Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

MIRANT (PHILIPPINES) CORPORATION AND EDGARDO A. BAUTISTA,
Petitioners,

- versus -

JOSELITO A. CARO,
Respondent.

G.R. No. 181490

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:
APR 23 2014

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DECISION

VILLARAMA, JR., *J.:*

At bar is a petition[1] under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) dated June 26, 2007 and January 11, 2008, respectively, which reversed and set aside the Decision[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 046551-05 (NCR-00-03-02511-05). The NLRC decision vacated and set aside the Decision[5] of the Labor Arbiter which found that respondent Joselito A. Caro (Caro) was illegally dismissed by petitioner Mirant (Philippines) Corporation (Mirant).

Petitioner corporation is organized and operating under and by virtue of the laws of the Republic of the Philippines. It is a holding company that owns shares in project companies such as Mirant Sual Corporation and Mirant Pagbilao Corporation (Mirant Pagbilao) which operate and maintain power stations located in Sual, Pangasinan and Pagbilao, Quezon,

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1 *Rollo*, pp. 13-80.
2 Id. at 145-159. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa concurring.
3 Id. at 162-164.
4 Id. at 165-181.
5 Id. at 434-444.

respectively. Petitioner corporation and its related companies maintain around 2,000 employees detailed in its main office and other sites. Petitioner corporation had changed its name to CEPA Operations in 1996 and to Southern Company in 2001. In 2002, Southern Company was sold to petitioner Mirant whose corporate parent is an Atlanta-based power producer in the United States of America.[6] Petitioner corporation is now known as Team Energy Corporation.[7]

Petitioner Edgardo A. Bautista (Bautista) was the President of petitioner corporation when respondent was terminated from employment.[8]

Respondent was hired by Mirant Pagbilao on January 3, 1994 as its Logistics Officer. In 2002, when Southern Company was sold to Mirant, respondent was already a Supervisor of the Logistics and Purchasing Department of petitioner. At the time of the severance of his employment, respondent was the Procurement Supervisor of Mirant Pagbilao assigned at petitioner corporation's corporate office. As Procurement Supervisor, his main task was to serve as the link between the Materials Management Department of petitioner corporation and its staff, and the suppliers and service contractors in order to ensure that procurement is carried out in conformity with set policies, procedures and practices. In addition, respondent was put incharge of ensuring the timely, economical, safe and expeditious delivery of materials at the right quality and quantity to petitioner corporation's plant. Respondent was also responsible for guiding and overseeing the welfare and training needs of the staff of the Materials Management Department. Due to the nature of respondent's functions, petitioner corporation considers his position as confidential.[9]

The antecedent facts follow:

Respondent filed a complaint[10] for illegal dismissal and money claims for 13th and 14th month pay, bonuses and other benefits, as well as the payment of moral and exemplary damages and attorney's fees. Respondent posits the following allegations in his Position Paper:[11]

On January 3, 1994, respondent was hired by petitioner corporation as its Logistics Officer and was assigned at petitioner corporation's corporate office in Pasay City. At the time of the filing of the complaint, respondent was already a Supervisor at the Logistics and Purchasing Department with a monthly salary of ₱39,815.00.

On November 3, 2004, petitioner corporation conducted a random drug test where respondent was randomly chosen among its employees who

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6 Id. at 434-435, 438.
7 Id. at 15.
8 Id.
9 Id. at 434-435.
10 Id. at 231.
11 Records (Vol. I), pp. 7-15.

would be tested for illegal drug use. Through an Intracompany Correspondence,[12] these employees were informed that they were selected for random drug testing to be conducted on the same day that they received the correspondence. Respondent was duly notified that he was scheduled to be tested after lunch on that day. His receipt of the notice was evidenced by his signature on the correspondence.

Respondent avers that at around 11:30 a.m. of the same day, he received a phone call from his wife's colleague who informed him that a bombing incident occurred near his wife's work station in Tel Aviv, Israel where his wife was then working as a caregiver. Respondent attached to his Position Paper a Press Release[13] of the Department of Foreign Affairs (DFA) in Manila to prove the occurrence of the bombing incident and a letter[14] from the colleague of his wife who allegedly gave him a phone call from Tel Aviv.

Respondent claims that after the said phone call, he proceeded to the Israeli Embassy to confirm the news on the alleged bombing incident. Respondent further claims that before he left the office on the day of the random drug test, he first informed the secretary of his Department, Irene Torres (Torres), at around 12:30 p.m. that he will give preferential attention to the emergency phone call that he just received. He also told Torres that he would be back at the office as soon as he has resolved his predicament. Respondent recounts that he tried to contact his wife by phone but he could not reach her. He then had to go to the Israeli Embassy to confirm the bombing incident. However, he was told by Eveth Salvador (Salvador), a lobby attendant at the Israeli Embassy, that he could not be allowed entry due to security reasons.

On that same day, at around 6:15 p.m., respondent returned to petitioner corporation's office. When he was finally able to charge his cellphone at the office, he received a text message from Tina Cecilia (Cecilia), a member of the Drug Watch Committee that conducted the drug test, informing him to participate in the said drug test. He immediately called up Cecilia to explain the reasons for his failure to submit himself to the random drug test that day. He also proposed that he would submit to a drug test the following day at his own expense. Respondent never heard from Cecilia again.

On November 8, 2004, respondent received a Show Cause Notice[15] from petitioner corporation through Jaime Dulot (Dulot), his immediate supervisor, requiring him to explain in writing why he should not be charged with "unjustified refusal to submit to random drug testing." Respondent submitted his written explanation[16] on November 11, 2004. Petitioner

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12 Id. at 16.
13 Id. at 17.
14 Id. at 18.
15 CA *rollo*, p. 273.
16 *Rollo*, p. 245.

corporation further required respondent on December 14, 2004 to submit additional pieces of supporting documents to prove that respondent was at the Israeli Embassy in the afternoon of November 3, 2004 and that the said bombing incident actually occurred. Respondent requested for a hearing to explain that he could not submit proof that he was indeed present at the Israeli Embassy during the said day because he was not allegedly allowed entry by the embassy due to security reasons. On January 3, 2005, respondent submitted the required additional supporting documents.[17]

On January 13, 2005, petitioner corporation's Investigating Panel issued an Investigating Report[18] finding respondent guilty of "unjustified refusal to submit to random drug testing" and recommended a penalty of four working weeks suspension without pay, instead of termination, due to the presence of mitigating circumstances. In the same Report, the Investigating Panel also recommended that petitioner corporation should review its policy on random drug testing, especially of the ambiguities cast by the term "unjustified refusal."

On January 19, 2005, petitioner corporation's Asst. Vice President for Material Management Department, George K. Lamela, Jr. (Lamela), recommended[19] that respondent be terminated from employment instead of merely being suspended. Lamela argued that even if respondent did not outrightly refuse to take the random drug test, he avoided the same. Lamela averred that "avoidance" was synonymous with "refusal."

On February 14, 2005, respondent received a letter[20] from petitioner corporation's Vice President for Operations, Tommy J. Sliman (Sliman), terminating him on the same date. Respondent filed a Motion to Appeal[21] his termination on February 23, 2005. The motion was denied by petitioner corporation on March 1, 2005.

It is the contention of respondent that he was illegally dismissed by petitioner corporation due to the latter's non-compliance with the twin requirements of notice and hearing. He asserts that while there was a notice charging him of "unjustified refusal to submit to random drug testing," there was no notice of hearing and petitioner corporation's investigation was not the equivalent of the "hearing" required under the law which should have accorded respondent the opportunity to be heard.

Respondent further asserts that he was illegally dismissed due to the following circumstances:

1. He signed the notice that he was randomly selected as a participant to the company drug testing;

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17 Id. at 244.
18 Id. at 246-252.
19 Id. at 253-254.
20 Records (Vol. I), p. 142.
21 *Rollo*, pp. 255-257.

2. Even the Investigating Panel was at a loss in interpreting the charge because it believed that the term "refusal" was ambiguous, and therefore such doubt must be construed in his favor; and

3. He agreed to take the drug test the following day at his own expense, which he says was clearly not an indication of evasion from the drug test.

Petitioner corporation counters with the following allegations:

On November 3, 2004, a random drug test was conducted on petitioner corporation's employees at its Corporate Office at the CTC Bldg. in Roxas Blvd., Pasay City. The random drug test was conducted pursuant to Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." Respondent was randomly selected among petitioner's employees to undergo the said drug test which was to be carried out by Drug Check Philippines, Inc.[22]

When respondent failed to appear at the scheduled drug test, Cecilia prepared an incident report addressed to Dulot, the Logistics Manager of the Materials Management Department.[23] Since it was stated under petitioner corporation's Mirant Drugs Policy Employee Handbook to terminate an employee for "unjustified refusal to submit to a random drug test" for the first offense, Dulot sent respondent a Show Cause Notice[24] dated November 8, 2004, requiring him to explain why no disciplinary action should be imposed for his failure to take the random drug test. Respondent, in a letter dated November 11, 2004, explained that he attended to an emergency call from his wife's colleague and apologized for the inconvenience he had caused. He offered to submit to a drug test the next day even at his expense.[25] Finding respondent's explanation unsatisfactory, petitioner corporation formed a panel to investigate and recommend the penalty to be imposed on respondent.[26] The Investigating Panel found respondent's explanations as to his whereabouts on that day to be inconsistent, and recommended that he be suspended for four weeks without pay. The Investigating Panel took into account that respondent did not directly refuse to be subjected to the drug test and that he had been serving the company for ten years without any record of violation of its policies. The Investigating Panel further recommended that the Mirant Drug Policy be reviewed to clearly define the phrase "unjustified refusal to submit to random drug testing."[27] Petitioner corporation's Vice-President for Operations, Sliman, however disagreed with the Investigating Panel's recommendations and terminated the services of respondent in accordance with the subject drug policy. Sliman likewise stated that respondent's violation of the policy

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22 Records (Vol. I), pp. 91-92.
23 CA *rollo*, p. 260.
24 Supra note 15.
25 Supra note 16.
26 CA *rollo*, p. 275.
27 Supra note 18.

amounted to willful breach of trust and loss of confidence.[28]

A cursory examination of the pleadings of petitioner corporation would show that it concurs with the narration of facts of respondent on material events from the time that Cecilia sent an electronic mail at about 9:23 a.m. on November 3, 2004 to all employees of petitioner corporation assigned at its Corporate Office advising them of the details of the drug test – up to the time of respondent's missing his schedule to take the drug test. Petitioner corporation and respondent's point of disagreement, however, is whether respondent's proffered reasons for not being able to take the drug test on the scheduled day constituted valid defenses that would have taken his failure to undergo the drug test out of the category of "unjustified refusal." Petitioner corporation argues that respondent's omission amounted to "unjustified refusal" to submit to the random drug test as he could not proffer a satisfactory explanation why he failed to submit to the drug test:

1. Petitioner corporation is not convinced that there was indeed such a phone call at noon of November 3, 2004 as respondent could not even tell who called him up.

2. Respondent could not even tell if he received the call *via* the landline telephone service at petitioner corporation's office or at his mobile phone.

3. Petitioner corporation was also of the opinion that granting there was such a phone call, there was no compelling reason for respondent to act on it at the expense of his scheduled drug testing. Petitioner corporation principally pointed out that the call merely stated that a bomb exploded near his wife's work station without stating that his wife was affected. Hence, it found no point in confirming it with extraordinary haste and forego the drug test which would have taken only a few minutes to accomplish. If at all, respondent should have undergone the drug testing first before proceeding to confirm the news so as to leave his mind free from this obligation.

4. Petitioner corporation maintained that respondent could have easily asked permission from the Drug Watch Committee that he was leaving the office since the place where the activity was conducted was very close to his work station.[29]

To the mind of petitioners, they are not liable for illegal dismissal because all of these circumstances prove that respondent really eluded the random drug test and was therefore validly terminated for cause after being properly accorded with due process. Petitioners further argue that they have already fully settled the claim of respondent as evidenced by a Quitclaim which he duly executed. Lastly, petitioners maintain that they are not guilty

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28 Supra note 20.
29 Id. at 55.

of unfair labor practice as respondent's dismissal was not intended to curtail his right to self-organization; that respondent is not entitled to the payment of his 13th and 14th month bonuses and other incentives as he failed to show that he is entitled to these amounts according to company policy; that respondent is not entitled to reinstatement, payment of full back wages, moral and exemplary damages and attorney's fees due to his termination for cause.

In a decision dated August 31, 2005, Labor Arbiter Aliman D. Mangandog found respondent to have been illegally dismissed. The Labor Arbiter also found that the quitclaim purportedly executed by respondent was not a *bona fide* quitclaim which effectively discharged petitioners of all the claims of respondent in the case at bar. If at all, the Labor Arbiter considered the execution of the quitclaim as a clear attempt on the part of petitioners to mislead its office into thinking that respondent no longer had any cause of action against petitioner corporation. The decision stated, *viz.*:

> **WHEREFORE**, premises considered, this Office finds respondents GUILTY of illegal dismissal, and hereby ordered to jointly and severally reinstate complainant back to his former position without loss on seniority rights and benefits and to pay him his backwages and other benefits from the date he was illegally dismissed up to the time he is actually reinstated, partially computed as of this date in the amount of ₱258,797.50 (₱39,815.00 x 6.5 mos.) plus his 13th and 14th month pay in the amount of ₱43,132.91 or in the total amount of ₱301,930.41. Respondents are also ordered to pay complainant the amount of ₱3,000,000.00 as and by way of moral and exemplary damages, and to pay complainant the amount equivalent to ten percent (10%) of the total awards as and by way of attorney's fees.
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> SO ORDERED.[30]

The Labor Arbiter stated that while petitioner corporation observed the proper procedure in the termination of an employee for a purported authorized cause, such just cause did not exist in the case at bar. The decision did not agree with the conclusions reached by petitioner corporation's own Investigating Panel that while respondent did not refuse to submit to the questioned drug test and merely "avoided" it on the designated day, "avoidance" and "refusal" are one and the same. It also held that the terms "avoidance" and "refusal" are separate and distinct and that "the two words are not even synonymous with each other."[31] The Labor Arbiter considered as more tenable the stance of respondent that his omission merely resulted to a "failure" to submit to the said drug test – and not an "unjustified refusal." Even if respondent's omission is to be considered as refusal, the Labor Arbiter opined that it was not tantamount to "unjustified refusal" which constitutes as just cause for his termination. Finally, the Labor Arbiter found that respondent was entitled to moral and exemplary damages and attorney's fees.

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30 *Rollo*, pp. 443-444.
31 Id. at 443.

On appeal to the NLRC, petitioners alleged that the decision of the Labor Arbiter was rendered with grave abuse of discretion for being contrary to law, rules and established jurisprudence, and contained serious errors in the findings of facts which, if not corrected, would cause grave and irreparable damage or injury to petitioners. The NLRC, giving weight and emphasis to the inconsistencies in respondent's explanations, considered his omission as "unjustified refusal" in violation of petitioner corporation's drug policy. Thus, in a decision dated May 31, 2006, the NLRC ruled, *viz.*:

> x x x [Respondent] was duly notified as shown by copy of the notice x x x which he signed to acknowledge receipt thereof on the said date. [Respondent] did not refute [petitioner corporation's] allegation that he was also personally reminded of said drug test on the same day by Ms. Cecilia of [petitioner corporation's] drug watch committee. However, [respondent] was nowhere to be found at [petitioner corporation's] premises at the time when he was supposed to be tested. Due to his failure to take part in the random drug test, an incident report x x x was prepared by the Drug Cause Notice x x x to explain in writing why no disciplinary action should be taken against him for his unjustified refusal to submit to random drug test, a type D offense punishable with termination. Pursuant to said directive, [respondent] submitted an explanation x x x on 11 November 2004, pertinent portions of which read:
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> > "I was scheduled for drug test after lunch that day of November 3, 2004 as confirmed with Tina Cecilia. I was having my lunch when a colleague of my wife abroad called up informing me that there was something wrong [that] happened in their neighborhood, where a bomb exploded near her workstation. Immediately, I [left] the office to confirm said information but at around 12:30 P.M. that day, I informed MS. IRENE TORRES, our Department Secretary[,] that I would be attending to this emergency call. Did even [inform] her that I'll try to be back as soon as possible but unfortunately, I was able to return at 6:15 P.M. I didn't know that Tina was the one calling me on my cell that day. Did only receive her message after I charged my cell at the office that night. I was able to call back Tina Cecilia later [that] night if it's possible to have it (drug test) the next day.
> >
> > My apology [for] any inconvenience to the Drug Watch Committee, that I forgot everything that day including my scheduled drug test due to confusion of what had happened. It [was] not my intention not to undergo nor refuse to have a drug test knowing well that it's a company policy and it's mandated by law."
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> In the course of the investigation, [respondent] was requested to present proof pertaining to the alleged call he received on 3 November 2004 from a colleague of his wife regarding the bomb explosion in Tel Aviv, his presence at the Israel Embassy also on 3 November 2004. [Respondent], thereafter, submitted a facsimile which he allegedly received from his wife's colleague confirming that she called and informed him of the bombing incident. However, a perusal of said facsimile x x x reveals that the same cannot be given any probative value because, as correctly observed by [petitioners], it can barely be read and upon inquiry with

> PLDT, the international area code of Israel which is 00972 should appear on the face of the facsimile if indeed said facsimile originated from Israel. [Respondent] also could not present proof of his presence at the Israel Embassy on said time and date. He instead provided the name of a certain Ms. Eveth Salvador of said embassy who could certify that he was present thereat. Accordingly, Mr. Bailon, a member of the investigation panel, verified with Ms. Salvador who told him that she is only the telephone operator of the Israel Embassy and that she was not in a position to validate [respondent's] presence at the Embassy. Mr. Bailon was then referred to a certain Ms. Aimee Zandueta, also of said embassy, who confirmed that based on their records, [respondent] did not visit the embassy nor was he attended to by any member of said embassy on 3 November 2004. Ms. Zandueta further informed Mr. Bailon that no bombing occurred in Tel Aviv on 3 November 2004 and that the only reported incident of such nature occurred on 1 November 2004. A letter x x x to this effect was written by Consul Ziva Samech of the Embassy of Israel. A press release x x x of the Department of Foreign Affairs confirm[ed] that the bombing occurred on 1 November 2004.
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> In his explanation, the [respondent] stated that the reason why he had to leave the office on 3 November 2004 was to verify an information at the Israel Embassy of the alleged bombing incident on the same day. However, [petitioners] in their position paper alleged that Ms. Torres of [petitioner] company received a text message from him at around 12:47 p.m. informing her that he will try to be back since he had a lot of things to do and asking her if there was a signatory on that day. [Respondent] did not deny sending said text messages to Ms. Torres in his reply and rejoinder x x x. He actually confirmed that he was involved in the CIIS registration with all companies that was involved with [petitioner] company and worked on the registration of [petitioner] company's vehicles with TRO.
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> It is also herein noted that [respondent] had initially reported to Ms. Torres that it was his mother in law who informed him about the problem concerning his wife. However, in his written explanation x x x, the [respondent] stated that it was a friend of his wife, whom he could not even identify, who informed him of the alleged bombing incident in Tel Aviv, Israel. [Respondent] also did not deny receiving a cellphone call from Ms. Cecilia that day. He merely stated that he did not know that it was Ms. Cecilia calling him up in a cellphone and it was only after he charged his cellphone at the office that night that he received her message. In effect, [respondent] asserted that his cellphone battery was running low or drained. [Petitioners] were able to refute [these] averments of [respondent] when they presented [respondent's] Smart Billing Statement x x x showing that he was able to make a cellphone call at 5:29 p.m. to [petitioner corporation's] supplier, Mutico for a duration of two (2) minutes.[32]

Given the foregoing facts, the NLRC stated that the offer of respondent to submit to another drug test the following day, even at his expense, cannot operate to free him from liability. The NLRC opined that taking the drug test on the day following the scheduled random drug test would affect both the integrity and the accuracy of the specimen which was supposed to be taken from a randomly selected employee who was notified

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[32] Id. at 174-177.

of his/her selection on the same day that the drug test was to be administered. The NLRC further asserted that a drug test, conducted many hours or a day after the employee was notified, would compromise its results because the employee may have possibly taken remedial measures to metabolize or eradicate whatever drugs s/he may have ingested prior to the drug test.

The NLRC further stated that these circumstances have clearly established the falsity of respondent's claims and found no justifiable reason for respondent to refuse to submit to the petitioner corporation's random drug test. While the NLRC acknowledged that it was petitioner corporation's own Investigating Panel that considered respondent's failure to take the required drug test as mere "avoidance" and not "unjustified refusal," it concluded that such finding was merely recommendatory to guide top management on what action to take.

The NLRC also found that petitioner corporation's denial of respondent's motion to reconsider his termination was in order. Petitioner corporation's reasons for such denial are quoted in the NLRC decision, *viz.*:

> "Your appeal is anchored on your claim that you responded to an emergency call from someone abroad informing you that a bomb exploded near the work station of your wife making you unable to undergo the scheduled drug testing. This claim is groundless taking into account the following:
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> We are not convinced that there was indeed that call which you claim to have received noon of November 3, 2004. On the contrary, our belief is based on the fact that you could not tell who called you up or how the call got to you. If you forgot to ask the name of the person who called you up, surely you would have known how the call came to you. You said you were having lunch at the third floor of the CTC building when you received the call. There were only two means of communication available to you then: the land line telephone service in your office and your mobile phone. If your claim were *(sic)* not fabricated, you would be able to tell which of these two was used.
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> Granting that you indeed received that alleged call, from your own account, there was no compelling reason for you to act on it at the expense of your scheduled drug testing. The call, as it were, merely stated that 'something wrong happened (sic) in their neighborhood, where a bomb exploded near her workstation.' Nothing was said if your wife was affected. There is no point in confirming it with extraordinary haste and forego the drug test which would have taken only a few minutes to accomplish. If at all, you should have undergone the drug testing first before proceeding to confirm the news so as to leave your mind free from this obligation.
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> Additionally, if it was indeed necessary that you skip the scheduled drug testing to verify that call, why did you not ask permission from the Drug Watch [C]ommittee that you were leaving? The place where the activity was being conducted was very close to your workstation. It was absolutely within your reach to inform any of its members that you were attending to an emergency call. Why did you not do so?

> All this undisputedly proves that you merely eluded the drug testing. Your claim that you did not refuse to be screened carries no value. Your act was a negation of your words."[33]

The NLRC found that respondent was not only validly dismissed for cause – he was also properly accorded his constitutional right to due process as shown by the following succession of events:

1. On November 8, 2004, respondent was given a show-cause notice requiring him to explain in writing within three days why no disciplinary action should be taken against him for violation of company policy on unjustified refusal to submit to random drug testing – a type D offense which results in termination.

2. Respondent submitted his explanation on November 11, 2004.

3. On December 9, 2004, respondent was given a notice of investigation[34] informing him of a meeting on December 13, 2004 at 9:00 a.m. In this meeting, respondent was allowed to explain his side, present his evidences and witnesses, and confront the witnesses presented against him.

4. On February 14, 2005, respondent was served a letter of termination which clearly stated the reasons therefor.[35]

The NLRC, notwithstanding its finding that respondent was dismissed for cause and with due process, granted financial assistance to respondent on equitable grounds. It invoked the past decisions of this Court which allowed the award of financial assistance due to factors such as long years of service or the Court's concern and compassion towards labor where the infraction was not so serious. Thus, considering respondent's 10 years of service with petitioner corporation without any record of violation of company policies, the NLRC ordered petitioner corporation to pay respondent financial assistance equivalent to one-half (1/2) month pay for every year of service in the amount of One Hundred Ninety-Nine Thousand Seventy-Five Pesos (₱199,075.00). The NLRC decision states thus:

> WHEREFORE, the decision dated 31 August 2005 is VACATED and SET ASIDE. The instant complaint is dismissed for lack of merit. However, respondent Mirant [Philippines] Corp. is ordered to pay complainant financial assistance in the amount of one hundred ninety-nine thousand seventy five pesos (₱199,075.00).
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> SO ORDERED.[36]

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33 Id. at 178-179.
34 Records (Vol. I), p. 120.
35 *Rollo*, p. 179.
36 Id. at 180.

Respondent filed a motion for reconsideration,[37] while petitioners filed a motion for partial reconsideration[38] of the NLRC decision. In a Resolution[39] dated June 30, 2006, the NLRC denied both motions.

In a petition for certiorari before the CA, respondent raised the following issues: whether the NLRC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of its jurisdiction when it construed that the terms "failure," "avoidance," "refusal" and "unjustified refusal" have similar meanings; reversed the factual findings of the Labor Arbiter; and held that respondent deliberately breached petitioner's Anti-Drugs Policy.[40] Respondent further argued before the appellate court that his failure to submit himself to the random drug test was justified because he merely responded to an emergency call regarding his wife's safety in Tel Aviv, and that such failure cannot be considered synonymous with "avoidance" or "refusal" so as to mean "unjustified refusal" in order to be meted the penalty of termination.[41]

The CA disagreed with the NLRC and ruled that it was immaterial whether respondent failed, refused, or avoided being tested. To the appellate court, the singular fact material to this case was that respondent did not get himself tested in clear disobedience of company instructions and policy. Despite such disobedience, however, the appellate court considered the penalty of dismissal to be too harsh to be imposed on respondent, *viz.*:

> x x x While it is a management prerogative to terminate its erring employee for willful disobedience, the Supreme Court has recognized that such penalty is too harsh depending on the circumstances of each case. "There must be reasonable proportionality between, on the one hand, the willful disobedience by the employee and, on the other hand, the penalty imposed therefor" x x x.
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> In this case, [petitioner corporation's] own investigating panel has revealed that the penalty of dismissal is too harsh to impose on [respondent], considering that this was the first time in his 10-year employment that the latter violated its company policies. The investigating panel even suggested that a review be had of the company policy on the term "unjustified refusal" to clearly define what constitutes a violation thereof. The recommendation of the investigating panel is partially reproduced as follows:
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> "VII. Recommendation
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> However, despite having violated the company policy, the panel recommends 4 working weeks suspension without pay (twice the company policy's maximum of 2 working weeks suspension) instead of termination due to the following mitigating circumstances.

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37 CA *rollo*, pp. 18-24.
38 Id. at 419-429.
39 Id. at 16-17.
40 Id. at 5-6.
41 Id. at 7-12.

> 1. Mr. Joselito A. Caro did not directly refuse to be subjected to the random drug test scheduled on November 3, 2004.
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> 2. In the case of Mr. Joselito A. Caro, the two conditions for termination (Unjustified and Refusal) were not fully met as he expressly agreed to undergo drug test.
>
> 3. Mr. Joselito A. Caro voluntarily offered himself to undergo drug test the following day at his own expense.
>
> Doubling the maximum of 2 weeks suspension to 4 weeks is indicative of the gravity of the offense committed. The panel believes that although mitigating factors partially offset reasons for termination, the 2 weeks maximum suspension is too lenient penalty for such an offense.
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> The Panel also took into consideration that Mr. Joselito A. Caro has served the company for ten (10) years without any record of violation of the company policies.
>
> x x x x
>
> The Panel also recommends that Management review the Mirant Drug Policy specifically 'Unjustified [R]efusal to submit to random drug testing.' The Panel believes that the term refusal casts certain ambiguities and should be clearly defined."[42]

The CA however found that award of moral and exemplary damages is without basis due to lack of bad faith on the part of the petitioner corporation which merely acted within its management prerogative. In its assailed Decision dated June 26, 2007, the CA ruled, *viz.*:

> IN VIEW OF ALL THE FOREGOING, the instant petition is **GRANTED**. The assailed Decision dated May 31, 2006 and Resolution dated June 30, 2006 rendered by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 046551-05 (NCR-00-03-02511-05) are **REVERSED and SET ASIDE**. The Labor Arbiter's Decision dated August 31, 2005 is hereby **REINSTATED with MODIFICATION** by omitting the award of moral and exemplary damages as well as attorney's fees, and that the petitioner's salary equivalent to four (4) working weeks at the time he was terminated be deducted from his backwages. No cost.
>
> SO ORDERED.[43]

Petitioner moved for reconsideration. In its assailed Resolution dated January 11, 2008, the CA denied petitioners' motion for reconsideration for lack of merit. It ruled that the arguments in the motion for reconsideration were already raised in their past pleadings.

In this instant Petition, petitioners raise the following grounds:

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42 *Rollo*, pp. 155-157. Citations omitted.
43 Id. at 158.

I. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO CONSIDER THAT:

A. THE PETITION FOR CERTIORARI FILED BY RESPONDENT CARO SHOULD HAVE BEEN SUMMARILY DISMISSED CONSIDERING THAT IT LACKED THE REQUISITE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING REQUIRED BY THE RULES OF COURT; OR

B. AT THE VERY LEAST, THE SAID PETITION FOR CERTIORARI FILED BY RESPONDENT CARO SHOULD HAVE BEEN CONSIDERED MOOT SINCE RESPONDENT CARO HAD ALREADY PREVIOUSLY EXECUTED A QUITCLAIM DISCHARGING THE PETITIONERS FROM ALL HIS MONETARY CLAIMS.

II. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND APPLICABLE DECISIONS OF THE HONORABLE COURT, CONSIDERING THAT:

A. THE COURT OF APPEALS REVERSED THE DECISION DATED 31 MAY 2006 OF THE NLRC ON THE GROUND THAT THERE WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION NOTWITHSTANDING THE FACT THAT IT AFFIRMED THE NLRC'S FINDINGS THAT RESPONDENT CARO DELIBERATELY DISOBEYED PETITIONER MIRANT'S ANTI-DRUGS POLICY.

B. THE PENALTY OF TERMINATION SHOULD HAVE BEEN SUSTAINED BY THE COURT OF APPEALS GIVEN ITS POSITIVE FINDING THAT RESPONDENT CARO DELIBERATELY AND WILLFULLY DISOBEYED PETITIONER MIRANT'S ANTI-DRUGS POLICY.

C. IN INVALIDATING RESPONDENT CARO'S DISMISSAL, THE COURT OF APPEALS SUBSTITUTED WITH ITS OWN DISCRETION A CLEAR MANAGEMENT PREROGATIVE BELONGING ONLY TO PETITIONER MIRANT IN THE INSTANT CASE.

D. THE WILLFUL AND DELIBERATE VIOLATION OF PETITIONER MIRANT'S ANTI-DRUGS POLICY AGGRAVATED RESPONDENT CARO'S WRONGFUL CONDUCT WHICH JUSTIFIED HIS TERMINATION.

E. IN INVALIDATING RESPONDENT CARO'S DISMISSAL, THE COURT OF APPEALS, IN EFFECT, BELITTLED THE IMPORTANCE AND SERIOUSNESS OF PETITIONER MIRANT'S ANTI-DRUGS POLICY AND CONSEQUENTLY HAMPERED THE EFFECTIVE IMPLEMENTATION OF THE SAME.

F. THE EXISTENCE OF OTHER GROUNDS FOR CARO'S DISMISSAL, SUCH AS WILLFUL DISOBEDIENCE AND [LOSS] OF TRUST AND CONFIDENCE, JUSTIFIED HIS TERMINATION FROM EMPLOYMENT.

III. NONETHELESS, THE AWARD OF FINANCIAL ASSISTANCE IN FAVOR OF RESPONDENT CARO IS NOT WARRANTED CONSIDERING THAT RESPONDENT CARO'S WILLFUL AND DELIBERATE REFUSAL TO SUBJECT HIMSELF TO PETITIONER MIRANT'S DRUG TEST AND HIS SUBSEQUENT EFFORTS TO CONCEAL THE SAME SHOWS HIS DEPRAVED MORAL CHARACTER.

IV. THE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT HELD PETITIONER BAUTISTA PERSONALLY LIABLE FOR [RESPONDENT] CARO'S UNFOUNDED CLAIMS CONSIDERING THAT, ASIDE FROM RESPONDENT CARO'S DISMISSAL BEING LAWFUL, PETITIONER BAUTISTA MERELY ACTED WITHIN THE SCOPE OF HIS FUNCTIONS IN GOOD FAITH.[44]

We shall first rule on the issue raised by petitioners that the petition for certiorari filed by respondent with the CA should have been summarily dismissed as it lacked the requisite verification and certification against forum shopping under Sections 4 and 5, Rule 7 of the Rules, *viz.*:

> SEC. 4. *Verification.* – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.
>
> A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.
>
> SEC. 5. *Certification against forum shopping*. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless

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[44] Id. at 33-35.

> otherwise provided, upon motion and after hearing. The submission of a false certification or noncompliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

It is the contention of petitioners that due to respondent's failure to subscribe the Verification and Certification of Non-Forum Shopping before a Notary Public, the said verification and certification cannot be considered to have been made under oath. Accordingly, such omission is fatal to the entire petition for not being properly verified and certified. The CA therefore erred when it did not dismiss the petition.

This jurisdiction has adopted in the field of labor protection a liberal stance towards the construction of the rules of procedure in order to serve the ends of substantial justice. This liberal construction in labor law emanates from the mandate that the workingman's welfare should be the primordial and paramount consideration.[45] Thus, if the rules of procedure will stunt courts from fulfilling this mandate, the rules of procedure shall be relaxed if the circumstances of a case warrant the exercise of such liberality. If we sustain the argument of petitioners in the case at bar that the petition for certiorari should have been dismissed outright by the CA, the NLRC decision would have reached finality and respondent would have lost his remedy and denied his right to be protected against illegal dismissal under the Labor Code, as amended.

It is beyond debate that petitioner corporation's enforcement of its Anti-Drugs Policy is an exercise of its management prerogative. It is also a conceded fact that respondent "failed" to take the random drug test as scheduled, and under the said company policy, such failure metes the penalty of termination for the first offense. A plain, simple and literal application of the said policy to the omission of respondent would have warranted his outright dismissal from employment – if the facts were that simple in the case at bar. Beyond debate – the facts of this case are not – and this disables the Court from permitting a straight application of an otherwise *prima facie* straightforward rule if the ends of substantial justice have to be served.

It is the crux of petitioners' argument that respondent's omission amounted to "unjust refusal" because he could not sufficiently support with convincing proof and evidence his defenses for failing to take the random drug test. For petitioners, the inconsistencies in respondent's explanations likewise operated to cast doubt on his real reasons and motives for not submitting to the random drug test on schedule. In recognition of these inconsistencies and the lack of convincing proof from the point of view of

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[45] *Bunagan v. Sentinel Watchman & Protective Agency, Inc.,* 533 Phil. 283, 291 (2006), citing *Santos v. Velarde*, 450 Phil. 381, 390-391 (2003).

petitioners, the NLRC reversed the decision of the Labor Arbiter. The CA found the ruling of the Labor Arbiter to be more in accord with the facts, law and existing jurisprudence.

We agree with the disposition of the appellate court that there was illegal dismissal in the case at bar.

While the adoption and enforcement by petitioner corporation of its Anti-Drugs Policy is recognized as a valid exercise of its management prerogative as an employer, such exercise is not absolute and unbridled. Managerial prerogatives are subject to limitations provided by law, collective bargaining agreements, and the general principles of fair play and justice.[46] In the exercise of its management prerogative, an employer must therefore ensure that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.[47] The Anti-Drugs Policy of Mirant fell short of these requirements.

Petitioner corporation's subject Anti-Drugs Policy fell short of being fair and reasonable.

First. The policy was not clear on what constitutes "unjustified refusal" when the subject drug policy prescribed that an employee's "unjustified refusal" to submit to a random drug test shall be punishable by the penalty of termination for the first offense. To be sure, the term "unjustified refusal" could not possibly cover all forms of "refusal" as the employee's resistance, to be punishable by termination, must be "unjustified." To the mind of the Court, it is on this area where petitioner corporation had fallen short of making it clear to its employees – as well as to management – as to what types of acts would fall under the purview of "unjustified refusal." Even petitioner corporation's own Investigating Panel recognized this ambiguity, *viz.*:

> The Panel also recommends that Management review the Mirant Drug Policy specifically "Unjustified [R]efusal to submit to random drug testing." The Panel believes that the term "refusal" casts certain ambiguities and should be clearly defined.[48]

The fact that petitioner corporation's own Investigating Panel and its Vice President for Operations, Sliman, differed in their recommendations regarding respondent's case are first-hand proof that there, indeed, is ambiguity in the interpretation and application of the subject drug policy. The fact that petitioner corporation's own personnel had to dissect the

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46 *Supreme Steel Corporation v. Nagkakaisang Manggagawa ng Supreme Independent Union (NMS-IND-APL)*, G.R. No. 185556, March 28, 2011, 646 SCRA 501, 525, citing *DOLE Philippines, Inc. v. Pawis ng Makabayang Obrero (PAMAO-NFL)*, 443 Phil. 143, 149 (2003).

47 *The Coca-Cola Export Corporation v. Gacayan,* G.R. No. 149433, December 15, 2010, 638 SCRA 377, 399, citing *St. Michael's Institute v. Santos*, 422 Phil. 723, 732-733 (2001).

48 *Rollo*, p. 252.

intended meaning of "unjustified refusal" is further proof that it is not clear on what context the term "unjustified refusal" applies to. It is therefore not a surprise that the Labor Arbiter, the NLRC and the CA have perceived the term "unjustified refusal" on different prisms due to the lack of parameters as to what comes under its purview. To be sure, the fact that the courts and entities involved in this case had to engage in semantics – and come up with different constructions – is yet another glaring proof that the subject policy is not clear creating doubt that respondent's dismissal was a result of petitioner corporation's valid exercise of its management prerogative.

It is not a mere jurisprudential principle, but an enshrined provision of law, that all doubts shall be resolved in favor of labor. Thus, in Article 4 of the Labor Code, as amended, "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor] Code, including its implementing rules and regulations, shall be resolved in favor of labor." In Article 1702 of the New Civil Code, a similar provision states that "[i]n case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer." Applying these provisions of law to the circumstances in the case at bar, it is not fair for this Court to allow an ambiguous policy to prejudice the rights of an employee against illegal dismissal. To hold otherwise and sustain the stance of petitioner corporation would be to adopt an interpretation that goes against the very grain of labor protection in this jurisdiction. As correctly stated by the Labor Arbiter, "when a conflicting interest of labor and capital are weighed on the scales of social justice, the heavier influence of the latter must be counter-balanced by the sympathy and compassion the law must accord the underprivileged worker."[49]

Second. The penalty of termination imposed by petitioner corporation upon respondent fell short of being reasonable. Company policies and regulations are generally valid and binding between the employer and the employee unless shown to be grossly oppressive or contrary to law[50]– as in the case at bar. Recognizing the ambiguity in the subject policy, the CA was more inclined to adopt the recommendation of petitioner corporation's own Investigating Panel over that of Sliman and the NLRC. The appellate court succinctly but incisively pointed out, *viz.*:

> x x x We find, as correctly pointed out by the investigating panel, that the [petitioner corporation's] Anti-Drug Policy is excessive in terminating an employee for his "unjustified refusal" to subject himself to the random drug test on ***first offense***, **without clearly defining what amounts to an "unjustified refusal."**
>
> Thus, We find that the recommended four (4) working weeks' suspension without pay as the reasonable penalty to be imposed on [respondent] for his disobedience. x x x[51] (Additional emphasis supplied.)

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49 Id. at 443, citing *Philippine National Construction Corporation v. NLRC*, 342 Phil. 769, 782 (1997).
50 Id. at 157, citing *Cosep v. NLRC*, G.R. No. 124966, June 16, 1998, 290 SCRA 704, 714.
51 Id. at 157-158.

To be sure, the unreasonableness of the penalty of termination as imposed in this case is further highlighted by a fact admitted by petitioner corporation itself: that for the ten-year period that respondent had been employed by petitioner corporation, he did not have any record of a violation of its company policies.

As to the other issue relentlessly being raised by petitioner corporation that respondent's petition for certiorari before the CA should have been considered moot as respondent had already previously executed a quitclaim discharging petitioner corporation from all his monetary claims, we cannot agree. Quitclaims executed by laborers are ineffective to bar claims for the full measure of their legal rights,[52] especially in this case where the evidence on record shows that the amount stated in the quitclaim exactly corresponds to the amount claimed as unpaid wages by respondent under Annex A[53] of his Reply[54] filed with the Labor Arbiter. *Prima facie*, this creates a false impression that respondent's claims have already been settled by petitioner corporation – discharging the latter from all of respondent's monetary claims. In truth and in fact, however, the amount paid under the subject quitclaim represented the salaries of respondent that remained unpaid at the time of his termination – not the amounts being claimed in the case at bar.

We believe that this issue was extensively discussed by both the Labor Arbiter and the CA and we find no reversible error on the disposition of this issue, *viz.*:

> A review of the records show that the alluded quitclaim, which was undated and not even notarized although signed by the petitioner, was for the amount of ₱59,630.05. The said quitclaim was attached as Annex 26 in the [petitioners'] Position Paper filed before the Labor Arbiter. As fully explained by [respondent] in his Reply filed with the Labor Arbiter, the amount stated therein was his last pay due to him when he was terminated, not the amount representing his legitimate claims in this labor suit x x x. To bolster his defense, [respondent] submitted the pay form issued to him by the [petitioner corporation], showing his net pay at ₱59,630.05 exactly the amount stated in the quitclaim x x x. Then, too, as stated on the quitclaim itself, the intention of the waiver executed by the [respondent] was to release [petitioner corporation] from any liability only on the said amount representing [respondent's] "full and final payment of [his] last salary/separation pay" x x x. It did not in any way waive [respondent's] right to pursue his legitimate claims regarding his dismissal in a labor suit. Thus, We gave no credence to [petitioners'] private defense that alleged quitclaim rendered the instant petition moot.[55]

Finally, the petition avers that petitioner Bautista should not be held personally liable for respondent's dismissal as he acted in good faith and within the scope of his official functions as then president of petitioner corporation. We agree with petitioners. Both decisions of the Labor Arbiter

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52 Id. at 442.
53 Id. at 398.
54 Id. at 393-397.
55 Id. at 163-164. Citations omitted.

and the CA did not discuss the basis of the personal liability of petitioner Bautista, and yet the dispositive portion of the decision of the Labor Arbiter – which was affirmed by the appellate court – held him jointly and severally liable with petitioner corporation, *viz.*:

> WHEREFORE, premises considered, this Office finds **respondents** GUILTY of illegal dismissal, and hereby ordered to **jointly and severally** reinstate complainant back to his former position without loss on seniority rights and benefits and to pay him his backwages and other benefits from the date he was illegally dismissed up to the time he is actually reinstated, partially computed as of this date in the amount of ₱258,797.50 (₱39,815.00 x 6.5 mos.) plus his 13th and 14th month pay in the amount of ₱43,132.91 or in the total amount of ₱301,930.41. Respondents are also ordered to pay complainant the amount of ₱3,000,000.00 as and by way of moral and exemplary damages, and to pay complainant the amount equivalent to ten percent (10%) of the total awards as and by way of attorney's fees.
>
> SO ORDERED.[56] (Emphasis supplied.)

A corporation has a personality separate and distinct from its officers and board of directors who may only be held personally liable for damages if it is proven that they acted with malice or bad faith in the dismissal of an employee.[57] Absent any evidence on record that petitioner Bautista acted maliciously or in bad faith in effecting the termination of respondent, plus the apparent lack of allegation in the pleadings of respondent that petitioner Bautista acted in such manner, the doctrine of corporate fiction dictates that only petitioner corporation should be held liable for the illegal dismissal of respondent.

WHEREFORE, the petition for review on certiorari is **DENIED**. The assailed Decision dated June 26, 2007 and the Resolution dated January 11, 2008 in CA-G.R. SP No. 96153 are **AFFIRMED** with the **MODIFICATION** that only petitioner corporation is found **GUILTY** of the illegal dismissal of respondent Joselito A. Caro. Petitioner Edgardo A. Bautista is not held personally liable as then President of petitioner corporation at the time of the illegal dismissal.

No pronouncement as to costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

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56 Supra note 30.
57 See *Sunio v. NLRC*, 212 Phil. 355, 362-363 (1984).

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice