Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CENTURY IRON WORKS, INC. and BENITO CHUA, Petitioners,	**G.R. No. 184116**
	Present:
	CARPIO, *J.*, *Chairperson,*
- versus -	BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
	Promulgated:
ELETO B. BAÑAS, Respondent.	JUN 19 2013

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioners Century Iron Works, Inc. (*Century Iron*) and Benito Chua to challenge the January 31, 2008 decision[2] and the August 8, 2008 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 98632.

The Factual Antecedents

Respondent Eleto B. Bañas worked at petitioner Century Iron beginning July 5, 2000[4] until his dismissal on June 18, 2002.[5] Bañas

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1 Dated August 29, 2008 and filed under Rule 45 of the Rules of Court; *rollo,* pp. 3-20.

2 Id. at 23-30; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), and concurred in by Associate Justices Monina Arevalo Zenarosa and Apolinario D. Bruselas, Jr.

3 Id. at 73-74.

4 Id. at 109.

5 Ibid.

responded to his dismissal by filing a complaint for illegal dismissal with prayer for reinstatement and money claims.[6]

According to Century Iron, Bañas worked as an inventory comptroller whose duties are to: (1) train newly hired warehouseman; (2) initiate analysis on the discrepancies concerning records and inventories; (3) check and confirm warehouseman's report; (4) check the accuracy of materials requisition before issuance to the respective warehouseman at the jobsite; (5) monitor and maintain records; and (6) recommend and initiate corrective or preventive action as may be warranted.[7]

Sometime in 2002, Century Iron received letters of complaint from its gas suppliers regarding alleged massive shortage of empty gas cylinders.[8] In the investigation that Century Iron conducted in response to the letters, it found that Bañas failed to make a report of the missing cylinders. On May 14, 2002, Century Iron required Bañas to explain within forty-eight (48) hours from receipt of its letter why no disciplinary action should be taken against him for loss of trust and confidence and for gross and habitual neglect of duty.[9] On May 31, 2002, Century Iron issued a Memorandum requiring Bañas to attend a hearing regarding the missing cylinders.[10] Bañas subsequently appeared at the hearing to air his side.

On June 17, 2002, Century Iron, through Personnel Officer Mr. Virgilio T. Bañaga, terminated Bañas' services on grounds of loss of trust and confidence, and habitual and gross neglect of duty.[11] The termination was effective June 18, 2002.

In his defense, Bañas alleged that he merely worked as an inventory clerk who is not responsible for the lost cylinders. He pointed out that his tasks were limited to conducting periodic and yearly inventories, and submitting his findings to the personnel officer. He maintained that unlike a supervisory employee, he was not required to post a bond and he did not have the authority to receive and/or release cylinders in the way that a warehouseman does. Therefore, he cannot be terminated on the ground of loss of confidence.[12]

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6 Ibid.
7 Id. at 4.
8 Id. at 52, 54 and 63.
9 Id. at 57.
10 Id. at 59.
11 Id. at 62.
12 Id. at 110 and 305- 306.

On the other hand, the petitioners asserted that Bañas was a supervisory employee who was responsible for the lost cylinders. They maintained that Bañas committed numerous infractions during his tenure amounting to gross and habitual neglect of duty. These included absences without leave, unauthorized under time, failure to implement proper standard warehousing and housekeeping procedure, negligence in making inventories of materials, and failure to ensure sufficient supplies of oxygen-acetylene gases.[13]

The Labor Arbitration Rulings

In a decision[14] dated January 31, 2005, Labor Arbiter (*LA*) Joel S. Lustria ruled that Bañas was illegally dismissed. The LA did not believe Century Iron's assertions that Bañas worked as an inventory comptroller and that he was grossly and habitually neglectful of his duties. The evidence on record shows that Bañas was an inventory clerk whose duties were merely to conduct inventory and to submit his report to the personnel officer. As an inventory clerk, it was not his duty to receive the missing items. The LA also ruled that Century Iron deprived Bañas of due process because the purpose of the hearing was to investigate the lost cylinders and not to give Bañas an opportunity to explain his side.

On appeal by Century Iron, the National Labor Relations Commission (*NLRC*) affirmed the LA's ruling *in toto.*[15] It ruled that the various memoranda issued by Century Iron explicitly show that Bañas was an inventory clerk. It noted that Century Iron unequivocally stated in its termination report dated July 29, 2002 that Bañas was an inventory clerk. It also pointed out that Century Iron failed to present the Contract of Employment or the Appointment Letter which was the best evidence that Bañas was an inventory comptroller.

The NLRC denied[16] the motion for reconsideration[17] that Century Iron subsequently filed, prompting the employer company to seek relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.[18]

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13 Id. at 5-6.
14 Id. at 123-136.
15 Id. at 166-176.
16 Id. at 200-202.
17 Id. at 177-183.
18 Id. at 184-198.

The CA Ruling

On January 31, 2008, the CA affirmed with modification the NLRC decision. It agreed with the lower tribunals' finding that Bañas was merely an inventory clerk. It, however, ruled that Bañas was afforded due process. It held that Bañas had been given ample opportunity to air his side during the hearing, pointing out that the essence of due process is simply an opportunity to be heard.[19]

Century Iron filed the present petition[20] after the CA denied[21] its motion for reconsideration.[22]

The Petition

The petitioners impute the following errors committed by the appellate court:

1) The CA erred in holding that the factual findings of the NLRC may not be inquired into considering that only questions of law may be brought in an original action for *certiorari;*

2) The CA erred in finding that Bañas was not a supervisory employee*;* and

3) The CA erred in not holding that Bañas' termination from his employment was for valid and just causes.[23]

The petitioners argue that the CA erred when it did not disturb the NLRC's finding that Bañas was merely a rank-and-file employee. Citing *Capitol Medical Center, Inc. v. Dr. Meris,*[24] they contend that for factual findings of the NLRC to be accorded respect, these must be sufficiently supported by the evidence on record. The petitioners assert that Bañas was a supervisory employee who, in the interest of the employer, effectively recommended managerial actions using his independent judgment. They point out that one of Bañas' duties as an inventory comptroller was to recommend and initiate corrective or preventive action as may be warranted.

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19 *Supra* note 2.
20 *Rollo*, pp. 3-20.
21 Id. at 73-74.
22 Id. at 31-42.
23 Id. at 8.
24 507 Phil. 130 (2005).

The petitioners also maintain that Bañas was dismissed for just and valid causes. They reiterate that since Bañas was a supervisory employee, he could be dismissed on the ground of loss of confidence. Finally, the petitioners claim that Bañas was grossly and habitually negligent in his duty which further justified his termination.

The Respondent's Position

In his *Comment*,[25] Bañas posits that the petition raises purely questions of fact which a petition for review on *certiorari* under Rule 45 of the Rules of Courts does not allow. He additionally submits that the petitioners' arguments have been fully passed upon and found unmeritorious by the lower tribunals and the CA.

The Issues

This case presents to us the following issues:

1) Whether or not questions of fact may be inquired into in a petition for *certiorari* under Rule 65 of the Rules of Court*;*

2) Whether or not Bañas occupied a position of trust and confidence, or was routinely charged with the care and custody of Century Iron's money or property; and

3) Whether or not Century Iron terminated Bañas for just and valid causes.

As part of the third issue, the following questions are raised:

a) Whether or not loss of confidence is a ground for terminating a rank-and-file employee who is not routinely charged with the care and custody of the employer's money or property; and

b) Whether or not Bañas was grossly and habitually neglectful of his duties.

The Court's Ruling

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25 *Rollo*, pp. 303-308.

We reverse the CA's decision.

In a petition for review on certiorari under Rule 45, only questions of law may be put into issue while in a petition for certiorari under Rule 65, only questions of jurisdiction may be inquired into

On the first issue, the CA relied on *Cebu Shipyard & Eng'g Works, Inc. v. William Lines, Inc.*[26] in affirming the lower tribunals' finding that Bañas worked as an inventory clerk. According to the CA, this Court has ruled in *Cebu Shipyard* that in **petitions for *certiorari***, only **questions of law** may be put into issue and questions of fact cannot be entertained. Not noticing such glaring error, the petitioners agree to such disquisition. They, however, assert that there is an exception to the rule that only questions of law may be brought in an original action for *certiorari*, such as when the lower court's findings of facts are not supported by sufficient evidence or that the same was based on misapprehension or erroneous appreciation of facts.[27]

A revisit of *Cebu Shipyard* shows that the CA has inadvertently misquoted this Court. In the said case, we held:[28]

> [I]n **petitions for review on *certiorari,*** only questions of law may be put into issue. Questions of fact cannot be entertained. The finding of negligence by the Court of Appeals is a question which this Court cannot look into as it would entail going into factual matters on which the finding of negligence was based. [emphasis ours; italics supplied]

We clarify that the petitioners filed a **petition for *certiorari* under Rule 65 of the Rules of Court** before the CA. Both the petitioners and the CA have confused Rule 45 and Rule 65. In several Supreme Court cases,[29] we have clearly differentiated between a petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65. A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower

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[26] 366 Phil. 439 (1999).
[27] *Rollo*, p. 9.
[28] *Supra* note 26, at 452.
[29] *Rigor v. Tenth Division of the Court of Appeals*, 526 Phil. 852 (2006); and *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, August 11, 2010, 628 SCRA 154.

tribunal on pure questions of law.[30] It is only in exceptional circumstances[31] that we admit and review questions of fact.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[32]

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[33]

On the other hand, a petition for *certiorari* under Rule 65 is a special civil action, an original petition confined solely to questions of jurisdiction because a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.[34]

The petition before us involves mixed questions of fact and law. The issues of whether Bañas occupied a position of trust and confidence, or was routinely charged with the care and custody of the employer's money or property, and whether Bañas was grossly and habitually neglectful of his

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30 RULES OF COURT, Rule 45, Section 1.

31 In *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005), citing *Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 401 SCRA 79, the Supreme Court recognized several exceptions to this rule, to wit: "(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion."

32 *Leoncio v. De Vera*, G.R. No. 176842, February 18, 2008, 546 SCRA 180, 184, citing *Elenita S. Binay, in her capacity as Mayor of the City of Makati, Mario Rodriguez and Priscilla Ferrolino v. Emerita Odeña*, G.R. No. 163683, June 8, 2007, 524 SCRA 248.

33 *Ibid*.

34 RULES OF COURT, Rule 65, Section 1.

duties involve questions of fact which are necessary in determining the legal question of whether Bañas' termination was in accordance with Article 282 of the Labor Code.

We will only touch these factual issues in the course of determining whether the CA correctly ruled whether or not the NLRC committed grave abuse of discretion in the process of deducing its conclusions from the evidence proffered by the parties. In reviewing in this Rule 45 petition the CA's decision on a Rule 65 petition, we will answer the question: *Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on this case?*[35]

Bañas did not occupy a position of trust and confidence nor was he in charge of the care and custody of Century Iron's money or property

The CA properly affirmed the NLRC's ruling that Bañas was a rank-and-file employee who was not charged with the care and custody of Century Iron's money or property. The ruling of the CA, finding no grave abuse of discretion in the LA and the NLRC rulings and are supported by substantial evidence, is, to our mind, correct. The evidence on record supports the holding that Bañas was an ordinary employee. There is no indication that the NLRC's decision was unfair or arbitrary. It properly relied on Century Iron's numerous memoranda[36] where Bañas was identified as an inventory clerk. It correctly observed that Century Iron unequivocably declared that Bañas was an inventory clerk in its July 29, 2002 termination report with the Department of Labor and Employment.[37] Moreover, as the NLRC judiciously pointed out, Century Iron failed to present the Contract of Employment or the Appointment Letter, the best evidence that would show that Bañas was an inventory comptroller.

Since Bañas was an ordinary rank-and-file employee, his termination on the ground of loss of confidence was illegal

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35 *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 344.

36 See *rollo*, pp. 227-228, 230-234, 236, 239, and 250.

37 Id. at 173.

Since Bañas did not occupy a position of trust and confidence nor was he routinely in charge with the care and custody of Century Iron's money or property, his termination on the ground of loss of confidence was misplaced.

We point out in this respect that loss of confidence applies to: (1) employees occupying positions of trust and confidence, the managerial employees; and (2) *employees who are routinely charged with the care and custody of the employer's money or property which may include* ***rank-and-file employees.*** Examples of rank-and-file employees who may be dismissed for loss of confidence are cashiers, auditors, property custodians, or those who, in the normal routine exercise of their functions, regularly handle significant amounts of money or property.[38] Thus, the phrasing of the petitioners' second assignment of error is inaccurate because **a rank-and-file employee who is routinely charged with the care and custody of the employer's money or property may be dismissed on the ground of loss of confidence.**

Bañas was grossly and habitually neglectful of his duties

With respect to Century Iron's assertion that Bañas was grossly and habitually neglectful of his duties, the CA erred in ruling that the NLRC did not commit grave abuse of discretion in concluding that the dismissal was illegal. The NLRC's finding that there was illegal dismissal on the ground of gross and habitual neglect of duties is not supported by the evidence on record. It believed in Bañas' bare and unsubstantiated denial that he was not grossly and habitually neglectful of his duties *when the record is replete with pieces of evidence showing the contrary.* Consequently, the NLRC capriciously and whimsically exercised its judgment by failing to consider all material evidence presented to it by the petitioners and in giving credence to Bañas' claim which is unsupported by the evidence on record.[39]

Bañas' self-serving and unsubstantiated denials cannot defeat the concrete and overwhelming evidence submitted by the petitioners. The evidence on record shows that Bañas committed numerous infractions in his one year and eleven-month stay in Century Iron. On October 27, 2000, Century Iron gave Bañas a warning for failing to check the right quantity of materials subject of his inventory.[40] On December 29, 2000, Bañas went undertime.[41] On January 2, 2001, Bañas incurred an absence without asking

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38 *Mabeza v. NLRC*, 338 Phil. 386, 396 (1997).

39 *Prince Transport, Inc. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 325.

40 *Rollo*, p. 43.

41 Id. at 47.

for prior leave.[42] On August 11, 2001, he was warned for failure to implement proper warehousing and housekeeping procedures.[43] On August 21, 2001, he failed to ensure sufficient supplies of oxygen-acetylene gases during business hours.[44] On November 15, 2001, Bañas was again warned for failing to secure prior permission before going on leave.[45] In May 2002, Century Iron's accounting department found out that Bañas made double and wrong entries in his inventory.[46]

Article 282 of the Labor Code provides that one of the just causes for terminating an employment is the employee's gross and habitual neglect of his duties. This cause includes gross inefficiency, negligence and carelessness.[47] "Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances."[48]

To our mind, such numerous infractions are sufficient to hold him grossly and habitually negligent. His repeated negligence is not tolerable. The totality of infractions or the number of violations he committed during his employment merits his dismissal. Moreover, gross and habitual negligence includes unauthorized absences and tardiness,[49] as well as gross inefficiency, negligence and carelessness.[50] As pronounced in *Valiao v. Court of Appeals*,[51] "[f]itness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other."

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42 Ibid.
43 Id. at 48.
44 Id. at 49.
45 Id. at 50.
46 Id. at 59.
47 *Challenge Socks Corp. v. Court of Appeals (Former First Division)*, 511 Phil. 4, 10 (2005), citing *Meralco v. NLRC*, 331 Phil. 838, 847 (1996).
48 *Jumuad v. Hi-Flyer Food, Inc.*, G.R. No. 187887, September 7, 2011, 657 SCRA 288, 300, citing *St. Luke's Medical Center, Inc. and Robert Kuan v. Estrelito Notario*, G.R. No. 152166, October 20, 2010, 634 SCRA 67, 78.
49 *Challenge Socks Corp. v. Court of Appeals (Former First Division), supra* note 47, at 10-11; and *Meralco v. NLRC, supra* note 47, at 847.
50 Ibid.
51 479 Phil. 459, 470-471 (2004).

Besides, the determination of who to keep in employment and who to dismiss for cause is one of Century Iron's prerogatives. Time and again, we have recognized that the employer has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.[52] It would be the height of injustice if we force an employer to retain the services of an employee who does not value his work.

In view of all the foregoing, we find the petition meritorious.

WHEREFORE, premises considered, we hereby **GRANT** the petition. The assailed decision and resolution of the Court of Appeals are **REVERSED** and **SET ASIDE**. The complaint for illegal dismissal is **DISMISSED** for lack of merit. Costs against respondent Eleto B. Bañas.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

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52 *Challenge Socks Corp. v. Court of Appeals (Former First Division), supra* note 47, at 11-12, citing *Deles, Jr. v. NLRC*, 384 Phil. 271, 281-282 (2000).

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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.

MARIA LOURDES P. A. SERENO
Chief Justice