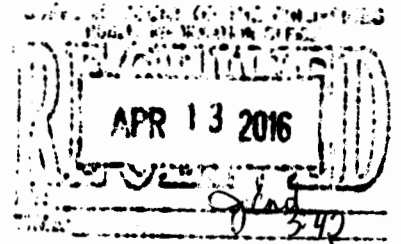




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

**UNIVERSAL
 SUGAR
 CORPORATION,**

**ROBINA
 MILLING**
 Petitioner,

G.R. No. 218172

Present:

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

- versus -

**ELMER ABLAY,
 ILDEFONSO
 CLAVECILLAS, STANLEY
 BLAZA, VINCENT
 VILLAVICENCIO,
 ROBERTO CACAS, and
 ELSA CADAYUNA, in behalf
 of her deceased husband,
 ELEAZAR CADAYUNA,**
 Respondents.

Promulgated:

MAR 16 2016

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated June 28, 2013 and the Amended Decision³ dated April 30, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 02078, which reversed and set aside the Decision⁴ dated April 26, 2006 and the Resolution⁵ dated May 30, 2006 of the National Labor Relations Commission (NLRC) in NLRC Case

¹ *Rollo*, pp. 41-57.

² Id. at 9-23. Penned by Associate Justice Pamela Ann Abella Maxino with Justices Edgardo L. Delos Santos and Maria Elisa Sempio Diy concurring.

³ Id. at 25-33. Penned by Associate Justice Pamela Ann Abella Maxino with Justices Edgardo L. Delos Santos and Marie Christine Azcarraga-Jacob concurring.

⁴ NLRC records, pp. 327-344. Penned by Commissioner Aurelio D. Menzon with Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles concurring.

⁵ Id. at 382-383.

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No. V-000593-05 and, accordingly, declared respondents Elmer Ablay (Ablay), Ildefonso Clavecillas (Clavecillas), Stanley Blaza (Blaza), Vincent Villavicencio (Villavicencio), Roberto Cacas (Cacas), and Eleazar Cadayuna⁶ (Cadayuna; collectively, respondents) to have been illegally dismissed by petitioner Universal Robina Sugar Milling Corporation (petitioner). As such, respondents are entitled to reinstatement – except for Ablay who is awarded separation pay in lieu of reinstatement – and backwages.

The Facts

The instant case arose from a complaint⁷ dated June 1, 2004 for illegal dismissal, unfair labor practice, and recovery of damages filed by respondents, members of the *Nagkahiutang Mamumuo sa* Ursumco-National Federation of Labor (the Union), against petitioner before the Sub-Regional Arbitration Branch No. VII, Dumaguete City of the NLRC. Respondents alleged that sometime in 1997, the Union filed a complaint against petitioner for non-compliance with Wage Order No. 3 issued by the Regional Tripartite Wages and Productivity Board before the Department of Labor and Employment (DOLE).⁸ After due proceedings, the DOLE found petitioner liable to the members of the Union in the total amount of ₱210,217.54 and, consequently, issued a Writ of Execution to enforce the said ruling.⁹ On September 11, 2003, DOLE Sheriff Ignacio Calinawan (Sheriff Calinawan) went to petitioner's premises to serve the writ to petitioner's Personnel Manager, Jocelyn Teo (Teo), but the latter refused to comply by reason of petitioner's pending appeal before the Secretary of Labor.¹⁰ Two (2) months later, or on November 12, 2003, Sheriff Calinawan went back to petitioner's premises in another attempt to serve the writ of execution, this time, seeking the help of the Union Officers, including respondents, in its enforcement. Despite Teo's refusal to receive the writ, Sheriff Calinawan and respondents still effected a levy on one of petitioner's forklifts, took it outside the company premises, and deposited it at the municipal hall for safekeeping.¹¹

Due to the foregoing incidents, petitioner issued a Notice of Offense¹² dated November 18, 2003 to each of the respondents, requiring them to explain in writing why no disciplinary action should be taken against them. Thereafter, or on November 24, 2003, petitioner issued a Notice of Administrative Investigation¹³ to each of the respondents, charging them of stealing company property, fraudulent acquisition or release to other persons

⁶ Represented by his wife Elsa Cadayuna.

⁷ NLRC records, pp. 1-2.

⁸ *Rollo*, p. 10.

⁹ *Id.* at 11.

¹⁰ *Id.*

¹¹ *Id.* at 11-12.

¹² NLRC records, pp. 68-73.

¹³ *Id.* at 74-85.

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of company property, unauthorized possession/use of company property, unauthorized operation of company equipment, and serious misconduct during official working hours or within company premises. On December 1, 2003, after due investigation, petitioner furnished respondents with a Notice of Dismissal¹⁴ for being found guilty as charged. This prompted the filing of the instant complaint.¹⁵

The LA Ruling

In a Decision¹⁶ dated May 4, 2005, the LA dismissed respondents' complaint for illegal dismissal for lack of merit. Nevertheless, the LA ordered petitioner to pay respondents their unpaid salary for November 16 to December 1, 2003, 13th month pay, off-milling bonus, Social Amelioration Bonus, and unused vacation/sick leave in the aggregate amount of ₱175,577.50, broken down as follows: Ablay – ₱28,940.00; Cadayuna – ₱32,737.50; Clavecillas – ₱26,460.00; Villavicencio – ₱26,460.00; Cacas – ₱28,165.00; and Blaza – ₱32,815.00.¹⁷

The LA found that respondents' participation in the execution of the writ by Sheriff Calinawan, while legal, was tainted with arrogance and lawlessness, considering that the same was effected with the use of force and intimidation. The LA highlighted the fact that their act of assisting Sheriff Calinawan in an intimidating mob-like manner to divest the company of its property was inimical to the interest of petitioner company.¹⁸

Aggrieved, both parties appealed¹⁹ to the NLRC.

The NLRC Ruling

In a Decision²⁰ dated April 26, 2006, the NLRC affirmed the LA ruling with modification, reducing the monetary awards in favor of respondents to ₱124,635.25, broken down as follows: Ablay – ₱25,662.81; Cadayuna – ₱25,035.80; Clavecillas – ₱16,453.93; Villavicencio – ₱17,689.14; Cacas – ₱22,588.37; and Blaza – ₱17,205.20.²¹

The NLRC agreed with the LA that the manner in which respondents assisted in the execution of the writ was arrogant and unlawful and, thus, deemed the legality of their termination as valid. In this relation, it reduced

¹⁴ Id. at 107-114.

¹⁵ Id. at 1-2.

¹⁶ Id. at 160-171. Penned by Labor Arbiter Fructuoso T. Villarín, IV.

¹⁷ Id. at 169-171.

¹⁸ Id. at 167-169.

¹⁹ See petitioner's Partial Appeal dated June 10, 2004; id. at 206-218. See respondents' Appeal dated June 3, 2004; id. at 184-201.

²⁰ Id. at 327-344.

²¹ Id. at 343.

the monetary awards in favor of the respondents, finding lack of basis to grant respondents' off-milling bonus for their failure to work during the milling season, aside from the fact that respondents' award of money claims was subject to deductions, *i.e.*, withholding taxes and legal obligations.²²

Dissatisfied, both parties moved for reconsideration,²³ but the same were denied in a Resolution²⁴ dated May 30, 2006. Undaunted, respondents filed a petition for *certiorari*²⁵ before the CA.

The CA Ruling

In a Decision²⁶ dated June 28, 2013, the CA reversed and set aside the NLRC ruling by declaring respondents to have been illegally dismissed by petitioner. Accordingly, petitioner was ordered to reinstate respondents and pay them backwages, unpaid salaries, 13th month pay, unused leave pay, and social amelioration pay.²⁷ While the CA agrees with the finding that respondents violated company rules in the manner by which they assisted Sheriff Calinawan in enforcing the writ of execution, it ruled that dismissal is too severe a penalty for the infraction. Finding that: (a) respondent's act of bringing the forklift out of the company premises was not tantamount to robbery or theft as they did not do so with intent to gain, but were merely motivated by their strong desire to collect what is due them as a matter of right; (b) they were mere equipment operators, technicians, and electricians, and thus, not occupying managerial nor confidential positions; and (c) it was their first offense in their 14-15 years of service, the CA concluded that the penalty of suspension would have sufficed as a penalty.²⁸

Dissatisfied, petitioner moved for reconsideration,²⁹ insisting that respondents' act of wresting possession of company property constitutes a serious infraction which warrants their dismissal. Moreover, petitioner brought to the CA's attention Ablay's conviction as an accomplice in the murder of one of its former assistant managers. In view of this, petitioner contended that the relationship between it and Ablay has already been strained and, as such, he should neither be reinstated nor granted separation pay and backwages.³⁰

²² Id. at 338-342.

²³ See petitioner's motion for partial reconsideration dated May 18, 2006; *id.* at 357-365. See respondents' motion for reconsideration dated May 12, 2006; *id.* at 345-356.

²⁴ *Id.* at 382-383.

²⁵ Dated September 8, 2006. *Id.* at 384-405.

²⁶ *Rollo*, pp. 9-23.

²⁷ *Id.* at 22-23.

²⁸ *Id.* at 19-22.

²⁹ Not attached to the *rollo*.

³⁰ *Rollo*, pp. 26-27.

In an Amended Decision³¹ dated April 30, 2015, the CA partially granted petitioner's motion by modifying its earlier ruling, but only insofar as the reinstatement of Ablay is concerned. The CA agreed that Ablay's conviction as an accomplice to the murder of one of its former assistant managers strained the relationship between him and petitioner, and, as such, he should no longer be reinstated to his former position. Nevertheless, the CA pointed out that since Ablay's conviction stemmed from a cause entirely different from his participation in the enforcement of the writ of execution, he should still receive the benefits accorded to him by law prior to such conviction, *i.e.*, separation pay, backwages, and other benefits.³²

Hence, this petition.

The Issues Before the Court

The issues raised for the Court's resolution are whether or not the CA correctly ruled that: (a) respondents were illegally dismissed as the penalty of suspension would have sufficed; and (b) Ablay is entitled to his benefits prior to his conviction, *i.e.*, separation pay, backwages, and other benefits.

The Court's Ruling

The petition is partly meritorious.

Article 297 (formerly Article 282) of the Labor Code,³³ which includes the ground of serious misconduct, provides for the just causes where the employee may be validly terminated from employment. It reads in full:

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

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

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

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

³¹ Id. at 25-33.

³² Id. at 28-31.

³³ As renumbered by Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also DOLE Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," dated July 21, 2015.

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing. (Emphasis and underscoring supplied)

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct must be serious, *i.e.*, of such grave and aggravated character, and not merely trivial or unimportant. Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, and equally important and required, the act or conduct must have been performed with wrongful intent. In other words, for serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.³⁴

In this case, the following facts are undisputed: (a) the Union, which the respondents are members of, filed a case for violation of labor standards against petitioner before the DOLE;³⁵ (b) after due proceedings, the DOLE ruled in favor of the Union and awarded its members the aggregate amount of ₱210,217.54, and accordingly, a writ of execution was issued in the Union's favor;³⁶ (c) Sheriff Calinawan failed in his first attempt to enforce the writ of execution as Teo refused to receive a copy of the same;³⁷ (d) on Sheriff Calinawan's second attempt to enforce the writ of execution, he sought the assistance of Union members, including respondents, and insisted that Teo comply with said writ, but the latter still refused;³⁸ (e) despite Teo's refusal, Sheriff Calinawan and the respondents effected a levy on one of petitioner's forklifts, took it outside the company premises, and deposited it at the municipal hall for safekeeping;³⁹ and (f) the taking of the forklift was without authority from petitioner or any of its officers.⁴⁰

³⁴ See *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014; citations omitted.

³⁵ *Rollo*, p. 10.

³⁶ *Id.* at 11.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 11-12.

⁴⁰ *Id.* at 12.

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Clearly, respondents committed some form of misconduct when they assisted Sheriff Calinawan in effecting the levy on the forklift and depositing the same to the municipal hall for safekeeping as they operated the forklift and took it out of company premises, all without the authority and consent from petitioner or any of its officers. However, as correctly pointed out by the CA, respondents did not perform the said acts with intent to gain or with wrongful intent. Rather, they were impelled by their belief – albeit misplaced – that they were merely facilitating the enforcement of a favorable decision in a labor standards case in order to finally collect what is due them as a matter of right, which is the balance of their unpaid benefits. In light of the foregoing, the Court upholds the right of petitioner to take the appropriate disciplinary action against respondents, but nevertheless, holds that respondents should not have been dismissed from service as a less punitive sanction, *i.e.*, suspension, would have sufficed. In *Philippine Long Distance Company v. Teves*,⁴¹ the Court stressed that while it is the prerogative of the management to discipline its employees, it should not be indiscriminate in imposing the ultimate penalty of dismissal as it not only affect the employee concerned, but also those who depend on his livelihood, *viz.*:

While management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers, pursuant to company rules and regulations, however, such management prerogatives must be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements. **The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion.** Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.

Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps maybe committed by labor ought not to be visited with a consequence so severe. This is not only the laws concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.⁴² (Emphases and underscoring supplied)

Further, considering the fact that respondents were mere equipment operators, technicians, and electricians, and thus, not occupying managerial nor confidential positions, and that the incident concerning the forklift was only their first offense in their 14-15 years of service, the Court agrees with

⁴¹ 649 Phil. 39 (2010).

⁴² *Id.* at 51-52.

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the CA that they should have only been meted a penalty that is less severe than dismissal, *i.e.*, suspension. Hence, respondents could not be validly dismissed by petitioner.⁴³

As a general rule, an illegally dismissed employee is entitled to reinstatement (or separation pay, if reinstatement is not viable) and payment of full backwages. In certain cases, however, the Court has carved out an exception to the foregoing rule and thereby ordered the reinstatement of the employee without backwages on account of the following: (a) the fact that the dismissal of the employee would be too harsh a penalty; and (b) that the employer was in good faith in terminating the employee.⁴⁴ The application of such exception was thoroughly discussed in the case of *Pepsi-Cola Products Philippines, Inc. v. Molon*,⁴⁵ to wit:

An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages. **In certain cases, however, the Court has ordered the reinstatement of the employee without backwages considering the fact that (1) the dismissal of the employee would be too harsh a penalty; and (2) the employer was in good faith in terminating the employee.** For instance, in the case of *Cruz v. Minister of Labor and Employment* the Court ruled as follows:

The Court is convinced that petitioner's guilt was substantially established. **Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of dismissal which may be too drastic. Denial of backwages would sufficiently penalize her for her infractions. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages.** Only employees discriminately dismissed are entitled to backpay. x x x

Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*, the Court pronounced that **"[t]he ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith."**⁴⁶ (Emphasis and underscoring supplied)

To reiterate, respondents were indeed guilty of some form of misconduct and, as such, petitioner was justified in exercising disciplinary action against them. Absent any evidence to the contrary, petitioner's resort to disciplinary proceedings should be presumed to have been done in good

⁴³ *Rollo*, pp. 20-21.

⁴⁴ See *Integrated Microelectronics, Inc. v. Pionilla*, G.R. No. 200222, August 28, 2013, 704 SCRA 362, 367.

⁴⁵ G.R. No. 175002, February 18, 2013, 691 SCRA 113.

⁴⁶ *Id.* at 136-137.


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faith.⁴⁷ Thus, perceiving that petitioner had ample ground to proceed with its disciplinary action against respondents, and that the disciplinary proceedings appear to have been conducted in good faith, the Court finds it proper to apply the exception to the rule on backwages, and consequently, direct the deletion of backwages in favor of respondents.⁴⁸

Finally, the CA correctly observed that Ablay's conviction as an accomplice to the murder of petitioner's former assistant manager had strained the relationship between Ablay and petitioner. Hence, Ablay should not be reinstated in the company and, instead, be paid separation pay, as reinstatement would only create an atmosphere of antipathy and antagonism would be generated as to adversely affect his efficiency and productivity.⁴⁹ In this relation, it should be clarified that said strained relation should not affect the grant of benefits in his favor prior to his conviction, as the latter pertains to an offense entirely separate and distinct from the acts constituting petitioner's charges against him in the case at bar, *i.e.*, taking of the company equipment without authority. Petitioner's payment of separation pay to Ablay in lieu of his reinstatement is therefore warranted.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated June 28, 2013 and the Amended Decision dated April 30, 2015 of the Court of Appeals in CA-G.R. SP No. 02078 are hereby **MODIFIED**, directing the **DELETION** of the award of backwages in favor of respondents Elmer Ablay, Ildefonso Clavecillas, Stanley Blaza, Vincent Villavicencio, Roberto Cacas, and Eleazar Cadayuna. The rest of the decision **STANDS**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁴⁷ "Good faith is presumed and the burden of proving bad faith rests on the one alleging it. it is a question of fact that must be proven." (*Bermudez v. Gonzales*, 401 Phil. 38, 47 [2000].)

⁴⁸ See *Integrated Microelectronics, Inc. v. Pionilla*, supra note 44, at 367-368.

⁴⁹ See *Tenazas v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014, 720 SCRA 467, 484.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Alfredo Benjamin S. Caguioa
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
MARIA LOURDES P. A. SERENO
Chief Justice