Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ALLAN JOHN UY REYES, Petitioner,	**G.R. No. 222816**
	Present:
- versus -	CARPIO, *J.*, *Chairperson*, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
GLOBAL BEER BELOW ZERO, INC., Respondent.	**Promulgated:** 04 OCT 2017

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D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court dated March 22, 2016 of petitioner Allan John Uy Reyes (*Reyes*) that seeks to reverse and set aside the Decision[2] dated August 27, 2015 of the Court of Appeals (*CA*) reversing the Decision[3] dated July 31, 2013 of the National Labor Relations Commission in NLRC LAC No. 01-000289-13 that found petitioner to be illegally dismissed by respondent Global Beer Below Zero, Inc. (*Global*).

The facts follow.

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1 *Rollo*, pp. 17-50.

2 Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Rodil V. Zalameda and Pedro B. Corales; *id.* at 53-68.

3 *Rollo*, pp. 101-108.

Petitioner Reyes was an employee of respondent Global as Operations Manager from January 2009 until January 2012. On January 18, 2012, petitioner Reyes, in accordance with his duties, reported to the main office of respondent Global in Makati instead of going to the Pasig warehouse in order to request for budget because there was a scheduled delivery the following day. The following day, January 19, 2012, petitioner Reyes ran late because according to him, his three-year-old son was sick. Around 10:30 a.m. of the same day, respondent Global's Vice-President for Operations, Vinson Co Say (*Co Say*), petitioner Reyes' immediate and direct superior at that time, called petitioner Reyes and asked him why he was not yet at the office. Petitioner Reyes apologized and said that he was on his way. According to petitioner Reyes, he tried to explain why he was late, but Co Say did not listen and the latter shouted at the other end of the line and told petitioner Reyes not to report for work anymore. Petitioner Reyes further claimed that Co Say angrily retorted that he will talk to him the following week before Co Say hung up the phone. As instructed, petitioner did not report for work on the following days and waited for further instructions from Co Say. On January 24, 2012, petitioner Reyes received a text message from Co Say stating the following, "*Allan, let's meet thu, puno ako today, bukas.*" Around 1:28 p.m. of January 26, 2012, petitioner Reyes received a text message from Co Say which says, "*Allan, let's meet in Starbucks Waltermart around 3:00.*" During the said meeting, Co Say told petitioner Reyes to no longer report for work and insisted that he file a resignation letter which petitioner Reyes refused to do because he believed that he had not done anything that would warrant his dismissal from the company. Thus, petitioner Reyes instituted a complaint for constructive dismissal on February 22, 2012 and amended the same complaint on March 29, 2012, changing his cause of action to illegal dismissal.

Respondent Global, on the other hand, claimed that petitioner Reyes was not dismissed from service, but the latter stopped reporting for work on his own volition after repeatedly violating company rules and regulations. According to respondent Global, the following are petitioner Reyes' violations:

> 5. However, during his tenure as operations manager, complainant Reyes proved unequal to the responsibilities imposed upon him as operations manager. On the month of January 2012 alone, he has incurred a total of six (6) days of absences.
>
> 5.1 Without informing respondent GBZ and without its prior consent, complainant Reyes was absent on 02 and 03 January 2012. In violation of company policy and to the utter detriment of respondent GBZ, complainant Reyes

only filed his leave application form on 04 January 2012 or after he has incurred the said absences. xxx

5.2 On 05 and 06 of January 2012, he was again absent from work and filed the leave application form on 04 January 2012. This is in violation of the company policy which requires seven (7) days prior written notice before the date of absence.

5.3 On 09 and 10 of January 2012, complainant Reyes was again absent. As before, he filed the necessary leave application form only after he has incurred the said absences. xxx

5.3 (sic) To make matters worse, he failed to comply with the company procedure as provided in the Company Personnel Policy in the filing of vacation leave. xxx

5.4 As a result of the use of unearned leaves, he was overpaid for a total of five (5) days worth of salary. xxx

6. Furthermore, complainant Reyes incurred a total balance of Seven Thousand Nine Hundred and Seventy-Seven Pesos and Ten Centavos [PhP7,977.10] for personal use of WAP services.

7. As a result of his frequent absences, several work has remained undone. A defective freezer that needed repair was not properly attended to by complainant Reyes. Furthermore, complainant Reyes lied about the true status of the work as well as the fact that he never supervised the repair being conducted. Respondent Co Say then reprimanded complainant Reyes on 19 January 2012 for such unfinished work as well as his untruthful statement.

7.1 To make matters worse, on 18 January 2012, complainant Reyes intentionally lied to respondent Co Say to try to conceal his misdeeds. He knowingly and deliberately told respondent Co Say that he was presently at the warehouse supervising the repair of a freezer that needed work, where in truth, he was not.

7.2 On 19 January 2012, respondent Co Say learned from Mr. Arman Valiente, warehouseman of GBZ, not from complainant Reyes, that the freezer was not ready. As operations manager, complainant Reyes had the duty to ensure that [the] deadline should be met, he also had the responsibility to inform respondent Co Say about the true status of pending works.

7.3 Furthermore, complainant Reyes was supposed to leave for Pampanga on 19 January 2012 at 10 a.m., but failed to do so. Upon inquiry of respondent Co Say, complainant Reyes admitted that he woke up late. Respondent Co Say was then forced to send someone else.

8. On 20 January 2012, complainant Reyes failed and neglected to report for work despite the pending work that needed his attention.

9. On 26 January 2012, upon the initiative of complainant Reyes, respondent Co Say met with complainant Reyes.

10. In the said meeting, complainant Reyes explained and apologize (sic) to respondent Co Say about the lies and violation of company policies as well as the unfinished works. Upon hearing all this, respondent Co Say asked complainant Reyes to report back to work and reasonably explain his dishonesty, serious violation of company policies and absences.

11. Complainant Reyes failed to heed this request of respondent Co Say. In fact, 18 January 2012 was the last time he took steps on the premises of GBZ, despite notice to report for work.

12. On 22 February 2012, complainant Reyes, feeling perhaps that his work will soon be terminated by respondent, "jumped the gun," so to speak, and prematurely filed a Complaint for Constructive Dismissal for no apparent reason at all.[4]

The Labor Arbiter, on November 28, 2012, ruled in favor of petitioner Reyes. The dispositive portion of the decision reads as follows:

WHEREFORE, respondent Global Beer Zero, Inc. is hereby ordered to pay the complainant the following amounts:

1. Full backwages (₱18,000.00/mo. from 1-19-12 to 10-31-12)	₱180,950.00
2. Separation pay (one month's Salary per year from 1-12-09 to 10-31-12)	₱60,000.00
3. Ten percent (10%) attorney's fees	P24,095.00
TOTAL JUDGMENT AWARD	₱265,045.00

The computation of the judgment awards attached to this decision is hereby adopted as an integral part thereof.

SO ORDERED.[5]

According to the Labor Arbiter, petitioner Reyes had no intention of quitting his job as seen from his filing of applications of leaves of absences days before he supposedly abandoned his job and his texting Co Say about

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4 *Id.* at 56-58. (Citations omitted)

5 *Id.* at 98-99.

his work on the day he supposedly abandoned his job. It also found that the accusation that petitioner Reyes committed serious misconduct and was negligent in the performance of his duty is more consistent with a finding that there was dismissal than with a finding that there was an abandonment of employment. The Labor Arbiter further ruled that the word "turnover" in Co Say's last text message to petitioner Reyes indicates that on the date that it was sent, the latter was already expected to turnover his duties to his replacement and belies the claim of Co Say that he asked petitioner Reyes to return to work in order to possibly explain his numerous absences, negligence in performing his duties and serious misconduct.

On appeal, the NLRC affirmed the decision of the Labor Arbiter, thus:

> WHEREFORE, the appeal filed by the respondents is hereby DISMISSED for lack of merit.
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> Accordingly, the Decision of Labor Arbiter Cherry M. Ampil dated November 28, 2012 is AFFIRMED.
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> SO ORDERED.[6]

The NLRC ruled that petitioner Reyes sufficiently alleged the surrounding circumstances of his dismissal and was able to state, with the required particularities how he was terminated from his employment; thus, respondent Global should have proven that the dismissal was legally done. According to the NLRC, respondent Global failed to disprove petitioner Reyes' allegation that he was verbally dismissed twice by Co Say, hence, there is no evidence showing that petitioner Reyes was dismissed from his job for cause and that he was afforded procedural due process.

Respondent filed with the CA a petition for *certiorari* under Rule 65 and the latter reversed the decision of the NLRC, disposing the case as follows:

> WHEREFORE, in light of all the foregoing, the decision dated July 31, 2013 and resolution dated October 31, 2013 of public respondent National Labor Relations Commission NLRC, First Division, in NLRC LAC No. 01-000289-13 are hereby ANNULLED and SET ASIDE.
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> RESULTANTLY, private respondent's complaint for illegal dismissal from employment is hereby DISMISSED.
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> SO ORDERED.[7]

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6 *Id.* at 107-108.

7 *Id.* at 68.

In finding merit to respondent Global's petition, the CA ruled that the "text" messages allegedly sent by Co Say and Tet Manares to petitioner could hardly meet the standard of clear, positive and convincing evidence to prove petitioner's dismissal from employment. It also held that aside from petitioner Reyes' bare assertion that he was verbally terminated from employment by Co Say, no corroborative and competent evidence was adduced by petitioner Reyes to substantiate his claim that he was illegally dismissed. The CA, instead, found that there was no overt or positive act on the part of respondent Global proving that it had dismissed petitioner.

Hence, the present petition, after the denial of petitioner Reyes' motion for reconsideration.

Petitioner Reyes assigns the following errors:

(A)
WHETHER OR NOT RESPONDENT ILLEGALLY DISMISSED PETITIONER.

(B)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN ANNULLING AND SETTING ASIDE THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH AFFIRMED THE LABOR ARBITER IN FINDING THAT ILLEGAL DISMISSAL EXISTS

(C)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN DECIDING THE PETITION FOR CERTIORARI UNDER RULE 65, A SPECIAL CIVIL ACTION, BASED ON QUESTIONS OF FACT AND NOT OF LAW.

(D)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN FINDING THAT THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION IN AFFIRMING THE DECISION OF THE LABOR ARBITER THAT ILLEGAL DISMISSAL WAS APPARENT ON THE PART OF HEREIN RESPONDENT.

(E)
THE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ACCEPTED SPECULATIONS AND POSTULATIONS BASED ON FACT AND NOT OF LAW TO IRREGULARLY RESOLVE THAT THERE WAS NO ILLEGAL TERMINATION BY HEREIN RESPONDENT.

(F)
THE COURT OF APPEALS [GRIEVOUSLY] ERRED IN FINDING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY ALLOWING HEREIN RESPONDENT TO RAISE THE ISSUE ABOUT THE WORD "TURNOVER" A FINDING OF FACT AND OUTSIDE RESPONDENT'S PETITION FOR CERTIORARI AND BEYOND THE NATURE OF RULE 65

(G)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN FINDING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT BELIED THE FACTUAL FINDING OF THE ADMINISTRATIVE AGENCIES A QUO AND INSTEAD MADE ITS OWN FACTUAL FINDING IN A PETITION FOR CERTIORARI UNDER RULE 65.

(H)
THE COURT OF APPEALS [GRIEVOUSLY] ERRED IN MAKING ITS OWN FINDING OF FACT AND IN FINDING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THE LATTER CORRECTLY AFFIRMED IN TOTO, BASED IN FACT AND IN LAW, THE DECISION OF THE LABOR ARBITER IN AWARDING BACKWAGES, SEPARATION PAY, AND ATTORNEYS FEES.

(I)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN FINDING THAT THE NATIONAL LABOR RELATIONS COMMISSION [COMMITTED] GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT INCLUDED HEREIN RESPONDENT'S OFFICER CO SAY AS LIABLE TO PETITIONER.[8]

In its Comment/Opposition dated June 27, 2016, respondent Global enumerates the following counter-arguments:

A.
PETITIONER REYES WAS COMPLETELY IN ERROR WHEN HE ALLEGED THAT THE PETITION FOR CERTIORARI DATED 30 NOVEMBER 2013 ("PETITION FOR CERTIORARI") FILED BY RESPONDENT GBZI IN THE COURT OF APPEALS WAS A MERE REHASH OF THE ARGUMENTS ALREADY ALLEGED IN THE POSITION PAPER BEFORE THE LABOR ARBITER.

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8 *Id.* at 29-30.

B.

THE COURT OF APPEALS CORRECTLY RULED THAT THE "TEXT" MESSAGES AND THE OTHER FINDINGS OF FACTS TAKEN ALTOGETHER DO NOT CONSTITUTE EVIDENCE TO ESTABLISH THAT THERE WAS ILLEGAL DISMISSAL.

C.

THE COURT OF APPEALS WAS CORRECT WHEN IT RULED THAT PETITIONER [REYES HAS] UTTERLY FAILED TO PRESENT AND ESTABLISH CLEAR, POSITIVE AND CONVINCING EVIDENCE THAT HE WAS DISMISSED.

D.

THE COURT OF APPEALS WAS CORRECT WHEN IT RULED THAT THERE WAS NO ILLEGAL DISMISSAL OF PETITIONER REYES FROM HIS EMPLOYMENT WITH RESPONDENT GBZI.[9]

The petition is meritorious.

As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court[10] are reviewable by this Court.[11] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[12] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;

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9 *Id.* at 138.

10 Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. Filing of petition with Supreme Court. A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

11 *Philippine Transmarine Carriers, Inc. v. Cristino,* G.R. No. 188638, December 9, 2015, 777 SCRA 114, 127, citing *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590 (2012).

12 *Id.*, citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.*, 620 Phil. 505, 512 (2009).

6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
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 respondent;'
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[13]

Since the factual findings of the Labor Arbiter and the NLRC are completely different from that of the CA, this case falls under one of the exceptions, therefore, this Court may now resolve the issues presented before it.

Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service.[14] The CA ruled that petitioner Reyes was not able to prove by substantial evidence the fact that he was illegally dismissed. After a review of the records, this Court finds otherwise. It must be remembered that the degree of proof in labor cases is less than that of criminal cases as in the former; it is enough that substantial evidence is proven. As aptly found by the Labor Arbiter and the NLRC, petitioner was able to prove his dismissal from service. As held by the NLRC:

> In this case, the complainant sufficiently alleged the surrounding circumstances of his dismissal. He was able to state, with the required particularities how he was terminated from his employment. He stated in detail that on January 19, 2012, he was not able to report for work early due to his son's illness. He also alleged that respondent Co Say called him and angrily told him not to report for work anymore and that they will have to talk in a week's time. During their meeting held at Starbucks Waltermart, the complainant was detailed enough when he recounted how respondent Co Say reiterated that he can no longer return to his job and even sought his resignation which he refused. While the allegations of the complainant may not be taken as gospel truths at this point, the complainant was able to establish that he was dismissed from his employment contrary to the denials of the respondents. Thus, it is now incumbent upon the respondents to prove that the complainant was validly

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13 *Id.*, citing *Co v. Vargas*, 676 Phil. 463, 471 (2011).

14 *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, 637 Phil. 244, 256 (2010).

> dismissed from his job in the light of the detailed and straightforward narration of the complainant.[15]

Verbal notice of termination can hardly be considered as valid or legal. To constitute valid dismissal from employment, two requisites must concur: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded an opportunity to be heard and to defend himself.[16] In justifying that such verbal command not to report for work from respondent Global's Vice-President for Operations Co Say as not enough to be construed as overt acts of dismissal, the CA cited the case of *Noblejas v. Italian Maritime Academy Phils., Inc.*[17] In the said case, an employee filed an illegal dismissal case after the secretary of the company's Managing Director told him, "*No, you better pack up all your things now and go, you are now dismissed and you are no longer part of this office – clearly, you are terminated from this day on.*" This Court then ruled in that case that there was no dismissal to speak of because the secretary's words were not enough to be construed as overt acts of dismissal. Be that as it may, the factual antecedents of that case is different in this case. In the present case, the one who verbally directed petitioner to no longer report for work was his immediate or direct supervisor, the Vice-President for Operations, who has the capacity and authority to terminate petitioner's services, while in *Noblejas*, the one who gave the instruction was merely the secretary of the company's Managing Director. Hence, in *Noblejas*, this Court found it necessary that the employee should have clarified the statement of the secretary from his superiors before the same employee instituted an illegal dismissal case. In the present case, Co Say's verbal instruction, being petitioner Reyes' immediate supervisor, was authoritative, therefore, petitioner Reyes was not amiss in thinking that his employment has indeed already been terminated.

Furthermore, the "text" messages petitioner Reyes presented in evidence were corroborative. The CA, however, held that those "text" messages could hardly meet the standard of clear, positive and convincing evidence to prove petitioner Reyes' dismissal from employment. It added that those conversations transpired more than ten (10) days after petitioner Reyes stopped reporting for work and that the Labor Arbiter and the NLRC took those messages out of context, the same having been lumped together for the purpose of supporting petitioner Reyes' claim of dismissal from employment. Such observation of the CA is more conjectural rather than factual. As rightly concluded by the NLRC, those "text" messages, viewed in connection with the factual antecedents and the narration of the petitioner, prove that there was indeed a dismissal from employment. As held by the NLRC:

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15 *Rollo*, pp. 104-105.

16 *Nacague v. Sulpicio Lines, Inc.*, 641 Phil. 377, 385 (2010).

17 735 Phil. 713 (2014).

> In weighing the arguments of the parties in this case, it is important to examine the evidence presented. In support of his claim that he was illegally dismissed, the complainant submitted machine copies of the purported text messages he received from the respondents. These text messages tend to show that the complainant was actually dismissed from his work. The text message purportedly sent by respondent Co Say that: "Tet will contact you plus turnover" was clear enough. A literal interpretation of said text message leaves no doubt that the complainant's days with the respondent company was numbered. The wor[d] "turnover" simply connotes "to transfer", "to yield" or "to return." In employment parlance, the wor[d] "turnover" is associated with severance of employment. An employee makes proper "turnover" of pending work before he leaves his employment.
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> Interestingly, the text message of respondent Co Say was followed by another message from Ms. Tet Manares which stated that: "Kuya, pinaayos ko na kay gen salary mo." This is consistent with the first message that Tet will contact the complainant. True enough, Ms. Tet Manares contacted the complainant informing him that his salary was already being prepared. The two (2) text messages, when taken together, support complainant's insistence that he was actually dismissed from his work. Respondent Co Say's text message regarding "turnover" and Ms. Manares' text message regarding the preparation of the complainant's salary were quite consistent with the complainant's allegation that he was dismissed by respondent Co [Say] during their telephone conversation and during their meeting at Starbucks Waltermart.
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> The respondents' assertion that the purported text messages submitted by the complainant should not be given credence as the complainant failed to authenticate the same in accordance with the Rules of Court, deserves scant consideration. It must be emphasized that in labor cases, the strict adherence to the rules of evidence may be relaxed consistent with the higher interest of substantial justice. In labor cases, rules of procedure should not be applied in a very rigid and technical sense. They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed. (Tres Reyes v. Maxim's Tea House, G.R. No. 140853, February 27, 2003, 398 SCRA 288)[18]

It is well settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases.[19] Thus, the "text" messages may be given credence especially if they corroborate the other pieces of evidence presented. Again, while as a rule, the Court strictly adheres to the rules of procedure, it may take

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[18] *Rollo*, pp. 105-106.

[19] *Anib v. Coca-Cola Bottlers Phils., Inc.*, 642 Phil. 516, 521 (2010).

exception to such general rule when a strict implementation of the rules would cause substantial injustice to the parties.[20]

Having thus proven the fact of being dismissed, the burden to prove that such dismissal was not done illegally is now shifted to the employer. In illegal dismissal cases, the burden of proof is upon the employer to show by substantial evidence that the employee's termination from service is for a just and valid cause.[21] In this case, respondent Global asserts that there was no dismissal; instead, there was an abandonment on the part of petitioner Reyes of his employment. The Labor Arbiter, however, found that on the days that petitioner Reyes supposedly abandoned his employment according to respondent Global, no such indication was found as petitioner filed applications for leave and even sent "text" messages to his immediate or direct superior regarding his work, thus:

> The applications for leaves filed by the complainant disclose the following information:
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> | Date Filed | Dates of Leave | Reason for Leave | No. of unused leave |
> |---|---|---|---|
> | 1-4-12 | Jan. 2, 3, 5, 6 | (blank) | 8 |
> | 1-12-12 | Jan. 9,10 | (blank) | 6 |
>
> Outgoing text messages on the complainant's mobile phone show that on January 1, 2012 he sent Tet (Maria Teresa) Manares, the respondent corporation's Administrative and Human Resources Officer, a text message informing her that he would be absent on January 2 and January 3 because "Yuan" was sick and had no nanny, and that on January 9, 2012, he sent her another text message to inform her that he would be absent that day. Other messages recorded on the complainant's mobile phone reveal that on January 18 and 19, 2012, he sent respondent Co Say, the VP for Operations of the respondent corporation, five (5) text messages regarding his work; that on January 24, 2012, respondent Co Say sent him a text message asking him to meet him on January 26, 2012; that on January 26, 2012, respondent Co Say sent him a text message telling him to meet him at Starbucks Waltermart at 3:00; and, that on January 30, 2012, respondent Co Say sent him the following text message: "Tet will contact you plus the turnover." It is significant that respondent Co Say's last text message was discussed in the complainant's second affidavit, and that the respondents never impugned the genuineness and due execution of the text messages adduced in evidence by the complainant.
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> The complainant's actuations – filing applications for leaves of absence days before he supposedly abandoned his job and texting respondent Co Say about his work on the day he supposedly abandoned his job – are more consistent with the theory that his services were

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20 *Locsin v. Nissan Lease Phils., Inc.*, 648 Phil. 596, 606 (2010).

21 *Prudential Guarantee and Assurance Employee Labor Union, et al. v. National Labor Relations Commission*, 687 Phil. 351, 369 (2012).

terminated by respondent Co Say than with the theory that he abandoned his job. Evidently, he had no intention of quitting his job.[22]

Abandonment requires the deliberate, unjustified refusal of the employee to resume his employment, without any intention of returning.[23] For abandonment to exist, two factors must 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 element as the more determinative factor being manifested by some overt acts.[24] In this case, no such abandonment was proven by respondent Global. In fact, petitioner Reyes would not have filed a case for illegal dismissal if he really intended to abandon his work. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work.[25]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated March 22, 2016, of petitioner Allan John Uy Reyes is **GRANTED**. Consequently, the Decision dated August 27, 2015 of the Court of Appeals is **REVERSED** and **SET ASIDE,** and the Decision dated July 31, 2013 of the National Labor Relations Commission in NLRC LAC No. 01-000289-13 is **AFFIRMED** and **REINSTATED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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22 *Rollo*, pp. 96-97.

23 *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 125-126 (2012).

24 *Garden of Memories Park and Life Plan, Inc. v. National Labor Relations Commission*, 681 Phil. 299, 314 (2012).

25 *JOSAN, JPS Santiago Cargo Movers v. Aduna*, 682 Phil. 641, 648 (2012).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ESTELA M. PERLAS BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
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