Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FLP ENTERPRISES INC. – FRANCESCO SHOES/EMILIO FRANCISCO B. PAJARO, Petitioners,	**G.R. No. 198093**
	Present:
	VELASCO, JR., *J.*, *Chairperson,*
	PERALTA,
- versus –	VILLARAMA,*
	MENDOZA, and
	LEONEN, *JJ.*
MA. JOERALYN D. DELA CRUZ and VILMA MALUNES, Respondents.	**Promulgated:**
	July 28, 2014

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D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioners FLP Enterprises, Inc.- Francesco Shoes (*FLPE*) and Emilio Francisco B. Pajaro against respondents Ma. Joeralyn D. Dela Cruz and Vilma Malunes assailing the Court of Appeals (*CA*) Decision[1] dated February 22, 2011 and Resolution[2] dated August 9, 2011 in CA-G.R. SP No. 113326. The CA annulled and set aside the September 30, 2009[3] and January 11, 2010[4] Resolutions of the National Labor Relations Commission (*NLRC*) affirming the December 8, 2008 Decision[5] of the Labor Arbiter (*LA*) which dismissed respondents' complaint for illegal dismissal.

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* Designated Acting Member per Special Order No. 1691 dated May 22, 2014, in lieu of the vacancy in the Third Division.

1 Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante, concurring; *rollo*, pp. 6-19.

2 *Id.* at 20-21.

3 *Id.* at 251-257.

4 *Id.* at 259-260.

5 *Id.* at 241-249.

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The factual and procedural antecedents of the instant case are as follows:

Petitioner FLPE hired respondent Dela Cruz in 1991 and respondent Malunes in 1998 as sales ladies and assigned them both at its Alabang Town Center store in Muntinlupa City. On March 10, 2008, at around 10:00 a.m., it was discovered that the store's sales proceeds for March 7 to March 9, 2008, amounting to □26,372.75, were missing. The investigating authorities found that it resulted from an "inside job" since the cash register remained closed and there was no indication of forced entry into the store. FLPE thus required respondents to explain in writing why they should not be terminated. It contended that respondents clearly violated its company policy prohibiting sales proceeds from being stored in the cash register. Accordingly, Dela Cruz and Malunes submitted their respective written explanations. They both denied the existence of such company policy and having knowledge thereof.

FLPE thereafter removed respondents from service, which took effect on May 26, 2008. Aggrieved, respondents filed a complaint for illegal dismissal with money claims against the company.

On December 8, 2008, the LA dismissed respondents' claim and held that FLPE was able to sufficiently prove that respondents were guilty of habitually violating the company standard procedure on safekeeping of cash collection. The dispositive portion of the LA Decision thus reads:

> WHEREFORE, the instant complaint for illegal dismissal is hereby dismissed considering that the complainants were dismissed for just cause. The claim for overtime pay, ECOLA, separation pay and backwages is denied for lack of basis. Respondent FLP Enterprises, Inc., is ordered to pay proportionate 13th month pay for the year 2008 in the amount of □3,921.67 for each complainant. Respondent Emilio Francisco Pajaro is absolved from liability.
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> All other claims are denied for lack of basis.
>
> SO ORDERED.[6]

Upon appeal, the Third Division of the NLRC affirmed the LA Decision in its entirety. Subsequently, respondents elevated the case to the CA, imputing grave abuse of discretion on the NLRC's part.

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6 *Id*. at 248-249.

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On February 22, 2011, the CA set aside the NLRC ruling and pronounced respondents as having been illegally dismissed by FLPE. Thus:

> **WHEREFORE**, the instant petition for *certiorari* is **GRANTED**. The assailed Resolutions of the public respondent National Labor Relations Commission are **ANNULLED** and **SET ASIDE**. Judgment is hereby rendered declaring that petitioners Joeralyn D. Dela Cruz and Vilma M. Malunes were illegally dismissed from employment by the private respondent FLP Enterprises, Inc. Said private respondent is accordingly held liable to pay petitioners:
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> (1) backwages computed from the time of their dismissal on May 26, 2008 until the finality of this Decision;
>
> (2) separation pay, in lieu of reinstatement, computed at the rate of one (1) month pay for every year of service from the time of their employment up to the finality of this Decision;
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> (3) proportionate 13th month pay for the year 2008 in the amount of □3,921.67;
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> (4) attorney's fees equivalent to 10% of their total monetary award; and,
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> (5) legal interest of twelve percent (12%) per annum of the total monetary awards computed from the finality of this Decision, until their full satisfaction.
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> This case is ***remanded*** to the labor arbiter for computation, with reasonable dispatch, of petitioners' total monetary awards.
>
> **SO ORDERED**.[7]

FLPE filed a Motion for Reconsideration, but the CA denied it for lack of merit.

Thereafter, FLPE filed this petition to finally settle the singular issue of whether it validly dismissed respondents Dela Cruz and Malunes. It contends that because of the several previous incidents of theft in its retail outlets, it formulated a policy on October 23, 2003, requiring its sales staff to keep the sales proceeds in the stockroom instead of the cash register. It maintains that said policy was properly announced, posted, and implemented in all its retail outlets, particularly in Alabang Town Center. Despite that, respondents still refused to comply.

The Court finds the instant petition to be without merit.

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7 *Id*. at 17-18. (Italics and emphases in the original)

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The settled rule is that the Court's jurisdiction in a petition for review on *certiorari* under Rule 45[8] is limited to reviewing only errors of law, unless the factual findings complained of are not supported by evidence on record or the assailed judgment is based on a gross misapprehension of facts.[9] The case at bar assails the propriety of the CA decision in finding the existence of grave abuse of discretion in the NLRC ruling. Grave abuse of discretion, amounting to lack or excess of jurisdiction, is the capricious and whimsical exercise of judgment which must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[10]

After a thorough review of the case, the Court finds no cogent reason to deviate from the CA's determination of grave abuse of discretion on the NLRC and its consequent substitution of its own ruling over that of the latter. Generally, the findings of facts and conclusion of quasi-judicial agencies like the NLRC are entitled to great weight and respect, and even clothed with finality and deemed conclusive upon the parties and binding on the Court, as long as they are supported by substantial evidence.[11] The findings of fact of an administrative agency, which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal. This rule, however, is not absolute and admits of certain well-recognized exceptions, such as when, as in this case, the labor tribunals' findings of fact are not supported by substantial evidence. The CA may then make its own independent evaluation of the facts, even if it may be contrary to that of the LA and the NLRC. Also, where the contesting party's claim appears to be clearly meritorious, or where the broader interest of justice and public policy so requires, the court may, in a *certiorari* proceeding, correct the error committed. The CA, in view of its expanded jurisdiction over labor cases, may look into the records of the case and re-examine the questioned findings if it considers the same to be necessary to arrive at a just and equitable decision.[12]

It is a fundamental rule that an employee can be discharged from employment only for a valid cause. Here, both the LA and the NLRC found that respondents have been validly terminated for gross and habitual neglect of duties, constituting just cause for termination under Article 282 of the Labor Code. As a valid ground for dismissal under said provision, neglect of duty must be both gross and habitual. Gross negligence entails want of care in the performance of one's duties, while habitual neglect imparts

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8 Rules of Court.

9 *P.J. Lhuillier Inc. v. NLRC*, 497 Phil. 298, 309 (2005).

10 *Carlo F. Sunga v. Virjen Shipping Corporation*, *Nissho Odyssey Ship Management Pte. Ltd. and/or Captain Angel Zambrano,* G.R. No. 198640, April 23, 2014.

11 *P. J. Lhuillier Inc.* v. NLRC, *supra* note 9.

12 *AMA Computer College-East Rizal v. Ignacio,* 608 Phil. 436, 453 (2009).

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repeated failure to perform such duties for a period of time, depending on the circumstances.[13]

Substantial evidence is also necessary for an employer to effectuate any dismissal. Uncorroborated assertions and accusations by the employer would not suffice, otherwise, the constitutional guaranty of security of tenure would be put in jeopardy.[14]

In this case, as the CA correctly ruled,[15] in order to sustain herein respondents' dismissal, FLPE must show, by substantial evidence, that the following are extant:

> 1) the existence of the subject company policy;
> 2) the dismissed employee must have been properly informed of said policy;
> 3) actions or omissions on the part of the dismissed employee manifesting deliberate refusal or wilful disregard of said company policy; and
> 4) such actions or omissions have occured repeatedly.

FLPE claims that its company policy that requires its sales managers and staff to keep the sales proceeds in a shoebox in the stockroom and not inside the cash register, have been in existence since October 23, 2003. As proof, it presented the following Memorandum:

TO	:	ALL MANAGERS & STAFF
FROM	:	EMILIO FRANCISCO B. PAJARO
RE	:	SAFEKEEPING OF CASH SALES & COLLECTIONS
DATE	:	October 23. 2003

Nais naming pa-alalahanan ang lahat tungkol sa ating policy na ang benta ay dapat itago sa box ng sapatos sa loob ng stockroom.

At kung sino ang nagtago ay s'ya lang ang [nakakaalam] kung saan n'ya ito inilagay.

Announced & Posted.[16]

However, FLPE failed to establish that such a company policy actually exists, and if it does truly exist, that it was, in fact, posted and/or disseminated accordingly. Neither is there anything in the records which reveals that the dismissed respondents were informed of said policy. The

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13 *Cavite Apparel, Incorporated v. Marquez*, G.R. No. 172044, February 6, 2013, 690 SCRA 48, 57.
14 *Kulas Ideas & Creations v. Alcoseba*, G.R. No. 180123, February 18, 2010, 613 SCRA 217, 226.
15 *Rollo*, p. 12.
16 *Id*. at 113.

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company vehemently insists that it posted, announced, and implemented the subject Safekeeping Policy in all its retail stores, especially the one in Alabang Town Center. It, however, failed to substantiate said claim. It could have easily produced a copy of said memorandum bearing the signatures of Dela Cruz and Malunes to show that, indeed, they have been notified of the existence of said company rule and that they have received, read, and understood the same. FLPE could likewise have simply called some of its employees to testify on the rule's existence, dissemination, and strict implementation. But aside from its self-serving and uncorroborated declaration, and a copy of the supposed policy as contained in the October 23, 2003 Memorandum, FLPE adduced nothing more.

In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause.[17] The one who alleges a fact has the burden of proving it; thus, FLPE should prove its allegation that it terminated respondents for a valid and just cause. It must be stressed that the evidence to prove this fact must be clear, positive, and convincing.[18] When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal.[19] Unfortunately, FLPE miserably failed to discharge this burden. To rule otherwise and simply allow the presumption as to the existence and dissemination of the supposed company policy would lead to a proliferation of fabricated notices, and entice further abuse by unscrupulous persons. Workers could then be arbitrarily terminated without much of an effort, running afoul of the State's clear duty to show compassion and afford the utmost protection to laborers.

Assuming *arguendo* that respondents were aware of the alleged company policy, FLPE failed to prove that they are guilty of disobedience amounting to gross and habitual neglect of duty. On March 9, 2008, Dela Cruz did not even report to work because it was her rest day. As for Malunes, she admitted putting the sales proceeds inside the cash register but she only did so upon the instructions of the store manager, who is basically part of management. There is likewise want of competent evidence showing that respondents have repeatedly violated said policy in the past.

True, an employer has the discretion to regulate all aspects of employment and the workers have the corresponding obligation to obey company rules and regulations. Deliberately disregarding or disobeying the rules cannot be countenanced, and any justification that the disobedient employee might put forth is deemed inconsequential.[20] However, the Court

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17 *Ama Computer College-East Rizal v. Ignacio*, *supra* note 12, at 454.

18 *MZR Industries, Marilou R. Quiroz and Lea Timbal v. Majen Colambot*, G.R. No. 179001, August 28, 2013.

19 *Ama Computer College-East Rizal v. Ignacio*, *supra* note 12, at 454.

20 *Glaxo Wellcome Philippines, Inc. v. NEW-DFA*, 493 Phil. 410, 424-425 (2005).

must emphasize that the prerogative of an employer to dismiss an employee on the ground of willful disobedience to company policies must be exercised in good faith and with due regard to the rights of labor.[21]

For lack of any clear, valid, and just cause in terminating respondents' employment, FLPE is indubitably guilty of illegal dismissal. The rate of interest, however, should be changed to 6% starting July 1, 2013, pursuant to the Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.[22]

WHEREFORE, the instant petition is **DENIED**. The Court of Appeals Decision dated February 22, 2011 and Resolution dated August 9, 2011 in CA-G.R. SP No. 113326 are hereby **AFFIRMED with MODIFICATION**. Petitioners FLP Enterprises, Inc.-Francesco Shoes and Emilio Francisco B. Pajaro are **ORDERED to PAY** respondents Ma. Joeralyn D. Dela Cruz and Vilma Malunes, among others, legal interest of six percent (6%) per *annum* of the total monetary awards, computed from the finality of this Decision until their full satisfaction.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

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21 *Nathaniel N. Dongon v. Rapid Movers and Forwarders Co., Inc., and/or Nicanor E. Jao, Jr.*, G.R. No. 163431, August 28, 2013.

22 *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 456.

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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice