



Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

RECORDED
APR 29 2022

JOY M. VILLARICO,
Petitioner,

G.R. No. 255602

Present:

LEONEN, J.,
Chairperson,
CARANDANG,
ZALAMEDA,
ROSARIO, and
LOPEZ, J.,* JJ.

- versus -

D.M. CONSUNJI, INC., AND
MADELINE B. GACUTAN,
Respondents.

Promulgated:

August 4, 2021

X-----X

DECISION

CARANDANG, J.:

This Court resolves a Petition for Review on *Certiorari*¹ assailing the Decision² dated August 28, 2020 and Resolution³ dated January 18, 2021 of the Court of Appeals (CA) in CA-G.R. SP No. 153702. The CA upheld the Resolutions⁴ dated August 30, 2017 and September 25, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-002605-17. The NLRC affirmed the Decision⁵ dated July 3, 2017 of the Labor Arbiter (LA) in NLRC NCR Case No. 08-10535-16, which dismissed the complaint of petitioner Joy M. Villarico (Villarico) for illegal dismissal, non-payment of service incentive leave pay, 13th month pay, and separation pay, as well as prayer for moral damages, exemplary damages, and attorney's fees against respondents D.M. Consunji Inc. (DMCI) and its Human Resources Department Manager/Vice-President Madeline Elba B. Gacutan (Gacutan; collectively, respondents).

* Designated as additional Member of the Third Division per S.O. No. 2834.

¹ *Rollo*, pp. 18-55.

² Penned by Associate Justice Carlito B. Calpatura, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy; id. at 58-67.

³ Id. at 69-70.

⁴ Penned by Commissioner Pablo C. Espiritu, Jr., with the concurrence of Presiding Commissioner Alex A. Lopez and Commissioner Cecilio Alejandro C. Villanueva; id. at 107-115.

⁵ Penned by Labor Arbiter Thomas T. Que, Jr.; id. at 284-296.

Facts of the Case

Villarico first worked for DMCI as a laborer on November 8, 2007.⁶ He was subsequently assigned to different projects, the last of which was the NAIA Expressway Project in March 2016 as a crane operator.⁷ Villarico alleged that on March 30, 2016, the site timekeeper informed him that he was suspended. Site Administrator Miguelito Chua (Chua) confirmed his suspension due to a violation of company policy. He was suspended for four days.⁸

When Villarico returned to work, Chua asked him to sign a document similar to a notice of explanation, but he refused. Chua then told him that he was absent without leave for four days. His termination paper will be sent to him via courier. Thus, Villarico sought assistance from the NLRC. Mediation and conciliation then ensued between the parties. In the meantime, DMCI placed Villarico on floating status for two months. Thereafter, he was required to undergo medical examination. DMCI informed him that he failed his drug test so he was ordered to return after one month for confirmatory testing.⁹

Villarico followed-up after one month but DMCI informed him that they were still waiting for the result of the confirmatory testing. He was instructed to return after two weeks. Villarico returned as instructed but was merely given a number to follow-up his concern. Villarico finally filed a complaint on August 30, 2016 against respondents after all his inquiries led to nothing.¹⁰

Respondents denied that Villarico was illegally dismissed. They admitted that DMCI engaged the services of Villarico under several project employment contracts. They entered into another project employment contract with him covering the period from September 16, 2015 to April 22, 2016. Villarico was assigned to work on the NAIA Expressway Project. The employment contract expired upon the completion of his assigned project. A Notice of Termination was issued to Villarico. DMCI also filed an Employees' Termination Report with the Department of Labor and Employment (DOLE).¹¹

On June 1, 2016, Villarico applied as a crane operator. However, he was declared unfit to work after testing positive for the use of prohibited drugs during his pre-employment medical examination.¹² Villarico also tested positive for dangerous drugs in the confirmatory test.¹³ DMCI's Employee Handbook prohibits the non-prescription use of controlled substances. Its Code of Conduct imposes the penalty of dismissal for the use of prohibited

⁶ Id. at 284.

⁷ Id. at 59.

⁸ Id. at 285.

⁹ Id. at 286.

¹⁰ Id. at 286-287.

¹¹ Id. at 287-289.

¹² Id. at 289.

¹³ Id. at 291.



drugs.¹⁴ Further, respondents submitted bank debit advisories to prove that Villarico was already given his service incentive leave and 13th month pay.¹⁵

Ruling of the Labor Arbiter

On July 3, 2017, the LA rendered its Decision¹⁶ as follows:

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

SO ORDERED.¹⁷ (Emphasis in the original)

First, the LA held that Villarico was a project employee. The Appointment Paper executed by the parties showed that his employment was for a pre-determined duration or period of the project. Pursuant to the Court's ruling in *William Construction Corp. v. Trinidad*,¹⁸ Villarico did not acquire regular employment even though he was repeatedly hired by DMCI because it is evident from the records that he was hired as a project employee. All his contracts were for a fixed duration. The LA noted that respondents presented the required notices of termination of contract and reports submitted to the DOLE.¹⁹ *Second*, the LA ruled that Villarico was not illegally dismissed because he was not dismissed at all. His contract simply expired on April 22, 2016. Moreover, Villarico admittedly failed the drug test. Based on DMCI's Handbook, it has a drug-free workplace policy. Unlawful drug abuse is prohibited whether on or off-duty. Considering the sensitive nature of Villarico's position as a crane operator, the LA could not fault DMCI for not rehiring him after he tested positive for the use of tetrahydrocannabinol. Since there is no illegal dismissal, Villarico is not entitled to separation pay and backwages.²⁰ *Third*, the LA denied Villarico's prayer for service incentive leave pay and 13th month pay because he failed to present evidence to refute the bank advisories submitted by respondents as proof of payment to him. The LA also denied Villarico's prayer for damages and attorney's fees because there is no basis to award it.²¹ Villarico appealed to the NLRC.

Ruling of the National Labor Relations Commission

The NLRC promulgated its Resolution²² on August 30, 2017, the dispositive portion of which states:

WHEREFORE, premised on all the foregoing considerations, the appeal is hereby **DISMISSED** for utter lack of merit.

¹⁴ Id. at 290.
¹⁵ Id. at 60.
¹⁶ Id. at 284-296.
¹⁷ Id. at 296.
¹⁸ 629 Phil. 185 (2010).
¹⁹ *Rollo*, pp. 292-294.
²⁰ Id. at 294-295.
²¹ Id. at 295-296.
²² Id. at 107-113.

Accordingly, the Decision appealed from is hereby
AFFIRMED en toto. [*sic*]

SO ORDERED.²³ (Emphasis in the original)

The NLRC agreed with the LA that Villarico was a project employee whose contract of employment clearly fixed a duration for a specific project. The termination and completion of the project was duly reported by DMCI to the DOLE. The NLRC also concurred that Villarico's claim of illegal dismissal is unmeritorious. There was no dismissal to speak of. Villarico's employment contract just expired.²⁴ DMCI's refusal to rehire Villarico is not tantamount to illegal dismissal. DMCI cannot be compelled to rehire him after he was found positive for prohibited drugs. As for Villarico's monetary claims, the NLRC held that these were sufficiently belied by the evidence submitted by respondents.²⁵

Villarico filed a motion for reconsideration. After the NLRC denied it, he filed a petition for *certiorari* before the CA.

Ruling of the Court of Appeals

In its August 28, 2020 Decision,²⁶ the CA held:

WHEREFORE, premises considered, the Petition for *Certiorari* is **DISMISSED**. The Resolutions promulgated on August 30, 2017, and September 25, 2017, by the National Labor Relations Commission – Third Division, in NLRC LAC No.08-002605-17 [NLRC NCR Case No. 08-10535-16], are **AFFIRMED in toto**.

SO ORDERED.²⁷ (Emphasis in the original)

The CA held that Villarico was a project employee. He was sufficiently informed of his employment as a project employee, its duration, and the scope of his employment at the time of his engagement based on the appointment papers. This is further proven by the Notices of Termination issued to Villarico and the Termination Reports submitted by respondents to the DOLE. The CA disagreed with Villarico's contention that he should be considered a regular employee because the Court has held that repeated and successive rehiring of project employees does not, by itself, qualify them as regular employees. The CA also concurred with the NLRC that Villarico was not dismissed. His contract of employment simply expired. DMCI cannot be compelled to hire him after he was found positive for drugs in his pre-employment medical examination. Accordingly, the CA concluded that Villarico failed to prove that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its rulings.²⁸

²³ Id. at 112.
²⁴ Id. at 111.
²⁵ Id. at 112.
²⁶ Supra note 2.
²⁷ *Rollo*, pp. 67.
²⁸ Id. at 64-67.

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Villarico filed a motion for reconsideration²⁹ that was denied by the CA. Thereafter, he filed a Petition for Review on *Certiorari* before this Court to assail the ruling of the CA. Villarico argued in his petition that *first*, he was a regular employee. DMCI hired him several times as a laborer from September 2007 to April 2010, a rigger from June 2010 to March 2014, and a crane operator from March 2014 to April 2016, for a total of nine (9) years. He has numerous appointments that were immediately successive or with no single day in between, thus implying continuity of service rendered by him. The services he rendered were necessary and desirable to the business or trade of DMCI. In *D.M. Consunji Corporation v. Bello*,³⁰ the Court held that respondent acquired the status of a regular employee because of his continuous work as a mason. Villarico argued that the ruling should apply to him. Further, the appointment papers should not be taken against Villarico. The terms thereof were not explained to him when he signed it. An explanation was necessary because he is a high school drop-out. Also, the nature of employment is determined by law and not by contract.³¹

Second, Villarico was dismissed by DMCI. He was suspended without prior notice and without the benefit of a hearing. When he returned to work after being suspended, he was required to sign a document by Chua. His refusal to do so resulted in respondents declaring that he was absent for four days without leave. Respondents did not allow Villarico to immediately return to work after he referred the matter to the LA. They required him to undergo medical examination. When he failed it, they severed his employment using the results of the examination and the expiration of his contract as their excuse. Respondents did not issue a written notice of termination to Villarico.³²

Third, Villarico was illegally dismissed and is therefore entitled to full backwages from the time that his compensation was withheld until his actual reinstatement. It would also be proper to award separation pay in lieu of reinstatement because Villarico is no longer willing to be reinstated. In addition, Villarico is entitled to overtime pay and payment for work he rendered during rest days. He is also entitled to service incentive leave pay and 13th month pay. Respondents did not dispute that Villarico is entitled to overtime pay, night shift differential pay, and salary differential. The bank debit advisories submitted by respondents were insufficient to prove payment. *Fourth*, Villarico is entitled to moral and exemplary damages, as well as attorney's fees.³³

Issue

The issue before this Court is whether the CA erred in affirming the dismissal of Villarico's complaint.

²⁹ Supra note 3.
³⁰ 715 Phil. 335 (2013).
³¹ *Rollo*, pp. 27-35.
³² Id. at 36.
³³ Id. at 37-50.



Ruling of the Court

The petition is partly meritorious.

Section 1, Rule 45 of the Rules of Court provides that a petition filed under this provision shall raise only questions of law. This is because the Court is not a trier of facts.³⁴ However, there are recognized exceptions to this general rule, one of which is when the inference or conclusion arrived at by the courts *a quo* is erroneous based on the available facts. After all, factual findings of the NLRC and the LA are not infallible.³⁵ The Court finds that the exception applies in this case. The facts herein lead to a conclusion different from what was made by the LA, NLRC, and the CA.

Article 295 of Presidential Decree No. 442 or the Labor Code of the Philippines defines who are considered regular and project employees:

Article 295. *Regular and Casual Employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

The following are considered in order to determine whether one is a regular employee or a project employee: (a) the employees were assigned to carry out a specific project or undertaking; and (b) the duration and scope of which were specified at the time the employees were engaged for that project.³⁶ In *D.M. Consunji Corp v. Bello*,³⁷ the Court held that the employee therein was a regular employee because of his continuous hiring as a mason for six years and the necessity and desirability of his skill to the employer's business.³⁸ The Court likewise held in *D.M. Consunji, Inc. v. Jamin*³⁹ that the continuous, repeated, and successive rehiring of the employee for 38 projects

³⁴ *Central Azucarera de Bais v. Heirs of Apostol*, 828 Phil. 211, 221 (2018).

³⁵ See *General Milling Corp. v. Viajar*, 702 Phil. 532, 541 (2013).

³⁶ *Mirandilla v. Jose Calma Development Corp.*, G.R. No. 242834, June 26, 2019.

³⁷ *Supra* note 29.

³⁸ *Id.*

³⁹ 686 Phil. 220 (2012).

in a span of almost 31 years, as well as the necessity and desirability of his skill as a carpenter, undoubtedly made him a regular employee.⁴⁰

DMCI first employed Villarico as a laborer in 2007 and later employed him as a rigger in 2010. He subsequently became a crane operator in 2014. Respondents listed the following projects that Villarico was assigned prior to the NAIA Expressway Project in its Position Paper before the LA:

- a) 28 March 2014 to 8 August 2015 for the “2 X 150 MW SLPGC Power Plant Project” in Calaca Batanagas [*sic*] (as Jr. Crane Operator);
- b) 12 December 2012 to 21 March 21 2014 for the “2 X 150 MW SLPGC Power Plant Project” in Calaca Batangas (as Rigger);
- c) 6 June 2012 to 8 December 2012 for the “1 X 135 MW Coal Fired Power Plant Project” (as Rigger);
- d) 4 May 2011 to 1 June 2012 for the “Rehabilitation of the Calaca Coal Fired Thermal Project” (as Rigger);
- e) 1 September 2010 to 30 April 2011 for the “Project Support Group” (as Rigger);
- f) 24 June 2010 to 21 July 2010 for the “Removal of Accumulated Vegetation Growth Project” (as Rigger);
- g) 22 June 2009 to 27 April 2010 for the “South Metro Manila Skyway – Stage 2 Project” (as Laborer); and
- h) 8 November 2007 to 18 June 2009 for the “Riverfront Residence Project” (as Laborer)⁴¹

The numerous appointment papers⁴² of Villarico which respondents themselves submitted before the LA,⁴³ show that DMCI continuously and successively employed him for nine (9) years, with barely any gaps in between his appointments, to wit:

Date of Appointment Paper	Project	Designation	Starting Period	Ending Period
November 8, 2007	Riverfront Residences	Laborer	September 9, 2007	December 9, 2007 ⁴⁴
January 5, 2008	Riverfront Residences	Laborer	January 10, 2008	February 10, 2008 ⁴⁵
February 9, 2008	Riverfront Residences	Laborer	February 11, 2008	May 11, 2008 ⁴⁶
May 6, 2008	Riverfront Residences	Laborer	May 12, 2008	June 12, 2008 ⁴⁷

⁴⁰ Id.

⁴¹ Id.

⁴² *Rollo*, pp.160-234.

⁴³ Id. at 146.

⁴⁴ Id. at 221.

⁴⁵ Id. at 222.

⁴⁶ Id. at 223.

⁴⁷ Id. at 224.

June 8, 2008	Riverfront Residences	Laborer	June 13, 2008	July 13, 2008 ⁴⁸
July 7, 2008	Riverfront Residences	Laborer	July 14, 2008	August 14, 2008 ⁴⁹
August 5, 2008	Riverfront Residences	Laborer	August 15, 2008	September 15, 2008 ⁵⁰
September 8, 2008	Riverfront Residences	Laborer	September 16, 2008	October 16, 2008 ⁵¹
October 7, 2008	Riverfront Residences	Laborer	October 17, 2008	November 17, 2008 ⁵²
November 8, 2008	Riverfront Residences	Laborer	November 18, 2008	December 18, 2008 ⁵³
December 13, 2008	Riverfront Residences	Laborer	December 19, 2008	January 19, 2009 ⁵⁴
January 2009	Riverfront Residences	Laborer	January 20, 2009	February 20, 2009 ⁵⁵
February 12, 2009	Riverfront Residences	Laborer	February 21, 2009	March 21, 2009 ⁵⁶
April 14, 2009	Riverfront Residences	Laborer	April 23, 2009	July 23, 2009 ⁵⁷
June 16, 2009	South Metro Manila Skyway -Stage 2 Project	Laborer	June 22, 2009	July 22, 2009 ⁵⁸
July 15, 2009	South Metro Manila Skyway -Stage 2 Project	Laborer	July 23, 2009	October 23, 2009 ⁵⁹
October 15, 2009	South Metro Manila Skyway -Stage 2 Project	Laborer	October 24, 2009	November 24, 2009 ⁶⁰

⁴⁸ Id. at 225.
⁴⁹ Id. at 226.
⁵⁰ Id. at 227.
⁵¹ Id. at 228.
⁵² Id. at 229.
⁵³ Id. at 230.
⁵⁴ Id. at 231.
⁵⁵ Id. at 232.
⁵⁶ Id. at 233.
⁵⁷ Id. at 234.
⁵⁸ Id. at 214.
⁵⁹ Id. at 215.
⁶⁰ Id. at 216.

November 14, 2009	South Metro Manila Skyway -Stage 2 Project	Laborer	November 25, 2009	January 25, 2010 ⁶¹
January 2010	South Metro Manila Skyway -Stage 2 Project	Laborer	January 26, 2010	February 26, 2010 ⁶²
February 18, 2010	South Metro Manila Skyway -Stage 2 Project	Laborer	February 27, 2010	April 27, 2010 ⁶³
June 23, 2010	Removal of Accumulated Vegetation Growth	Riggr	June 24, 2010	July 24, 2010 ⁶⁴
August 31, 2010	Project Support Group	Riggr	September 1, 2010	October 1, 2010 ⁶⁵
September 24, 2010	Project Support Group	Riggr	October 2, 2010	November 2, 2010 ⁶⁶
October 28, 2010	Project Support Group	Riggr	November 3, 2010	December 3, 2010 ⁶⁷
November 26, 2010	Project Support Group	Riggr	December 4, 2010	January 4, 2011 ⁶⁸
December 29, 2010	Project Support Group	Riggr	January 5, 2011	February 5, 2011 ⁶⁹
February 3, 2011	Project Support Group	Riggr	February 6, 2011	March 6, 2011 ⁷⁰
March 4, 2011	Project Support Group	Riggr	March 7, 2011	April 7, 2011 ⁷¹
April 1, 2011	Project Support Group	Riggr	April 8, 2011	May 8, 2011 ⁷²

61 Id. at 217.
62 Id. at 218.
63 Id. at 219.
64 Id. at 212.
65 Id. at 203.
66 Id. at 204.
67 Id. at 205.
68 Id. at 206.
69 Id. at 207.
70 Id. at 208.
71 Id. at 209.
72 Id. at 210.

May 3, 2011	Rehabilitation of Calaca Coal Fired Thermal	Riggr	May 4, 2011	June 4, 2011 ⁷³
May 31, 2011	Rehabilitation of Calaca Coal Fired Thermal	Riggr	June 5, 2011	September 5, 2011 ⁷⁴
September 1, 2011	Rehabilitation of Calaca Coal Fired Thermal	Riggr	September 6, 2011	December 6, 2011 ⁷⁵
December 6, 2011	Rehabilitation of Calaca Coal Fired Thermal	Riggr	December 7, 2011	March 7, 2012 ⁷⁶
March 5, 2012	Rehabilitation of Calaca Coal Fired Thermal	Riggr	March 8, 2012	June 8, 2012 ⁷⁷
June 5, 2012	1 x 135MW Coal Fired Power Plant	Riggr	June 6, 2012	July 6, 2012 ⁷⁸
June 30, 2012	1 x 135MW Coal Fired Power Plant	Riggr	July 7, 2012	October 7, 2012 ⁷⁹
September 27, 2012	1 x 135MW Coal Fired Power Plant	Riggr	October 8, 2012	January 8, 2013 ⁸⁰
January 4, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	January 13, 2013	February 13, 2013 ⁸¹
February 9, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	February 14, 2013	March 14, 2013 ⁸²
March 5, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	March 15, 2013	April 15, 2013 ⁸³
April 13, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	April 16, 2013	May 16, 2013 ⁸⁴

73 Id. at 197.
74 Id. at 198.
75 Id. at 199.
76 Id. at 200.
77 Id. at 201.
78 Id. at 193.
79 Id. at 194.
80 Id. at 195.
81 Id. at 179.
82 Id. at 180.
83 Id. at 181.
84 Id. at 182.



May 8, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	May 17, 2013	June 17, 2013 ⁸⁵
June 8, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	June 18, 2013	July 18, 2013 ⁸⁶
July 12, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	July 19, 2013	August 19, 2013 ⁸⁷
August 12, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	August 20, 2013	September 2, 2013 ⁸⁸
September 11, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	September 21, 2013	October 21, 2013 ⁸⁹
October 14, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	October 22, 2013	November 22, 2013 ⁹⁰
November 14, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	November 23, 2013	December 23, 2013 ⁹¹
December 14, 2013	2 x 150MW SLPGC Power Plant Project	Riggr	December 24, 2013	January 24, 2014 ⁹²
January 17, 2014	2 x 150MW SLPGC Power Plant Project	Riggr	January 25, 2014	March 25, 2014 ⁹³
March 27, 2014	2 x 150MW SLPGC Power Plant Project	Crane Operator	March 28, 2014	April 28, 2014 ⁹⁴
April 25, 2014	2 x 150MW SLPGC Power Plant Project	Crane Operator	April 29, 2014	July 29, 2014 ⁹⁵
July 27, 2014	2 x 150MW SLPGC Power Plant Project	Crane Operator	July 30, 2014	September 30, 2014 ⁹⁶

85 Id. at 183.
86 Id. at 184.
87 Id. at 185.
88 Id. at 186.
89 Id. at 187.
90 Id. at 188.
91 Id. at 189.
92 Id. at 190.
93 Id. at 191.
94 Id. at 170.
95 Id. at 171.
96 Id. at 172.

September 22, 2014	2 x 150MW SLPGC Power Plant Project	Crane Operator	October 1, 2014	January 1, 2015 ⁹⁷
December 27, 2014	2 x 150MW SLPGC Power Plant Project	Crane Operator	January 2, 2015	March 2, 2015 ⁹⁸
February 23, 2015	2 x 150MW SLPGC Power Plant Project	Crane Operator	March 3, 2014	June 3, 2015 ⁹⁹
May 29, 2015	2 x 150MW SLPGC Power Plant Project	Crane Operator	June 4, 2015	September 4, 2015 ¹⁰⁰
September 15, 2015	NAIA Expressway	Crane Operator	September 16, 2015	October 16, 2015 ¹⁰¹
October 8, 2015	NAIA Expressway	Crane Operator	October 17, 2015	November 17, 2015 ¹⁰²
November 10, 2015	NAIA Expressway	Crane Operator	November 18, 2015	December 18, 2015 ¹⁰³
December 13, 2015	NAIA Expressway	Crane Operator	December 19, 2015	January 19, 2016 ¹⁰⁴
January 12, 2016	NAIA Expressway	Crane Operator	January 20, 2016	February 20, 2016 ¹⁰⁵
February 12, 2016	NAIA Expressway	Crane Operator	February 21, 2016	March 21, 2016 ¹⁰⁶
March 11, 2016	NAIA Expressway	Crane Operator	March 22, 2016	April 22, 2016 ¹⁰⁷

It is undoubtable that Villarico's skills are necessary and desirable to the business of DMCI considering that the latter continuously employed him in its various projects. Following the Court's previous rulings in *D.M. Consunji, Inc. v. Jamin* and *D.M. Consunji Corp. v. Bello*, Villarico is a regular employee of DMCI.

The termination of Villarico's employment for the completion of the project he was assigned to is not proper. However, Villarico was not illegally

97 Id. at 173.
98 Id. at 174.
99 Id. at 175.
100 Id. at 176.
101 Id. at 160.
102 Id. at 161.
103 Id. at 162.
104 Id. at 163.
105 Id. at 165.
106 Id. at 166.
107 Id. at 164.

dismissed because there was just cause for his dismissal. Villarico did not dispute the Medical Examination Certificate¹⁰⁸ dated June 1, 2016 and the Drug Test Report¹⁰⁹ dated August 31, 2016 wherein it is stated that he tested positive for Tetrahydrocannabinol. He did not present any evidence to refute such findings. Tetrahydrocannabinol is considered a dangerous drug under Republic Act No. (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002. The use of illegal drugs qualifies as serious misconduct under Article 297 of the Labor Code. Misconduct is defined as the improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not merely an error in judgment. It is considered serious when it is of a grave and aggravated character and not merely trivial or unimportant.¹¹⁰ In *Bughaw, Jr. v. Treasure Island Industrial Corp.*, the Court held that “any employee under the influence of drugs cannot possibly continue doing his duties without posing a serious threat to the lives and property of his co-workers and even his employer.”¹¹¹ Villarico may not have been caught by DMCI in the act of using illegal drugs but his failure to disprove the findings showing that he tested positive for tetrahydrocannabinol cannot be disregarded. Thus, DMCI had just cause for terminating Villarico’s employment. Consequently, Villarico is not entitled to backwages and separation pay in lieu of reinstatement.

Though there was a valid ground for the dismissal of Villarico, the requirements of due process were not observed. Villarico was entitled to two (2) notices, the first to inform him of the particular act or omission for which his dismissal was sought while the second to inform him of his dismissal.¹¹² There is no evidence that either notice was sent to Villarico. The termination paper¹¹³ regarding the completion of the latest project that Villarico was assigned to certainly did not inform him of the basis for his dismissal. It is not the notice required under the law. Hence, DMCI did not comply with the twin-notice required under the law. The violation of Villarico’s right to due process entitles him to nominal damages in the amount of ₱30,000.00.¹¹⁴

With respect to Villarico’s prayer for 13th month pay and service incentive leave pay, it is respondents who bear the burden of proving that these have been paid.¹¹⁵ The bank advisories¹¹⁶ submitted by DMCI do not sufficiently prove payment of Villarico’s 13th month pay and service incentive leave pay. The bank advisories do not establish that the account listed in it belongs to Villarico and that he received the amounts indicated therein. In fact, most of the bank advisories were not signed by a representative of the bank. Hence, DMCI must pay Villarico his 13th month pay and service incentive leave.

¹⁰⁸ Id. at 244-245.

¹⁰⁹ Id. at 253.

¹¹⁰ *Bughaw, Jr. v. Treasure Island Industrial Corp.*, 573 Phil. 435, 445 (2008).

¹¹¹ Id.

¹¹² *Jose, Jr. v. Michaelmar Phils., Inc.*, 621 Phil. 107, 125 (2009).

¹¹³ *Rollo*, p. 168.

¹¹⁴ *Agabon v. National Labor Relations Commission*, 485 Phil. 248 (2004).

¹¹⁵ See *Mantle Trading Services, Inc. v. National Labor Relations Commission*, 611 Phil. 570, 582 (2009)

¹¹⁶ *Rollo*, pp. 262-281.

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Villarico is likewise entitled to attorney's fees in accordance with Article 2208 of the Civil Code of the Philippines which allows the recovery of attorney's fees in actions for indemnity under workmen's compensation and employer's liability laws. However, he is not entitled to moral damages and exemplary damages for lack of proof of bad faith on the part of respondents. There is also no basis to award exemplary damages to Villarico under Articles 2229 and 2232 of the Civil Code. No moral, temperate, liquidated, or compensatory damages were awarded to him. And it was not shown that respondents acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. The total amount awarded to Villarico is subject to a legal interest of six percent (6%) *per annum* from the finality of this Decision until its full payment pursuant to *Nacar v. Gallery Frames*.¹¹⁷

Gacutan was impleaded by Villarico as the Human Resources Department Manager/Vice-President of DMCI. Corporate officers cannot be held personally liable unless it is shown that they acted with malice or in bad faith.¹¹⁸ There is no evidence that Gacutan acted with malice or in bad faith with respect to the dismissal of Villarico. As such, she cannot be held personally liable to Villarico.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated August 28, 2020 and Resolution dated January 18, 2021 of the Court of Appeals in CA-G.R. SP No. 153702 are **AFFIRMED with MODIFICATION**. Respondent D.M. Consunji, Inc. is **ORDERED** to pay petitioner Joy M. Villarico nominal damages in the amount of ₱30,000.00, 13th month pay for 2007 to 2016, service incentive leave pay for 2007 to 2016, and attorney's fees equivalent to ten percent (10%) of the total amount awarded. The total amount awarded is subject to a legal interest of six percent (6%) *per annum* from the finality of this Decision until its full satisfaction.

SO ORDERED.

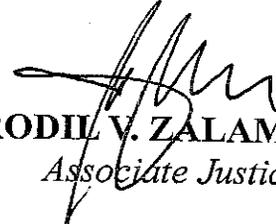

ROSMARI D. CARANDANG
Associate Justice

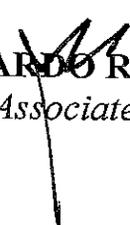
¹¹⁷ 716 Phil. 267 (2013).

¹¹⁸ *People's Security, Inc. v. Flores*, 801 Phil. 1029 (2016).

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice