



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CATTLEYA R. CAMBIL,
Petitioner,

G.R. No. 245938

Present:

- versus -

GESMUNDO, C.J., *Chairperson,*
CAGUIOA,
INTING,
GAERLAN, and
DIMAAMPAO, JJ.

KABALIKAT PARA SA
MAUNLAD NA BUHAY, INC.,
Respondent.

Promulgated:

APR 05 2022

X

RESOLUTION

INTING, J.:

This is a Petition for Review on *Certiorari*¹ assailing the Decision² dated January 31, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 154165. The CA granted the Petition for *Certiorari*³ filed by Kabalikat Para sa Maunlad na Buhay, Inc. (KMBI), and reversed and set aside the Decision⁴ dated September 29, 2017 and the Resolution⁵ dated October 30, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-002652-17 (RAB-IV-09-01272-16-C).

¹ *Rollo*, pp. 3-30.

² *Id.* at 33-50; penned by Associate Justice Ramon A. Cruz with Associate Justices Ramon M. Bato, Jr. and Ronaldo Roberto B. Martin, concurring.

³ *Id.* at 51-76-A.

⁴ *Id.* at 78-90; penned by Commissioner Nieves E. Vivar-De Castro with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra, concurring.

⁵ *Id.* at 102-103.

The Antecedents

On May 30, 2016, Cattleya R. Cambil (petitioner) was hired by KMBI as Program Officer for Credit Group – Upper Cavite Branch on a probationary basis.⁶ In order to familiarize petitioner with her duties, KMBI instructed her to attend a one-week training called Basic Operations Training Program from June 1 to 7, 2016⁷ and provided her with the following employment packets on June 2, 2016:⁸ (1) Appointment Letter;⁹ (2) Performance Standards;¹⁰ (3) KMBI Code of Ethics;¹¹ (4) Job Description;¹² and (5) Code of Conduct.¹³ Her Appointment Letter reads:

Dear Ms. Cambil,

Welcome to the team.

You are hereby notified of your employment with KMBI as Program Officer for Credit Operations Group - Upper Cavite Branch. Your appointment to said position would be on probationary status starting from May 30, 2016 to November 26, 2016. As such, you will be receiving monthly wage of Ten Thousand Six Hundred Pesos (Php 10,600.00).

In accepting this appointment, you are accepting the following conditions:

1. You will endeavor in every way to advance the interest of KMBI, to observe all rules and regulations made by KMBI, and carry out the orders and instructions of your superior consistent with the established policies and procedures of KMBI.
2. *In case you are found to have violated any of the provisions under the prohibition section of the KMBI Personnel Policy Manual, of which were discussed with you, your term of service will be immediately terminated following the administrative investigation policy of KMBI.*
3. *You are required to be working during duty hours. Service must be never left unattended.*
4. You are not to have any outside practice and/or employment unless expressly agreed.

⁶ Id. at 34.

⁷ Id. at 35.

⁸ Id. at 7.

⁹ Id. at 104.

¹⁰ Id. at 105.

¹¹ Id. at 106.

¹² Id. at 107-108.

¹³ Id. at 35.

5. You are willing to be assigned in any of the existing branches of KMBI.
6. In the event of your resignation from the organization, you are required to comply with all the requirements for the processing of your clearance. In case of your failure to comply with the proper processing of your monetary and property clearance within a reasonable period of time, you are giving the organization the right to offset your claims against your liability in the organization.
7. *During this period, KMBI reserves the right to terminate your services.*

Also, attached is a copy of our Company's Code of Ethics and Code of Conduct for Program Officer, which you are expected to abide by during your tenure of employment in KMBI.

Sincerely,

[Signed]
SHARON O. DIONCO
Officer-in-Charge
Human Capital Department

[Signed]
Conforme: Cattleya R. Cambil
Date: 02/06/2016¹⁴

Eventually, KMBI terminated petitioner's services. The parties had conflicting dates as to when KMBI terminated petitioner's contract. According to petitioner, she was terminated on July 22, 2016;¹⁵ but for KMBI, petitioner was terminated on August 1, 2016.¹⁶

Petitioner narrated the following:

She reported for work on July 19, 2016 despite not feeling well. Her condition got worse, and thus, she texted her co-program officer Arlene Perey that she was going straight home.¹⁷ Upon the advice of Dr. Dante E.M. Belleza,¹⁸ she did not report for work for the next two days.¹⁹

¹⁴ Id. at 104. Emphasis omitted; italics supplied.

¹⁵ Id. at 170.

¹⁶ Id. at 140.

¹⁷ Id. at 34.

¹⁸ Id. at 181.

¹⁹ Id. at 34.

She returned to work on July 22, 2016 and immediately presented herself to her supervisor, Mark Edwin Espos (Espos). To her surprise, Espos told her that her services had been terminated. During the lunch period that day, petitioner talked to Espos again but to no avail. Before she went home, Espos told her that she will receive a text if she needed to report for work on Monday, July 25, 2016. She waited for the text message, but she did not receive a single text message from Espos. From July 25 to 28, 2016, KMBI did not allow her to go to her centers and did not give her any task.²⁰

KMBI narrated its own version of events as follows:

KMBI directed petitioner to accomplish the self-evaluation section of the Performance Evaluation Report on July 22, 2016 after she left her station on July 19, 2016 without informing any of her superiors.²¹ Thereafter, Espos evaluated petitioner's performance on July 25, 2016 and gave her an overall rating of 67.50%.²² Consequently, Branch Manager Susana Hembrador (Hembrador), through an Interoffice Memo²³ addressed to Joel D. Clavecilla, KMBI's Acting Area Manager, recommended that petitioner's probationary contract be terminated.

In its Position Paper,²⁴ KMBI maintained that petitioner's probationary contract was terminated due to her failure to meet the prescribed rating and standards made known to her at the start of her employment.²⁵ It stressed that petitioner did not create new centers during her probationary employment—all of petitioner's five centers were turned over to her by other program officers. In addition, there were no new loan disbursements on her record.²⁶

To counter petitioner's allegation that she was not allowed to go to her centers and was not given any task starting July 25, 2016, KMBI presented her attendance record for the month of July 2016 which showed that she reported for work from July 25 until July 28, 2016. In the output column of her attendance record from July 25 to 27, 2016, petitioner wrote "center meeting and collection" with the remarks

²⁰ Id. at 34-35.

²¹ Id. at 54.

²² See Performance Evaluation Report dated July 25, 2016, id. at 128-129.

²³ Id. at 123.

²⁴ Id. at 139-147.

²⁵ Id. at 142-143.

²⁶ Id. at 142.

“DONE.”²⁷ KMBI admitted, however, that petitioner’s salary was put on hold since July 25, 2015 pursuant to KMBI’s organization manual in view of the pending recommendation for the termination of her contract.²⁸

On July 28, 2016, petitioner received a show cause letter²⁹ dated July 20, 2016, viz.:

SUBJECT : Abandonment of Work

The undersigned would like to inform you that you have violated our company rules & regulations for being absent without official leave last July 19-21, 2016. As per policy, you have violated the following:

1. Section A.9 “Leaving work assignment or company premises during official working hours” which merits 5 days suspension.
2. Section A.13 “Abandonment of work” which merits Dismissal for the first offense.

With these, you are given 3 working days from receipt thereof to submit your explanation.

Thank you and God bless.

Sincerely,

[Signed]
MARK EDWIN D. ESPOS
OIC-Program Unit Supervisor Unit B

Endorsed By:

[Signed]
SUSANA C. HEMBRADOR
Branch Manager

RECEIVED
[Signed] JULY 28, 2016
CAMBIL, CATTLEYA R.³⁰

On the same date, KMBI served petitioner with an interoffice

²⁷ CA rollo, p. 53.

²⁸ Rollo, p. 150.

²⁹ Id. at 124.

³⁰ Id. at 80, 124.

memo entitled *Proof of talk about End of Contract*³¹ which she refused to sign.³² Petitioner, upon learning that Espos and Hembrador recommended the termination of her probationary contract, became hostile and told Hembrador: “[m]ag-ingat ka mam, attorney at hepe lang naman ng NBI ang kausap ko.”³³ By reason thereof, Hembrador issued another interoffice memo dated July 28, 2016 entitled *Disrespect*³⁴ but was unserved because petitioner had left the office after their verbal altercation.³⁵ Apparently aggrieved, petitioner filed a Single Entry Approach complaint³⁶ with the Department of Labor and Employment on the same day.

Petitioner failed to comply with the show cause letter dated July 20, 2016 and the interoffice memo dated July 28, 2016 with the subject title *Disrespect*; hence, on August 1, 2016, KMBI sent a notice of termination of her probationary employment³⁷

The Labor Arbiter (LA) Ruling

On June 20, 2017, the LA rendered a Decision³⁸ in favor of petitioner. The dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant as having been illegally dismissed. Accordingly, respondent KABALIKAT PARA SA MAUNLAD NA BUHAY, INC. is hereby ordered to pay complainant as follows:

1. P6,013.43 as unpaid wages; and
2. P52,000 as wages corresponding to the unexpired portion of her probationary contract.

All other claims are hereby dismissed for lack of basis.

SO ORDERED.³⁹

According to the LA, the show cause letter issued to petitioner

³¹ Id. at 125.

³² Id. at 111.

³³ Id.

³⁴ Id. at 126.

³⁵ Id. at 111.

³⁶ Id. at 132.

³⁷ Id. at 134.

³⁸ Id. at 189-194; rendered by Labor Arbiter Enrico Angelo C. Portillo.

³⁹ Id. at 194.

stating that she is being charged with abandonment of work is contrary to KMBI's allegation that petitioner was dismissed due to her failure to qualify as a regular employee. With respect to petitioner's absences, the LA found that it cannot be categorized as an abandonment from work because it was due to illness as evidenced by a medical certificate.⁴⁰

KMBI appealed the above Decision to the NLRC.

The NLRC Ruling

In the Decision⁴¹ dated September 29, 2017, the NLRC affirmed the LA's Decision.⁴²

The NLRC denied KMBI's appeal on the strength of the following observations: (1) the *Proof of talk about End of Contract* did not state that petitioner was dismissed for her failure to meet the standards of her probationary employment as KMBI asserted;⁴³ (2) KMBI failed to include the performance evaluation report's criteria in the performance standards communicated to her;⁴⁴ and (3) petitioner was able to establish five centers with 105 clients for the prescribed period.⁴⁵

KMBI moved for reconsideration,⁴⁶ but the NLRC denied it in Resolution⁴⁷ dated October 30, 2017.

Undeterred, respondent filed a Petition for *Certiorari* with the CA.

The CA Ruling

The CA, in the assailed Decision⁴⁸ dated January 31, 2019, reversed the Decisions of the NLRC and the LA; thus:

⁴⁰ Id. at 193.

⁴¹ Id. at 78-90.

⁴² Id. at 89.

⁴³ Id. at 85.

⁴⁴ Id. at 87-88.

⁴⁵ Id. at 88.

⁴⁶ See Motion for Reconsideration dated October 23, 2017, id. at 91-100.

⁴⁷ Id. at 102-103.

⁴⁸ Id. at 33-50.

WHEREFORE, premises considered, the petition is GRANTED. The Decision dated September 29, 2017, as well as the Resolution dated October 30, 2017, both issued by the National Labor Relations Commission (NLRC) in LAC No. 08-002652-17 (RAB-IV-09-01272-16-C) are REVERSED and SET ASIDE. The Complaint filed by private respondent Cattleya R. Cambil therein is hereby DISMISSED.

SO ORDERED.⁴⁹

The CA found that contrary to the findings of the NLRC, petitioner's act of absenting herself without leave for three days merely triggered the evaluation of her work performance as a probationary employee. According to the CA, the *Proof of Talk about End of Contract* is merely a recommendation to end petitioner's contract considering that only the Human Capital Department has the authority to effect termination. Thus, the CA deemed the document to be a mere "heads up" of petitioner's imminent termination.⁵⁰

The CA further held that petitioner failed to meet the performance standards made known to her during her Basic Operations Training Program because she did not contribute to the creation of new centers.⁵¹

In fine, the CA ruled that KMBI did not illegally dismissed petitioner and that it complied with the due process requirement when it issued a written notice informing her of her failure to meet the performance standards of KMBI.⁵²

On February 21, 2019, petitioner received a copy of the Decision dated January 31, 2019 of the CA. However, considering that she was unrepresented by any counsel before the CA and due to the untimely confinement of her parents, she failed to file a motion for reconsideration of the CA Decision. Sometime in the third week of March 2019, petitioner approached the Public Attorney's Office regarding her case.⁵³

⁴⁹ Id. at 48-49.

⁵⁰ Id. at 45.

⁵¹ Id. at 46.

⁵² Id. at 48.

⁵³ Id. at 3.

Hence, the instant petition which was filed on April 2, 2019, 25 days after the lapse of the period to file a petition for review on *certiorari*.⁵⁴

The Issue

The core issue to be resolved is whether the CA erred in finding that the NLRC gravely abused its discretion when it ruled that petitioner was illegally dismissed.

Petitioner raises the following points before the Court: (1) the performance evaluation is a mere afterthought on the part of KMBI; (2) the performance standards did not categorically state the consequences of her failure to meet the targets set therein; (3) the KMBI's Code of Ethics merely enumerates the virtues that KMBI stakeholders need to observe; and (4) she was not given a copy of KMBI's Personnel Policy Manual.⁵⁵

The Court's Ruling

At the outset, it must be pointed out that petitioner filed her petition for review on *certiorari* 25 days after the period for filing had prescribed. Petitioner pleads leniency and asks the Court to relax the application of the rules in view of the fact that she was not assisted by counsel before the CA due to her being an indigent.⁵⁶

Petitioner insists that the CA should have appointed a counsel *de officio* considering that she is an indigent litigant. Citing the case of *Polsoin, Jr. v. De Guia Enterprises, Inc.*,⁵⁷ (*Polsoin*), petitioner submits that the CA should have exercised leniency and caution in deciding the case against petitioner.⁵⁸

The case cited by petitioner is not on all fours with the case at bar. In *Polsoin*, the NLRC and the CA dismissed the appeal of the petitioners therein purely on technical grounds although both tribunals were aware that the petitioners were not represented by counsel.⁵⁹ In the

⁵⁴ Id.

⁵⁵ Id. at 23-24.

⁵⁶ Id. at 13-14.

⁵⁷ 677 Phil. 561 (2011).

⁵⁸ *Rollo*, pp. 14-15.

⁵⁹ *Polsoin, Jr. v. De Guia Enterprise, Inc.*, *supra* at 567.

present case, however, the CA had no way of knowing that petitioner is an indigent litigant because petitioner made no attempt to comply with the CA's directives⁶⁰ or inform the latter that she cannot secure the services of a counsel due to financial constraints. Notably, petitioner admitted that she received copies of the CA Decision but chose to ignore the appellate court's directives because she was under the impression that the case was already terminated when she obtained a favorable judgment from the LA and the NLRC.⁶¹

Indeed, "[t]he right to counsel in civil cases exists just as forcefully as in criminal cases."⁶² Nonetheless, there is still a distinction between the two. Under Section 2, Rule 124 of the Rules of Criminal Procedure, the CA's Clerk of Court is mandated to designate a counsel *de officio* if it appears from the record of the case that the accused: (a) is confined in prison; (b) is without counsel *de parte* on appeal; or (c) has signed the notice of appeal himself or herself. However, no similar provision appears in the Rules of Civil Procedure. Thus, petitioner's argument that the CA should have appointed a counsel *de officio* to assist a non-responsive private respondent such as herself has no legal basis.

Nonetheless, the Court has often set aside strict application of procedural technicalities to serve the broader interest of substantial justice in several cases.⁶³ Not being a lawyer, petitioner cannot be expected to be well versed on the rules of procedure, and thus, her lack of awareness as to the importance of the timeliness of this petition is understandable.

In *Dra. Baylon v. Fact-Finding Intelligence Bureau*,⁶⁴ the Court suspended the enforcement of procedural rules "[i]f only to assure the judicial mind that no injustice is allowed to take place due to a blind adherence to rules of procedure."⁶⁵

⁶⁰ In *Polsoin, Jr. v. De Guia Enterprise, Inc.*, the employee-petitioners filed their Memorandum of Appeal and Petition for *Certiorari* before the NLRC and the CA, respectively. Due to their lack of understanding of procedural rules, they did not attach a certification of non-forum shopping in their Memorandum of Appeal and did not affix their individual signatures on top of their typewritten names in the verification and certification of non-forum shopping attached to their petition before the CA. *Id.*

⁶¹ *Rollo*, pp. 13-14.

⁶² *Spouses Telan v. Court of Appeals*, 279 Phil. 587, 594 (1991).

⁶³ See *Heirs of Teodoro Cadelina v. Cadiz*, 800 Phil. 668, 673-675 (2016); *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 339 (2011); and *Senator Jaworski v. Phil. Amusement and Gaming Corp.*, 464 Phil. 375, 385 (2004).

⁶⁴ 442 Phil. 217 (2002).

⁶⁵ *Id.* at 232.

In line with this, the Court hereby gives due course to the petition in order to give petitioner the fullest opportunity to establish the merits of her petition.

As a general rule, a petition for review on *certiorari* under Rule 45 shall raise only questions of law.⁶⁶ However, the Court deems it appropriate to examine the facts herein given the conflicting factual findings between the CA on one hand, and the NLRC and the LA on the other.⁶⁷

Equally important, “in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether, [in a petition for *certiorari*,] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.”⁶⁸

There is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.⁶⁹ Such grave abuse of discretion on the part of the NLRC warrants the grant of the extraordinary remedy of *certiorari*.⁷⁰

The CA correctly imputed grave abuse of discretion on the part of the NLRC when the latter ruled that petitioner was not dismissed due to her failure to qualify as a regular employee.

A probationary employee under Article 296⁷¹ of the Labor Code is

⁶⁶ Section 1, Rule 45 of the Rules of Court.

⁶⁷ *Phil. Journalists, Inc. v. NLRC*, 626 Phil. 614, 624 (2010); *Filsystems, Inc. v. Puente*, 493 Phil. 923, 930 (2005).

⁶⁸ *Slord Development Corporation v. Noya*, G.R. No. 232687, February 4, 2019; see also *Maricalum Mining Corp. v. Florentino*, 836 Phil. 655, 677 (2018).

⁶⁹ *Ace Navigation Company v. Garcia*, 760 Phil. 924, 932 (2015); *Mercado v. AMA Computer College-Paranaque City, Inc.*, 632 Phil. 228 (2010).

⁷⁰ *Ace Navigation Company v. Garcia*, *id.*

⁷¹ Article 296 [281] of the Labor Code of the Philippines provides:

ARTICLE 296 [281]. *Probationary Employment*. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by

one “who for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment.”⁷² Although probationary employees enjoy security of tenure,⁷³ they do not enjoy permanent status and thus may be terminated on two grounds: (1) just cause; and (2) *when they fail to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.*⁷⁴

In *Dusit Hotel Nikko v. Gatbonton*,⁷⁵ the Court clarified the requisites for a valid termination of a probationary employee on the basis of failure to meet the employer’s reasonable standards: (1) this power must be exercised in accordance with the specific requirements of the contract; (2) the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and (3) there must be no unlawful discrimination in the dismissal.⁷⁶

The Court finds that the LA and the NLRC misapprehended details which are crucial and significant in the proper disposition of the case. Ruling in favor of petitioner, the LA leaned heavily on his finding that petitioner is not guilty of work abandonment without addressing KMBI’s allegations regarding her work attitude and performance.⁷⁷ Worse, the NLRC mistook the centers turned over to petitioner at the start of her employment as centers formed by her, and thus, came up with the wrong conclusion that petitioner reached the target set forth in the performance standards.⁷⁸ For its part, the NLRC dwelled on the absence of the word “standards” in the *Proof of talk about End of Contract* dated July 28, 2016 in ruling that petitioner was not dismissed due to her failure to meet KMBI’s standards.⁷⁹ It disregarded the reasons, aside from petitioner’s unauthorized absences, that prompted petitioner’s dismissal, *i.e.*, her work attitude and character, among others, which Espos and Hembrador stated on the same document.⁸⁰ Lastly, both the LA and the NLRC erred when they willfully ignored petitioner’s

an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

⁷² *Enchanted Kingdom, Inc. v. Verzo*, 775 Phil. 388, 401 (2015).

⁷³ *Agoy v. NLRC*, 322 Phil. 636, 645 (1996).

⁷⁴ *Id.*

⁷⁵ 523 Phil. 338 (2006).

⁷⁶ *Id.* at 344.

⁷⁷ *Rollo*, pp. 193-194.

⁷⁸ *Id.* at 88.

⁷⁹ *Id.* at 85.

⁸⁰ *Id.* at 125.

demeanor towards her superiors and the 67.50% rating she got in her Performance Evaluation Report.⁸¹

At any rate, petitioner was negligent when she took three days of sick leave without notifying any of her superiors.⁸² At the very least, petitioner should have sent an electronic mail or a text message to Espos or Hembrador when she decided to go home during office hours and absent herself for two consecutive days thereafter. More, it goes without saying that shouting and hurling threats at one's superior is disrespectful.⁸³ Petitioner cannot brush aside her misconduct by faulting KMBI for its one-page Code of Ethics.

In *Aberdeen Court, Inc. v. Agustin, Jr.*,⁸⁴ the Court held that the rule on reasonable standards in probationary employment should not be used to "exculpate a probationary employee who acts in a manner contrary to basic knowledge and common sense in regard to which there is no need to spell out a policy or standard to be met."⁸⁵

Verily, the NLRC's ruling that petitioner's dismissal was not due to her failure to qualify as a regular employee was not supported by substantial evidence. Consequently, the CA correctly held that the NLRC acted with grave abuse of discretion in ruling that the cause of petitioner's dismissal was solely due to her unauthorized absences.

The Court agrees with the CA that the termination of petitioner's probationary contract is just a matter of time in view of her overall rating of 67.50%.⁸⁶ This was further exacerbated by the verbal altercation she had with Hembrador on July 28, 2016.⁸⁷ Hembrador cited other reasons for her recommendation aside from her unauthorized absences: (1) she would neither notify Espos of her whereabouts nor give updates on the status of her center collection; and (2) she would leave her center without completing her collection.⁸⁸ In the *Proof of talk about End of Contract* dated July 28, 2016, Hembrador and Espos also mentioned their dissatisfaction with petitioner's work attitude and character as some

⁸¹ Id. at 125-126, 128-131.

⁸² Id. at 43.

⁸³ Id. at 126.

⁸⁴ 495 Phil. 706 (2005)

⁸⁵ Id. at 716-717.

⁸⁶ *Rollo*, p. 129.

⁸⁷ Id. at 126.

⁸⁸ Id. at 123.

of the factors which prompted their recommendation for the termination of her probationary contract.⁸⁹ These factual assertions were never denied or controverted by petitioner.

All told, KMBI cannot be faulted for terminating petitioner's probationary employment.

KMBI complied with the Rules on Notification of Standards under Section 6(d), Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code.

Petitioner points out that the CA erred in ruling that she was properly apprised of the reasonable standards required of her considering that KMBI's employment packet was given to her only on June 2, 2016 instead of May 30, 2016, the first day that she reported for work.⁹⁰

Petitioner's contention is unmeritorious.

Section 6(d), Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code provides as follows:

Section 6. Probationary Employment. —

x x x x

(d) In all cases of probationary employment, *the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement.* Where no standards are made known to the employee at that time, he shall be deemed a regular employee. (Italics supplied.)

Ideally, employers should immediately inform probationary employees of the standards for their regularization from day one; however, strict compliance thereof is not required.

In the case of *Alcira v. National Labor Relations Commission*,⁹¹ the Court ruled that an employer would have substantially complied with

⁸⁹ Id. at 125.

⁹⁰ Id. at 24

⁹¹ 475 Phil. 455 (2004).

the rule on notification of standards if it apprises its employee that they will be subjected to a performance evaluation on a particular date.⁹² At any rate, it is ludicrous to rule that petitioner was deprived of due process considering that there is only a three-day difference between May 30, 2016 and June 2, 2016.

Further, the records show that KMBI exerted reasonable efforts to apprise petitioner of the standards required of her. Although she was not given a copy of KMBI's Personnel Policy Manual,⁹³ petitioner did not deny KMBI's claim that this was discussed during the one-week Basic Operations Training Program which she attended.⁹⁴ Aside from an Appointment Letter⁹⁵ and Job Description,⁹⁶ KMBI also quantified petitioner's targets in the employment packet given to her. Petitioner's argument that KMBI ought to categorically state the consequences of her failure to meet her targets deserves scant consideration as such failure will result in her non-regularization as a matter of course.⁹⁷

An employer is not precluded from terminating the probationary employment if it is evident that its standards are not attainable during the trial period.

In *International Catholic Migration Commission v. NLRC*,⁹⁸ the Court held that if the purpose sought by the employer is neither attained nor attainable within the trial period, the employer is not precluded from terminating the probationary employment on justifiable causes.⁹⁹

Considering petitioner's poor performance,¹⁰⁰ KMBI cannot be compelled to keep petitioner in its employ until the end of the six-month probationary period. Notably, petitioner was not able to create a new center or disburse a single loan from May 30, 2016 to July 28, 2016.¹⁰¹

⁹² Id. at 463.

⁹³ *Rollo*, p. 23.

⁹⁴ Id. at 43, 47.

⁹⁵ Id. at 104.

⁹⁶ Id. at 107-108.

⁹⁷ Id. at 23.

⁹⁸ 251 Phil. 560 (1989).

⁹⁹ Id. at 568.

¹⁰⁰ *Rollo*, p. 129.

¹⁰¹ Id. at 123.

In addition, petitioner's propensity to defy company rules as gleaned from the records is a sufficient ground for the termination of her probationary employment.¹⁰² Her argument on the insufficiency of KMBI's one-page Code of Ethics is a strained justification of her unacceptable conduct towards her superiors. Probationary employees who refuse to behave in accordance with a simple code of ethics have no right to expect, much less demand permanent employment.

From the foregoing, KMBI was able to show that petitioner's dismissal is not arbitrary, fanciful, or whimsical and that its dissatisfaction with petitioner is real and in good faith. Thus, the Court rules that the CA is correct in finding that the NLRC gravely abused its discretion in sustaining the LA and ordering the payment of petitioner's salary for the unexpired portion of her probationary employment¹⁰³ in view of the validity of her dismissal. Petitioner's dismissal predicated on her failure to meet the standards made known to her negates the award of salary for the unexpired portion of her probationary employment.¹⁰⁴

As a final point, the Court emphasizes that while the policy of social justice and protection of the working class is entrenched in our Constitution, management also has its own rights which are entitled to great respect.¹⁰⁵ It is well settled that the employer has the right or is at liberty to choose who will be hired and who will be denied employment¹⁰⁶ and that a probationary employee's failure to perform the duties and responsibilities which have been clearly made known to them constitutes a justifiable basis for non-regularization.¹⁰⁷

WHEREFORE, the petition is **DENIED**. The Decision dated January 31, 2019 of the Court of Appeals in CA-G.R. SP No. 154165 is hereby **AFFIRMED**.

¹⁰² Id. at 123-126, 130-131.

¹⁰³ Id. at 89.

¹⁰⁴ See *International Catholic Migration Commission v. NLRC*, *supra* note 98 at 566.

¹⁰⁵ *Phil. Long Distance Telephone Company v. Honrado*, 652 Phil. 331, 334 (2010).

¹⁰⁶ *Philippine Daily Inquirer, Inc. v. Magtibay, Jr.*, 555 Phil. 326, 334 (2007), citing *International Catholic Migration Commission v. NLRC*, 251 Phil. 560, 567 (1989).

¹⁰⁷ *Abbott Laboratories, Phils., et al. v. Alcaraz*, 714 Phil. 510, 534 (2013).

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice