Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

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| **PROTECTIVE MAXIMUM SECURITY AGENCY, INC.,** Petitioner, | **G.R. No. 169303** |
| | Present: |
| - versus - | CARPIO. *J.*, VELASCO, JR.*, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.* |
| **CELSO E. FUENTES,** Respondent. | **Promulgated:** FEB 11 2015 |

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**DECISION**

**LEONEN, *J.*:**

In this Petition for Review on Certiorari,[1] Protective Maximum Security Agency, Inc. seeks to set aside the Decision[2] of the Court of Appeals which affirmed the Resolutions of the National Labor Relations Commission.[3]

Protective Maximum Security Agency, Inc. (Protective) provides security services for commercial, industrial and agricultural firms, and personal residences.[4]

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* Designated Acting Member per S.O. No. 1910 dated January 12, 2015.

1 *Rollo*, pp. 30–47.

2 Id. at 8–21. The Decision dated June 24, 2005 was penned by Associate Justice Romulo V. Borja (Chair) and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizarro of the Twenty-Third Division. The June 24, 2005 Decision and August 10, 2005 Resolution in CA-G.R. SP No. 81336 affirmed the National Labor Relations Commission Resolutions and denied Protective's Motion for Reconsideration.

3 Id. at 21.

4 Id. at 32.

Celso E. Fuentes (Fuentes) was hired as a security guard by Protective sometime in November 1999. At the time of Fuentes' employment, Protective assigned him to Picop Resources, Inc. He was posted to a security checkpoint designated as Post 33 in Upper New Visayas, Agusan del Sur.[5]

On July 20, 2000, a group of armed persons ransacked Post 33 and took five (5) M-16 rifles, three (3) carbine rifles, and one (1) Browning Automatic Rifle, all with live ammunition and magazines. Agency-issued uniforms and personal items were also taken.[6] These armed persons inflicted violence upon Fuentes and the other security guards present at Post 33, namely: Francisco Dalacan, Rolando Gualberto Lindo, Jr. (Lindo, Jr.), Cempron (Cempron), and Wilson Maravilles.[7] Francisco Dalacan was employed by Protective, while the others were employed by Meshim Security Agency.[8]

On the same day of the incident, Fuentes and his fellow security guards reported the raid to the Philippine National Police in Trento, Agusan del Sur. When asked by the police, Fuentes reported that he and the other security guards assigned to Post 33 were accosted at gunpoint by the New People's Army.[9]

After its initial investigation, the Philippine National Police found reason to believe that Fuentes conspired and acted in consort with the New People's Army.[10] This was based on the two (2) affidavits executed by Lindo, Jr. and Cempron, who were both present in the July 20, 2000 raid.[11] In their affidavits, Lindo, Jr. and Cempron stated that Fuentes should be prosecuted for criminal acts done on July 20, 2000.[12]

On July 24, 2000, the Philippine National Police, through Senior Police Officer IV Benjamin Corda, Jr., filed the Complaint for robbery committed by a band against Fuentes, a certain Mario Cabatlao, and others.[13] This was filed before the Second Municipal Circuit Trial Court of Trento-Sta. Josefa-Veruela in Trento, Agusan del Sur.[14] The Complaint stated that Fuentes was a "cohort of the NPA in the raid[.]"[15]

Immediately upon the filing of the Complaint, Fuentes was detained at

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5 Id. at 9.
6 Id.
7 Id. at 83.
8 Id. at 83–84.
9 Id. at 9–10.
10 Id. at 84.
11 Id. at 10.
12 Id.
13 Id. at 84.
14 Id. at 10 and 84.
15 Id. at 10.

the Mangagoy Police Sub-Station, Mangagoy, Bislig, Surigao del Sur.[16] During his detention, he alleged that he was "mauled and tied up by the security officers of [Protective]."[17] To preserve proof of these claims, Fuentes had pictures taken of his injuries while in custody and acquired a medical certificate detailing his injuries.[18]

In the Order dated August 1, 2000, Judge Particio Balite of the Municipal Circuit Trial Court of Trento-Sta. Josefa-Veruela directed that Fuentes be transferred from the Mangagoy Police Sub-Station to Trento Municipal Jail in Trento, Agusan del Sur.[19] In his return to this court order, however, Police Inspector Ernesto Escartin Sr. (Inspector Escartin) reported:

> . . . Celso Fuentes is no longer in the custody of this station and he is never detained [*sic*] in this station but requested that he will be put to custody for fear of his life. . . . [H]e left this station on July 28, 2000 at around 2:45 in the afternoon accompanied by his mother. The last known address of subject person is Sta. Josefa, Trento, Agusan del Sur.[20] (Citation omitted)

On August 15, 2001, the Office of the Provincial Prosecutor of Surigao del Sur issued the Resolution dismissing the Complaint against Fuentes.[21] It found during preliminary investigation that there was no probable cause to warrant the filing of an Information against Fuentes.[22]

On March 14, 2002, Fuentes filed the Complaint "for illegal dismissal, non-payment of salaries, overtime pay, premium pay for holiday and rest day, 13th month pay, service incentive leave and damages against [Protective], Picop [Resources, Inc.], Emie S. Dolina and Wilfredo Fuentes before [the National Labor Relations Commission] Regional Arbitration Branch XIII in Butuan City."[23]

In his Position Paper, Fuentes claimed that "right after the criminal complaint for robbery against [him] was dismissed . . . he demanded to return to work but he was . . . refused entry by [a certain] Mr. [Regildo] Espinosa on the ground that [Fuentes] [was] a member of the NPA and that his position had already been filled up by another security guard."[24]

On the other hand, Protective claims that "[a]s was usual and routine,

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16 Id. The Decision of the Court of Appeals referred to "Mangagoy" as "Manganoy".
17 Id.
18 Id.
19 Id. at 33.
20 Id. at 12.
21 Id. at 10-11.
22 Id.
23 Id. at 12.
24 Id. at 11.

[Fuentes] should have reported to his Team Leader or Officer-in-Charge. Since the incident of July 20, 2000, private respondent has not yet reported to his Team [L]eader or to any of the officers of [Protective].”[25]

Executive Labor Arbiter Rogelio P. Legaspi (Labor Arbiter Legaspi) rendered his Decision in favor of Protective, thus:

> As borne out by the record, complainant was not dismissed from the service much less illegally by the respondents PMSAI and/or Emie S. Dolina. What happened was that complainant was charged by the PNP Trento, Agusan del Sur in the 2nd Municipal Circuit Trial Court of TRENTO-STA. JOSEFA-VERUELA, Trento, Agusan del Sur for conspiring and confederating with the purported members of the New People’s Army in robbing PMSAI (Post 33) . . . mainly based on the statements of security guards Gualberto Lindo, Jr. and Rolando Cempron of Mishem Security Agency who were also assigned at Post 33. Because of this incident, complainant was detained at the Mangagoy Police Sub-Station, Mangagoy, Bislig, Surigao [d]el Sur and later at the Trento Municipal Jail, Trento, Agusan del Sur.
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> As correctly pointed out by respondents PRI and/or Wilfredo Fuentes, complainant was unable to perform his duties and responsibilities as security guard due to the criminal charges filed against him, hence he was replaced with another guard.
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> Complainant’s claim that respondents refused to admit him back to work after it was found out that he was innocent of the charges against him is not supported by relevant and/or material evidence. Moreover, complainant even failed to state with sufficient definiteness and/or clarity the time and date when he allegedly reported for work after the dismissal of his case on 15 August 2001. In fact, respondents PMSAI and/or Ernie S. Dolina aver that complainant has not reported to any of his superiors since 20 July 2000 up to the present (17 July 2002). Neither was [sic] his whereabouts known to PMSAI as he cannot be found despite diligent efforts. Hence, notice for him to explain his involvement in the incident of 20 July 2000 at Post 33 could not be properly served. The only manifestation of complainant’s existence, respondents admit, came only when respondents were notified of a labor complaint filed by the complainant before this Branch sometime in April 2002.[26]

On appeal, the National Labor Relations Commission reversed the Decision of Labor Arbiter Legaspi and found that Fuentes was illegally dismissed:

> WHEREFORE, the foregoing premises considered, the decision appealed from is hereby MODIFIED, and a NEW judgment is rendered, thus:
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> 1. declaring the dismissal of complaint [sic] as illegal;

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25 Id.

26 Id. at 37–38.

> 2. ordering respondent Protective Maximum Security Agency to pay complainant full backwages (August 15, 2001 to May 30, 2003) amounting to P204,250.00 (P9,500 x 21.5 mos.) and to reinstate him immediately upon receipt of this decision. However, should reinstatement is no longer feasible [*sic*], to pay complainant in lieu thereof separation pay equivalent to one (1) month pay for every year of service; and,
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> 3. ordering same respondent and Picop Resources Inc. to pay complainant in solidum his unpaid salary amounting to P4,750.00, without prejudice however on the part of PRI to present proof of payment/remittance to respondent security agency.
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> SO ORDERED.[27] (Citation omitted)

Protective filed a Petition for Certiorari before the Court of Appeals alleging grave abuse of discretion on the part of the National Labor Relations Commission.[28]

Protective asserted that the evidence and the records showed that Fuentes was never dismissed because he had been missing until the day he filed the Complaint with the Labor Arbiter.[29] To support its position, Protective raised the following arguments:

> The determination of the respondent NLRC was without basis in law and in fact. Respondent NLRC simply brushed off the established fact that private respondent vanished after the July 20, 2000 incident. . . .
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> . . . .
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> [F]rom July 20, 2000 until the present time, private respondent never contacted his superior or reported to the head office of petitioner PMSAI, much less attempted to do the same, to officially manifest whether he was still interested in being employed as security guard. Furthermore, it was incumbent upon private respondent to explain why he was implicated in the crime of robbery by fellow security guards. . . .
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> . . . .
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> Hence, it was physically and legally impossible for petitioner to terminate, constructive, illegal or otherwise [*sic*], the services of private respondent since the procedure for such an action have [*sic*] have not been initiated. Private respondent had chose [sic] not to exercise his rights as an employee and remain unreachable for reasons known only to him.[30] (Citation omitted)

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27 Id. at 13.
28 Id. at 8.
29 Id. at 14.
30 Id. at 15.

The Court of Appeals dismissed the Petition.[31] It held that Protective failed to discharge its burden to prove a just cause for dismissal:

> Petitioner [Protective] bases its contention that private respondent [Fuentes] abandoned his job entirely upon its claim that the latter vanished from sight after the July 20, 2000 incident and until he filed the present action.
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> We are not persuaded.
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> First, the records do not support such a claim. As respondent NLRC found:
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> > [The] [r]ecord shows that after the incident on July 20, 2000, complainant was among those who reported the assault made by the group of NPA at their post in Trento Police Municipal Office, at Trento, Agusan del Sur (Annex "C", complainant's Position Paper). It was only on July 24, 2000 that a criminal complaint was filed in court leading to his arrest and detention. In fact the witnesses at the prosecution [sic] are two (2) of the security guards also assigned at Post 33 of respondent PRI, albeit from different [sic] security agency (Annex 1, 2 and 3, Respondent PMSAI's Position Paper). It is thus unbelievable that complainant's whereabouts were unknown. (NLRC's August 27, 2003 Resolution, pp. 6-7 ; Rollo, pp. 35-36)
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> We note, additionally, from petitioner's own submissions, that private respondent's last known address was given to the investigating court by Police Inspector Escartin in his report to that court. That report, incidentally, also reveals the state of mind of private respondent and explains why he could not report to the offices of petitioner. Private respondent, after having been charged with a crime on the strength of affidavits of petitioner's other security guards and beaten up by them, was so traumatized that *he actually asked to remain in the custody of the police because he feared for his life.* The intensity of his fear is manifest by the fact that he left the custody of the police only when his mother accompanied him. His fear, incongruous as it may appear in a trained security guard, is nonetheless understandable in view of his allegations of having been beaten up. Which allegations, [w]e note, are not controverted.
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> At any rate, the whereabouts of private respondent were available from official records. The claim of petitioner that private respondent "simply vanished" has no evidentiary support.
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> But even granting that petitioner was ignorant of private respondent's whereabouts, still it does not suffice to establish abandonment of work. In *ACD Investigation Security Agency, Inc. vs. Daquena, G.R. No. 147473, March 30, 2004*, the Supreme Court held that:
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> > . . . "for abandonment of work to exist, it is essential (1) that the employee must have failed to report for work or

[31] Id. at 21.

> must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. . . . Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer."
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> . . . .
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> . . . It is not enough to simply allege that the private respondent had "mysteriously disappeared" and that "[a]s usual and routine, private respondent should have reported to his Team Leader or Officer-in-Charge." [32] (Emphasis and underscoring in the original, citations omitted).

Further, the Court of Appeals found that Fuentes should have been afforded his procedural due process rights:

> More is required of the employer who must afford private respondent his right to due process. As respondent NLRC states:
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> > Granting it was so, respondents should have served a written notice to complainant at his last known address to ascertain whether he is still interested to continue his job. Feigning ignorance of the reason why complainant after being hailed in court failed to report for work is ridiculous, at best, a sham defense. What was clear is that respondents did not exert diligent efforts at all to afford complainant his right to due process. No proof has been adduced to support their defense. Moreover, considering that there was a team leader assigned by respondents to Post 33 where complainant was one of its members, the report of the incident should have come from the team leader and not from the complainant as adverted to by respondents. In sum, respondents have all the opportunities to comply with the due process requirement as mandated by law, yet they deliberately ignored and failed to do so. Such deliberate act of respondent PMSAI reflects their deprivation of due process [sic]. The dismissal is thus illegal.[33] (Citation omitted)

Thus, the Court of Appeals found that the National Labor Relations Commission committed no grave abuse of discretion amounting to lack or excess of jurisdiction.[34] It applied the reasoning of this court in *Philippine Airlines, Inc. v. Pascua*,[35] where this court held that since the Decision of the National Labor Relations Commission is based on substantial evidence,

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[32] Id. at 16–18.
[33] Id. at 18–19.
[34] Id. at 19–20.
[35] 456 Phil. 425, 438 (2003) [Per J. Quisimbing, Second Division].

it would not reverse these findings "[a]bsent any showing of patent error, or that the [National Labor Relations Commission] failed to consider a fact of substance that if considered would warrant a different result[.]"[36]

In this Petition, petitioner assails the Decision of the Court of Appeals and states that it is the findings of Labor Arbiter Legaspi that should have been upheld. It argues that the findings of fact and conclusions of Labor Arbiters are accorded great weight since they have the opportunity to determine the facts surrounding the case and the necessary expertise to resolve such matters.[37]

Petitioner relies on *Gelmart Industries (Phils.), Inc. v. Hon. Leogardo, Jr.*[38] and argues that "[w]hen confronted with conflicting versions of factual matters, the Labor Arbiter has the discretion to determine which party deserves credence on the basis of evidence received."[39] For petitioner, Labor Arbiter Legaspi rightfully concluded that respondent abandoned his post, a finding that the National Labor Relations Commission and the Court of Appeals dismissed.[40]

Petitioner states that, by analogy, the Labor Arbiter's findings are akin to those of a trial judge.[41] Thus, pursuant to this court's *ratio decidendi* in *People v. Valla*,[42] "the trial judge's evaluation of the testimony of a witness is generally accorded not only the highest respect, but also finality, unless some weighty circumstance has been ignored or misunderstood but which could change the result."[43]

For petitioner, this is a clear case of abandonment of work by respondent. Petitioner claims that since respondent "vanished"[44] without reporting his whereabouts, he manifested a clear intent to leave his employment. Petitioner argues that respondent was not dismissed; no dismissal took place due to respondent's abandonment of duty. Since there was abandonment, the award of backwages and reinstatement is capricious and without basis.[45]

Petitioner argues that respondent never bothered to explain why it took him more than six (6) months from the date petitioner allegedly refused to allow him to work to file the Complaint for illegal dismissal.[46] For

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36 *Rollo*, p. 20.
37 Id. at 87–88.
38 239 Phil. 386 (1987) [Per J. Cortes, Third Division].
39 *Rollo*, p. 39.
40 Id. at. 91.
41 Id. at 38.
42 380 Phil. 31 (2000) [Per J. Quisimbing, Second Division].
43 Id. at 40.
44 *Rollo*, p. 88.
45 Id. at 91–92.
46 Id. at 39.

petitioner, this six-month delay in filing the Complaint showed that it was "a mere afterthought on the part of [Fuentes]."[47]

Citing *Indophil Acrylic Mfg. Corporation v. National Labor Relations Commission*,[48] petitioner claims that respondent should have been more vigilant of his rights as an employee because at stake was not only his position but also his means of livelihood.[49] Thus, he should have reported to his supervisor immediately after the July 20, 2000 raid at Post 33.

Petitioner contends further that contrary to the findings of the National Labor Relations Commission and the Court of Appeals, there was no specific last known address where petitioner could have provided a written notice to respondent.[50] Petitioner argues that the purported last address of respondent is "in Sta. Josefa, Trento, Agusan del Sur."[51] The insufficiency of the address rendered it impossible for petitioner to provide notice to respondent.[52] Thus, respondent's right to procedural due process was not violated.[53]

For respondent, the Court of Appeals correctly found that the National Labor Relations Commission did not commit grave abuse of discretion. Respondent asserts that the Court of Appeals committed no reversible error in affirming the findings of the National Labor Relations Commission. He raises that the National Labor Relations Commission and the Court of Appeals correctly found that he did not abandon his job. Respondent reiterates that after the dismissal of the criminal Complaint for robbery filed against him, he tried his best to resume work. However, he was refused because he was allegedly a member of the New People's Army and he had already been replaced.[54]

According to respondent, the Court of Appeals found no evidence to support petitioner's allegation that he had "simply vanished."[55] Respondent reiterates the findings of the Court of Appeals, particularly the report of Inspector Escartin. That report showed that respondent was traumatized from having been charged with the crime of robbery and suffering a beating from petitioner's security guards. This justified respondent's absence and initial failure to report back for work.[56]

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47 Id. at 90.
48 G.R. No. 96488, September 27, 1993, 226 SCRA 723, 729 [Per J. Nocon, Second Division].
49 *Rollo*, pp. 89–90.
50 Id. at 89.
51 Id. at 89.
52 Id.
53 Id. at 91.
54 Id. at 101–102.
55 Id.
56 Id. at 101.

For respondent, the twin requirements of substantive and procedural due process were not observed by petitioner. He asserts that the National Labor Relations Commission and the Court of Appeals correctly found that mere allegations of "simply disappearing" and failure to report to the team leader cannot justify the violation of his substantive and procedural due process rights. Respondent asserts that his dismissal from service was clearly illegal.[57]

With these arguments, the principal issues are:

First, whether the Court of Appeals erred in dismissing the Petition for Certiorari assailing the Decision of the National Labor Relations Commission, which reversed the findings of Labor Arbiter Legaspi;

Second, whether respondent was justifiably dismissed due to abandonment; and

Lastly, whether respondent's right to substantive and procedural due process was violated.

This Petition must be denied.

**I**

The National Labor Relations Commission has the power to overturn the findings of fact of the Labor Arbiter.

Petitioner asserts that the findings of fact of Labor Arbiter Legaspi are binding and conclusive. Petitioner raises that, between the determination of facts of the National Labor Relations Commission and the Labor Arbiter, the findings of the latter must prevail.

Contrary to petitioner's claims, the National Labor Relations Commission is not bound by the findings of the Labor Arbiter. Article 223 of the Labor Code reads:

> **Article 223. Appeal.** Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

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57 Id. at 102–103.

> 1.If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
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> 2.If the decision, order or award was secured through fraud or coercion, including graft and corruption;
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> 3.If made purely on questions of law; and
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> 4.If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

Article 223 provides that the decision of the Labor Arbiter is final and executory, unless appealed to the National Labor Relations Commission within ten (10) calendar days by any or both of the parties. The Labor Code vests in the National Labor Relations Commission the authority to reverse the decision of the Labor Arbiter, provided that the appellant can prove the existence of one of the grounds in Article 223.

The errors in the findings of fact that will justify a modification or reversal of the Labor Arbiter's decision must be "serious" and, if left uncorrected, would lead to "grave or irreparable damage or injury to the appellant."

Serious errors refer to inferences of facts without evidence, or mistakes in the interpretation of the evidence that border on arbitrariness or similar circumstances. Not only must the error be palpable, but there must also be a showing that such error would cause grave and irreparable injury to the appellant. It should affect the disposition of the cause of the appellant. The error must impact on the main issues and not some tangential matter. Evidently, a showing of bias on the part of the Labor Arbiter or a lack of due regard for the procedural rights of the parties are indicia that serious errors may be present.

In this case, the National Labor Relations Commission decided that there was a serious error in the factual findings of Labor Arbiter Legaspi.

Labor Arbiter Legaspi found that respondent was charged by the Philippine National Police in Trento, Agusan del Sur for allegedly conspiring and confederating with the members of the New People's Army.[58] Thus, respondent was detained at the Mangagoy Police Sub-Station in Surigao del Sur.[59] Labor Arbiter Legaspi found that respondent was "unable to perform his duties and responsibilities as security guard due to

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58 *Rollo*, p. 37.
59 Id.

the criminal charges [that were] filed against him[.]"[60] This led to petitioner replacing respondent with another security guard.[61]

The National Labor Relations Commission found that petitioner's claims that respondent consorted with the New People's Army and committed robbery on July 20, 2000 "were never substantiated at all[.]"[62] In fact, the Complaint for robbery against respondent was dismissed after preliminary investigation. Thus, the National Labor Relations Commission found that the refusal to admit respondent to work based on the latter's alleged conspiracy with the New People's Army during the July 20, 2000 incident had no basis.[63]

As for respondent's absence from work, Labor Arbiter Legaspi found that respondent's whereabouts were unknown to petitioner.[64] Labor Arbiter Legaspi found that the notice for respondent to explain his involvement in the July 20, 2000 incident could not be properly served despite "diligent efforts."[65] Thus, he supported petitioner's allegation that respondent "vanished" after the July 20, 2000 incident at Post 33.

On appeal, the National Labor Relations Commission found that petitioner's claim that respondent's whereabouts were unknown to the former was "unbelievable."[66] The National Labor Relations Commission found that after the July 20, 2000 incident, respondent "was among those who reported the assault [to the police]."[67] Petitioner even submitted that "respondent's last known address was given to the investigating court by Police Inspector Escartin in his report to [the Municipal Circuit Trial Court]."[68]

Contrary to Labor Arbiter Legaspi's findings, the National Labor Relations Commission found that petitioner did not exert diligent efforts to locate respondent and afford him his right to due process.[69] It found that petitioner feigned ignorance of the reason of respondent's absence.[70] It also found petitioner's claim that respondent had "vanished" to be "ridiculous, at best, a sham defense."[71]

Based on these premises, the National Labor Relations Commission

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60 Id. at 38.
61 Id.
62 Id.
63 Id.
64 Id.
65 Id.
66 Id. at 16.
67 Id.
68 Id.
69 Id. at 18.
70 Id.
71 Id.

found that there was a serious error in the factual determination and conclusions of Labor Arbiter Legaspi. The errors in the findings of fact directly would affect the primary issues raised by the parties and their respective claims. If the errors in the findings of fact were not corrected, respondent's right to security of tenure would have been violated. The National Labor Relations Commission acted well within the discretion provided by Article 223 in deciding appealed cases from the Labor Arbiter.

**II**

This court's power to decide a Rule 45 petition for review on certiorari, particularly in labor cases, has its limits.

Petitioner prays that this court reverse the findings of fact of the National Labor Relations Commission, which were affirmed by the Court of Appeals.

In *St. Martin Funeral Home v. National Labor Relations Commission*,[72] this court established the proper mode of appeal in labor cases:

> [O]n this score we add the further observations that there is a growing number of labor cases being elevated to this Court which, not being a trier of fact, has at times been constrained to remand the case to the NLRC for resolution of unclear or ambiguous factual findings; that the Court of Appeals is procedurally equipped for that purpose, aside from the increased number of its component divisions; and that there is undeniably an imperative need for expeditious action on labor cases as a major aspect of constitutional protection to labor.
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> Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for *certiorari* under Rule 65. Consequently, all such petitions should henceforth be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.[73]

In *Bani Rural Bank, Inc. v. De Guzman*,[74] this court discussed the primary issues to be addressed in a Rule 45 petition for review on certiorari in labor cases:

> *In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?*

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72 356 Phil. 811 (1998) [Per J. Regalado, En Banc].
73 Id. at 824.
74 G.R. No. 170904, November 13, 2013, 709 SCRA 330 [Per J. Brion, Second Division].

> This manner of review was reiterated in *Holy Child Catholic School v. Hon. Patricia Sto. Tomas, etc., et al*., where the Court limited its review under Rule 45 of the CA's decision in a labor case to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion in the decision of the Secretary of Labor, and not on the basis of whether the latter's decision on the merits of the case was strictly correct.
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> Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment amounting to or equivalent to lack of jurisdiction. There is grave abuse of discretion when the power is exercised in an arbitrary or despotic manner by reason of "passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[75] (Emphasis supplied, citations omitted)

In *Career Philippines Shipmanagement, Inc. v. Serna*,[76] this court elaborated on its role to determine whether the Court of Appeals was correct in either granting or dismissing the petition for certiorari:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.* In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. (Emphasis in the original)
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> *Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.*[77] (Emphasis supplied, citations omitted)

Applying these cases, the general rule is that in a Rule 45 petition for review on certiorari, this court will not review the factual determination of the administrative bodies governing labor, as well as the findings of fact by the Court of Appeals. The Court of Appeals can conduct its own factual determination to ascertain whether the National Labor Relations

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75 Id. at 346–347.
76 G.R. No. 172086, December 3, 2012, 686 SCRA 676 [Per J. Brion, Second Division].
77 Id. at 684.

Commission has committed grave abuse of discretion.[78] "In the exercise of its power of review, the findings of fact of the Court of Appeals are conclusive and binding and consequently, it is not our function to analyze or weigh evidence all over again."[79]

## III

There are exceptions to the general rule that the findings of fact of labor tribunals, as affirmed by the Court of Appeals, are binding on this court. In *Medina v. Asistio, Jr*:[80]

> It is a well-settled rule in this jurisdiction that only questions of law may be raised in a petition for certiorari under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the Court of Appeals. The rule, however, is not without exception. Thus, findings of fact by the Court of Appeals may be passed upon and reviewed by this Court in the following instances, none of which obtain in the instant petition:
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> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (Joaquin v. Navarro, 93 Phil. 257 [1953]); (2) When the inference made is manifestly mistaken, absurd or impossible (Luna v. Linatok, 74 Phil. 15 [1942]); (3) Where there is a grave abuse of discretion (Buyco v. People, 95 Phil. 453 [1955]); (4) When the judgment is based on a misapprehension of facts (Cruz v. Sosing, L-4875, Nov. 27, 1953); (5) When the findings of fact are conflicting (Casica v. Villaseca, L-9590 Ap. 30, 1957; unrep.);** (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee (Evangelista v. Alto Surety and Insurance Co., 103 Phil. 401 [1958]); (7) The findings of the Court of Appeals are contrary to those of the trial court (Garcia v. Court of Appeals, 33 SCRA 622 [1970]; Sacay v. Sandiganbayan, 142 SCRA 593 [1986]);** (8) When the findings of fact are conclusions without citation of specific evidence on which they are based (Ibid.,); (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents (Ibid.,); and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record (Salazar v. Gutierrez, 33 SCRA 242 [1970]).[81]

In labor cases, if the petitioner before this court can show grave abuse of discretion on the part of the National Labor Relations Commission, the assailed Court of Appeals ruling (in the Rule 65 proceedings) will be reversed. "Labor officials commit grave abuse of discretion when their factual findings are arrived at arbitrarily or in disregard of the evidence."[82]

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78 *Maralit v. Philippine National Bank*, 613 Phil. 270, 289 (2009) [Per J. Carpio, First Division].

79 *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 364 [Per J. Ynares-Santiago, First Division].

80 G.R. No. 75450, November 8, 1990, 191 SCRA 218 [Per J. Bidin, Third Division].

81 Id. at 223–224.

82 *Maralit v. Philippine National Bank*, 613 Phil. 270, 285 (2009) [Per J. Carpio, First Division], *citing*

If the petitioner can show that "the [labor] tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy,"[83] the factual findings of the National Labor Relations Commission may be subjected to review and ultimately rejected.[84]

In addition, if the findings of fact of the Labor Arbiter are in direct conflict with the National Labor Relations Commission, this court may examine the records of the case and the questioned findings in the exercise of its equity jurisdiction.[85]

It is the petitioner's burden to justify the existence of one of the exceptions to the general rule for this court to conduct a factual review. In this case, we find that petitioner has failed to discharge this burden.

**IV**

The absence of respondent does not constitute abandonment.

Petitioner justifies its actions against respondent by maintaining that respondent never reported to his supervising officer after the July 20, 2000 raid at Post 33. Thus, this alleged prolonged absence from work constituted abandonment. Petitioner asserts that since respondent failed to report for work after the raid, there was no "actual" dismissal of respondent.

Abandonment as a just cause for dismissal is based on Article 282(b) of the Labor Code:[86]

> **Art. 282. Termination by employer.** An employer may terminate an employment for any of the following causes:
>
> . . . .
>
> (b) Gross and habitual neglect by the employee of his duties[.]

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*Triumph International (Phils.), Inc. v. Apostol*, 607 Phil. 157, 170 (2009) [Per J. Carpio, First Division], *Marival Trading, Inc. v. National Labor Relations Commission*, 552 Phil. 762, 774 (2007) [Per J. Chico-Nazario, Third Division], and *Escareal v. National Labor Relations Commission*, G.R. No. 99359, September 2, 1992, 213 SCRA 472, 490 [Per J. Davide, Jr., Third Division].

83 *Odango v. National Labor Relations Commission*, G.R. No. 147420, June 10, 2004, 431 SCRA 633, 640 [Per J. Carpio, First Division], *citing Sajonas v. National Labor Relations Commission*, 262 Phil. 201, 206 (1990) [Per J. Regalado, Second Division].

84 *Norkis Trading Corporation v. Buenavista*, G.R. No. 182018, October 10, 2012, 683 SCRA 406, 422 [Per J. Reyes, First Division].

85 *Luna v. Allado Construction Co., Inc.*, G.R. No. 175251, May 30, 2011, 649 SCRA 262, 272 [Per J. Leonardo-De Castro, First Division], *citing Abel v. Philex Mining Corporation*, 612 Phil. 203, 213 (2009) [Per J. Carpio Morales, Second Division].

86 *Alert Security and Investigation Agency, Inc. v. Pasawilan*, G.R. No. 182397, September 14, 2011, 657 SCRA 655, 666–667 [Per J. Villarama, Jr., First Division].

Abandonment constitutes a just cause for dismissal because "[t]he law in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer."[87] The employer cannot be compelled to maintain an employee who is remiss in fulfilling his duties to the employer, particularly the fundamental task of reporting to work.

In *Agabon v. National Labor Relations Commission*,[88] this court discussed the concept of abandonment:

> Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It is a form of neglect of duty, hence, a just cause for termination of employment by the employer. For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employees has [sic] no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[89] (Citations omitted)

The burden to prove whether the employee abandoned his or her work rests on the employer.[90] Thus, it is incumbent upon petitioner to prove the two (2) elements of abandonment. First, petitioner must provide evidence that respondent failed to report to work for an unjustifiable reason. Second, petitioner must prove respondent's overt acts showing a clear intention to sever his ties with petitioner as his employer.

There is no abandonment in this case.

The first element of abandonment is the failure of the employee to report to work without a valid and justifiable reason. Petitioner asserts that respondent failed to report for work immediately after his release from prison.[91] He also failed to abide by company procedure and report to his immediate superior.[92] According to petitioner, respondent's actions constitute a failure to report to work without a valid and justifiable reason.[93]

The National Labor Relations Commission and the Court of Appeals

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87 *Philippine Long Distance Telephone Company v. Honrado*, 652 Phil. 331, 334 (2010) [Per J. Del Castillo, First Division], *citing Mercury Drug Corporation v. National Labor Relations Commission*, 258 Phil. 384, 391 (1989) [Per C.J. Fernan, Third Division]; *Agabon v. National Labor Relations Commission*, 485 Phil. 248, 286 (2004) [Per J. Ynares-Santiago, En Banc].

88 485 Phil. 248 (2004) [Per J. Ynares-Santiago, En Banc].

89 Id. at 278.

90 *Macahilig v. National Labor Relations Commission*, 563 Phil. 683, 691 (2007) [Per J. Austria-Martinez, Third Division].

91 *Rollo*, p. 89.

92 Id.

93 Id. p. 89-90.

found that respondent's failure to return to work was justified because of his detention and its adverse effects. The Court of Appeals found that petitioner did not refute the allegation that respondent, while in the custody of the police, suffered physical violence in the hands of its employees. Thus, the Court of Appeals gave credence to the report submitted by Inspector Escartin, which stated that respondent was "so traumatized that *he actually asked to remain in the custody of the police because he feared for his life*."[94] The Court of Appeals further found that respondent experienced intense fear, "manifest[ed] by the fact that he left the custody of the police only when his mother accompanied him."[95]

Thus, the intervening period when respondent failed to report for work, from respondent's prison release to the time he actually reported for work, was justified. Since there was a justifiable reason for respondent's absence, the first element of abandonment was not established.

The second element is the existence of overt acts which show that the employee has no intention to return to work. Petitioner alleges that since respondent "vanished" and failed to report immediately to work, he clearly intended to sever ties with petitioner.

However, respondent reported for work after August 15, 2001, when the criminal Complaint against him was dropped. Further, petitioner refused to allow respondent to resume his employment because petitioner believed that respondent was a member of the New People's Army and had already hired a replacement.

Respondent's act of reporting for work *after* being cleared of the charges against him showed that he had no intention to sever ties with his employer. He attempted to return to work after the dismissal of the Complaint so that petitioner would not have any justifiable reason to deny his request to resume his employment.

Thus, respondent's actions showed that he intended to resume working for petitioner. The second element of abandonment was not proven, as well.

In *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*,[96] respondent Rogelio Javier failed to report for work on July 31, 1995.[97] He was arrested and detained on

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94 *Rollo*, p. 17.
95 Id.
96 505 Phil. 418 (2005) [Per J. Callejo, Sr., Second Division].
97 Id. at 420.

August 9, 1995 for the charge of rape upon his neighbor's complaint.[98] "[A]n Information for rape was filed in the Regional Trial Court (RTC) of Pasig, docketed as Criminal Case No. 108593."[99]

On January 13, 1996, his employer, Standard Electric Manufacturing Corporation, received a letter from Javier through counsel informing them of his detention.[100] Despite receiving this letter, it terminated Javier for "(a) having been absent without leave (AWOL) for more than fifteen days from July 31, 1995; and (b) for committing rape."[101]

On May 17, 1996, the Regional Trial Court of Pasig issued the Order "granting Javier's demurrer to evidence and ordered his release from jail."[102] "Javier reported [to] work, but [Standard Electric Manufacturing Corporation] refused to accept him back."[103]

This court found that there was no abandonment:

> Respondent Javier's absence from August 9, 1995 cannot be deemed as an abandonment of his work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. To constitute as such, two requisites must concur: 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 as manifested by some overt acts, with the second element being the more determinative factor. Abandonment as a just ground for dismissal requires clear, willful, deliberate, and unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.
>
> Moreover, respondent Javier's acquittal for rape makes it more compelling to view the illegality of his dismissal. The trial court dismissed the case for "insufficiency of evidence," and such ruling is tantamount to an acquittal of the crime charged, and proof that respondent Javier's arrest and detention were without factual and legal basis in the first place.[104] (Citation omitted)

In deciding that there was no abandonment, this court applied its ruling in *Magtoto v. National Labor Relations Commission*.[105] In *Magtoto*, Alejandro Jonas Magtoto was arrested by virtue of the Arrest, Search and

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98 Id.
99 Id.
100 Id.
101 Id.
102 Id.
103 Id.
104 Id. at 427–428.
105 224 Phil. 210 (1985) [Per J. Gutierrez, Jr., First Division].

Seizure Order dated September 1, 1980.[106] Magtoto was charged with violating Article 136 (Conspiracy and Proposal to Commit Rebellion) and Article 138 (Inciting to Rebellion or Insurrection) of the Revised Penal Code.[107] On April 10, 1981, seven months after his arrest, Magtoto was released after the City Fiscal dismissed the case due to lack of evidence.[108] On the same day, Magtoto informed his employer of his intention to resume working, but the employer rejected his request to return to work.[109] According to his employer, Magtoto's prolonged absence justified his dismissal from work.[110]

In its Decision, this court did not find Magtoto's dismissal to be justified:

> The employer tries to distance itself from the detention by stressing that the petitioner was dismissed due to prolonged absence. . . . Since the causes for the detention, which in turn gave the employer a ground to dismiss the petitioner, proved to be non-existent, we rule that the termination was illegal and reinstatement is warranted. A non-existent cause for dismissal was explained in *Pepito v. Secretary of Labor* (96 SCRA 454):
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> . . . . . .
>
> ". . . . Petitioner was separated because of his alleged involvement in the pilferage in question. However, he was absolved from any responsibility therefor by the court. The cause for his dismissal having been proved non-existent or false, his reinstatement is warranted. It would be unjust and unreasonable for the Company to dismiss petitioner after the latter had proven himself innocent of the cause for which he was dismissed."[111]

In *Standard Electric* and *Magtoto*, the employees reported for work after the charges against them were dropped. This court found that the employers' refusal to allow these employees to resume work had no basis.

This is the same premise in this case. Here, Labor Arbiter Legaspi found that petitioner was justified in refusing respondent to resume work "due to the criminal charges filed against him[.]"[112] However, the National Labor Relations Commission found that "[petitioner] utterly failed to establish by convincing evidence [respondent's] culpability[,]"[113] and reversed the Decision of Labor Arbiter Legaspi. The Court of Appeals

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106 Id. at 214.
107 Id.
108 Id. at 215.
109 Id.
110 Id. at 217.
111 Id.
112 *Rollo*, p. 38.
113 Id.

affirmed this finding of fact.

Thus, the act of reporting to work after the Complaint had been dropped showed that respondent had no intention to sever his employer-employee relationship with petitioner. Respondent did not commit any overt act which would show his intention to sever this relationship. He clearly intended to resume employment.

**V**

Petitioner failed to discharge its burden to prove a just cause for dismissal.

Based on the findings of the National Labor Relations Commission and the Court of Appeals, petitioner was unable to prove the two (2) concurrent elements necessary to constitute abandonment. Outside of the allegation that respondent "simply vanished" and failed to report to petitioner, they found that petitioner was unable to provide additional evidence that would have justified its actions.

Taking all these into consideration, the Court of Appeals did not err in affirming the findings of the National Labor Relations Commission. In *Stolt-Nielsen Marine Services, Inc. v. National Labor Relations Commission*:[114]

> It is a basic rule in evidence that each party must prove his affirmative allegation. While technical rules are not strictly followed in the NLRC, this does not mean that the rules on proving allegations are entirely dispensed with. Bare allegations are not enough; these must be supported by substantial evidence at the very least.
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> . . . .
>
> The rule is well established that in termination cases, the burden of proving just and valid cause for dismissing an employee rests on the employer and his failure to do so shall result in a finding that the dismissal is unjustified.[115]

The burden to prove a just cause for dismissal must be met by the employer.

Petitioner was unable to discharge its evidentiary burden before the National Labor Relations Commission and the Court of Appeals. Thus, the

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114 360 Phil. 881 (1998) [Per J. Romero, Third Division].
115 Id. at 888–889.

illegality of the dismissal stands.

**VI**

The six-month period from the alleged date of dismissal by petitioner to the date of filing of the complaint is justified.

Petitioner alleges that the Complaint of illegal dismissal filed by respondent had no basis since petitioner filed it six (6) months from the date he was allegedly dismissed. According to petitioner, this delay in the filing of the Complaint strengthens its claim that this was a mere afterthought on the part of respondent.

Petitioner cites the actions of the respondent-employee in *Philippine Industrial Security Agency Corporation v. Dapiton*[116] to contrast with the actions of respondent in this case.[117] In *Philippine Industrial*, Virgilio Dapiton "reported to petitioner's office regularly for a new posting[,] but to no avail."[118] Virgilio Dapiton then "lost no time in filing the illegal dismissal case."[119] The immediate filing of the illegal dismissal case, therefore, constituted evidence that Virgilio Dapiton did not wish to be separated from his employment.[120]

In *Arriola v. Pilipino Star Ngayon, Inc.*,[121] this court made the distinction between money claims under Article 291 and the claims for backwages under Article 1146 of the Civil Code:

> . . . Article 291 of the Labor Code . . . requires that money claims arising from employer-employee relations [should] be filed within three years from the time the cause of action accrued:
>
> > Art. 291. *MONEY CLAIMS*. All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.
>
> Article 291 covers claims for overtime pay, holiday pay, service incentive leave pay, bonuses, salary differentials, and illegal deductions by an employer. It also covers money claims arising from seafarer contracts.

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116 377 Phil. 951 (1999) [Per J. Puno, First Division].

117 *Rollo*, pp. 90–91.

118 *Philippine Industrial Security Agency Corporation v. Dapiton*, 377 Phil. 951, 959 (1999) [Per J. Puno, First Division].

119 Id.

120 Id.

121 G.R. No. 175689, August 13, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/175689.pdf> [Per J. Leonen, Third Division].

> The provision, however, does not cover "money claims" consequent to an illegal dismissal such as backwages. It also does not cover claims for damages due to illegal dismissal. These claims are governed by Article 1146 of the Civil Code of the Philippines, which provides:
>
> > Art. 1146. The following actions must be instituted within four years:
> >
> > > (1) Upon injury to the rights of the plaintiff[.]
>
> . . . .
>
> This four-year prescriptive period applies to claims for backwages, not the three-year prescriptive period under Article 291 of the Labor Code. A claim for backwages, according to this court, may be a money claim "by reason of its practical effect." Legally, however, an award of backwages "is merely one of the reliefs which an illegally dismissed employee prays the labor arbiter and the NLRC to render in his favor as a consequence of the unlawful act committed by the employer." Though it results "in the enrichment of the individual [illegally dismissed], the award of backwages is not in redress of a private right, but, rather, is in the nature of a command upon the employer to make public reparation for his violation of the Labor Code."
>
> Actions for damages due to illegal dismissal are likewise actions "upon an injury to the rights of the plaintiff." Article 1146 of the Civil Code of the Philippines, therefore, governs these actions.[122] (Citations omitted)

Petitioner admits that respondent filed the Complaint for illegal dismissal six (6) months after the first time petitioner had refused to allow respondent to work. This is well within the four-year prescriptive period provided by Article 1146 of the Labor Code, as mentioned in *Arriola*.

In *Azcor Manufacturing, Inc. v. National Labor Relations Commission*,[123] the employee filed a Complaint for illegal dismissal with a prayer for reinstatement four (4) months after the incident of illegal dismissal.[124] This court held that Article 1146 still applied:

> In addition, an action for reinstatement by reason of illegal dismissal is one based on an injury which may be brought within four (4) years from the time of dismissal pursuant to Art. 1146 of the Civil Code. Hence, Capulso's case which was filed after a measly delay of four (4) months should not be treated with skepticism or cynicism. By law and settled jurisprudence, he has four (4) years to file his complaint for illegal dismissal. A delay of merely four (4) months in instituting an illegal dismissal case is more than sufficient compliance with the prescriptive

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122 Id. at 6–9.
123 362 Phil. 370 (1999) [Per J. Bellosillo, Second Division].
124 Id. at 379.

> period. It may betray an unlettered man's lack of awareness of his rights as a lowly worker but, certainly, he must not be penalized for his tarrying.[125]

In this case, the six-month period from the date of dismissal to the filing of the Complaint was well within reason and cannot be considered "inexcusable delay." The cases filed before the courts and administrative tribunals originate from human experience. Thus, this court will give due consideration to the established facts which would justify the gap of six (6) months prior to the filing of the complaint.

First, respondent received a beating from petitioner's employees at the time of his detention. Even after the dismissal of the Complaint against him, it would have been reasonable for him to take time to recover from the physical and emotional trauma he received.

Second, after the charges against him were dropped, respondent averred that he "repeatedly"[126] asked petitioner if he could resume employment. The Court of Appeals affirmed this finding. Prior to the filing of the Complaint on March 14, 2002, respondent did not sleep on his right to resume work.

Lastly, this court takes notice of the considerable distance between respondent's last known address at Sta. Josefa, Trento, Agusan del Sur and Post 33 at Picop Resources, Inc., Upper New Visayas, Agusan del Sur. The distance he had to travel to ask petitioner to resume work would have placed an understandable constraint on respondent's time and resources.

Respondent cannot be prejudiced by the six-month period. Petitioner's argument on this matter must fail.

## VII

*Indophil* is not applicable as a defense against petitioner's dismissal of respondent.

According to petitioner, respondent should have made a more substantial effort to comply with its orders, pursuant to *Indophil*.[127] This application, however, is misplaced.

In *Indophil*, the employer gave the employee a letter requiring him to

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125 Id. at 379–380.
126 *Rollo*, p. 102.
127 Id. at 89–90.

report and explain his unauthorized absences.[128] The employer gave the employee three (3) days to respond to the letter.[129] Instead, the employee filed a complaint alleging illegal dismissal against the employer.[130] This court held that by failing to respond to the letter, the employee effectively resigned from his employment. Thus, to begin with, there was no dismissal of the employee.[131] The employee in that case should have acted promptly in the interest of protecting his employment.[132]

In this case, the National Labor Relations Commission and the Court of Appeals did not find evidence that petitioner afforded respondent the opportunity to explain his failure or inability to report for work. They found that petitioner's allegation that respondent "simply vanished" did not discharge its burden of proving that respondent was dismissed for a just cause. In *Functional, Inc. v. Granfil*:[133]

> Being a matter of intention, moreover, abandonment cannot be inferred or presumed from equivocal acts. As a just and valid ground for dismissal, it requires the deliberate, unjustified refusal of the employee to resume his employment, without any intention of returning. . . . The burden of proving abandonment is once again upon the employer who, whether pleading the same as a ground for dismissing an employee or as a mere defense, additionally has the legal duty to observe due process. *Settled is the rule that mere absence or failure to report to work is not tantamount to abandonment of work.*[134] (Emphasis supplied, citations omitted)

Unlike *Indophil*, illegal dismissal occurred in this case. Respondent was illegally dismissed from the time petitioner refused to allow him to resume work.

Further, *People v. Valla*,[135] relied upon by petitioner, does not apply to this case.

*People v. Valla* is a criminal case. This, however, is a labor case. Criminal cases and labor cases have different evidentiary requirements and procedures. Criminal cases are first heard in trial courts, while labor cases are first heard by administrative agencies. They are not analogous, and a trial judge is not in the same position as the Labor Arbiter. Petitioner's arguments based on this case must fail.

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128 *Indophil Acrylic Mfg. Corporation v. National Labor Relations Commission*, G.R. No. 96488, September 27, 1993, 226 SCRA 723, 725 and 727 [Per J. Nocon, Second Division].
129 Id. at 725.
130 Id.
131 Id. at 729.
132 Id.
133 G.R. No. 176377, November 16, 2011, 660 SCRA 279 [Per J. Perez, Second Division].
134 Id. at 286–287.
135 380 Phil. 31 (2000) [Per J. Quisimbing, Second Division].

## VIII

Applying the doctrine of "no work, no pay," the computation of backwages should only begin from the date of the filing of the Complaint.

The dispositive portion of the Decision of the National Labor Relations Commission states that respondent should be paid full backwages from August 15, 2001 to May 30, 2003.[136] The Court of Appeals affirmed this award.[137] This court finds that this amount should be reduced in view of the principle of "no work, no pay."

In *Republic v. Pacheo*:[138]

> If there is no work performed by the employee there can be no wage or pay, unless of course the laborer was able, willing and ready to work but was illegally locked out, *dismissed* or suspended. The "No work, no pay" principle contemplates a "no work" situation where the employees voluntarily absent themselves.[139] (Emphasis in the original)

It would be unjust if petitioner were ordered to pay respondent for the period of time that respondent could not and did not work.

In *Standard Electric*, respondent Javier was not entitled to the entirety of the backwages during the time of his detention:

> Finally, in line with the rulings of this Court in *Magtoto* and *Pedroso* on the matter of backwages, respondent Javier is not entitled to any salary during the period of his detention. His entitlement to full backwages commenced from the time the petitioner refused his reinstatement. In the instant case, when respondent Javier was freed on May 24, 1996 by virtue of the judgment of acquittal dated May 17, 1996, he immediately proceeded to the petitioner but was not accepted back to work; hence, the reckoning point for the grant of backwages started therefrom.[140]

In *Standard Electric*, the period of computation of backwages commenced from the date petitioner refused to allow respondent to return to work, and not from the date the charges against respondent were dismissed.

In this case, the date of petitioner's refusal to allow respondent's return to work was not established in the findings of fact of the labor

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136 *Rollo*, p. 13.
137 Id. at 21.
138 G.R. No. 178021, January 31, 2012, 664 SCRA 497 [Per J. Mendoza, En Banc].
139 Id. at 505.
140 *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*, 505 Phil. 418, 429–430 (2005) [Per J. Callejo, Sr., Second Division].

tribunals and the Court of Appeals. Petitioner alleged that the filing of the Complaint took place six (6) months after the alleged date that respondent's request to return to work was refused. The date when the incident took place was not specified.

Applying *Standard Electric*, respondent is not entitled to backwages from August 15, 2001, the date of the Resolution dismissing the Complaint against respondent. The facts do not categorically state that petitioner refused to allow respondent to resume working on August 15, 2001.

Absent proof of the actual date that respondent first reported for work and was refused by petitioner, the date of the filing of the Complaint should serve as the basis from which the computation of backwages should begin. Thus, this court finds that respondent is entitled to full backwages starting only on March 14, 2002 until actual reinstatement.

**IX**

Respondent's right to procedural due process was not observed.

The employer must always observe the employee's right to due process. In *Agabon*:

> Procedurally . . . if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss. . . .
>
> . . . .
>
> Due process under the Labor Code, like Constitutional due process, has two aspects: substantive, *i.e.*, the valid and authorized causes of employment termination under the Labor Code; and procedural, *i.e.*, the manner of dismissal. Procedural due process requirements for dismissal are found in the Implementing Rules of P.D. 442, as amended, otherwise known as the Labor Code of the Philippines in Book VI, Rule I, Sec. 2, as amended by Department Order Nos. 9 and 10. Breaches of these due process requirements violate the Labor Code. . . .
>
> Constitutional due process protects the individual from the government and assures him of his rights in criminal, civil or administrative proceedings; while statutory due process found in the Labor Code and Implementing Rules protects employees from being unjustly terminated without just cause after notice and hearing.[141] (Citation omitted)

[141] 485 Phil. 248, 280–284 (2004) [Per J. Ynares-Santiago, En Banc].

In this case, petitioner violated respondent's right to procedural due process. The two-notice requirement was not followed. Petitioner sought to excuse itself by claiming that there was no address where the proper notice could have been served. However, petitioner admitted before the Court of Appeals that "respondent's last known address was given to the investigating court by Police Inspector Escartin[.]"[142]

There was no attempt from petitioner to serve the proper notice on respondent at the address contained in its employment records. Respondent was replaced without being given an opportunity to explain his absence.

In *Agabon*, this court awarded an amount as indemnity to the dismissed employee due to the violation of the right to procedural due process.[143] This court deems it just to confer an additional award of ₱30,000.00 to respondent.

Petitioner has violated respondent's right to security of tenure, as well as his right to procedural due process. For these violations, petitioner must be held accountable.

**WHEREFORE,** the Petition is **DENIED.** The Court of Appeals Decision dated June 24, 2005 and Resolution dated August 10, 2005 in CA-G.R. SP No. 81336 are **AFFIRMED with MODIFICATION** in that the amount of backwages to be awarded to respondent Celso E. Fuentes should begin on March 14, 2002 until his actual reinstatement. Petitioner Protective Maximum Security Agency, Inc. is further ordered to pay respondent Celso Fuentes the amount of ₱30,000.00 as indemnity for violation of respondent's right to procedural due process. Legal interest shall be computed at the rate of 6% per annum of the total award from date of finality of this Decision until full satisfaction.[144] Costs against petitioner.

**SO ORDERED.**

**MARVIC M.V.F. LEONEN**
Associate Justice

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142 *Rollo*, p. 16.
143 485 Phil. 248, 288 (2004) [Per J. Ynares-Santiago, En Banc].
144 *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458 [Per J. Peralta, En Banc].

WE CONCUR:

**ANTONIO T. CARPIO**
Associate Justice
Chairperson

**PRESBITERO J. VELASCO, JR.**
Associate Justice

**MARIANO C. DEL CASTILLO**
Associate Justice

**JOSE CATRAL MENDOZA**
Associate Justice

## ATTESTATION

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

**ANTONIO T. CARPIO**
Associate Justice
Chairperson, Second Division

## CERTIFICATION

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

**MARIA LOURDES P. A. SERENO**
Chief Justice