Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NILO D. LAFUENTE and BILLY C. PANAGUITON, *Petitioners,*	**G.R. NO. 247410** Present:
- *versus* -	LEONEN, *J., Chairperson,* HERNANDO, INTING, DELOS SANTOS, and LOPEZ, J., *JJ.*
DAVAO CENTRAL WAREHOUSE CLUB, INC., and LILY S. YAP, Corporate Secretary, *Respondents.*	Promulgated: March 17, 2021 MistDcBatt

x - x

DECISION

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated July 20, 2018 and the Resolution[3] dated January 23, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 08394-MIN. The assailed Decision and Resolution affirmed the Decision[4] dated June 30, 2017 and the Resolution[5] dated September 27, 2017 of the National Labor Relations Commission (NLRC) in NLRC No. MAC-03-014836-2017 (RAB-XI-11-00803-16) which reversed the Decision[6] dated January 25, 2017 of the Labor Arbiter (LA) and ruled that there was valid dismissal from employment.

---

[1] *Rollo*, pp.12-34.

[2] *Id.* at 168-179; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon, concurring.

[3] *Id.* at 192-193; penned by Associate Justice Oscar V. Badelles with Associate Justices Edgardo T. Lloren and Tita Marilyn Payoyo-Villordon, concurring.

[4] *Id.* at 43-53; penned by Commissioner Elbert C. Restauro with Presiding Commissioner Bario-Rod M. Talon and Commissioner Proculo T. Sarmen, concurring.

[5] *Id.* at 68-69.

[6] *Id.* at 37-41; penned by Labor Arbiter Merceditas C. Larida.

The Antecedents

The case stemmed from a complaint for illegal dismissal with prayer for payment of holiday pay, overtime pay, proportionate 13th month pay, service incentive leave and separation pay filed by Nilo D. Lafuente (Lafuente) and Billy C. Panaguiton (Panaguiton) (collectively, petitioners) against Davao Central Warehouse Club, Inc. (DCWCI) and Lily S. Yap (Yap) (collectively, respondents).[7]

DCWCI hired Lafuente in 1993 as Dispatching-in-Charge. On the other hand, DCWCI hired Panaguiton in 1995 as Lafuente's Assistant Dispatcher.[8]

On September 5, 2016, DCWCI issued a preventive suspension against petitioners through a Notice of Preventive Suspension with Investigation Hearing.[9] DCWCI immediately placed them under preventive suspension and charged them with "*Gross and Habitual Neglect by the Employee of His Duties*" and for "*Fraud/Willfull Breach by the Employee of the Trust Reposed on Him by His Employer.*" DCWCI further required them to explain in writing why they should not be administratively charged for the missing/loss of several appliances in the warehouse under their watch.[10]

In response, Lafuente vehemently denied having knowledge of the incident. He explained that he had no authority to stay in the warehouse and that the dispatching area was more or less 60 meters away from the warehouse. As a Dispatching-in-Charge, he only recorded the model and serial numbers of the appliances for dispatch and assisted in carrying the withdrawn items from the warehouse only in cases of several orders. He added that before the withdrawn units were loaded for delivery to the branch, the guard on duty would verify and inspect the items.[11]

In Panaguiton's written explanation,[12] he narrated that he would take over the checking of the units and handle the requested items for

---

7 *Id.* at 37.
8 *Id.* at 37, 44.
9 *Id.* at 93-94, 95-96.
10 *Id.* at 44.
11 See Letter-reply dated September 9, 2016 of Nilo D. Lafuente, *id.* at 63-64.
12 See handwritten Letter dated September 10, 2016 of Billy C. Panaguiton, *id.* at 65-66.

dispatch only when Lafuente is not around. He would also bring the items for loading when no utility personnel is present. He recounted that when he discovered some missing units in the warehouse, he told his manager about it; the manager, however, just instructed him to first find the missing appliances. Despite his efforts, he only found empty appliance boxes.

After the conduct of an investigation, DCWI, in two similarly worded Memoranda[13] dated October 5, 2016, found petitioners guilty of Gross and Habitual Neglect by the Employee of his Duties, and terminated their employment, portions of which are cited herein to wit:

> x x x Based on the explanations you have offered in your letter reply received September 10, 2016 and during the Investigation hearing September 12, 2016, you acknowledged to be the Dispatching in-charge for the Household and Appliance department, and that you knew about the issue on missing units prior to the disclosure by Sammuel Llantada to Head Office staff. You mentioned about the charges incurred and reversal of such charges when Mr. Llantada cleared the issue but no audit report was submitted for verification and evaluation. During the investigation hearing, you admitted to have not implemented monthly actual inventory. When you had doubts about the missing units, you haven't requested for actual count/audit and were shocked to found [*sic*] out of the quantities lost in the area.
>
> After careful consideration of all the facts and circumstances obtaining your case, we have determined that your explanation is unacceptable. As a dispatcher, it is your main duty and responsibility to see to it that your area of jurisdiction is in order. That, all units taken out from the department must have proper documentation whether it be SOLD or for TRANSFER units. You were not able to reach the expectation of the company as Dispatcher or Releasing in-charge. Your failure to perform work due to gross negligence has resulted to the damage and prejudice of the company's interest and is in direct violation of the established company rules and regulations which warrants the termination of your employment.[14]

Aggrieved, petitioners filed a complaint against DCWCI and Yap for illegal dismissal. They raised that the first notice did not show in detail their alleged infraction; thus, null and void. They insisted that they were not remiss in their duties and functions as dispatchers; that they have no knowledge of or participation in the qualified theft incident; and

---

[13] *Id.* at 109-112.
[14] *Id.* at 109, 111.

that the incident was attributable to the bodega-in-charge, the security guard, the appliance manager, Mr. Samuel Llantada (Llantada), and Ms. Lovely Viduya. They asserted that it was through Lafuente's efforts that the thief, Rambo Menguito Dospueblos (Dospueblos), DCWCI's utility man and a cousin of Lafuente, voluntarily surrendered to the authorities resulting in the recovery of a few stolen television units.[15]

Respondents countered that petitioners' dismissal was anchored on Article 297 [282](b)[16] of the Labor Code of the Philippines (Labor Code) on gross and habitual neglect of duties. They insinuated that petitioners did not use reasonable care and caution when 29 television sets were taken out of its bodega without proper orders. They argued that, although nine sets were recovered, they incurred actual losses amounting to ₱448,056.00 which petitioners' long years of service or unblemished record could not mitigate.[17]

Ruling of the LA

In the Decision[18] dated January 25, 2017, the LA ruled that petitioners have been illegally dismissed from employment; thus, it granted them separation pay in lieu of reinstatement, plus 13th month pay and service incentive leave pay.

The LA held that the dismissal of petitioners for gross and habitual neglect of duties and fraud/willful breach of trust was unjustified. For the LA, petitioners' primary duty was simply to ascertain that all the requirements for the final release of items sold or transferred to DCWCI's sister companies were met. They were not in charge of the warehouse security and that the presence of the company encoder and bodega-in-charge showed that petitioners were not directly accountable for the stocks inside the warehouse.[19]

The LA added that, assuming petitioners were also tasked to

[15] *Id.* at 45.

[16] Article 297[282](b) of the Labor Code of the Philippines provides:

ARTICLE 297. [282] *Termination by Employer.* — An employer may terminate an employment for any of the following causes:

x x x

(b) Gross and habitual neglect by the employee of his duties;

x x x

[17] *Rollo*, pp. 46-47.

[18] *Id.* at 37-41.

[19] *Id.* at 38-39.

conduct inventory of stocks, the extreme penalty of dismissal was incommensurate for their failure to do so in light of the concomitant accountabilities of DCWCI's company encoder and bodega-in-charge.

Dissatisfied, respondents filed an appeal and asserted that petitioners, as dispatchers, were strategically stationed at the entrance and exit of the warehouse where every item for disposal could pass through them for inspection. For respondents, the entire warehouse was petitioners' place of work and their job was to control, verify, and inspect every disposal of items while the warehouse was open.

Ruling of the NLRC

In the Decision[20] dated June 30, 2017, the NLRC granted respondents' appeal and ruled that petitioners were validly dismissed from employment for gross and habitual neglect of their duties. The NLRC pointed out that although it was not shown that petitioners stole the appliances in the warehouse, they were nonetheless liable because of their failure to monitor and support the day to day operations of the store and properly account for all the stocks.

The NLRC denied petitioners' motion for reconsideration in the Resolution[21] dated September 27, 2017. Consequently, petitioners filed a Petition for *Certiorari*[22] with the CA praying that the Decision of the NLRC be set aside and the ruling of the LA be reinstated with modification as to backwages.

Ruling of the CA

In the assailed Decision,[23] the CA dismissed the petition for lack of merit and upheld the NLRC. It ruled that the NLRC did not gravely abuse its discretion when it vacated and set aside the ruling of the LA, explaining as follows:

> In the incident that transpired on August 31, 2016, twenty-nine (29) television sets went missing during the watch of petitioners. As

[20] *Id.* at 43-53.
[21] *Id.* at 68-69.
[22] *Id.* at 144-165.
[23] *Id.* at 168-179.

> admitted by petitioners themselves, it is their duty to check and record the model and serial numbers of all items that are released from the bodega in their logbook for bodega purposes. Apparently, petitioners failed to exercise due or even ordinary diligence to protect the company property as the missing items were taken out of the bodega, under their watch, without the proper documentation. Had the petitioners discharged their duties, no loss would have been incurred. As noted by the NLRC, the twenty nine lost items were big ones and could not be easily concealed. They could not have passed through the process of inspection by the dispatchers prior to their final disposal without being noticed.
>
> Notably, [petitioners'] negligence, although gross, was not habitual. In view of the considerable resultant damage, however, the Court finds that the cause is sufficient to dismiss them from employment. x x x[24]

Petitioners filed their Motion for Reconsideration,[25] but the CA denied the motion in the Resolution[26] dated January 23, 2019.

Hence, the instant petition.

The Court's Ruling

The petition lacks merit.

As a general rule, a petition for review on *certiorari* under Rule 45 of the Rules of Court precludes the Court from resolving factual issues, However, the instant case presents a situation where there is a divergence between the assessment of petitioners' case by the LA, the NLRC, and the CA calling for the application of the exception where the Court may be urged to resolve factual issues.

The propriety of the dismissal of petitioners from employment is rooted on Article 297 [282] of the Labor Code which mandates the concurrence of two requisites: (a) the dismissal must be for any of the just causes provided for under the Labor Code; and (b) the employee

---

[24] *Id.* at 175.
[25] *Id.* at 180-189.
[26] *Id.* at 192-193.

must be afforded an opportunity to be heard and defend himself.[27] Otherwise stated, an employer can terminate the services of an employee for just and valid causes which must be supported by clear and convincing evidence. Further, procedurally, the employee must be given notice, with adequate opportunity to be heard before he is notified of his actual dismissal for cause.[28]

The petitioners' preventive suspension did not amount to termination of employment.

Petitioners argue that DCWCI immediately terminated their employment "*under the cloak of preventive suspension on the First Notice*" dated September 5, 2016 in violation of their right to due process envisaged by the twin notice rule under Article 297 [282] of the Labor Code.

The pertinent provision regarding preventive suspension is Sections 8 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code (Omnibus Rules), as amended by Department Order No. 9, Series of 1997, viz.:

> Section 8. *Preventive suspension.* — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

Through preventive suspension, an employer safeguards itself from further harm or losses that may be further caused by the erring employee. This principle was explained by the Court in *Gatbonton v. NLRC*:[29]

> Preventive suspension is a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee. The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.[30]

---

[27] *Permex Inc. v. National Labor Relations Commission*, 380 Phil. 79, 85-86 (2000), citing *Salafranca v. Philamlife Village Homeowners Asso. Inc.*, 360 Phil. 652 (1998); *Mirano v. NLRC*, 336 Phil. 838, 844 (1997); *Molato v. NLRC*, 334 Phil. 39, 41-42 (1997).

[28] *Id.* Citations omitted.

[29] 515 Phil. 387 (2006).

[30] *Id.* at 393, citing *PAL v. NLRC (2nd Div.)*, 354 Phil. 37, 43 (1998).

The concept was applied by the Court in *Bluer Than Blue Joint Ventures Company, et al. v. Esteban*,[31] where it was ruled:

> Preventive suspension is a measure allowed by law and afforded to the employer if an employee's continued employment poses a serious and imminent threat to the employer's life or property or of his co-workers. It may be legally imposed against an employee whose alleged violation is the subject of an investigation.

Here, it should be pointed out that petitioners have mistaken their preventive suspension as a violation of the twin notice rule. Preventive suspension is not the dismissal from employment contemplated under the provisions of the Labor Code which would require compliance with the twin notice rule. It is merely a disciplinary measure within the ambit of the management's exercise of prerogative pending the conduct of investigation for an employee's possible infractions. Considering that petitioners were performing functions that involved handling of DCWCI's properties, respondents had every right to protect their assets and operations pending their investigation. It was only prudent for DCWCI to preventively suspend them because they were also suspects to the stealing incident, and DCWCI had to determine whether they had conspired with the culprit, Dospueblos, who coincidentally is Lafuente's cousin.

The Court is likewise not convinced that there was a violation of petitioners' due process rights. Based from the records, the first notice denominated as Notice of Preventive Suspension with Investigation Hearing dated September 5, 2016 charged petitioners of "*Gross and Habitual Neglect by the Employee of His Duties*" and of "*Fraud/Willfull Breach by the Employee of the Trust Reposed on Him by His Employer.*" In this notice, petitioners were given a period of five days from notice to explain the several missing or lost appliances in the warehouse under their watch which they complied with. Petitioners were even afforded the chance to be heard during the company hearing before the issuance of the second notice[32] on petitioners' termination from employment.

DCWCI having acted within its rights in preventively suspending petitioners, the Court brushes aside the latter's contention that they were

---

[31] 731 Phil. 502, 513-514 (2014).
[32] *Rollo*, pp. 109-112.

immediately terminated from employment under the cloak of a preventive suspension notice in violation of their right to due process.

Petitioners were grossly and habitually negligent of their duties.

Petitioners maintain that the CA erred in its conclusion that the missing properties were under their watch because they are not directly accountable to conduct a monthly inventory of stocks and that there is a bodega-in-charge, a duty guard in the warehouse, and an encoder of incoming and outgoing stocks.

The Court is not swayed. In order to warrant the dismissal of the employee for just cause, Article 297 [282](b) of the Labor Code requires the negligence to be gross and habitual.[33] Gross negligence is defined as the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[34] Habitual neglect connotes repeated failure to perform one's duties for a period of time, depending upon the circumstances, which should not be limited to a single or isolated act of negligence.[35] However, in several cases, the Court has departed from this requirement, like where the employer suffered substantial losses because of the gravity of negligence displayed by the employee.[36]

Undisputedly, petitioners were dispatchers of DCWCI whose primary duties were to control, verify, and inspect every disposal of items coming from the warehouse. They were stationed in a strategic location where every item could pass through them for inspection.[37] As the employees in charge of controlling, verifying, and inspecting every disposal of units from the warehouse, the Court cannot subscribe to their claim that they were not expected to conduct an inventory of the appliances in the warehouse. Had petitioners regularly performed their duties as dispatchers, which necessarily included the conduct of an

---

[33] *Sugarsteel Industrial, Inc., et al. v. Albina, et al.*, 786 Phil. 318, 327 (2016).

[34] *Id.*, citing *Sanchez v. Rep. of the Phils.*, 618 Phil. 228, 237 (2009).

[35] *Id.*

[36] See *LBC Express - Metro Manila, Inc., et al. v. Mateo,* 607 Phil. 8 (2009) and *Fuentes v. National Labor Relations Commission*, 248 Phil. 980 (1988).

[37] See Comment (to the Petition for Review on *Certiorari* dated June 21, 2019) dated November 21, 2019, *rollo*, p. 218.

inventory, the theft of the television sets could have been averted or at least discovered at once while the losses were still minimal. Also, the necessary investigation and security measures could have been immediately conducted to prevent further pilferage.

Moreover, what aggravated petitioners' gross and habitual negligence was their failure to report the incident after discovering that there were already missing stocks in the warehouse. Petitioners themselves admitted during the company hearing that they already knew of the missing stocks even before the management conducted the surprise inventory and even prior to the Spot Report[38] submitted by Llantada on September 3, 2016.[39] As dispatchers tasked to control, verify, and inspect every disposal of items from the warehouse, it was incumbent upon them to urgently report any irregularity in the warehouse, much more, any loss occurring therein. While there is no direct evidence of theft on their part, or proof of their conspiracy with Dospueblos, the Court is puzzled as to why they never bothered to report the matter so that an investigation could be held at once. They may not have been directly involved in the pilferage of DCWCI's products, but their negligence and indifference facilitated the unauthorized dispatch of products out of DCWCI's warehouse.

The Court quotes with approval the apt disquisition of the NLRC:

> We observe though that neither of the parties presented any documentary evidence, such as employment contracts, to establish their claims relative to the actual nature of Nilo and Billy's daily tasks. But what is apparent and substantially proven is that both acted as dispatchers and that appellant Davao Central lost several valuable items during their watch. It also established that it is the common duty and responsibility of the complainants-appellees, as such dispatchers, to thoroughly check all items that are dispatched from the bodega. It is also established, as it is not disputed that the items were lost during their watch. Thus, complainants cannot just make a general denial and wash their hands clean, so to speak from any responsibility arising from said incident. Had they exercised due care or even ordinary diligence in the performance of their duties to protect appellant Davao Central's property, no loss would have been incurred. It is immaterial that appellees were not among those who actually stole the television sets. They may not have been directly involved in the thievery but they are nonetheless complicit because they miserably failed to

[38] *Rollo*, p. 92.

[39] As culled from the Memoranda dated October 5, 2016 issued by Davao Central Warehouse Club, Inc., *id.* at 109, 111.

> perform their dutiesin [*sic*] monitoring and supporting the day to day operations of the store and ensuring that all the stocks were properly accounted for. The nature of their tasks and the fact of huge loss suffered by appellant dictate that they are answerable to the losses that their employer incurred.[40]

An employer has free reign over every aspect of its business, including the dismissal of his employees as long as the exercise of its management prerogative is done reasonably, in good faith, and in a manner not otherwise intended to defeat or circumvent the rights of workers.[41] Under the circumstances of the case, the Court finds no bad faith on DCWCI's part in dismissing petitioners in view of the gravity of the negligence they committed and the resultant damage and losses DCWCI sustained.

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision dated July 20, 2018 and the Resolution dated January 23, 2019 rendered by the Court of Appeals in CA-G.R. SP No. 08394-MIN are **AFFIRMED**.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

---

[40] *Id.* at 50.

[41] *FJ Lhuillier, Inc. v. Camacho*, 806 Phil. 413, 425 (2017), citing *Imasen Philippine Manufacturing Corporation v. Alcon, et al.*, 746 Phil. 172, 180 (2014).

RAMON PAUL L. HERNANDO
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice