Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

ALEX Q. NARANJO, DONNALYN DE GUZMAN, RONALD V. CRUZ, ROSEMARIE P. PIMENTEL, and ROWENA B. BARDAJE, Petitioners,	**G.R. No. 193789** Present:
- versus -	VELASCO, JR., *J.*, Chairperson, PERALTA, ABAD, PEREZ,* and MENDOZA, *JJ.*
BIOMEDICA HEALTH CARE, INC. and CARINA "KAREN" J. MOTOL, Respondents.	Promulgated: 19 September 2012

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DECISION

VELASCO, JR., *J.*:

The Case

This Petition for Review on Certiorari under Rule 45 seeks to annul the June 25, 2010[1] Decision and September 20, 2010[2] Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 108205, finding that petitioners were validly dismissed. The CA Decision overturned the Decision dated November 21, 2008[3] of the National Labor Relations Commission (NLRC) and reinstated the Decision dated March 31, 2008[4] of Labor Arbiter Ligerio V. Ancheta.

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* Additional member per Special Order No. 1299 dated August 28, 2012.

[1] *Rollo*, pp. 55-63. Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez and Ramon M. Bato, Jr.

[2] Id. at 64.

[3] Id. at 314-329. Penned by Commissioner Gregorio O. Bilog, III and concurred in by Commissioners Lourdes C. Javier and Pablo C. Espiritu.

[4] Id. at 265-282.

The Facts

Respondent Biomedica Health Care, Inc. (Biomedica) was, during the material period, engaged in the distribution of medical equipment. Respondent Carina "Karen" J. Motol (Motol) was then its President.

Petitioners were former employees of Biomedica holding the following positions:

Alex Q. Naranjo (Naranjo)	-	Liaison Officer
Ronald Allan V. Cruz (Cruz)	-	Service Engineer
Rowena B. Bardaje (Bardaje)	-	Administration Clerk
Donnalyn De Guzman (De Guzman)	-	Sales Representative
Rosemarie P. Pimentel (Pimentel)	-	Accounting Clerk[5]

On November 7, 2006, which happened to be Motol's birthday, petitioners—with two (2) other employees, Alberto Angeles (Angeles) and Rodolfo Casimiro (Casimiro)—were all absent for various personal reasons. De Guzman was allegedly absent due to loose bowel movement,[6] Pimentel for an ophthalmology check-up,[7] Bardaje due to migraine,[8] Cruz for not feeling well,[9] and Naranjo because he had to attend a meeting at his child's school.[10] Notably, these are the same employees who filed a letter-complaint dated October 31, 2006[11] addressed to Director Lourdes M. Transmonte, National Director, National Capital Region-Department of Labor and Employment (DOLE) against Biomedica for lack of salary increases, failure to remit Social Security System and Pag-IBIG contributions, and violation of the minimum wage law, among other grievances. Per available records, the complaint has not been acted upon.

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[5] Id. at 266-267.
[6] Id. at 113.
[7] Id. at 118.
[8] Id. at 110.
[9] Id. at 107.
[10] Id. at 103.
[11] Id. at 174.

Later that day, petitioners reported for work after receiving text messages for them to proceed to Biomedica. They were, however, refused entry and told to start looking for another workplace.[12]

The next day, November 8, 2006, petitioners allegedly came in for work but were not allowed to enter the premises.[13] Motol purportedly informed petitioners, using foul language, to just find other employment.

Correspondingly, on November 9, 2006, Biomedica issued a notice of preventive suspension and notices to explain within 24 hours (Notices)[14] to petitioners. In the Notices, Biomedica accused the petitioners of having conducted an illegal strike and were accordingly directed to explain why they should not be held guilty of and dismissed for violating the company policy against illegal strikes under Article XI, Category Four, Sections 6, 8, 12, 18 and 25 of the Company Policy. The individual notice reads:

> Subject: Notice of Preventive Suspension
> & Notice to explain within 24 hours
>
> Effective upon receipt hereof, you are placed under preventive suspension for willfully organizing and/or engaging in illegal strike on November 7, 2006. Your said illegal act-in conspiracy with your other co-employees, paralyzed the company operation on that day and resulted to undue damage and prejudice to the company and is direct violation of Article XI, Category Four Section 6, 8, 12, 18 & 25 of our Company Policy, which if found guilty, you will be meted a penalty of dismissal.
>
> Please explain in writing within 24 hours from receipt hereof why you should not be held guilty of violating the company policy considering further that you committed and timed such act during the birthday of our Company president.

On November 15, 2006, petitioners were required to proceed to the Biomedica office where they were each served their Notices.[15] Only Angeles and Casimiro submitted their written explanation for their absence wherein

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[12] Id. at 315.
[13] Id. at 316.
[14] Id. at 142.
[15] Id. at 104, 107, 111, 114 & 119.

they alleged that petitioners forced them to go on a "mass leave" while asking Biomedica for forgiveness for their actions.

On November 20, 2006, petitioners filed a Complaint with the NLRC for constructive dismissal and nonpayment of salaries, overtime pay, 13th month pay as well as non-remittance of SSS, Pag-IBIG and Philhealth contributions as well as loan payments. The case was docketed as Case No. 00-09597-06.

Thereafter, Biomedica served Notices of Termination on petitioners. All dated November 29, 2006,[16] the notices uniformly stated:

> We regret to inform you that since you did not submit the written letter of explanation as requested in your preventive suspension notice dated November 9, 2006, under Article XI, Category Four, Section 6, 8, 12, 18 and 25 you are hereby dismissed from service effective immediately.

On March 31, 2008, the Labor Arbiter issued a Decision,[17] the dispositive portion of which reads:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered dismissing for lack of merit the instant complaint for illegal dismissal.
>
> However, the respondents are hereby ORDERED, jointly and severally, to pay the complainants the following:
>
> Unpaid salary for the period 08-15 November 2006;
>
> Pro-rated 13th month pay for 2006; and
>
> Service Incentive Leave for 2006 (except for complainant Bardaje).
>
> From the monetary award given to complainant Naranjo, the amount of PhP4,750.00 shall be deducted.
>
> From the monetary award given to complainant Pimentel, the amount of PhP4,500.00 shall be deducted.

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[16] Id. at 143, 145, 147 & 149.
[17] Id. at 264-284.

> A detailed computation of the monetary awards, as of the date of this Decision, is embodied in Annex "A" which is hereby made an integral part hereof.
>
> SO ORDERED.[18]

The Labor Arbiter found that, indeed, petitioners engaged in a mass leave akin to a strike. He added that, assuming that petitioners were not aware of the company policies on illegal strikes, such mass leave can sufficiently be deemed as serious misconduct under Art. 282 of the Labor Code. Thus, the Labor Arbiter concluded that petitioners were validly dismissed.

Petitioners appealed the Labor Arbiter's Decision to the NLRC which rendered a modificatory Decision dated November 21, 2008.[19] Unlike the Labor Arbiter, the NLRC found and so declared petitioners to have been illegally dismissed and disposed as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered modifying the assailed Decision dated April 11, 2008 [sic];[20]
>
> (a) DECLARING the Complainants to have been illegally dismissed for lack of just cause;
>
> (b) ORDERING Respondents to pay separation pay in lieu of reinstatement and payment of backwages computed on the basis of one (1) month pay for every year of service up to the date of complainants illegal dismissal;
>
> (c) ORDERING the respondents to pay complainant De Guzman and Cruz their unpaid commission on the basis of their sale for year 2005-2006;
>
> (d) Sustaining the monetary award as stated in the Decision dated April 11, 2008;
>
> (e) ORDERING the respondents to pay attorney's fees in the amount of 10% of the total award of monetary claims.
>
> All other claims and counterclaims are dismissed for lack of factual and legal basis.
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> SO ORDERED.[21]

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[18] Id. at 282.

[19] Id. at 314-329.

[20] This should be March 31, 2008. April 11, 2008 refers to the date of the Notice of Judgment/Decision for the March 31, 2008 Decision of the Labor Arbiter.

[21] *Rollo*, pp. 328-329.

Thereafter, Biomedica moved but was denied reconsideration per the NLRC's Resolution dated January 30, 2009.[22]

From the Decision and Resolution of the NLRC, Biomedica appealed the case to the CA which rendered the assailed Decision dated June 25, 2010, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the assailed Decision and Resolution of public respondent National Labor Relations Commission (NLRC) dated November 21, 2008 and January 30, 2009 respectively in NLRC NCR CN 00-11-09597-06 are hereby **ANNULLED** and **SET ASIDE**. Decision of the labor arbiter is hereby **REINSTATED.**
>
> **SO ORDERED.**[23]

In its assailed Resolution dated September 20, 2010, the CA denied petitioners' Motion for Reconsideration. The CA ruled that, indeed, petitioners staged a mass leave in violation of company policy. This fact, coupled with their refusal to explain their actions, constituted serious misconduct that would justify their dismissal.

Hence, the instant appeal.

The Issues

I.

The Court of Appeals, with all due respect, gravely erred in concluding facts in the case which were neither rebutted nor proved as to its truthfulness.

II.

The Court of Appeals, with all due respect, gravely erred in ruling that grave abuse of discretion was committed by the NLRC and by reason of the same, it upheld the Decision of the Labor Arbiter stating that petitioners were not illegally dismissed.

III.

The Court of Appeals, with all due respect, gravely erred in ruling that grave abuse of discretion was committed by the NLRC and by reason of

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[22] Id. at 344-345.
[23] Id. at 63.

> the same, it upheld the Decision of the Labor Arbiter in relation to petitioners[’] money claims.[24]

The Court’s Ruling

This petition is meritorious.

Petitioners were illegally dismissed

The fundamental law of the land guarantees security of tenure, thus:

> Sec. 3. The State shall afford full protection to labor x x x.
>
> x x x They shall be entitled to security of tenure, humane conditions of work and a living wage.[25] x x x

On the other hand, the Labor Code promotes the right of the worker to security of tenure protecting them against illegal dismissal:

> ARTICLE 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.

It bears pointing out that in the dismissal of an employee, the law requires that due process be observed. Such due process requirement is two-fold, procedural and substantive, that is, “the termination of employment must be based on a just or authorized cause of dismissal and the dismissal must be effected after due notice and hearing.”[26] In the instant case, petitioners were not afforded both procedural and substantive due process.

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[24] Id. at 24-25.
[25] CONSTITUTION, Art. XIII, Sec. 3.
[26] *Mansion Printing Center v. Bitara, Jr.*, G.R. No. 168120, January 25, 2012.

Petitioners were not afforded procedural due process

Art. 277(b) of the Labor Code contains the procedural due process requirements in the dismissal of an employee:

> Art. 277. Miscellaneous Provisions. – x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

On the other hand, Rule XIII, Book V, Sec. 2 I (a) of the Implementing Rules and Regulations of the Labor Code states:

> SEC. 2. Standards of due process; requirements of notice.—In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) **A written notice served on the employee specifying the ground or grounds for termination**, and giving said employee **reasonable opportunity within which to explain his side**.
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (Emphasis supplied.)

Thus, the Court elaborated in *King of Kings Transport, Inc. v. Mamac*[27] that a mere general description of the charges against an employee by the employer is insufficient to comply with the above provisions of the law:

> x x x 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.
>
> x x x x
>
> x x x We observe from the irregularity reports against respondent for his other offenses that such contained merely a general description of the charges against him. The reports did not even state a company rule or policy that the employee had allegedly violated. Likewise, there is no mention of any of the grounds for termination of employment under Art. 282 of the Labor Code. Thus, KKTI's "standard" charge sheet is not sufficient notice to the employee. (Emphasis supplied.)

In the instant case, the notice specifying the grounds for termination dated November 9, 2006 states:

> Effective upon receipt hereof, you are placed under preventive suspension for willfully organizing and/or engaging in **illegal strike** on November 7, 2006. Your said illegal act-in conspiracy with your other co-employees, **paralyzed the company operation on that day and resulted to undue damage and prejudice to the company and is direct violation of Article XI, Category Four Section 6, 8, 12, 18 & 25 of our Company Policy, which if found guilty, you will be meted a penalty of dismissal**.
>
> Please explain in writing within 24 hours from receipt hereof why you should not be held guilty of violating the company policy considering further that you committed and timed such act during the birthday of our Company president.[28]

Clearly, petitioners were charged with conducting an illegal strike, not a mass leave, without specifying the exact acts that the company considers as constituting an illegal strike or violative of company policies. Such allegation falls short of the requirement in *King of Kings Transport, Inc.* of "a detailed narration of the facts and circumstances that will serve as basis

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[27] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 123-127.
[28] *Rollo*, p. 142.

for the charge against the employees." A bare mention of an "illegal strike" will not suffice.

Further, while Biomedica cites the provisions of the company policy which petitioners purportedly violated, it failed to quote said provisions in the notice so petitioners can be adequately informed of the nature of the charges against them and intelligently file their explanation and defenses to said accusations. The notice is bare of such description of the company policies. Moreover, it is incumbent upon respondent company to show that petitioners were duly informed of said company policies at the time of their employment and were given copies of these policies. No such proof was presented by respondents. There was even no mention at all that such requirement was met. Worse, respondent Biomedica did not even quote or reproduce the company policies referred to in the notice as pointed out by the CA stating:

> It must be noted that the company policy which the petitioner was referring to was not quoted or reproduced in the petition, a copy of which is not also appended in the petition, as such we cannot determine the veracity of the existence of said policy.[29]

Without a copy of the company policy being presented in the CA or the contents of the pertinent policies being quoted in the pleadings, there is no way by which one can determine whether or not there was, indeed, a violation of said company policies.

Moreover, the period of 24 hours allotted to petitioners to answer the notice was severely insufficient and in violation of the implementing rules of the Labor Code. Under the implementing rule of Art. 277, an employee should be given "reasonable opportunity" to file a response to the notice. *King of Kings Transport, Inc.* elucidates in this wise:

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[29] Id. at 60.

> 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**.[30] (Emphasis supplied.)

Following *King of Kings Transport, Inc.*, the notice sent out by Biomedica in an attempt to comply with the first notice of the due process requirements of the law was severely deficient.

In addition, Biomedica did not set the charges against petitioners for hearing or conference in accordance with Sec. 2, Book V, Rule XIII of the Implementing Rules and Regulations of the Labor Code and in line with ruling in *King of Kings Transport, Inc.*, where the Court explained:

> (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.[31]

While petitioners did not submit any written explanation to the charges, it is incumbent for Biomedica to set the matter for hearing or conference to hear the defenses and receive evidence of the employees. More importantly, Biomedica is duty-bound to exert efforts, during said hearing or conference, to hammer out a settlement of its differences with petitioners. These prescriptions Biomedica failed to satisfy.

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[30] Supra note 27, at 125.
[31] Id. at 125-126.

Lastly, Biomedica again deviated from the dictated contents of a written notice of termination as laid down in Sec. 2, Book V, Rule XIII of the Implementing Rules that it should embody the facts and circumstances to support the grounds justifying the termination. As amplified in *King of Kings Transport, Inc.*:

> (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.[32]

The November 26, 2006 Notice of Termination issued by Biomedica miserably failed to satisfy the requisite contents of a valid notice of termination, as it simply mentioned the failure of petitioners to submit their respective written explanations without discussing the facts and circumstances to support the alleged violations of Secs. 6, 8, 12, 18 and 25 of Category Four, Art. XI of the alleged company rules.

All told, Biomedica made mincemeat of the due process requirements under the Implementing Rules and the *King of Kings Transport, Inc.* ruling by simply not following any of their dictates, to the extreme prejudice of petitioners.

Petitioners were denied substantive due process

In any event, petitioners were also not afforded substantive due process, that is, they were illegally dismissed.

The just causes for the dismissal of an employee are exclusively found in Art. 282(a) of the Labor Code, which states:

> ARTICLE 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

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[32] Id. at 126.

