Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RUSTAN COMMERCIAL CORPORATION,	**G.R. No. 219664**
Petitioner,	Present:
- versus -	LEONEN, *J.*, Chairperson, HERNANDO, CARANDANG,* DELOS SANTOS, and LOPEZ, J., *JJ.*
DOLORA F. RAYSAG and MERLINDA S. ENTRINA,	Promulgated:
Respondents.	May 12, 2021

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DECISION

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[2] dated February 27, 2015 and the Resolution[3] dated July 21, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 131889. In the assailed Decision and Resolution, the CA reversed the Decision[4] of the National Labor Relations Commission (NLRC) and, accordingly, reinstated with modification the ruling of the Labor Arbiter[5] (LA) finding respondents Dolora F. Raysag (Raysag) and Merlinda S. Entrina (Entrina; collectively, respondents) to have been illegally dismissed by petitioner Rustan Commercial Corporation (petitioner).

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* Designated as additional member in lieu of Associate Justice Henri Jean Paul B. Inting per Raffle dated February 12, 2020.

1 *Rollo*, pp. 16-48.

2 Id. at 50-75.

3 Id. at 77-78.

4 Id. at 160-173.

5 Id. at 425-449.

The Factual Antecedents

Respondents Raysag and Entrina started working for petitioner in November 1974 and March 1994, respectively. Subsequently, they were assigned as Inventory Specialists at the Cosmetics, Perfumeries & Toiletries (CP & T) stockroom in Rustan's Department Store, Makati City (Rustan's Makati), on October 16, 2006 and July 1, 2005, respectively.

On July 19, 2011, Azucena Baliwas (Baliwas), a Beauty Consultant for La Prairie, a high-end skin care merchandise at Rustan's Makati, discovered that a La Prairie Cellular Resurfacing Cream was missing from the CP & T stockroom. She informed Edna Leonardo (Leonardo), La Prairie's Counter Manager at Rustan's Makati, of her discovery. Leonardo then made a physical count of all La Prairie merchandise in the selling area and in the CP & T stockroom with the assistance of Baliwas.[6] However, the missing item could not be found. Leonardo further discovered that 62 La Prairie skin care merchandise amounting ₱617,775.00 were actually missing from the CP & T stockroom, prompting her to request for a thorough inventory by the petitioner's Inventory Control Group (ICG).[7]

Thereafter, on July 25, 2011, the ICG performed a count of La Prairie's stocks inventory at Rustan's Makati and found an unaccounted variance totaling ₱537,554.00.[8] The ICG endorsed its findings to the petitioner's Internal Audit Division (IAD).[9]

Afterwards, the IAD made its own inventory on August 11, 2011 of all stocks *vis-à-vis* the reported inventory discrepancies as endorsed by the ICG. On October 4, 2011, the IAD issued an Audit Report,[10] with an attached list of unaccounted or missing items, finding that there were 54 missing La Prairie merchandise from Rustan's Makati CP & T stockroom amounting to ₱510,800.00. Thus, the IAD urged further investigation by petitioner's Legal Department.[11]

On October 11, 2011, petitioner sent Notices to Explain to respondents in reference to the report provided by the ICG that there was an accounted variance of ₱537,554.00 in the La Prairie inventory covering the period of January 2011 to October 10, 2011. Accordingly, the respondents were required "to explain why [they] should not be held accountable for the losses of [petitioner] due to the aforementioned shortage at La Prairie and why no appropriate action should be taken against [them]."[12] Petitioner

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6 Id. at 271.
7 Id. at 272-273.
8 Id. at 276 and 278.
9 Id. at 276.
10 Id. at 276-277.
11 Supra note 9.
12 *Rollo*, pp. 278-279.

alleged that respondents failed to submit their written explanation.[13] This was denied, however, by the respondents who claimed that they submitted their written explanation, but failed to keep a receiving copy.[14]

An administrative investigation hearing was later conducted on October 27, 2011 in connection with the aforementioned Notice to Explain.[15]

On November 2, 2011, the IAD released a final audit report on inventory shortages of 60 pieces of La Prairie merchandise at Rustan's Makati for a total retail value of ₱586,300.00.[16]

On December 8, 2011, the IAD received an email from Leonardo regarding the continuing losses of La Prairie merchandise inside the CP & T stockroom.[17] In response thereto, the IAD performed physical count on December 12 and 15, 2011, and found that there was an additional inventory shortage of 27 pieces of La Prairie merchandise worth ₱456,900.00 which losses occurred in the CP & T stockroom, as indicated in its December 28, 2011 Report.[18]

On December 19, 2011, the Legal Department of petitioner prepared and submitted for approval an Administrative Investigation Report[19] to petitioner's Executive Vice-President, Anthony T. Huang (Huang), containing, among others, the following findings and recommendations:

> Brief Background
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> 3) The Inventory Specialists have failed to implement strict measures to prevent theft or other forms of losses of items; from the statements of all personnel questioned about the variances, it can be fairly concluded that the [Inventory Specialists] have not been strictly updating their documentation of items coming in and going out of the Stockroom; worse, they have been allowing other employees to take charge in arranging and controlling stocks inside the Stockroom, and actually perform functions which should be particularly carried out only by them;
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> Findings
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> 1) There is gross negligence on the part of [Inventory Specialist] Dolora Raysag and [Inventory Specialist] Merlinda Entrina in

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[13] Id. at 260.
[14] Id. at 391-392.
[15] Id. at 482.
[16] Id. at 281.
[17] Id.
[18] Id.
[19] Id. at 481-485.

failing to observe dedication, diligence and vigilance in performing their crucial functions as Inventory Specialists. Precisely the purpose for which they have been employed by the company as such is to safeguard the integrity of stocks and merchandise in the stockroom, thereby preventing pilferage, theft or any cause of losses of stocks or merchandise items entrusted under their watch.

They should have strictly implemented the system and procedures required for them to observe in the course of the performance of their jobs. Sad to say, they simply do not care if such irregularities in the safeguarding and keeping of stocks in the Stockroom resulted to severe losses to the company.

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Recommendation

I. [INVENTORY SPECIALIST RAYSAG]:

a. Inventory Specialist Dolora Raysag be terminated from employment for violation of Rule C.6 of the [Rules] of Conduct: "Committing other acts of inefficiency and incompetence" Degree of Severity: 4 First Offense: Dismissal, considering the serious losses which the Company suffered by reason of her gross neglect of duty; and

b. That she be held liable to pay fifty percent (50%) of the total amount of inventory variances for merchandise items lost from the Stockroom (P509,004.00), or for a sum amounting to TWO HUNDRED FIFTY[-]FOUR THOUSAND AND FIVE HUNDRED TWO PESOS (P254,502.00).

II. [INVENTORY SPECIALIST ENTRINA]:

a. Inventory Specialist Merlinda Etrina be also terminated from employment for violation of Rule C.6 of the [Rules] of Conduct: "Committing other acts of inefficiency and incompetence" Degree of Severity: 4 First Offense: Dismissal, considering the serious losses which the Company suffered by reason of her gross neglect of duty; and

b. That she be also held liable to pay fifty percent (50%) of the total amount of inventory variances for merchandise items lost from the Stockroom (P509,004.00), or for a sum amounting to TWO HUNDRED FIFTY[-]FOUR THOUSAND AND FIVE HUNDRED TWO PESOS (P254,502.00).[20]

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[20] Id.

On December 29, 2011, respondents were subjected to a voluntary polygraph test examination conducted by Truth Verifier Systems, Inc., in which the lie detector examiner found respondents' responses as "deceptive" anent the questions on any involvement in the pilferage and losses of any of the La Prairie merchandise inside the Rustan's Makati CP & T stockroom.[21]

On January 10, 2012, petitioner served Notices of Preventive Suspension to respondents in connection with the investigation of their involvement in the merchandise losses of La Prairie, MAC and other CP & T brands.[22]

In separate letters[23] dated February 1, 2012, petitioner informed respondents that their employment would be terminated effective February 1, 2012 due to the offense they committed which led to the losses from the CP & T stockroom of merchandise under La Prairie brand amounting to ₱509,004.00 in "violation of Rule (C), x x x in particular committing acts of inefficiency and incompetence resulting to serious prejudice to the Company x x x [which] constitutes an act of gross negligence, level four (4) in degree and severity [and] merits a penalty of dismissal even for the first infraction."[24] In the same letters, respondents were informed that they were "likewise held accountable for [the losses] [and were] directed to pay fifty percent (50%) of the total amount of inventory variance for merchandise items lost from the stockroom amounting to TWO HUNDRED FIFTY[-]FOUR THOUSAND FIVE HUNDRED TWO PESOS (₱254,502.00)."

In their separate letters[25] both dated February 6, 2012, respondents respectively submitted their written explanation anent the reports of La Prairie merchandise losses in December 2011.

On March 20, 2012, Raysag filed before the NLRC National Capital Region Arbitration Branch a complaint against petitioner and its Company President Zenaida Tantoco (Tantoco), Executive Vice-President Huang, and Assistant Vice-President for Human Resources Jocelyn Barcelona (Barcelona) for illegal dismissal, non-payment of Emergency Cost of Living Allowance (ECOLA), vacation leave and sick leave pay, 13th month pay, separation pay, retirement benefits and claims for moral and exemplary damages, and attorney's fees.[26] Entrina followed suit on March 22, 2012 by filing a complaint for the same causes of action except for separation pay

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21 Id 284-286, 288-290.
22 Id at 251-254.
23 Id. at 255-56.
24 Id.
25 Id. at 291-292 (Raysag); 293-294 (Entrina).
26 Id. at 209-2010.

and retirement benefits.[27] The complaints were consolidated.

In their Position Paper[28] and Reply,[29] respondents contended, in summary, that their dismissal was without just or authorized cause and that there was no observance of procedural due process. Respondents asserted that they never committed any act that may have caused the alleged La Prairie merchandise losses. Purportedly, the dismissal of Raysag was petitioner's "cost-saving measure" to not pay her retirement benefits as she was dismissed 14 days prior to her 60th birthday on February 15, 2012. Entrina's dismissal, on the other hand, was merely orchestrated to make it appear that Raysag's dismissal was not related to her impending retirement. In addition, respondents interposed that they were illegally preventively suspended since the notice of preventive suspension was imposed on them even after the investigation was already concluded through the petitioner's approved Legal Department Investigation Report.

Respondents likewise pointed out several circumstances which show that the suspicions and accusations against them were unsubstantiated, to wit: they were directed to only pay 50% of the amount of the merchandise losses; the alleged merchandise losses were not reported to the Philippine National Police (PNP) nor a criminal complaint was filed before the Office of the City Prosecutor; the alleged losses were not presented by petitioner on a daily basis and monthly basis; the alleged losses, if true, could have been easily detected by the Closed Circuit Television (CCTV) cameras of the company and by the security guards who subject all workers of Rustan's Makati to reasonable search each time they leave the company premises;[30] the differing statements and reports pertaining to the worth of the alleged merchandise losses; respondents were awarded salary increases at the time they were investigated;[31] failure of petitioner to show the actual audit reports and financial statements showing actual losses and the Minutes of the Administrative Investigation Hearing;[32] and respondents were still subjected to a lie detector test despite prior findings of alleged valid grounds to terminate them.[33]

With regard to the non-observance of procedural due process in dismissing an employee, respondents alleged that petitioner never furnished them with the valid first written notice. They averred that the Notice to Explain dated October 11, 2011 and the Notice of Preventive Suspension issued to them on January 11, 2012 are not considered as the first notice contemplated by the rule on the twin-notice requirement and hearing as the

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27 Id. at 212-214.
28 Id. at 215-247.
29 Id. at 378-409.
30 Id. at 233-235.
31 Id. at 385-386.
32 Id. at 389-390.
33 Id. at 400.

same did not specify the grounds for their termination. They also claimed to have submitted their written explanation, contrary to the allegation of petitioner. Respondents likewise asseverated that the Notice of Termination dated February 1, 2012 did not comply with the second kind of notice required prior to dismissal as this did not state in detail the reason or reasons for their dismissal, particularly how they were involved in the said merchandise losses.

On the other hand, in its Joint Position Paper[34] and Reply,[35] petitioner asserted that respondents were legally dismissed from employment for being grossly negligent in the performance of their duties and responsibilities as Inventory Specialists, which is a valid ground for termination under Article 282 of the Labor Code. Petitioner claimed that respondents' gross negligence and blatant disregard of company policy in safeguarding company property triggered the variance in La Prairie stocks and resulted to losses in the amount of ₱509,004.00. Furthermore, petitioner cited jurisprudence which held that an employee who occupies a position of trust and confidence, such as the respondents, may also be justly dismissed for willful breach of the trust reposed in him by his employer.[36]

Petitioner also claimed that it dutifully accorded due process to respondents as they were directed to explain in writing the losses of La Prairie stocks inside the CP & T stockroom. Despite respondents' refusal and failure to submit the written explanation, petitioner conducted an Administrative Investigation Hearing, during which both respondents were granted the opportunity to explain their side. In fact, to give respondents full benefit of the doubt and as further assurance that there was no misappreciation of facts as regards their participation or misdemeanor, petitioner asked respondents to undergo a voluntary polygraph examination, which result indicated deceptive responses on their part. Respondents were likewise duly informed of the decision of the management of Rustan to terminate their services.[37]

In support of the above allegations, petitioner submitted to the LA the affidavits of Baliwas and Leonardo,[38] the IAD Report dated October 4, 2011, the List of Items with Variances per Spot Checking[39] done on August 11, 2011, the Notice to Explain[40] dated October 11, 2011, the attendance sheet[41] during the Administrative Investigation Hearing on October 27, 2011, the

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34 Id. at 257-270.
35 Id. at 411-423.
36 Id. at 265; 417-418.
37 Id. at 267-268.
38 Id. at 271-275.
39 Id. at 276-277.
40 Id. at 278-279.
41 Id. at 280.

IAD Report[42] dated December 28, 2011, the *Pahintulot sa* Polygraph Examination[43] and the Lie Detector Test Reports,[44] and the termination letters.[45]

Finally, petitioner contested respondents' claim for non-payment of service incentive leave and ECOLA, as well as the claim for moral and exemplary damages, and attorney's fees, alleging that these claims are general and non-specific as to year, months, or particular instances when such monetary benefits were not paid. Petitioner submitted proof of payment to both respondents of vacation and sick leave benefits in lieu of service incentive leave pay and ECOLA for the years 2010 and 2011.

The Ruling of the LA

On September 25, 2012, the LA rendered a Decision[46] finding the dismissal of respondents illegal.

The LA held that respondents were dismissed without being accorded with the proper procedural due process. The LA ruled that the Notice to Explain dated October 11, 2011 did not conform with the first written notice requirement in dismissing an employee, considering that the particular acts or omissions allegedly committed by respondents and the particular items/products and their corresponding prices or itemized monetary value being referred to as the accounted variances were not indicated therein. As to petitioner's directive on February 6, 2012 for respondents to submit written explanations, the same was only done five days after the latter were already dismissed. The LA also doubted if an administrative investigation hearing was conducted by petitioner as it failed to adduce the Minutes of the said investigation hearing, as well as its Legal Department Investigation Report. Likewise, the LA noted that the Notice of Termination dated February 1, 2012 did not conform with the second written notice requirement in terminating an employee, observing that the grounds for dismissal cited therein are not the ones mentioned in the pre-dismissal notices. The LA referred to the fact that the amount of merchandise losses indicated in the pre-dismissal notices was not the same with that indicated in the termination letters.[47]

As to the substantive aspect of due process in dismissing an employee, the LA gave weight to the arguments of respondents, citing several circumstances which signify the illegality of their dismissal. In particular, the LA doubted the truthfulness of the merchandise losses, explaining that:

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[42] Id. at 281.
[43] Id. at 283, 287.
[44] Id. at 284-286, 288-290.
[45] Id. at 295-298.
[46] Supra note 5.
[47] *Rollo*, pp. 437-439.

(1) it was unusual that respondents were given 50% discount in the payment of the monetary value of the merchandise losses; (2) there are varied and contradicting averments of the monetary value of the merchandise losses, ranging from ₱509,004.00 to as high as ₱965,004.00; (3) the petitioner failed to produce signed and certified reports; (4) there was a failure to present documentary evidence like financial statements to validate the alleged losses; (5) the security guards were not asked to submit report regarding the merchandise losses; (6) other employees in the CP & T stockroom were not involved in the administrative investigation; and (7) petitioner did not submit CCTV images or records. The LA also cited certain factors which negate the respondents' culpability, such as: the respondents were subjected to reasonable search when they leave the company premises; they were awarded salary increases while the investigation was ongoing; the respondents have no derogatory record prior to their dismissal; the respondents could not have committed the "ongoing" pilferage stated in Leonardo's June 26, 2012 Affidavit as they were already dismissed five months earlier; and that the lie detector test results are not only inadmissible as evidence, the conduct thereof also signify the uncertainty of petitioner's allegations against respondents, aside from the fact that the questions asked therein are not related to the charges imputed against the respondents.[48]

Finding that respondents were illegally dismissed, the LA awarded Raysag with backwages from the time she was dismissed on February 1, 2012 up to February 14, 2012 and with retirement pay, in lieu of reinstatement, in view of her retirement effective February 15, 2012. With regard to Entrina, the LA awarded her with backwages from the time she was illegally dismissed up to the date of the Decision. Due to the strained relations brought about by petitioner's false allegation of wrongful act, Entrina was awarded with separation pay instead of reinstatement. As for both respondents, the LA awarded them moral and exemplary damages and attorney's fees. Further, the LA held the impleaded company officers to be solidarily liable with petitioner as the termination of respondents was attended with malice or in bad faith.[49]

Believing that there are serious errors amounting to abuse of discretion in the findings and reasoning of the LA, petitioner appealed to the NLRC.

The Ruling of the NLRC

On April 11, 2013, the NLRC rendered a Decision[50] reversing the ruling of the LA.

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[48] Id. at 439-442.
[49] Id. at 448-449.
[50] Supra note 4.

The NLRC ruled that respondents' employment were justly terminated on the ground of gross and habitual neglect. The NLRC emphasized that the subject skin care merchandise went missing from Rustan's Makati CP & T stockroom between January and October 2011 during the watch of respondents who were Inventory Specialists to whom rested the responsibility of ensuring strict and faithful compliance with petitioner's policies and procedures on safeguarding all the stocks in the stockroom and keeping proper inventory of the same. In arriving at such conclusion, the NLRC referred to petitioner's Legal Department Report dated December 19, 2011 submitted before it.[51] The NLRC added that respondents' failure to keep watch of the stocks under their authority and jurisdiction and their failure to detect anomalies concerning the same constitute gross and habitual neglect of duties and responsibilities as Inventory Specialists which warrants dismissal. Moreover, bearing in mind respondents' positions as Inventory Specialists, the NLRC held that petitioner's loss of trust and confidence in them justified the termination of their employment. The NLRC also pointed out that the fact that respondents were usually frisked and searched upon leaving Rustan's Makati is of no consequence and relation to the reason why they were dismissed for being grossly and habitually neglectful in performing their duties and responsibilities.[52]

The NLRC likewise found that the procedural requirements of due process were properly observed in the termination of respondents since petitioner was able to explain that the difference in the figures of the losses embodied in the Notice of Termination dated February 1, 2012 and those shown in the Notice to Explain dated October 11, 2011 was due to price adjustments or variations during the time the audits were made. In any case, the NLRC explicated that the price differences are mere details; the fact remains that respondents failed to account for the 54 La Prairie skin care merchandise that went missing from Rustan's Makati CP & T stockroom during their watch from January to October 2011. As to the alleged "belated and cover-up directive" to submit a written explanation on February 6, 2012, the NLRC held that the explanation referred to therein actually contemplated respondents' response to the discovery of additional missing La Prairie merchandise on December 12 and 15, 2011, which is not covered in their dismissal letter issued on February 1, 2012.[53]

In its Resolution[54] dated August 1, 2013 denying respondents' motion for reconsideration, the NLRC debunked the circumstances which allegedly show the illegality of the subject dismissal. It pointed out that while the submission of financial statements and the filing of a police report or corresponding criminal case would corroborate the fact of the merchandise losses, the non-submission or failure to do the same does not necessarily

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[51] *Rollo*, pp. 165-166.
[52] Id. at 167 and 171.
[53] Id. at 170-171.
[54] Id. at 175-179.

mean that the losses were mere fabrications. The NLRC noted that it is ridiculous for respondents to claim that the losses were fabrications when they themselves have admitted the fact of such losses in their explanation letters dated February 6, 2012. There is likewise no logic in respondents' assertion that petitioner should have demanded 100% and not 50% of the value of the merchandise losses as it would result to unjust enrichment on the company's part, explaining that what is only needed is for respondents to pay "50% each" to recoup the full amount of the loss incurred. As to the differing amounts of losses reported, the NLRC explained that the same was due to price adjustments and the varying dates when the corresponding reports were made. It stressed that the fact remains that the losses occurred and had been proven. Moreover, the NLRC held that the act of petitioner in adjusting Raysag's salary during the pendency of the administrative case was a display of fairness. Consequently, in light of the fact that petitioner had observed the requirements of procedural and substantive due process of law in dismissing the respondents, the NLRC found untenable the claim that the losses were fabricated by petitioner in order to evade the payment of Raysag's retirement pay.[55]

Aggrieved with the NLRC's Decision, the respondents filed a *certiorari* petition under Rule 65 of the Rules of Court before the CA.

The Ruling of the CA

On February 27, 2015, the CA rendered the herein assailed Decision finding grave abuse of discretion on the part of the NLRC in declaring that petitioner had proven, through substantial evidence, that the termination of respondents' employment complied with the requirements of substantial and procedural due process.[56]

Contrary to the finding of the NLRC, the CA held that petitioner failed to prove respondents' gross neglect of duty in the performance of their functions. Foremost, the CA explained that there was no evidence submitted by petitioner to establish the duties and responsibilities that must be discharged by respondents. According to the CA, the designation of respondents as Inventory Specialists and the allegations of petitioner that they were in-charge of ensuring the safety of the La Prairie merchandise in the Rustan's Makati CP & T stockroom were not sufficient to prove the nature and extent of their responsibilities. The CA further pointed out that petitioner failed to properly and clearly identify the company system and procedures which respondents allegedly failed to strictly implement and observe in the performance of their jobs, and to prove that respondents have repeatedly violated said system and procedures in the past.[57]

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[55] Id. at 177-178.
[56] Id. at 73.
[57] Id. at 61-62.

The CA ratiocinated that even assuming that respondents' duties and responsibilities included the safeguarding of the items in the stockroom, their negligence cannot be considered as gross and habitual, pointing out that in their long years of service with petitioner, Raysag for 37 years and Entrina for 18 years, they never had a single infraction prior to the incident subject of this case. According to the CA, the fact that no reports of any discrepancy was reported in the inventory stocks under the supervision of respondents during the long years of their service at petitioner company only goes to show that respondents were diligently performing their responsibilities to the satisfaction of petitioner. As to the alleged continuing losses of La Prairie merchandise occurring while the administrative investigation on respondents was ongoing, the CA held that the same could not be attributed to respondents without any clear proof. The CA also opined that petitioner cannot put all the blame on respondents when petitioner itself is negligent when it failed to take the necessary security measures to prevent any future loss in its stockroom.[58]

The CA also noted anomalous circumstances which weakened petitioner's case. First, petitioner's superior Sales Operations Manager Karen Victoria Reyes, who was also found guilty of gross neglect of duty for the same incident, was only meted the penalty of suspension for 15 days. Second, respondents were made to undergo the lie detector test only after the recommendation of the Legal Department to terminate respondents was released, and not while the investigation was ongoing. Moreover, the CA observed that the questions in the polygraph test were not connected with the offense which was the basis of respondents' dismissal and included different brands of alleged missing products in the stockroom. Third, respondents were preventively suspended only on January 10, 2012, after the administrative proceedings had ended and the suspension no longer served its purpose. Fourth, the pleadings and documentary evidence submitted by petitioner bear different amounts of alleged losses.[59]

The CA also held that petitioner failed to comply with the procedural requirements for a valid dismissal. The CA posited that the Notice to Explain fell short of the requirement of due process since it did not inform respondents outright that the penalty of dismissal will be meted out to them if the charge against them is proven.[60]

The CA, however, found respondents guilty of simple negligence. Considering that the loss of La Prairie merchandise occurred in the CP & T stockroom while it was under their watch, the CA held that respondents were negligent in the performance of their duties, albeit such negligence can hardly be classified as gross and habitual as to warrant their dismissal from

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[58] Id. at 62-63.
[59] Id. at 63-66.
[60] Id. at 67-68.

work. Accordingly, the CA found it sufficient that Entrina be meted the penalty of six-month suspension without pay and Raysag to be suspended for the period from January 11, 2012 to February 15, 2012 (the date of her retirement). In arriving at the said penalty of suspension, the CA took into account the following: the loss of La Prairie merchandise was respondents' first offense in their long years of service; they were not solely responsible for the incident as petitioner also failed to take measures to secure the CP & T stockroom; respondents' superior was only meted the penalty of suspension although this was already her second offense. The CA further held that the preventive suspension handed on respondents is illegal since the same was imposed even if the administrative investigation against them had already ended, thus, the same can no longer serve the purpose for which it is allowed by law. As a consequence, the CA credited the time served by respondents when they were placed under preventive suspension to the penalty of suspension meted on them.[61]

In view of the foregoing disquisitions, the CA awarded backwages to Entrina computed from the time she was illegally dismissed, excluding her salary covering the time of her suspension. Instead of reinstatement, the CA awarded her with separation pay in view of the strained relations between her and petitioner. As to Raysag, considering her retirement, the CA awarded separation pay computed in accordance with that provided by the Labor Code or retirement pay as provided by the company policy, whichever is higher. The CA, however, deleted the award of moral and exemplary damages for failure of respondents to show that petitioner was impelled by some evil motive in dismissing them. The award of attorney's fees was affirmed by the CA as respondents were compelled to file an action to protect their rights and interests.[62]

Finally, the CA ruled that petitioner's officers Tantoco, Huang, and Barcelona cannot be made jointly and solidarily liable with petitioner as there is wanting in sufficient evidence that they acted in bad faith in the termination of respondents.[63]

Accordingly, the CA reversed the NLRC's ruling and rendered the assailed Decision,[64] the dispositive portion of which reads:

> WHEREFORE, the instant petition is GRANTED. The April 11, 2013 Decision and August 1, 2013 Resolution of the National Labor Relations Commission (NLRC), Fourth Division dismissing the complaint are hereby REVERSED AND SET ASIDE. The Decision of the Labor Arbiter dated September 25, 2012 is hereby REINSTATED with MODIFICATIONS in that:

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61 Id. at 69-70.
62 Id. at 72-73.
63 Id. at 71.
64 Supra note 2.

1) Petitioners are found guilty of simple negligence for which six- month suspension is imposed on petitioner Entrina while suspension from January 11, 2012 to February 15, 2012 is imposed on petitioner Raysag, the period of their preventive suspension to be credited in the service of the penalty of suspension herein meted-out;

2) RUSTAN COMMERCIAL CORPORATION is solely liable for the payment of the monetary awards in favor of petitioners; [and]

3) The award of moral and exemplary damages is DELETED;

Let the records of this case be REMANDED to the Labor Arbiter for a re-computation of petitioners' backwages, separation pay and retirement pay in accordance with [*Session Delights Ice Cream and Fast Foods vs. Court of Appeals*.] x x x

SO ORDERED.[65]

Not amenable to the Decision of the CA, petitioner filed the present petition for review.

The Issues

I. Whether the CA erred in ruling that respondents were illegally dismissed for lack of substantial evidence that they were guilty of gross and habitual neglect of duty.

II. Whether the CA erred in ruling that respondents were illegally dismissed for lack of procedural due process.

III. Whether the CA erred in ruling that respondents are entitled to separation pay, retirement pay, and other monetary award.

The Court's Ruling

The petition is meritorious.

I.

The issues raised in the instant petition chiefly pertain to the legality of the respondents' dismissal which, by the nature of the arguments of the parties, involve a calibration and re-evaluation of the evidence they presented, as well as a review of the factual findings of the LA, the NLRC and the CA. As a rule, the Court does not review questions of fact, but only

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[65] *Rollo*, pp. 73-74.

questions of law in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Elementary is the principle that the Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are generally binding and conclusive.[66] The rule though is not absolute as the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory.[67] Considering that the findings and rulings of the LA and the CA, on one hand, and those of the NLRC on the other, are conflicting, the Court finds sufficient basis for a review of the factual matters in this case in conjunction to questions of law involved herein.

II.

For a dismissal to be valid, the same must be pursuant to either a just or an authorized cause under Articles 282,[68] 283[69] or 284[70] of the Labor Code.[71] Also, the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and, therefore, illegal. To discharge this burden, the employer must present substantial evidence, which is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, and not based on mere surmises or conjectures.[72]

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66 *Cavite Apparel, Inc. v. Marquez*, 703 Phil. 46, 53 (2013).

67 Id.

68 Art. 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 duly authorized representatives; and
e. Other causes analogous to the foregoing.

69 Art. 283. *Closure of establishment and reduction of personnel.* The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

70 Art. 284. *Disease as ground for termination.* An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

71 *Noblado v. Alfonso*, 773 Phil. 271, 281 (2015).

72 *Bicol Isarog Transport System, Inc. v. Relucio*, G.R. No. 234725, September 16, 2020.

Moreover, not only must the dismissal be for a cause provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and defend one's self.[73] In particular, the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary, however, that an actual hearing be conducted.[74] Relatedly, the employer bears the burden of proving compliance with the above two-notice requirement.[75] Nonetheless, failure to observe or to prove compliance of the same would still make the dismissal valid as long as just or authorized cause for dismissal exists; the employer, however, shall be held liable for nominal damages.[76]

III.

The petitioner dismissed respondents on the ground of gross neglect of duty in the performance of their functions as Inventory Specialists, which resulted to the loss of high-end cosmetic merchandise, La Prairie, worth ₱509,004.00.

The CA ruled respondents' dismissal to be illegal, ratiocinating, among others, that petitioner failed to prove the specific duties and responsibilities of respondents that were performed negligently and repeatedly. Apparently, the CA found it insufficient for the petitioner to simply say that respondents are in-charge of ensuring the safety of La Prairie products inside the CP & T stockroom.

The Court finds the CA's reasoning *non-sequitur*. The respondents were engaged by petitioner as Inventory Specialists of a specific cosmetics brand and specially assigned at the specific location at Rustan's Makati stockroom of the aforesaid product. As the special designation of the respondents logically suggests, it is only natural for petitioner to expect them to be responsible for the safekeeping of that particular product in the CP & T stockroom. Notably, it is for this reason that the duties of respondents to monitor, control, and safeguard the subject stocks and merchandise in the CP & T stockroom in order to prevent pilferage or theft were never raised as an issue before the labor tribunals.

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[73] *Eagle Clarc Shipping Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 245370, July 13, 2020.

[74] *Noblado v. Alfonso*, supra note 71, at 282.

[75] *Santos v. Integrated Pharmaceutical, Inc.*, 789 Phil. 477, 495 (2016).

[76] See *Libcap Marketing Corp. v. Baquial*, 737 Phil. 349, 350 (2014).

Besides, the aforesaid finding of the CA is belied by the evidence on record, particularly the Affidavit of Counter Manager, Leonardo, and by petitioner's Legal Department's Administrative Investigation Report, which detailed the duties and responsibilities negligently performed by respondents. Leonardo subscribed under oath that respondents "were the ones [in-charge] with the monitoring and control of La Prairie stocks,"[77] and that they have "direct access inside the stockroom."[78] Leonardo also said that respondents "could not produce [and are not using] the company required documents, [Bin Cards], to be used by Inventory Specialists as a standard operating procedure to monitor and control stocks coming into and going out of the stockroom to prevent theft and pilferage"[79] in order "to conceal from the company anomalous transactions or losses of CP & T stocks inside the stockroom."[80] On the day she found out that there was a missing La Prairie Cellular Resurfacing Cream, Leonardo "took almost four (4) hours to check the La Prairie stocks inside the stockroom as the stocks were so in [disarray], dirty, not properly stacked and [she] found that [respondents] were not using Bin Cards to record and monitor stock movements in and out of the stockroom, which made [her] think that what was happening inside the stockroom was being deliberately done, as if to conceal any [loss] therein."[81] Meanwhile, in the report of petitioner's Legal Department, it was detailed therein that "[p]recisely the purpose for which [the respondents] have been employed by the company as [Inventory Specialists] is to safeguard the integrity of stocks and merchandise in the stockroom, thereby preventing pilferage, theft or any cause of losses of stocks or merchandise items entrusted under their watch."[82] The respondents, however, "have failed to implement strict measures to prevent theft or other forms of losses of items; from the statements of all personnel questioned about the variances, it can be fairly concluded that the [respondents] have not been strictly updating their documentation of items coming in and going out of the [s]tockroom; worse, they have been allowing other employees to take charge in arranging and controlling stocks inside the [s]tockroom, and actually perform functions which should be particularly carried out only by them."[83]

It might not be amiss to stress at this point that respondents never directly and sufficiently answered the negligent acts imputed against them. A scrutiny of the pleadings they filed and of the records in this case shows that respondents never directly retorted the accusations against them as they simply kept on insisting that the petitioner failed to prove its case, citing anomalous circumstances surrounding their dismissal and of their flawless employment record. True, the burden of proof is upon the employer to show

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77 *Rollo*, p. 274.
78 Id.
79 Id.
80 Id.
81 Id. at 272.
82 Id. at 483.
83 Id. at 482.

that the employee's termination from service is for a just and valid cause. In this case, the evidence for petitioner has clearly overcome that burden, which need only be proved through substantial evidence and not any other heavier quantum of proof. It would have helped respondents' case and would have given the adjudicating tribunal or court a different look of petitioner's evidence if respondents directly and clearly responded to the specific acts imputed against them during the adjudication proceedings. Remarkably, respondents failed to directly, clearly, and sufficiently explain or refute that they have not been using the company-required documents to monitor and control stocks coming in and going out of the stockroom to prevent theft and pilferage, that the stocks inside the stockroom were so in disarray, dirty, and not properly stacked to conceal any loss therein, that they have not been strictly updating their documentation of items coming in and going out of the stockroom, that they have been allowing other employees to take charge in arranging and controlling stocks inside the stockroom, and, more importantly, that they failed to report missing items and merchandise losses inside the stockroom.

The Court cannot also agree with the CA's opinion that respondents' neglect in the performance of their duties and responsibilities could only be considered as simple which warrants a lesser penalty than dismissal. Clearly, the CA failed to fully understand the nature of the job of respondents as Inventory Specialists *vis-à-vis* the impact of their negligent acts to the business of petitioner. Petitioner is engaged in retail business. Inventory is a vital part of its operations. Precisely, the respondents were particularly designated as specialists in the field of inventory and were exclusively assigned at the stockroom to safekeep, monitor, and control La Prairie stocks coming in and going out of the stockroom in order to prevent misaccounting, theft, and pilferage. Accordingly, in relation to their special designation, the negligent acts of the respondents — in not using the company-required documents to monitor and control stocks, in failing to properly stack, in not strictly updating their documentation of items coming in and going out of the stockroom, in allowing other employees to take charge in arranging and controlling stocks inside the stockroom — which ultimately led to the failure to prevent, much less, even detect, product losses inside the stockroom, in totality, cannot merely constitute simple negligence. The acts they failed to perform or negligently failed to perform are the very essence of their job — the crucial duties and responsibilities demanded and imposed as their employer's measures to prevent misaccounting, theft, and pilferage, the exact evil it sought to avoid. Needless to say, by their failure to do their basic but essential and crucial duties, the same could not just be considered as inadvertent; rather, the same constitutes wanton failure to perform an act with conscious indifference to consequences insofar as their employer may be affected. Reasonable care and caution, which any other employee would use, especially by an inventory specialist, undoubtedly tell us that the aforementioned acts of respondents in abdicating their essential duties would certainly result to thievery or pilferage.

Likewise, the Court disagrees with the observation of the CA that the negligence of respondents is not habitual.

The fact that there was only one single investigation that led to a finding of respondents' gross neglect of duty does not necessarily mean that respondents committed a single and isolated act of negligence. It must be stressed that the losses of La Prairie merchandise subject of the investigation and subsequent termination of respondents covered a period of 10 months or from January to October 10, 2011. Clearly, respondents' neglect of duty is habitual. Logic dictates that the loss of 58 items of La Prairie merchandise could not have happened only in a single instance of neglect; otherwise, a bulk of cosmetic products taken outside the CP & T stockroom and outside from Rustan's Makati premises would have been easily detected.

In any case, while the rule is that a single or isolated act of negligence is not sufficient to constitute a just cause for the dismissal of the employee,[84] the same, however, is not absolute. An infraction, even if not habitual, may warrant a dismissal under appropriate circumstances.

In *Fuentes v. National Labor Relations Commission*,[85] the Court upheld the dismissal of the employee despite the fact that the infraction is not habitual, to wit:

> Although petitioner's infraction was not habitual, we took into account the substantial amount lost. Since the deposit slip for [₱]200,000.00 had already been validated prior to the loss, the act of depositing had already been complete and from thereon, the bank had already assumed the deposit as a liability to its depositors. Cash deposits are not assets to banks but are recognized as current liabilities in its balance sheet.
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> It would be most unfair to compel the bank to continue employing petitioner. In *Galsim v. PNB*, we upheld the dismissal of a bank teller who was found to have given money to a co-employee in violation of bank rules and regulations. Said act, which caused prejudice to the bank, was a justifiable basis for the bank to lose confidence in the employee.
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> An employer cannot legally be compelled to continue with the employment of a person admittedly guilty of gross negligence in the performance of his duties and whose continuance in his office is patently inimical to the employer's interest. "For the law in protecting the rights of the employee/laborer authorizes neither oppression nor self-destruction of the employer."[86] (Citation omitted)

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[84] *Sy v. Neat, Inc.*, 821 Phil. 751, 771 (2017).
[85] 248 Phil. 980 (1988).
[86] Id. at 986.

Likewise, in *LBC Express-Metro Manila, Inc. v. Mateo*,[87] the Court upheld the dismissal of the employee despite the fact that said employee committed the infraction only once, thus:

> Although Mateo's infraction was not habitual, we must take into account the substantial amount lost. In this case, LBC lost a motorcycle with a book value of [₱]46,000[.00] which by any means could not be considered a trivial amount. Mateo was entrusted with a great responsibility to take care of and protect company property and his gross negligence should not allow him to walk away from that incident as if nothing happened and, worse, to be rewarded with backwages to boot.
>
> An employer cannot legally be compelled to continue with the employment of a person admittedly guilty of gross negligence in the performance of his duties. This holds true specially if the employee's continued tenure is patently inimical to the employer's interest. What happened was not a simple case of oversight and could not be attributed to a simple lapse of judgment. No amount of good intent, or previous conscientious performance of duty, can assuage the damage Mateo caused LBC when he failed to exercise the requisite degree of diligence required of him under the circumstances.[88]

In this case, the Court finds, under the circumstances pertaining herein, that it was just and reasonable for petitioner to dismiss respondents even, assuming, that it was the first time that they committed the infraction. The Court takes into account two important factors. First is the quantity and the substantial amount or value of the merchandise lost, amounting to ₱509,044.00. Second, respondents' position is necessarily one of trust and confidence. Petitioner cannot legally be compelled to continue with the employment of respondents who are entrusted with the care, custody, and safekeeping of high-end cosmetic products, but who just committed gross negligence which resulted to missing assigned products amounting to an enormous amount of around half a million pesos. Clearly, respondents' continued tenure is patently inimical to the petitioner's business interest.

IV.

Anent the alleged anomalous circumstances – as pointed out by respondents, the LA and the CA – which suggest the illegality of respondents' dismissal, the Court finds the same to be baseless, inconsequential or preposterous.

It is contended that the truthfulness of the merchandise losses is questionable because (1) there are varied and contradicting averments of the monetary value of the merchandise losses; (2) it was unusual that

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[87] 607 Phil. 8 (2009).
[88] Id. at 12-13.

respondents were given 50% discount in the payment of the monetary value of the merchandise losses; (3) the petitioner failed to produce signed and certified reports; (4) failure to present documentary evidence like financial statements to validate the alleged losses; (5) the security guards were not asked to submit report regarding the merchandise losses; (6) other employees in the stockroom were not involved in the administrative investigation; and (7) petitioner did not submit CCTV images or records.

It is undisputed that petitioner conducted a count or audit of La Prairie merchandise inside Rustan's Makati CP & T stockroom and selling area, which confirmed that La Prairie merchandise were indeed missing from the CP & T stockroom. This has been proven by the affidavit of petitioner's La Prairie Counter Manager, Leonardo, and by the reports of the ICG and the IAD. Respondents, themselves, have admitted the fact of loss in their explanation letters both dated February 6, 2012. To understand the varied amounts of losses averred by petitioner in their pleadings, one only needs to take a closer look and review of the affidavits of Leonardo and Baliwas, the audit reports submitted as evidence, and the factual milieu of this case, which the LA and the CA failed to do. As can be gleaned from the carefully laid-out recital of factual antecedents, it all started with the initial count of Leonardo on July 19, 2011, who initially found that there are 62 missing items, hence, the amount of ₱617,750.00. Baliwas' statement of the amount of ₱600,000.00, on the other hand, was her estimate of the merchandise losses when she assisted Leonardo during the initial count. Thereafter, Leonardo requested for a thorough inventory by petitioner's appropriate departments. Thus, on July 25, 2011, the ICG performed a count of La Prairie's stock inventory at Rustan's Makati and found that there was an unaccounted variance totaling ₱537,554.00. The ICG then endorsed its findings to the IAD as indicated in the latter's October 4, 2011 Report. The IAD made its own count on August 1, 2011 of all stocks *vis-à-vis* the reported inventory discrepancies as endorsed by the ICG and found that there are 54 missing La Prairie merchandise from Rustan's Makati CP & T stockroom, hence, the amount of ₱510,800.00. On October 11, 2011, petitioner sent notices to respondents to explain why they should not be held liable for the accounted variance of ₱537,554.00. It can be observed in the Notice to Explain that it referred to the report provided by the ICG, not the IAD, hence, the amount of ₱537,554.00 as reported earlier by former. On its part, the IAD later released another report stating a shortage of 60 pieces for a total retail value of ₱586,300.00. This report, however, refers to the count as of November 2, 2011 and not as of October 11, 2011 when the Notice to Explain was sent to respondents pertaining to the ICG Report, hence, the variance of the amounts. Ultimately, in the Legal Department's Investigation Report dated December 19, 2011, it was indicated that respondents are responsible for 58 lost items and the final amount of merchandise losses is ₱509,004.00. This is because it referred to the "latest recount" conducted by the ICG on November 10, 2011. It was that amount, ₱509,004.00, that was stated in the termination letter dated February 1,

2012. The Court sees nothing unusual in the variance of the count and value of merchandise losses in this case. This is clearly a product of continuing audits and revalidation conducted by petitioner on different dates, yielding updated results and corresponding amount, the latest of which upon the submission of final investigation report is 58 missing items amounting to ₱509,004.00 — the amount stated in the termination letters.

Meanwhile, additional losses were reported to the IAD subsequent to the Notice to Explain and during the investigation. Accordingly, the IAD performed physical count on December 12 and 15, 2011 and found that there is an additional inventory shortage of 27 pieces of La Prairie merchandise, amounting to ₱456,900.00, as indicated in its December 28, 2011 Report. It may be observed that in the Position Paper of petitioner filed before the LA, it claimed that it suffered the total losses of ₱965,904.00. Clearly, this was the sum total of the ₱509,004.00 reported losses as of November 10, 2011 and the additional losses in the amount of ₱456,900.00 discovered during the count on December 12 and 15, 2011, but was reported by IAD only on December 28, 2011 or days past the conclusion of the Legal Division report on December 19, 2011. Also, Leonardo stated in her affidavit that the total losses of La Prairie products is ₱908,200.00. This refers, however, to the Audit Report dated March 2, 2012, as indicated therein, when respondents were already dismissed from employment. It is worthy to note that in the final amount charged against the respondents, the additional losses of ₱456,900.00 reported on December 28, 2011 or the updated amount of additional missing items as of March 2, 2012 were no longer included. Rightly so as the additional losses were not taken up in the investigation conducted by petitioner's Legal Division or covered in its Administrative Investigation Report dated December 19, 2012, which was the basis for the termination of respondents' employment.

That respondents were directed to pay ₱254,502.00 "each" does not suggest that the losses were sham. Basic use of mathematical addition of the amounts charged individually to respondents would readily sum up to ₱509,004.00, the value of the lost items subject of the investigation report and termination letters. Clearly, there was no "50% discount" granted to respondents. As correctly pointed out by the NLRC, for petitioner to demand 100% of the value lost from each of the respondents would result to a clear case of unjust enrichment on its part. Furthermore, that petitioner did not report the loss of its merchandise to police authorities or file a criminal complaint does not render its claim of merchandise losses unbelievable. It must be noted that there are no known criminal offender here. Respondents were not charged with theft, but for gross negligence which resulted or paved the way for pilferage. The same is true with the alleged non-submission of petitioner's security guard report. Again, there could possibly be no report from petitioner's security department as there was no apprehension of any known criminal offender for thievery or pilferage. It

must also be underscored that the losses were initially discovered by Rustan's Makati's Counter Manager who reported immediately and directly to her superiors and to the appropriate departments of petitioner. Hence, there is no point in recording or reporting the said missing items with petitioner's security department when the same were already formally reported to its higher authorities. Also, there is no absolute necessity for the respondent to submit a financial statement showing their losses as the instant case does not involve a dismissal due to retrenchment or serious business losses as in the case of *Guerrero v. National Labor Relations Commission*.[89] Besides, as pointed out by the NLRC, like a police report, the submission of financial statements is merely corroborative and failure to submit the same does not necessarily mean that the losses were mere fabrications in light of the other evidence presented by petitioner. Also, the failure of petitioner to submit the detailed certified reports from the personnel and accountants who conducted the counting or audit does not mean that the losses were manufactured. The Court notes that the audit reports submitted by petitioner were prepared and signed by its concerned audit and inventory department heads who explained the details on the information regarding the conduct of the audit or counting. If taken together with the affidavits of Leonardo and Baliwas, who, like the aforesaid department heads, would gain nothing in falsely testifying or reporting on the merchandise losses inside Rustan's Makati CP & T stockroom, the Court sees no basis that the losses were concocted. As to the allegation that there were no other employees subjected to administrative investigation, this is belied by the evidence on record as there are other employees investigated; in fact, some employees and officers were also meted with administrative penalties of suspension. And as to the suggestion that CCTV footages should have been produced, the petitioner has already explained before the NLRC that there are no CCTV cameras installed inside the CP & T stockroom as stated in the affidavit of Engr. Gilbert Cuevas, Head of petitioner's Engineering Department.[90]

Moving on to the factors which allegedly controvert the findings that respondents were grossly negligent, the Court has this below to say.

The fact that Raysag was granted salary increase just recently before her dismissal does not mean that she was or could never have committed the employment offense. As explained by petitioner, the memorandum regarding the salary adjustment given to Raysag was signed and served on October 18, 2011 which is prior to the conduct of Administrative Investigation held on October 27, 2011. As of the time the salary increase was given, there were no findings yet that the aforementioned employee is grossly negligent.[91] Hence, the grant of salary increase should not be taken against petitioner. Rather, the same set a good example of what an employer

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[89] 329 Phil. 1069 (1996).
[90] *Rollo*, p. 469.
[91] Id. at 469-470.

should legally and justly do to an employee subjected to disciplinary investigation – to give what is due him or is already a vested right upon him in the absence of final determination that he is guilty of the offense charged. To act otherwise would give the notion that the employer is condemning already the employee even before the offense is proven – a clear case of injustice, if not totally an illegality. Besides, salary increase granted to an employee for past merit or other reasons is never a waiver of an employer's right to sever their services for anomalies found only after the grant. To do so would embolden employees to engage in anomalous transactions, thinking that their past meritorious performance will, nevertheless, exculpate them from future wrongdoings. In the same vein, one's service to their employer for several years without committing an infraction does not necessarily mean that they are not guilty of a wrongdoing later found in their employment. Otherwise, it would speciously make longtime employees infallible and immune from disciplinary action for a proven infraction committed later their employment, to the detriment of the interest or safety of the employer and other employees. The Court cannot accept such absurd supposition.

The Court also differs with the CA in saying that the fact that respondents' co-employees were only meted with the lesser penalty of suspension has weakened petitioner's case. It must be stressed that the CA, or even the Court for that matter, has no full comprehension of the merits of the administrative cases of the other employees as the same are not part of the case subject of the *certiorari* petition filed before the CA. For sure, the arguments, as well as the evidence to be presented, hypothetically, by the parties involved therein would clearly elucidate on the merits of said other disciplinary cases, including the causes and, especially, the reasonableness or unreasonableness of the penalty imposed to those other employees. The Court, like the CA, could only speculate as to the reasons why those employees only merited a suspension rather than dismissal. Perhaps, the Court can only note that those employees have different functions, duties, and responsibilities, and the gravity and effect of their infraction in relation to the resulting damage or loss suffered by petitioner may not be as severe and direct as compared to the respondents. As extensively discussed earlier, the nature of respondents' job as Inventory Specialists, who are primarily responsible for the custody, safekeeping and proper inventory or accounting of the lost items, and the negligent acts they committed constitute vital factors which warrant their dismissal. The Court is not equipped to rule the same, unfavorably or favorably, for the other employees. For certain though, to say that the termination of respondents is attended with illegality on the mere fact that other employees, subject of the same investigation, were not dismissed from employment is too conjectural.

With regard to the conduct of lie detector tests even after the submission of the December 19, 2011 Final Investigation Report, respondents' guess, that it was needed as the aforesaid report is

unsubstantiated or not enough to find them liable, is as good as petitioner's explanation that the same was conducted to give *additional* credence and certainty to the investigation findings in consideration of the fact that respondents were its long-time employees who gained certain level of trust from management, and thus, were given the benefit of the doubt. The Court, nonetheless, agrees with the observation of the CA and the LA that the questions in the polygraph test were not connected with the offense for which the respondents were charged and subsequently dismissed. In particular, the questions asked to the respondents concern their direct involvement and participation in the pilferage of any merchandise inside the CP & T stockroom and did not touch on respondents' negligent acts in the performance of their duties. Accordingly, the same, cannot be considered as a corroborative evidence for the petitioner's case. Notwithstanding, as lengthily discussed earlier, the petitioner has more than sufficiently established by substantial evidence that there was just cause in dismissing the respondents. And as for the failure to produce the Minutes of the October 27, 2011 Investigation Hearing, petitioner has sufficiently explained that there were no Minutes. The procedure followed by its Legal Department is to conduct an investigation hearing and then issue a memorandum or report pertaining to the result thereof, as embodied in its Final Investigation Report dated December 19, 2011. Relative thereto, the Court cannot help but notice that respondents kept on alluding, since the case was still in the arbitration level, that the content in the Minutes would tell that they are not guilty of the offenses charged. Interestingly, however, respondents failed to specify in their pleadings as to what took place during the hearing – especially their answers to the acts imputed against them – for them to say that petitioner's Legal Department report is baseless.

As to the other allegations, suggestions and observations that allegedly tainted respondents' dismissal with illegality, the Court finds the same too speculative and trivial to warrant a discussion.

V.

While there is just cause in the termination of respondents' employment, the Court agrees with the CA that the petitioner failed to observe procedural due process in effecting their dismissal.

In *King of Kings Transport, Inc. v. Mamac*,[92] the Court clarified the twin requirements of notice and hearing in dismissing an employee, thus:

> (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

[92] 553 Phil. 108 (2007).

> 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 is being charged against the employees.**
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> (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.
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> (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.[93] (Emphases and underscoring supplied)

The first notice must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal.[94] Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process.[95]

In this case, the Notice to Explain[96] dated October 11, 2011 sent by petitioner to respondents stated as follows:

> This has reference with the report provided by the Inventory Control Group pertaining to the La Prairie Unaccounted Variances.
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> It has come to our attention that after reconciling discrepancies in the La Prairie inventory covering the period January 2011 up to October

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[93] Id. at 115-116.
[94] *Maquiling v. Philippine Tuberculosis Society, Inc.*, 491 Phil. 43, 57 (2005).
[95] *Kulas Ideas & Creations v. Alcoseba*, 627 Phil. 22, 34 (2010).
[96] *Rollo*, p. 278.

> 10, 2011, the final report showed that there is an unaccounted variance of P537,554.00. Since you have been assigned as an Inventory Specialist to La Prairie in Rustan's Makati during the covering period of the shortage, we would like to get your explanation as to why there is such an unaccounted variance.
>
> Please explain within five (5) days from receipt of this memo why you should not be held accountable for the losses of Rustan due to the aforementioned shortage at La Prairie, and why no appropriate action should be taken against you. Failure on your part to submit a written explanation within the given period shall constitute a waiver of your right to be heard and the matter will be resolved based on the evidence at hand.[97]

It is apparent on the face of the Notice that there is no indication that respondents could be terminated from employment. No such intention to dismiss respondents can be inferred from the general tenor of the Notice. Neither did the Notice apprise respondents of the specific causes or grounds for their possible termination, or the company rules or policies they violated. Respondents were only notified that their termination was due to gross neglect of duty in the Notice of Termination dated February 1, 2012. The Notices of Preventive Suspension[98] dated January 10, 2012 did not rectify petitioner's violation of the first written notice requirement. As admitted by petitioner, it refers to the subsequent string of additional losses after the actual investigation was conducted in relation to the October 11, 2011 Notice to Explain and the corresponding Investigation Report dated December 19, 2011.

The Court cannot overemphasize that the first written notice bears heavily upon the employee's intelligent preparation for defense. It enables the employee to squarely address the accusations against him or her and guides the employee in deciding whether to consult a union official or lawyer, or gather data and evidence.[99] One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.[100]

VI.

Finding that there is just cause in the dismissal of respondents, but without the proper observance of procedural due process on the part of petitioner, the dismissal, as mentioned at the outset, remains valid.

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[97] Id.
[98] Id. at 251-254.
[99] *Cf. Abel v. Philex Mining Corp.*, 612 Phil. 203 (2009).
[100] *Kulas Ideas & Creations v. Alcoseba*, supra note 95.

Accordingly, the respondents are not entitled to backwages, reinstatement or separation pay in lieu thereof, retirement benefits with regard to Raysag, and attorney's fees. Under Article 279 of the Labor Code, only unjustly dismissed employees are entitled to reinstatement and backwages.[101] Likewise, retirement benefits cannot be granted to an employee dismissed for just cause.[102]

Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity. Petitioner had already suffered financial losses in the amount of ₱509,004.00 as a result of respondents' gross neglect of duty. To compel petitioner to pay for any monetary considerations would be adding insult to injury. Besides, if an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.[103]

However, petitioner shall be held liable for nominal damages for failure to faithfully and strictly comply with the due process requirements in terminating the employment of respondents.[104] In accordance to prevailing jurisprudence,[105] petitioner is directed to pay nominal damages of ₱30,000.00 to each of the respondents. This liability falls exclusively to petitioner as its officers are not guilty of bad faith in failing to follow the two notices requirement to warrant its solidary liability with the petitioner.

WHEREFORE, premises considered, the Decision dated February 27, 2015 and the Resolution dated July 21, 2015 of the Court of Appeals in CA-G.R. SP 131889 are **REVERSED** and **SET ASIDE**. The dismissal of respondents Dolora F. Raysag and Merlinda S. Entrina is hereby **DECLARED** to be for just cause. Petitioner Rustan Commercial Corporation is **ORDERED** to indemnify respondents Dolora F. Raysag and Merlinda S. Entrina the amount of ₱30,000.00 each as nominal damages for failure to comply with the procedural due process requirements in terminating the employment of said respondents.

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[101] Art. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[102] *Philippine Long Distance Telephone Co. v. Bolso*, 557 Phil. 313, 325 (2007).

[103] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, 489 Phil. 483, 499 (2005).

[104] *Libcap Marketing v. Baquial*, supra note 76.

[105] *Bicol Isarog Transport System, Inc. v. Relucio*, supra note 72.

SO ORDERED.

EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
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 MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

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.

ALEXANDER G. GESMUNDO
Chief Justice