Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MCMER CORPORATION, INC., MACARIO D. ROQUE, JR. and CECILIA R. ALVESTIR, **Petitioners,**	**G.R. No. 193421**
	Present:
	VELASCO, JR., *J.*, *Chairperson*, PERALTA,
- versus –	VILLARAMA, JR.,* MENDOZA, and LEONEN, *JJ.*
NATIONAL LABOR RELATIONS COMMISSION and FELICIANO C. LIBUNAO, JR., Respondent.	**Promulgated:** June 4, 2014

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DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated May 19, 2010 and the Resolution[2] dated August 17, 2010, respectively, of the Court of Appeals (*CA*) in CA-G.R. SP No. 112237.

The facts, as shown in the records, are the following:

Private respondent was employed by petitioner McMer Corporation, Inc. (*McMer*) on August 5, 1999 as Legal Assistant and was eventually promoted as Head of Legal Department, and concurrently, as Officer-in-Charge of petitioner McMer's Legal and Administrative Department,

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* Designated Acting Member, per Special Order No. 1691 dated May 22, 2014.

1 Penned by Associate Justice Cecilia C. Librea-Leagogo, with Associate Justices Remedios Salazar-Fernando and Michael P. Elbinias, concurring; Annex "A" to Petition, *rollo*, pp. 54-72.

2 Annexes "B" to Petition, *id.* at 73-75.

effective on January 3, 2000,[3] with a monthly salary of ₱10,500.00 as basic pay plus ₱3,500.00 as living and representation allowance, plus the sum of ₱5,000.00 which is not reflected on the payroll.[4]

According to private respondent, for quite some time, he and petitioners, specifically Macario D. Roque, Jr. (*Roque*) and Cecilia R. Alvestir (*Alvestir*), McMer's General Manager and President, respectively, have been on a cold war brought often by the disagreement in the design and implementation of company policies and procedures.[5] However, the subsisting rift between him and petitioners heightened on July 10, 2007 when petitioner McMer started verbally and maliciously imputing against Ms. Ginalita C. Guiao, Department Head III, Logistics Department, and another officer of the Logistics Department, Ms. Marissa A. Rebulado, Department Head I, certain unfounded score of inefficient performance of duty.[6]

At around noon on July 20, 2007, petitioner Roque gave an immediate summon upon private respondent to proceed to his office to discuss administrative matters, including but not limited to the alleged absence and tardiness of private respondent.[7]

Private respondent, sensing some unusual development in the attitude of petitioner Roque, instead of responding to the summon, went to petitioner Alvestir's office, and informed her of petitioner Roque's disposition and his fear of a perceived danger to his person. He then requested for petitioner Alvestir to go to petitioner Roque's office instead, of which petitioner Alvestir conceded. Moments later, petitioner Roque, at the height of anger, confronted private respondent and commanded him to proceed to his office. At this juncture, private respondent was too scared to confront Roque as the latter may inflict physical harm on him.

As a consequence of the foregoing, private respondent elected to discontinue work that afternoon and immediately proceeded to the Valenzuela Police Headquarters to report on the incident in the police blotter. Private respondent did not report for work from July 21, 2007 up to July 30, 2007. Because of this, petitioner McMer, through petitioner Alvestir, issued a Memorandum[8] dated July 30, 2007 directing private respondent to explain within five (5) days why no disciplinary action should be imposed upon him for being in absence without official leave (AWOL).

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3 Annex "A" to Comment on Petition, *id*. at 186.
4 Annex "N" to Petition, *id*. at 140-141.
5 *Id.* at 141.
6 *Id*. at 140.
7 Annex "O" to Petition, *id*. at 154.
8 Annex "K" to Petition, *id*. at 131.

In response, private respondent sent a letter[9] dated August 6, 2007 explaining the reason why he refused to report for work during the aforesaid period.

On August 6, 2007, private respondent Feliciano C. Libunao, Jr. filed a complaint for unfair labor practices, constructive illegal dismissal, non-payment of 13th month pay and separation pay, moral and exemplary damages, as well as attorney's fees, against petitioners McMer Corporation, Inc., Roque, and Alvestir.

In response, petitioners sent a letter[10] dated August 9, 2007 acknowledging private respondent's letter dated August 6, 2007 and informing the latter that his letter is being judiciously considered by management.

On August 18, 2007, a conciliary meeting was held inside petitioners' premises to discuss the possibility of an amicable settlement. In the end, however, private respondent was informed verbally by petitioner Alvestir that on account of strained relationship brought about by the institution of a labor case against petitioners, the latter is inclined to dismiss him from office. Private respondent was, likewise, offered a separation pay in the sum of ₱55,000.00.

In its Decision[11] dated March 12, 2008, Labor Arbiter Eduardo G. Magno ruled that there was no constructive dismissal in the instant case since:

> x x x. It is very apparent that complainant voluntarily stopped reporting for work on perceived danger from harm by Mr. Roque. However, it is more of a figment of his imagination and not supported by any concrete evidence or established facts.[12]

Nevertheless, private respondent was granted a proportionate 13th month pay of ₱10,834.00 based on his actual monthly income of ₱19,500.00, the pertinent portion of the Decision reads:

> **WHEREFORE**, Respondent corporation McMer Corporation, Inc. is hereby ordered to pay complainant the amount of ₱84,000.00 as his separation pay and ₱10,834.00 as his proportionate 13th month pay.
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> **SO ORDERED**.[13]

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9 Annex "L" to Petition, *id*. at 132-137.
10 Annex "M" to Petition, *id*. at 138.
11 Annex "E" to Petition, *id*. at 92-96.
12 *Id.* at 95.
13 *Id.* at 96.

Private respondent filed his Appeal dated April 1, 2008, while petitioners filed their Memorandum of Appeal dated April 10, 2008. After the parties submitted their respective replies to the aforementioned appeals, public respondent NLRC, in its assailed Decision[14] dated August 14, 2009, reversed the findings of the Labor Arbiter and modified the relief granted to private respondent, to wit:

> **WHEREFORE**, premises considered, the assailed Decision dated March 12, 2008, is modified as Respondents/Appellants are hereby ordered:
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> > To pay Complainant-Appellee Feliciano C. Libunao, Jr. full backwages based on his basic monthly pay of ₱10,500.00, plus 13th month pay, living & representation allowance, and particular amount computed from the time his wages were withheld from him in August 2007 up to the date We issued this Decision in the total amount of ₱359,141.25.
> >
> > To pay Complainant's separation pay of one month's salary for every year of service in lieu of reinstatement in the amount of ₱105,000.00.
> >
> > To pay Complainant Feliciano C. Libunao, Jr. moral, exemplary and nominal damages in the total amount of ₱90,000.00.
> >
> > **SO ORDERED**.[15]

Respondents filed their Motion for Reconsideration dated September 2, 2009. The same was, however, denied by the NLRC in its assailed Resolution[16] dated November 5, 2009.

Aggrieved by the foregoing, petitioners filed a Petition for *Certiorari* with prayer for injunctive relief with the CA, assailing the Decision and Resolution of the NLRC. The CA did not, however, find basis to reverse the aforementioned judgments of the NLRC, the dispositive portion of its Decision[17] dated May 19, 2010 reads:

> **WHEREFORE**, premises considered, the Petition is **DENIED** for lack of merit. Costs against petitioners.
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> **SO ORDERED**.[18]

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14 Annex "C" to Petition, *id*. at 76-86.
15 *Id.* at 83-84. (Emphasis in the original)
16 Annex "D" to Petition, *id*. at 88-90.
17 *Supra* note 1.
18 *Id.* at 70. (Emphasis in the original)

Despite petitioners' Motion for Reconsideration dated May 19, 2010, the CA found no compelling reason to modify or reverse its earlier Decision, the dispositive portion of its Resolution[19] dated August 17, 2010 states:

> **WHEREFORE**, premises considered, the Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED**.[20]

Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, with the following assigned errors:

> 1. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING THAT THE HONORABLE COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN FINDING THAT THERE WAS CONSTRUCTIVE DISMISSAL; [AND]
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> 2. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING THAT THE HONORABLE COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN ITS MONETARY AWARD IN FAVOR OF PRIVATE RESPONDENT.[21]

The sole issue raised before the Court is whether or not the CA seriously erred in sustaining the NRLC's finding that private respondent was constructively dismissed, and entitled to full backwages, separation pay in lieu of reinstatement, and moral, exemplary and nominal damages.

We find no basis to reverse the ruling of the CA.

At the onset, we concur with petitioners' view that while a petition filed under Rule 45 of the Revised Rules of Court deals only with matters involving questions of law, the same is not absolute, as in the instant case wherein a conflict of factual findings exists among the Labor Arbiter, the NLRC, and the CA. Particularly, the Labor Arbiter found facts supporting the conclusion that there is no constructive dismissal, while the NLRC and the CA found none. Under this situation and consistent with prevailing jurisprudence, the conflicting factual findings below are not binding on us, and we retain the authority to pass on the evidence presented and draw conclusions therefrom.

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19 Annex "B" to Petition, *id*. at 74-75.

20 *Id.* at 75. (Emphasis in the original)

21 *Rollo*, p. 32.

As plainly held in *Uniwide Sales Warehouse Club v. NLRC*,[22] the Court may scrutinize and assess the evidence once again should there be a conflict of factual perceptions between the Labor Arbiter and the CA, to wit:

> It is a well-settled rule that the jurisdiction of the Supreme Court in petitions for review on certiorari under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact. The Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding and consequently, it is not the Court's function to analyze or weigh evidence all over again.
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> The foregoing rule, however, is not absolute. The Court, in *Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN)*, held that the factual findings of the NLRC as affirmed by the CA, are accorded high respect and finality unless the factual findings and conclusions of the LA clash with those of the NLRC and the CA in which case the Court will have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.
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> ***The present case is clouded by conflict of factual perceptions. Consequently, the Court is constrained to review the factual findings of the CA which contravene the findings of facts of the LA***.[23]

Now to the main issue of the instant case.

Petitioners aver that there is no clear, positive and convincing evidence to prove that private respondent was constructively dismissed from office[24] given that the only evidence presented were merely the Valenzuela police blotter[25]dated July 20, 2006 as well as the Affidavit[26] executed by Ginalita Guiao, dated September 5, 2007.

In a plethora of cases, we have defined constructive dismissal as a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[27]

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[28] It is an act amounting to dismissal but made to

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22 570 Phil. 535 (2008).
23 *Uniwide Sales Warehouse Club v. NLRC, supra*, at 548-549. (Emphasis supplied)
24 *Rollo*, p. 35.
25 Annex "J" to Petition, *id*. at 128-130.
26 Annex "P" to Petition, *id*. at 166-167.
27 *Uniwide Sales Warehouse Club v. NLRC, supra* note 22, at 549.
28 *Id.* at 549-550.

appear as if it were not.[29] Constructive dismissal is, therefore, a dismissal in disguise.[30]As such, the law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.[31] In fact, the employee who is constructively dismissed may be allowed to keep on coming to work.[32]

After a careful consideration of the evidence and records at hand, we uphold the factual and legal findings of the CA that there was constructive dismissal because of the following acts committed by petitioners against private respondent, to wit:

1. About noon of July 20, 2007, petitioner Roque went to private respondent's office at the height of his anger with threat to inflict physical harm, shouted a command for private respondent to proceed to petitioner's office;

2. Private respondent was approached sarcastically with commanding voice by petitioner Roque even in front of some officers and rank-and-file employees and newly-hired employees; and

3. Private respondent's professional ethic or moral belief was compromised due to certain business practices[33] of petitioner McMer

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29 *Id.* at 550.

30 *Id.*

31 *Id.*

32 *CRC Agricultural Trading v. NLRC*, G.R. No. 177664, December 23, 2009, 609 SCRA 138, 149.

33 According to private respondent, the following acts were being practiced by petitioner McMer in managing and operating its business, that ultimately resulted in conflict between petitioners and private respondent:

10.1 They always wanted that the company is always right and in case of major disagreement between any personnel, the latter can go out and the company is confidently ready to meet everyone in the NLRC.

10.2 They do not want to believe with the Legal Department that probationary employment is based only within a period of six (6) months.

10.3 They do not want to believe with the Legal Department that payment of 13th month pay should be given not later than December 24.

10.4 They do not want to believe with the Legal Department that work in excess of the first eight (8) hours is considered overtime duty and therefore compensable.

10.5 They do not want to believe that in the computation of the overtime pay, the applicable rate is 125% of the basic pay and that what is merely deductible thereto is the prescribed time of usual break only and not another 1 hour or more.

10.6 They do not want to believe that payment of allowance during overtime, duty cannot be regarded as overtime payment.

10.7 They do not want to believe that there is no such inorganic employees within the compilation of the labor laws in the Labor Code of the Philippines.

10.8 They do not want to believe that persons who do not have official appointment from the company but who are in continuous employment with the company specifically those who have reached the 1st, 2nd and 3rd year are by law required to be recognized as regular and permanent employees of the company to be afforded with mandated benefits.

10.9 They do not want to believe that requirement of the SSS law insofar as mandatory coverage in the System of an employee does not provide certain distinction.

10.10 In case of vehicular accident of company vehicles resulting to a collision with another vehicle, they always wanted the Legal Department to make it appear that the other vehicle is the offended party.

> that were never exposed due to the employee's fear of reprisal, as shown in private respondent's Position Paper.[34]

We disagree with petitioners' view that the Affidavit executed by Guiao is insufficient to depict the hostile working environment petitioner McMer maintains. It bears stressing that Guiao has actual knowledge of facts derived from her personal observation of what transpired on July 20, 2007, an excerpt of which reads:

> 2. Sometime on July 20, 2007, I was inside the administration building of the aforesaid company (HRD and Legal Department office) having a conversation with its President, Ms. Cecilia R. Alvestir.
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> 3. In the course of our discussion we were interrupted by Feliciano Libunao, Jr. as he transmitted some words to the President for the latter to inform the owner of the company, Mr. Macario D. Roque, Jr. that he cannot proceed on the latter's summon to proceed to his office understandably on account of existing fear that they would come to a possible severe disagreement.
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> 4. Ms. Alvestir then moved to the office of the owner in compliance to the given request, but after few seconds, Mr. Macario Roque followed by Ms. Alvestir proceeded to the aforesaid office where I remained sitting and where Feliciano Libunao, Jr. holds his office.
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> 5. His face apparently fuming with anger associated with clear provocation, Mr. Roque accosted Mr. Libunao and shouted at him to immediately proceed to his office.
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> 6. On the intervention of Ms. Alvestir, his younger brother, Mr. Macario Roque was forced to return to his office with that standing order for Mr.Libunao to follow him, while Mr. Libunao was caught in the state

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> 10.11 In case of apprehension of a company Sales Representative for ESTAFA under Article 315, par. 1(b) of the RPC, they always wanted the Legal Department to cause the immediate imprisonment of suspect on the same day.
> 10.12 They do not believe that in the exercise of management prerogative to suspend and lay-off employees, the same is subject to the observance of the due process of law notably the mandatory twin notices rule.
> 10.13 They do not want to believe with the Legal Department that inflicting physical or bodily harm by any corporate officers against an employee is not among the vested rights and prerogatives legally afforded by law to them.
> 10.14 They do not want to believe with the Legal Department that an intended promotion in rank is just like an offer of gift that is subject to acceptance or rejection.
> 10.15 They do not want to believe that an intended transfer of an employee from one Department to another Department even within the same company is logically and legally required to be covered by a "Written Transfer Order" and that any amount of refusal or deprivation thereto absolutely amounts to tangible concealment of fraudulent act.
> 10.16 They do not want to believe that under the canons of professional ethics and even under civil laws, every person must in the exercise of his rights and in the performance of duties, act with justice, give everyone his due, and observe honesty and good faith.

[34] *Supra* note 4, at 142-145.

> of shock, public humiliation and embarrassment in the presence of employees and applicants.
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> 7. Understandably to avoid a possible collision with Mr. Roque, who is known within the company yard as a violent person especially during the height of uncontrolled anger, Mr. Libunao decided to immediately leave the office without seeing anymore Mr. Roque.
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> x x x.[35]

As correctly observed by the CA, the sworn statement of Guiao is not only relevant and material evidence, the same is likewise reliable and competent given that Guiao was physically present at petitioner Alvestir's office when the incident happened, and has therefore personal knowledge of what transpired therein. Further, we find her description of petitioner Roque's disposition adequate to support a conclusion that private respondent was caught in the state of humiliation and embarrassment in the presence of his co-employees as a result thereof.

Time and again, we have upheld that the substantiality of the evidence depends on its quantitative as well as its qualitative aspects,[36]as in the present case where the affidavits on which the decision was mainly anchored were corroborated by any other documentary evidence such as the police blotter.

It must be remembered that although police blotters are of little probative value, they are nevertheless admitted and considered in the absence of competent evidence to refute the facts stated therein.[37] Entries in police records made by a police officer in the performance of the duty especially enjoined by law are *prima facie* evidence of the fact therein stated, and their probative value may be either substantiated or nullified by other competent evidence.[38]

In *Macalinao v. Ong*,[39] we held that the *prima facie* nature of the police report ensures that if it remains unexplained or uncontradicted, it will be sufficient to establish the facts posited therein, to wit:

> In this case, the police blotter was identified and formally offered as evidence and the person who made the entries thereon was likewise presented in court. On the other hand, aside from a blanket allegation that the driver of the other vehicle was the one at fault, respondents did not present any evidence to back up their charge and show that the conclusion

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35 *Supra* note 26.
36 *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382, 396.
37 *Lao v. Standard Insurance Co., Inc.*, 456 Phil. 227, 234 (2003).
38 *Id.*
39 514 Phil. 127 (2005).

> of the police investigator was false. Given the paucity of details in the report, the investigator's observation could have been easily refuted and overturned by respondents through the simple expedient of supplying the missing facts and showing to the satisfaction of the court that the Isuzu truck was blameless in the incident. Ong was driving the truck while the two other truck helpers also survived the accident. Any or all of them could have given their testimony to shed light on what actually transpired, yet not one of them was presented to substantiate the claim that Ong was not negligent.
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> Since respondents failed to refute the contents of the police blotter, the statement therein that the Isuzu truck hit the private jeepney and not the other way around is deemed established. The *prima facie* nature of the police report ensures that if it remains unexplained or uncontradicted, it will be sufficient to establish the facts posited therein.[40]

We are persuaded by the CA's reasoning that as regards police blotters, the same are admitted and considered in the absence of competent evidence to refute the facts stated therein. Well-entrenched is the rule that the quantum of evidence required to establish a fact in quasi-judicial bodies is substantial evidence.[41] Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise.[42]

In any event, we note that the sarcastic approach on private respondent was not the basis for the NLRC and the CA to conclude that there was constructive dismissal in the instant case. Neither was the allegation that all of private respondent's staff were removed one by one until finally only private respondent was left alone to handle managerial and clerical duties.

Indeed, the CA's Decision was not decided only on what transpired on July 20, 2007. Various factors were considered in determining the working environment of petitioner McMer, to determine whether or not private respondent was in a position wherein he would have felt compelled to give up his position under the circumstances because continued employment was just impossible, unreasonable or unlikely.

As may gleaned from the records, what transpired on July 20, 2007 was not merely an isolated outburst on the part of petitioner Roque. The latter's behaviour towards his employees shows a clear insensibility rendering the working condition of private respondent unbearable. Private respondent had reason to dawdle and refuse to comply with the summon of petitioner Roque out of severe fear that he will be physically harmed. In fact,

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40 *Macalinao v. Ong, supra,* at 138-139.

41 *Uniwide Sales Warehouse Club v. NLRC, supra* note 22, at 552.

42 *Id.*

the same was clearly manifested by his immediate reaction to the situation by going to the Valenzuela Police to report the incident.

Moreover, after a judicious scrutiny of the records, we find that private respondent has exhibited a strong opposition to some company practices resulting in a severe marginal distance between him and petitioners Roque and Alvestir at the workplace. This, together with the harassment and intimidation displayed by petitioner Roque to his employees, became so unbearable for private respondent to continue his employment with petitioner McMer. The fact that none of the employees complained or brought this to the attention of the appropriate authority does not validate petitioners' actions. For private respondent, retaining the employment despite his despair was a matter of principle. Private respondent reasoned that it was difficult for him to look for another employment, considering that at the time he filed his Position Paper, he was already 58 years old. His eventual decision to leave petitioners due to the agonizing situation at the workplace cannot, therefore, be discounted.

The NLRC and the CA, therefore, correctly appreciated the foregoing events as badges of constructive dismissal, since private respondent could not have given up a job he has engaged in for eight years unless it has become so unbearable for him to stay therein. Indeed, private respondent felt compelled to give up his employment.

As far as private respondent is concerned, how the working place is being run has caused inordinate strain on his professional work and moral principles, even stretching to desecration of dignity in the workplace. The allegation that all of private respondent's staff were removed one by one until finally only the latter was left alone performing managerial and clerical duties is merely part of the greater scheme brought forth by the insensibility of petitioners in dealing with the employees.

In *Siemens Philippines, Inc. v. Domingo*,[43] we have declared that "an employee who is forced to surrender his position through the employer's unfair or unreasonable acts is deemed to have been illegally terminated and such termination is deemed to be involuntary."[44] Constructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefit and privileges. There may be constructive dismissal if an act of clear discrimination, insensibility or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[45]

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43 582 Phil. 86 (2008).

44 *Siemens Philippines, Inc. v. Domingo, supra,* at 100.

45 *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295, 306 (2001).

We ought to remind petitioners regarding the doctrine we laid down in *Aguilar v. Burger Machine Holdings Corporation*,[46] to wit –

> The test of constructive dismissal is whether ***a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances***. Based on the factual considerations in the instant case, ***we hold that the hostile and unreasonable working conditions of petitioner justified the finding of the Labor Arbiter and the NLRC that petitioner was constructively dismissed.*** Petitioner's performance may not have been exceptional as he ranked 14th in the quality food service control survey for the 1st quarter of 2002. But he was certainly not grossly inefficient as Burger Machine pictured him to be. In fact, he received several citations and was able to comply with the directive to reduce his shortages for the month of November 2001. ***From all indications, there is really no ground to dismiss petitioner for gross inefficiency. And, as Burger Machine saw it, the only way to get rid of the latter was to constructively dismiss him.***[47]

No employee should be subjected to constant harassment, ridicule and inhumane treatment on the basis of management prerogative or even for poor performance at work. While we concur with petitioners that raising one's voice in the workplace as a result of displeasure in the performance of an employee is not illegal *per se*, the right to impose disciplinary sanctions upon an employee for just and valid cause is not without limit. The means does not justify the end; thus, the same should be in accordance with the norms of due process.

In view of the foregoing, we find that the evidence on record is consistent with the ruling of the NLRC, as affirmed by the CA, that private respondent was constructively dismissed. Accordingly, we rule that the award of full backwages, separation pay in lieu of reinstatement, moral, exemplary and nominal damages is in order pursuant to Section 279 of the Labor Code, which explicitly states that 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.

As early as *Santos v. NLRC*,[48] the Supreme Court already explained the underlying basis for the foregoing provision, to wit –

> x x x. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to

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46 536 Phil. 985 (2006).

47 *Aguilar v. Burger Machine Holdings Corporation, supra,* at 995-996. (Emphasis supplied)

48 238 Phil. 161 (1987).

> continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. x x x[49]

In the present case, considering that reinstatement is no longer feasible due to the strained relations between petitioners and private respondent, we find that the payment of separation pay of one month's salary for every year of service is just and reasonable as an alternative of reinstatement. Over and again, this Court has recognized that strained relations between the employer and employee is an exception to the rule requiring actual reinstatement for illegally dismissed employees for the practical reason that the already existing antagonism will only fester and deteriorate, and will only worsen with possible adverse effects on the parties if we shall compel reinstatement; thus, the use of a viable substitute that protects the interests of both parties while ensuring that the law is respected.[50]

Further, it cannot be gainsaid that private respondent was unjustly treated in the workplace, and, consequently, bore wounded feelings and suffered mental anguish during his tenure with petitioner McMer until he was constructively dismissed from service. Thus, we uphold the grant of moral, exemplary and nominal damages in the aggregate amount of ₱90,000.00 in favor of private respondent due to the wanton, oppressive and malevolent manner by which private respondent was illegally and constructively terminated, in accordance with *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*,[51] which emphatically held that—

> In determining entitlement to moral and exemplary damages, we restate the bases therefor. In moral damages, it suffices to prove that the claimant has suffered anxiety, sleepless nights, besmirched reputation and social humiliation by reason of the act complained of. Exemplary damages, on the other hand, are granted in addition to, *inter alia*, moral damages "by way of example or correction for the public good" if the employer "acted in a wanton, fraudulent, reckless, oppressive or malevolent manners."[52]

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49 *Santos v. NLRC, supra,* at 167.
50 *CRC Agricultural Trading v. NLRC, supra* note 32, at 151-152.
51 387 Phil. 250 (2000).
52 *Philippine Aeolus Automotive United Corporation v. NLRC, supra,* at 265.

WHEREFORE, the petition is **DENIED**. The Decision dated May 19, 2010 and the Resolution dated August 17, 2010, respectively, of the Court of Appeals, are hereby **AFFIRMED *IN TOTO***.

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

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