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

It was on this ground that the CA upheld the dismissal of petitioners from their employment. Serious misconduct, as a justifying ground for the dismissal of an employee, has been explained in *Aliviado v. Procter & Gamble, Phils., Inc.*:[33]

> Misconduct has been defined as **improper or wrong conduct**; **the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful in character implying wrongful intent and not mere error of judgment.** The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. To be a just cause for dismissal, such misconduct (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.

Clearly, to justify the dismissal of an employee on the ground of serious misconduct, the employer must first establish that the employee is guilty of improper conduct, that the employee violated an existing and valid company rule or regulation, or that the employee is guilty of a wrongdoing. In the instant case, Biomedica failed to even establish that petitioners indeed violated company rules, failing to even present a copy of the rules and to prove that petitioners were made aware of such regulations. In fact, from the records of the case, Biomedica has failed to prove that petitioners are guilty of a wrongdoing that is punishable with termination from employment. Art. 277(b) of the Labor Code states, "The burden of proving that the termination was for a valid or authorized cause shall rest on the employer." In the instant case, Biomedica failed to overcome such burden. As will be shown, petitioners' absence on November 7, 2006 cannot be considered a mass leave, much less a strike and, thus, cannot justify their dismissal from employment.

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[33] G.R. No. 160506, March 9, 2010,614 SCRA 563, 583-584.

Petitioners did not stage a mass leave

The accusation is for engaging in a mass leave tantamount to an illegal strike.

The term "Mass Leave" has been left undefined by the Labor Code. Plainly, the legislature intended that the term's ordinary sense be used. "Mass" is defined as "participated in, attended by, or affecting a large number of individuals; having a large-scale character."[34] While the term "Leave" is defined as "an authorized absence or vacation from duty or employment usually with pay."[35]

Thus, the phrase "mass leave" may refer to a simultaneous availment of authorized leave benefits by a large number of employees in a company.

It is undeniable that going on leave or absenting one's self from work for personal reasons when they have leave benefits available is an employee's right. In *Davao Integrated Port Stevedoring Services v. Abarquez*,[36] the Court acknowledged sick leave benefits as a legitimate economic benefit of an employee, carrying a purpose that is at once legal as it is practical:

> Sick leave benefits, like other economic benefits stipulated in the CBA such as maternity leave and vacation leave benefits, among others, are by their nature, intended to be replacements for regular income which otherwise would not be earned because an employee is not working during the period of said leaves. They are non-contributory in nature, in the sense that the employees contribute nothing to the operation of the benefits. By their nature, upon agreement of the parties, they are intended to alleviate the economic condition of the workers.

In addition to sick leave, the company, as a policy or practice or as agreed to in a CBA, grants vacation leave to employees. Lastly, even the Labor Code grants a service incentive leave of 5 days to employees.

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[34] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1981).
[35] Id. at 1287.
[36] G.R. No. 102132, March 19, 1993, 220 SCRA 197, 207.

Moreover, the company or the CBA lays down the procedure in the availment of the vacation leave, sick leave or service incentive leave.

In the factual milieu at bar, Biomedica did not submit a copy of the CBA or a company memorandum or circular showing the authorized sick or vacation leaves which petitioners can avail of. Neither is there any document to show the procedure by which such leaves can be enjoyed. Absent such pertinent documentary evidence, the Court can only conclude that the availment of petitioners of their respective leaves on November 7, 2006 was authorized, valid and in accordance with the company or CBA rules on entitlement to and availment of such leaves. The contention of Biomedica that the enjoyment of said leaves is in reality an illegal strike does not hold water in the absence of strong controverting proof to overturn the presumption that "a person is innocent of x x x wrong."[37] Thus, the individual leaves of absence taken by the petitioners are not such absences that can be regarded as an illegal mass action.

Moreover, a mass leave involves a large number of people or in this case, workers.

Here, the five (5) petitioners were absent on November 7, 2006. The records are bereft of any evidence to establish how many workers are employed in Biomedica. There is no evidence on record that 5 employees constitute a substantial number of employees of Biomedica. And, as earlier stated, it is incumbent upon Biomedica to prove that petitioners were dismissed for just causes, this includes the duty to prove that the leave was large-scale in character and unauthorized. This, Biomedica failed to prove.

Having failed to show that there was a mass leave, the Court concludes that there were only individual availment of their leaves by petitioners and they cannot be held guilty of any wrongdoing, much less

[37] RULES OF COURT, Rule 131(a).

anything to justify their dismissal from employment. On this ground alone, the petition must be granted.

Petitioners did not go on strike

Granting for the sake of argument that the absence of the 5 petitioners on November 7, 2006 is considered a mass leave, still, their actions cannot be considered a strike.

Art. 212(o) of the Labor Code defines a strike as "any **temporary stoppage of work** by the concerted action of employees as a result of any industrial or labor dispute."

"Concerted" is defined as "mutually contrived or planned" or "performed in unison."[38] In the case at bar, the 5 petitioners went on leave for various reasons. Petitioners were in different places on November 7, 2006 to attend to their personal needs or affairs. They did not go to the company premises to petition Biomedica for their grievance. To demonstrate their good faith in availing their leaves, petitions reported for work and were at the company premises in the afternoon after they received text messages asking them to do so. This shows that there was NO intent to go on strike. Unfortunately, they were barred from entering the premises and were told to look for new jobs. Surely the absence of petitioners in the morning of November 7, 2006 cannot in any way be construed as a concerted action, as their absences are presumed to be for valid causes, in good faith, and in the exercise of their right to avail themselves of CBA or company benefits. Moreover, Biomedica did not prove that the individual absences can be considered as "temporary stoppage of work." Biomedica's allegation that the mass leave "paralyzed the company operation on that day" has remained unproved. It is erroneous, therefore, to liken the alleged

[38] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 470 (1981).

mass leave to an illegal strike much less to terminate petitioners' services for it.

Notably, the CA still ruled that petitioners went on strike as evidenced by the explanation letters of Angeles and Casimiro sent by Biomedica. They stated in the letters that they, along with petitioners, agreed to go on leave on the birthday on Motol to stress their demands against the company.

These statements do not deserve much weight and credit.

Sec. 11(c) of the 2011 NLRC Rules of Procedure relevantly provides:

> SECTION 11. SUBMISSION OF POSITION PAPER AND REPLY. – x x x
>
> x x x x
>
> c) The position papers of the parties shall cover only those claims and causes of action stated in the complaint or amended complaint, accompanied by all supporting documents, including the **affidavits of witnesses, which shall take the place of their direct testimony**, excluding those that may have been amicably settled. (Emphasis supplied.)

In the instant case, the CA accepted as evidence the explanation letters issued by Angeles and Casimiro when these are not notarized. While notarization may seem to be an inconsequential requirement considering that the Labor Arbiter and the NLRC are not strictly bound by technical rules of evidence, however, mere explanation letters submitted to the company that the authors issued even before the case was filed before the NLRC cannot be accepted as direct testimony of the authors. The requirement that the direct testimony can be contained in an affidavit is to ensure that the affiant swore under oath before an administering officer that the statements in the affidavit are true. The affiant knows that he or she can be charged criminally for perjury under solemn affirmation or at least he or she is bound to his or her oath. Thus, the affidavits or sworn statements of these employees should have been presented. At the very least, the workers should have been

summoned to testify on such letters. Ergo, these letters cannot be the sole basis for the finding that petitioners conducted a strike against Biomedica and for the termination of their employment. Lastly, the explanation letters cannot overcome the clear and categorical statements made by the petitioners in their verified positions papers. As between the verified statements of petitioners and the unsworn letters of Angeles and Casimiro, clearly, the former must prevail and are entitled to great weight and value.

Finally, it cannot be overemphasized that in case of doubt, a case should be resolved in favor of labor. As aptly stated in *Century Canning Corporation v. Ramil*:[39]

> x x x Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.

Biomedica has failed to adduce substantial evidence to prove that petitioners' dismissal from their employment was for a just or authorized cause. The conclusion is inescapable that petitioners were illegally dismissed.

Dismissal is not the proper penalty

But setting aside from the nonce the facts established above, the most pivotal argument against the dismissal of petitioners is that the penalty of dismissal from employment cannot be imposed even if we assume that petitioners went on an illegal strike. It has not been shown that petitioners are officers of the Union. On this issue, the NLRC correctly cited *Gold City Integrated Port Service, Inc. v. NLRC,*[40] wherein We ruled that: "An ordinary striking worker cannot be terminated for mere participation in an

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[39] G.R. No. 171630, August 8, 2010, 627 SCRA 192, 202.
[40] G.R. No. 103560, July 6, 1995, 245 SCRA 627, 637.

illegal strike. There must be proof that he committed illegal acts during a strike."

In the instant case, Biomedica has not alleged, let alone, proved the commission by petitioners of any illegal act during the alleged mass leave. There being none, the mere fact that petitioners conducted an illegal strike cannot be a legal basis for their dismissal.

Petitioners are entitled to separation pay in lieu of reinstatement, backwages and nominal damages

Given the illegality of their dismissal, petitioners are entitled to reinstatement and backwages as provided in Art. 279 of the Labor Code, which states:

> 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.

Thus, the Court ruled in *Golden Ace Builders v. Talde*,[41] citing *Macasero v. Southern Industrial Gases Philippines*:[42]

> Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.
>
> **The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.** (Emphasis supplied.)

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[41] G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289.
[42] G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

Petitioners were absent from work on Motol's birthday. Respondent Motol, in the course of denying entry to them on November 8, 2006, uttered harsh, degrading and bad words. Petitioners were terminated in swift fashion and in gross violation of their right to due process revealing that they are no longer wanted in the company. The convergence of these facts coupled with the filing by petitioners of their complaint with the DOLE shows a relationship governed by antipathy and antagonism as to justify the award of separation pay in lieu of reinstatement. Thus, in addition to backwages, owing to the strained relations between the parties, separation pay in lieu of reinstatement would be proper. In *Golden Ace Builders*, We explained why:

> Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.
>
> Strained relations must be demonstrated as a fact, however, to be adequately supported by evidence — substantial evidence to show that the relationship between the employer and the employee is indeed strained as a necessary consequence of the judicial controversy.[43]

And in line with prevailing jurisprudence,[44] petitioners are entitled to nominal damages in the amount of PhP 30,000 each for Biomedica's violation of procedural due process.

WHEREFORE, the Decision dated June 25, 2010 and the Resolution dated September 20, 2010 of the CA in CA-G.R. SP No. 108205 are hereby **REVERSED** and **SET ASIDE**. The Decision dated November 21, 2008 of the NLRC in NLRC LAC No. 08-002836-08 is hereby **REINSTATED** with **MODIFICATION**. As modified, the November 21, 2008 NLRC Decision shall read, as follows:

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[43] Supra note 41.
[44] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012.

WHEREFORE, in view of the foregoing, judgment is hereby rendered modifying the assailed Decision [of the Labor Arbiter] dated [March 31, 2008];

(a) DECLARING the Complainants to have been illegally dismissed for lack of just cause;

(b) ORDERING Respondents jointly and solidarily to pay Complainants separation pay in lieu of reinstatement computed on the basis of one (1) month pay for every year of service from date of employment up to November 29, 2006 (the date of complainants illegal dismissal);

(c) ORDERING Respondents jointly and solidarily to pay Complainants backwages from November 29, 2006 up to the finality of this Decision;

(d) ORDERING the Respondents jointly and solidarily to pay Complainants the following:

1. Unpaid salary for the period 08-15 November 2006;

2. Pro-rated 13th month pay for 2006;

3. Service Incentive Leave for 2006 (except for complainant Bardaje);

4. Unpaid commissions based on their sales for the years 2005 and 2006; and

5. Nominal damages in the amount of PhP 30,000 each.

(e) ORDERING the Respondents jointly and solidarily to pay Complainants attorney's fees in the amount of 10% of the total award of monetary claims.

All other claims and counterclaims are dismissed for lack of factual and legal basis.

The NLRC is ordered to recompute the monetary awards due to petitioners based on the aforelisted dispositions deducting from the awards to Naranjo and Pimentel their cash advances of PhP4,750.00 and PhP4,500.00, respectively.

SO ORDERED.

No costs.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice