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SECOND DIVISION

[G.R. No. 202613. November 8, 2017]

SYMEX SECURITY SERVICES, INC. and RAFAEL Y. ARCEGA, *petitioners, vs.* **MAGDALINO O. RIVERA, JR. and ROBERTO B. YAGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; MAY BE ASCRIBED TO THE NLRC IN LABOR DISPUTES AS WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.— "To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law." "In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; IN ILLEGAL DISMISSAL, THE EMPLOYEES MUST FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THAT THEY WERE DISMISSED.— A judicious review of the records of the case reveals that respondents were dismissed by Capt. Cura, the Operations Manager of petitioner Symex. Even as the Court has acknowledged the management prerogative of security agencies to transfer security guards when necessary in conducting its business, it likewise has repeatedly held that this should be done in good faith. x x x Petitioner Symex insists that Capt. Cura did not constructively dismiss respondents, explaining

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that they refused to accept their new assignments on the ground that their new postings would be inconvenient to them. Respondents, on the other hand, maintain that they did not refuse re-assignment nor did they abandon their work. x x x In cases of illegal dismissal, the employees must first establish by substantial evidence that they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof. x x x To the mind of the Court, the NLRC did not err in finding that respondents had substantially discharged this burden. x x x Petitioners, on the other hand, failed to discharge their burden of proving that the termination of respondents was for a valid or authorized cause. In fact, they simply maintained that respondents were not illegally dismissed because they refused their new assignments.

3. ID.; ID.; TERMINATION; GROUNDS; ABANDONMENT; BELIED BY THE FILING OF COMPLAINT FOR ILLEGAL DISMISSAL.— In this case, the respondents' act of filing a complaint for illegal dismissal with prayer for reinstatement belies any intention to abandon employment. To be sure, the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement, has been held to be totally inconsistent with a charge of abandonment. To reiterate, abandonment is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts.

4. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE NLRC, RESPECTED.— The rule is that factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times, even finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction. It is also settled that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial. The Court has consistently ruled in the recent decisions of *Perea v. Elburg Shipmanagement Inc*. *Philippines,* and *Madridejos v. NYK-Fil Ship Management, Inc*., that the factual findings of the NLRC, when confirmed by the CA, are usually conclusive on this Court.

5. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AWARD OF

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SEPARATION PAY UNDER THE DOCTRINE OF STRAINED RELATIONS IS PROPER IN LIEU OF REINSTATEMENT; STRAINED RELATIONS MUST BE DEMONSTRATED AS A FACT.— Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 298 to 299 of the Labor Code, as well as in cases of illegal dismissal where reinstatement is no longer feasible. The payment of separation pay and reinstatement are exclusive remedies. x x x Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. Strained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone.

6. **ID.; ID.; ID.; AWARD OF OTHER MONEY CLAIMS, MORAL AND EXEMPLARY DAMAGES ARE WARRANTED IN CASE AT BAR.—** With respect to the award of money claims, as well as moral and exemplary damages, the sole office of the writ of certiorari, as aptly pointed out by the CA, is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality. In this case, it is noteworthy to stress that respondents have presented their pay slips to prove their monetary claims. It is settled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. x x x Petitioners could have easily presented pertinent company records to disprove respondents' claims. Yet, the records of the case are bereft of such company records thus giving merit to respondents' allegations. It is a rule that failure of employers to submit the necessary documents that are in their possession as employers gives rise to the presumption that the presentation

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thereof is prejudicial to their cause. Moral damages are recoverable when the dismissal of an employee 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, on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner. The Court also affirms the award of moral and exemplary damages to respondents. As aptly pointed out by both the NLRC and the CA, the acts constitutive of respondents' dismissal are clearly tainted with bad faith as they were done to punish them for filing a complaint against petitioner Symex before the LA and for their refusal to withdraw the same.

7. ID.; ID.; ID.; THE PRESIDENT OF THE COMPANY IS NOT LIABLE FOR THE LABOR OBLIGATIONS OF THE COMPANY ABSENT SHOWING OF GROSS NEGLIGENCE OR BAD FAITH ON HIS PART; DISCUSSED.— A corporation is a juridical entity with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, as a general rule, an officer may not be held liable for the corporation's labor obligations unless he acted with evident malice and/or bad faith in dismissing an employee. Section 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation. To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith. Based on the records, respondents failed to specifically allege either in their complaint or position paper that Arcega, as an officer of Symex, willfully and knowingly assented to the acts of Capt. Cura, or that Arcega had been guilty of gross negligence or bad faith in directing the affairs of the corporation. x x x The Court has repeatedly emphasized that the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception. To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

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APPEARANCES OF COUNSEL

Law Firm of Arnold V. Guerrero for petitioners.
Jose C. Evangelista for respondents.

D E C I S I O N

CAGUIOA, *J.:*

Assailed in this petition for review on certiorari[1] are the Decision[2] dated January 12, 2012 and the Resolution[3] dated June 27, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 119039, which affirmed the Decision[4] dated December 9, 2010 and Resolution[5] dated February 7, 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 042778-05 (RA-06-10) that, in turn, reversed the Decision[6] dated April 30, 2010 of the Labor Arbiter (LA) in NCR-02-02569-03 which dismissed the complaint for illegal dismissal filed by respondents Magdalino O. Rivera, Jr. and Roberto B. Yago (respondents) against petitioners Symex Security Services, Inc. (petitioner Symex) and Rafael Y. Arcega (petitioner Arcega), and ordered petitioners to pay respondents in the amount of ₱1,543.75 each or a total of ₱3,087.50.

Facts

The instant case stemmed from a complaint[7] for underpayment/nonpayment of wages, overtime pay, holiday pay, premium

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[1] *Rollo*, pp. 10-35.

[2] *Id*. at 36-48. Penned by Associate Justice Romeo F. Barza, with Associate Justices Noel G. Tijam (now a Member of this Court) and Edwin D. Sorongon concurring.

[3] *Id*. at 49-50.

[4] *Id*. at 116-129. Penned by Commissioner Teresita D. Castillon-Lora, with Presiding Commissioner Raul T. Aquino concurring while Commissioner Napoleon M. Menese took no part.

[5] *Id*. at 143-144.

[6] *Id*. at 91-98. Penned by Labor Arbiter Enrique L. Flores, Jr.

[7] *Id*. at 51-54.

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for rest day, service incentive leave pay, clothing allowance and 13th month pay as well as illegal deduction of cash bond and firearm bond and repair filed by respondents before the LA.

Respondents alleged that they had been employed as security guards by petitioner Symex sometime in May 1999. Petitioner Symex is engaged in the business of investigation and security services. Its President and Chairman of the Board is petitioner Arcega.[8]

Respondents were both assigned at the offices and premises of Guevent Industrial Development Corporation (Guevent), a client of petitioner Symex. As security guards, they were tasked to guard the entrance and the exit of the building, and check the ingress and egress of the visitors' vehicles going through the building. Their tour of duty was from Monday to Saturday, from 6:00 AM to 6:00 PM, a twelve-hour duty, but they were not paid their overtime pay. Respondents were likewise not given a rest day, and not paid their five-day service incentive leave pay, and 13th month pay.[9]

At the time of their employment, respondents were receiving a salary of ₱198.00 a day from January 20 to March 2001. From April 2001 to March 2003, they were receiving ₱250.00 a day. They were required to report for work during legal holidays, but they were not paid holiday premium pay.[10]

On February 25, 2003, respondents filed a complaint for nonpayment of holiday pay, premium for rest day, 13th month pay, illegal deductions and damages.[11]

On March 13, 2003, Capt. Arcego Cura (Capt. Cura), the Operations Manager of petitioner Symex, summoned respondents to report to the head office the next day.[12]

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[8] *Id*. at 37.

[9] *Id*.

[10] *Id*. at 37-38.

[11] *Id*. at 38.

[12] *Id*.

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The following day or on March 14, 2003, respondents went to the head office where Capt. Cura told them that they would be relieved from the post because Guevent reduced the number of guards on duty. Capt. Cura told them to go back on March 17, 2003 for their reassignment.[13]

On March 17, 2003, Capt. Cura told respondents that they would not be given a duty assignment unless they withdrew the complaint they filed before the LA. Respondents were made to choose between resignation or forcible leave. Capt. Cura gave them a sample affidavit of desistance for them to use as a guide. Respondents both refused to obey Capt. Cura, who then told them that they were dismissed.[14]

The next day or on March 18, 2003, respondents amended their complaint[15] before the LA to include illegal dismissal.[16]

In their defense, petitioners Symex and Arcega maintained that they did not illegally dismiss respondents. They claimed that respondents are still included in petitioner Symex's roll of security guards. They shifted the blame to respondents, arguing that respondents refused to accept available postings.[17]

The LA Ruling

In a Decision[18] dated April 30, 2010, the LA dismissed respondents' amended complaint for illegal dismissal but ordered petitioner Symex to pay respondents' their proportionate 13th month pay, *viz.*:

Rates: ₱198/day (1/20/01-3/31/01) Dismissed 3/14/03
₱250/day (4/1/01-3/31/03) =

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[13] *Id*.

[14] *Id*. at 38-39.

[15] *Id*. at 53-54.

[16] *Id*. at 39.

[17] See *id*. at 39-40.

[18] *Id*. at 91-98.

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A. MAGDALINO O. RIVERA, JR.
PROP. 13th MO. PAY:
1/1/03-3/14/03
₱250 x 30 x 2.4 7/12 = ₱1,543.75

B. ROBERTO B. YAGO
PROP. 13th MO. PAY:
1/1/03-3/14/03
₱250 x 30 x 2.4 7/12 = ₱1,543.75

SUMMARY OF COMPUTATION:

A.	MAGDALINO O. RIVERA, JR.	₱1,543.75
B.	ROBERTO B. YAGO	1,543.75
	TOTAL AWARD:	₱3,087.50[19]

The LA found that respondents were merely relieved from their post by Capt. Cura. According to the LA, a relief order in itself does not sever the employment relationship between a security guard and the agency. Further, the LA did not give credence to the purported handwritten Affidavit of Desistance supposedly given to respondents by Capt. Cura because such affidavit offered no assurance of its authenticity as it was unsigned and at best, self-serving.[20]

The LA also ruled that the pay slips presented by respondents themselves showed that they were not underpaid. Respondents have also failed to prove that they rendered overtime work or that they worked on a holiday/rest day. Respondents also failed to show proof that they were entitled to their claims for service incentive leave pay and for illegal deductions. The LA also ruled that there were no qualifying circumstances in the instant case to warrant the grant of damages.[21]

Aggrieved, respondents appealed to the NLRC.

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[19] *Id*. at 98.

[20] *Id*. at 96-97.

[21] *Id*. at 97.

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The NLRC Ruling

In a Decision[22] dated December 9, 2010, the NLRC reversed and set aside the LA ruling, *viz.*:

WHEREFORE, the foregoing premises considered, the decision of the Labor Arbiter is hereby **REVERSED** and **SET ASIDE**, a new one entered declaring complainants illegally dismissed by Respondents who are hereby ORDERED to pay complainants the following, as per attached computation:

		Magdalino O. Rivera	Roberto B. Yago
1. Separation pay	-	₱ 133,320.00	₱ 145,440.00
2. Full backwages	-	1,017,522.21	1,017,522.21
3. Underpaid wages	-	18,713.47	17,882.59
4. Underpaid service incentive leave pay	-	209.91	248.37
5. Underpaid 13th month pay		1,559.46	1,490.22
6. Moral damages	-	10,000.00	10,000.00
7. Exemplary damages	-	10,000.00	10,000.00
Sub-total	-	₱ 1,191,375.05	₱ 1,202,583.39
8. 10% attorney's fees	-	119,137.50	120,258.34
TOTAL	-	₱ 1,310,512.55	₱ 1,322,841.72

Other claims are however dismissed for lack of basis.

SO ORDERED.[23]

Contrary to the LA's findings, the NLRC found that respondents were illegally dismissed by Capt. Cura, the Operations Manager of petitioner Symex, who told them that unless they withdrew their complaint for money claims pending before the LA, their services would be terminated. It held that the burden of proving that the dismissal of an employee was for a valid or authorized cause lies on the employer, and that failure to discharge this burden of proof makes the employer liable for illegal dismissal. The NLRC found that petitioners

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[22] *Id*. at 116-129.

[23] *Id*. at 128-129.

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failed to prove, with substantial evidence, that respondents were furnished with a written order of detail or re-assignment. It added that neither were respondents guilty of abandonment of work as they immediately amended their complaint for money claims to include a complaint for illegal dismissal. The NLRC relied on *A'Prime Security Services, Inc. v. NLRC*[24] which held that abandonment of work is inconsistent with the filing of a complaint for illegal dismissal.[25]

Accordingly, the NLRC held that respondents are entitled to separation pay at one month per year of service from the time of their employment up to the finality of the decision with backwages and monetary claims, subject to the three-year prescriptive period. It also awarded respondents ten thousand pesos (₱10,000.00) each as moral damages and exemplary damages in the same amount, plus ten percent (10%) of the total monetary award as attorney's fees.[26]

Petitioners moved for reconsideration, but this was denied in a Resolution[27] dated February 7, 2011. Dissatisfied, they filed a petition for certiorari[28] before the CA.

The CA Ruling

In a Decision[29] dated January 12, 2012, the CA affirmed the questioned NLRC Decision.

It held that the NLRC did not gravely abuse its discretion as the undisputed facts clearly established respondents to have been illegally dismissed and that petitioners used their prerogative to reassign and post security guards, merely as

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[24] 292-A Phil. 239, 244 (1993).

[25] *Rollo*, pp. 126-127.

[26] *Id*. at 128.

[27] *Id*. at 143-144.

[28] *Id*. at 145-170.

[29] *Id*. at 36-48.

leverage to cause the withdrawal of the labor complaint filed against them by respondents.[30]

The CA likewise found that the NLRC sufficiently ruled on respondents' money claims. It ruled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which the employer allegedly failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it; and even where the employees must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[31]

The CA also affirmed the award for moral and exemplary damages as well as attorney's fees.[32]

Petitioners filed a motion for reconsideration[33] dated February 9, 2012, which was, however, denied in a Resolution[34] dated June 27, 2012.

The Issues Before the Court

The issues for the Court's resolution are whether or not: *(a)* the CA correctly ruled that the NLRC did not gravely abuse its discretion, and consequently, held that respondents were illegally dismissed; *(b)* petitioners are liable to respondents for backwages, service incentive leave pay, 13th month pay, separation pay, moral damages, exemplary damages and attorney's fees; and *(c)* petitioner Arcega should be held solidarily liable with petitioner Symex for respondents' monetary awards.

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[30] *Id*. at 43.

[31] *Id*. at 45-46, citing *Grandteq Industrial Steel Products, Inc. v. Margallo,* 611 Phil. 612, 629 (2009).

[32] *Id*. at 46.

[33] CA *rollo*, pp. 192-195.

[34] *Rollo*, pp. 49-50.

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The Court's Ruling

The petition is without merit.

NLRC did not commit grave abuse of discretion.

"To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[35]

"In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[36]

Guided by the foregoing considerations, the Court finds that the CA correctly found no grave abuse of discretion on the part of the NLRC in reversing the LA ruling, as the LA's finding that respondents were not illegally dismissed from employment is not supported by substantial evidence.

A judicious review of the records of the case reveals that respondents were dismissed by Capt. Cura, the Operations Manager of petitioner Symex. Even as the Court has acknowledged the management prerogative of security agencies to transfer security guards when necessary in conducting its business, it likewise has repeatedly held that this should be done in good faith.[37]

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[35] *Sta. Isabel v. Perla Compañia De Seguros, Inc.,* G.R. No. 219430, November 7, 2016, p. 6, citing *Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr.,* 779 Phil. 563, 579 (2016).

[36] *Id*.

[37] *Exocet Security and Allied Services Corporation v. Serrano*, 744 Phil. 403, 418 (2014).

In the case of *Exocet Security and Allied Services Corporation v. Serrano*,[38] the Court ruled that the security agency was able to prove that it was in good faith when it placed the security guard on floating status and was therefore not guilty of illegal dismissal nor constructive dismissal. The evidence presented by the security agency showed that the security guard's own refusal to accept a non-VIP detail was the reason that he was not given an assignment within the six-month period. The Court, in the subject case, ruled that it was manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of floating status as a case of constructive dismissal, without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post.[39] The Court emphasized that:

> [T]he security guard's right to security of tenure does not give him a vested right to the position as would deprive the company of its prerogative to change the assignment of, or transfer the security guard to, a station where his services would be most beneficial to the client. Indeed, an employer has the right to transfer or assign its employees from one office or area of operation to another, or in pursuit of its legitimate business interest, **provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause**.[40]

In the controversy now before this Court, there is no question that respondents were placed on floating status after their relief from their post in Guevent. The crux of the controversy lies in whether or not this floating status was actually a dismissal.

Respondents were illegally dismissed.

Petitioner Symex insists that Capt. Cura did not constructively dismiss respondents, explaining that they refused to accept their

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[38] *Id*.

[39] *Id*. at 420.

[40] *Id*., citing *Salvaloza v. National Labor Relations Commission,* 650 Phil. 543, 557 (2010).

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new assignments on the ground that their new postings would be inconvenient to them.[41] Respondents, on the other hand, maintain that they did not refuse re-assignment nor did they abandon their work.[42] The narration of respondents is enlightening:

> Noon February 26, 2003 nagkaisa kami na iparating na sa Labor para makuha naming [ang aming] mga benepisyo na dapat mapasamin. At noong March 13, 2003 tumawag si Captain Cura (Operation Ma[n]ager ng SYMEX SCTY. SVCS.) na magreport daw kaming dalawa sa SYMEX OFFICE, kinabukasan March 14, 2003, mga 9:00 A.M. dumating kami sa SYMEX OFFICE, binigyan kami ng order na inaalis daw kami sa kliyente dahil nagbawas [daw ng] gwardiya doon at nagtaka kami dahil marami nam[a]ng baguhan pa doon pero kami talaga ang tinanggal na matagal na at sinabi sa amin na magreport kami sa lunes March 17, 2003 para sa panibagong duty daw sa ibang kliyente.
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> Noong March 17, 2003 dumating kami sa SYMEX OFFICE band[a]ng 9:00 A.M. at ito ang sinabi sa amin na hindi daw kami pwedeng bigyan ng duty dahil idinamay daw [namin] ang agency at hindi daw kami pwedeng magtrabaho sa agency habang hindi pa naaayos ang kaso. **At sa panahon pala na iyon natanggap na nila ang demanda [namin] [galing] sa Labor at doon kami inutusan ni Capt. Cura na kumuha daw kami ng Affidavit of Desistance at saka ibabalik daw kami sa duty at sa katunayan binigyan pa kami ng sample kung paano kumuha ng affidavit of desistance, at kung hindi daw kami kumuha ng nasabing affidavit magleave na lang daw kami o m[a]gresign at bago kami umalis sa opisina ng SYMEX humingi kami ng pabor na mag log man lang kami para sa aming attendance sa araw na iyon**. Pero tumanggi si Kapitan Cura na magsulat kami sa Log book nya. Tapos kinausap din [namin] ang kasama nya sa opisina na si Yolly Ansus na mag-log kami para sa aming attendance, siya ay tumanggi at sabi niya ay baka daw magalit si Capt. Cura. At kinabukasan March 18, 2003 pumunta kami sa NLRC para amendahan [ang aming] demanda laban sa SYMEX at idinagdag [namin] ang Illegal Dismisal (actual) at noong April 3, 2003 sa araw

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[41] *Rollo*, p. 24.

[42] *Id*. at 201-202.

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ng Hearing [namin], natanggap ni Capt. Cura ang amended complaint [namin].[43]

In cases of illegal dismissal, the employees must first establish by substantial evidence that they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[44] In *Machica v. Roosevelt Services Center, Inc.*,[45] the Court enunciated:

> The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.[46]

To the mind of the Court, the NLRC did not err in finding that respondents had substantially discharged this burden. Apart from their sworn declarations, respondents offered the sample affidavit of desistance given them by Capt. Cura to support their narration that Capt. Cura threatened to terminate them unless they executed such affidavit of desistance. The NLRC found the narration of respondents convincing:

> On complainants' claim that they were illegally dismissed, suffice it to state that complainants' following narration is convincing: that they were relieved from their post upon request of respondent's client to reduce the assigned security guards in their place to reduce their expenses; that Complainants were thus relieved and when they reported to respondent's office, they were told to go back for re-assignment; that meantime, complainants already filed a complaint for money claims against respondents; that when complainants returned to respondent's office, they were told by no less than the General Manager that their services were terminated due to the complaint they filed

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[43] Records, pp. 9-10.

[44] *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142, 154 (2011).

[45] 523 Phil. 199 (2006).

[46] *Id*. at 209-210.

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and as a condition for their re-posting or re-assignment, they were ordered first to withdraw their complaint but they refused; that Complainants then amended their earlier complaint to illegal dismissal.

From the foregoing narration, it can be easily inferred that complainants were dismissed categorically. **There can be no abandonment on their part as they even immediately amended their complaint to include illegal dismissal when they were given a condition to withdraw their complaint first before they could be given assignment. Such condition is illegal and unwarranted.** x x x[47] (Emphasis supplied)

The CA also found that petitioner Symex used its prerogative to re-assign its security guards as leverage in the withdrawal of the labor complaint filed against petitioners by respondents, *viz.*:

We find nothing reversible in the ruling of the NLRC in finding illegal the dismissal of the private respondents.

The assertion of Symex that the private respondents committed abandonment is contrary to the circumstances herein presented. **While it is a recognized prerogative for the employer in the security services to reassign and post its security guards from time to time for the exigency of service, We however hold that in this case, the petitioner used such prerogative as a leverage in the withdrawal of the labor complaint filed against them by the private respondents.**

It is well to remember that the private respondents in this case initially filed a labor complaint for monetary claims prior to their recall to the head office for possible reassignment and new postings. To believe that the private respondents refused to the new postings assigned to them because it will inconvenience them is unlikely and contrary to human experience.[48] (Emphasis supplied)

Petitioners, on the other hand, failed to discharge their burden of proving that the termination of respondents was for a valid or authorized cause. In fact, they simply maintained that respondents were not illegally dismissed because they refused their new

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[47] *Rollo*, pp. 126-127.

[48] *Id*. at 43.

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assignments. Yet, petitioners offered no evidence at all to prove respondents' alleged new assignments or respondents' refusal to accept the same. All that petitioners offer as proof that respondents were not dismissed is the argument that respondents remained in the roll of the security guards of petitioner Symex. And yet, petitioners failed to even present said roll of security guards to prove this assertion.

Respondents are not guilty of abandonment.

The Court further agrees with the findings of the CA that respondents were not guilty of abandonment. *Tan Brothers Corporation of Basilan City v. Escudero*[49] extensively discussed abandonment in labor cases:

> As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 297] of the Labor Code. **To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.** Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[50] (Emphasis supplied)

In this case, the respondents' act of filing a complaint for illegal dismissal with prayer for reinstatement belies any intention to abandon employment.[51] To be sure, the immediate filing of

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[49] 713 Phil. 392 (2013).

[50] *Id*. at 400-401.

[51] See *Pentagon Steel Corporation v. Court of Appeals,* 608 Phil. 682, 696-697 (2009).

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a complaint for illegal dismissal, more so when it includes a prayer for reinstatement, has been held to be totally inconsistent with a charge of abandonment.[52] To reiterate, abandonment is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts.[53]

The rule is that factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times, even finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction.[54] It is also settled that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial.[55]

The Court has consistently ruled in the recent decisions of *Perea v. Elburg Shipmanagement Philippines, Inc.*[56] and *Madridejos v. NYK-Fil Ship Management, Inc.*,[57] that the factual findings of the NLRC, when confirmed by the CA, are usually conclusive on this Court:

> [T]his Court limits itself to questions of law in a Rule 45 petition:
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> As a rule, we only examine questions of law in a Rule 45 petition. Thus, "we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the [National Labor Relations Commission], an administrative body that has expertise in its specialized field." Similarly, we do not replace our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual

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[52] *Chavez v. NLRC,* 489 Phil. 444, 460 (2005).

