Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RODFHEL BACLAAN TORREFIEL, MYRA SUACILLO, LORLIE ORENDAY, SHEELA LAO, and LEODELYN LIBOT, Petitioners,	**G.R. No. 214186**
	Present:
	SERENO, *C.J.*,
	LEONARDO-DE CASTRO,
	BERSAMIN,
- versus -	PERLAS-BERNABE,
	CAGUIOA, *JJ.*
BEAUTY LANE PHILS., INC./MS. MA. HENEDINA D. TOBOJKA, Respondents.	Promulgated:
	AUG 03 2016

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DECISION

PERLAS-BERNABE, *J.*:

For the Court's resolution is a petition for review on *certiorari*[1] assailing the Decision[2] dated May 5, 2014 and the Resolution[3] dated September 10, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 133299, which reversed the Decision[4] dated October 31, 2013 and the Resolution[5] dated November 27, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 09-00513-13,[6] and reinstated the Decision[7] dated July 31, 2013 of the Labor Arbiter (LA) in NLRC NCR Case No. 03-04299-13 dismissing the complaint for illegal dismissal filed by petitioners Rodfhel Baclaan Torrefiel (Torrefiel), Myra Suacillo (Suacillo), Lorlie Orenday (Orenday), Sheela Lao (Lao), and Leodelyn Libot (Libot; collectively, petitioners) for lack of merit.

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1 *Rollo*, Vol. I, pp. 27-91.

2 Id. at 93-107. Penned by Associate Justice Normandie B. Pizarro with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios concurring.

3 Id. at 108-109.

4 Id. at 291-333. Penned by Commissioner Teresita D. Castillon-Lora with Presiding Commissioner Raul T. Aquino and Commissioner Erlinda T. Agus concurring.

5 Id. at 376-379.

6 Docketed NLRC LAC No. 09-002513-13 in the November 27, 2013 Resolution.

7 Id. at 217-223. Penned by LA Jose Antonio C. Ferrer.

The Facts

Respondent Beauty Lane Phils., Inc. (Beauty Lane), with respondent Ma. Henedina D. Tobojka (Tobojka; collectively; respondents) as its president,[8] is a company engaged in the importation and distribution of certain beauty, aesthetic, and grooming products including, among others, a product called "Brazilian Blowout." "Brazilian Blowout" is a set of grooming products composed of five (5) items worth a total of ₱40,000.00. It has a short lifespan and may only be used for a maximum of 50 times.[9]

As exclusive distributor of "Brazilian Blowout," Beauty Lane provides free training to its prospective buyers through its "beauty educators" who conduct trainings and demonstrations at the company's training center, located in its three (3)-storey warehouse in Las Piñas City. The second floor of the said warehouse is used as storage area, while a portion of the ground floor serves as sleeping area of some of its employees.[10]

On January 3 to 5, 2013, respondents conducted an inventory in the warehouse and discovered discrepancies between the recorded stocks and the actual stocks of supply, particularly its "Brazilian Blowout" product. Thus, respondents conducted an investigation and installed closed circuit television (CCTV) cameras on the premises. On January 25, 2013, Beauty Lane received information from its Sales Manager, Mark Quibral (Quibral), that one of its former employees is selling sets of "Brazilian Blowout" at a much lower price. This prompted the warehouse supervisors to meet and discuss the results of the inventory, by virtue of which it was discovered that some sets of "Brazilian Blowout" were incomplete. It appeared that a different item is taken from each set and the items taken are combined to make a complete set.[11]

On February 1, 2013, respondents conducted a full-blown investigation, summoning and questioning employees on their involvement in the apparent pilferage.[12] After comparing its client list vis-à-vis the salons and online sellers offering "Brazilian Blowout," respondents discovered that Rean Metro Salon, a client registered under the account of Torrefiel who is a Sales Coordinator, had not been ordering "Brazilian Blowout" for months but continued to offer it and its allied services. Various salons and online sites were also selling whole sets of "Brazilian Blowout" as well as incomplete sets, which respondents surmised were leftovers from the sets used during training sessions. They also discovered that Torrefiel and Lao, a beauty educator, sold Gigi Professional Waxing System to Angelic Nails Spa and Waxing Salon, which is not among respondents' approved clients.

