THIRD DIVISION

[G.R. No. 252186. November 6, 2023]

AUXILIA, INC., *Petitioner*, *v.* **NELYN CARPIO MESINA,** *Respondent*.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Auxilia, Inc. (petitioner) which assails the Decision[2] dated October 21, 2019, and the Resolution[3] dated February 24, 2020, of the Court of Appeals (CA) in CA-G.R. SP No. 160191. The CA dismissed the Petition for *Certiorari*[4] of petitioner and affirmed with modification the Decision[5] dated November 29, 2018, and Resolution[6] dated January 28, 2019, of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 05-08869-18/NLRC LAC No. 11-004314-18. The NLRC reversed and set aside the Decision[7] dated October 17, 2018, of the Labor Arbiter (LA) and declared that petitioner illegally dismissed respondent Nelyn Carpio Mesina (Mesina) from employment.

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1 *Rollo*, pp. 3–27.

2 *Id.* at 32–40. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Pablito A. Perez and Ruben Reynaldo G. Roxas.

3 *Id.* at 41–41-A.

4 *Id.* at 42–62.

5 *Id.* at 71–80. Penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Cecilio Alejandro C. Villanueva.

6 *Id.* at 81–82.

7 *Id.* at 66–70. Penned by Labor Arbiter Imelda C. Alforte-Ganancial.

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The Antecedents

On November 14, 2017, petitioner hired Mesina as Vice President, Head of Legal, and Head of Liaison Officers, for Philippine Overseas Employment Administration (POEA) Matters, with a monthly salary of ₱130,000.00 and parking allowance of ₱3,000.00.[8]

In April 2018, Glendalyn Demaria (Demaria), petitioner's Chairman of the Board, directed Mesina to stop performing her functions, vacate her office, and turn over all company properties in her possession as a condition for the release of her last salary. Petitioner reiterated the directive through a Memorandum[9] dated April 27, 2018, issued by Rommel Miranda, the Corporate Secretary of the petitioner. Mesina complied with the Memorandum, but petitioner still withheld her last salary. Despite non-payment of her salary, Mesina continued to report for work.[10]

On May 25, 2018, a personnel of petitioner informed Mesina of the company's order for her to physically leave the premises; otherwise, the security will escort her out of the premises.[11] On the same date, Mesina filed a Complaint[12] against petitioner for illegal dismissal and non-payment of wages and her two months of parking allowance.[13] According to Mesina, petitioner did not inform her of the reason for her termination and unceremoniously dismissed her from employment.[14]

Petitioner denied Mesina's allegations and averred the following: (1) Mesina was not an employee, as she was a stockholder and a former member of its Board of Directors; (2) in 2017, petitioner tapped her for the position of Vice President; (3) soon after, Mesina acquired shares of stocks in her name and got

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[8] *Id.* at 32–33.

[9] *Id.* at 125.

[10] *Id.* at 66–67.

[11] *Id.* at 67.

[12] *Id.* at 107–107-A.

[13] *Id.* at 67.

[14] *Id.*

elected as member of the Board of Directors to make her qualify as Vice President;[15] (4) Mesina even served as the Acting President, after the company's President resigned on January 25, 2018; (5) the issue arose when, without the approval of the Board, she wrote "no objection" letters[16] to the POEA relative to the requests for the transfer of the accreditation of its two vessels to other manning agencies; (6) resultantly, it had to temporarily stop its operations due to lack of "*crew order*" and vessels;[17] (7) on April 10, 2018, petitioner held a general assembly of all its stockholders; (8) during the meeting, the assembly declared the board's seats as vacant and elected a new set of directors; (9) Mesina nominated herself but she lost; (10) thus, she was removed as a member of the board and as Vice President of the company;[18] (11) on the same date, the new members of the board passed a resolution[19] which confirmed the action of the assembly; (12) on June 29, 2018, another general assembly meeting was held wherein the stockholders unanimously approved some cost cutting measures, like the discontinuation of the payment of salaries and other remunerations of all its directors and high-ranking officers.[20]

The Ruling of the LA

In the Decision[21] dated October 17, 2018, the LA dismissed the complaint of Mesina for lack of jurisdiction. The LA explained:

> In this case, since it is complainant who is claiming that she was designated by the corporation holding the positions as Vice-President, Head of Legal and Head of Liaison for POEA Matters it is thus incumbent upon her to proffer evidence to prove the existence of employer-employee relationship between them. She needs to show by substantial evidence that she was indeed an employee of Auxilia. However, the records as

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[15] *Id.*

[16] See Letters dated March 22, 2018, *id.* at 152–153.

[17] *Id.* at 34.

[18] *Id.* at 156. See Minutes of the General Assembly Meeting dated June 29, 2018, *id.* at 160–162.

[19] *Id.* at 154–155.

[20] *Id.* at 67–68.

[21] *Id.* at 66–70.

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previously stated are barren of any evidence supporting complainant's claims that she was hired by the corporation. On the contrary, the evidence presented by the respondents confirmed that complainant was indeed a corporate officer which is beyond the jurisdiction of this Office.

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Anent the foregoing, the claims of the complainant being an intra-corporate dispute should be dismissed for want of jurisdiction.

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of jurisdiction.

SO ORDERED.[22] (Emphasis omitted)

Aggrieved, Mesina appealed to the NLRC.

The Ruling of the NLRC

In the Decision[23] dated November 29, 2018, the NLRC granted the appeal of Mesina. It noted that petitioner did not present its by-laws to substantiate its defense that Mesina was a corporate officer. The NLRC held that, under the circumstances, Mesina cannot be removed or dismissed from work without just and/or authorized cause and due process of law.[24] The *fallo* of the NLRC Decision states:

WHEREFORE, premises considered, the Decision appealed from is hereby REVERSED and SET ASIDE and a new one entered declaring complainant's dismissal as illegal. Concomitantly, [petitioner] Auxilia, Inc. is ordered to pay complainant's full backwages and separation pay in lieu of reinstatement till finality of this Decision which is tentatively computed at the amounts of [₱]796,900.00 and [₱]136,000.00 respectively, and to pay her remaining unpaid salaries for the period of 1 month and 25 days (April-May 2018) plus ten (10%) percent of the total judgment award by way of and/as attorney's fees.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[25] (Emphasis omitted)

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[22] *Id.* at 70.

[23] *Id.* at 71–80.

[24] *Id.* at 79.

[25] *Id.*

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Undaunted, petitioner filed a motion for reconsideration, but the NLRC denied it in a Resolution[26] dated January 28, 2019.

Unsatisfied, petitioner filed a Petition for *Certiorari*[27] under Rule 65 of the Rules with the CA.

The Ruling of the CA

In the assailed Decision,[28] the CA dismissed the petition. It agreed with the NLRC's ruling that Mesina was petitioner's regular employee[29] as the latter failed to produce a copy of its by-laws before the labor tribunals to prove that she was a corporate officer.[30] The CA ratiocinated that even if it considered petitioner's belatedly submitted Amended By-Laws, there was no proof that Mesina was actually elected as the company's Vice President as the allegation was not supported by the minutes of the meeting.[31] The dispositive portion of the CA's Decision states:

> WHEREFORE, premises considered, the petition is DISMISSED. The Decision dated November 29, 2018 and the Resolution dated January 28, 2019 of public respondent National Labor Relations Commission, Third Division, in NLRC NCR Case No. 05-08869-18/NLRC LAC No. 11-004314-18 are AFFIRMED WITH MODIFICATION, in that all the monetary awards shall earn an interest rate of six percent (6%) per annum to be computed from the finality of this decision until fully paid. All other aspects of the assailed Decision STAND.
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> SO ORDERED.[32] (Emphasis omitted)

Petitioner moved for a reconsideration, but the CA denied the motion for lack of merit in its Resolution[33] dated February 24, 2020.

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[26] *Id.* at 81–82.

[27] *Id.* at 42–62.

[28] *Id.* at 32–40.

[29] *Id.* at 36.

[30] *Id.* at 37.

[31] *Id.* at 38.

[32] *Id.* at 39.

[33] *Id.* at 41–41-A.

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Hence, the present petition.

Petitioner argues that Mesina was not its employee as she was a corporate officer, *i.e.*, its former Vice President, Head of Legal, and Head of Liaison Officers[34] — a fact reported to and acknowledged by the POEA.[35] Further, petitioner avers that the 2017 General Information Sheet it submitted to the Securities and Exchange Commission stated that Mesina was its Vice President.[36] According to petitioner, the fact that the position of the Vice President is mentioned in the company's by-laws, indicates that Mesina was a corporate officer.[37]

In her Comment,[38] Mesina counters that because petitioner did not produce before the labor tribunals its by-laws or the minutes of the meeting where the Board of Directors allegedly elected her as Vice President, Head of Legal, and Head of Liaison Officers, petitioner failed to establish that she was a corporate officer.[39]

Issues

The issues for the Court's resolution are: (1) whether Mesina is a regular employee of petitioner; and (2) whether petitioner validly terminated Mesina from employment.

The Court's Ruling

The petition is denied.

In a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Court's jurisdiction is generally limited to reviewing errors of law.[40] The Court is not a trier of facts, and this rule applies with greater force in labor cases.[41] "[F]indings of

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[34] *Id.* at 15.

[35] *Id.* See also Letter dated December 12, 2017, *id.* at 150.

[36] *Id.* at 16.

[37] *Id.* See petitioner's By-Laws, *id.* at 84–106.

[38] *Id.* at 295–307.

[39] *Id.* at 301.

[40] *Doctor v. NII Enterprises*, 821 Phil. 251, 264 (2017).

[41] *Id.*

fact of administrative agencies and quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality."[42] "They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record."[43]

One of the exceptions to the foregoing rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with the factual findings of the CA[44] as in the present case. The exception applies here as the findings of fact of the LA contradict the respective findings of the NLRC and the CA.

The LA ruled that the jurisdiction of Mesina's complaint fell *within* the jurisdiction of the regular courts as it presented an intra-corporate dispute.[45] On appeal, the NLRC reversed the LA's ruling as petitioner failed to submit evidence that Mesina was a corporate officer. According to the NLRC, petitioner failed to establish that Mesina's positions, *i.e.*, its former Vice President, Head of Legal, and Head of Liaison Officers, were created by virtue of an act of its Board of Directors, and that she was specifically elected or appointed to such position by the Board.[46] Hence, the NLRC held that the case properly fell within the jurisdiction of the LA, being a complaint for illegal dismissal of employment.

Upon a Rule 65 petition, the CA agreed with the NLRC with respect to its jurisdictional conclusion. The CA noted that petitioner consistently failed to present a copy of its by-laws before the labor tribunals, and it only submitted a copy of its purported Amended By-Laws on October 3, 2019, after it already filed a Reply to Mesina's comment to the petition for *certiorari*.[47]

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[42] *Bernardo v. Dimaya*, G.R. No. 195584, November 10, 2021.

[43] *Vergara v. ANZ Global Services and Operations Manila, Inc.*, G.R. No. 250205, February 17, 2021.

[44] *Id.*

[45] *Rollo*, p. 70.

[46] *Id.* at 76.

[47] *Id.* at 37.

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Equally important is the rule that "in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether [in a petition for *certiorari*,] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision."[48] In the case, the Court agrees with the NLRC and the CA. Mesina was a regular employee of petitioner.

Belated submission of evidence may only be allowed if the delay is justified

Strict adherence with the technical rules is not required in labor cases. Accordingly, labor tribunals are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them.[49] Nevertheless, this liberal policy should still conform with the rudiments of equitable principles of law. Delay in the submission of evidence should be justified and sufficiently prove the allegations sought to be proven.[50]

In *Anabe v. Asian Construction*[51] (*Asiakonstrukt*), the Court reiterated that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. There is, however, a caveat to this policy. The delay in the submission of evidence should be clearly explained and should adequately prove the just and/or authorized cause for the employee's termination from employment. The Court held that because Asian Construction proffered no explanation behind the belated submission of its financial statements, it failed to substantiate its financial losses to justify the dismissal of Virgilio G. Anabe on account of retrenchment.[52]

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[48] *Slord Development Corporation v. Noya*, 846 Phil. 380, 391 (2019).

[49] *Misamis Oriental II Electric Service Cooperative (MORESCO II) v. Cagalawan*, 694 Phil. 268, 281 (2012).

[50] *Id.*

[51] 623 Phil. 857 (2009).

[52] *Id.* at 863.

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Further, in *Misamis Oriental II Electric Service Cooperative (MORESCO II) v. Cagalawan*,[53] MORESCO II did not cite any reason for its failure to file a position paper or present its cause before the LA. It presented its defense and rebutted the evidence of Virgilio M. Cagalawan (Cagalawan) only after the LA issued an adverse decision against it. To the Court, such belated submission of evidence lends credence to the theory of Cagalawan that MORESCO II may have just fabricated its defense for the purpose of appeal. Thus, the Court did not permit the belated submission of evidence.[54]

In the case, petitioner did not cite any reason for its failure to present the company's by-laws before the labor tribunals. The belated submission of the by-laws before the CA, long after the NLRC found Mesina's dismissal as illegal, weighs against petitioner's credibility, especially when such document is not even a newly discovered evidence. It must be underscored that petitioner submitted the purported Amended By-Laws only on October 3, 2019, after it already filed its Reply to Mesina's comment to the petition for *certiorari*. Why the by-laws was not presented at the earliest opportunity is an interesting question which petitioner neither addressed nor discussed in the present petition.[55] Hence, the CA correctly ruled that petitioners' belatedly submitted by-laws was inadmissible as evidence.

Nature and qualification of corporate officers

Corporate officers are those officers of the corporation who are given that character by the Corporation Code or by the corporation's by-laws. Under the Corporation Code, there are three specific officers: the president, the secretary, and the treasurer. A corporation may also have such other officers as may be provided for by its by-laws like, but not limited to, the vice president,

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[53] *Supra* note 50.

[54] *Id.* at 282.

[55] *Id.*

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cashier, auditor, or general manager.[56] The test for determining the status of a corporate officer under the law is an appointment to the office by the Board of Directors pursuant to a corporation's by-laws. Thus:

In *Easycall Communications Phils., Inc. v. King*, this Court held that in the context of Presidential Decree No. 902-A, corporate officers are those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws. Section 25 of the Corporation Code specifically enumerated who are these corporate officers, to wit: (1) president; (2) secretary; (3) treasurer; and (4) such other officers as may be provided for in the by-laws.

The aforesaid Section 25 of the Corporation Code, particularly the phrase "such other officers as may be provided for in the by-laws," has been clarified and elaborated in this Court's recent pronouncement in *Matling Industrial and Commercial Corporation v. Coros*, where it held, thus:

> Conformably with Section 25, a position must be expressly mentioned in the [b]y-[l]aws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a [b]y-[l]aw enabling provision is not enough to make a position a corporate office. [In] *Guerrea v. Lezama* [citation omitted] the first ruling on the matter, held that the only officers of a corporation were those given that character either by the Corporation Code or by the [b]y-[l]aws; the rest of the corporate officers could be considered only as employees or subordinate officials. Thus, it was held in *Easycall Communications Phils., Inc. v. King* [citation omitted]:
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> > An "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an employee occupies no office and generally is employed not by the action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.
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> x x x x
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> This interpretation is the correct application of Section 25 of the Corporation Code, which plainly states that the corporate officers

[56] *Garcia v. Eastern Telecommunications Philippines, Inc.*, 603 Phil. 438, 455 (2009).

> are the President, Secretary, Treasurer and such other officers as may be provided for in the [b]y-[l]aws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the Corporation Code or by the corporation's [b]y-[l]aws.
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> A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the [b]y-[l]aws of an enabling clause on the creation of just any corporate officer position.
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> It is relevant to state in this connection that the SEC, the primary agency administering the Corporation Code, adopted a similar interpretation of Section 25 of the Corporation Code in its Opinion dated November 25, 1993 [citation omitted], to wit:
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> > Thus, pursuant to the above provision (Section 25 of the Corporation Code), whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate [b]y-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.[57] (Citations omitted)

In sum, before a person can be considered as a corporate officer, it is essential that: (1) his office or position is one of those specifically enumerated by the Corporation Code, as amended, or created by the corporation's by-laws; and (2) he is elected by the directors or stockholders to occupy such office or position.

In the case, even if the belatedly submitted by-laws of petitioner establishing the position of Vice President as one of its corporate offices was admitted and considered by the CA, still, Mesina

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[57] *Marc II Marketing, Inc. v. Joson*, 678 Phil. 232, 249–251 (2011).

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cannot be considered as a corporate officer because the record is bereft of any evidence that she was duly elected or appointed to hold said position.

Petitioner did not submit any copy of the board resolution showing that Mesina was appointed to the position of Vice President, Head of Legal, and Head of Liaison Officers by action of the Board of Directors. Verily, allegations, not supported by substantial evidence, are not evidence.[58] Hence, the NLRC, as affirmed by the CA, correctly ruled that Mesina was a regular employee and not a corporate officer.

Mesina's dismissal from employment was illegal

While the law recognizes the right of an employer to dismiss an employee in view of its management prerogative, the evidence must clearly and convincingly establish the facts upon which the ground for termination of employment is based.[59]

In the case, record shows that petitioner unceremoniously dismissed Mesina from her position in April 2018. Through Demaria, the Chairman of the Board, petitioner instructed Mesina to: (1) stop performing her functions; (2) vacate her office; and (3) turn over all the company properties in her possession. Mesina complied, but petitioner withheld her salary. Notwithstanding her termination, Mesina continued to report for work until she learned of petitioner's order for her to physically leave the premises on May 25, 2018.

As aptly found by the NLRC and the CA, petitioner failed to produce any convincing proof that there was a just or authorized cause to terminate Mesina's employment. Petitioner alleges that Mesina's actions relative to the transfer of the accreditation of its two vessels caused damage to the company. However, there is no showing that petitioner conducted an investigation on the matter and that Mesina was administratively charged for it.

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[58] *General Milling Corporation v. Casio*, 629 Phil. 12, 33 (2010).

[59] *Century Canning Corporation v. Ramil*, 641 Phil. 314, 325 (2010).

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Mesina's dismissal was effected without due process of law

In addition, the law requires the employer to furnish the employee sought to be dismissed with two written notices *before* termination of employment can be legally effected:

> The twin requirements of notice and hearing constitute the essential elements of procedural due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality.[60]

Here, Mesina's dismissal was summarily effected through a Memorandum[61] dated April 27, 2018, wherein petitioner suddenly informed Mesina of its decision to terminate her employment. Notably, no *prior* notice was given to her; she was neither given the opportunity to explain her side nor refute petitioner's allegations. Of paramount importance is the opportunity of a party to rebut or comment on the accusations or charges against him/her. Indubitably, petitioner failed to accord such opportunity to Mesina.

Mesina is entitled to separation pay

As a rule, an illegally dismissed employee is entitled to backwages and reinstatement.[62] However, when reinstatement is no longer viable as an option on account of the strained relations between the employer and the employee, separation pay is awarded in lieu of reinstatement.[63]

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[60] *General Milling Corporation v. Casio*, *supra* note 59, at 35.

[61] *Rollo*, p. 125.

[62] *Prudential Guarantee and Assurance Employee Labor Union v. NLRC*, 687 Phil. 351, 374 (2012).

[63] *Dela Fuente v. Gimenez*, G.R. No. 214419, November 17, 2021.

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In the case, Mesina, as petitioner's former Vice President (*although not duly elected as such; thus, not a corporate officer*), Head of Legal, and Head of Liaison Officers, certainly occupied a position involving trust and confidence. The manner how she was dismissed — through the express instructions of the Chairman of the Board, reiterated through a Memorandum issued by the Corporate Secretary, coupled with threat of being physically escorted out by petitioner's security personnel certainly shows that the differences between Mesina and petitioner are of such nature or degree as to preclude reinstatement, which necessitates the application of the doctrine of strained relations.[64] Thus, Mesina is entitled to separation pay in lieu of reinstatement and backwages.

Mesina was compelled to litigate to seek redress; thus she is also entitled to the award of attorney's fees equivalent to ten percent (10%) of the total monetary award.[65]

Conformably with the prevailing jurisprudence, legal interest at the rate of six percent (6%) per annum is imposed on the total monetary award due to Mesina from the finality of this Decision until full payment.[66]

WHEREFORE, the petition is **DENIED**. The Decision dated October 21, 2019, and the Resolution dated February 24, 2020, of the Court of Appeals in CA-G.R. SP No. 160191 are **AFFIRMED**. Petitioner Auxilia, Inc. is declared liable for illegal dismissal and is **ORDERED** to pay respondent Nelyn Carpio Mesina the following:

1. **FULL BACKWAGES**, inclusive of allowances and other benefits or their monetary equivalent, computed from April 2018, or from the time that her compensation was withheld, until finality of this Decision.

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[64] *Musahamat Workers Labor Union-1-ALU v. Musahamat Farms, Inc. Farm 1*, G.R. No. 240184, July 6, 2022.

[65] *Tamin v. Magsaysay Maritime Corporation*, 794 Phil. 286, 308 (2016).

[66] *Lara's Gift & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, September 20, 2022.

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2. **SEPARATION PAY** in lieu of reinstatement at one-month salary for every year of service, with a fraction of at least six (6) months considered as one whole year computed from the date of hiring until finality of this Decision.

3. **ATTORNEY'S FEES** equivalent to ten percent (10%) of the total monetary award.

All the monetary awards due to respondent Nelyn Carpio Mesina shall earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.

Further, the case is **REFERRED** to the Labor Arbiter for the determination of whether the total monetary award has already been fully or partially satisfied. Any unpaid amount should be further satisfied or any excess payment returned to petitioner Auxilia, Inc.

SO ORDERED.

Caguioa,[*] *(Chairperson), Gaerlan, Dimaampao*, and *Singh, JJ.*, concur.

APPEARANCES OF COUNSEL

Noel A. Dignadice for petitioner.
Robert Buluran for respondent.

[*] Designated as Acting Chief Justice per Special Order No. 3045 dated November 3, 2023.