Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COLEGIO DE SAN JUAN DE LETRAN,	**G.R. No. 178837**
Petitioner,	**Present:**
	VELASCO, JR., *J.*, *Chairperson*,
	PERALTA,
- versus -	BERSAMIN,*
	VILLARAMA, JR., and
	REYES, *JJ.*
	Promulgated:
ISIDRA DELA ROSA-MERIS	
Respondent.	September 1, 2014

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D E C I S I O N

PERALTA, *J.:*

Before the Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court which seeks to review, reverse and set aside the Decision[1] of the Court of Appeals (*CA*), dated January 29, 2007 and its Resolution[2] dated May 25, 2007, in the case entitled *Isidra Dela Rosa-Meris v. National Labor Relations Commission, Letran College-Manila, Fr. Edwin Lao, Angelita Delos Reyes, Mansueto Elorpe and Marilou Tolentino*, docketed as CA-G.R. SP No. 92933.

The facts of the case are as follows:

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* Designated Acting member, in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 1777 dated September 1, 2014.

1 Penned by Associate Justice Japar B. Dimaampao.; Annex "A" to Petition, *rollo*, pp. 30-42.

2 Penned by Associate Justice Japar B. Dimaampao.; Annex "B" to Petition, *id.* at 44-46.

Petitioner Colegio De San Juan de Letran is a religious educational institution operated by the Order of Preachers.[3] Respondent Isidra Dela Rosa-Meris was hired by petitioner in January 1971 as a probationary trial teacher; then, she steadily climbed up the ranks until she became Master Teacher in June 1982.[4] However, her stint with petitioner temporarily ended when she resigned in March 1991.[5] Seven years later, respondent returned to petitioner as Junior Teacher C in the Elementary Department for the period of February up to April 1998.[6] On October 21, 1999, she was hired again as a substitute teacher, wherein she acted as such until her eventual termination on October 3, 2003.[7]

The rift between petitioner and respondent began on September 10, 2003, when several parents of the Preparatory (*Prep*) pupils who were under the class of respondent went to the Principal's Office to lodge a complaint against respondent, alleging the following: (1) respondent has been too indifferent and unprofessional in addressing their concerns; and (2) the pupil who landed in the top of the Honor Roll, Louis Ariel Arellano, seemed not to be the best pupil in class.[8] Relying on such theories, said parents then asked for the formula in the computation of the general average.[9]

On even date, petitioner conducted an investigation relative to the parents' concerns by gathering respondent's class records as well as her students' test papers and report cards.[10] The investigation revealed certain discrepancies in the entries of grades in respondent's Dirty Record Book (*Dirty Records*) as against her Clean Record Book (*Clean Records*).[11]Specifically, the alleged discrepancies consisted of the following:

Name of Student	**Subject**	**Grade**	
		Per Dirty Records	**Per Clean Records**
Arellano, Louis Ariel	P.E.	88	90
	Music & Arts	87	90
	Writing	86	88
Baysic, Matthew Edison	P.E.	85	88
	Music & Arts	85	88
	Writing	81	85
Laurel, Pete Andrei	P.E.	86	84

3 *Rollo*, p. 10.
4 *Supra* note 1, at 31.
5 *Id.*
6 *Id.*
7 *Id.*
8 *Supra* note 3.
9 *Id.*
10 *Id.*
11 *Id.* at 32.

Pavia, Jeremy Jasper	P.E.	87	88
	Music & Arts	87	88
	Writing	85 instead of 88 (with erasures)	
De Leon, Zachary	P.E.	87	89
	Music & Arts	87	89
	Writing	82	89
Yralao, Francis Miguel	Writing	88 instead of 85	
Lapitan, Christian Keith	Writing	86 instead of 88 (with erasures)	
McGarry, John Vincent	Writing	86 instead of 88 (with erasures)[12]	

It was further discovered that there were erasures on certain grades of the above-named pupils which appeared in the Clean Records.[13]

Taking action on the matter, petitioner sent respondent a letter dated September 12, 2003 which detailed the parents' complaints and the aforementioned discrepancies.[14] Respondent was given seventy-two (72) hours from receipt thereof within which to explain why she should not be charged with tampering with school records in violation of petitioner's Elementary Faculty Manual.[15]

Respondent, however, refused to receive said letter, prompting petitioner to send the same by registered mail and by LBC Express.[16] As certified by LBC Express, the memo was delivered to respondent on September 23, 2003.[17]

According to respondent, upon her receipt of the aforesaid letter, she approached the Principal, Angelita M. De Los Reyes, and asked that the complaints of the parents be reduced to writing.[18] However, respondent never received such written complaint.[19] Respondent further alleged that on October 2, 2003, she was summoned to the Office of Rev. Fr. Edwin A. Lao, O.P., who blatantly asked her why she tampered with her students' grades, of which she vehemently denied.[20] Fr. Lao informed her that while her performance as a teacher is excellent, she could no longer continue with her employment with petitioner since her conduct towards her co-teachers is

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12 Petition, *rollo*, pp. 56-61.
13 *Id.* at 61.
14 *Supra* note 11.
15 *Id.*
16 *Id.* at 32-33.
17 *Rollo*, p. 12.
18 *Id.* at 33.
19 *Id.*
20 *Id.*

unpleasant.[21] At that instance, Fr. Lao terminated her employment effective October 3, 2003.[22]

On the other hand, petitioner averred that respondent offered no explanation despite receipt by mail of the letter dated September 12, 2003.[23] According to Fr. Lao, on October 2, 2003, he arranged a conference with respondent during which the former explained to her why she should give her side on the charge contained in the letter dated September 12, 2003.[24] Respondent was even advised by Fr. Lao to give a written explanation of why she tampered her class records; otherwise, she would be terminated without further investigation as her refusal will be taken as a waiver of her right to be heard.[25] Despite the admonition of Fr. Lao, respondent still refused to give her side in writing.[26] Hence, Fr. Lao served her with a copy of the termination letter dated September 29, 2003, but still, respondent refused to receive it.[27] Accordingly, the matter was forwarded to the Head of the Human Resource Division, Ms. Nimfa Maduli, who attempted to serve the letter of termination to respondent on the same date.[28] However, respondent relentlessly refused to receive and affix her signature thereon.[29] Instead, she asked Ms. Maduli not to require her to receive the termination letter as she may consider filing a resignation letter.[30] She promised Ms. Maduli that she will return the following day to inform her of her decision.[31] However, she did not return and stopped reporting to the school then.[32]

On October 6, 2003, respondent instituted a Complaint for illegal dismissal and damages before the Labor Arbiter (*LA*) claiming that she was dismissed without cause and in violation of her right to due process.[33] For its part, petitioner claimed that respondent was dismissed for just cause since tampering with school records to favor one student over another constitutes serious misconduct; moreso, in the case of respondent, a teacher who is supposed to be a role model of the students.[34]

Weighing the respective positions of the parties, the LA rendered a Decision[35] dated May 14, 2004, finding the dismissal of respondent valid and legal, thus:

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21 *Id.*
22 *Id.*
23 *Id.*
24 Annex “D-2” to Petition, *rollo*, p. 102.
25 *Id.*
26 *Id.*
27 *Id.*
28 *Id.*
29 *Id.*at 106.
30 *Id.*
31 *Id.*
32 *Id.*
33 *Supra* note 1, at 33.
34 *Id.*
35 Annex "G" to Petition, *rollo*, pp. 199-207.

> ***That complainant had indeed tampered the grades of some of her students, is evidenced by the Dirty Records which, if compared with the Clean Records will reveal the discrepancy***. During the hearing of March 24, 2004, the respondents presented the original copies of the Dirty Records and Clean Records for examination, and this Labor Arbiter personally saw the alterations or discrepancies, the details of which were narrated by the respondents in their position paper.
>
> Complainant justifies the alterations by saying that the students made significant improvements from the time she finished with her dirty records up to the time she filled up the clean records, which allegedly was within the first grading period. We are not persuaded. Complainant could not have started and finished recording the grades earlier than the end of the first grading period which was on August 15, 2003, because the results of the examinations are not yet known at that time. Logically, the grades would have to be recorded after the end of the first quarter.
>
> Complainant's pretense that the alterations were done because of significant improvements on the part of the students concerned does not also persuade us. ***If there were improvements as complainant suggests, it should not reflect on the first quarter, considering that the first quarter had already ended. Any improvement should reflect on the second quarter because it was during that time when the supposed improvement took place. Moreover, it is unbelievable that in such a short period of time, the students had shown a very significant improvement that would justify such a big adjustment on their grades***.
>
> We cannot also give credence to the complainant's pretense that the Dirty Record is a mere rough draft. ***The Dirty Record is the repository of the student's performance as of the time it happened. It is the Dirty Record where grades gotten during recitations, quizzes or projects are written. The Clean Record is a mere transcription of the entries in the Dirty Record, and therefore, the Dirty Record must be free from alterations***. As pointed out by the respondents, the Dirty Record is an official record which respondent School requires its teachers to submit to the Principal at the end of the school year. This is to be used as reference just in case questions or complaints about grades would be raised in the future. To ensure that there are no alterations, the Dirty Records are even subjected to examination by the Coordinators. ***In this case, there is reasonable ground to believe that the alterations were done after the same had been examined by the Coordinator, otherwise, the discrepancies would have easily been noticed by the Coordinator***. x x x.[36]

In view thereof, respondent appealed the aforesaid Decision to the National Labor Relations Commission (*NLRC*), which rendered a Decision[37] on February 28, 2005, declaring that respondent failed to "exercise the necessary degree of prudence in rating the academic performance of her pupils."[38] Nonetheless, the NLRC found the conduct of respondent as "one

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36 *Id.* at 204-205. (Emphasis supplied)

37 Annex "H" to Petition, *rollo*, pp. 211-224.

38 *Id.* at 221.

which does not involve moral turpitude."[39] Accordingly, "a penalty less severe than dismissal is appropriate."[40] The NLRC, thus, held:

> **WHEREFORE**, premises considered, the decision under review is hereby **MODIFIED** by ordering the respondent Letran College of Manila, to pay the complainant, separation benefits, in lieu of reinstatement **WITHOUT BACKWAGES**, at the rate of one-month salary for every year of service.
>
> All other claims are **DISMISSED** for lack of merit.
>
> **SO ORDERED**.[41]

Not surprisingly, both parties moved for reconsideration. In its Decision[42] dated November 18, 2005, the NLRC made a complete turn-about of its previous stance ruling that respondent's appeal was not perfected due to lack of certification of non-forum shopping; and in any case, dismissal of the appeal is still warranted, considering that respondent committed serious misconduct – an act of dishonesty, which justified her dismissal from service.[43] The *fallo* of the Decision reads:

> **WHEREFORE**, our decision dated February 28, 2005 is hereby, **RECONSIDERED** and **SET ASIDE**. The decision of the Labor Arbiter dated May 14, 2004 is hereby **AFFIRMED** *in toto.*
>
> **SO ORDERED**.[44]

Dissatisfied, petitioner then filed a Petition for *Certiorari* with the CA on the ground that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction: (1) when it ruled that respondent's appeal was not perfected due to lack of certification of non-forum shopping; (2) when it reconsidered its previous finding that petitioner had not acted in bad faith on the basis of unfounded and insignificant claim; (3) when it affirmed respondent's dismissal in spite of the fact that it is not for a just or authorized cause and without due process; and (4) when it denied respondent's motion for reconsideration on the alleged ground that it was not verified.[45]

On May 30, 2000, the CA rendered a Decision[46] finding respondent's petition meritorious, the dispositive portion of which states:

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39 *Id.* at 222.
40 *Id.*
41 *Id.* at 223-224. (Emphasis in the original)
42 Annex "J" to Petition, *rollo*, pp. 231-235.
43 *Id.* at 232.
44 *Id.* at 234. (Emphasis in the original)
45 *Supra* note 1, at 35.
46 *Supra* note 1.

> **WHEREFORE**, the Petition is hereby **GRANTED**. The Decisions dated 28 February 2005 and 18 November 2005 of the National Labor Relations Commission are **REVERSED and SET ASIDE,** with a new one entered finding illegal the dismissal from service of petitioner Isidra Dela Rosa-Meris. Accordingly, Letran College-Manila is hereby ordered to pay her separation pay equivalent to one month salary for every year of service in lieu of reinstatement, plus full backwages, without deduction or qualification, counted from the date of dismissal until the finality of this decision, including other benefits she is entitled to under the law.
>
> **SO ORDERED**.[47]

From the aforesaid Decision, both parties filed their respective motions for reconsideration. Acting thereon, the CA issued a Resolution[48] dated May 25, 2007, maintaining its earlier decision but granting attorney's fees and interest in favor of respondent, the *fallo* thereof reads:

> **WHEREFORE**, Our Decision dated 29 January 2007 is hereby **MODIFIED** in that petitioner is granted attorney's fees equivalent to 10% of the monetary award; and upon finality of this judgment, interest at the rate of 12% per annum is hereby imposed on the total monetary award. Private respondents' Motion for Reconsideration is accordingly **DENIED**.[49]

Hence, the instant petition with the following grounds for the allowance thereof, to wit:

> I
>
> THE HONORABLE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.
>
> a. WHEN IT ALTERED THE DECISION OF THE LABOR ARBITER WHICH HAD BECOME FINAL AND EXECUTORY BY REASON OF NON-PERFECTION OF THE APPEAL;
>
> b. WHEN IT ALTERED A **FACTUAL FINDING** ON A MATTER WHICH NECESSITATES A VISUAL COMPARISON OF THE ORIGINAL VERSUS THE TAMPERED DOCUMENTS, NOTWITHSTANDING THE FACT THAT IT DID NOT HAVE THE OPPORTUNITY TO PHYSICALLY/VISUALLY MAKE A COMPARISON.
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> II
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> THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR APPLICABLE DECISIONS OF THIS HONORABLE COURT:

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47 *Id.* at 41-42. (Emphasis in the original)

48 *Supra* note 2.

49 *Id.* at 46. (Emphasis in the original)

> a. WHEN IT AWARDED ATTORNEY'S FEES ON THE BASIS OF ARTICLE 111 (a) OF THE LABOR CODE, NOTWITHSTANDING THE FACT THAT ARTICLE 111 (a) OF THE LABOR CODE PERTAINS ONLY TO ATTORNEY'S FEES FOR ACTIONS INVOLVING UNLAWFUL WITHHOLDING OF WAGES AND NOT TO AN ACTION FOR ILLEGAL DISMISSAL.
>
> b. WHEN IT ORDERED THE PETITIONER HEREIN TO PAY INTEREST UPON FINALITY OF THE JUDGMENT, NOTWITHSTANDING THE ABSENCE OF ANY LAW AUTHORIZING SUCH PAYMENT OF INTEREST, CONTRARY TO ARTICLE 279 OF THE LABOR CODE WHICH LIMITS THE RELIEF AVAILABLE TO AN ILLEGALLY DISMISSED EMPLOYEE TO REINSTATEMENT WITH BACKWAGES.[50]

As can be gleaned from the foregoing, the petition raises essentially two (2) main issues:

> (1) Whether or not the CA erred in finding grave abuse of discretion on the part of the NLRC when the latter dismissed petitioner's appeal from the LA's decision for respondent's failure to attach a certification of non-forum shopping to her Memorandum of Appeal in violation of NLRC Resolution 01-02 (Series of 2002); and
>
> (2) Whether or not the CA erred in finding grave abuse of discretion on the part of the NLRC when the latter declared respondent to have been dismissed on valid grounds and in accordance with due process.

After a scrupulous review of the records and evidence before us, we find the petition meritorious. Accordingly, the reversal of the Decision of the CA is in order.

We shall first address the *procedural* issue.

First. Petitioner posits that the LA's Decision dated May 14, 2000 has already attained finality, considering that the appeal to the NLRC was never perfected due to respondent's failure to attach a certification of non-forum shopping to her Memorandum of Appeal. The NLRC sustained such argument by dismissing respondent's appeal. However, the CA reversed the ruling of the NLRC and upheld respondent's plea for relaxation of the rules in her case. Thus:

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[50] *Rollo*, p. 14.

> We must admit that the argument raised in the **Twin Towers** case insofar as the non-compliance with the forum shopping rule is concerned, is not on all fours with this case. However, We will not hesitate to apply the pronouncement in the aforecited case given the peculiar circumstances of the controversy at bench. It is Our considered opinion *pro hac vice* that the strict application of the non-forum shopping rule as provided for in Resolution No. 01-02 would not work to the best interest of the parties. The employment of petitioner Meris revered as property in the Constitutional sense is at stake here. This may be considered a "special circumstance or a compelling reason that would justify tampering the hard consequence of the procedural requirement on non-forum shopping. Social justice demands that We lean backwards in her favor and relax exacting rules of procedure in the higher interest of justice. We have not lost sight of the avowed policy of the State to accord utmost protection and justice to labor. Certainly, all doubts in the implementation and interpretation of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.

We disagree with the CA's liberal application of the rules. As admitted by respondent, she filed the appeal before the NLRC without attaching a certification of non-forum shopping to her notice of appeal, despite the categorical requirement provided by Section 4, Rule VI of the NLRC Rules of Procedure.[51] Respondent's explanation that "she could only assumed (sic) that the certification was not so much required or (sic) due to the well established rule that the cases before the Department of Labor and Employment should be decided on its merit and not on mere technicalities"[52] and "her counsel was not aware that it is required"[53] is simply unacceptable; and is, in fact, an affront to the administration of justice. Clearly, such cannot be considered as a special circumstance or compelling reason that would justify tempering the hard consequence of the procedural requirement on non-forum shopping.

In the same vein, the merit of respondent's case does not warrant the liberal application of the aforesaid rules. The fact that the instant case anchors on one of the most cherished constitutional rights afforded to an employee is of no moment since the Rules of Court may not be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution.[54] While it is true that

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51 **SECTION 4. REQUISITIES FOR PERFECTION OF APPEAL**. a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and a statement of the date when the appellant received the appealed decision, resolution or order ***and a certification of non-forum shopping*** with proof of service on the other party of such appeal. ***A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal***. (Emphasis supplied)

52 Comment to Petition, *rollo*, p. 289.

53 *Id.* at 290.

54 *Mandaue Galleon Trade, Inc. v. Isidto*, G.R. No. 181051, July 5, 2010, 623 SCRA 414, 422.

litigation is not a game of technicalities and that rules of procedure shall not be strictly enforced at the cost of substantial justice, it must be emphasized that procedural rules should not likewise be belittled or dismissed simply because their non-observance might result in prejudice to a party's substantial rights.[55] Like all rules, they are required to be followed, except only for the most persuasive of reasons.[56]

Thus, the NLRC correctly issued a Resolution dismissing respondent's appeal since the period for perfecting the same has already lapsed. Consequently, the decision of the LA has become final and executory.

Second. Petitioner likewise assails the CA in substituting its own findings of facts to the findings of the LA and the NLRC, notwithstanding the fact that it did not have the opportunity to physically or visually make a comparison between the original versus the allegedly tampered documents.[57]

We have ruled that the CA has ample authority to make its own factual determination in a special civil action for *certiorari,* and may grant the same when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy.[58] In the same manner, this Court is not precluded from reviewing the factual issues when there are conflicting findings by the LA, the NLRC and the CA.[59]

Here, we are constrained to scrutinize the records because of the contradictory findings between the labor courts on one hand, and the appellate court on the other. After a painstaking review thereof, we find that the findings of the LA and the NLRC are more in accord with the evidence on record.

As will be further discussed hereinbelow, respondent failed to convince us that the factual determinations of the LA and the NLRC, respectively, are not supported by evidence on record or the assailed judgments are based on a misapprehension of facts. In *Bolinao Security and Investigation Service, Inc. v. Toston*,[60] we have emphatically held that:

> It is axiomatic that factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, ***when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding***

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55 *Id.*
56 *Id.*
57 *Rollo*, p. 16.
58 *Plastimer Industrial Corp. v. Gopo,* G.R. No. 183390, February 16, 2011, 643 SCRA 502, 509 (2011).
59 *Id.*
60 466 Phil. 153 (2004).

> ***on this Court***. As long as their ***Decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is the Court's stamp of finality by affirming the factual findings made by the NLRC and the Labor Arbiter***.[61]

Nevertheless, even if we brush aside the foregoing procedural flaws in the instant case, the NLRC correctly dismissed the appeal for lack of merit.

At the onset, it bears stressing that there is no controversy on the fact that there are discrepancies between respondent's entries of grades in her Dirty Records and Clean Records.[62] Likewise, it is a matter of record that there were alterations and erasures of certain grades in both Dirty and Clean Records using "snopake" or white liquid eraser. Thus, the only issue left for resolution is whether or not respondent is justified to make said erasures and alteration of grades,[63] and if she had executed the same in accordance with petitioner's Faculty Manual.

As regards the discrepancies, respondent alleged that the students made significant improvements from the time she finished with her Dirty Records up to the time she filled up the Clean Records which, according to her, was still within the first grading period. Accordingly, she made the alterations in the Clean Records to effect the same. Respondent added that the said alterations are inconsequential, because the Dirty Record is merely a rough draft, and as such, what were entered therein were not yet final.

We find these explanations incredible and conflicting on two points.

First, respondent finished recording the grades in the Clean Records and submitted the same for review to the subject coordinators on August 27 and 28, 2003, after the last day of examinations for the first grading period. At the time the subject coordinators checked the Dirty and Clean Records of respondent, they did not notice anything wrong in them as the grades in the Dirty Records tally or jibe with the ones entered in the Clean Records, and there were no erasures found therein.[64] Accordingly, the same were approved as shown by the notations of the subject coordinators in the Clean Records for Physical Education, Music & Arts, and Writing.

Given the foregoing, it appears that the assailed erasures and alterations were effected *after* the subject coordinators have already approved the same on August 27 and 28, 2003, respectively.

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61 *Id.* at 160-161. (Emphasis supplied)
62 Annex "D-1" to Petition, *rollo*, p. 66.
63 *Id.*
64 *Id.* at 90.

This was readily admitted by respondent when she said that Ms. Elvira Dambong, Coordinator for Physical Education and Music, checked her Clean Records but found nothing wrong in them.[65] This was also confirmed by Ms. Dambong's statement under oath that the erasures and alterations of grades in the Clean Records were made *after* she had checked and approved the said grades. As such, the same were done without her knowledge and approval, to wit:

> x x x x
>
> 5. Likewise, I admit that, after checking the clean records of Mrs. Meris in the said subjects with the dirty records, I did not see anything wrong in them as the grades in the dirty record tally or jibe with the ones entered in the clean records and ***there were no erasures***. So, I approved the clean records by affixing my signature therein on August 27, 2003.
>
> 6. ***However, when the said clean records were later shown to me by our Assistant Principal, Mr. Monsueto Elorpe, I noticed that there were a lot of erasures and alterations of grades in the subjects of Physical Education and Music so that some grades in the clean records no longer tally or jibe with those in the dirty records***;
>
> 7. I am very sure that the said erasures and alterations of grades in the clean records were made ***after*** I have checked and approved the said grades and the same were ***done without my knowledge and approval***.[66]

The foregoing testimony was likewise corroborated by the other Subject Coordinator in Writing and Arts, Ms. Teresa Magpantay, who categorically declared the following:

> x x x x
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> 5. After checking the clean records of Mrs. Meris in the said subjects with the dirty records, I did not see anything wrong in them as the grades in the dirty records tally or jibe with the ones entered in the clean records and ***there were no erasures***. So, I approved the clean records by affixing my signature therein on August 28, 2003.
>
> 6. However, when the said clean records were later shown to me by our Assistant Principal, Mr. Monsueto Elorpe, ***I noticed that there were a lot of erasures and alterations of grades in the subjects of Arts and Writing so that some grades in the clean records no longer tally or jibe with those in the dirty records;***
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> 7. I am very sure that the said erasures and alterations of grades in the clean records were made ***after*** I have checked and approved the

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65 *Id.* at 70.

66 *Id.* at 71-72. (Emphasis supplied)

> said grades and the same were done without my knowledge and approval.[67]

Curiously, why would respondent effect the alterations after the Clean Records were already reviewed and approved by the subject coordinators? If there were in fact some improvements exhibited by the students in any subject after the grades in the Dirty and Clean Records were already recorded and approved, these should no longer be reflected in the first grading period as such improvements took place after the last day of examinations for the first grading period. Rather, it should have been reflected on the records for the second grading period.

In the alternative, if said improvements were exhibited within the first grading period but were mistakenly not reflected by respondent in her records, she could have easily informed the subject coordinators about this for proper documentation, in order to avoid any questions relative thereto. However, respondent never acknowledged these alterations and erasures until she was questioned thereon. Even then, she refused to explain the discrepancies to the Principal at first instance.

In any case, it is beyond belief how respondent could have perceived such improvements at such limited period of time, as correctly observed by the NLRC, to wit:

> x x x We have taken note of the fact that what was sought to be graded here was the student's performance from June 9, 2003 to August 15, 2003. Consequently, complainant could not have started and finished recording the grades earlier than August 15, 2003 because she can only do so after she got the results of the examinations, which cannot be earlier than August 15, 2003. ***Thus, when complainant recorded the grades in the dirty records up to the time she finished it, it was already very much beyond the first quarter. It is quite incredible that in such a short period of time, students would show "significant improvements" that would justify a big adjustment of the final grades in the first quarter***. ***Assuming that there were "significant improvements" on the part of the students concerned, they could not be reflected in the first quarter because the improvements, if any, took place in the second quarter***. These facts clearly indicate that complainant deliberately tampered with the grades of some of her students in order to favor another student – Louis Ariel Arellano, who, as a result of such tampering landed in the top of the Honor Roll class although he was not the best pupil in class. The bad faith on the part of complainant is evident.[68]

Anent respondent's bare allegation that she has not made any alteration in the Clean Records, the same is belied by the documentary evidence at hand. For one, the same was categorically stated in the Notice of

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67 *Id.* at 92. (Emphasis supplied)

68 *Supra* note 42, at 232-233. (Emphasis supplied)

Charge dated September 12, 2003, which petitioner wrote to respondent, but which the latter refused to receive. The pertinent portion of which reads:

> ***It was further discovered that there were erasures in the said grades of the above-named pupils which appeared in your Clean Record***.
>
> Within seventy-two hours, upon receipt of this letter, please explain why you should not be charged of the offense of tampering of class records as stated on p. 67 of the Elementary Faculty Manual of the Colegio.[69]

For another, respondent admitted this when she said that "what they (petitioner) claimed had been altered, were the Clean Records of the subjects Physical Education, Music & Arts, and Writing."[70]

Second, contrary to respondent's view, the erasures in the Dirty Records are not acceptable, since records reveal that the Dirty Records is, indeed, an official document from which the entries of grades in the Clean Records are taken.

Paragraph 1.2.2 of petitioner's Faculty Manual provides that faculty members should keep an updated record of their student's quizzes, examination results and other records of the students' performance in a particular subject, which we can only assume is served by the Dirty Records. Accordingly, the Clean Records is a mere transcription of the entries in the Dirty Records, as correctly observed by the LA. These records (without distinction, whether classified as dirty or clean) are then submitted to the subject coordinators for verification at the end of each quarter or at any particular time they ask for them.[71] Moreover, the class records are submitted to the Office of the Principal for filing purposes at the end of every school year.[72] The formality of the Dirty Records cannot, therefore, be discounted.

This is why erasures in the Class Records "should" bear the initials of the teacher/s concerned, to wit:

> Class Records
>
> Faculty members should keep an updated record of their students' quizzes, examination results and other records of the students' performance in a particular subject. These are to be submitted to the Subject Coordinator for checking at the end of each quarter or at any particular time they ask for them. The Class Records are then submitted to the Office of the

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69 Annex "D" to Petition, *rollo*, p. 61. (Emphasis supplied)
70 Annex "G" to Petition, *id.* at 193.
71 Annex "D-1" to Petition, *id.* at 97.
72 *Id.*

> Principal for filing purposes at the end of every school year. ***Erasures in the Class Records should bear the initials of the teacher/s concerned***.[73]

Such procedure obviates any room for confusion or issue on the objectivity of the grading system. Here, no initials were placed on the erasures in either the Dirty or Clean Records. Clearly, this is a patent violation of the aforequoted procedure.

Even assuming that the Dirty Records is a working draft and is not required to be submitted to the subject coordinators for review, it is nonetheless necessary to keep the same in order, without unnecessary erasures and alterations to avoid doubts on the due execution thereof. The computation of the general average of the students should also be carefully reviewed by the teacher, since the same will be carried over to the Clean Records. The significance of maintaining this system of recording was exhaustively explained by the NLRC in its Decision[74] dated February 28, 2005, to wit:

> Indeed, much is desired of the complainant insofar as maintaining the integrity of respondent school's grading system. And, while there exists a certain degree of discretion which a teacher exercises in terms of assessing a student's academic performance, specially in cases of recitations involving non-objective responses, exercises with no definite point allocation on answers, and other similar undertakings, objectivity is still captured, in essence, the moment a grade is already entered by the teacher with respect thereto. This is definitely reflected in a teacher's class record of grades, otherwise known as the "Dirty" record book. Thus, it is not an uncommon sight that erasures are seen, specially if these pertain to a rectification of an error in summation of scores in the exam, or in the transmutation of grades. ***But what remains emphatic about this fact is that, alterations could no longer be made without any sufficient basis therefor***. ***To acknowledge as acceptable, a teacher's practice in just increasing or decreasing points from a recorded grade by way of a general allegation that the student had improved his performance, or exerted less efforts towards the end of a grading period, does not reflect well of the objectivity that the teaching profession should be endowed with***. Such improvement or deterioration, whatever the case may be, should be assigned a specific weight in numerical terms known as grades that would, in turn, make up for the general average of the student in a particular subject. ***All of these are necessary reflected in a teacher's record book***. ***Consequently, it follows that what should appear in the Clean Record Book should be no less different than that which appears in the original, otherwise known as "dirty record book". Any discrepancy reasonably yields the conclusion that the change was not premised on an objective assessment of the performance of a student.*** For this reason alone, respondents may not be faulted for administratively proceeding against the complainant.[75]

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73 *Supra* note 71. (Emphasis supplied)

74 Annex "H" to Petition, *rollo*, pp. 211-224.

75 *Id.* at 219-221. (Emphasis supplied)

In fact, no issue was raised with respect to the subjects of Christian Living/GMRC, English, Mathematics and Filipino, since there was no alteration, erasure or superimposition for the foregoing subjects in the Dirty and Clean Records.[76]

The timing of such alterations and erasures is crucial in determining the soundness of respondent's reasons for making them, and whether bad faith was obtaining in the instant case. Unfortunately for respondent, we find her acts and omissions highly irregular and suspicious.

Respondent further maintained that she had not committed any favoritism because even the alleged pupils that she had favored got grades that are lower than those they ought to get; and that as a teacher, she has the right to give the grade which she feels that a student deserves to get.

While the subjects of Physical Education, Music & Arts, and Writing are all non-tested; meaning, there is no written examinations by which the grades may be based upon, said significant improvements should be backed with justifiable basis. The same is apt because the components of the grades for non-tested subjects are not quantifiable and cannot be ascertained by mathematical computation; therefore, it is highly subjective and prone to manipulation. In the instant case, respondent utterly failed to indicate the reason behind such improvement. Was it because of the concerned students' improvement in their activity books, participation in the play or writing, or on-the-spot drawing contest? A concrete basis for such improvement could have been easily given by respondent, but all she offered were sweeping and general statements of purported significant improvements.

The fact that the grades are non-tested does not give the teacher unbridled discretion to grade her students arbitrarily and whimsically. Otherwise, the spirit of Section 79 of the Manual of Regulation for Private Schools would be rendered in futile, the pertinent portion of which reads:

> **Sec. 79. Basis for Grading.** The final grade or rating given to a pupil or student in a subject should be ***based on his scholastic record***. Any addition or diminution to the grade x x x shall not be allowed.[77]

In fact, in *Technological Institute of the Philippines Teachers and Employees Organization (TIPTEO) v. Court of Appeals*,[78] we have categorically enunciated that knowingly and deliberately falsifying one's records by changing the submitted record and the supporting documents relevant thereto is not only a school violation but a serious misconduct under

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76 *Supra* note 71, at 69.
77 Emphasis supplied.
78 608 Phil. 632 (2009).

Article 282(a) of the Labor Code, a just cause for termination of employment. Thus:

> As in the case of unauthorized selling of examination papers, Salon's guilt is not erased or mitigated by the fact that she meant well, or that she tried to rectify her indiscretion after realizing that she violated the grading system of the school. Two differences exist between the examination paper selling violation and the present one. First, her examination paper violation is largely a transgression against a school regulation. ***The present one goes beyond a school violation; it is a violation against the Manual of Regulation for Private Schools*** whose Section 79 provides:
>
> > Sec. 79. Basis for Grading. The final grade or rating given to a pupil or student in a subject should be based on his scholastic record. Any addition or diminution to the grade x x x shall not be allowed.
>
> Second, ***the present violation involves elements of falsification and dishonesty***. Knowing fully what Manalo deserved, Salon gave him a grade of 6.0 instead of a failing grade. ***In the process, she changed - in short, falsified - her own records by changing the submitted record and the supporting documents. Viewed in any light, this is Serious Misconduct under Article 282(a) of the Labor Code, and a just cause for termination of employment***.[79]

The fact that eight students were made beneficiaries of such increase does not justify the irregular alteration since the rule is, the rating of the pupil should be based on his scholastic record, even if the same is non-tested or qualitative in nature, as in the case at bar. Respondent's prerogative to give her students the grade that they deserve is not incoherent with having a fair and reasonable basis therefor.

To our mind, the acts of the respondent in altering the grades in the Clean Records even after the same were already reviewed and approved by the subject coordinators; of effecting the alterations and erasures without placing her initials thereon; of not informing the subject coordinators of such alterations and erasures; of allowing the discrepancies to last without any effort to reconcile the same to avoid any doubts on the grading system of petitioner; of refusing to accept the memo informing her of the aforesaid tampering and snubbing any explanation relevant thereto, are all acts of transgression of school rules, regulations and policies. Truly, then, respondent had committed a misconduct, serious enough to warrant her dismissal from employment under paragraph (a) of Article 282 of the Labor Code, as well as Section 94(b), Article XVII of the Manual of Regulations for Private Schools, which provides that the employment of a teacher may be terminated for negligence in keeping school or student records, or tampering with or falsification of the same, to wit:

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[79] *Id.* at 653-654. (Emphasis supplied)

> **Section 94. Causes for Terminating Employment** – In addition to the just causes enumerated in the Labor Code, the employment of school personnel, including faculty, may be terminated for any of the following causes:
>
> x x x
>
> b) ***Negligence in keeping school or student records, or tampering with or falsification of the same***;"[80]

Negligence in keeping school or student records, or tampering with or falsification of the same can neither be cured nor cossetted by compassion towards the students, because the means does not justify the end. While respondent's motive for increasing the grades of certain students in the Clean Records was not known or could have been noble, the fact is, unauthorized and improper alterations were effected in the official records of petitioner, a clear violation of petitioner's Elementary Faculty Manual as well as the Private School Manual adhered to by petitioners and its faculties. Respondent is deemed to have exercised an unreasonable degree of discretion in failing to provide a concrete basis for increasing the grades of certain students. For this, respondent should be made to face the consequences of her actions. To tolerate such conduct will, indeed, undermine the integrity of petitioner's grading system, and its standing as an academic institution as well.

It cannot be gainsaid that respondent is no ordinary employee. She carries with her a responsibility like no other, as aptly held in *TIPTEO*, thus:

> We do not find these entreaties sufficiently compelling or convincing as Salon is no ordinary employee. She is a teacher from whom a lot is expected; she is expected to be an exemplar of uprightness, integrity and decency, not only in the school, but also in the larger community. She is a role model for her students; in fact, as she claims, she stands in *loco parenti* to them. She is looked up to and is accorded genuine respect by almost everyone as a person tasked with the heavy responsibility of molding and guiding the young into what they should be - productive and law-abiding citizens.
>
> What Salon committed is a corrupt act, no less, that we cannot allow to pass without giving a wrong signal to all who look up to teachers, and to this Court, as the models who should lead the way and set the example in fostering a culture of uprightness among the young and in the larger community. From the personal perspective, Salon demonstrated, through her infractions, that she is not fit to continue undertaking the serious task and the heavy responsibility of a teacher. ***She failed in a teacher's most basic task - in honestly rating the performance of students***. ***Her failings lost her the trust and confidence of her employer, and even of her students***.[81]

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80 Emphasis supplied.

81 *Supra* note 78, at 656. (Emphasis supplied)

It is now settled that petitioner duly complied with the requirement of substantial due process in terminating the employment of respondent. We will now determine whether petitioner had complied with the procedural aspect of lawful dismissal.

In the termination of employment, the employer must (a) give the employee a written notice specifying the ground or grounds of termination, giving to said employee reasonable opportunity within which to explain his side; (b) conduct a hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) give the employee a written notice of termination indicating that upon due consideration of all circumstances, grounds have been established to justify his termination.[82]

Petitioners had complied with all of the above-stated requirements as shown by the following:

First. After receiving information from parents who lodged complaints against respondent, petitioner immediately conducted an investigation which included a verification of respondent's class records, which uncovered the aforementioned discrepancies.[83]

Second. Finding discrepancies and irregularities from the aforesaid examination, petitioner directed respondent to explain why no disciplinary action should be taken against her for tampering her class records, through a letter dated September 12, 2003, which was personally served on respondent but which the latter refused to receive twice on the same day.[84] In the said letter, the charges against respondent were stated, and respondent was given seventy-two (72) hours to air her side of the story.

Thereafter, particularly on September 16, 2003, petitioner called respondent to a conference wherein the notice of charge was again served upon her.[85] However, respondent refused to receive the same because according to her, she will just be the subject of ridicule by the people.[86] Because of her persistent refusal to receive the letter, petitioner was constrained to send it by registered mail under Registry Receipt No. 985943, and another set was sent through LBC Express, which were all shown to have been received by respondent on September 23, 2003.[87] The foregoing notwithstanding, respondent did not bother to submit an explanation, which

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82 *NLRC v. Salgarino*, 529 Phil. 355, 374 (2006).
83 *Supra* note 69, at 51.
84 *Id.*
85 *Id.*
86 *Id.*
87 *Id.*

would have instigated a conference for the parties to thresh out all the issues accordingly.

Third. On October 2, 2003, Fr. Lao arranged a conference with respondent during which the former explained to her why she should give her side on the charge contained in the letter dated September 12, 2003. In fact, respondent was advised by Fr. Lao to give a written explanation of why she tampered her class records, otherwise, she would be terminated without further investigation as her refusal will be taken as a waiver of her right to be heard.[88] Despite the admonition of Fr. Lao, respondent still refused to give her side in writing. Hence, Fr. Lao served her with a copy of the termination letter dated September 29, 2003, but which she refused to receive once again. Accordingly, the matter was forwarded to the Head of the Human Resource Division, Ms. Nimfa Maduli, who attempted to serve the letter of termination to respondent on the same date. However, respondent refused to receive and affix her signature thereon as she may consider filing a resignation letter instead. Despite respondent's promise to return the next day to inform Ms. Maduli of her decision, she did not return and stopped reporting to the school then.

Based on the foregoing, it is clear that respondent refused to present her side by choice. It can be said that ample opportunity was afforded to respondent to defend herself from the charges levelled on her, but she opted not to take it. In a plethora of cases, we have ruled that the essence of due process lies simply in an opportunity to be heard; and not that an actual hearing should always and indispensably be held,[89] especially when the employee herself precluded the same from happening, as in this case.

It is also worthy to note that failure on the part of petitioner to convert the parents' concerns in writing does not deprive respondent from facing the charges against her, since the offense was committed against petitioner as an educational institution, the students being merely a collateral damage thereof.

After deliberately and knowingly disregarding the show cause letters and her opportunities to be heard, as well as the termination letter, respondent cannot now claim that she was denied due process.

Indubitably, respondent was dismissed from employment for a just cause and in accordance with due process under existing labor laws, rules and regulations. Accordingly, she is not entitled to reinstatement or separation pay, backwages or other claims for damages. No court, not even this Court, can make an award that is not based on law.[90]

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88 *Supra* note 24, at 102.

89 *Asian Terminals, Inc. v. Sallao*, 580 Phil. 229, 237-238 (2008).

90 *Supra* note 78, at 656.

In view thereof, it is pointless to belabor the other issues raised in this petition.

WHEREFORE, the Court **GRANTS** the petition and **REVERSES** the Decision of the Court of Appeals in CA-G.R. SP No. 92933, dated January 29, 2007 and its Resolution dated May 25, 2007, and **REINSTATES** the Resolution of the National Labor Relations Commission, dated November 18, 2005 which dismissed the appeal of respondent Isidra Dela Rosa-Meris.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
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.

ANTONIO T. CARPIO
Acting Chief Justice