



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

SUSAN M. BANCE,¹ ARLENE C. G.R. No. 202724
 DIMAIWAT, JEAN O.
 VELASCO, NANCY M.
 AGUIRRE, and HAZEL A. Present:
 LOBETANIA,

Petitioners,

- versus -

LEONEN, J.,
 Chairperson,
 HERNANDO,
 LAZARO-JAVIER,*
 DELOS SANTOS, and
 LOPEZ, J. Y., JJ.

UNIVERSITY OF ST.
 ANTHONY and SANTIAGO
 ORTEGA, JR.,

Respondents.

Promulgated:

February 3, 2021

X-----MisDCCB-H-----X

DECISION

HERNANDO, J.:

Challenged in this Petition for Review on *Certiorari*² are the April 17, 2012 Decision³ and June 27, 2012 Resolution⁴ of the Court of Appeals (CA) in CA-G.R. SP No. 115111, which affirmed with modification the September 30, 2009 Decision⁵ of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 12-003998-08.

The NLRC Decision reversed and set aside the October 1, 2008 Decision⁶ of the Labor Arbiter (LA), and held that the petitioner-employees were rightfully dismissed from employment in respondent University of St. Anthony (University).

* Designated as additional Member per raffle dated June 29, 2020 vice *J. Inting* who recused himself, his sister, *J. Socorro B. Inting*, had prior participation in the proceedings in the Court of Appeals.

¹ Spelled as "Barce" in the CA Decision.

² *Rollo*, vol. I, pp. 18-43. Filed on September 10, 2012.

³ *Id.* at 44-62; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Fernanda Lampas-Peralta and Mario V. Lopez (now a member of this Court).

⁴ *Id.* at 63-64.

⁵ *Id.* at 89-105; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

⁶ *Id.* at 79-88; penned by Labor Arbiter Jesus Orlando M. Quiñones.

The Factual Antecedents:

Petitioners Susan M. Bance (Bance), Arlene C. Dimaiwat (Dimaiwat), Jean O. Velasco (Velasco), Nancy M. Aguirre (Aguirre), and Hazel A. Lobetania (Lobetania; collectively, petitioners) filed complaints for illegal dismissal with money claims against respondents University and Atty. Santiago D. Ortega, Jr. (Atty. Ortega; collectively, respondents).

The University is an educational institution duly organized and existing under Philippine laws.⁷ Atty. Ortega is the President and the Chairman of the University's Board of Trustees.⁸ Mrs. Victoria SD. Ortega (Mrs. Ortega) was originally impleaded in the case but was subsequently dropped as a party respondent.⁹ She is the University's Vice-President for Finance.¹⁰

Petitioners were regular employees of the University.¹¹ As summarized by the CA, the details of their employment are as follows:

Names	Date Employed	Position	Monthly Salary
Susan M. Bance	June 1984	Senior Accounts Officer	₱21,591.12
Arlene C. Dimaiwat	June 14, 1982	Accounting Clerk	₱9,250.00
Jean O. Velasco	June 1988	Classroom Teacher	₱11,880.00
Nancy M. Aguirre	April 7, 1980	Accounting Officer	₱11,850.00
Hazel A. Lobetania	June 1, 1984	Credit and Collection Officer	₱14,000.00 ¹²

Facts relative to Lobetania:

In June 2006, several irregular and anomalous transactions were noted in the University's Accounting Office.¹³ Consequently, in January 2007, Atty. Ortega hired an external auditor to conduct an investigation.¹⁴ The audit report dated March 13, 2007 revealed a cash shortage of ₱1,239,856.25, which represents the net collection of book remittances.¹⁵ The cash should have been kept inside the cash vault under the custody of Lobetania but it was missing.¹⁶ As a result, Lobetania was asked to go on a leave of absence.¹⁷ During her

⁷ *Rollo*, vol. I, p. 45.

⁸ *Id.*

⁹ *Id.* at 105. However, the CA Decision still included her as a party respondent. This Petition for Review on Certiorari, all subsequent pleadings filed and resolutions issued by this Court relevant to this case do not indicate her as a party respondent.

¹⁰ *Id.* at 45.

¹¹ *Id.* at 46.

¹² *Id.*

¹³ *Id.* at 420.

¹⁴ *Id.*

¹⁵ *Id.* at 420. See Audit Report dated March 13, 2007 at 447-449.

¹⁶ *Id.*

¹⁷ *Id.* at 420-421.

conference with Atty. Ortega, Lobetania admitted that she failed to deposit the amount in the University's bank account.¹⁸ Upon demand to return the amount,¹⁹ Lobetania paid it in installments out of her personal funds as evidenced by official receipts issued by the University under her name.²⁰ In a subsequent audit report dated May 15, 2007, additional anomalous transactions in the prior years surfaced where the tellers accommodated the encashment of checks not in the name of the University.²¹

Lobetania went on leave for the duration of the audit. Eventually, she tendered her resignation on July 27, 2007 (to take effect on August 1, 2007), and was approved by Atty. Ortega on August 9, 2007.²²

Subsequently, on February 22, 2008, the University filed criminal cases for Estafa against Lobetania.²³ On March 25, 2008, the prosecutor found probable cause to charge her with Qualified Theft and filed the corresponding Information before the Regional Trial Court of Iriga City.²⁴

Facts relative to Bance, Dimaiwat, Velasco, and Aguirre:

At around the same period, Bance, Dimaiwat, and Aguirre were found to have taken advantage of their positions in the Accounting Office by enrolling their children and relatives, including Velasco's, under the University's group enrollment incentive program²⁵ despite knowing that they were unqualified.²⁶ Upon discovery of the fraudulent scheme in November 2007, Atty. Ortega immediately ordered an investigation and called a conference with the alleged perpetrators.²⁷

During the December 2007 conference, petitioners (excluding Lobetania) were apprised of the infractions they committed. During the conference, they admitted that their children and relatives indeed benefitted from the unauthorized discounts.²⁸ Atty. Ortega thus verbally informed them that their employment will be terminated.²⁹ On December 22, 2007, Atty. Ortega issued Office Memo No. 007-026, informing them that their employment will be terminated effective January 1, 2008 on grounds of dishonesty amounting to

¹⁸ Id. at 420.

¹⁹ Id. at 421. See Letter dated April 2, 2007 at 450. See 134, 241-242.

²⁰ Id. at 27.

²¹ Id. at 421. See Audit Report dated May 15, 2007 at 455-459.

²² Id. at 421, 454.

²³ Id. at 421.

²⁴ Id.

²⁵ Also referred to in the records as group enrollment discount/free tuition fee program.

²⁶ *Rollo*, Vol. I, p. 424.

²⁷ Id.

²⁸ Id. at 59, 424.

²⁹ Id. at 25, 424.

malversation of school funds.³⁰ The office memo was allegedly not preceded by any written notice to petitioners except for the two conferences and a verbal announcement during the second conference.³¹

Dimaiwat, Velasco, and Aguirre opted to resign. They tendered their resignation on December 22, 2007 (taking effect on January 2, 2008), and these were approved by Atty. Ortega on December 26, 2007.³² Bance did not tender her resignation.³³

Subsequently, the University filed several criminal cases for Estafa against Bance, Dimaiwat, Velasco, and Aguirre.³⁴ These are pending before the Municipal Trial Court in Iriga City.³⁵

On April 1, 2008, Bance, Dimaiwat, Velasco, and Aguirre filed their respective complaints for illegal dismissal with money claims against the respondents.³⁶ Lobetania filed hers on April 22, 2008.³⁷ They subsequently amended their complaints to include claims for unpaid salaries and 13th month pay, and to implead Mrs. Ortega as respondent in Lobetania's complaint.³⁸

Proceedings ensued. Respondents opted to file two separate position papers—one position paper on Lobetania's case and another on Bance, Dimaiwat, Velasco, and Aguirre's case.³⁹ They, however, belatedly filed their position paper on Bance, Dimaiwat, Velasco, and Aguirre's case before the LA.⁴⁰

In their Joint Position Paper,⁴¹ petitioners contended that their dismissal was illegal for lack of just or authorized causes⁴² and non-observance of the requirements of procedural due process.⁴³ Lobetania, for her part, stated that there was no missing money as the ₱1,239,856.25 she allegedly pilfered was actually used by Mrs. Ortega to pay off loans.⁴⁴ She was only forced to pay the amount from her personal funds, as evidenced by official receipts issued by the University under her name, because of the threats issued by Atty. Ortega.⁴⁵

³⁰ Id. See Office Memo No.007-026 dated December 22, 2007 at 460.

³¹ Id. at 46-47.

³² Id. at 425, 461. The resignation letters were sufficiently reproduced in the NLRC Decision (Id. at 99-100).

³³ Id.

³⁴ Id. at 425-426.

³⁵ Id.

³⁶ *CA rollo*, pp. 149-164.

³⁷ Id.

³⁸ Id.

³⁹ *Rollo*, vol. I, pp. 428, 465-470, 471-478.

⁴⁰ Id. at 80.

⁴¹ Id. at 138-170.

⁴² Id. at 154-162.

⁴³ Id.

⁴⁴ Id. at 144.

⁴⁵ Id. at 144, 241-242.

Petitioners prayed for reinstatement, and payment of money claims, moral, nominal, and exemplary damages, and attorney's fees.⁴⁶

On the other hand, in their two separate Position Papers,⁴⁷ respondents contended that petitioners' (except Bance) resignation rendered the complaints for illegal dismissal without basis.⁴⁸ Respondents added that, in any event, petitioners' (including Bance) dismissals were for a just cause (*i.e.*, willful breach of trust and fraud) based on the acts that they committed during their employment as shown by the result of the investigation and audits.⁴⁹ Respondents prayed for the dismissal of the complaints and for the payment of moral and exemplary damages to the University.⁵⁰

Ruling of the Labor Arbiter:

On October 1, 2008, the LA rendered a Decision finding petitioners to have been illegally dismissed⁵¹ and ordering the respondents to reinstate them to their previous or equivalent positions without loss of seniority rights, and to pay them (jointly and severally) backwages, unpaid salaries, 13th month pay, holiday pay, damages, and attorney's fees.⁵² The LA also ordered respondents to reimburse Lobetania the amount of ₱1,239,856.25.⁵³

The LA found that the University, as employer, failed to discharge the burden of showing by substantial evidence that there was just or authorized cause in the dismissal of Bance, Dimaiwat, Velasco, and Aguirre.⁵⁴ In failing to file a position paper on time, respondents were deemed to have waived presenting evidence in their favor.⁵⁵ As for Lobetania's case, the LA found that the missing funds were actually used by Mrs. Ortega to pay off her personal obligations.⁵⁶ Moreover, Lobetania was even forced to repay that amount to the University from her personal funds.⁵⁷ The LA also ruled that respondents failed to afford petitioners procedural due process in effecting their dismissal.⁵⁸

The dispositive portion of the LA Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding respondents UNIVERSITY OF SAINT ANTHONY/ATTY.

⁴⁶ Id at 162-168.

⁴⁷ Id. at 465-478.

⁴⁸ Id. at 467, 473-475.

⁴⁹ Id.

⁵⁰ Id. at 469, 477.

⁵¹ Id.at 86-88.

⁵² Id.

⁵³ Id.

⁵⁴ Id. at 82-83.

⁵⁵ Id.

⁵⁶ Id. at 84.

⁵⁷ Id.

⁵⁸ Id. at 85-86.

SANTIAGO D. ORTEGA, JR., guilty of illegal dismissal and liable for money claims of complainants SUSAN M. BANCE, ARLENE C. DIMAIWAT, JEAN O. VELASCO, and NANCY M. AGUIRRE.

Likewise, respondents UNIVERSITY OF SAINT ANTHONY/ATTY. SANTIAGO D. ORTEGA, JR./MRS. VICTORIA SD. ORTEGA are found guilty of illegal dismissal and liable for money claims of complainant HAZEL LOBETANIA.

x x x x

SO ORDERED.⁵⁹

Aggrieved, respondents appealed the LA Decision to the NLRC.

Ruling of the National Labor Relations Commission:

In its September 30, 2009 Decision, the NLRC reversed and set aside the LA Decision. It ruled that petitioners were not illegally dismissed.⁶⁰ It, however, ordered the University to pay Bance indemnity for failure to observe procedural due process; pay Lobetania her 13th month pay; and, pay all petitioners their holiday pay for three (3) years.⁶¹ The Decision also dropped Mrs. Ortega as respondent.⁶²

The NLRC ruled that the complaints for illegal dismissal have no basis as petitioners, except for Bance, had voluntarily resigned before the effectivity of the termination of their employment.⁶³ In other words, they opted for a voluntary exit instead of being fired. As for Bance, the criminal charges for Estafa filed by the University against her provided ample basis for her dismissal on grounds of serious misconduct and loss of trust and confidence.⁶⁴ However, the NLRC found that procedural due process was not observed in the termination of Bance's employment, thus, it awarded nominal damages in the amount of ₱5,000.00.⁶⁵

On the matter of the payment of ₱1,239,856.25 as reimbursement to Lobetania, the NLRC declared that the claim is not covered by any labor law, labor standard, or a provision of a collective bargaining agreement⁶⁶ hence it dismissed the claim with advice that the parties may litigate in a different forum.⁶⁷

⁵⁹ Id. at 86-88; the portions pertaining to the award of monetary claims were removed for brevity.

⁶⁰ *Rollo*, vol. 1, p. 104.

⁶¹ Id. at 104-105.

⁶² Id.

⁶³ Id. at 101.

⁶⁴ Id. at 101-102.

⁶⁵ Id. at 103-104.

⁶⁶ Id. at 104.

⁶⁷ Id.

The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the appeal filed by respondents is GRANTED. The appealed Decision of Labor Arbiter Jesus Orlando M. Quiñones dated October 1, 2008 is REVERSED and SET ASIDE, and a NEW ONE [is] rendered declaring complainants not to have been illegally dismissed by respondents.

1. However, respondent USANT is hereby ordered:
 - a. To pay complainant Susan Bance the sum of P5,000.00 as indemnity for failure to observe procedural due process as discussed above
 - b. To pay all complainants their holiday pay for 3 years
 - c. To pay complainant Lobetania her 13th month pay for 2007 in the sum of P2,334.00 as computed in this Decision; and
2. Individual respondent Victoria SD. Ortega is hereby dropped as party respondent

SO ORDERED.⁶⁸

Petitioners filed a motion for reconsideration but this was subsequently denied in a Resolution dated April 8, 2010.⁶⁹

Hence, they filed a Petition for *Certiorari* before the CA.⁷⁰

Ruling of the Court of Appeals:

On April 17, 2012, the CA rendered its Decision affirming the ruling of the NLRC with modification in that it deleted the award of nominal damages in favor of Bance.⁷¹

It found that the requirement of substantive due process was satisfied with respect to Lobetania and Bance's dismissal,⁷² *i.e.*, loss of trust and confidence in view of their participation in the anomalous handling of the University's finances. Lobetania failed to remit collections to the University's bank account while Bance enrolled unqualified candidates into the University's group enrollment incentive program.⁷³ Further, the CA ruled that the requirement of procedural due process was aptly observed in Bance's dismissal, hence, she is not entitled to nominal damages.⁷⁴ As for Lobetania,

⁶⁸ Id. at 104-105.

⁶⁹ *Rollo*, vol. II, pp. 530-545.

⁷⁰ *CA rollo*, pp. 3-48.

⁷¹ *Rollo*, vol. I, pp. 44-62.

⁷² Id. at 57.

⁷³ Id. at 57-58.

⁷⁴ Id. at 58.

the requirement of procedural due process is irrelevant in view of her voluntary resignation.⁷⁵

With respect to Velasco, Aguirre, and Dimaiwat, there was just cause for their dismissal, *i.e.*, dishonesty, when they participated in the anomalous scheme in the University's accounting department by making their children and relatives beneficiaries of the group enrollment incentive program.⁷⁶

The CA agreed with the NLRC's disposition on the matter of the payment of ₱1,239,856.25 as reimbursement to Lobetania. It stated that the issue did not arise from an employer-employee relationship but was a personal financial accommodation on the part of Lobetania.⁷⁷

The dispositive portion of the assailed Decision reads:

WHEREFORE, foregoing considered, the Petition is hereby **DISMISSED**. The September 30, 2009 Decision of the NLRC is **AFFIRMED with the MODIFICATION** that the award of nominal damages in favor of Susan [Bance] is **DELETED**.

SO ORDERED.⁷⁸

Petitioners filed a motion for reconsideration but this was subsequently denied in a Resolution dated June 27, 2012.⁷⁹

Steadfast, petitioners elevated the case to this Court praying for the reinstatement of the LA Decision.⁸⁰ They maintain that there was no just cause in their dismissal from employment. They allege that Lobetania was dismissed because Atty. Ortega found out that she was more loyal to Mrs. Ortega than to him.⁸¹ There were no missing funds contrary to what the respondents alleged, hence, Lobetania's termination was unfounded.⁸² With respect to Bance, the allegation that she took undue advantage of the University's group enrollment incentive program was unsubstantiated.⁸³ The same was true as to Dimaiwat, Velasco, and Aguirre – the allegation that they participated in the anomalous transaction involving the group enrollment incentive program was unsubstantiated.⁸⁴ Petitioners also argue that the finding of probable cause in the criminal cases filed against them does not constitute just cause for their dismissal from employment.⁸⁵

⁷⁵ Id. at 58-59.

⁷⁶ Id. at 59.

⁷⁷ Id. 60.

⁷⁸ Id. at 61.

⁷⁹ Id. at 63-64.

⁸⁰ Id. at 39.

⁸¹ Id. at 32.

⁸² Id.

⁸³ Id. at 32-33

⁸⁴ Id.

⁸⁵ Id. at 33.

Petitioners further allege that procedural due process was not observed. Respondents allegedly did not issue a written notice informing them of the charges.⁸⁶ In relation to this, petitioners claim that an award of nominal damages is proper based on existing case law.⁸⁷

On the matter of reimbursement to Lobetania, petitioners contend that the financial accommodation extended by Lobetania to Mrs. Ortega arose from employer-employee relationship.⁸⁸

In their Comment,⁸⁹ respondents claim that petitioners, except Bance, voluntarily resigned, hence, their complaints for illegal dismissal had no basis.⁹⁰ Bance's dismissal was for a just cause because the audit results showed that she committed anomalous transactions in the Accounting Department by extending group enrollment incentives and discounts to unqualified beneficiaries, including her children and relatives.⁹¹ She gravely abused her authority and committed fraudulent acts, resulting to loss of the trust and confidence reposed by respondents.⁹² In any case, notwithstanding their voluntary resignation, the other petitioners were dismissed for just cause, *i.e.*, fraud and willful breach of trust and confidence.⁹³ Respondents also point out the CA's pronouncement that procedural due process was observed in Bance's dismissal from employment.⁹⁴ They likewise reiterate the CA's ruling that Lobetania's claim was entirely a personal transaction between Lobetania and Mrs. Ortega.⁹⁵

Issues

- a. Whether petitioners' (except Bance) voluntary resignation render their complaints for illegal dismissal without basis.
- b. Whether Bance was illegally dismissed.

⁸⁶ Id. at 35.

⁸⁷ Id.

⁸⁸ Id. at 36. To wit:

- a. The money involved belong to the University;
- b. The consideration/accommodation was made by Lobetania because Mrs. Ortega was her boss and employer;
- c. Had Lobetania not been Mrs. Ortega's employee, she would not be extending the accommodation;
- d. The amount pertained to a fund of the University and was supposedly embezzled by Lobetania;
- e. Lobetania had access to the funds because she was an employee;
- f. The alleged embezzlement of the funds was the cause of the termination of Lobetania's employment.

⁸⁹ Id. at 419-446. Filed on April 11, 2014.

⁹⁰ Id. at 436-439.

⁹¹ Id. at 440.

⁹² Id.

⁹³ Id.

⁹⁴ Id. at 437.

⁹⁵ Id. at 441.

- c. Whether the labor tribunal has jurisdiction to resolve the issue of reimbursement to Lobetania.

Our Ruling

We affirm the Decision of the CA with modification on the award of nominal damages. After an exhaustive review of the records, We hold that: (1) the voluntary resignation of Lobetania, Dimaiwat, Velasco, and Aguirre rendered their complaints for illegal dismissal without any basis; (2) Bance's dismissal was valid, but procedural due process was not observed, entitling her to nominal damages; and, (3) the issue of reimbursement to Lobetania is already moot.

The Constitution affords protection to labor and promotes full employment.⁹⁶ This policy is echoed in Article 3 of the Labor Code (as amended and renumbered).⁹⁷

Philippine labor laws are adopted with a view to give maximum aid and protection to labor.⁹⁸ However, they are not to be applied in a manner that undermines a valid exercise of management prerogative.⁹⁹ The Constitution and labor laws recognize the right of the employers to regulate all aspects of employment, and this right is limited only by those imposed by labor laws and principles of equity and substantial justice.¹⁰⁰ *Telus International Philippines, Inc. v. De Guzman*¹⁰¹ instructs:

Similarly, labor laws and the [Constitution] recognize the right of the employers to regulate, according to his/her own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place[,] and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only

⁹⁶ CONSTITUTION, Art. XIII, Sec. 3. The relevant portion of the provision states:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

⁹⁷ Presidential Decree No. 442 s. 1974, A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development, Insure Industrial Peace Based on Social Justice [LABOR CODE], as amended and renumbered, art. 3. The provision states:

Art. 3. Declaration of Basic Policy. – The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

⁹⁸ *Philippine Span Asia Carriers v. Pelayo*, G.R. No. 212003, February 28, 2018.

⁹⁹ *Id.*

¹⁰⁰ *Telus International Philippines, Inc. v. De Guzman*, G.R. No. 202676, December 4, 2019.

¹⁰¹ *Id.*

limitations to the exercise of this prerogative are those imposed by labor laws and the principles of equity and substantial justice. (Citations omitted)

Management prerogative includes the right to discipline employees, which necessarily includes dismissal of employees based on just and authorized causes.¹⁰²

For a dismissal from employment to be valid, both the substantial and procedural due process requirements must be satisfactorily complied with.¹⁰³ Substantial due process pertains to the “employee’s right not to be dismissed without just or authorized cause, as provided by law.”¹⁰⁴ Procedural due process pertains to the employer’s compliance with the procedure in effecting a dismissal as provided in the Labor Code and implementing rules.¹⁰⁵ The burden of proving that the dismissal was valid rests on the employer; failure to do so renders the dismissal illegal.¹⁰⁶

A dismissal based on a just cause implies that the employee has committed some violation against the employer, hence, it can be said that the employee initiated the dismissal process.¹⁰⁷ The Labor Code provides for the instances when an employer may terminate an employment due to just cause:

Art. 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;
- (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.

To comply with the requirements of substantial due process, the cause of the dismissal must have basis under the law. Failure to observe substantial due process renders the dismissal illegal and entitles the employee to reinstatement without loss of seniority rights and other privileges, full backwages inclusive of allowances, and other benefits or their monetary equivalent.¹⁰⁸

¹⁰² See *Holcim Philippines, Inc. v. Obra*, G.R. No. 220998, August 8, 2016, 792 Phil 594, 604.

¹⁰³ *Slord Development Corporation v. Moya*, G.R. No. 232687, February 4, 2019.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Labor Code, Article 292 [277].

¹⁰⁷ *Jaka Food Processing Corporation v. Pacot*, 494 Phil 114, 120 (2005).

¹⁰⁸ Labor Code, art. 294 [279]. Based on jurisprudence, other reliefs may be awarded, such as separation pay in lieu of reinstatement, damages, and attorney’s fees.

On procedural due process, Article 292 (formerly Article 277) of the Labor Code provides for the manner of termination of employment based on just cause. The case of *King of Kings Transport, Inc. v. Mamac*¹⁰⁹ standardized the requirements of procedural due process in termination of employment, applying Article 292 and its corresponding implementing rules. The case provides:

To clarify, the following should be considered in terminating the services of employees:

(1) **The first written notice to be served on the employees should contain the specific causes or grounds for termination against them**, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 (now 297) is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing or conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.**¹¹⁰

To comply with the requirements of procedural due process, two notices must be served to the employee. The conduct of a hearing or conference though is, as held in *Perez v. Philippine Telegraph and Telephone Company*,¹¹¹ mandatory only "when requested by the employee in writing or

¹⁰⁹ 553 Phil 108 (2007).

¹¹⁰ Id. at 115-116. Emphases supplied; citations omitted.

¹¹¹ 602 Phil 522 (2009).

substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.”¹¹² Failure to comply with procedural due process (although the dismissal is based on just or authorized causes) will entitle the employee to nominal damages: if the dismissal is based on just cause, the employee is entitled to ₱30,000.00;¹¹³ if the dismissal is based on authorized cause, the employee is entitled to ₱50,000.00.¹¹⁴

Lobetania, Dimaiwat, Velasco and Aguirre voluntarily resigned rendering their complaints for illegal dismissal without basis.

Respondents correctly argued that Lobetania, Dimaiwat, Velasco, and Aguirre had voluntarily tendered their resignation before filing their complaints for illegal dismissal. The NLRC ruled that this event rendered their complaints for illegal dismissal without basis as the employment relationship was severed before the effectivity date of its termination. Petitioners, on the other hand, did not contest this but insisted that there they were illegally dismissed.

The Court holds that petitioners’ voluntary resignation effectively rendered their complaints for illegal dismissal without any basis.

*Central Azucarera De Bais, Inc. v. Siason*¹¹⁵ discusses the concept of resignation:

Resignation is the formal pronouncement or relinquishment of a position or office. It is the voluntary act of an employee who is in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he has then no other choice but to disassociate himself from employment. The intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he in fact intended to terminate his employment. In illegal dismissal cases, it is a fundamental rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.¹¹⁶

For resignation from employment to be valid, there must be an intent to relinquish the position together with the overt act of relinquishment. Resignation must be voluntary. In illegal dismissal cases, the employer, if

¹¹² Id. at 542.

¹¹³ See *Agabon v. National Labor Relations Commission*, 485 Phil 248, 288 (2004).

¹¹⁴ See *Jaka Food Processing Corporation v. Pacot*, supra note 106, at 122.

¹¹⁵ 765 Phil 399 (2015).

¹¹⁶ Id. at 407. Citations omitted.

defense of resignation is presented, must show that the employee indeed voluntarily resigned.

In the instant case, the fact of petitioners' resignation is undisputed. Lobetania tendered her resignation on July 27, 2007, and was approved by Atty. Ortega on August 9, 2007. Dimaiwat, Velasco, and Aguirre tendered their resignation on December 22, 2007, and these were approved by Atty. Ortega on December 26, 2007. In examining the totality of circumstances, respondents showed that Lobetania, Dimaiwat, Velasco, and Aguirre voluntarily resigned prior to the effectivity date of the termination of their employment. There were ongoing investigations against petitioners for the irregular acts they committed thereby placing them in a difficult position. Moreover, from the wording¹¹⁷ of the resignation letters, it can be implied that petitioners' resignations were voluntary. Though not the sole test, the wording of resignation letters may be considered as a factor, together with other circumstances, in assessing the voluntariness of a resignation.¹¹⁸ Also, to emphasize, petitioners did not contend or present countervailing evidence that their resignation was involuntary. Likewise, "it is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record."¹¹⁹

Thus, because of the voluntary resignations of Lobetania, Dimaiwat, Velasco, and Aguirre prior to the termination of their employment, their complaints for illegal dismissal have no basis.

Even if we disregard their voluntary resignation, this Court agrees with the CA that Lobetania, Dimaiwat, Velasco, and Aguirre were dismissed for just causes.

Lobetania's failure to remit and deposit the University's funds to its bank account amounted to a willful breach of trust. To constitute willful breach of trust, the employee concerned must be holding a position of trust and confidence, and there must be an act, that is willful, that would justify the loss of trust and confidence.¹²⁰ Additionally, cashiers, auditors, property custodians, and those positions who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property are considered positions of trust.¹²¹ These requisites are satisfied with respect to Lobetania. She is holding a position of trust because her duties as Credit and Collection Officer included safeguarding of the cash vault and depositing cash to the University's bank account, among others. The audit report proved that

¹¹⁷ Words and phrases such as "thank you," "more power," "profound gratitude," "A peaceful Christmas to you," "extend my gratitude."

¹¹⁸ See *SME Bank, Inc. v. De Guzman*, 719 Phil 103, 121 (2013).

¹¹⁹ *Central Azucarera De Bais, Inc. v. Siason*, supra note 115, 120, at 409.

¹²⁰ *The Peninsula Manila v. Jara*, G.R. No. 225586, July 29, 2019.

¹²¹ *Id.*

there were undeposited amounts that should have been inside the cash vault under Lobetania's custody but were unaccounted for. Therefore, Lobetania was validly dismissed for willful breach of trust.

As to Dimaiwat, Velasco, and Aguirre, their collective act of taking undue advantage of the University's group enrollment incentive program despite knowledge that their children and relatives were unqualified amounted to fraud and dishonesty. The investigation conducted by respondents showed that petitioners enrolled their unqualified children and relatives in the program. Moreover, as confirmed by the CA, petitioners even admitted during a conference with Atty. Ortega that their children and relatives indeed benefitted from the unauthorized discounts. These acts constitute fraud which, as provided in Article 297 of the Labor Code, is a ground that is separate and distinct from willful breach of trust.¹²² Fraud and dishonesty can only be used to justify termination from employment when the employee concerned commits a dishonest act that reflects a disposition to deceive, defraud and betray the employer.¹²³

On the aspect of procedural due process, the Court deems it not necessary to discuss because, to reiterate, Lobetania, Dimaiwat, Velasco, and Aguirre all voluntarily resigned.

Consequently, it follows that petitioners are not entitled to backwages and other money claims arising from illegal dismissal.

Bance's dismissal from employment is valid but procedural due process was not observed by respondent.

As stated, Bance did not tender her resignation. She insists that she was illegally dismissed for lack of substantial and procedural due process. Respondents, on the other hand, argue that she was validly dismissed based on fraud resulting to willful breach of trust. The NLRC ruled that the dismissal was valid but procedural due process was not observed, awarding nominal damages in the amount of ₱5,000.00. The CA agreed but deleted the award of nominal damages and ruled that procedural due process was observed.

The Court holds that Bance's dismissal was for a just cause. She willfully breached the trust that the University has reposed on her. Bance's act of accommodating into the University's group enrollment incentive program unqualified beneficiaries, including the children and relatives of the petitioners, constitute willful breach of trust. As stated, to constitute willful

¹²² See *Sanden Aircon Philippines v. Rosales*, 661 Phil 584, 594 (2011).

¹²³ See *Bookmedia Press, Inc. v. Sinajon*, G.R. No. 213009, July 17, 2019.

breach of trust, the employee concerned must be holding a position of trust and confidence, and there must be a willful act that would justify the loss of trust and confidence.¹²⁴ In *Alvarez v. Golden Tri Bloc, Inc.*,¹²⁵ this Court ruled that a supervisory position is considered a position of trust because of the high degree of honesty and responsibility required and expected of the employee as compared with ordinary rank and file employees.¹²⁶

Hence, Bance's position as Senior Accounts Officer, being supervisory in nature, can be considered as a position of trust. The investigation conducted by respondents showed that Bance (with Dimaiwat, Velasco, and Aguirre) participated in the scheme in the incentive program by enrolling unqualified beneficiaries. Likewise, as confirmed by the CA, Bance admitted during a conference with Atty. Ortega and other petitioners that her children or relatives (as the case may be) benefitted from the unauthorized discounts. By her admission, Bance's act was willful. Such constitutes willful breach of the trust that the University has reposed on her.

Having been dismissed for a just cause, it follows that Bance is not entitled to backwages and other money claims arising from an illegal dismissal.

The Court, however, does not agree with the CA on its ruling on the aspect of procedural due process. As discussed above, to comply with the requirement of procedural due process, two written notices must be issued. The first written notice should contain the specific causes or grounds for termination against the employee. The second written notice contains the decision terminating the employment after considering all circumstances involving the charge.

Records show that during the events leading to Bance's dismissal, two conferences were held, after which, Office Memo No. 007-026 was issued to inform her (and Dimaiwat, Velasco, and Aguirre) of the termination of her employment effective January 1, 2008. Clearly, these are not compliant with the requirements established by law. Only the second written notice or Office Memo No. 007-026, was served on Bance. The records show that no first written notice was given to Bance. Conferences and verbal announcements do not suffice as substitute for the requisite first written notice.

Applying *Agabon v. National Labor Relations Commission*,¹²⁷ Bance is therefore entitled to nominal damages in the amount of ₱30,000.00.

¹²⁴ *The Peninsula Manila v. Jara*, supra note 120.

¹²⁵ 718 Phil 415 (2013).

¹²⁶ Id. at 425-426.

¹²⁷ Supra note 112.

The issue of reimbursement of the amount of Php1,239,856.25 to Lobetania is moot.

Petitioners argue that Lobetania paid Atty. Ortega the amount of ₱1,239,856.25 because of the latter's threats. They claim that the amount arose from an employer-employee relationship. Respondents, as affirmed by both the CA and NLRC, contend that the amount did not arise from employer-employee relationship.

The Court concludes otherwise and rules that, after a judicious review of the records, respondents are not liable to reimburse the amount to Lobetania. As found, the amount pertains to the cash shortage that was unaccounted for. Lobetania subsequently paid the amounts to the University as evidenced by official receipts¹²⁸ issued by the University under her name. It can then be concluded that the purpose of the payment was to return the cash shortage. Thus, the University is not obligated to return this amount to Lobetania.

If Lobetania insists that there was a personal accommodation between her and Mrs. Ortega, the NLRC and the CA are correct in ruling that the matter should be litigated before the regular courts. In unpaid debts such as this, the facet of employer-employee relationship is merely incidental and the cause of action proceeds from a different source of obligation.¹²⁹

Lastly, there is no reason to disturb the CA and NLRC's finding that respondents are liable to pay petitioners their holiday pay for the three (3) years preceding their resignation. Likewise, the Court agrees that respondents are liable to pay Lobetania her 13th month pay for the year 2007, prorated to the months she was still in employment. For both instances, respondents failed to present proof of payment.

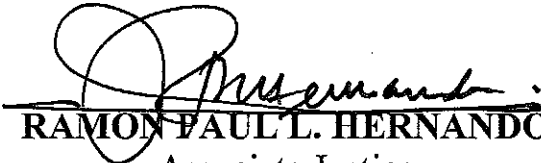
WHEREFORE, the Petition is **PARTIALLY GRANTED**. The Court **AFFIRMS** the April 17, 2012 Decision of the Court of Appeals with **MODIFICATION** in that petitioner Susan M. Bance is entitled to nominal damages. Hence, in addition to the awards granted by the Court of Appeals and the National Labor Relations Commission, respondent University of St. Anthony is hereby **ORDERED** to pay petitioner Susan M. Bance the amount of ₱30,000.00 as nominal damages.

¹²⁸ *Rollo*, vol. I, pp. 241-242.


¹²⁹ See *Paredes v. Feed the Children Philippines, Inc.*, 769 Phil 418, 440-442 (2015).

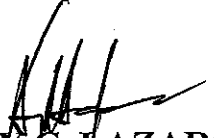
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SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

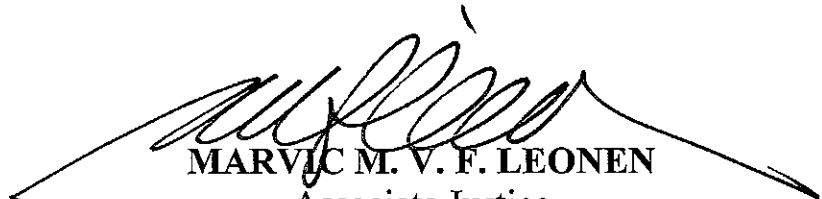

AMY C. LAZARO-JAVIER
Associate Justice


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