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THIRD DIVISION

[G.R. No. 248304; April 20, 2022]

MARLON BUTIAL AGAPITO, *Petitioner*, *v.* **AEROPLUS MULTI-SERVICES, INC. and MITZI THERESE P. DE GUZMAN,** *Respondents*.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on Certiorari[1] seeks to reverse the following dispositions of the Court of Appeals in CA-G.R. SP No. 147411:

1) **Decision**[2] dated March 14, 2019 affirming the ruling of the National Labor Relations Commission that petitioner was not illegally dismissed by Aeroplus Multi-Services, Inc.; and

2) **Resolution**[3] dated July 9, 2019 denying petitioner's motion for reconsideration.

Antecedents

Respondent Aeroplus Multi-Services, Inc. (Aeroplus) is engaged in janitorial and manpower services.[4] It hired petitioner Marlon Butial Agapito in February 2004 as a housekeeper with a daily wage of ₱466.00 less ₱200.00 a month as cash bond.[5]

On December 30, 2014, Aeroplus conducted a meeting with its employees. During the open forum, petitioner asked his

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1 *Rollo*, pp. 18–45.

2 Penned by Associate Justice Germano Francisco D. Legaspi, concurred in by Associate Justices Sesinando E. Villon and Edwin D. Sorongon, id. at 47–53.

3 Id. at 55–56.

4 Id. at 48.

5 Id. at 47.

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immediate supervisor George Constantino (Constantino), *"Bakit po naman unfair ang treatment niyo sa amin. Bakit yung iba hindi niyo pinagagawa ng explanation gayong kapag kami ang na late kahit 30mins, pinagagawa niyo pa."* Constantino retorted — *"Naninilip ka ba ng kasamahan mo? Ikaw nga eh hindi mo inaayos ang trabaho mo! Masyado kang ma-reklamo, kung ayaw niyo ang patakaran ko lumayas ka dito!"* petitioner explained that he was merely raising a valid concern.[6]

On January 5, 2015, petitioner reported the incident to Aeroplus' personnel office. Constantino, however, found out about it and gave him a letter memorandum for insubordination. On February 13, 2015, Aeroplus suspended him until March 3, 2015.[7]

Thereafter, on March 3, 2015, petitioner reported for work, only to be told by Aeroplus' OIC-Personnel Darrel Mendoza (Mendoza), *"Wala na tiwala sayo ang Management kaya tanggal ka na!"* When asked to explain, Mendoza merely responded, *"Basta tanggal ka na!"* and ordered him to get out of the office.[8]

Consequently, petitioner filed with the National Labor Relations Commission (NLRC) a complaint for illegal dismissal, illegal suspension, and money claims, entitled *Marlon Butial Agapito v. Aeroplus Multi-Services, Inc., Mitzi Therese P. De Guzman* docketed as NLRC Case No. NCR-0404098-15.[9]

Proceedings before the Labor Arbiter

In his position paper,[10] petitioner essentially alleged: (1) He was initially suspended and subsequently dismissed without just cause and due process; (2) Aeroplus did not have any grounds to terminate him under Article 282[11] of the Labor Code, much

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[6] Id. at 47–48.

[7] Id. at 48.

[8] Id.

[9] Id. at 78.

[10] Id. at 78–92.

[11] Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:

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less, suspend him; (3) Aeroplus did not comply with the twin notice requirement for a valid dismissal; and (4) He is entitled to separation pay under Article 279[12] of the Labor Code, 13th Month Pay, Service Incentive Leave, Reimbursement of Cash Bond, Attorney's Fees, Moral and Exemplary Damages.

In its position paper,[13] Aeroplus riposted: (1) Petitioner's complaint is factually baseless; (2) Petitioner continuously violated company policies without any sign of improvement. He had a long history of absences[14] and insubordination resulting in loss of trust and confidence; (3) It never issued a written notice of termination or suspension, but only a notice of violation with warning that a repetition thereof will be dealt with more severely;

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[12] Art. 279. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Section 24, Republic Act No. 6715, March 21, 1989).

[13] *Rollo*, pp. 93–119.

[14] List of violations: (1) July 25, 2007 — Suspended for seven (7) days due to being Absent without permission/Insubordination; (2) February 4, 2009 — Suspended for three (3) days due to Tardiness for five (5) days; (3) May 8, 2009 — Suspended for fifteen (15) days due to Tardiness for eight (8) days; (4) October 21, 2010 — Suspended for seven (7) days due to being Absent without permission and reasonable cause; and (5) July 3, 2014 — Suspended for thirty (30) days due to Tardiness for twelve (12) days. See Memorandum dated July 3, 2014, *id.* at 100.

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(4) His claims for Separation Pay and other monetary benefits were baseless.

Petitioner filed his reply[15] to the position paper of Aeroplus, reiterating the arguments in his position paper.

The Ruling of the Labor Arbiter

By Decision[16] dated February 5, 2016, Labor Arbiter Celso Virgilio C. Ylagan IV found Aeroplus liable for illegal dismissal and total monetary obligation of ₱454,889.16, *viz.*:[17]

WHEREFORE, premises considered, judgment is hereby rendered finding the complainant to have been ILLEGALLY DISMISSED. Accordingly, respondent Aeroplus Multi-Services, Inc. is liable to pay the complainant the following:

(a) Backwages computed from March 4, 2015 up to the actual payment of his separation pay;

(b) Separation pay, in lieu of reinstatement, equivalent to one (1) month pay for every year of service computed from February 2004 up to March 3, 2015;

(c) Service incentive leave pay and 13th month pay reckoned three (3) years back from March 3, 2015;

(d) Cash bond in the amount of Php200.00 a month computed from February 2004 to February 2015;

(e) Moral and exemplary damages in the amount of Php20,000.00 each; and

(f) Attorney's fees equivalent to ten percent (10%) of his total monetary award.

the computation of which is hereto attached forming part of the records.

SO ORDERED.[18]

The monetary benefits of ₱454,889.16 were computed, *viz.*:[19]

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[15] Id. at 120–123.

[16] Id. at 126–131.

[17] Id. at 46–53.

[18] Id. at 131.

[19] Id. at 132.

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1)	Backwages 3/4/15-4/3/15 = 29 days ₱466 x 29 days =	₱	13,514.00
	4/4/15-2/4/16 = 12.10 mos. ₱481.00 x 26 x 12.10 =		151,322.60
2)	Separation Pay ₱481 x 26 x 11 =		137,566.00
3)	SILP ₱481 x 5 x 3 =		7,215.00
4)	13th month pay ₱481 x 26 x 3 =		37,518.00
5)	Cash Bond ₱200 x 12 x 11 =		26,400.00
6)	Moral Damages =		20,000.00
7)	Exemplary Damages =		20,000.00
		Total	₱413,535.60
8)	Attorney's Fees (10%) =		₱41,353.56
		Total	₱454,889.16

The factual and legal findings of the labor arbiter may be synthesized, as follows:

First, petitioner categorically recounted the circumstances surrounding the illegal termination of his employment by Aeroplus. The statements of Aeroplus' OIC-Personnel Mendoza — *"Wala na tiwala sayo ang Management kaya tanggal ka na!"* and *"Basta tanggal ka na!"* followed by his directive for petitioner to get out of the office[20] leave no doubt that petitioner was indeed dismissed outright without due process.[21] The argument of Aeroplus that Mendoza could not have uttered these statements owing to his years of service to Aeroplus is shallow and

[20] Id. at 48.

[21] Id. at 128–129.

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unpersuasive, especially since there is no affidavit categorically denying the same.

Second, Aeroplus failed to adduce substantial evidence to show why it supposedly lost its trust and confidence in petitioner. Aeroplus did not even challenge petitioner's protest that his substantive and procedural right to due process were violated.

Third, since petitioner was illegally dismissed, he is entitled to full backwages computed from the time of his dismissal up to the full satisfaction of his separation pay of one (1) month per year of service. This is in lieu of reinstatement due to the parties' strained relations considering the manner by which petitioner's employment was terminated.

Fourth, petitioner is also entitled to service incentive leave pay and 13th month pay, in the absence of proof that the same have already been paid.

Fifth, Aeroplus must reimburse petitioner the ₱200.00 cash bond they deducted every month as trust fund or savings plan for its personnel.

Sixth, the spiteful and wanton manner by which petitioner was illegally dismissed entitles him to moral and exemplary damages. Having been forced to litigate, he is also entitled to attorney's fees.

Finally, as for the charge of illegal suspension, petitioner himself admitted that during the employees' meeting with Constantino, per narration of his co-workers, he was disrespectful towards him and in fact apologized for it. In fine, his charge of illegal suspension must fail.

Mitzi Therese P. De Guzman, Vice-Chairperson of Aeroplus, is not personally liable for petitioner's illegal dismissal and monetary claims, as petitioner failed to discuss the reason why she was impleaded in the first place.

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Dispositions of the NLRC

On appeal by Aeroplus, the NLRC reversed under Decision[22] dated April 19, 2016. In sum, it dismissed the complaint for illegal dismissal and ordered petitioner to return to work within five (5) days from notice, without backwages. It gave credence to the respective sworn statements of Mendoza and Constantino, albeit the same were submitted only for the first time on appeal. These affidavits denied the statements alluded by petitioner to have been spoken by Constantino effectively terminating petitioner's employment and ordering the latter to leave the company premises. According to the NLRC, the submission of these affidavits shifted the burden of proof to petitioner to establish that the alleged statements were truly spoken by Constantino. To this score, the NLRC concluded that other than petitioner's allegations, he failed to present any substantial evidence to support his claim of illegal dismissal. The NLRC further pronounced that the rules of evidence in courts of law and equity are not controlling in labor cases.

Petitioner's subsequent motion for reconsideration[23] was denied in the main, but the grant of service incentive leaves, 13th month pay, and cash bond was affirmed per Resolution[24] dated June 30, 2016.

Proceedings before the Court of Appeals

On a petition for certiorari under Rule 65,[25] petitioner charged the NLRC with grave abuse of discretion amounting to lack or excess of jurisdiction when it admitted and accorded weight to the belatedly submitted affidavits of Constantino and Mendoza; and for pronouncing that petitioner was not illegally dismissed nor entitled to the monetary award given by the labor arbiter.

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22 Id. at 185–193.

23 Id. at 194–205.

24 Id. at 206–210.

25 Id. at 57–76.

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In its Comment,[26] Aeroplus argued that technical rules of procedure should not be applied to a labor case where the result would be detrimental to either party. It also maintained that petitioner was not illegally dismissed.

Dispositions of the Court of Appeals

By Decision[27] dated March 14, 2019 in CA-G.R. SP No. 147411, the Court of Appeals affirmed. It further denied petitioner's motion for reconsideration[28] under Resolution[29] dated July 9, 2019.

The Present Petition

Petitioner now faults the Court of Appeals[30] for allegedly ignoring the fact that he was verbally dismissed, without just cause and in violation of his right to due process. He asserts that although strict adherence to technical rules is not required in labor cases, still, the requirements of equity and due process must be complied with. The belated and unjustified submission of the respective *Sinumpaang Salaysay* of Constantino and Mendoza should not have been allowed, aside from the fact that the same are utterly self-serving. As he was illegally dismissed, he is entitled to the monetary benefits granted by the labor arbiter.

In its Comment,[31] Aeroplus counters that there was no illegal dismissal to speak of considering the *Sinumpaang Salaysay* of Constantino and Mendoza belying the claims of petitioner. It had adduced substantial evidence to support its defense that petitioner was never dismissed. Resort to technicalities resulting in the dismissal of cases is disfavored because litigations as much as possible should be decided on the merits and not on mere technicalities.

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[26] Id. at 229–253.

[27] Id. at 46–53.

[28] Id. at 194–206.

[29] Id. at 54–56.

[30] Id. at 18–45.

[31] Id. at 325–347.

In his Reply,[32] petitioner reiterates the arguments in his petition.

Our Ruling

We reverse.

To begin with, it is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that the Court is not a trier of facts. The Court, nonetheless, may proceed to probe and resolve factual issues presented here because the findings of the Court of Appeals and NLRC are contrary to those of the labor arbiter.[33]

In labor cases, strict adherence to technical rules is not required. This liberal policy, however, should still conform to the basic principles of fair play, justice, and due process.

In labor cases, strict adherence to the technical rules of procedure is not required. Time and again, we have allowed evidence to be submitted for the first time on appeal with the NLRC in the interest of substantial justice.[34] We have consistently supported the rule that labor officials should use all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, in the interest of due process.[35]

But this liberal policy must still conform to the basic principles of fair play, justice, and due process. In *Wilgen Loon, et al. v. Power Master, Inc., et al.*,[36] the Court ordained that "the liberality of procedural rules is qualified by two requirements: (1) a party

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[32] Id. at 357-368.

[33] G.R. Nos. 240123 & 240125, June 17, 2020; See *Status Maritime Corporation, et al. v. Sps. Margarito B. Delalamon and Priscila A. Delalamon*, 740 Phil. 175, 189 (2014).

[34] *Wilgen Loon, et al. v. Power Master, Inc., et al.*; citing *Casimiro v. Stern Real Estate, Inc.*, 519 Phil. 438, 454-455 (2006); and *Iran v. NLRC*, 352 Phil. 264-265, 273-274 (1998).

[35] Id.

[36] Id.

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should adequately explain any delay in the submission of evidence; and (2) a party should sufficiently prove the allegations sought to be proven."[37] For the liberal application of the rules before quasi-judicial agencies cannot be used to perpetuate injustice and hamper the just resolution of the case. Neither is the rule on liberal construction a license to disregard the rules of procedure.[38]

Guided by these principles, we hold that the Court of Appeals committed reversible error when it affirmed the admission of and the weight assigned to the belatedly submitted sworn statements of Constantino and Mendoza against petitioner.

(1) Aeroplus did not offer any explanation for the delayed submission of the Sinumpaang Salaysay of Mendoza and Constantino.

Aeroplus submitted to the NLRC its Memorandum of Appeal, together with the respective *Sinumpaang Salaysay* of Mendoza and Constantino, albeit these sworn statements were being submitted for the first time on appeal. Both repudiated petitioner's narrative pertaining to the utterances of Constantino, *viz.*, *Naninilip ka ba ng kasamahan mo? Ikaw nga eh hindi mo inaayos ang trabaho mo! Masyado kang ma-reklamo, kung ayaw niyo ang patakaran ko lumayas ka dito!*"; and Mendoza's — *Wala na tiwala sayo ang Management kaya tanggal ka na!*" x x x x "*Basta tanggal ka na!*" Notably, Aeroplus did so without asking for leave or at least presenting an explanation for the belated submission of these sworn statements. As it was, the NLRC peremptorily accepted and gave full credence to these affidavits, thus, completely turning the tide against petitioner who obviously did not see it coming.

This, we cannot countenance. Note that starting with his position paper before the labor arbiter and up until now, petitioner has invariably anchored his cause of action for illegal dismissal on the aforesaid utterances of Constantino and Mendoza. But

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[37] Id., citing *Tanjuan v. Phil. Postal Savings Bank, Inc.*, 457 Phil. 993, 1004-1005 (2003).

[38] Id., citing *Favila v. NLRC*, 367 Phil. 584, 593 (1999).

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instead of presenting controverting evidence at the earliest opportunity before the labor arbiter, Aeroplus simply kept mum and even manifested that it was not filing a reply to petitioner's position paper. Verily, the delayed submission of the supposed controverting affidavits of Constantino and Mendoza for the first time on appeal, *sans* any valid justification is repugnant to the basic tenets of justice, fair play, and due process. More so since these affidavits containing a plain denial of the otherwise prompt, positive, and detailed narrative of petitioner are simply self-serving, hence, devoid of any probative weight. *MORESCO II v. Cagalawan*[39] is *apropos*:

> **Labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them. However, any delay in the submission of evidence should be adequately explained and should adequately prove the allegations sought to be proven**.
>
> In the present case, MORESCO II did not cite any reason why it had failed to file its position paper or present its cause before the Labor Arbiter despite sufficient notice and time given to do so. **Only after an adverse decision was rendered did it present its defense and rebut the evidence of Cagalawan by alleging that his transfer was made in response to the letter-request of the area manager of the Gingoog sub-office asking for additional personnel to meet its collection quota.** To our mind, however, the belated submission of the said letter-request without any valid explanation casts doubt on its credibility, specially so when the same is not a newly discovered evidence. For one, the letter-request was dated May 8, 2002 or a day before the memorandum for Cagalawan's transfer was issued. MORESCO II could have easily presented the letter in the proceedings before the Labor Arbiter for serious examination. **Why it was not presented at the earliest opportunity is a serious question which lends credence to Cagalawan's theory that it may have just been fabricated for the purpose of appeal.** (Emphases supplied)

So must it be.

(2) Petitioner was illegally dismissed.

We now resolve the issue of illegal dismissal based on the remaining untainted evidence on record. In illegal dismissal cases,

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[39] *Misamis Oriental II Electric Service Cooperative (MORESCO II) v. Cagalawan*, 694 Phil. 268, 281–282 (2012).

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before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service.[40] Obviously, if there is no dismissal, then there can be no question as to its legality or illegality.[41]

Here, as found by the labor arbiter, petitioner categorically recounted the circumstances surrounding the unlawful termination of his employment by Aeroplus. The words spoken by Aeroplus OIC-Personnel Mendoza to petitioner — *"Wala na tiwala sayo ang Management kaya tanggal ka na!"* and *"Basta tanggal ka na!,"* immediately followed by an unequivocal order for petitioner to get out of the office,[42] speak for themselves. It was an outright termination of employment without just cause and due process.[43]

Aeroplus is liable for petitioner's money claims and moral and exemplary damages.

Gimalay v. Court of Appeals[44] aptly discussed the consequences of illegal dismissal, *viz.*:

> On the consequences of the illegality of petitioner's dismissal, *Noblado v. Alfonso* held:
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> In fine, respondent's lack of just cause and non-compliance with the procedural requisites in terminating petitioners' employment taints the latter's dismissal with illegality.
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> Where the dismissal was without just or authorized cause and there was no due process, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time

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[40] *Rodriguez v. Sintron Systems, Inc.*, G.R. No. 240254, July 24, 2019, citing *Philippine Rural Reconstruction Movement v. Pulgar*, 637 Phil. 244, 256 (2010).

[41] Id., citing *Ledesma, Jr. v. NLRC*, 562 Phil. 939, 951 (2007).

[42] *Rollo*, p. 48.

[43] Id. at 128–129.

[44] Supra note 31, citing *Noblado v. Alfonso*, 773 Phil. 271, 286–287 (2015).

the compensation was not paid up to the time of actual reinstatement. However, if reinstatement is no longer possible, the backwages shall be computed from the time of the employee's illegal termination up to the finality of the decision.

x x x

In addition to payment of backwages, petitioners are also entitled to separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of their illegal dismissal up to the finality of this judgment, as an alternative to reinstatement.

Also, in accordance with prevailing jurisprudence, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

Thus, an illegally dismissed employee is ordinarily entitled to: (a) reinstatement without loss of seniority rights and other privileges, or in lieu thereof, separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of the employee's illegal dismissal up to the finality of the judgment; and (b) full backwages inclusive of allowances and other benefits or their monetary equivalent computed from the time compensation was not paid to the time of his actual reinstatement.

As for reinstatement, petitioner has not sought the same way back in the proceedings before the labor arbiter and up until here. On this score, we reckon with the pronouncement of the labor arbiter:

x x x x this labor Arbitration Court finds that reinstatement is no longer feasible because of the existence of strained relation between the parties and the respondent's lack of intention to reinstate the complainant by their offer, by way of amicable settlement, of separation pay during the mandatory conference. Notably, the settlement through payment of separation pay failed to materialize because of the parties' disagreement as to the rate of pay to be used.[45]

x x x

Thus, an illegally dismissed employee is ordinarily entitled to: (a) reinstatement without loss of seniority rights and other

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[45] Id.

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privileges, or in lieu thereof, separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of the employee's illegal dismissal up to the finality of the judgment; and (b) full backwages inclusive of allowances and other benefits or their monetary equivalent computed from the time compensation was not paid to the time of his or her actual reinstatement.[46]

Here, Aeroplus is liable for petitioner's full backwages from March 4, 2015 up to the finality of this Decision. It is also liable for petitioner's service incentive leave pay and 13th month pay reckoned three (3) years back from March 3, 2015 as it failed to prove that it already paid these benefits to petitioner.

As for reinstatement, while it is a normal consequence of illegal dismissal, where reinstatement, however, is no longer viable as an option, separation pay equivalent to one (1) month pay for every year of service should be awarded as an alternative. The payment of separation pay is in addition to the payment of backwages.[47] As correctly ruled by the labor arbiter, petitioner is entitled to separation pay of one (1) month pay per year of service in lieu of reinstatement due to the parties' strained relation considering the manner by which petitioner got dismissed from his employment.

With regard to the monthly deduction of ₱200.00 as cash bond, we remind Aeroplus of Articles 112 and 113 of the Labor Code:

> Art. 112. Non-interference in disposal of wages. No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages. He shall not in any manner force, compel, or oblige his employees to purchase merchandise, commodities[,] or other property from any other person, or otherwise make use of any store or services of such employer or any other person.
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> Art. 113. Wage deduction. No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

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[46] Id.

[47] *Golden Ace Builders v. Talde*, 634 Phil. 364, 370 (2010).

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In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

Articles 112 and 113 of the Labor Code are clear. Aeroplus cannot interfere with the freedom of any employee to dispose of his or her wages. More, it cannot unilaterally make any deductions except in the three (3) instances provided by law. Here, Aeroplus illegally deducted ₱200.00 as monthly cash bond from petitioner's wages. Thus, petitioner is entitled to a reimbursement of the total of this monthly deduction from February 2004 to February 2015 plus six percent (6%) legal interest corresponding to this period.[48]

On the award of damages, *Leus v. St. Scholastica's College Westgrove*[49] bears the ground rules, *viz.*:

x x x x A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs[,] or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive[,] or malevolent manner.

"Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."

"It must be noted that the burden of proving bad faith rests on the one alleging it since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. Allegations of bad faith and fraud must be proved by clear and convincing evidence."

The records of this case are bereft of any clear and convincing evidence showing that the respondents acted in bad faith or in a wanton or

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[48] See *Nacar v. Gallery Frames*, 716 Phil. 267, 283.

[49] 752 Phil. 186–220 (2015).

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fraudulent manner in dismissing the petitioner. That the petitioner was illegally dismissed is insufficient to prove bad faith. A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without cause.

However, the petitioner is entitled to attorney's fees in the amount of 10% of the total monetary award pursuant to Article 111 of the Labor Code. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[50]

Petitioner showed the requisite elements for award of moral and exemplary damages in his favor. He adduced evidence that his dismissal was done in a wanton, oppressive, or malevolent manner. As correctly found by the labor arbiter, the spiteful and wanton manner by which petitioner was illegally dismissed entitles him to moral and exemplary damages in the amount of ₱20,000.00 each.

Following both statutory and case law, petitioner should be paid attorney's fees equivalent to ten percent (10%) of the total monetary award. This is because he was forced to litigate and incur expenses to protect his rights and interest.

The Court notes that petitioner was represented by the Public Attorney's Office (*PAO*) through Public Attorneys III Eric A. Crisostomo, Nenita M. Guerrero and Iris M. Pozon. In accordance with our ruling in *Our Haus Realty Development Corporation v. Parian, et al.*,[51] while petitioner is still entitled to attorney's fees even if he is represented by the PAO, it shall be received by PAO as a trust fund to be used for the special allowances of its officials and lawyers, in accordance with Chapter 5, Title III, Book IV of Executive Order No. 292, or the Administrative Code of 1987, as amended by Republic Act No. 9406.[52] As ruled in *Alva*

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[50] Id. at 218-220.

[51] 740 Phil. 699 (2014).

[52] Republic Act No. 9406, (AN ACT REORGANIZING AND STRENGTHENING THE PUBLIC ATTORNEY'S OFFICE (PAO), AMENDING FOR THE PURPOSE PERTINENT PROVISIONS OF

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v. High Capacity Security Force, Inc., et al.,[53] the award is not precluded by the fact that the employee was represented by the PAO. It is awarded as a recompense against the employer who unjustifiably deprived the employee of a source of income he or she industriously worked for.

ACCORDINGLY, the petition is **GRANTED**. The **Decision** dated March 14, 2019 and **Resolution** dated July 9, 2019 of the Court of Appeals in CA-G.R. SP No. 147411 are **REVERSED** and **SET ASIDE**. Respondent Aeroplus Multi-Services, Inc. is found liable for the illegal dismissal of petitioner Marlon Butial Agapito. It is ordered to **PAY** him the following:

1) Full Backwages computed from March 4, 2015 up to the finality of this Decision;

2) Separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, computed from February 2004 up to the finality of this Decision;

3) Service incentive leave pay and 13th month pay reckoned three (3) years back from March 3, 2015;

EXECUTIVE ORDER NO. 292, OTHERWISE KNOWN AS THE "ADMINISTRATIVE CODE OF 1987," AS AMENDED, GRANTING SPECIAL ALLOWANCE TO PAO OFFICIALS AND LAWYERS, AND PROVIDING FUNDS THEREFOR), Section 16, New sections are hereby inserted in Chapter 5, Title III, Book IV of Executive Order No. 292, to read as follows:

x x x x

SEC. 16-D. *Exemption from Fees and Costs of the Suit*. — The clients of the PAO shall [sic] exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.

The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National's Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO.

[53] 820 Phil. 677, 683 (2017).

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4) The total deduction of ₱200.00 a month as cash bond computed from February 2004 to February 2015 plus six percent (6%) legal interest for the same period;

5) Moral damages in the amount of ₱20,000.00; and

6) Exemplary damages in the amount of ₱20,000.00.

Respondent Aeroplus Multi-Services, Inc. is further ordered to **PAY** the Public Attorney's Office attorney's fees equivalent to ten percent (10%) of the total monetary award.

The total monetary award shall earn legal interest at six percent (6%) *per annum* from finality of this Decision until fully paid.

The case is **REMANDED** to Labor Arbiter Celso Virgilio C. Ylagan IV for the computation of the total monetary award. Likewise, he is **ORDERED** to notify the appropriate officials exercising visitorial and enforcement power under Article 128 of the Labor Code in the Department of Labor and Employment to conduct an investigation on the unlawful practice of Aeroplus of making illegal deductions from the wages of its employees in the guise of cash bond.

SO ORDERED.

Leonen (Chairperson), M. Lopez, J. Lopez, and *Kho, Jr., JJ.*, concur.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
P.C. De Jesus Law Offices for respondents.