SUPREME COURT
FIRST DIVISION

ARTEMIO LABOR, PEDRO BONITA, JR., DELFIN MEDILLO, ALLAN ROMMEL GABUT, and IRENEO VISABELLA,
***Petitioners*,**

-versus-

G.R. No. 110388
September 14, 1995

NATIONAL LABOR RELATIONS COMMISSION, GOLD CITY COMMERCIAL COMPLEX, INC., and RUDY UY,
***Respondents*.**
x----------x

D E C I S I O N

DAVIDE, JR., *J.*:

SEPARATE OPINION
***PADILLA, J., concurring.*:**

Petitioners filed this Special Civil Action for *Certiorari* seeking to reverse the Decision of 24 September 1992 of public respondent National Labor Relations Commission (NLRC) Fifth Division, in

NLRC CA No. M-000834-92 (RAB 11-08-00742-91)[1] which vacated and set aside the decision of 27 March 1992 of Labor Arbiter Nicolas S. Sayon[2] declaring illegal the petitioners' dismissal from their employment by private respondent Gold City Commercial Complex, Inc. (hereinafter Gold City) and ordering the latter to pay separation pay and other money claims.

The petitioners were employees of Gold City at its Eye Ball Disco located at Tagum, Davao. In a complaint dated 19 August 1991 filed with the Regional Office No. XI of the Department of Labor and Employment (DOLE) in Davao City, the petitioners charged Gold City with violations of labor standards laws, specifically for underpayment of the minimum wage, non-payment of 13th month pay for 1991, premiums for holidays and rest days, holiday pay, service incentive leave pay, night shift differential and allowance pursuant to RTWPB-XI-02.[3]

On 26 August 1991, the petitioners also filed with the NLRC Regional Arbitration Branch No. XI in Davao City a complaint against Gold City and its President, herein private respondent Rudy Uy, for illegal dismissal and for the same violations of labor standards laws earlier complained of.[4] This case was docketed as Case No. RAB-11-08-00742-91.

On 2 September 1991, one Atty. Rolando Casaway, representing Lee Manuela Suelto, Ellen de Guzman, Mary Grace Verano, and Percy Hangad, all employees of Gold City, and Joenel de Mesa, a customer of Eye Ball Disco, wrote the Provincial Prosecutor of Davao requesting that a criminal action against the petitioners for theft and/or estafa be instituted.[5] In support thereof, he attached to his letter the affidavits of de Mesa executed on 20 August 1991 and of the others he represented executed on 23 August 1991[6] wherein the affiants attested to alleged acts committed by the petitioners during the period from June to August 1991 which deprived Eye Ball Disco of certain amounts of money. According to the affiants, the petitioners would get the claim stubs from customers of Eye Ball Disco that entitle them to one free drink each, but the petitioners did not surrender these stubs to the cashier and instead made the customers pay for the drinks; then, later, when other customers ordered drinks, the petitioners would surrender these stubs to the cashier as

"payment" for the drinks of these other customers and pocket their payment.[7]

On 11 September 1991, Labor Examiner Edgardo Diaz of the DOLE Regional Office No. XI submitted his report[8] to the Regional Director wherein he confirmed the labor standards violations committed by Gold City, viz., (1) record-keeping; (2) underpayment of minimum wage; (3) non-payment of holiday pay; and, (4) overtime premium. He further stated that:

> Complainants have personally appeared before this Office to manifest that they have not received the amounts indicated in the Cash Vouchers submitted by the management of the subject establishment on July 23, 1991 as payment for the Compromise Settlement representing salary differentials and allowances, pursuant to Wage Order RTWPB-XI-02.

Said Labor Examiner also submitted a computation of the amounts due the petitioners.[9] He then recommended that the case be endorsed to the NLRC because the amounts each of them is entitled to receive exceeded the jurisdictional limit of P5,000.00 for money claims.

In the meanwhile, on 30 October 1991, 3rd Assistant Provincial Prosecutor Justino Aventurado of Davao handed down a resolution[10] dismissing the criminal complaint against the petitioners. He found the story of the petitioners' co-employees and a customer incredible and concluded thus:

Let it not be forgotten that the name of the game is evidence. The precious time of the court, the efforts of all the parties shall go to naught in cases bereft of evidence. This sort of offense involving money needs physical evidence not mere words of mouth of respondents' [herein petitioners] own co-workers. Such weakness is worsened by the fact that the complainant's [sic] witnesses who posture protectiveness of their employer's interest spoke only about the alleged irregularities several days and even months after their commission. After the labor claims were filed.

If they are that loyal or protective of the establishment as they now appear to be, they should have reported the irregularities a day after each offense.

> WHEREFORE, finding no cause to hold respondents liable for estafa, this complaint is hereby dismissed.
>
> The Provincial Prosecutor approved this resolution and the records fail to disclose if Gold City had taken any action to reverse the resolution.

Thereafter, Case No. RAB-11-08-0042-91 pending before Labor Arbiter Nicolas Sayon became the sole venue of the legal battle between the petitioners and Gold City. Both parties therein were required to submit their respective position papers. In their position paper,[11] the petitioners alleged that Gold City prevented Labor, Visabella, Medillo, and Gabut from entering their work place on 22 August 1991 and Bonita on 24 August 1991; that their time cards were taken off the time card rack; and that they were advised to resign. They assailed the notice of termination given to them by Gold City dated 6 September 1991,[12] and denied having abandoned their work for as a matter of fact, Labor was on an approved leave from 19 August to 21 August 1991 but was not allowed to return to work after that date. They accused Gold City of unfair labor practice for illegally dismissing them in retaliation for their having filed a complaint for labor standards violations against it. They also denied having signed any quitclaim or compromise settlement. They further claimed the amounts found by the Labor Examiner as due them from Gold City for the labor standards violations and prayed for full back wages and separation pay in lieu of reinstatement.

In its Position Paper,[13] Gold City asserted that the petitioners were not illegally terminated but had abandoned their work by not reporting to their place of employment beginning on 19 August (petitioners Labor and Bonita), 21 August (petitioners Medillo and Gabut), and 22 August (petitioner Visabella) 1991. It further alleged that as early as June 1991, the petitioners were under investigation for the dishonest acts for which they

were charged with estafa and/or theft in the Office of the Provincial Prosecutor, and to preempt any action to be taken therein, the petitioners filed the "baseless and unfounded complaint" with the DOLE for the labor standards violation and furthermore, abandoned their work to make it appear that they were illegally dismissed. It also alleged that on 6 September 1991, each of the petitioners was sent a notice of possible termination due to abandonment or for absence without official leave or notice for six consecutive days, with a warning that if no explanation is given within seven days from receipt thereof, they will be terminated,[14] but the petitioners failed to reply to the notice and did not report for work. It then concluded that the abandonment justified their dismissal. As for the petitioners' money claims, Gold City contended that the petitioners were paid the minimum wage and allowances, and that the computation made by the DOLE (through the Labor Examiner) did not take into account the other benefits given to the petitioners, viz., board and lodging, meals, snacks, clothing and transportation allowance, and the fact that their Social Security Services (SSS) contributions and cash advances were deducted from their gross pay. It further alleged that the petitioners had already "agreed to compromise settlement before the DOLE, concerning money claims, as evidenced by cash vouchers[15] duly signed"[16] by them.

The petitioners submitted their Reply[17] to Gold City's position paper.

On 27 March 1992, the Labor Arbiter rendered his Decision[18] in favor of the petitioners, the dispositive portion of which reads as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered:
>
> 1. Declaring the dismissal of complainants Artemio Labor, Pedro L. Bonita, Jr., Ireneo Visabella, Delfin Medillo and Allan Rommel Gabut as ILLEGAL; and
>
> 2. Ordering respondent Gold City Commercial Complex, Inc. to pay the above-named complainants, the following:

	Name	Separation Pay	Money Claims Less 20%	Total
(a)	Artemio Labor	P5,338.00	P24,741.80	P30,079.80;
(b)	Pedro Bonita, Jr.	5,338.00	24,741.80	30,079.80;
(c)	Ireneo Visabella	5,338.00	24,741.80	30,079.80;
(d)	Allan Rommel Gabut	5,338.00	24,741.80	30,079.80;
(e)	Delfin Medillo	5,338.00	18,251.41	23,589.41

or in the total amount of One Hundred Forty Three Thousand Nine Hundred Eight Pesos and 61/100 (P143,908.61).

SO ORDERED.

We quote his ratiocinations in support thereof:

After judicious scrutiny of the parties pleadings, arguments, counter-arguments and evidences, this Office finds for the complainants.

First, on the illegal dismissal issue.

The approved application for leave of absence of complainants Labor and Bonita negates the abandonment charge of respondents. Said applications, which were duly approved by respondent Rudy Uy showed that complainant Labor was actually on leave from August 19 to 21, 1991; while complainant Bonita, on August 20 to 23, 1991. With such reality, where could the abandonment of work lie?

Besides, the fact that complainants have immediately filed this complaint for illegal dismissal against them proves that there was no intention on their part to sever their employment with respondents. It is well-settled in our jurisprudence that "For abandonment to constitute a valid cause for termination of employment, there must be a deliberate, unjustified refusal of the employee to resume his employment. This refusal must be clearly shown. Mere absence is not sufficient, it must be accompanied by overt acts unerringly pointing to the fact that the employee does not want to work anymore" (Flexo

Manufacturing Corp. vs. NLRC. 135 SCRA 145, Emphasis supplied).

Records likewise show that the issuance of notice of termination by respondents on September 6, 1991 was only a mere subterfuge to shield themselves from the sanction of the law for having violated the mandatory requirements in the termination of employment, which was issued long after complainants had filed this case.

Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are two-fold: the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause as provided by law (Article 279, 281, 282-284, New Labor Code), but the rudimentary requirements of due process — notice and hearing — must also be observed before an employee may be dismissed. One does not suffice; without their concurrence, the termination would, in the eyes of the law be illegal." (Salaw vs. NLRC, G.R. No. 90786, Sept. 27, 1991).

Neither the alleged commission of acts of dishonesty by complainants would warrant the dismissal. It has no leg to stand on. There is no sufficient proof or evidence that tend to show that complainants were really in cahoots with each other in misappropriating the proceeds of the "unclaimed" free beer or softdrink due to the disco pub customers, except the bare allegations in the affidavits executed by one Joenel Mendoza and respondents' cashiers. Undoubtedly, they are self-serving testimonies. In fact, it is more apparent that the charges imputed to complainants are pure prevarication as respondents were bent to dismiss complainants in reprisal to the complaint they have filed with the DOLE.

Absent such two requirements, their dismissal is thus patently illegal. Complainants were constructively dismissed.

Payment of separation pay is proper under the circumstances, and as alternately prayed for by the complainants, which will be computed at one-month pay for every year of service, a fraction of at least six months being considered as one year. Thus, they are entitled [to the] equivalent [of] two months' salary or in the amount of P5,338.00 for each of them (P102.00/12 x 314 x 2).

Albeit respondents rebutted complainants' money claims through the submission of the latter's payslips, however, the same could not be credited in their favor, being found spurious. The payslips, *vis-a-vis* respondents did not bear any entries such as meals, snacks , lodging and SSS contributions (Annexes "A", "B", Complainants' Reply to Respondents' Position Paper). It is very obvious that those entries are belatedly added by respondents to lessen their actual liabilities to complainants.

There being no other proofs like payrolls or vouchers that would support their compliance of labor standard laws, complainants are awarded the following benefits: representing salary differential, 13th month pay for 1991 and holiday [pay] as computed by this Office which is now part of the records of the case, to wit:

1. Artemio Labor P30,927.24;
2. Ireneo Visabella 30,927.24;
3. Allan Rommel Gabut 30,927.24;
4. Pedro Bonita, Jr. 30,927.24; and
5. Delfin Medillo 22,814.27

This Office, however, took cognizance of the fact that complainants were extended free lodging, meals and snacks. Considering that the monetary award due them was based on straight computations, we deem it equitable that a twenty (20%) percent deduction is proper to offset those fringe benefits as well as absence, tardiness and non-working days incurred during their tenure of employment.

As to the alleged receipt by complainants on the compromise settlement of P2.000.00 each, we find that they are not estopped from claiming the monetary benefits due them. The Supreme Court has ruled:

> "The fact that petitioner received his retirement benefits voluntarily and executed a deed of release and quitclaim does

> not militate against him. In the case of MRR Crew Union vs. PNR, 72 SCRA 88, We held: "That the employee has signed a satisfaction receipt does not result in waiver, the law does not consider as valid any agreement to receive less compensation that what a worker is entitled to recover." A deed of release or quitclaim cannot bar any employee from demanding benefits to which he is Legally entitled." (Fuentes vs. NLRC. 167 SCRA 767).

The rest of [the] money claim are hereby denied for lack of factual and legal basis.

As expected, Gold City appealed the Labor Arbiter's decision to the NLRC. On 24 September 1992, the NLRC promulgated the challenged decision reversing that of the Labor Arbiter's and dismissing the petitioners' complaint. Essentially, the NLRC gave full faith and credit to the same affidavits which were submitted in the aforementioned criminal complaint for estafa or theft filed against the petitioners. Accordingly, it declared that the findings of the Labor Arbiter that the accusations made by Gold City are mere fabrications is not supported by the evidence on record. To the NLRC, the filing by the petitioners of the complaint with the DOLE was made "to preempt respondents' lawful prerogatives." It also ruled that there was abandonment by the petitioners and that Gold City, in terminating them, complied with the procedural requirements since it gave notice and granted them an opportunity to explain their absences, which they did not avail of. In ruling that the petitioners were not illegally dismissed, the NLRC found that just cause existed, viz., their dishonest acts which do not require proof beyond reasonable doubt. As to the money claims, the NLRC ruled that the compromise settlements were freely and voluntarily executed by the petitioners and their allegation that they were tricked into signing it and that the P2,000.00 was not given to them deserve scant consideration; hence, they were estopped from claiming such monetary benefits pursuant to the rule laid down in Veloso vs. Department of Labor and Employment,[19] which abandoned the ruling in Fuentes vs. National Labor Relations Commission[20] that the Labor Arbiter relied upon.

Their Motion for the Reconsideration of the Decision having been denied by the NLRC, the petitioners filed this special civil action for *certiorari* where they alleged that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when:

> (A) IT ABSOLUTELY AND TOTALLY DISMISSED THE CLAIMS OF PETITIONERS DESPITE THE FINDINGS OF FACTS MADE BY THE LABOR ARBITER AND THE ADMISSION OF PRIVATE RESPONDENTS OF LIABILITIES AS STATED IN THEIR POSITION PAPER.
>
> (B) IT HELD THAT PETITIONERS ABANDONED THEIR WORK DESPITE KNOWLEDGE THAT THE INSTANT CASE IS ALREADY INSTITUTED AND THAT THEY COMMITTED ACTS OF DISHONESTY DESPITE SELF-SERVING AFFIDAVITS AND DISMISSAL OF THE COMPLAINT.

We required the respondents to comment on the petition.

As expected, the private respondents in their comment support the NLRC and quoted the arguments adduced in their Memorandum of Appeal filed with the NLRC.[21]

The Office of the Solicitor General filed a Manifestation in lieu of a Comment[22] and prayed that the NLRC be required to file its own comment. The said Office takes a stand adverse to the NLRC and in favor of the petitioners, and opines that Gold City was not able to prove its charge of dishonesty. It disagrees with the NLRC's finding that, because its evidence consisting of the affidavits of its witnesses "very clearly stated in detail how the complainants [petitioners herein] cheated the customers and the respondents as well," the petitioners are unworthy of their employer's trust and confidence. On the contrary, the Office of the Solicitor General argues that the affidavits do not specify the individual participation of the petitioners in the alleged losses incurred by Gold City, and it proceeds to examine the affidavits and point out their flaws. It also noted that the affidavits which support the NLRC's decision were the very same affidavits upon which the complaint filed with the Provincial Prosecutor was based and which was eventually dismissed for lack of evidence. It

added that, although it may be argued that the dismissal of the criminal case does not bar the employee's termination, the evidence, nevertheless, does not support a conclusion that the petitioners committed the dishonest acts complained of.

The Office of the Solicitor General also maintains that the petitioners did not abandon their work, again disagreeing with the findings of the NLRC. It sounded off its doubts as to the truth of the claim of dishonesty because these acts were not mentioned at all in the notices of 6 September 1991 given to the petitioners which referred only to their alleged absences without leave. If the accusations are true, contends the Office of the Solicitor General, Gold City could have immediately acted upon them by, for instance, placing the petitioners under preventive suspension or giving them the requisite notice and opportunity to be heard in the investigation it was allegedly conducting, but it did not do anything. The Office of the Solicitor General concludes that there is no basis for the charge of loss of confidence. Furthermore, the immediate filing of the case for illegal dismissal by the petitioners negates the theory of abandonment.

With respect to the money claims, the Office of the Solicitor General opines that the petitioners are entitled to them and their recovery is not barred by the compromise settlement. It contradicts the opinion of the NLRC that the case of Veloso had abandoned the rule in Fuentes, citing Philippine National Oil Company vs. National Labor Relations Commission[23] decided by this Court more recently than Veloso wherein we reaffirmed the rule that quitclaims do not bar recovery by the employees of their claims such quitclaims are frowned upon as contrary to public policy. It also said that the petitioners are still entitled to their money claims because the alleged compromise settlement was for an unconscionably lower amount than that awarded to them by the Labor Arbiter.

In its own Comment,[24] the NLRC sustains its challenged resolution and submits that the issues raised are factual and that there is no showing that the NLRC committed such abuse of discretion but rather, its assailed decision "is based on the records and ably supported by the evidences presented by the parties." As to the compromise agreements, it maintained that they are valid since they were freely and voluntarily executed by the parties.

We resolved to give due course to the petition and required the parties to submit their respective memoranda. Only the petitioners submitted their memorandum.[25] The NLRC and the private respondents manifested that their separate comments will serve as their memoranda.

We decide in favor of the petitioners.

The first assigned error involves the question of whether or not Gold City is guilty of labor standards violations. The findings regarding this issue made by the Labor Arbiter and the NLRC are opposed to one another. While it is well-established that the findings of facts of the NLRC are entitled to great respect and are generally binding on this Court, it is equally well-settled that the Court will not uphold erroneous conclusions of the NLRC when the Court finds that the latter committed grave abuse of discretion in reversing the decision of the labor arbiter or when the findings of facts from which the conclusions were based were not supported by substantial evidence.[26]

The Labor Arbiter adopted the findings of the Labor Examiner that Gold City committed violations of the labor standards laws. Gold City did not contest nor protest the findings when it was presented with a copy of the report made by the Labor Examiner.[27] It raised its defenses only in the position paper it submitted to the Labor Arbiter. The unexplained delay in presenting pertinent documents to support its defenses strengthens the assertion of the petitioners that the pay slips presented by Gold City, which the latter claims show proper deductions that the petitioners knew of, were falsified, and that the deductions were added only after these had already been signed by them.

Recovery of the petitioners' money claims for the violations of labor standard laws are not barred by the alleged compromise agreements signed by the petitioners. Contrary to the NLRC's opinion, Veloso did not overturn the rule laid down in Fuentes. The said cases are not founded on similar or identical facts, thus accounting for the difference in the rulings made therein. In fact, we said in Veloso that the case of Pampanga Sugar Development Co., Inc. vs. Court of

Industrial Relations[28] relied upon by the petitioners therein and which enunciated the same rule later applied in Fuentes, is not applicable to Veloso because the pertinent facts differ. Veloso did not lay down a rule totally different from what this Court had set in Pampanga or even in Fuentes and other similar cases. Veloso does not even apply in this case because the petitioners had asserted, and Gold City did not prove the contrary, that they initially refused to sign a document purportedly waiving their claims but were later tricked into signing the vouchers which turned out to be for alleged compromise settlements at P2,000.00 for each of them. We are inclined to agree with the petitioners. Gold City has not submitted any compromise agreement attended with the formulations of law.[29] All that it has are the cash vouchers, dated 17 July 1991, which states under the heading PARTICULARS: "To payment of Compromise Settlement representing Salary Differentials and Allowances as per RTWPB-X1-02." Of course, a voucher purporting to represent payment of the consideration in a compromise agreement is not the compromise agreement itself. Since Gold City did not submit any compromise agreement, then it is logical to presume that none existed for it had the burden of proving its own assertions.

Even if the petitioners did enter into a compromise settlement with Gold City, such agreement would be valid and binding only if, per Veloso, quoting Periquet vs. National Labor Relations Commission,[30] the agreement was voluntarily entered into and represents a reasonable settlement of the claims. In this case, as in Fuentes, the amounts purportedly received by the petitioners were unreasonably lower than what they were legally entitled to.

Furthermore, like in Pampanga, the "compromise settlements" with the petitioners were not executed with the assistance of the Bureau of Labor Relations or the Regional Office of the DOLE pursuant to Article 227 of the Labor Code. The records do not disclose that the assistance of such office was ever solicited. What Gold City did was merely to file with the Regional Office of the DOLE in Davao City the vouchers purporting to show payments of the alleged considerations of the "compromise settlements." Such filing can by no stretch of the imagination be considered as the requisite assistance in the execution of compromise settlements.

Finally, we also note that the alleged vouchers were dated 17 July 1991, or before the filing of any complaint with the DOLE on 19 August 1991 and even before the Labor Examiner submitted his findings of violations by Gold City. If indeed the parties entered into such compromise agreements, then Gold City should have submitted the vouchers to the Labor Examiner to refute the petitioners' claim and put an end to the controversy.

Having dispensed with the first error ascribed to the NLRC, the next issue to be resolved is whether the petitioners abandoned their jobs and, consequently, whether their dismissal due to abandonment was lawful.

To constitute abandonment, two elements must concur: (l) the 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.[31] Mere absence is not sufficient.[32] It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[33] Gold City failed to discharge this burden. It did not adduce any proof of some overt act of the petitioners that clearly and unequivocally show their intention to abandon their posts. On the contrary, the petitioners lost no time in filing the case for illegal dismissal against them, taking only four days from the time most of them were prevented from entering their work place on 22 August 1991 to the filing of the complaint on 26 August 1991. They cannot, by any reasoning, be said to have abandoned their work, for as we have also previously ruled, the filing by an employee of a complaint for illegal dismissal is proof enough of his desire to return to work, thus negating the employer's charge of abandonment.[34] Furthermore, petitioners Labor and Bonita presented proof that during some of those days that they were supposedly on AWOL (absence without official leave), they were actually on official leave as approved by no less than Rudy Uy himself.[35] Neither Gold City nor Rudy Uy had disputed this.

It may further be observed that the timing of Gold City's alleged refusal to allow the petitioners to enter their work place is highly suspicious. It happened on 22 August 1991 or only two days after the petitioners filed their complaint for labor standards violations with the DOLE. Mere coincidence? We think not. What it is, though, is evidence that lends credence to the allegation of the petitioners that they did not abandon their employment as Gold City asserts but were prevented from going to work. Thus, we cannot agree with the NLRC when it said that the petitioners "ha[d] to jump the gun against the respondents in order to save their faces from their own wrong doings, dishonest acts" by filing the case for illegal dismissal against the respondents.

Equally baseless is the charge of dishonesty which Gold City also relies upon to justify the dismissal of the petitioners from their employment.

A charge of dishonesty involves serious misconduct on the part of the employee, a breach of the trust reposed by the employer upon him. The rule that proof beyond reasonable doubt is not required to terminate an employee on the charge of loss of confidence and that it is sufficient that there is some basis for such loss of confidence is not absolute.[36] The right of an employer to dismiss employees on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause.[37] For loss of trust and confidence to be a valid ground for an employee's dismissal, it must be substantial and not arbitrary, and must be founded on clearly established facts sufficient to warrant the employee's separation from work.[38]

Unfortunately for Gold City, the evidence it adduced is insubstantial, inadequate, and unreliable to support a conclusion that the petitioners are even remotely guilty of the acts they are accused of committing. On this matter, we agree with the observations and conclusions of the Office of the Solicitor General which we quote with approval, to wit:

> Indeed, an examination of the affidavits would reveal that the alleged offenses complained of and through which private respondent Gold City sustained losses estimated at

P216,000.00 are couched in general terms and do not specifically mention the individual participation of each of the petitioners in the alleged losses. For instance, in the affidavit of Lee Manuela Suelto, the following will be noted:

(i) allegedly the order slip marked "Mrs. Ima V" was missing but it does [not] mention who is responsible for it;

(ii) allegedly petitioner Visabella or Arnold Veloso did not remit the amount of P60.00 collected by Visabella from a customer but goes on to conclude that both of them pocketed the amount;

(iii) allegedly the amount paid by a customer for several bottles of beer and soft drinks to petitioner Visabella was turned over to Veloso but concludes that both of them pocketed it;

(iv) allegedly petitioner Visabella crumpled and threw away an order slip he made out for four (4) bottles of beer and four (4) soft drinks after receiving payment from the said order but does not indicate if he appropriated the same; and

(v) allegedly petitioner Gabut admitted to affiant that he and Arnold Veloso made some money on an order slip for draft beer and the former would give the latter part of the money, if he was inclined to do so since they were at odds at that time. The admission, however, is hearsay and inadmissible against petitioner Gabut.

On the other hand, the affidavits of Mary Grace Verano, Ellen de Guzman and Renato Dalugdog (Annexes "C", "D" and "F", respectively, of Annex "D"‘ Petition) are pro forma and, except for the different sates of the incidents mentioned therein, invariably show that petitioners, on three separate occasions from June to August, 1991, failed to remit the money collected by them allegedly remitted stubs of entrance tickets which entitled customers to free drinks.

If it is true that petitioners were cheating their employer in the manner described in the affidavits of private respondents' witnesses, how come that they, who held the position of confidence as cashiers, tolerated the practice from June 1991 and blew the whistle only after petitioners filed a complaint of underpayment of wages in August 19, 1991? As pointed out by the investigating prosecutor, the affiants should have reported the irregularities a day after each offense.

The same may be said of the affidavit (Annex "A" of Annex "D", Petition) of Joenel de Mesa and the affidavit of Percy Hangad (Annex "B" of Annex "D", Petition), both of which substantiate the alleged modus operandi of petitioners. The alleged offenses happened in June, 1991 and they came with a clean breast of it only on August 20 and 23, 1991. Moreover, establishing the mode by which petitioners allegedly cheated private respondent Gold City does not necessarily prove their complicity.

It is private respondents' posture that great weight should be given to the affidavit of Joenel de Mesa, a mere customer whose only alleged desire is to protect the public similarly situated with him. However, de Mesa charges only Visabella of using his (Mesa's) entrance ticket stub to deprive private respondents of P60.00. The same could not be imputed to his so-petitioners.

Although the employer's evidence is not required to be of such degree as is required in criminal cases, i. e., proof beyond reasonable doubt, such must be substantial. The same must clearly and convincingly establish the facts upon which loss of confidence in the employer may be made to rest. (Starlite Plastic Industrial Corporation vs. NLRC, 171 SCRA 315 [1989].

In the instant case, private respondents have not clearly and convincingly shown by substantial evidence the individual participation of each of the petitioners in depriving their employer of the estimated amount of P216,000.00 per year. As correctly pointed out by the investigating prosecutor, there was no cause to hold petitioners liable for the offense imputed to them.

It may be argued by private respondents that the acquittal of an employee in a criminal case does not guarantee his reinstatement or that the dropping of a criminal prosecution for an employee's alleged misconduct does not bar his dismissal. (Starlite Plastic Industrial Corp. Supra).

Still, such an argument would fail to impress since petitioners' actual involvement or participation in the irregularities complained of have not been proven. Private respondents failed miserably even to establish a prima facie case against them in the prosecutor's office and, precisely, because of such absence of evidence, the case was dismissed. What private respondents had were "mere words of mouth" and generalities which are not sufficient to afford reasonable ground for belief that petitioners were responsible for the misconduct imputed to them.

In the words of the Labor Arbiter, the alleged commission of acts of dishonesty had no leg to stand on. They are but prevarications in reprisal to the complaint filed by petitioners with the DOLE.

There being no abandonment or commission of dishonest acts by the petitioners, no just cause exists to dismiss them, hence, their termination by Gold City is illegal. The fact that Gold City sent them notices on 6 September 1991 becomes irrelevant. It does not cure the illegality of their dismissal for lack of just cause. It is interesting to note, however, that in its letters of 6 September 1991 individually addressed to the petitioners, Gold City sought an explanation from the petitioners on their alleged absence without official leave or, in short, their abandonment, and warned them in the form of a reminder that such absence is a ground for separation or dismissal from the company. Nothing is mentioned about dishonesty or any other misconduct on the part of the petitioners. If indeed the petitioners were guilty of both abandonment and dishonesty or misconduct, then Gold City should have put them down in black and white. The letters cum notice cannot then be considered to include dishonesty or misconduct. It would be a gross violation of the petitioners' right to due process to dismiss them for that cause of which they were not given notice or for a charge for which they were never given an opportunity to defend themselves. A dismissal must not only be for a valid or substantial cause; the employer must also

observe the procedural aspect of due process in giving the employee notice and the opportunity to be heard and to defend himself.[39]

At the same time, when the petitioners were dismissed by preventing them from entering their work place, no previous notice of any kind was given to them at all. The case for illegal dismissal was filed on 26 August 1991, or at least eleven days before the date of the notices. The subsequent notices cannot cure the lack of notice prior to the illegal dismissal of the petitioners on 22 August and 24 August 1991.

As for the money claims of the petitioners, the award made by the Labor Arbiter must be upheld, subject to the modification with respect to the addition of an award for back wages which the Labor Arbiter should have made but did not.

This Court, after scrutinizing the documents and evidence before it, agrees with the findings of the Labor Arbiter on Gold City's disclaimer of liability for the money claims and adopts them herein, the pertinent portions of which are as follows:

> Albeit respondents rebutted complainants' money claims through the submission of the latter's payslips, however, the same could not be credited in their favor, being found spurious. The payslips, vis-a-vis respondents, did not bear any entries such as meals, snacks, lodgings and SSS contributions (Annexes "A," "B," Complainants' Reply to Respondents' Position Paper). It is very obvious that those entries [were] belatedly added by respondents to lessen their actual liabilities to complainants.

There being no other proofs like payrolls or vouchers that would support their compliance [with] labor standard laws, complainants are awarded the following benefits: representing salary differentials, 13th month pay for 1991 and holiday [pay] as computed by this Office which is now part of the records of this case, to wit:

1. Artemio Labor P30,927.24;

2. Ireneo Visabella 30,927.24;

3. Allan Rommel Gabut 30,927.24;

4. Pedro Bonita. Jr. 30,927.24; and

5. Delfin Medillo 22,814.27.[40]

From the above amounts, the Labor Arbiter deducted twenty percent (20%) therefrom to represent the benefits which the petitioners received, such as lodging, meals and snacks, as well as for absences, tardiness, and for non-working days when no work was performed by them because, as it stated, "the monetary award due to them was based on straight computations."[41] Though the Labor Arbiter did not explain why an arbitrary figure of 20% was used to represent these deductions, since the petitioners did not raise this as an issue and we do not find any reason to delete or modify it, this value for deductions from the total money claims to be awarded to the petitioners must stay.

With respect to the award of separation pay, the same was properly made and is affirmed. Ordinarily, a finding that an employee has been illegally dismissed entitles him to reinstatement to his former position without loss of seniority rights and to the payment of back wages.[42] But in this case, the petitioners did not pray for reinstatement in the position paper they filed with the Labor Arbiter.[43] The latter in turn ordered the payment of separation pay in lieu of reinstatement and this is part of the decision that the petitioners seek to be affirmed by this Court. That being the case, and as we have said before, if the employee decides not to be reinstated, the employer shall pay him separation pay in lieu of reinstatement.[44] This is only just and practical because reinstatement of the petitioners will no longer be in the best interest of both the petitioners and Gold City considering the animosity and antagonism that exists between them brought about by the filing of charges by both parties against each other in the criminal as well as in the labor proceedings.[45] Gold City had also refused entry to the petitioners into their work place, giving rise to strained relations between the parties which make reinstatement unacceptable to them. The petitioners would then be entitled to separation pay equivalent to at least one month's salary for every year of service in lieu of reinstatement in addition to their full back wages.

The Labor Arbiter, however, failed to award back wages despite its ruling that the petitioners were illegally dismissed. We thus deem it proper to make such an award herein in addition to the money claims for labor standards violations and for the separation pay. As a rule, full back wages are computed from the time of the employee's illegal dismissal until his actual reinstatement, but since in this case, reinstatement is not possible, the back wages must be computed from the time of the petitioners' illegal dismissal until the finality of our Decision herein.[46] This amount due the petitioners for back wages, however, is subject to deductions for any amount which the petitioners may have earned during the period of their illegal termination.[47] Computation of full back wages and presentation of proof as to income earned elsewhere by the illegally dismissed employees after their termination and before full payment is effected by Gold City should be ventilated in the execution proceedings before the Labor Arbiter in accordance with the appropriate rules of procedure of the NLRC.[48]

WHEREFORE, the Decision of public respondent National Labor Relations Commission in NLRC CA No. M-000834-92(RAB 11-08-00742-91) is hereby **SET ASIDE** and the Decision of the Labor Arbiter is **REINSTATED**, with the addition of an award of full back wages to each of the petitioners from the time of their illegal termination until the finality of this Decision.

SO ORDERED.

Bellosillo, Kapunan and Hermosisima, Jr., *JJ.*, concur.

SEPARATE OPINION

***PADILLA, J., concurring.*:**

I concur, except with the observation that income earned elsewhere by the employees during the period of their illegal termination or

dismissal should be deducted from their backwages. Such income should not be deducted from backwages as the employees had to earn a living during their illegal termination from employment and the payment of full backwages (without deducting such income earned elsewhere) is a part of the price the employer has to pay for his illegal dismissal of the employees.

Republic Act No. 6715 approved on 2 March 1989, clearly provides for the payment of full backwages to illegally dismissed employees. In Pines City Educational Center vs. NLRC (227 SCRA 655), I expressed the view that the Court has no alternative but to award full backwages, without deduction or qualification, to illegally dismissed employees, the provisions of the law against unjust enrichment notwithstanding. The intent of the law (R.A. No. 6715) is quite clear and unequivocal in that no deductions and/or qualifications shall be made in awards of backwages to employees illegally dismissed.

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[1] Annex "A" of Petition; Rollo, 18-32. Per Commissioner Leon G. Gonzaga, Jr., with Commissioners Musib M. Buat and Oscar N. Abella concurring.
[2] Annex "G," Id.; Id., 205-214.
[3] Rollo, 243.
[4] Id., 257.
[5] Id., 246.
[6] Id., 248-253.
[7] Rollo, 248-253.
[8] Id., 241, 244.
[9] Id., 242, 245.
[10] Id., 46-48.
[11] Rollo, 34-48.
[12] Id., 72-76.
[13] Rollo, 49-187.
[14] Id., 72-76.
[15] Rollo, 183-187.
[16] Id., 63.
[17] Id., 188-192.
[18] Id., 205-214.
[19] 200 SCRA 201 [1991].
[20] 167 SCRA 767 [1988].
[21] Rollo, 276-299.
[22] Id., 304-325.
[23] 215 SCRA 204 [1992].
[24] Rollo, 336-344.

[25] Id., 378-393.
[26] Chong Guan Trading vs. NLRC, 172 SCRA 831 [1989] and the cases cited therein. See also Kapisanan ng Manggagawa ng Camara Shoes vs. Camara Shoes, 111 SCRA 477 [1982].
[27] Rollo, 241, 244. The report of the Labor Examiner stated that the results were explained to and received by Gold City but its manager did not sign the Inspection Report and the Notice of Inspection Results.
[28] 114 SCRA 725 [1982].
[29] See Article 227, Labor Code, and the discussion below.
[30] 186 SCRA 724 [1990].
[31] De Ysasi III vs. NLRC, 231 SCRA 173 [1994] See Bonotan vs. NLRC, 237 SCRA 717 [1994].
[32] Kingsize Manufacturing Corp. vs. NLRC, 238 SCRA 349 [1994]; F.R.F. Enterprises, Inc. vs. NLRC, G.R. No. 105998, 21 April 1995.
[33] See F.R.F Enterprises, supra note 32.
[34] Santos vs. NLRC, 166 SCRA 759 [1988]; New Imus Lumber vs. NLRC, 221 SCRA 589 [1993]. See Flores vs. Funeraria Nuestro, 160 SCRA 568 [1988]; Asphalt and Cement Pavers, Inc. vs. Leogardo, Jr., 162 SCRA 312 [1988].
[35] Rollo. 43A, 43B.
[36] See Starlite Plastic Industrial Corp. vs. NLRC, 171 SCRA 315 [1989], and the cases cited therein.
[37] Acda vs. Minister of Labor, 119 SCRA 326 [1982]; Philippine Long Distance Telephone Co. vs. NLRC, 122 SCRA 601 [1983]; Starlite Plastic Industrial Corp. vs. NLRC, supra note 36; China City Restaurant Corp. vs. NLRC, 217 SCRA 443 [1993].
[38] See Pilipinas Bank vs. NLRC, 215 SCRA 750 [1992]; China City Restaurant Corp. NLRC, supra note 37; Jose Marcelo and Carlito Sarcia vs. NLRC, G.R. No. 113458, 31 January 1995.
[39] See Rule XIV, Book of the Implementing Rules of the Labor Code. see also numerous previous decisions of this Court on the subject, e.g., Shoemart, Inc. vs. NLRC, 176 SCRA 385 [1989]; Imperial Textile Mills, Inc. vs. NLRC, 217 SCRA 237 [1993]; San Miguel Corporation vs. NLRC, 222 SCRA 818 [1993].
[40] Rollo, 212.
[41] Id.
[42] Santos vs. NLRC, 154 SCRA 166 [1987].
[43] Rollo, 4
[44] Starlite Plastic Industrial Corp. vs. NLRC, supra note 36. See Lagniton, Sr. vs. NLRC, 218 SCRA 456 [1993]. See also Domingo C. Congson vs. NLRC, G.R. No. 114250, 5 April 1995.
[45] See Tiu vs. NLRC, 215 SCRA 540 [1992]; Mapalo vs. NLRC, 233 SCRA 266 [1994].
[46] See Gaco vs. NLRC, 230 SCRA 260 [1994]; Oscar Ledesma and Co. and Arturo Ledesma vs. NLRC (Fourth Division) and Orlando Ondon, G.R. No. 110930, 13 July 1995.
[47] Ferrer vs. NLRC, 224 SCRA 410 [1993]. See Pines City Educational Center vs. NLRC, 227 SCRA 655 [1993].

[48] Ferrer vs. NLRC, supra note 47.