Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SURIGAO DEL NORTE ELECTRIC COOPERATIVE, INC. and/or DANNY Z. ESCALANTE,	**G.R. No. 187722**
Petitioners,	Present:
- versus -	BRION, *J.*, Acting *Chairperson,*[*] DEL CASTILLO, PEREZ, PERLAS-BERNABE, and LEONEN,[**] *JJ.*
TEOFILO GONZAGA, Respondent.	Promulgated: JUN 10 2013

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the May 29, 2008 Decision[2] and March 30, 2009 Resolution[3] of the Cagayan de Oro City Court of Appeals (CA) in CA G.R. SP. No. 00267 which nullified the August 31, 2004[4] and February 1, 2005[5] Resolutions of the National Labor Relations Commission (NLRC) in NLRC Case No. M-007354-2003 and instead, reinstated with modification the November 28, 2002 Decision[6] of Executive Labor Arbiter Rogelio P. Legaspi (LA) in NLRC Case No. RAB-

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* Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

** Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

1 *Rollo*, pp. 26-53.

2 Id. at 11-17. Penned by Associate Justice Michael P. Elbinias, with Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, concurring.

3 Id. at 20-23.

4 Id. at 132-138. Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan, concurring.

5 Id. at 144-145.

6 Id. at 68-76.

13-01-00016-2002, finding respondent Teofilo Gonzaga (Gonzaga) to have been illegally dismissed.

The Facts

On October 13, 1993, petitioner Surigao Del Norte Electric Cooperative, Inc. (SURNECO) hired Gonzaga as its lineman. On February 15, 2000, he was assigned as Temporary Teller at SURNECO's sub-office in Gigaquit, Surigao Del Norte.[7]

On June 26, 2001, petitioner Danny Escalante (Escalante), General Manager of SURNECO, issued Memorandum Order No. 34, series of 2001 (Memorandum 34-01), with attached report of SURNECO's Internal Auditor, Pedro Denolos (Collection Report) and two (2) sets of summaries of collections and remittances (Summaries),[8] seeking an explanation from Gonzaga regarding his remittance shortages in the total amount of ₱314,252.23, covering the period from February 2000 to May 2001.[9]

On July 16, 2001, Gonzaga asked for an extension of three (3) weeks within which to submit his explanation since he needed to go over the voluminous receipts of collections and remittances with the assistance of an accountant. On the same day, he sent another letter, denying any unremitted amount on his part and thereby, requesting that the charges against him be lifted.[10] Attached to the same letter is an Audit Opinion[11] prepared by one Leonides Laluna (Laluna), a certified public accountant (CPA), stating that the Internal Auditor's Report cannot accurately establish any remittance shortage on Gonzaga's part since the amount of collections stated in the Summaries was not supported by any bills or official receipts.

In the meantime, SURNECO formed an Investigation Committee (Committee) to investigate Gonzaga's alleged remittance shortages. On July 30, 2001, the Committee sent Gonzaga an invitation to attend the investigation proceedings, in which he participated.[12] Pending investigation, Gonzaga was placed under preventive suspension from July 31 to August 29, 2001.[13]

On August 9, 2001, the Committee tendered its report, finding Gonzaga guilty of (*a*) gross and habitual neglect of duty under Section 5.2.15 of the Code of Ethics and Discipline for Rural Electric Cooperative

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7 Id. at 68, 132.
8 Id. at 214-240.
9 Id. at 132.
10 Id. at 133.
11 Id. at 243-244.
12 Id. at 133.
13 Id. at 71, 75.

(REC) Employees (Code of Ethics); (*b*) misappropriation of REC funds under Section 7.2.1 of the Code of Ethics; and (*c*) failure to remit collections/monies under Section 7.2.2 of the Code of Ethics. Thereafter, a notice of termination was served on Gonzaga on September 13, 2001. Gonzaga sought reconsideration before SURNECO's Board of Directors but the latter denied the same after he presented his case.[14] On October 25, 2001, another notice of termination (Final Notice of Termination) was served on Gonzaga. Consequently, he was dismissed from the service on November 26, 2001.[15]

In view of the foregoing incidents, Gonzaga filed a complaint with the NLRC Regional Arbitration Branch No. XIII - Butuan City for illegal dismissal with payment of backwages including damages and attorney's fees, claiming that he was denied due process and dismissed without just cause. He alleged that while he was asked in Memorandum 34-01 to explain the ₱314,252.23 remittance shortage, he was nonetheless denied due process since the actual grounds for his dismissal, *i.e.*, gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies, were not indicated in the said memorandum.[16] He also claimed that petitioners' evidence failed to show any missing collection since (*a*) the attached Summary of Collections and Remittances dated June 7, 2001[17] did not bear any receipt numbers, both with respect to collections and remittances and (*b*) the other Summary of Collections and Remittances[18] only contained receipt numbers for the remittances and none for the collections.[19]

In defense, petitioners maintained that Gonzaga's dismissal was attended with due process and founded on a just and valid cause. They maintained that Gonzaga's remittance shortages accumulated to the amount of ₱314,252.23,[20] stressing that the so-called Collection Report was prepared by Gonzaga himself. Petitioners further argued that Gonzaga was given enough opportunity to defend himself during the investigation. Likewise, he was properly informed of the accusation against him since the charge of cash shortage has a direct and logical relation to the findings of gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies. In this regard, there was no conflict between the charge stated in Memorandum 34-01 and the grounds cited in the Final Notice of Termination.[21]

In reply, Gonzaga insisted that, contrary to petitioners' claim, the Summaries were prepared by SURNECO's internal auditor. He also added

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14 Id. at 133.
15 Id.
16 Id. at 69-70.
17 Id. at 223-240.
18 Id. at 214-222.
19 Id. at 70.
20 Id. at 71.
21 Id. at 71-72.

that the cooperative's proper procedure for the conduct of investigation, as outlined in Section 16.5 of the Code of Ethics was not followed; hence, he was denied due process.[22]

The LA's Ruling

On November 28, 2002, the LA rendered a Decision,[23] finding that petitioners were unable to show that Gonzaga's dismissal was just and valid and thus, ordered that the latter be reinstated to his former position without loss of seniority rights and with payment of full backwages, moral and exemplary damages, and attorney's fees.[24]

The LA found that the alleged shortages in Gonzaga's remittances were not proved since the actual receipts were not presented in evidence. The Summaries were not even signed by the preparer and neither did they reflect the receipt numbers of actual collection. Considering these deficiencies, there was no way of verifying whether the total amount remitted, as shown in the receipts, would tally with the amount actually collected.[25] Further, the LA held that Gonzaga was not afforded due process because the mandatory procedure for the conduct of investigation, pursuant to Section 16.5 of the Code of Ethics, was not followed.[26]

Aggrieved, petitioners elevated the matter to the NLRC. On September 22, 2003, pending appeal, they submitted a Manifestation,[27] with annexed Audit Report dated September 15, 2003[28] (September 15, 2003 Audit Report) prepared by a certain Daphne Fetalvero-Awit, an independent CPA, as additional evidence to corroborate the Collection Report of SURNECO's internal auditor. The Cash Flow Summary attached to the September 15, 2003 Audit Report reflected a shortage of ₱328,974.02 in Gonzaga's remittances as of May 31, 2001.[29]

The NLRC's Ruling

In a Resolution dated August 31, 2004,[30] the NLRC vacated the ruling of the LA, finding Gonzaga to have been dismissed for a just and valid cause.

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22 Id. at 72-73.
23 Id. at 68-76.
24 Id. at 75-76.
25 Id. at 73-74.
26 Id. at 74-75.
27 Id. at 109-114.
28 Id. at 115-130.
29 Id. at 130.
30 Id. at 132-138.

It observed that Gonzaga, by his admission, failed to subscribe to the company policy of remitting cash collections daily, claiming that the distance and cost of doing so made it impractical.[31] With respect to the imputed cash shortages, it did not give credence to Gonzaga's position in view of his general denial. In this light, the NLRC faulted Gonzaga for not demanding the production and examination of the collection receipts during the investigation proceedings, noting that the said omission meant that the collection receipts would confirm the shortage.[32] Moreover, it ruled that the procedure laid down in the Code of Ethics is not mandatory. It is sufficient that Gonzaga, with the assistance of an accountant and a legal counsel, was given an ample opportunity to explain his side and also participate in the investigation proceedings.[33]

Gonzaga moved for reconsideration but the same was denied in a Resolution dated February 1, 2005.[34]

The CA's Ruling

In a Decision dated May 29, 2008,[35] the CA reversed and set aside the NLRC's ruling and, instead, reinstated the LA's decision with modification, deleting the award of moral and exemplary damages.[36]

It held that it is petitioners' duty to present substantial evidence to show that the dismissal was due to a just and valid cause which they, however, failed to do. Petitioners' evidence did not prove the imputed shortage in Gonzaga's collection since the numbers of the collection receipts were not indicated so as to compare them with the remittance receipts. Moreover, the CA did not give weight to the September 15, 2003 Audit Report, which was submitted for the first time before the NLRC, because Gonzaga was not given an opportunity to submit any counter-evidence in order to rebut the same. For insufficiency of evidence, it therefore ruled that the dismissal was illegal.[37]

Nonetheless, it found improper the award of moral and exemplary damages for lack of showing that petitioners acted in bad faith. Gonzaga was given ample opportunity to explain the alleged cash shortages, and an investigation, though informal, was actually conducted by SURNECO to determine his liability. As such, petitioners did not act in bad faith.[38]

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31 Id. at 136.
32 Id. at 136-137.
33 Id. at 137.
34 Id. at 144-145.
35 Id. at 11-17.
36 Id. at 16-17.
37 Id. at 14-16.
38 Id. at 16-17.

Petitioners filed a motion for reconsideration which was, however, denied in a Resolution dated March 30, 2009.[39]

In the said resolution, the CA held that the Summaries presented by petitioners remained insufficient as they failed to establish the voluminous character of the official receipts evidencing the amount of Gonzaga's collections and remittances as to render them admissible under Section 3(c), Rule 130[40] of the Rules of Court.[41] It also observed that apart from the fact that the September 15, 2003 Audit Report was belatedly filed with the NLRC eight (8) months after Gonzaga had filed his Comment to the Memorandum of Appeal, the said report was hearsay since the accountant who prepared the said report was not presented to testify on its veracity.[42]

Hence, the instant petition.

The Issue

The crux of the present controversy revolves around the propriety of Gonzaga's dismissal.

The Court's Ruling

The petition is meritorious.

At the outset, it must be pointed out that the main issue in this case involves a question of fact. In this light, it is an established rule that the jurisdiction of the Court in cases brought before it from the CA via a petition for review on *certiorari* under Rule 45 of the Rules of Court is generally limited to reviewing errors of law as the former is not a trier of facts. In the Court's exercise of its power of review, thus, the findings of fact of the CA are conclusive and binding as it is not the former's function to analyze or weigh evidence all over again.[43]

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39 Id. at 20-23.

40 SEC. 3. *Original document must be produced*; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

x x x x

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; x x x x

41 *Rollo*, pp. 20-21.

42 Id. at 22.

43 *Sugue v. Triumph International (Phils.), Inc.*, G.R. No.164804 and G.R. No. 164784, January 30, 2009, 577 SCRA 323, 331-332, citing *Gabriel v. Mabanta*, G.R. No. 142403, March 26, 2003, 399 SCRA 573, 579-580.

However, one of the recognized exceptions to this rule is when there resides a conflict between the findings of facts of the NLRC and of the CA. In such instance, there is a need to review the records to determine which of them should be preferred as more conformable to the evidentiary facts,[44] as in this case. Accordingly, the Court proceeds to examine the cause and procedure attendant to the termination of Gonzaga's employment.

A. Cause of termination.

In termination cases, the burden of proof rests on the employer to show that the dismissal is for a valid cause. Failing in which, the law considers the matter a case of illegal dismissal.[45] In this relation, the quantum of proof which the employer must discharge is substantial evidence which, as defined in case law, means that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[46]

Applying the foregoing principles to this case, the Court finds that petitioners were able to prove, by substantial evidence, that there lies a valid cause to terminate Gonzaga's employment.

The Court concurs with the NLRC's finding that petitioners' evidence – which consists of the Collection Report, the Summaries, and the September 15, 2003 Audit Report with attached Cash Flow Summary – adequately supports the conclusion that Gonzaga misappropriated the funds of the cooperative. The data indicated therein show gaping discrepancies between Gonzaga's collections and remittances, of which he was accountable for. In this accord, the burden of evidence shifted to Gonzaga to prove that the reflected shortage was not attributable to him. However, despite being allowed to peruse the bills and receipts on record together with the assistance of an accountant and a counsel during the investigation proceedings, Gonzaga could not reconcile the amounts of his collections and remittances and, instead, merely interposed bare and general denials.

To note, petitioners could not be faulted for not presenting each and every bill or receipt due to their voluminous character. Corollarily, the Court takes judicial notice of the fact that documents of such nature could indeed consist of multiple pages; likewise, it is clear that petitioners only sought to establish a general result from the whole, *i.e.*, the total cash shortage. In this regard, the requirement that the offeror first establish the voluminous nature of the evidence sought to be presented, as discussed in the CA's March 30,

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44 *Dimagan v. Dacworks United, Incorporated and/or Cancino*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445-446.

45 *Caltex Philippines, Inc. v. Agad*, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 207, citing *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633.

46 Id., citing *Philippine Commercial Industrial Bank v. Cabrera*, G.R. No. 160368, March 30, 2005, 454 SCRA 792, 803.

2009 Resolution, is dispensed with. Besides, technical rules of evidence are not strictly followed in labor cases[47] and thus, their liberal application relaxes the same.

Neither does the lack of collection receipt numbers, as Gonzaga alleges, suffice to exculpate him from the dismissal charges. This is because the said numbers had already been supplied by petitioners through their eventual submission of the Cash Flow Summary which was attached to the September 15, 2003 Audit Report. On this score, the Court observes that the CA should have considered the foregoing documents as they corroborate the evidence presented by the petitioners before the LA. Verily, labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them.[48] In fact, labor officials should use every and reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.[49]

Also, it cannot be said that with the admission of the said evidence, Gonzaga would be denied due process. Records show that he was furnished a copy of the Manifestation with the attached audit report on September 23, 2003 and the NLRC only rendered a decision on August 31, 2004. This interim period gave him ample time to rebut the same; however, he failed to do so.

Finally, the records are bereft of any showing that SURNECO's internal auditor was ill-motivated when he audited Gonzaga. Thus, there lies no reason for the Court not to afford full faith and credit to his report.

All told, considering the totality of circumstances in this case, the Court finds the evidence presented by the petitioners, as opposed to the bare denial of Gonzaga, sufficient to constitute substantial evidence to prove that he committed serious misconduct and gross and habitual neglect of duty to warrant his dismissal from employment. Such are just causes for termination

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47 Article 221 of the Labor Code reads:

> ART 221. *Technical Rules Not Binding and Prior Resort to Amicable Settlement*. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

48 *Misamis Oriental II Electric Service Cooperative v. Cagalawan*, G.R. No. 175170, September 5, 2012, 680 SCRA 127, 139 citing *Iran v. NLRC*, 352 Phil. 261, 274 (1998).

49 *Philippine Telegraph and Telephone Corporation v. NLRC and Toribiano*, 262 Phil. 491, 498-499 (1990). (citations omitted)

which are explicitly enumerated under Article 296 of the Labor Code, as amended:[50]

> Article 296. *Termination by Employer*. – An employer may terminate an employment for any of the following causes:
>
> (a) Serious Misconduct or wilful 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;
>
> x x x x

At any rate, Gonzaga had admitted that he failed to remit his collections daily in violation of SURNECO's company policy, rendering such fact conclusive and binding upon him. Therefore, for his equal violation of Section 7.2.2 of the Code of Ethics (failure to remit collections/monies), his dismissal is justified altogether.

B. Termination procedure; statutory compliance.

The statutory procedure for terminating an employee is found in Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code (Omnibus Rules) which 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:
>
> For termination of employment based on just causes as defined in Article 282 of the Labor Code:[51]
>
> > (i) 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.
> >
> > (ii) 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.
> >
> > (iii) 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.

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[50] Previously Article 282 of the Labor Code; renumbered by Republic Act No. 10151.

[51] Now Article 296 of the Labor Code, as amended; renumbered by Republic Act No. 10151.

Succinctly put, the foregoing procedure consists of (*a*) a first written notice stating the intended grounds for termination; (*b*) a hearing or conference where the employee is given the opportunity to explain his side; and (*c*) a second written notice informing the employee of his termination and the grounds therefor. Records disclose that petitioners were able to prove that they sufficiently complied with these procedural requirements:

First, petitioners have furnished Gonzaga a written first notice specifying the grounds on which his termination was sought.

In particular, Memorandum 34-01, which was issued on June 26, 2001, reads:[52]

> Attached is a report of Mr. Pedro A. Denolos, Internal Auditor, alleging that you incurred shortages as Teller of Sub-Office I which accumulated to THREE HUNDRED FOURTEEN THOUSAND TWO HUNDRED FIFTY TWO PESOS AND TWENTY THREE CENTAVOS (₱314,252.23).
>
> In this regard, please submit a written explanation within seventy two (72) hours from receipt of this memorandum why no disciplinary action shall be taken against you on this matter.
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> x x x x

As may be gleaned from the foregoing, not only was Gonzaga effectively notified of the charge of cash shortage against him, he was also given an ample opportunity to answer the same through written explanation. Notably, attached to Memorandum 34-01 are the Summaries which particularly detail the discrepancies in Gonzaga's collections vis-à-vis his remittances. As it turned out, Gonzaga submitted a letter to management on July 16, 2001, attaching therewith an Audit Opinion prepared by Gonzaga's accountant, Laluna, in order to preliminarily answer the charges against him.

While the actual grounds of Gonzaga's dismissal, *i.e.,* gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies, were not explicitly stated in Memorandum 34-01, these infractions are, however, implicit in the charge of cash shortage. Due to the direct and logical relation between these grounds, Gonzaga could not have been misled to proffer any mistaken defense or contrive any weakened position. Rather, precisely because of the substantial identity of these grounds, any defense to the charge of cash shortage equally constitutes an adequate defense to the charges of gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies. It stands to reason that the core of all these infractions is similar – that is, the loss of money to which Gonzaga was

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[52] *Rollo*, p. 132.

accountable – such that by reconciling the amounts purportedly missing, Gonzaga would have been exculpated from all these charges. Therefore, based on these considerations, the Court finds that the first notice requirement had been properly met.

Second, petitioners have conducted an informal inquiry in order to allow Gonzaga to explain his side. To this end, SURNECO formed an investigation committee to investigate Gonzaga's alleged remittance shortages. After its formation, an invitation was sent to Gonzaga to attend the investigation proceedings, in which he participated.[53] Apropos to state, Gonzaga never denied his participation during the said proceedings. Perforce, the second requirement had been equally complied with.

Third, a second written notice was sent to Gonzaga informing him of the company's decision to relieve him from employment, as well as the grounds therefor.

Records indicate that the Committee tendered its report on August 9, 2001, finding Gonzaga guilty of gross and habitual neglect of duties and responsibilities, misappropriation of REC funds and failure to remit collections/monies. Subsequently, a notice of termination was served on Gonzaga on September 13, 2001, stating the aforesaid grounds. Thereafter, Gonzaga tried to appeal his dismissal before SURNECO's Board of Directors which was, however, denied after again being given an adequate opportunity to present his case.[54] On October 25, 2001, a Final Notice of Termination was served on Gonzaga which read as follows:

> For violation of the Code of Ethics and Discipline for REC Employees, specifically Sections 5.2.15, 7.2.1 and 7.2.2 you are hereby notified of the termination of your employment with this cooperative effective at the close of business hours on November 26, 2001.[55]

Based on the foregoing, it cannot be gainsaid that Gonzaga had been properly informed of the company's decision to dismiss him, as well as the grounds for the same. As such, the second notice requirement had been finally observed.

At this juncture, it must be pointed out that while petitioners have complied with the procedure laid down in the Omnibus Rules, they, however, failed to show that the established company policy in investigating employees was adhered to. In this regard, SURNECO's breach of its company procedure necessitates the payment of nominal damages as will be discussed below.

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53 Id. at 133.
54 Ibid.
55 Id.

C. Company procedure; consequences of breach.

Jurisprudence dictates that it is not enough that the employee is given an "*ample opportunity to be heard*" if company rules or practices require a formal hearing or conference. In such instance, the requirement of a formal hearing and conference becomes mandatory. In *Perez v. Philippine Telegraph and Telephone Company*,[56] the Court laid down the following principles in dismissing employees:

> (a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.
>
> (b**) a formal hearing or conference becomes <u>mandatory</u> only when** requested by the employee in writing or substantial evidentiary disputes exists or **a company rule or practice requires it**, or when similar circumstances justify it.
>
> (c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing and conference" requirement in the implementing rules and regulations. [emphases and underscoring supplied]

The rationale behind this mandatory characterization is premised on the fact that company rules and regulations which regulate the procedure and requirements for termination, are generally binding on the employer. Thus, as pronounced in *Suico v. NLRC, et al.*:[57]

> **Company policies or practices are binding on the parties**. Some can ripen into an **obligation on the part of the employer**, such as those which confer benefits on employees **or regulate the procedures and requirements for their termination**. [emphases supplied; citations omitted]

Records reveal that while Gonzaga was given an ample opportunity to be heard within the purview of the foregoing principles, SURNECO, however, failed to show that it followed its own rules which mandate that the employee who is sought to be terminated be afforded a formal hearing or conference. As above-discussed, SURNECO remains bound by – and hence, must faithfully observe – its company policy embodied in Section 16.5 of its own Code of Ethics which reads:

> 16.5. Investigation Proper. The conduct of investigation shall be open to the public. If there is no answer from the respondent, as prescribed, he shall be declared in default.

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[56] G.R. No. 152048, April 7, 2009, 584 SCRA 110, 127.

[57] G.R. Nos. 146762, 153584 and 163793, January 30, 2007, 513 SCRA 325, 343.

> Direct examination of witnesses shall be dispensed with in the IAC. In lieu thereof, the IAC shall require the complainant and his witnesses to submit their testimonies in affidavit form duly sworn to subject to the right of the respondent or his counsel/s to cross-examine the complainant or his witnesses. Cross examination shall be confined only to material and relevant matter. Prolonged argumentation and other dilatory tactics shall not be entertained.

Accordingly, since only an informal inquiry[58] was conducted in investigating Gonzaga's alleged cash shortages, SURNECO failed to comply with its own company policy, violating the proper termination procedure altogether.

In this relation, case law states that an employer who terminates an employee for a valid cause but does so through invalid procedure is liable to pay the latter nominal damages.

In *Agabon v. NLRC* (*Agabon*),[59] the Court pronounced that where the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights.[60] Thus, in *Agabon*, the employer was ordered to pay the employee nominal damages in the amount of ₱30,000.00.[61]

By analogy, the Court finds that the same principle should apply to the case at bar for the reason that an employer's breach of its own company procedure is equally violative of the laborer's rights, albeit not statutory in source. Hence, although the dismissal stands, the Court deems it appropriate to award Gonzaga nominal damages in the amount of ₱30,000.00.

To clarify, Escalante, the general manager of SURNECO, does not stand to be solidarily liable with the company for the same since records are bereft of any indication that he either (*a*) assented to a patently unlawful act of the corporation or (*b*) is guilty of bad faith or gross negligence in directing its affairs.[62]

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58 *Rollo*, p. 16.

59 G.R. No. 158693, November 17, 2004, 442 SCRA 573.

60 Id. at 616, citing *Reta v. NLRC,* G.R. No. 112100, May 27, 1994, 232 SCRA 613, 618.

61 Id. at 620.

62 *Carag v. NLRC,* G.R. No. 147590, April 2, 2007, 520 SCRA 28, 52, citing *McLeod v. NLRC*, G.R. No. 146667, January 23, 2007, 512 SCRA 222, 249; and *Spouses Santos v. NLRC*, G.R. No. 120944, 354 Phil. 918 (1998).

WHEREFORE, the petition is **GRANTED**. The May 29, 2008 Decision and March 30, 2009 Resolution of the Court of Appeals are hereby **SET ASIDE**. The August 31, 2004 and February 1, 2005 Resolutions of the National Labor Relations Commission in NLRC Case No. M-007354-2003 are hereby **REINSTATED** with the **MODIFICATION** that petitioner Surigao del Norte Electric Cooperative, Inc. be **ORDERED** to pay respondent Teofilo Gonzaga nominal damages in the amount of Thirty Thousand Pesos (₱30,000.00) on account of its breach of company procedure.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

See: Separate Opinion

ARTURO D. BRION
Associate Justice
Acting Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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