconsideration before resorting to the extraordinary remedy of certiorari.

Be that as it may, the second exception (i.e. that the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court) may still be invoked to achieve the same result of exempting Dalag from moving for reconsideration of the September 20, 2011 NLRC

---

[49] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, 704 SCRA 24.

[50] 523 Phil. 540, 545 (2006).

[51] *Algura v. City Government of Naga*, G.R. No. 150135, October 30, 2006, 506 SCRA 81; Sec. 18, Rule 141 of the Rules of Court as amended by Sec. 19 of Administrative Matter No. 04-2-04-SC, promulgated on July 20, 2004.

Decision. As extensively discussed, the contractual relation between WM MFG and Golden Rock, as well as the validity of Dalag's dismissal, have consistently been the main issues in the flip-flopping rulings in the proceedings below. Moreover, noteworthy is that the ruling that respondent Dalag assailed by certiorari was the NLRC's **second** Decision, petitioner having already moved for reconsideration of the labor commission's May 31, 2011 findings. Thus, to settle the issues once and for all, the CA aptly deemed it prudent, and rightfully so, to dispense with the procedural requirement of reconsideration and to address the substantive issues head on.

WM MFG and Golden Rock engaged in labor-only contracting

Delving into the core of the controversy, the Court first determines whether or not petitioner WM MFG and Golden Rock engaged in labor-only contracting. Both companies claim that Golden Rock is a legitimate contractor for manpower services, relying on its Certificate of Registration and their contractual stipulation leaving Golden Rock with the power to discipline its employees.

We are not convinced.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.[52]

Under Art. 106 of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, the Secretary of Labor and Employment (SOLE) may issue pertinent regulations to protect the rights of workers against the prohibited practice of labor-only contracting. Pursuant to this delegated authority, the SOLE, throughout the years, endeavored to provide clearer guidelines in distinguishing a legitimate manpower provider from a labor-only contractor, beginning with Department Order No. 10,[53] series of 1997, issued on May 30, 1997; followed by Department Order No. 03,[54] series of 2001, issued on May 8, 2001; Department Order 18-02,[55] series of 2002, issued on February 21, 2002; and by Department Order No. 18-A,[56] series of 2011, promulgated on November 14, 2011. Of these executive edicts, Department Order 18-02 (DO 18-02) is the applicable issuance at the time respondent Dalag complained of his alleged illegal dismissal.[57]

---

[52] LABOR CODE, Art. 106.
[53] Amending The Rules Implementing Books III and VI of the Labor Code, as amended.
[54] Revoking Department Order No. 10, Series of 1997.
[55] Rules Implementing Articles 106-109 of the Labor Code, as amended.
[56] Id.
[57] Respondent Dalag filed his complaint on August 9, 2010.

Section 5 of DO 18-02 laid down the criteria in determining whether or not labor-only contracting exists between two parties, as follows:

> Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
>
> i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.
>
> x x x x

It is clear from the above section that the essential element in labor-only contracting is that the contractor merely recruits, supplies or places workers to perform a job, work or service for a principal. However, the presence of this essential element is not enough and must, in fact, be accompanied by any one of the confirmatory elements to be considered a labor-only contractor within the contemplation of the rule.[58]

The presence of the essential element in the extant case cannot be gainsaid. This much is clearly provided in the service agreement between WM MFG and Golden Rock:

> The CONTRACTOR shall render, undertake, perform and **employ the necessary number of workers as the CLIENT may need**, at such dates and times as the CLIENT may deem necessary.

As to the presence of the confirmatory elements, Dalag draws our attention to (1) Golden Rock's lack of substantial capital, coupled with the necessity and desirability of the job he performed in WM MFG; and (2) Golden Rock's lack of control over the employees it supplied WM MFG.

i. <u>Golden Rock lacked substantial capital</u>

Anent the first confirmatory element, petitioner and Golden Rock refuted the latter's alleged lack of substantial capital by presenting its Certificate of Registration from the DOLE Regional Office in Valenzuela City. Although not conclusive proof of legitimacy as a manpower provider, the certification nevertheless prevented the presumption of labor-only contracting from arising.[59] In its stead, the certification gave rise to a

---

[58] C.A. Azucena, EVERYONE'S LABOR CODE 95 (5th ed., 2007).
[59] Sec. 11, Department Order No. 18-02, Series of 2002.

disputable presumption that the contractor's operations are legitimate. As provided in *Gallego v. Bayer Philippines, Inc.*:[60]

> The DOLE certificate having been issued by a public officer, it carries with it the presumption that it was issued in the regular performance of official duty. Petitioners bare assertions fail to rebut this presumption. Further, since the DOLE is the agency primarily responsible for regulating the business of independent job contractors, the Court can presume, in the absence of evidence to the contrary, that it had thoroughly evaluated the requirements submitted by PRODUCT IMAGE before issuing the Certificate of Registration. x x x

Among the requirements for registration is a copy of the contractor's audited financial statements, if the applicant is a corporation, partnership, cooperative or a union, or a copy of the latest income tax return if the applicant is a sole proprietorship.[61] Upon submission of the requirements, the DOLE Regional Director concerned will then have seven (7) days to evaluate the information supplied and determine whether the application ought to be approved or denied. Since Golden Rock's application was approved, both petitioner and respondent company claimed that the DOLE Regional Office found Golden Rock's capitalization to be satisfactory and substantial, contrary to Dalag's claim.

Petitioner and Golden Rock's claim fails to convince.

It may be that the DOLE Regional Director for the National Capital Region was satisfied by Golden Rock's capitalization as reflected on its financial documents, but the basis for determining the substantiality of a company's "capital" rests not only thereon but also on the tools and equipment it owns in relation to the job, work, or service it provides. DO 18-02 defines "substantial capital or investment" in the context of labor-only

---

[60] G.R. No. 179807, July 31, 2009, 594 SCRA 736.

[61] Department Order No. 18-02, Series of 2002, Sec. 12 provides:

Section 12. Requirements for registration. A contractor or subcontractor shall be listed in the registry of contractors and subcontractors upon completion of an application form to be provided by the DOLE. The applicant contractor or subcontractor shall provide in the application form the following information:

(a) The name and business address of the applicant and the area or areas where it seeks to operate;

(b) The names and addresses of officers, if the applicant is a corporation, partnership, cooperative or union;

(c) The nature of the applicant's business and the industry or industries where the applicant seeks to operate;

(d) The number of regular workers; the list of clients, if any; the number of personnel assigned to each client, if any and the services provided to the client;

(e) The description of the phases of the contract and the number of employees covered in each phase, where appropriate; and

(f) A copy of audited financial statements if the applicant is a corporation, partnership, cooperative or a union, or copy of the latest ITR if the applicant is a sole proprietorship.

The application shall be supported by:

(a) A certified copy of a certificate of registration of firm or business name from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI), Cooperative Development Authority (CDA), or from the DOLE if the applicant is a union; and

(b) A certified copy of the license or business permit issued by the local government unit or units where the contractor or subcontractor operates.

The application shall be verified and shall include an undertaking that the contractor or subcontractor shall abide by all applicable labor laws and regulations.

contracting as referring not only to a contractor's financial capability, but also encompasses the tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.[62]

Here, the Certificate of Registration may have prevented the presumption of labor-only contracting from arising, but the evidence Dalag adduced was sufficient to overcome the disputable presumption that Golden Rock is an independent contractor. To be sure, in performing his tasks, Dalag made use of the raw materials and equipment that WM MFG supplied. He also operated the side-seal machine in the workplace of WM MFG, not of Golden Rock. With these attendant circumstances, the Court rules that the first confirmatory element indubitably exists.

ii. WM MFG exercised control over the employees supplied by Golden Rock

As to the second confirmatory element (i.e. control), petitioner argues that the Service Agreement it forged with Golden Rock specifically provides that the latter exclusively exercises control over the employees it assigns to WM MFG. What is more, it is Golden Rock who paid for Dalag's salaries and wages, a badge of their employer-employee relation.

Petitioner's claim does not persuade.

The second confirmatory element under DO 18-02 does not require the application of the economic test and, even more so, the four-fold test to determine whether or not the relation between the parties is one of labor-only contracting. All it requires is that the contractor does not exercise **control** over the employees it supplies, making the control test of paramount consideration. The fact that Golden Rock pays for Dalag's wages and salaries then has no bearing in resolving the issue.

Under the same DO 18-02, the "right to control" refers to the right to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.[63] Here, notwithstanding the contract stipulation leaving Golden Rock the exclusive right to control the working warm bodies it provides WM MFG, evidence irresistibly suggests that it was WM MFG who actually exercised supervision over Dalag's work performance. As culled from the records, Dalag was supervised by WM MFG's employees. Petitioner WM MFG even went as far as furnishing Dalag with not less than seven (7) memos directing him to explain within twenty-four (24) hours his alleged work infractions.[64] The company likewise took pains in issuing investigation reports detailing its findings on Dalag's culpability.[65] Clearly, WM MFG took it upon itself to discipline Dalag for violation of company

---

[62] Id., Sec. 5.
[63] Id.
[64] *Rollo*, pp. 701-707
[65] Id. at 708-709.

rules, regulations, and policies, validating the presence of the second confirmatory element.

Having ascertained that the essential element and at least one confirmatory element obtain in the extant case, there is then no other result than for the Court to rule that WM MFG and Golden Rock engaged in labor-only contracting. As such, they are, by legal fiction, considered principal and agent, respectively, jointly and severally liable to their illegally dismissed employees, in accordance with Art. 109 of the Labor Code[66] and Sec. 19 of DO 18-02.[67]

We stress, however, that this finding of labor-only contracting does not preclude the Court from re-examining, in future cases, the nature of the contractual relationship between WM MFG and Golden Rock under Department Order No. 18-A, series of 2011, which redefined the parameters of legitimate service contracting, private recruitment and placement services, and labor-only contracting.

WM MFG dismissed Dalag for just cause, but did not comply with the procedural requirements

This brings us to the question of whether or not Dalag was illegally dismissed.

i. Dalag did not abandon his employment, but was in fact dismissed

The Court is not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; but fair evidentiary rule dictates that before an employer is burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence that he or she was, in fact, dismissed.[68]

A cursory reading of the records of this case would reveal that the fact of Dalag's dismissal was sufficiently established by petitioner's own evidence.

---

[66] **Article 109.** *Solidary liability.* The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

[67] Section 19. Solidary liability. The principal shall be deemed as the direct employer of the contractual employees and therefore, solidarily liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former in the case of violations as provided for in Sections 5 (LaborOnly contracting), 6 (Prohibitions), 8 (Rights of Contractual Employees) and 16 (Delisting) of these Rules. In addition, the principal shall also be solidarily liable in case the contract between the principal and contractor or subcontractor is preterminated for reasons not attributable to the fault of the contractor or subcontractor.

[68] *Noblejas v. Italian Maritime Academy Phils., Inc.*, G.R. No. 207888, June 9, 2014.

Recall that Memo 2010-19 dated August 7, 2010 indefinitely suspended Dalag from work. This is in hew with Dalag's allegation in his complaint that on even date, he was prevented by WM MFG's security guard from proceeding to his work station, and was told to withdraw his belongings from his locker. Noteworthy, however, is that while Memo 2010-19 merely imposed an indefinite period of suspension, WM MFG's true intention—to sever its ties with Dalag—is brought to the fore by its letter dated August 9, 2010, informing Golden Rock that it no longer requires respondent Dalag's services.[69]

We cannot subscribe to petitioner's contrary view that Dalag was never terminated, legally or otherwise, and that it was he who abandoned his employment. On this point, the teaching in *MZR Industries v. Colambot*[70] is apropos:

> In a number of cases, this Court consistently held that to constitute abandonment of work, two elements must be present: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and **second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.**
>
> In the instant case, other than Colambot's failure to report back to work after suspension, petitioners failed to present any evidence which tend to show his intent to abandon his work. It is a settled rule that mere absence or failure to report for work is not enough to amount to abandonment of work. There must be a concurrence of the intention to abandon and some overt acts from which an employee may be deduced as having no more intention to work. On this point, the CA was correct when it held that:
>
> > Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment. The burden of proof to show that there was unjustified refusal to go back to work rests on the employer. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. Furthermore, **it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.** The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment. (emphasis added)

---

[69] *Rollo*, p. 721.
[70] G.R. No. 179001, August 28, 2013, 704 SCRA 150.

A prayer for reinstatement in a complaint for illegal dismissal signifies the employee's desire to continue his working relation with his employer, and militates against the latter's claim of abandonment. Pursuant to the age-old adage that he who alleges must prove,[71] it becomes incumbent upon the employer to rebut this seeming intention of the employee to resume his work. Hence, to prove abandonment, the onus rests on the employer to establish by substantial evidence the employee's non-interest in the continuance of his employment, which petitioner herein failed to do. On the contrary, Dalag's immediate filing of a complaint after his dismissal, done in a span of only two (2) days, convinces us of his intent to continue his work with WM MFG.

With the foregoing discussion, the burden now shifts to petitioner and Golden Rock to justify the legality of Dalag's dismissal, by proving that the termination was for just cause, and that the employee was afforded ample opportunity to be heard prior to dismissal.[72]

ii. Dalag's dismissal was for just cause

The Labor Code mandates that an employee cannot be terminated except for just or authorized cause, lest the employer violate the former's constitutionally guaranteed right to security of tenure.[73] Relevant hereto, the just causes for termination of employment are enumerated under Art. 282 of P.D. 442, as follows:

> 1. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
> **2. Gross and habitual neglect by the employee of his duties;**
> 3. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
> 4. 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
> 5. Other causes analogous to the foregoing. (emphasis added)

To constitute just cause for an employee's dismissal, the neglect of duties must not only be gross but also habitual. Gross neglect means an absence of that diligence that an ordinarily prudent man would use in his own affairs.[74] Meanwhile, to be considered habitual, the negligence must not be a single or isolated act.[75]

Here, WM MFG duly established that Dalag was terminated for just cause on the second ground. The litany of Dalag's infractions, as detailed in memos 2010-13 up to 2010-18 demonstrated how Dalag repeatedly failed to report to his supervisor the problems he encountered with the side-seal

---

[71] *Lim v. Equitable PCI Bank*, G.R. No. 183918, January 15, 2014.
[72] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186.
[73] LABOR CODE, Art. 279, in relation to CONSTITUTION, Art. XIII , Sec. 3.
[74] *Ting v. Court of Appeals*, G.R. No. 146174, July 12, 2006, 494 SCRA 610.
[75] *St. Luke's Medical Center, Inc. v. Notario*, G.R. No. 152166, October 20, 2010, 634 SCRA 67.

machine assigned to him for operation. This failure resulted in repeated machine breakdowns that caused production and delivery delays, and lost business opportunities for the company. As stated in the memos:

MEMO 2010-13[76]

> Base sa inireport na insidente reference number CTRL #2010-27. Ikaw ay nakasira [ng] Conveyor Belt ng Sideseal Machine No.02 noong ika-20 ng Hulyo 2010 dahil sa iyong kapabayaan.
>
> Lumalabas na ikaw ay nagkasala ng Gross Negligence na nagresulta sa pagkakasira ng mamahaling gamit ng kompanya.
>
> Ang ganitong pangyayari ay nagdulot ng malaking abala sa produksyon at pagkaantala sa delivery. Sa panahong kung saan mahigpit ang kompetisyon at pabago-bagong ekonomiya, ang mga ganitong pangyayari at may lubhang epekto sa kumpanya.
>
> Ikaw ay binibigyan ng 24-oras para magsubmite sa Admin office ng written explanation o depensa sa nangyari. Inaasahan na itong pangyayari ay hindi na mauulit. Ito rin ay babala para sa iyo at pag alala na kailangan mag ingat at umiwas sa paglabag sa Company Rules and Regulation.

MEMO 2010-14[77]

> Base sa inireport na insidente reference number CTRL #2010-28 Ang pagkasira mo ng Conveyor belt ay hindi mo ginawan ng oral o written report ang pagkasira mo ng makina sa team leader o sa maintenance o SINO MAN kahit na alam mo na ito ay dapat mong gawin.
>
> Lumalabas na ikaw ay nagkasala ng sadyang pagtatago o paglilihim ng tunay na kalagayan ng makina na nagdulot ng malaking negatibong epekto sa produksyon.
>
> Ang ganitong pangyayari ay nagdulot ng malaking abala sa produksyon at pagkaantala sa delivery. Sa panahong kung saan mahigpit ang kompetisyon at pabago-bagong ekonomiya, ang mga ganitong pangyayari at may lubhang epekto sa kumpanya.
>
> Ikaw ay binibigyan ng 24-oras para magsubmite sa Admin office ng written explanation o depensa sa nangyari. Inaasahan na itong pangyayari ay hindi na mauulit. Ito rin ay babala para sa iyo at pag alala na kailangan mag ingat at umiwas sa paglabag sa Company Rules and Regulation.

MEMO 2010-16[78]

> Base sa inireport na insidente reference number CTRL #2010-30 Ang pagkasira ng manual heater ng sideseal machine no.02 ay hindi mo nanaman pinaalam o ginawan ng report.

---

[76] *Rollo*, p. 701.
[77] Id. at 702.
[78] Id. at 704.

Lumalabas na ikaw ay nagkasala ng sadyang pagtatago o paglilihim ng tunay na kalagayan ng makina na nagdudulot ng malaking negatibong epekto sa produksyon.

Ang di pagrereport mapa-verbal o written, pagtatago o pagkukubli sa kundisyon ng makina ay nagdulot ng malaking abala sa produksyon. Amg paglilihis ng tunay na pangyayari ay nagdulot din ng pagkakaroon ng di pagkakaunawaan ng Maintenance at ni Melvin Luna. Dahil dito nagkagulo at nadelay ang produksyon.

Sa panahong kung saan mahigpit ang kumpetisyon at pabago-bagong ekonomiya, ang mga ganitong pangyayari ay lubhang nakakaapekto sa kumpanya.

Ikaw ay binibigyan ng 24-oras para magsubmite sa Admin office ng written explanation o depensa sa nangyari. Inaasahan na itong pangyayari ay hindi na mauulit. Ito rin ay babala para sa iyo at pag alala na kailangan mag ingat at umiwas sa paglabag sa Company Rules and Regulation.

MEMO 2010-17[79]

Base sa inireport na insidente reference number CTRL #2010-31 Ang naputol na Thermocouple wire ng sideseal machine no.02 at ang hindi mo paggawa ng report tungkol dito ay patunay na walang dahilan para ito ay masira.

Lumalabas na ikaw ay nagkasala ng sadyang pagtatago o paglilihim ng tunay na kalagayan ng makina na nagdulot ng malaking negatibong epekto sa produksyon.

Ang mga ganitong pangyayari na kahina-hinala at kaduda-duda ay hindi maganda at dapat gayahin ng sinuman. Sa panahong kung saan mahigpit ang kumpetisyon at pabago-bago ang ekonomiya, ang mga ganitong pangyayari ay lubhang nakakaapekto sa kumpanya.

Ikaw ay binibigyan ng 24-oras para magsubmite sa Admin office ng written explanation o depensa sa nangyari. Inaasahan na itong pangyayari ay hindi na mauulit. Ito rin ay babala para sa iyo at pag alala na kailangan mag ingat at umiwas sa paglabag sa Company Rules and Regulation.

MEMO 2010-18[80]

Base sa pangyayaring naganap, ang hindi pagsasabi o pag amin na nasira ang makina ay napakalaking responsibilidad ng isang operator. Sa kabila ng pagbigay ng memo sa iyo at babala, nauulit pa rin ang insidente ng hindi mo pagreport sa kahit anong paraan, mapawritten o verbal na pararan.

Ang paulit-ulit na pangyayari ay lubos na nakaapekto sa produksyon. Dahil dito, nagkaroon ng pagkaantala at di pagkadeliver ng mga produkto sa ating kliyente sa tamang oras.

---

[79] Id. at 705.
[80] Id. at 706.

> Ang ganitong gawain ay isang maliwanag na isang uri ng kapabayaan, pananadya at hindi magandang halimbawa para gayahin ng sinuman.
>
> Ikaw ay binibigyan ng 24-oras para magsubmite sa Admin office ng written explanation o depensa sa nangyari. Inaasahan na itong pangyayari ay hindi na mauulit. Ito rin ay babala para sa iyo at pag alala na kailangan mag ingat at umiwas sa paglabag sa Company Rules and Regulation.

Contrary to the NLRC's May 31, 2011 Decision, as effectively affirmed by the CA, Dalag's dismissal rested not on mere suspicion alone as the allegations in the memos were supported by written statements executed by Dalag's co-workers and immediate superiors.[81] As recounted by Melvin Luna, who operates the same side-seal machine assigned to Dalag, he frequently encounters problems when starting up the equipment after Dalag was through with it, and that Dalag usually leaves the machine unserviceable after use. This practice was observed by Danilo Acosta, one of the team leaders of WM MFG, as per his written statement. Dalag's own team leader, Bonifacio Dimaano, likewise executed a written statement to the effect that Dalag never reported any problem with his side-seal machine.

Moreover, the NLRC's finding that WM MFG took no further step in the form of administrative investigation to confirm its suspicion is refuted by the Investigation Report[82] that served as basis for Dalag's "suspension." The Court notes that from the dates the memos were issued, the earliest being July 20, 2010, until the date of Dalag's dismissal, August 7, 2010, there was reasonable time for WM MFG to look into the matter, and that it, in fact, did so. As per the Investigation Report:

> **Kinalabasan ng Imbestigasyon ng Insidente:**
>
> 1. Noong ika-20 ng Hulyo 2010 nalaman ni Melvin Luna na nasira ang conveyor belt at di mapaandar ang Sideseal Machine No. 2.
> Ito ay nangyari dahil sa kapabayaan ng kanyang kapalitan na si Richard Dalag. Bilang isang operator isa sa mga binabantayan niya ay ang pag-ikot ng conveyor belt ngunit hindi niya napansin ang paghinto nito habang umaandar ang makina na naging sanhi ng pagkakaroon ng malaking butas ng conveyor belt.
>
> 2. Nabutas ang conveyor belt sa pamamagitan ng mainit na sealing bar na siyang dumidiin dito. Ang hindi pag-ikot ng belt at madiin na puwersa ng mainit na sealing bar sa isang parte ng belt ay mag-iiwan ng malalim na hiwa sa hindi umiikot na belt.
>
> 3. Dahil sa hindi pagreport ng nakasriang si RICHARD DALAG, itong insidenteng ito ay nagdulot ng di pagkakaunawaan sa pagitan ng Maintenance Staff at ng iyong kapalitang si Melvin Luna.
>
> 4. Dahil rin dito, ito ay nagdulot ng malaking delays sa ating produksyon at di pagkakadeliver ng produkto sa tamang oras sa kliyente.

---

[81] Id. at 716-720.
[82] Id. at 708-709.

x x x x

8. Napagalaman din ng Maintenance staff, Team Leader at Production Supervisor ang mga hindi maipaliwanag na sira ng makina sa kabila ng maayos na kondisyon nito bago ito hawakan ni RICHARD DALAG.

9. Ito ay hindi nangyari ng isang beses lamang kundi paulit ulit. Ang magkasunod na insidente ng pagkasira ng manual heater at ng thermocouple wire at hindi paggawa ni RICHARD DALAG ng report ay patunay na walang malinaw na dahilan upang masira ang mga piyesa.

10. Ang paulit-ulit na hindi pagrereport ni RICHARD DALAG sa mga nagiging sira ng makina ay hindi maganda at kahina-hinala na Gawain ng pananabotahe.

Hence, Dalag's gross and habitual neglect of his duty to report to his superiors the problems he encountered with the side-seal machine he was assigned to operate was well-documented and duly investigated by WM MFG. The Court, therefore, holds that there was, indeed, just cause to terminate Dalag's employment under Art. 282(2) of the Labor Code.

iii. Procedural requirements were not observed when Dalag's employment was terminated

Anent the conformity of Dalag's dismissal to procedural requirements, the cardinal rule in our jurisdiction is that the employer must furnish the employee with two written notices before the termination of his employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The twin notice rule is coupled with the requirement of a hearing, which is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[83]

In the case at bar, while petitioner submitted as evidence memos that it supposedly attempted to serve Dalag, there was no proof that these were, indeed, received by the latter.[84] By petitioner's own allegation, Dalag refused to receive the same. Under such circumstance, the more prudent recourse would have been to serve the memos through registered mail instead of directly proceeding with the investigation. As held in *NEECO II v. NLRC*:[85]

> x x x That private respondent refused to receive the memorandum is to us, too self-serving a claim on the part of petitioner in the absence of any showing of the signature or initial of the proper serving officer. Moreover, petitioner could have easily remedied the situation by the

---

[83] *Solid Development Corporation Workers Association v. Solid Development Corporation*, G.R. No. 165995, August 14, 2007, 530 SCRA 132.

[84] *Rollo*, p. 55.

[85] G.R. No. 157603, June 23, 2005, 461 SCRA 169.

> expediency of sending the memorandum to private respondent by registered mail at his last known address as usually contained in the Personal Data Sheet or any personal file containing his last known address.

The non-service of notice effectively deprived Dalag of any, if not ample, opportunity to be informed of and defend himself against the administrative charges leveled against him, which element goes into the very essence of procedural due process.[86]

Dalag is only entitled to nominal damages, not full backwages

In spite of the failure of WM MFG and Golden Rock to show that they complied with the procedural requirements of a valid termination under the Labor Code and its implementing rules, Dalag's dismissal cannot be deemed tainted with illegality, contrary to the CA's ruling,[87] for the circumstance merely renders the two companies solidarily liable to Dalag for nominal damages. Instructional on this point is the doctrine in *JAKA Food Processing Corp. v. Pacot (JAKA)*.[88] There, the Court expounded that a dismissal for just cause under Art. 282 of the Labor Code implies that the employee concerned has committed, or is guilty of, some violation against the employer, i.e. the employee has committed some serious misconduct, is guilty of some fraud against the employer, or he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process. However, the employer will still be held liable if procedural due process was not observed in the employee's dismissal. In such an event, the employer is directed to pay, in lieu of backwages, indemnity in the form of nominal damages.[89]

Nominal damages are adjudicated in order that a right of the plaintiff that has been violated or invaded by the defendant may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[90] In cases such as *JAKA*, the nominal damages awarded serves as vindication or recognition of the employee's fundamental due process right,[91] and as a deterrent against future violations of such right by the employer.[92]

The amount of nominal damages to be awarded is addressed to the sound discretion of the court, taking into account the relevant

---

[86] *Rollo*, p. 548.
[87] Id. at 499.
[88] G.R. No. 151378, March 28, 2005, 454 SCRA 119.
[89] Id.
[90] *Celebes Japan Foods Corporation v. Yermo*, G.R. No. 175855, October 2, 2009, 602 SCRA 414.
[91] Id.; see also *JAKA Food Processing Corp. v. Pacot*, supra note 88; *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004, 442 SCRA 573.
[92] Id.

circumstances.[93] Nonetheless, *JAKA* laid down the following guidelines in determining what amount could be considered proper:[94]

> (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and
>
> (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.

In the case at bar, given that there was substantial attempt on the part of WM MFG to comply with the procedural requirements, the Court, nevertheless, deems the amount of ₱30,000 as sufficient nominal damages[95] to be awarded to respondent Dalag.

WHEREFORE, premises considered, the petition is **GRANTED**. The February 21, 2013 Decision and September 17, 2013 Amended Decision of the Court of Appeals in CA-G.R. SP No. 122425 are hereby **REVERSED** and **SET ASIDE**. Let a new one be entered declaring W.M. Manufacturing and Golden Rock Manpower Services jointly and severally liable to Richard R. Dalag in the amount of One Thousand Two Hundred Twelve Pesos (₱1,212) representing Richard R. Dalag's unpaid wages from August 4-6, 2010 as determined by the Labor Arbiter; and Thirty Thousand Pesos (₱30,000) as nominal damages for Dalag's dismissal with just cause, but without observing proper procedure.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

---

[93] *JAKA Food Processing Corp. v. Pacot*, supra note 88.
[94] Id.
[95] *Agabon v. NLRC*, supra note 91.

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

DEC 29 2015

MARIA LOURDES P. A. SERENO
Chief Justice