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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ERROL RAMIREZ, JULITO APAS, RICKY ROSELO and ESTEBAN MISSION, JR., Petitioners,	**G.R. No. 207898**
	Present:
	VELASCO, JR., *J.*, *Chairperson*,
	PERALTA,
- versus -	PEREZ,
	REYES,
	JARDELEZA, *JJ.*
POLYSON INDUSTRIES, INC. and WILSON S. YU, Respondents.	**Promulgated:**
	October 19, 2016

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DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated January 23, 2013 and June 17, 2013, respectively, in CA-G.R. SP No. 125091. The assailed CA Decision affirmed the March 28, 2012 Resolution of the Fourth Division of the National Labor Relations Commission (*NLRC*), which found that respondent corporation validly dismissed petitioners from their employment, while the CA Resolution denied petitioners' Motion for Reconsideration.

The facts of the case are as follows:

Respondent Polyson Industries, Inc. (*Polyson*) is a duly organized domestic corporation which is primarily engaged in the business of manufacturing plastic bags for supermarkets, department stores and the like.

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1 Penned by Associate Justice Isaias P. Dicdican, with the concurrence of Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela, Annex "A" to Petition: *rollo*, pp. 25-36.

2 *Id.* at 38-39.

Petitioners, on the other hand, were employees of Polyson and were officers of Obrero Pilipino (*Obrero*), the union of the employees of Polyson.

The instant case arose from a labor dispute, between herein petitioners and respondent corporation, which was certified by the Secretary of the Department of Labor and Employment (*DOLE*) to the NLRC for compulsory arbitration.

In its Position Paper[3] submitted to the NLRC, Polyson alleged that: on April 28, 2011, it received a notice of hearing from the DOLE with respect to the petition for certification election filed by Obrero; on May 31, 2011, Polyson, through counsel and management representative, met with the officers of Obrero, led by the union president, herein petitioner Ramirez; Obrero asked that it be voluntarily recognized by Polyson as the exclusive bargaining agent of the rank-and-file employees of Polyson, but the latter refused and opted for a certification election; furious at such refusal, the Obrero officers threatened the management that the union will show its collective strength in the coming days; on June 7, 2011, Polyson received a rush order from one of its clients for the production of 100,000 pieces of plastic bags; the management of Polyson informed the operators of its Cutting Section that they would be needing workers to work overtime because of the said order; based on the usual practice of the company, those who intend to perform overtime work were expected to sign the "time sheet" indicating their willingness to work after their shift; on June 7, 2011, the supervisors approached the operators but were told that they would be unable to work overtime because they have other commitments after their shift; the supervisors then requested that the operators set aside their time for the following day to work beyond their regular shift; on June 8, 2011, five (5) operators indicated their desire to work overtime;[4] however, after their regular shift, three of the five workers did not work overtime which resulted in the delay in delivery of the client's order and eventually resulted in the cancellation of the said order by reason of such delay;[5] when management asked the workers, who initially manifested their desire to work overtime, to indicate in the time sheet the reason for their failure to do so, two of the three workers, namely, Leuland Visca (*Visca*) and Samuel Tuting (*Tuting*) gave the same reason, to wit: "*Ayaw nila/ng iba na mag-OT [overtime] ako*";[6] the management then conducted an investigation and a hearing where Visca affirmed his previous claim that petitioners were the ones who pressured him to desist from rendering overtime work;[7] on even date, Tuting executed a written statement claiming that herein petitioners induced or threatened them not to work overtime;[8] the management then gave notices to petitioners asking them to explain why no disciplinary action would be taken

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3 *Id.* at 132-138.
4 *Id.* at 142.
5 *Id.* at 147.
6 *Id.* at 142
7 *Id.* at 144.
8 *Id.* at 145.

against them;[9] petitioners submitted their respective explanations to the management denying their liability;[10] after evaluation, the management informed petitioners that it has decided to terminate petitioners' employment on the ground that they instigated an illegal concerted activity resulting in losses to the company.[11]

In their Position Paper,[12] petitioners denied the allegations of Polyson contending that they were terminated from their employment not because they induced or threatened their co-employees not to render overtime work but because they established a union which sought to become the exclusive bargaining agent of the rank-and-file employees of Polyson; that their termination was undertaken without affording them substantive and procedural due process; and that Polyson is guilty of unfair labor practice.

Subsequently, on June 29, 2011, Obrero filed a Notice of Strike with the National Conciliation and Mediation Board (*NCMB*) which was predicated on various grounds, among which was the alleged illegal dismissal of herein petitioners.

Thereafter, on July 21, 2011, the DOLE Secretary certified the labor dispute to the NLRC for immediate compulsory arbitration where the parties were required to maintain the *status quo*, in accordance with Article 263(g) of the Labor Code.[13]

On December 26, 2011, the NLRC rendered its Decision[14] finding petitioners illegally dismissed from their employment and ordering their reinstatement to their former positions without loss of seniority rights and other privileges and benefits as well as to pay petitioners their backwages and attorney's fees. The NLRC ruled that, for failure of Polyson to submit in evidence petitioners' supposed written explanations in answer to the company's Notice to Explain, Polyson failed to discharge its burden of proving that petitioners were indeed terminated for a valid cause and in accordance with due process.

Polyson then filed a Motion for Reconsideration[15] submitting, for the consideration of the NLRC, the subject written explanations of petitioners and reiterating their position that petitioners were, indeed, validly dismissed.

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9 *Id.* at 148-151.
10 CA *rollo*, pp. 68-70, 72.
11 *Rollo*, pp. 152-155.
12 CA *rollo*, pp. 81-92.
13 *Id.* at 56-58.
14 *Id.* at 28-35.
15 *Id.* at 62-67.

On March 28, 2012, the NLRC issued a Resolution[16] granting Polyson's Motion for Reconsideration, thereby reversing and setting aside its December 26, 2011 Decision and rendering a new judgment which declared petitioners as validly dismissed. In the said Resolution, the NLRC found that Polyson was able to present sufficient evidence to establish that petitioners' termination from employment was for a valid cause, as they were found guilty of inducing or threatening their co-employees not to render overtime work, and that petitioners' dismissal was in conformity with due process requirements.

Aggrieved by the above Resolution, petitioners filed a special civil action for *certiorari* with the CA assailing the said Resolution and praying for the reinstatement of the December 26, 2011 Decision of the NLRC.[17]

In its questioned Decision dated January 23, 2013, the CA denied petitioners' petition for *certiorari* and affirmed the March 28, 2012 Resolution of the NLRC. The CA ruled that petitioners' defense, which is anchored primarily on their denial of the allegations of Polyson, cannot overcome the categorical statements of Polyson's witnesses who identified petitioners as the persons who induced or threatened them not to render overtime work.

Petitioners filed a Motion for Reconsideration,[18] but the CA denied it in its Resolution dated June 17, 2013.

Hence, the present petition for review on *certiorari* based on the following grounds:

> THE HONORABLE COURT OF APPEALS THIRTEENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING THE HEREIN ASSAILED DECISIONS.
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> THE THIRTEENTH DIVISION OF THE COURT OF APPEALS MISAPPRECIATED THE ACTUAL FACTS OF THE INSTANT CASE. THUS, A REVIEW IS NECESSARY AND THE ASSAILED DECISIONS VACATED.[19]

The basic issue in the instant case is whether petitioners' dismissal from their employment was valid.

Due process under the Labor Code involves two aspects: first is substantive, which refers to the valid and authorized causes of termination of employment under the Labor Code; and second is procedural, which points

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16 *Id.* at 44-55.
17 *Id.* at 3-27.
18 *Id.* at 172-183.
19 *Rollo*, p. 13.

to the manner of dismissal.[20] Thus, to justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just or authorized cause and that the employee was afforded due process prior to dismissal.[21] As a complementary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal.[22]

Anent the substantive aspect, the question that should be resolved, in the context of the facts involved in and the charges leveled against petitioners in the present case, is whether petitioners are guilty of an illegal act and, if so, whether such act is a valid ground for their termination from employment.

In its Resolution dated March 28, 2012, the NLRC ruled that "[t]he evidence on record clearly establishes that herein [petitioners] resorted to an illicit activity. The act of inducing and/or threatening workers not to render overtime work, given the circumstances surrounding the instant case, was undoubtedly a calculated effort amounting to 'overtime boycott' or 'work slowdown'. [Petitioners], in their apparent attempt to make a statement – as a response to [Polyson's] refusal to voluntarily recognize Obrero Pilipino – Polyson Industries Chapter as the sole and exclusive bargaining representative of the rank-and-file employees, unduly caused [Polyson] significant losses in the aggregate amount of Two Hundred Ninety Thousand Pesos (PhP290,000.00)."[23]

The Court finds no cogent reason to depart from the above findings, which were affirmed by the CA. The Court is not duty-bound to delve into the accuracy of the factual findings of the NLRC in the absence of clear showing that these were arbitrary and bereft of any rational basis.[24] In the present case, petitioners failed to convince this Court that the NLRC's findings that they instigated the slowdown on June 8, 2011 are not reinforced by substantial evidence. Verily, said findings have to be maintained and upheld. This Court reiterates, as a reminder to labor leaders, the rule that union officers are duty-bound to guide their members to respect the law.[25] Contrarily, if the officers urge the members to violate the law and defy the duly-constituted authorities, their dismissal from the service is a just penalty or sanction for their unlawful acts.[26]

In any case, a review of the records at hand shows that the evidence presented by Polyson has proven that petitioners are indeed guilty of

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20 *King of Kings Transport, Inc. v. Mamac,* 553 Phil. 108, 114 (2007).
21 *Aliling v. Feliciano, et al.,* 686 Phil. 889, 909 (2012).
22 *Id.*
23 CA *rollo,* p. 50.
24 *Toyota Motors Phil. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission, Second Division,* 562 Phil. 759, 798 (2007).
25 *Id.*
26 *Id.*

instigating two employees to abstain from working overtime. In the Cutting Section Overtime Sheet[27] dated June 8, 2011, employees Visca and Tuting indicated that "*ayaw nila/ng iba na mag-OT [overtime] ako*" as the reason why they did not render overtime work despite having earlier manifested their desire to do so. In the Administrative Hearing[28] conducted on June 9, 2011, Visca identified petitioners as the persons who pressured them not to work overtime. In the same manner, Tuting, in his written statement,[29] also pointed to petitioners as the ones who told him not to work overtime.

Petitioners question the credibility of Tuting and Visca's claims contending that these are self-serving and that they were merely used by the management to manufacture evidence against them. However, there is nothing on record to indicate any ulterior motive on the part of Visca and Tuting to fabricate their claim that petitioners were the ones who threatened or induced them not to work overtime. Absent convincing evidence showing any cogent reason why a witness should testify falsely, his testimony may be accorded full faith and credit.[30] Moreover, petitioners' defense consists of mere denials and negative assertions. As between the affirmative assertions of unbiased witnesses and a general denial and negative assertions on the part of petitioners, weight must be accorded to the affirmative assertions.[31]

In addition, the Court finds no error in the findings of the NLRC in its questioned Resolution that, contrary to petitioners' claims, the slowdown was indeed planned, to wit:

> The abovementioned finding is bolstered by the Incident Report dated 10 June 2011 wherein it is stated that upon inquiry by Respondent Wilson Yu as regards the reason for the non-rendering of overtime work, [petitioner] Errol Ramirez retorted, thus: "[DI BA] SABI NINYO EIGHT (8) HOURS LANG KAMI. EH DI EIGHT (8) NA LANG. KUNG MAG[-]OOVERTIME KAMI DAPAT LAHAT MAY OVERTIME. AYAW KO MAGKAWATAK WATAK ANG MGA TAO KO." It is, therefore, unmistakably clear that [petitioners] were completely aware of and, in fact, were responsible for what transpired during the scheduled overtime. [Petitioners] cannot now feign ignorance and simply deny liability upon the implausible pretext that the "overtime boycott" was undertaken without their knowledge and not upon their prodding. Note that the exchange was witnessed by several other workers and, interestingly, was never disputed by herein [petitioners].[32]

The Court agrees with both the NLRC and the CA that petitioners are guilty of instigating their co-employees to commit slowdown, an inherently and essentially illegal activity even in the absence of a no-strike clause in a

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27 *Rollo*, p. 142.
28 *Id.* at 144.
29 *Id.* at 145.
30 *Arboleda v. National Labor Relations Commission*, 362 Phil. 383, 391 (1999).
31 *Id.*
32 *Rollo*, pp. 82-83. (Citation omitted)

collective bargaining contract, or statute or rule.[33] Jurisprudence defines a slowdown as follows:

> x x x a "**strike on the installment plan**;" as a willful reduction in the rate of work by concerted action of workers for the purpose of restricting the output of the employer, in relation to a labor dispute; as an activity by which workers, without a complete stoppage of work, retard production or their performance of duties and functions to compel management to grant their demands. The Court also agrees that **such a slowdown is generally condemned as inherently illicit and unjustifiable**, because while the employees "continue to work and remain at their positions and accept the wages paid to them," they at the same time "select what part of their allotted tasks they care to perform of their own volition or refuse openly or secretly, to the employer's damage, to do other work;" in other words, they "work on their own terms.[34]

The Court is not persuaded by petitioners' contention that they are not guilty of "illegal concerted activity" as they claim that this term contemplates a "careful planning of a considerable number of participants to insure that the desired result is attained." Nothing in the law requires that a slowdown be carefully planned and that it be participated in by a large number of workers. The essence of this kind of strike is that the workers do not quit their work but simply reduce the rate of work in order to restrict the output or delay the production of the employer. It has been held that while a cessation of work by the concerted action of a large number of employees may more easily accomplish the object of the work stoppage than if it is by one person, there is, in fact no fundamental difference in the principle involved as far as the number of persons involved is concerned, and thus, if the act is the same, and the purpose to be accomplished is the same, there is a strike, whether one or more than one have ceased to work.[35] Furthermore, it is not necessary that any fixed number of employees should quit their work in order to constitute the stoppage a strike, and the number of persons necessary depends in each case on the peculiar facts in the case and no definite rule can be laid down.[36] As discussed above, petitioners engaged in slowdown when they induced two of their co-workers to quit their scheduled overtime work and they accomplished their purpose when the slowdown resulted in the delay and restriction in the output of Polyson on June 8, 2011.

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33 *Ilaw at Buklod ng Manggagawa (IBM) v. National Labor Relations Commission, et al.,* 275 Phil. 635, 649 (1991).

34 *Interphil Laboratories Employees Union-FFW, et al. v. Interphil Laboratories, Inc., et al.,* 423 Phil. 948, 964 (2001), citing *Ilaw at Buklod ng Manggagawa (IBM) v. NLRC, supra,* at 649-650. (Emphases ours)

35 83 C.J. S. 543, citing *Sammons v. Hotel & Restaurant Emp. Local Union No. 363,* Com. Pl., 93 N.E. 2D 301, 302.

36 83 C.J.S. 544, citing *People on Complaint of Mandel v. Tapel,* 3 N.Y.S. 2D 779, 781 and *Walter W. Oeflein, Inc. v. State,* 188 N.W. 633, 635, 177 Wis. 394.

With respect to procedural due process, it is settled that in termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing.[37] The employer must furnish the employee with two written notices before the termination of 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.[38] The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[39] In the present case, Polyson was able to establish that these requirements were sufficiently complied with.

As to petitioners' liability, the second paragraph of Article 264(a) of the Labor Code provides:

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> x x x **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status**: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.[40]

Finally, it cannot be overemphasized that strike, as the most preeminent economic weapon of the workers to force management to agree to an equitable sharing of the joint product of labor and capital, exert some disquieting effects not only on the relationship between labor and management, but also on the general peace and progress of society and economic well-being of the State.[41] This weapon is so critical that the law imposes the supreme penalty of dismissal on union officers who irresponsibly participate in an illegal strike and union members who commit unlawful acts during a strike.[42] The responsibility of the union officers, as main players in an illegal strike, is greater than that of the members as the union officers have the duty to guide their members to respect the law.[43] The policy of the State is not to tolerate actions directed at the destabilization of the social order, where the relationship between labor and management has been endangered by abuse of one party's bargaining prerogative, to the extent of disregarding not only the direct order of the government to maintain the *status quo*, but the welfare of the entire workforce though they

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37 *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445 (2010).
38 *Id.*
39 *Id.*
40 Emphasis supplied.
41 *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association (PILTEA), et al.*, 552 Phil. 432, 452 (2007).
42 *Id.*
43 *Id.*

may not be involved in the dispute.[44] The grave penalty of dismissal imposed on the guilty parties is a natural consequence, considering the interest of public welfare.[45]

WHEREFORE, the instant petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated January 23, 2013 and June 17, 2013, respectively, in CA-G.R. SP No. 125091 are **AFFIRMED.**

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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44 *Id.*
45 *Id.*

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, Third 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

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