

# FIRST DIVISION

[ CA-G.R. SP No. 124601, May 26, 2014 ]

**TRANSNATIONAL CONSTRUCTION CORPORATION, PETITIONER,  
VS. NATIONAL LABOR RELATIONS COMMISSION AND AILEEN V.  
BALOIS, RESPONDENTS.**

## D E C I S I O N

**BARRIOS, M. M., J.:**

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the Decision dated 06 January 2012<sup>[1]</sup> of the National Labor Relations Commission, which denied its appeal. The dispositive part reads:

x x x

***WHEREFORE***, premises considered, respondents' appeal is hereby ***DISMISSED*** for lack of merit.

**SO ORDERED.**

Likewise assailed is the Resolution dated 07 March 2012<sup>[2]</sup> denying petitioner's motion for reconsideration.

### The Antecedents

In February 1998, private respondent Aileen V. Balois was employed as parking attendant at the New Galleria Baclaran Mall belonging to petitioner. In 2009, her decade's long service to petitioner earned for private respondent a loyalty award. On 13 December 2010, however, private respondent received a memorandum<sup>[3]</sup> from petitioner citing her to explain within twenty-four (24) hours the commission of infraction where she allegedly punched in a co-employee's time card even though the latter was not yet at work. In another memorandum<sup>[4]</sup> dated 13 December 2010, she was informed that a panel inquiry will be conducted the following day. During the panel inquiry held on 14 December 2010, petitioner formally charged private respondent of punching in the time card of one "Thotie", but there were no details nor documents shown as to the date and manner the infraction was committed. Likewise, private respondent was advised for the first time of other infractions supposedly committed, to wit: 1) use of the manual, as opposed to computerized, system of logging in the data of vehicles entering and exiting the parking lot of New Galleria; and 2) failure to account for several missing parking cards. Private respondent, however, averred that these latter infractions transpired five (5) years ago and for which, she had already been meted the appropriate disciplinary action by petitioner. The next day, petitioner issued a memorandum<sup>[5]</sup> dated 15 December 2010 informing private respondent that her employment was

being terminated as she was incompetent, incapable and ineffective in her job. Thus, private respondent filed a complaint for illegal dismissal and other claims.

In response, petitioner maintained that private respondent's dismissal was substantially and procedurally justified. It averred that private respondent was able to submit her written explanation on the charge that she punched in her co-employee's time card even though the latter was not yet present. It also averred that during the panel inquiry, private respondent was also made to explain and seems to admit that she violated several company rules since she made an apology.

In a Decision dated 28 June 2011, the Labor Arbiter ruled in favor of private respondent finding the dismissal is illegal as it was done without due process of law.

Petitioner appealed to public respondent NLRC which rendered the now assailed Decision dated 06 January 2012, affirming the Labor Arbiter. Petitioner moved for reconsideration, but the same was denied. Hence, this instant petition premised on the following arguments:

### ***I***

***THE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE FIRST NOTICE STATES AN ALLEGED OFFENSE BUT WITHOUT PARTICULAR.***

### ***II***

***THE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE DISMISSAL OF THE RESPONDENT HEREIN IS BOTH SUBSTANTIVELY AND PROCEDURALLY INFIRMED (sic).***

### ***III***

***THE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN UPHOLDING THAT RESPONDENT IS ENTITLED TO SEPARATION PAY AND IN FAILING TO CORRECT THE ERRONEOUS COMPUTATION OF AWARD.***

### **Our Ruling**

At the onset, We first address private respondent's contention that the instant petition must be dismissed for failure of petitioner to allege acts which constitute grave abuse of discretion on the part of public respondent as a ground for filing this petition for certiorari under Rule 65 and hence, this Court lacks jurisdiction.

We do not agree. The power of this Court to review NLRC decisions *via* a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure has been confirmed by the Supreme Court in the case of *St. Martin Funeral Homes, Inc. vs NLRC*.<sup>[6]</sup> Moreover, it is also the settled rule that under Section 9<sup>[7]</sup> of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, this Court – pursuant to the exercise of its original jurisdiction over petitions for certiorari – is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.<sup>[8]</sup> Necessarily, this Court can only evaluate the materiality or significance of the evidence which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.<sup>[9]</sup> Therefore,