[53] *Mallo v. Southeast Asian College, Inc.,* 771 Phil. 410, 421 (2015).

[54] *General Milling Corporation v. Viajar,* 702 Phil. 532, 540 (2013), citing *Eureka Personnel & Management Services, Inc. v. Valencia,* 610 Phil. 444, 453 (2009).

[55] *Id*., citing *Eureka Personnel & Management Services, Inc. v. Valencia, id.* at 452-453 and *Bernarte v. Philippine Basketball Association,* 673 Phil. 384 (2011).

[56] G.R. No. 206178, August 9, 2017.

[57] G.R. No. 204262, June 7, 2017.

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findings of the National Labor Relations Commission, when confirmed by the Court of Appeals, are usually "conclusive on this Court."[58]

Award of separation pay is proper.

Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 298[59] to 299[60] of the Labor Code, as well as in cases of illegal dismissal where reinstatement is no longer feasible.[61]

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[58] *Perea v. Elburg Shipmanagement Philippines, Inc., supra* note 47, at 10, citing *Madridejos v. NYK-Fil Ship Management, Inc., id*. at 13-14.

[59] As renumbered pursuant to Department Advisory No. 01, Series of 2015.

ART. 298 [Formerly Article 283]. **Closure of Establishment and Reduction of Personnel.** — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[60] ART. 299 [Formerly Article 284]. **Disease as Ground for Termination.**— An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[61] *Reno Foods, Inc. and/or Khu v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan,* 629 Phil. 247, 257 (2010).

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The payment of separation pay and reinstatement are exclusive remedies.[62] In *Dee Jay's Inn and Café v. Raneses*,[63] the Court ruled that "[i]n a case where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee."[64] The circumstances in this case, however, warrant the application of the doctrine of strained relations.

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[65]

Strained relations must be demonstrated as a fact.[66] The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone.[67]

On this score, the NLRC has made a factual finding, sustained by the CA, that the length of time this case has dragged has invariably resulted in a strain in the relations between respondents and petitioners, so that reinstatement is now impossible. Once more, this factual finding is binding on this Court. Accordingly, the award for separation pay is proper.

Award of other money claims, moral and exemplary damages are warranted.

With respect to the award of money claims, as well as moral and exemplary damages, the sole office of the writ of certiorari,

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[62] *Bani Rural Bank, Inc. v. De Guzman,* 721 Phil. 84, 100 (2013).

[63] G.R. No. 191823, October 5, 2016, 805 SCRA 143.

[64] *Id*. at 167.

[65] *Bank of Lubao, Inc. v. Manabat,* 680 Phil. 792, 801 (2012).

[66] *Paguio Transport Corporation v. NLRC,* 356 Phil. 158, 171 (1998).

[67] *Tenazas v. R. Villegas Taxi Transport,* 731 Phil. 217, 232 (2014).

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as aptly pointed out by the CA, is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.[68] It does not include correction of the NLRC's evaluation of the evidence or of its factual findings.[69] Such findings are generally accorded not only respect but also finality.[70]

In this case, it is noteworthy to stress that respondents have presented their pay slips to prove their monetary claims. It is settled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. Once more, he who pleads payment has the burden of proving it; and even where the employees must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[71] Petitioners could have easily presented pertinent company records to disprove respondents' claims. Yet, the records of the case are bereft of such company records thus giving merit to respondents' allegations. It is a rule that failure of employers to submit the necessary documents that are in their possession as employers gives rise to the presumption that the presentation thereof is prejudicial to their cause.[72]

Moral damages are recoverable when the dismissal of an employee 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,

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[68] *Rollo*, p. 46.

[69] *Id*.

[70] *Id*. at 46-47.

[71] *Grandteq Industrial Steel Products, Inc. v. Margallo, supra* note 31, at 629.

[72] See *National Semiconductor (HK) Distribution, Ltd. v. NLRC,* 353 Phil. 551, 558 (1998).

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on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner.[73]

The Court also affirms the award of moral and exemplary damages to respondents. As aptly pointed out by both the NLRC and the CA, the acts constitutive of respondents' dismissal are clearly tainted with bad faith as they were done to punish them for filing a complaint against petitioner Symex before the LA and for their refusal to withdraw the same.

Petitioner Arcega is not liable for obligations of petitioner Symex absent showing of gross negligence or bad faith on his part.

Finally, as to petitioner Arcega's liability for the obligations of Symex to respondents, the Court notes that there was no showing that Arcega, as President of Symex, willingly and knowingly voted or assented to the unlawful acts of the company.

In *Guillermo v. Uson*,[74] the Court resolved the twin doctrines of piercing the veil of corporate fiction and personal liability of company officers in labor cases. According to the Court:

> The common thread running among the aforementioned cases, however, is that the veil of corporate fiction can be pierced, and **responsible corporate directors and officers or even a separate but related corporation, may be impleaded and held answerable solidarily in a labor case, even after final judgment and on execution, so long as it is established that such persons have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so.** When the shield of a separate corporate identity is used to commit wrongdoing and opprobriously elude responsibility, the courts and the legal authorities in a labor case have not hesitated to step in and shatter the said shield and deny the usual protections to the offending party, even after final judgment. The key element is the presence of fraud, malice or bad faith. Bad faith, in this instance,

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[73] *Kay Products Inc. v. Court of Appeals,* 502 Phil. 783, 798 (2005); *Norkis Trading Co., Inc. v. NLRC,* 504 Phil. 709, 719-720 (2005).

[74] G.R. No. 198967, March 7, 2016, 785 SCRA 543.

does not connote bad judgment or negligence but imparts a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.

As the foregoing implies, there is no hard and fast rule on when corporate fiction may be disregarded; instead, each case must be evaluated according to its peculiar circumstances. For the case at bar, applying the above criteria, **a finding of personal and solidary liability against a corporate officer like Guillermo must be rooted on a satisfactory showing of fraud, bad faith or malice, or the presence of any of the justifications for disregarding the corporate fiction**.[75] (Emphasis supplied)

A corporation is a juridical entity with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[76] Thus, as a general rule, an officer may not be held liable for the corporation's labor obligations unless he acted with evident malice and/or bad faith in dismissing an employee.[77] Section 31[78] of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation. To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty

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[75] *Id*. at 556-557.

[76] *The Coffee Bean and Tea Leaf Philippines, Inc. v. Arenas,* 755 Phil. 882, 891 (2015).

[77] *Id*. at 891-892.

[78] SEC. 31. *Liability of directors, trustees or officers*. — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

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of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.[79]

Based on the records, respondents failed to specifically allege either in their complaint or position paper that Arcega, as an officer of Symex, willfully and knowingly assented to the acts of Capt. Cura, or that Arcega had been guilty of gross negligence or bad faith in directing the affairs of the corporation. In fact, there was no evidence at all to show Arcega's participation in the illegal dismissal of respondents. Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold Arcega personally liable for the monetary awards to the respondents, are lacking.

Arcega is merely one of the officers of Symex and to single him out and require him to personally answer for the liabilities of Symex are without basis.

The Court has repeatedly emphasized that the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception.[80] To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

WHEREFORE, the petition is **DENIED**. The Decision dated January 12, 2012 and the Resolution dated June 27, 2012 of the Court of Appeals in CA-G.R. SP No. 119039 are hereby **AFFIRMED with MODIFICATION** in that petitioner Rafael Y. Arcega is absolved from solidary liability.

SO ORDERED.

Carpio (*Chairperson*), *Peralta,* and *Reyes, Jr., JJ.,* concur.

Perlas-Bernabe, JJ., on official leave.

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[79] *Heirs of Fe Tan Uy v. International Exchange Bank,* 703 Phil. 477, 486 (2013).

[80] *Id*. at 487.