Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ALBERTO J. RAZA, Petitioner,	**G.R. No. 188464**
	Present:
- versus -	VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., PEREZ,* and JARDELEZA, *JJ.*
DAIKOKU ELECTRONICS PHILS., INC. and MAMORU ONO, Respondents.	**Promulgated:** July 29, 2015

x----------x

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* assailing the Court of Appeals' Decision[1] dated December 22, 2008 and Resolution[2] dated April 14, 2009 which upheld the finding of the National Labor Relations Commission (*NLRC*) in its Resolutions dated May 31, 2006 and July 31, 2006 that petitioner was validly dismissed by respondents.

The facts of the case follow.

Petitioner Alberto J. Raza (*Raza*) was hired as a driver by respondent Daikoku Electronics Phils., Inc. (*Daikoku*) on January 11, 1999. Eventually, he was assigned to drive for the other respondent, the company president

---

* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

1 Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza, concurring; *rollo*, pp. 57-64.

2 *Id.* at 78.

Mamoru Ono (*Ono*). Raza claims that his working days and hours depended on Ono's schedule and needs, so it was not unusual for him to be ordered to work from very early in the morning up to past midnight of any day, including Sundays.[3]

On the evening of July 21, 2003, Raza dropped Ono off at the latter's residence called the Pacific Plaza Condominium in Makati City. But Raza, instead of parking the company vehicle at the condominium building's parking area, drove the vehicle to his home and parked it there overnight. The next morning, as Raza was about to fetch Ono, the latter confronted him and asked why the vehicle was not at the condominium parking lot. Raza replied with a lie, telling Ono that he parked the car at the condominium building but in the wrong slot. Three (3) days later, on July 24, 2003, Raza was served a company Notice of Violation of the Code of Conduct for Dishonesty. On July 25, 2003, Raza submitted his written explanation wherein he admitted bringing the car to his home without permission and lying about it to Ono.[4] He apologized for these infractions but he also indicated that he was previously told by Ono that he could use the car if he needed to.[5]

The company's Investigation Committee conducted a hearing wherein Raza again admitted bringing the car home and lying about it to Ono, but Raza reiterated that there were previous occasions when Ono authorized him to bring the vehicle home.[6] The Committee then recommended the suspension of Raza for twelve (12) days without pay for the offenses of parking the company vehicle at home without authority and for lying about it.[7] However, disregarding such recommendation, the company's General Affairs Manager Gerardo Gaytano sent a letter dated August 7, 2003 terminating Raza's services for dishonesty.[8] Respondents explain that the harsher punishment was imposed because at the meeting of the board of directors, Ono denied permitting Raza to use the company car and even presented a report from the Pacific Plaza Security Office stating that from May 1, 2003 to July 20, 2003, Raza did not park the company car at the said building for a total of thirty-one (31) instances, all without authority nor permission.[9]

Thus, Raza filed his Complaint for illegal dismissal with claims for damages and attorney's fees.

---

3 *Rollo*, p. 57; CA *rollo*, pp. 11, 125.
4 *Id.* at 57-58; *id.* at 11-12, 123.
5 *Id.*; *id.*
6 CA *rollo*, p. 144.
7 *Rollo*, p. 58; *id.* at 12, 141-145.
8 *Id.*; *id.* at 12, 148-149.
9 *Id.* at 106; *id.* at 129.

On January 15, 2005, Labor Arbiter Lita V. Alibut rendered a Decision[10] in favor of Raza as complainant. In NLRC Case No. RAB-IV-9-18127-03-L, the said officer ruled as follows:

> WHEREFORE, finding the complainant's dismissal unlawful, respondents are hereby directed to reinstate complainant to his former position without loss of seniority rights and other benefits and (are) further ordered solidarily to pay complainant backwages from the time of his dismissal up to actual reinstatement minus the salary corresponding to the suspension period of twelve days plus 10% of the total award for attorney's fees computed as follows:
>
> | | |
> |---|---|
> | FULL BACKWAGES: | |
> | A. Basic pay | |
> | From 8/14/03 to 1/14/05 | |
> | ₱ 12,000 x 17.03 = | ₱204,360.00 |
> | B. 13th month pay | |
> | ₱ 204,360 ÷ 12 = | 17,030.00 |
> | C. Service Incentive Leave Pay | |
> | ₱ 12,000 ÷ 30 x 5 days x 17.03 ÷ 12 = | 2,838.33 |
> | | ₱224,228.33 |
> | Less: ₱12,000 ÷ 30 x 12 days = | 4,800.00 |
> | TOTAL: | ₱219,428.33 |
> | Attorney's fee of ₱219,428.33 x 10% = | ₱ 21,942.83 |
>
> SO ORDERED.[11]

The Labor Arbiter found that the allegations of Raza's infractions, such as his repeated use of the company vehicle without permission, are unsubstantiated by evidence.[12] She ruled that although the company alleges that there were thirty-one (31) prior incidents of Raza taking the company vehicle, allegedly reported by the condominium security guard, Raza was not confronted with the same in the notice of violation and neither was it presented during the deliberations by the investigating committee. And even if such report was admitted, the Labor Arbiter still sustained Raza's explanation that he was permitted to do so by Ono and that there were times when Raza would work until 1:30 in the morning and was told to report back to work at 7:00 in the morning of the same day, or with just a few hours of rest in between.[13]

Disagreeing with the decision of the Labor Arbiter, respondents filed an appeal to the NLRC.

---

10 CA *rollo*, pp. 23-29.
11 *Id.* at 29.
12 *Id.* at 28.
13 *Id.* at 27-28.

In a Resolution[14] dated August 31, 2005, the NLRC dismissed the appeal due to respondents' failure to include a certificate of non-forum shopping and lack of proper verification.

A motion for reconsideration with manifestation and compliance was filed by respondents.[15] It was duly opposed by Raza, who alleged that the same was filed out of time.[16]

The NLRC, in a Resolution[17] dated May 31, 2006, reinstated the appeal of respondents and ruled that the application of technical rules of procedure may be relaxed to meet the demands of substantial justice. In the same resolution, the NLRC set aside the findings of the Labor Arbiter and ruled in favor of respondents.[18] It held that Raza was not illegally dismissed since the infractions he committed were a just cause for dismissal.[19] Such infractions include the taking of the company vehicle without authority, which the NLRC described as a "recurring act," and the uttering of falsehood towards company president Ono, which it believed was a show of disrespect and brought dishonor to the latter.[20] However, the NLRC still found respondents liable for Raza's monthly salary, 13th month pay and service incentive leave pay during his period of reinstatement from the time of their receipt of the Labor Arbiter's decision up to the time of the NLRC's decision.[21] The NLRC held:

> WHEREFORE, premises considered, respondents' Motion for Reconsideration is GRANTED. Complainant's Motion to Cite Respondents in Contempt is DENIED for lack of merit.
>
> The assailed Decision dated January 15, 2005 of the Labor Arbiter is REVERSED and SET ASIDE and a new one is hereby entered declaring that complainant was validly dismissed from his employment. Nevertheless, for failure to reinstate complainant Alberto J. Raza pursuant to the Labor Arbiter's Decision, respondent DAIKOKU ELECTRONICS PHILS., INC. is hereby ordered to pay him his wages from 11 March 2005 up to the promulgation of this Resolution, provisionally computed as follows:
>
> Basis pay: (3/11/05 – 5/11/06)
> (₱8,790.00 x 14 months) = ₱123,060.00

---

14 *Id.* at 61-63.
15 *Id.* at 64-74.
16 *Id.* at 75-78.
17 Penned by Commissioner Gregorio O. Bilog, III, with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo concurring; *id.* at 86.
18 CA *rollo*, pp.85-96.
19 *Id.* at 91.
20 *Id.*
21 *Id.* at 94-95.

13th month pay:
(₱123,060.00/12 mos.) = 10,255.55

Service Incentive Leave Pay:
(₱8,790.00/30 x 5 days x 14 mos. / 12) = 1,709.17

TOTAL = ₱135,024.72

SO ORDERED.[22]

Raza filed a motion for reconsideration of the above decision, but the same was denied by the NLRC in a Resolution[23] dated July 31, 2006.

Raza filed a petition for *certiorari* with the CA, assailing the NLRC's resolutions, but the petition was initially dismissed by the appellate court in its Order[24] dated November 6, 2006 for its failure to meet procedural requirements, such as the inclusion of pleadings and documents relevant to the petition, as well as the inclusion of the actual addresses of the respondents.

From the said dismissal, Raza filed a motion for reconsideration while submitting the pertinent documents that were missing in his petition.[25] Thus, in an Order[26] dated September 24, 2007, the CA granted the motion and reinstated the petition, as well as declared Raza an indigent litigant.

On December 22, 2008, the CA, in CA-G.R. SP No. 100714, rendered its assailed Decision,[27] denying the petition filed by Raza. The dispositive portion of that decision states:

> WHEREFORE, in view of the foregoing, the petition is DISMISSED. The assailed rulings STAND.
>
> SO ORDERED.[28]

The CA rejected Raza's allegation that respondents' motion for reconsideration of the NLRC's August 31, 2005 Resolution was filed late with the NLRC, stating that Raza failed to substantiate such allegation with

---

22 *Id.* at 95-96. The Court, in *Daikoku Electronics Phils., Inc. v. Raza*, 606 Phil. 796, 805 (2009), held that this Resolution dated May 31, 2006 of the NLRC is final and executory as to Daikoku.

23 Penned by Commissioner Romeo L. Go, with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo concurring; *id.* at 104-105;

24 CA *rollo* pp. 109-110.

25 *Id.* at 111-113.

26 *Id.* at 174-178.

27 *Id.* at 257-264. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano Del Castillo (now a member of the Supreme Court) and Romeo Barza concurring.

28 *Id.* at 263.

evidence.[29] Then, it found that Raza's dishonesty, consisting of parking the vehicle at his home overnight and lying about it to Ono, is deserving of the sanction of dismissal.[30]

The motion for reconsideration filed by Raza was likewise denied in the other assailed Resolution,[31] dated April 14, 2009.

Hence, this petition. Petitioners rely on the following grounds for the grant of their petition:

> I.
> THE HONORABLE COURT OF APPEALS ERRED IN LAW WHEN IT CONSIDERED RESPONDENTS' MOTION FOR RECONSIDERATION DATED OCTOBER 21, 2005 SUBMITTED BEFORE THE NATIONAL LABOR RELATIONS COMMISSION WHICH WAS OBVIOUSLY FILED OUT OF TIME AND IN TRAVESTY OF THE ADMINISTRATION OF JUSTICE.
>
> II.
> THE HONORABLE COURT OF APPEALS ERRED IN LAW WHEN IT ALLOWED THE IMPOSITION OF A GROSSLY DISPROPORTIONATE PENALTY ON THE ALLEGED INFRACTION COMMITTED BY PETITIONER.

The issues for this Court's resolution are procedural and substantive: whether the respondents' Motion for Consideration dated October 21, 2005 was submitted on time with the NLRC, and whether petitioner Alberto J. Raza committed infractions or violations of company rules that merit the penalty of dismissal from employment.

As for the procedural ground, petitioner Raza argues that the motion for reconsideration filed by respondents with the NLRC after the tribunal initially dismissed their appeal was filed out of time.[32] He states that the deadline for filing the said motion was October 21, 2005, but there was allegedly a certification from the postmaster that the latter's office was without any clear record of mailing, or even a record of mailing or dispatch.[33] Raza admits, however, that the envelopes sent to the NLRC and his counsel all indicate through stamps and handwritten markings that the mailing date was October 21, 2005.[34]

---

29 *Id.* at 260-262.
30 *Id.* at 262-263.
31 *Id.* at 281.
32 *Rollo,* p. 19.
33 *Id.* at 19-20; CA *rollo,* p. 80.
34 *Id.*

To this Court, Raza's contentions as to the allegedly late filing of respondents' motion with the NLRC are untenable. Verily, the concerns raised are all factual which, under a petition for review under Rule 45, should not have been elevated to this Court for review. This Court is not a trier of facts, and this rule applies in labor cases.[35] The issue in question first came up and was already raised on the appeal with the NLRC, whose disposition of it was already affirmed by the Court of Appeals. In such a situation, the findings of the lower tribunals are no longer to be disturbed, and are even accorded finality,[36] unless the case falls under any of the exceptions that would necessitate this Court's review.[37] The petition does not even allege nor demonstrate that the case is covered by any of these exceptions.

At any rate, this Court finds nothing out of the ordinary nor irregular in the mailing of the motion of respondents as would put in doubt the timeliness of its filing. The mailing of the motion was done on the deadline for the filing and service of such, which was October 21, 2005, as indicated by the post office on the envelopes as well as in the registry receipts sent to the NLRC. Thus, the motion is considered filed on that date and the filing was on time. Petitioner does not dispute but even admits the fact that the envelopes and registry receipts bear that date. The rule is that whenever the filing of a motion or pleading is not done personally, the date of mailing (by registered mail), as indicated by the post office on the envelope or the registry receipt, is considered as the date of filing.[38] The fact that the post office indicated October 21, 2005 on the envelope and receipts as the mailing date, as examined first-hand by the NLRC based on its records, entitles respondents to the presumption that the motion was indeed mailed on said date. Official duties – in this case, of a post office employee – are presumed to be regularly performed, unless there is an assertion otherwise and the one so asserting rebuts such with affirmative evidence of irregularity

---

35 *Chuayuco Steel Manufacturing Corporation v. Buklod Ng Manggagawa Sa Chuayuco Steel Manufacturing Corporation*, 542 Phil. 618, 624-625 (2007).

36 *San Juan de Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan de Dios Educational Foundation, Inc.*, 474 Phil. 223, 237 (2004); *Gerlach v. Reuters Limited, Phils.*, 489 Phil. 501, 512 (2005).

37 The exceptions are when: (1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioner's main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. [*Merck Sharp and Dohme (Philippines) v. Robles*, 620 Phil. 505, 512 (2009)].

38 Rules of Court, Rule 13, Sec. 3; *Padre v. Badillo*, 655 Phil. 52, 63 (2011); *Associated Anglo-American Tobacco Corporation v. NLRC*, 366 Phil. 41, 48 (1999).

or failure to perform a duty.[39] In addition, the stamps and marks made by the postal worker are considered entries in the regular course of duty which are considered accurate unless proven otherwise.[40]

The postmaster's belated certification[41] that there is no clear record of mailing or dispatch or that dispatch or delivery was done on a later date does not contradict the fact of mailing done on October 21, 2005. On the contrary, the evidence disputes the postmaster's certification.

In Raza's own Second Motion to Cite Respondents in Contempt,[42] the post office's copies of Registry Receipt Number 1421 (which corresponds to the mailing done to Raza's counsel (Atty. Gesmundo) of his copy of the motion) and Receipt Number 1422 (which corresponds to the mailing of the NLRC's copy) were submitted in evidence to the NLRC.[43] The receipts were clearly marked "V. Gesmundo" and "NLRC," respectively, the names of the recipients.[44] Then, the date November 2, 2005, which appears thereon and which the postmaster certified as the date of "dispatch" does not negate the fact of mailing done on October 21, 2005. That the mail was dispatched or delivered by the postal service on a later date that it was deposited or "mailed" by the sender is only logical. And it is only probable that there would be a delay of a few days between the mailing and delivery. As to the alleged absence of a "clear record of mailing," the same only refers to the office's own record, but the stamps and marks of October 21, 2005 on the envelopes are also a record and are reliable evidence of mailing done on that date. Also, it has been held that between the belated certification of the postmaster and the marking or stamping done by the post office at the time of mailing, the latter is preferred as evidence for having been done closer to the transaction in question, especially in this case when the postmaster's certification does not even clearly allege nor prove any irregularity or mistake made in such marking or stamping.[45]

The Court now proceeds to the case's substantive aspect. The respondents claim that Raza committed infractions that deserve the punishment of dismissal, as they amount to valid grounds for termination as defined in Article 282 (a) and (c) of the Labor Code.[46] Raza, for his part, disagrees and contends that dismissal is a very severe punishment that is not

---

39 Rules of Court, Rule 131, Sec. 3(m); *Eureka Personnel and Management Services, Inc., v. Valencia*, 610 Phil. 444, 453-455 (2009); *Sevilla v. Cardenas*, 529 Phil. 419, 433-434 (2006);

40 Rules of Court, Rule 130, Sec. 44; *Eureka Personnel and Management Services, Inc. v. Valencia*, *supra*.

41 CA *rollo*, p. 80.

42 *Id.* at 75-78.

43 *Id.* at 81.

44 *Id.*

45 *Eureka Personnel and Management Services, Inc. v. Valencia, supra* note 39.

46 Respondents' Position Paper, CA *rollo*, pp. 131-135.

commensurate to his purported offense.[47] He also maintains that he was previously allowed by his superior to take home the company vehicle.[48]

What is in issue, therefore, is whether petitioner Raza's numerous acts of taking the company car home overnight and lying about one of the incidents to the company president legally deserve the supreme penalty of dismissal from the company.

The Court denies the petition. Raza was validly dismissed within the confines of a just cause for termination as provided for in the Labor Code.

Before the Court resolves the issue, it needs reiterating that such an exercise requires this Court to re-examine the facts and weigh the evidence on record, which is normally a task that is not for this Court to perform, for basic is the rule that the Court is not a trier of facts and this rule applies with greater force in labor cases.[49] Questions of fact are for the labor tribunals to resolve.[50] It is elementary that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact.[51]

However, the case at bar falls under one of the recognized exceptions to the rule, that exception being when the findings of the Labor Arbiter conflict with those of the NLRC and the Court of Appeals.[52] The conflicting findings of the Labor Arbiter, NLRC and the Court of Appeals pave the way for this Court to review factual issues even if it is exercising its function of judicial review under Rule 45.[53]

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal.[54]

Upon this Court's assessment, however, it finds that this burden has been discharged by respondents and this Court agrees with the latter that petitioner Raza's acts amounted to serious misconduct which falls under the valid grounds for termination of the services of an employee as provided for in the Labor Code, specifically Article 282 (a) thereof, to wit:

---

47 Complainant's Position Paper, *id*. at 119.
48 *Id.* at 117.
49 *New City Builders Inc. v. NLRC*, 409 Phil. 207, 211 (2005).
50 *Eastern Overseas Employment Center, Inc. v. Bea*, 512 Phil. 749, 754 (2005).
51 *Peckson v. Robinsons Supermarket Corporation*, 700 SCRA 668, 685 (2013).
52 *R & E Transport Inc. v. Latag*, 467 Phil. 355, 360 (2004).
53 *Concrete Solutions, Inc./Primary Structures v. Cabusas*, G.R. No. 177812, June 19, 2013, 699 SCRA 44, 54.
54 *Vicente v. Court of Appeals*, 557 Phil. 777, 785 (2007).

> ART. 282. *Termination by employer.* – An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; x x x.

Misconduct is improper or wrongful conduct.[55] It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment.[56] For misconduct to justify dismissal under the law, (a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.[57]

In the case at bar, it must be noted that Raza's termination came not as a result of a singular incident on July 21, 2003 of driving home the company car, keeping it overnight and then lying about such act to the company president the next day. It came because such incident launched a company investigation during which it was found out that the July 21, 2003 incident was preceded by thirty-one (31) other instances in the previous two and a half (2-1/2) months (or from May 1, 2003 to July 20, 2003) in which Raza similarly did not park the car in the assigned area but took it home overnight without permission.[58] Thus, the termination letter against Raza mentioned a "recurring act of taking the subject vehicle without authority,"[59] as a ground for his separation from service. This Court finds and agrees with respondents that the above acts constitute serious misconduct which rendered Raza's termination valid.

Raza admits his acts but prays for a lighter penalty because he disputes the actual number of incidents wherein he brought home the subject car and he claims that he enjoyed the authority to do so from the respondents.[60] However, not only does he fail to provide an actual number of his admitted acts of bringing home the car, he also fails to substantiate his claim that he did the same with the "permission and tolerance" of the company president. The evidence also disagrees with his contentions. *First*, as to the actual number of incidents, the "in and out" logs of the condominium security guards are clear and indisputable. The guards dutifully logged as "in" the time when the subject car was driven into the parking lot and, again, they logged it as "out" when the car was driven out.

---

55 *Ha Yuan Restaurant v. NLRC*, 516 Phil. 124, 128 (2006).
56 *Id.*
57 *Nagkakaisang Lakas ng Manggagawa sa Keihin v. Keihin Philippines Corporation*, 641 Phil. 300, 310 (2010).
58 CA *rollo*, pp. 131-135; 146-147.
59 *Id.* at 148.
60 *Id.* at 116-120, 140.

Based on the said record, this Court counted at least twenty-nine (29) incidents of the car being driven into the parking lot in the early or late evenings, only to be driven out within a few minutes, indicating that the vehicle did not stay parked therein for the whole night. *Second*, if it is true that the acts of driving the company car home was with the permission of Ono or the previous company president, then Ono would not have asked Raza about the car's whereabouts the previous night in the morning of July 22, 2003. Then, Raza, too, would not have had any reason to lie, as he could have simply told Ono that he drove the car home as the latter had previously permitted. Instead, he waited for a formal investigation for him to finally admit driving home the car. What is also material is that Raza has no evidence of having obtained permission other than his mere assertion.

The Court expects proof from Raza because his claims go against ordinary experience and common practice among companies. A company's executive vehicle is usually for the personal service of the person to whom it is assigned and is supposed to be available solely to the latter at any given time. It is rarely made available for the personal use and service of the chauffeur even if the executive is already home and retired for the night and the chauffeur himself has to go to his own residence that is away from his master's residence. By taking the vehicle out and driving it to his home, the driver exposes such company property to the risk of damage or loss due to collisions, theft or even untoward incidents such as a fire or civil disturbance. There is also a risk of company liability to third persons arising from such use. In addition, such use is not free of costs, since the extra journey entails fuel use, wear and tear, and other allied expenses. Therefore, it can be safely held that use of a company vehicle for a driver's personal needs is more of an exceptional privilege rather than the norm. It cannot be presumed as bestowed on every employee, not even a chauffeur, so that one who claims to have it has the obligation to provide proof of his authority, permission or privilege for the use to be considered warranted.

As to the allegation that the penalty of dismissal is too harsh, it is long established that an employer is given a wide latitude of discretion in managing its own affairs, and in the promulgation of policies, rules and regulations on work-related activities of its employees.[61] The broad discretion includes the implementation of company rules and regulations and the imposition of disciplinary measures on its workers.[62] But for the management prerogative to be upheld, the exercise of disciplining employees and imposing appropriate penalties on erring workers must be practiced in good faith for the advancement of the employer’s interest and

---

61 *San Miguel Corporation v. NLRC*, 574 Phil. 556, 570 (2008).

62 *Dongon v. Rapid Movers and Forwarders Co., Inc.*, G.R. No. 163431, August 28, 2013, 704 SCRA 56, 69.

not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[63]

In the case at bar, the infractions of Raza were numerous enough that they already amount to an unlawful taking of company resources and that they may be subsumed under the charge of serious misconduct leveled against him.[64] It has been held that "although as a rule this Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in the handling of company property are a different matter."[65] Such may be penalized with dismissal.[66] It matters little that Raza claims that his record prior to this was clean or that he has yet to cause substantial damage to the company or to its property in committing his acts. His transgressions are too serious and too many to escape without heavy sanction. In the present situation wherein Raza has already been found guilty of numerous acts of driving the company vehicle for his personal use without prior authority, the Court cannot expect and require the employer company to wait for one more such instance of unauthorized use or for actual damage to be caused by such use before the company can be considered justified in penalizing the erring employee.[67] This Court has held that a series of irregularities when put together may constitute serious misconduct, which is a just cause for termination.[68] In the case at bar, the seriousness and volume of the prior incidents, committed in such a short period of time, are already enough as ground to terminate petitioner.

On this note, this Court disagrees with the Labor Arbiter's finding that the infractions were too light and do not merit the supreme sanction of dismissal. The arbiter's finding is grounded on her incorrect disregard of the security guards' report on the thirty-one (31) alleged prior incidents, which she claimed was not included in the notice of violation and was not presented during the hearing by the investigating committee. The Labor Arbiter also held that even if the incidents [were] considered, such are excused by Raza's long and unusual working hours. Suffice it to state during the investigation, Raza himself admitted such incidents as, during his appearance before the investigating committee, he himself alleged and acknowledged that on several occasions, "Mr. Mamoru Ono authorized (him) to take the vehicle home," which has the effect of admitting that he, indeed, has previously taken the car home.[69] Then, the company's letter of

---

63 *Fulache, et al. v. ABS-CBN Broadcasting Corp.,* 624 Phil. 562, 583 (2010).

64 *Nagkakaisang Lakas ng Manggagawa sa Keihin v. Keihin Philippines Corporation*, *supra* note 57.

65 *Firestone Tire and Rubber Company of the Philippines v. Lariosa*, 232 Phil. 201, 206 (1987).

66 *Id.*

67 *National Service Corporation v. Leogardo, Jr., et al*., 215 Phil. 450, 457 (1984); *St. Luke's Hospital, Inc. v. Minister of Labor*, 201 Phil. 706, 724 (1982).

68 *National Service Corporation v. Leogardo, supra*.

69 CA *rollo*, p. 144.

termination dated August 7, 2003 included as one of the grounds therefor Raza's allegedly "recurring act of taking the subject vehicle without authority,"[70] which Raza had the chance to refute *via* a letter-motion for reconsideration[71] dated August 19, 2003.

In any case, the presentation of the security guards' report for the first time with the Labor Arbiter through the respondents' Position Paper is neither too late nor improper. For one thing, the NLRC is not restricted by the technical rules of procedure and is allowed to be liberal in the application of its rules in hearing and deciding labor cases. Under Section 2, Rule I of the 2005 Revised Rules of Procedure and reiterated *verbatim* in the same provision of the 2011 Rules of Procedure of the National Labor Relations Commission, it is provided that:

> Section 2. *Construction*. – These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes.

Further, under Section 10, Rule VII of both the 2005 Revised Rules of Procedure and the 2011 NLRC Rules it is also identically stated that:

> Section 10. *Technical rules not binding*. – The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.
>
> In any proceeding before the Commission, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner to exercise complete control of the proceedings at all stages.

And far more importantly, it is precisely at the stage of the filing of the position paper that the parties are required to submit "supporting documents and affidavits" to bolster their causes of action or defenses, as the case may be.[72] Hence, it was just proper and the most opportune time that the said report was presented at that stage and at the level of the Labor Arbiter.

Then, too, it is with the Labor Arbiter that Raza had the chance to refute, contradict or deny the veracity of the report. He had every

---

70 *Id.* at 148.

71 *Id.* at 150-151.

72 2005 REVISED RULES OF PROCEDURE OF THE NLRC, Rule V, Sec. 7; see also 2011 NLRC RULES OF PROCEDURE, Rule V, Sec. 11.

opportunity to present his own controverting evidence to impeach the credibility of such evidence. He did none of that, however. Instead, Raza admitted in his Reply that he indeed brought the car to his own house "for a number of times," albeit allegedly with prior "knowledge, permission and tolerance" of his superior.[73] Although he was unclear whether such "number of times" corresponds with the number of incidents reflected in the security guards' report, what is more important is his admission of the fact of bringing home the car more than a few times. He did not deny nor disprove that he committed such acts, even when he was given the chance to do so. In administrative proceedings, one may not claim having been denied due process when one has been given ample opportunity to be heard, for the essence of due process is simply an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[74] It is evident in the case at bar that Raza was not barred from being heard nor that he had an absolute lack of opportunity to be heard.

Also, unlike the Labor Arbiter, the Court does not excuse Raza's acts by considering his allegedly long working hours or the fact that he was allegedly duty-bound to report for work very early in the morning and get dismissed late at night, including Sundays and holidays. Even if such working conditions were true, then it only makes Raza entitled to overtime, night differential and holiday pay, if ever such remain unpaid to him, a claim which he does not even make in his complaint. But certainly, such does not justify his acts of appropriating the use of company property for his own personal gain without prior permission. The fact that he is often tired right after driving Ono to the latter's residence every night and the fact that he is still required to report early the next day does not entitle him to the use of the company car as his own service vehicle, as such entails risks and expenses to the company that the latter has not consented to facing. The Court likewise fails to see how the personal use of the car could have greatly benefited Raza's work performance, since he himself claimed in his Position Paper that he did not live far, as he also resided in Makati City, which is the same city as his master Ono's residence.[75]

This Court has previously upheld as legal the dismissal of employees for using the employer's vehicle for their own private purposes without prior permission or authority. In *Soco v. Mercantile Corporation of Davao,*[76] the Court held that "a rule prohibiting employees from using company vehicles for private purposes without authority from management is a reasonable one." Thus, an employee who used the company vehicle twice in pursuing his own personal interests, on company time and deviating from his

---

73 CA *rollo*, p. 155.
74 *ABS-CBN Broadcasting Corporation v. Nazareno*, 534 Phil. 306, 326-327 (2006) .
75 *Rollo*, p. 117.
76 232 Phil. 488, 495 (1987).

authorized route, all without permission, was held to have been validly dismissed, for, as the Court held, to condone the employee's conduct will erode the discipline that an employer should uniformly apply so that it can expect compliance to the same rules and regulations by its other employees.[77] In another case, *Family Planning Organization of the Philippines v. NLRC*,[78] the Court also affirmed the dismissal of an employee who used the company vehicle twice without permission and for personal reasons, noting that employees must yield obedience to the rule against unauthorized use of company vehicles because this is proper and necessary for the conduct of the employer's business or concern.[79]

While the Court remains invariably committed towards social justice and the protection of the working class from exploitation and unfair treatment, it, nevertheless, recognizes that management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play.[80] The aim is always to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, on the other.[81] Indeed, the Court should be ever mindful of the legal norm that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[82]

WHEREFORE, the petition is **DENIED**. The Court of Appeals' Decision dated December 22, 2008 and Resolution dated April 14, 2009 are **AFFIRMED**. The Labor Arbiter, unless barred by mootness or some other legal cause, is hereby **ORDERED TO PROCEED WITH THE EXECUTION** of the May 31, 2006 Resolution of the **NLRC WITH DISPATCH**.[83]

No costs.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

---

77 *Soco v. Mercantile Corporation of Davao, supra.*

78 G.R. No. 75907, March 23, 1992, 207 SCRA 415.

79 *Family Planning Organization of the Philippines v. NLRC, supra,* at 421.

80 *Alcosero v. NLRC*, 351 Phil. 368, 373 (1998).

81 *Homeowners Savings and Loan Association, Inc. v. NLRC*, 330 Phil. 979, 985 (1996).

82 *Vigilla v. Philippine College Of Criminology Inc.*, G.R. No. 200094, June 10, 2013, 698 SCRA 247, 270-271.

83 See note 22.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
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