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8 Id. at 217.
9 See id. at 94.
10 See id. at 94-95 and 560.
11 See id. at 95 and 218.
12 See id. at 96 and 292.

Later that day, Coke Gonzales (Gonzales), a Sales Executive, confided to Tobojka that Lao had asked her to sell opened bottles of Brazilian Blowout Solution and Anti-Residue Shampoo.[13]

On February 4, 2013, respondents issued Notices to Explain and Preventive Suspension[14] against petitioners and two (2) other employees, including Marcel Mendoza (Mendoza),[15] a beauty educator who also happened to operate his own salon.[16] Torrefiel and Lao denied any participation in the alleged pilferage and maintained that they had no access to the "Brazilian Blowout" products.[17] Lao further clarified that her access is limited to the training center where no "Brazilian Blowout" sets are stored. However, she admitted asking for help from Gonzales in selling the "Brazilian Blowout" inventory of one of respondents' clients, Skinsational Salon, because its owner sought her help in disposing the products which did not sell well thereat.[18]

For her part, Libot who was also a beauty educator, denied conniving with Torrefiel and Lao and maintained that she reported all her activities to Quibral.[19] Meanwhile, Suacillo and Orenday asserted their lack of information on the allegations against them, pointing out that they were not among those questioned during the February 1, 2013 investigation.[20]

In statements dated February 4 and 12, 2013, Mendoza who, as stated earlier, also operated his own salon and was also asked to explain his participation in the pilferage, implicated Torrefiel and Lao in the anomaly.[21] According to him, Torrefiel and Lao offered him a bottle of Professional Smoothing Solution which is part of the "Brazilian Blowout" set for only ₱18,000.00. Lao was purportedly selling the same for her friend who owned a salon.[22]

On February 27, 2013, an administrative hearing was held where petitioners, however, failed to appear. Instead, they sent letters stating that they had already submitted their respective written explanations, and that they had an appointment with the Department of Labor of Employment (DOLE) on the same day.[23] After assessing the evidence before them, respondents sent Notices of Termination[24] to petitioners on February 28, 2013. Meanwhile, in an entrapment operation conducted by the National

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13 See id. at 96 and 220.
14 Id. at 626-627, 631-632, 637-637A, 641-642, and 646-647.
15 Id. at 220 and 292-293.
16 See *rollo*, Vol. II, pp. 825 and 828.
17 See Letters filed by Torrefiel (undated) and Lao (February 4, 2013); *rollo*, Vol. I, pp. 628 and 633, respectively.
18 See id. at 633.
19 See Letter dated February 4, 2013 of Libot; id. at 638.
20 See Letters of Suacillo and Orenday both dated February 4, 2013; id. at 643 and 648.
21 See id. at 221. See also *rollo*, Vol. II, pp. 825-828.
22 See *rollo*, Vol. II, p. 826. See also *rollo*, Vol. I, p. 221.
23 See *rollo*, Vol. I, pp. 97 and 220.
24 Id. at 629-630, 634-636, 639-640, 644-645, and 649-650. See also id. at 97, 218, and 293.

Bureau of Investigation on February 18, 2013, two (2) former employees, namely, Romar Geroleo and Cipriano Layco, were caught in possession of "Brazilian Blowout" products.[25]

On March 18, 2013, petitioners filed a complaint[26] for illegal dismissal and money claims before the NLRC, averring that respondents had no valid cause in dismissing them as none of them had access to the stolen products.[27] Specifically, Torrefiel maintained that he merely prepared the sales orders and it was the warehouse supervisor and the sales assistant who had access to the products.[28] On the other hand, Lao and Libot emphasized that they were beauty educators for Gigi Professional Waxing System products only and, as such, had no access to "Brazilian Blowout" products.[29] Meanwhile, Suacillo contended that she is merely an Administrative Assistant whose duties are limited to maintaining personnel files, preparing checks, managing office supplies, administering examinations to applicants, and cleaning the training center. She also emphasized that she was not among those investigated on February 1, 2013.[30] Lastly, Orenday clarified that she was a Sales Assistant who merely encoded orders and delivery receipts.[31]

The LA's Ruling

In a Decision[32] dated July 31, 2014, the LA dismissed the complaint for lack of merit, holding that there was valid cause for petitioners' dismissal and due process therefor was observed. The LA pointed out that while no direct evidence was presented showing that petitioners indeed pilfered the "Brazilian Blowout" products, the circumstances of the case show that petitioners are guilty of the charges against them.[33] The LA cited Torrefiel and Lao's failure to refute the statements of their colleagues, Mendoza and Gonzales, directly identifying them as the ones selling sets of "Brazilian Blowout" at a lower price. They also failed to deny Mendoza's averment that they had met with him and that the latter confronted them about the "Brazilian Blowout" sets which they tried to sell him.[34] With respect to Suacillo and Orenday, the LA gave credence to respondents' claim that they held the positions of Office Assistant and Inventory Officer, respectively, and as such, their failure to report the discrepancy in the recorded and actual stocks point to their complicity in the pilferage.[35]

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25 See id. at 155-156.
26 Id. at 116-117, including dorsal portions.
27 See Position Paper dated May 14, 2013; id. at 118-129.
28 See id. at 118-120.
29 See id. at 120-123.
30 See id. at 124.
31 See id. at 125.
32 Id. at 217-223.
33 See id. at 221-223.
34 See id. at 222.
35 See id. at 223.

Aggrieved, petitioners appealed[36] to the NLRC.

The NLRC Ruling

In a Decision[37] dated October 31, 2013, the NLRC reversed the decision of the LA, finding that petitioners were illegally dismissed, after observing that there was no proof of their involvement in the pilferage.[38]

The NLRC found merit in petitioners' defense that they did not have access to the stolen items,[39] and explained that they could not be dismissed for loss of trust and confidence since none of them held positions where trust and confidence are requirements for continued employment, except for Torrefiel who, in any case, was not shown to have committed an act that would justify the loss of trust and confidence.[40]

With respect to Torrefiel and Lao's alleged selling of "Brazilian Blowout" products at a lower price, the NLRC gave credence to the affidavit[41] of Lea Tagupa, the owner of Skinsational Salon, who categorically stated that she had asked them to sell the "Brazilian Blowout" products she (Tagupa) previously bought from Beauty Lane but was not able to sell at her salon. According to the NLRC, Tagupa's affidavit should be given more weight considering that she is a disinterested party, as opposed to Mendoza and Gonzales whose statements are biased since they were among those investigated upon and their statements were obtained while the investigation was ongoing.[42] Moreover, the availability of "Brazilian Blowout" products and services in salons that no longer ordered from respondents does not prove that Torrefiel was guilty of pilferage since respondents themselves pointed out that "Brazilian Blowout" products are also available abroad and online, albeit illegally.[43]

As regards Suacillo, Orenday, and Libot, the NLRC noted the lack of evidence to substantiate the allegations against them.[44] It remarked that contrary to respondents' claim, Orenday was no longer an Inventory Officer at the time the alleged anomalies happened since she was issued a Notice of Personnel Action reassigning her as Sales and Administrative Assistant.[45] On the other hand, Suacillo's duties as Office Assistant did not include monitoring and keeping an inventory. Besides, she had no knowledge of the

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36 See Appeal Memorandum dated September 1, 2013; id. at 224-262.
37 Id. at 291-333.
38 See id. at 314, 322, 328, and 330.
39 See id. at 311, 318, and 326.
40 See id. at 312 and 321.
41 Id. at 191-193.
42 See id. at 309-310.
43 See id. at 315-316.
44 See id. at 322, 328, and 330.
45 Id. at 325.

inventory conducted which was carried out by her supervisors.[46] In any case, Suacillo and Orenday were terminated without due process, considering that the notices sent to them failed to specify the particular acts or omission charged and they were not among the employees questioned during the February 1, 2013 investigation.[47] Consequently, respondents were ordered to reinstate petitioners and pay them full backwages, as well as their wages from January 6, 2013 to February 4, 2013, moral and exemplary damages, and attorney's fees.[48]

Respondents moved for reconsideration,[49] which was, however, denied by the NLRC in its Resolution[50] dated November 27, 2013. Thus, Beauty Lane elevated the case to the CA *via* petition for *certiorari*.[51]

The CA Ruling

In a Decision[52] dated May 5, 2014, the CA reversed the ruling of the NLRC and reinstated the findings of the LA.[53] It pointed out that there was no dispute that "Brazilian Blowout" products were missing from respondent's warehouse and that petitioners were individuals who had access to the room where the said products were stored. Furthermore, petitioners were implicated by their colleagues – namely, Mendoza and Gonzales – who had no axe to grind against them. Meanwhile, petitioners offered nothing but an all-encompassing denial without even bothering to controvert the allegations of their colleagues who had confessed.[54] These, according to the CA, constitute substantial evidence that petitioners pilfered the "Brazilian Blowout" products from respondent's warehouse which amount to serious misconduct or willful disobedience to the lawful orders of their employer – both of which are just causes for their dismissal.[55]

Anent the issue of due process, the CA agreed with the LA that the due process requirements of notice and hearing were complied with since petitioners were asked to submit their respective written explanations in their participation in the pilferage and were notified of the administrative hearing set on February 27, 2013. That they did not attend the same was their own choice and was prompted by their stance that they had already submitted their written explanations on the matter.[56]

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46 See id. at 326-327.
47 See id. at 322-324, 327-328, and 331.
48 See id. at 332.
49 See Motion for Partial Reconsideration [Re: Decision dated 31 October 2013] dated November 15, 2013. Id. at 334-375.
50 Id. at 376-379.
51 Dated December 27, 2013. Id. at 497-554.
52 Id. at 93-107.
53 Id. at 106.
54 See id. at 101.
55 See id. at 102-104.
56 See id. at 105-106.

Dissatisfied, petitioners filed a motion for reconsideration,[57] which was, however, denied in a Resolution[58] dated September 10, 2014; hence, the present petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA committed any reversible error in reinstating the LA ruling holding that petitioners were validly dismissed.

The Court's Ruling

At the outset, it should be pointed out that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[59] The Court is not a trier of facts and does not routinely re-examine the evidence presented by the contending parties. Nevertheless, the divergence in the findings of fact by the LA and the CA, on the one hand, and that of the NLRC on the other – as in this case – is a recognized exception for the Court to open and scrutinize the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC in ruling that petitioners were illegally dismissed.[60]

After a thorough review of the records, the Court finds the petition meritorious.

Contrary to the CA's finding, petitioners did not proffer bare denials of the allegations against them and their access to the stolen products is not undisputed. In their joint Position Paper,[61] petitioners all asserted that there were two (2) Warehouse Supervisors, two (2) Stockmen, and two (2) Warehouse Assistants manning Beauty Lane's warehouse.[62] Further, Torrefiel explained that whenever an order is placed, a Sales Assistant encodes the Sales Order and issues Delivery Receipts which are then sent electronically to the Warehouse Supervisor who, in turn, dispatches the delivery of purchases items to clients. While he admitted that there were a few times when he personally claimed his clients' orders from the company's Sales Assistants, Torrefiel maintained that they were duly covered by Sales Invoice and Delivery Receipts and were recorded by the Sales Assistants. There were also instances when the clients themselves picked-up the items they purchased from Sales Assistants in respondents'

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57 See motion for reconsideration dated May 30, 2014; id. at 110-114.
58 Id. at 108-109.
59 See Section 1, Rule 45 of the Rules of Court.
60 See *Baron v. EPE Transport, Inc.*, G.R. No. 202645, August 5, 2015; citations omitted.
61 Dated May 14, 2013. *Rollo*, pp.118-129.
62 See id. at 119-120 and 123-125.

office.[63] This statement was corroborated by Orenday who, apart from clarifying that she was not among those invited for questioning during the February 1, 2013 investigation, averred that as Sales Assistant, she accepted orders from clients and from Sales Executives, and encoded the Sales Orders and Delivery Receipts which are then sent electronically to the Warehouse Supervisor. It is the Warehouse Supervisor who prepares orders and allocates the deliveries to clients.[64]

On the other hand, Lao and Libot clarified that as beauty educators, they only used Gigi Professional Waxing System in their demonstrations and trainings and had no access to the "Brazilian Blowout" products which are not stored at the training center.[65] Although Lao admitted that she was selling "Brazilian Blowout" products and that she asked Gonzales if the latter had a buyer for it, she stressed that the said products came from one of respondents' clients who asked her to resell them as she (client) was not able to use it.[66] Meanwhile, Libot claimed that she reported all her activities to Quibral, emphasizing too that she does not take orders from customers since orders are placed through the Sales Executive assigned to the customers' respective areas.[67] For her part, Suacillo asserted that she was not invited for questioning during the February 1, 2013 investigation and that, as Administrative Assistant, her responsibilities were limited to maintaining the employee files, preparing checks, monitoring office supplies, administering tests to applicants, and cleaning the training center.[68]

The Court also takes exception to the CA's ruling that petitioners' participation in the pilferage has been shown by substantial evidence. It is settled that in employee termination disputes such as the present case, the employer bears the burden of proving that the employee's dismissal was for a lawful cause. Equipoise is not enough and the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[69] Although it is true that the guilt of a party in administrative proceedings need not be shown by proof beyond reasonable doubt, there must be substantial evidence to support it.[70] Substantial evidence means that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[71]

In this case, respondents dismissed petitioners on the strength of circumstantial evidence which did not establish their participation in the pilferage. As aptly pointed out by the NLRC, the statements given by

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63 See id. at 119.
64 See id. at 125.
65 See id. at 120-123.
66 See id. at 121.
67 See id. at 122-123.
68 See id. at 124.
69 See *Moreno v. San Sebastian College-Recoletos, Manila*, 573 Phil. 533, 547 (2008).
70 *Anscor Transport & Terminals, Inc. v. NLRC*, 268 Phil. 154, 158 (1990).
71 *Surigao del Norte Electric Cooperative, Inc. v. Gonzaga*, 710 Phil. 676, 687-688 (2013).

Mendoza and Gonzales only prove that Torrefiel and Lao offered them "Brazilian Blowout" products at a lower price. There is nothing in their testimonies that prove that Torrefiel and Lao pilfered the said items from Beauty Lane. On the other hand, Torrefiel and Lao persuasively explained that Tagupa, the owner of Skinsational Salon which is one of Beauty Lane's clients, had asked for their help in disposing of the "Brazilian Blowout" products she previously bought from Beauty Lane but did not sell well in her salon.[72] This statement was corroborated by Tagupa herself who executed an affidavit which reads:

> I bought 1 set of [B]razilian [B]lowout (basic blowout for my salon as a[n] additional service to offer, the item [was] paid in full but unfortunately the service for the product did not [turn] out good, we were not able to consume the whole set. As salon owner[,] I have to find [a] way [on] how I can regain my investment for the said product. [Torrefiel] being the sales executive in charge in (sic) our salon and [Lao] whom I've known being the train[e]r of my staff for [G]igi [W]axing, I asked [for] their help to resell the products on other Beauty Lane clients for [₱]20,000[.00] (twenty thousand pesos). I asked them to find [a] buyer for me, but because the products were on my other branch in CALAPAN, MINDORO, I told them to inform me once they find [a] buyer so [that] I can bring the items here in [M]anila. In return, I agree[d] that I will be giving them commission.[73]

The NLRC was correct in giving more weight to Tagupa's statement over Mendoza's averment that Torrefiel and Lao pilfered from the company. In the first place, Tagupa is a party disinterested to the case and has no reason to state falsities. On the other hand, Mendoza was one of the suspects in the pilferage and was among those questioned during the investigation. She also confessed to committing several irregularities in handling "Brazilian Blowout" products as beauty educator, including using the demonstration sets and tools issued by Beauty Lane in his own salon.[74] Portions of her statement dated February 4, 2013 read:

> I have received a bottle of Brazilian Blowout Professional Smoothing Solution which **I used some of it to service my customers at my salons**. Some of the solutions I used was to **service my co-employees** namely: Sheela Lao & Lyn Ascillo, at my residence. **I made some erroneous entries at my Brazilian Blowout usage summary sheet to cover up such services** in terms of names and number of caps used.
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> x x x x
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> **I have used tools and implements, products for sampling at my salon** wherein I already made a list of such items which are still in my custody and promise to surrender to Beauty Lane Philippines. x x x

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72 See *rollo*, Vol. I, pp. 308-309.
73 Id. at 191.
74 See id. at 309-310.

> [Lao] and [Torrefiel] offered me to buy a Professional Smoothing Solution at a price of ₱18,000.00 a few weeks ago. I did not buy any product from them and when I asked where the solution come from[,] the fact given to me [was] that [Lao] had a friend that owned a salon that wanted to sell their solution – and that [Torrefiel] was just reselling the solution for [Lao].
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> On January 30, 2013[,] Ma['Jam Becky Lopez, Mark Quebral, Sim Ballon **confronted me in a closed door meeting where they discussed issues regarding some missing items at the warehouse and that if I knew anything about the missing items or someone trying to dispose of these items**. A few hours after being presented with these facts, I was ready to meet up with [ma'am] Dina and face allegations made against me and wanted to come clean. x x x.[75] (Emphases supplied)

Notably, even Mendoza himself stated that Torrefiel and Lao had told him that they were just reselling the Professional Smoothing Solution for their friend who owned a salon.[76] Hence, although Torrefiel and Lao were selling the "Brazilian Blowout" at a lower price, there is no proof that they stole the same from Beauty Lane. On the contrary, the evidence on record all support their explanation that Tagupa merely solicited their help in disposing of the "Brazilian Blowout" products she (Tagupa) previously bought from respondents. To be sure, although Torrefiel and Lao's acts may involve a conflict of interest since Beauty Lane is the exclusive distributor of "Brazilian Blowout" products in the Philippines, this does not prove that they were guilty of the pilferage for which they were dismissed.

Moreover, the fact that Rean Metro Salon stopped ordering "Brazilian Blowout" products from respondents but continued to offer the same and its allied service months later does not prove that Torrefiel stole the missing products from respondents, especially without showing that the "Brazilian Blowout" products used by Rean Metro Salon came from respondents' stocks. To recall, respondents themselves admitted that "Brazilian Blowout" products are available in other establishments and online, although illegally. It is thus entirely possible that Rean Metro Salon may have sourced its supply of "Brazilian Blowout" products from other entities offering it.

In addition, the LA and the CA hastily concluded that Torrefiel was guilty of pilferage simply because he was seen at Rean Metro Salon. As properly observed by the NLRC, his presence thereat was accounted for by his co-petitioner Libot who narrated that they went there to follow up an order before proceeding to another client. Incidentally, Libot, who was accused of conniving with Torrefiel, asserted that she reported all her activities to Quibral.[77] Notably, Quibral did not deny this.

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75 *Rollo*, Vol. II, pp. 825-826.
76 See id. at 826.
77 See *rollo*, Vol. I, pp. 315-316.

At this juncture, it should be pointed out that while Torrefiel was essentially a salesman, he did not occupy a position of trust and confidence, the loss of which is a just cause for dismissal. To recall, there are two (2) classes of positions of trust: the first class consists of managerial employees or those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; the second class consists of cashiers, auditors, property custodians, and the like who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[78]

Here, respondents have not shown that Torrefiel had access to their money or property. On the contrary, Torrefiel maintained that he merely took orders from clients but had no access to the respondents' products which are handled by warehouse supervisors and sales assistants. At any rate, even assuming that he regularly handled significant amounts of money or property, he cannot be dismissed on the ground of loss of trust and confidence considering that the basis therefor has not been established. It is settled that for dismissal based on such ground to be valid, the act that would justify the loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts which was not the case here.[79]

The Court also agrees with the NLRC's observation that the rudiments of due process were not observed in dismissing Suacillo and Orenday. As correctly pointed out by the NLRC, the copies of the Notices to Explain and Preventive Suspension issued to them did not specify the charges against them but simply stated that they condoned and failed to report anomalies to the management.[80] Time and again, the Court has repeatedly held that two (2) written notices are required before termination of employment can be legally effected, namely: (1) the notice which apprises the employee of the **particular acts or omissions** for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him.[81] The failure to inform an employee of the charges against him deprives him of due process.[82] Besides, Suacillo and Orenday were not among those questioned during the February 1, 2013 investigation.[83] Hence, they cannot be presumed to know exactly what anomalies respondents were referring to.

In any event, there was no valid reason for their dismissal considering the lack of proof of their involvement in the alleged pilferage. As conveyed by the NLRC, Suacillo's duties as Office Assistant did not include

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78 *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628 (2008).
79 See id. at 629.
80 See *rollo*, Vol. I, pp. 626-627, 631-632, 637-637A, 641-642, and 646-647.
81 See *Convoy Marketing Corporation v. Albia*, G.R. No. 194969, October 7, 2015, citing *First Industrial Corporation v. Calimbas*, 713 Phil. 608, 621-622 (2013).
82 See *Mitsubishi Motors Phils. Corp. v. Chrysler Philippines Labor Union*, 477 Phil. 241, 258 (2004).
83 See *rollo*, Vol. I, pp. 643 and 648.

monitoring and keeping an inventory and she cannot be presumed to know the results of the inventory which was conducted by her supervisors.[84] Meanwhile, Orenday was no longer an Inventory Officer at the time the alleged anomalies happened since she was reassigned as Sales and Administrative Assistant.[85] She cannot, therefore, be charged of responsibility for respondents' inventory.

All told, the respondents failed to prove by substantial evidence that petitioners were the authors of or at least participated in the alleged pilferage of the "Brazilian Blowout" products. Unlike respondents' two (2) former employees, namely, Romar Geroleo and Cipriano Layco, who were caught red-handed in an entrapment operation, no direct evidence showing petitioners' guilt was presented and respondents relied on *inconclusive* circumstantial evidence in determining who the perpetrators of the pilferage are. While proof beyond reasonable doubt is not required in dismissing an employee, the employer must *prove by substantial evidence the facts and incidents* upon which the accusations are made.[86] Unsubstantiated suspicions, accusations, and conclusions of the employer, as in this case, are not enough to justify an employee's dismissal.[87]

It bears emphasis that to justify the grant of the extraordinary remedy of *certiorari*, it must be satisfactorily shown that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[88] Measured against these parameters, the Court finds that the CA committed reversible error in granting respondents' *certiorari* petition since the NLRC did not gravely abuse its discretion in finding petitioners to have been illegally dismissed. The NLRC's ruling cannot be equated to a capricious and whimsical exercise of judgment since its pronouncement of illegal dismissal squares with existing legal principles and is supported by the records of the case.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 5, 2014 and the Resolution dated September 10, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 133299 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated October 31, 2013 and the Resolution dated November 27, 2013 of the National Labor Relations Commission in NLRC LAC No. 09-00513-13 are **REINSTATED**.

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84 See id. at 326-327.
85 See id. at 325.
86 *Landtex Industries v. CA*, 556 Phil. 466, 487 (2007).
87 Id.
88 See *Baron v. EPE Transport, Inc.*, supra note 60.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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