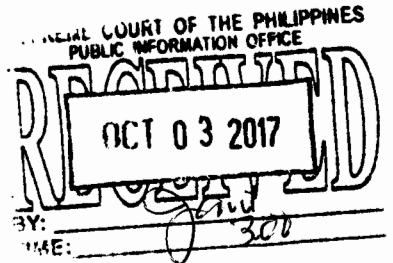




Republic of the Philippines  
 Supreme Court  
 Manila



FIRST DIVISION

**PHILIPPINE NATIONAL BANK,**

**G.R. No. 194944**

Petitioner,

Present:

SERENO, *CJ.*, Chairperson,\*  
 LEONARDO-DE CASTRO,\*\*  
 DEL CASTILLO,  
 JARDELEZA, and  
 TIJAM, *JJ.*

- versus -

**TERESITA FE A. GREGORIO,**

Respondent.

Promulgated:

**SEP 18 2017**

X-----X

**DECISION**

**JARDELEZA, J.:**

Petitioner Philippine National Bank (PNB) filed this petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court challenging the Decision<sup>2</sup> of the Court of Appeals (CA) dated July 15, 2010 in CA-G.R. SP No. 110045 and its Resolution<sup>3</sup> dated December 21, 2010 which denied PNB's motion for reconsideration. The CA found that the National Labor Relations Commission (NLRC) committed grave abuse of discretion when it reversed the Labor Arbiter (LA) and ruled that PNB illegally dismissed respondent Teresita Fe A. Gregorio (Gregorio).<sup>4</sup>

Gregorio was initially hired by PNB as an apprentice teller in 1978. She rose through the ranks and eventually became the Branch Manager, with a level of Senior Manager, of PNB's Sucat, Parañaque Branch (PNB Sucat).<sup>5</sup>

Sometime in December 2002, a depositor requested confirmation that PNB Sucat offers a unique kind of high-return investment, as promised by

\* On official leave.

\*\* Designated Acting Chairperson per Special Order No. 2484 dated September 14, 2017.

<sup>1</sup> *Rollo*, pp. 9-26

<sup>2</sup> *Id.* at 9-26. Penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Normandie B. Pizarro and Priscilla J. Baltazar-Padilla.

<sup>3</sup> *Id.* at 27-32.

<sup>4</sup> *Id.* at 25-26.

<sup>5</sup> *Id.* at 11-12.

branch officers and personnel.<sup>6</sup> Thus, from January 8 to 24, 2003, PNB's Internal Audit Group (IAG) conducted a credit review at PNB Sucat regarding its activities connected with loan against deposit hold-out transactions.<sup>7</sup>

On February 3, 2003, a certain Benita C. Rebollo (Rebollo) also executed an affidavit detailing her transactions with Gregorio.<sup>8</sup>

On February 18, 2003, the IAG submitted its evaluation, findings, and recommendation in a Memorandum<sup>9</sup> (IAG Memorandum) which essentially detailed how Gregorio authorized the conduct of irregular transactions in PNB Sucat. From its investigation and Rebollo's affidavit, the IAG discovered Gregorio's purported irregular lending activities: Gregorio, along with Gloria Miranda (Miranda), a customer relation specialist of PNB Sucat, allegedly convinced depositors to invest in a PNB product that had an above-market interest income yield. To avail of this product, Gregorio required depositors to avail of a loan secured by their deposits with PNB Sucat. The loan proceeds are thereafter loaned to other borrowers who undertook to pay a 5% monthly interest. Of the 5%, 3% will be paid to them as income interest yield while the remaining 2% will go to PNB Sucat as commission. Parenthetically, the IAG found no records showing that PNB Sucat received any commission arising from these loan activities. To facilitate the loans, Gregorio required the depositors to accomplish loan documents such as the Application/Approval Form on Loans Against Deposit Hold-out, Promissory Notes, and Deposit Hold-out Agreements. The proceeds of the loans are then released through manager's checks. These checks, in turn, are credited to the savings accounts of persons other than the borrowers.<sup>10</sup>

The IAG Memorandum identified other irregular transactions within PNB Sucat to prove Gregorio's supposed *modus operandi*: Gregorio approved the application of loan proceeds of 25 borrowers to settle the outstanding loans covered by 44 promissory notes and bank charges of other borrowers.<sup>11</sup> Sampled bank transactions from the period of February 15 to August 29, 2001 show that Gregorio approved 21 manager's checks representing the proceeds of loans against deposit hold-outs. These were loan proceeds of 15 borrowers credited to the accounts of persons other than the borrowers. There were no documents showing the borrowers' written consent to the crediting of their loan proceeds to other people's accounts. Dollar loans against hold-out were granted to three borrowers which proceeds, however, were credited without written consent to the account of a third person.<sup>12</sup>

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<sup>6</sup> *Id.* at 99-A.

<sup>7</sup> *Id.* at 13.

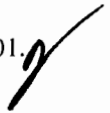
<sup>8</sup> *Id.* at 104.

<sup>9</sup> *Id.* at 97-109.

<sup>10</sup> *Id.* at 99-100.

<sup>11</sup> *Id.* at 98.

<sup>12</sup> *Id.* at 100-101.



The IAG's investigation also revealed that there were two deposit hold-out borrowers who received the monthly 3% interest income yield through their savings accounts. This was paid either in cash or fund transfer from the account of a certain Grace de Guia Brozas (Brozas). The IAG asserted that this is the dummy account of Miranda, who worked with Gregorio in the conduct of these irregular lending activities,<sup>13</sup> on the basis of bank records showing several fund transfers of large amounts from Miranda's account to Brozas' account.

The IAG also noted in its Memorandum that tellers of PNB Sucat accepted for encashment eight managers' checks representing loan proceeds without the proper endorsement of the loan borrowers.<sup>14</sup> In other instances, the tellers paid managers' checks in cash even when it was not clear if the proper bank officer approved the checks for encashment or deposit.<sup>15</sup>

Further, the IAG found that the 3% interest was paid to the depositors who availed of the loan against hold-out transactions either: (1) to their savings or checking accounts with PNB Sucat or (2) by Gregorio in cash.<sup>16</sup>

Later on, two other depositors executed affidavits narrating their transactions with Gregorio. Specifically, Maxima Villar (Villar) and Virginia Pollard (Pollard) executed affidavits on May 19, 2003 and October 14, 2003, respectively, depicting essentially the same transaction that Rebollo stated in her affidavit. In sum, these depositors claimed in their affidavits that Gregorio convinced them to invest in a PNB product that had a high interest income yield. They were required to sign withdrawal slips and other loan documents. Later on, they claimed that, upon inquiry with PNB Sucat, they were surprised to learn that they have outstanding loans with the bank and that their deposits were subject of a hold-out agreement. They were presented with bank documents concerning their loans and hold-out agreements. They insisted in their affidavits that they never agreed to contract a loan with the bank.<sup>17</sup>

On May 30, 2003, the PNB Administrative Adjudication Panel (Panel) charged Gregorio with gross misconduct and dishonesty based on Villar's affidavit.<sup>18</sup> On February 4, 2004, Gregorio was again charged with gross dishonesty and/or willful breach of trust and gross misconduct and/or negligence.<sup>19</sup> Gregorio filed separate answers to these charges on June 12, 2003<sup>20</sup> and February 16, 2004,<sup>21</sup> respectively. In her answer to the first

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<sup>13</sup> *Id.* at 101.

<sup>14</sup> *Id.* at 102.

<sup>15</sup> *Id.* at 103.

<sup>16</sup> *Id.* at 99-A.

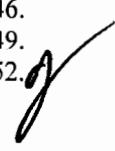
<sup>17</sup> *Id.* at 141-143, 144-146.

<sup>18</sup> *Id.* at 141-143.

<sup>19</sup> *Id.* at 144-146.

<sup>20</sup> *Id.* at 147-149.

<sup>21</sup> *Id.* at 150-152.



charge, Gregorio submitted Villar's affidavit of retraction which she received on June 11, 2003. According to Villar's affidavit of retraction: (1) the loan against deposit hold-out transaction was a matter between PNB Sucat's depositors and their respective borrowers; (2) these loans "are [the depositors-borrowers'] private concern. Employees of the [b]ranch do not have to do anything with them (*sic*) and their business concerns;"<sup>22</sup> (3) Villar executed the earlier affidavit "out of [her] sincere fear and anxiety that [she] may not be able to get [her] money from PNB Sucat with interest, for reasons which [she] was (*sic*) not able to verify the facts first before executing the affidavit;"<sup>23</sup> (4) Gregorio never induced Villar to enter into any illegal activity or to sign any blank bank documents; (5) the hold-out of Villar's deposit was made upon her instructions.<sup>24</sup> Notably, Rebollo also executed an affidavit of retraction of her earlier affidavit.<sup>25</sup>

In her answer to the second charge, Gregorio denied Pollard's claim that she made the latter sign blank bank documents. Instead, according to Gregorio, Pollard was made to sign "documents with blank spaces on them that [Pollard], like other depositors, have (*sic*) to fill out."<sup>26</sup> Gregorio also stated that she never borrowed money from Pollard nor induced her to invest money in high interest-yielding ventures. Rather, Pollard's loan activities were between her and her borrowers. Gregorio asserts that Pollard only complained because her borrower had failed to pay her. Nevertheless, whatever losses she may have incurred is her concern. Gregorio, as well as the staff of PNB Sucat, has nothing to do with this.<sup>27</sup>

On March 22, 2004, the Panel conducted a meeting on the charges which Gregorio attended.<sup>28</sup> On March 29, 2004, the Panel recommended Gregorio's dismissal<sup>29</sup> after taking into consideration the affidavits executed by Rebollo, Villar, and Pollard, as well as the results of the IAG investigation. Although the Panel noted the affidavits of retraction from Villar and Rebollo, it did not give credence to these later affidavits. As to Villar's affidavit of retraction, the decision stated that the original of the affidavit was never presented before the Panel and thus its authenticity was never established. It also cited jurisprudence stating that affidavits of retraction are generally unreliable. As to Rebollo's affidavit of retraction, the decision emphasized that this second affidavit even revealed Gregorio's active participation in the supposed irregular lending activities when Rebollo stated that:

*[N]a ang mga pangyayari ay alam ko, at ang ginawa lamang ni Mrs. Gregorio ay tinulungan ako kung papaano kumita ang pera ko ng mas mataas kay sa*

<sup>22</sup> *Id.* at 148.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Rollo*, pp. 427-428.

<sup>26</sup> *Id.* at 150.

<sup>27</sup> *Id.* at 151.

<sup>28</sup> *Id.* at 156.

<sup>29</sup> *Id.* at 153-161

***binibigay na tubo ng bangko sa aking “time deposit”; na ang kanyang ginawa lamang ay ipinakilala ako kay Mrs. Realina Ty na siya raw ay “supplier” ng City Hall ng Parañaque at siya ang gagamit ng aking pera. x x x<sup>30</sup>***  
(Emphasis and underscoring in the original.)

On May 4, 2004, PNB issued a memorandum dismissing Gregorio from service based on the Panel’s recommendation. This prompted Gregorio to file before the NLRC an action for illegal dismissal, damages and attorney’s fees, with prayer for reinstatement with full backwages against PNB. The LA found that Gregorio was illegally dismissed, rooting his finding on the insufficiency of PNB’s bases in dismissing Gregorio. The LA asserted that as to the first charge, PNB based its decision solely on Villar’s first affidavit which has since been successfully rebutted by Gregorio when she presented Villar’s affidavit of retraction. There was thus no basis for holding Gregorio guilty on the first charge.<sup>31</sup>

As to the second charge, the LA found that PNB based its decision solely on Pollard’s affidavit, which Gregorio was again able to refute. Moreover, since Gregorio was never given the opportunity to confront Pollard, the LA concluded that Pollard’s affidavit simply cannot suffice to warrant a finding of Gregorio’s guilt on the second charge.<sup>32</sup> It also found that the consistent high performance ratings previously given by PNB to Gregorio militate against PNB’s position.<sup>33</sup> The LA thus held:

**WHEREFORE**, all foregoing premises considered, judgment is hereby rendered:

1. Declaring complainant **TERESITA FE A. GREGORIO** to have been illegally dismissed from her employment and ordering respondent **PHILIPPINE NATIONAL BANK** to immediately reinstate her to her former or substantially equivalent position without loss of seniority rights and other privileges; and

2. Further ordering respondent **PHILIPPINE NATIONAL BANK** to pay complainant **TERESITA FE A. GREGORIO** the amount of **P1,554,247.75** representing the monetary awards granted the latter as initially computed above.

For being a mere nominal party, Mr. Lorenzo V. Tan is hereby ordered dropped as party-respondent in this case.

**SO ORDERED.**<sup>34</sup> (Emphasis in the original.)

<sup>30</sup> *Id.* at 159-160.

<sup>31</sup> *Id.* at 241-243.

<sup>32</sup> *Id.* at 244-245.

<sup>33</sup> *Id.* at 247-248.

<sup>34</sup> *Id.* at 252-253.

PNB appealed to the NLRC which reversed the LA's Decision in a Decision<sup>35</sup> promulgated on September 26, 2008. The dispositive portion of the NLRC Decision reads:

**WHEREFORE**, premises considered, the appeal of respondent Philippine National Bank is GRANTED. The Decision of Labor Arbiter Napoleon M. Menese dated December 8, 2005 is REVERSED and SET ASIDE, and a new one is hereby rendered DISMISSING the above-entitled [complaint] for lack of merit.

**SO ORDERED.**<sup>36</sup> (Emphasis in the original.)

The NLRC held that PNB met the required burden of proof. According to the NLRC, PNB used the affidavits of Rebollo, Villar, and Pollard as well as the result of the IAG's investigation as bases for its findings. It agreed with PNB that Rebollo and Villar's affidavits of retraction did not necessarily make their earlier statements false as recantations are generally looked upon with disfavor as they can be easily fabricated. It added that the LA erred in holding that Gregorio should have been given the opportunity to confront Pollard. According to the NLRC, the confrontation of a witness is not required in company investigations for administrative liability of the employee. Further, the NLRC highlighted that Gregorio's supposed evidence consisted of nothing more than mere denials. Finally, it held that Gregorio's previous commendations did not necessarily mean that she could not have committed the charges against her.<sup>37</sup>

Gregorio filed a motion for reconsideration<sup>38</sup> of the NLRC's Decision. This, however, was denied.<sup>39</sup> Thus, Gregorio filed a special civil action for *certiorari*<sup>40</sup> under Rule 65 of the Rules of Court before the CA, alleging that the NLRC, in reversing the LA, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its Decision dated July 15, 2010, the CA granted Gregorio's petition, reversed the NLRC, and reinstated the LA's Decision. Agreeing with Gregorio that PNB presented no sufficient evidence to warrant her dismissal, the CA found no factual or legal basis for the charges of gross misconduct and willful breach of trust and confidence. It found all the questioned bank transactions to be well documented and the loan against hold-out agreements to be regular transactions of PNB Sucat. The CA added that while Villar and Pollard legitimately availed of this loan arrangement, they suffered losses because their borrowers failed to pay the promised interest. For the CA, this was neither Gregorio's fault nor within her control. It also highlighted that PNB based its decision to terminate Gregorio on the

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<sup>35</sup> *Id.* at 313-328.

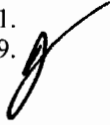
<sup>36</sup> *Id.* at 327-328.

<sup>37</sup> *Id.* at 323-324.

<sup>38</sup> *Id.* at 329-359.

<sup>39</sup> *Id.* at 360-361.

<sup>40</sup> *Id.* at 362-399.



three affidavits, two of which were recanted by Villar and Rebollo.<sup>41</sup> As to Pollard's affidavit which was never recanted, the CA found that: (1) PNB never gave Gregorio the opportunity to confront Pollard; and (2) Pollard's allegations were unsubstantiated.<sup>42</sup> Aside from stressing that there was also no evidence that PNB incurred losses or damages because of Gregorio's activities, the CA also found relevant the fact that Gregorio has consistently received high performance ratings.

PNB is now before this Court challenging the CA's ruling. It asserts that the CA erred in finding that it acted solely on the basis of the three (3) affidavits. In truth, PNB based its decision on the IAG Memorandum, the affidavits executed by Rebollo, Villar, and Pollard, the affidavits of retraction subsequently executed by Villar and Pollard, and Gregorio's answers to the two charges against her.<sup>43</sup> PNB maintains that these altogether provide substantial evidence to establish Gregorio's irregular transactions as manager of PNB Sucat.<sup>44</sup> These irregular transactions, in turn, amount to gross misconduct, gross dishonesty and willful breach of trust and confidence.<sup>45</sup>

In her comment, Gregorio insists that there was no factual basis for her dismissal.<sup>46</sup> Further, she challenges the purported new allegation in PNB's petition that she ran "a bank within [a] [b]ank."<sup>47</sup> Since this was never raised in any of the proceedings below, Gregorio claims that raising it now on a petition for review before this Court is a breach of her right to due process.<sup>48</sup>

At the onset, we must emphasize that decisions of the NLRC are reviewable by the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court. This means that the CA must look at an NLRC Decision and ascertain if it merits a reversal exclusively on the basis of one ground—the presence of grave abuse of discretion amounting to lack or excess of jurisdiction. Necessarily then, when a CA decision is brought before us through a petition for review on *certiorari* under Rule 45, the question of law presented before us is this—whether the CA correctly found that the NLRC acted with grave abuse of discretion in rendering its challenged Decision.

We grant the petition.

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<sup>41</sup> *Id.* at 82-83.

<sup>42</sup> *Id.* at 86.

<sup>43</sup> *Id.* at 49, 57.

<sup>44</sup> *Id.* at 64.

<sup>45</sup> *Id.* at 87.

<sup>46</sup> *Id.* at 438-439.

<sup>47</sup> *Id.* at 454-455.

<sup>48</sup> *Id.* at 456.

## I.

We held in *St. Martin Funeral Home v. NLRC*<sup>49</sup> (*St. Martin*) that the decision of the NLRC may be reviewed by the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court. While we stated in this case that the courts, particularly the CA, possess jurisdiction to review the rulings of the NLRC, our existing laws and rules limit a resort to the courts through a petition for *certiorari*. In ruling that a special civil action for *certiorari* is the proper remedy to assail NLRC decisions, we specified in *St. Martin* the parameters of the judiciary's review powers over the rulings of the NLRC. In particular, the CA may review NLRC decisions only when there is grave abuse of discretion amounting to lack or excess of jurisdiction.

A special civil action for *certiorari* under Rule 65 is not the same as an appeal. In an appeal, the appellate court reviews errors of judgment. On the other hand, a petition for *certiorari* under Rule 65 is not an appeal but a special civil action, where the reviewing court has jurisdiction only over errors of jurisdiction. We have consistently emphasized that a special civil action for *certiorari* and an appeal are "mutually exclusive and not alternative or successive."<sup>50</sup> A petition filed under Rule 65 cannot serve as a substitute for an appeal.<sup>51</sup>

Thus, while we said in *St. Martin* that a special civil action under Rule 65 is proper to seek the review of an NLRC decision, this remedy is, by no means, intended to be an alternative to an appeal. It is not a substitute for an appeal that was devised to circumvent the absence of a statutory basis for the remedy of appeal of NLRC decisions. It is not a means to review the entire decision of the NLRC for reversible errors on questions of fact and law.

In *Leonis Navigation Co., Inc. v. Villamater*,<sup>52</sup> we explained that:

[A] petition for *certiorari* does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the

<sup>49</sup> G.R. No. 130866, September 16, 1998, 295 SCRA 494.

<sup>50</sup> *Bernardo v. Court of Appeals (Special Sixth Division)*, G.R. No. 106153, July 14, 1997, 275 SCRA 413, 426. Citation omitted.

<sup>51</sup> *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, August 17, 2011, 655 SCRA 580, 590.

<sup>52</sup> G.R. No. 179169, March 3, 2010, 614 SCRA 182.



discretion was exercised arbitrarily or despotically.<sup>53</sup>

These parameters of the review powers of the courts in decisions coming from the NLRC find more meaning when seen in the context of the authority of quasi-judicial bodies and the binding effect of their rulings. In *Hagonoy Rural Bank, Inc. v. NLRC*,<sup>54</sup> we explained that quasi-judicial agencies, like the NLRC, have acquired expertise in the specific matters entrusted to their jurisdiction. Thus, their findings of facts are accorded not only respect but even finality if they are supported by substantial evidence.<sup>55</sup>

The focus of a special civil action under Rule 65 also affects the scope of our review when we are presented with a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the ruling of the CA in cases involving alleged grave abuse of discretion by the NLRC. An appeal through a petition for review on *certiorari* under Rule 45 is limited to questions of law.<sup>56</sup> Thus, when a petition under Rule 45 is brought before us challenging the decision of the CA in a petition under Rule 65 challenging an NLRC Decision, the question of law we must resolve is this—whether the CA correctly ruled on the presence or absence of grave abuse of discretion on the part of the NLRC.<sup>57</sup>

In *Career Philippines Shipmanagement, Inc. v. Serna*,<sup>58</sup> we said:

In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.**<sup>59</sup> (Citation omitted; emphasis and underscoring supplied.)

To summarize, an appeal is a statutory right. This means that there is no remedy of appeal unless there is a law expressly granting it. In the case of

<sup>53</sup> *Id.* at 192.

<sup>54</sup> G.R. No. 122075, January 28, 1998, 285 SCRA 297.

<sup>55</sup> *Id.* at 308.

<sup>56</sup> RULES OF COURT, Rule 45, Sec. 1.

<sup>57</sup> *Fuji Television Network Inc. v. Espiritu*, G.R. Nos. 204944-45, December 3, 2014, 744 SCRA 31, 63; *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 684.

<sup>58</sup> *Supra.*

<sup>59</sup> *Id.* at 684.

the decisions of the NLRC, there is no law stating that the aggrieved party may appeal the decision before the court. Our ruling in *St. Martin*, however, explained that while there is no appeal from an NLRC decision, this does not mean that NLRC decisions are absolutely beyond the powers of review of the court. In fact, NLRC decisions may be reviewed by the CA through a petition for *certiorari* under Rule 65. Pertinent here is the use of the word “review” and not “appeal.” Also relevant is the use of the remedy of a petition under Rule 65, which is a special civil action for *certiorari* on the basis of grave abuse of discretion. The implication of this is that an NLRC decision is final and not subject to appeal or review by the courts. There is an exception to this, which is a review by the CA only in cases where there is grave abuse of discretion. When the CA reviews an NLRC decision, it is necessarily limited to the question of whether the NLRC acted arbitrarily, whimsically, or capriciously, in the sense that grave abuse of discretion is understood under the law, the rules, and jurisprudence. It does not entail looking into the correctness of the judgment of the NLRC on the merits.

The nature of the judiciary’s review of NLRC decisions also prescribe specific allegations in the petition filed by the party seeking the review. As the petition is filed under Rule 65, it must raise not errors of judgment but the acts and circumstances showing grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is defined as “an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law”<sup>60</sup> or that the tribunal, board or officer with judicial or quasi-judicial powers “exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility.”<sup>61</sup>

Without these allegations, the petition should not be given due course. At the risk of repetition, the presence of grave abuse of discretion must be alleged lest a special civil action under Rule 65 become a mere substitute for an appeal.

We apply these pronouncements in resolving the case before us.

## II.

The NLRC reversed the LA’s Decision and ruled that Gregorio was properly dismissed. It held that PNB had sufficient basis in its finding that Gregorio committed acts amounting to gross dishonesty, gross misconduct and willful breach of trust. The CA, in a petition for *certiorari* under Rule 65, reversed the NLRC’s finding that “PNB has met the required burden of proof to support its allegation.”<sup>62</sup> The CA found that the NLRC’s finding is “hollow and finds no evidential support as against the findings of the

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<sup>60</sup> *Triplex Enterprises, Inc. v. PNB-Republic Bank*, G.R. No. 151007, July 17, 2006, 495 SCRA 362, 365.

<sup>61</sup> *Id.* Citation omitted.

<sup>62</sup> *Rollo*, p. 20.

[LA].”<sup>63</sup> The meat of the CA Decision is that the NLRC was in error when it held that there was substantial evidence for Gregorio’s dismissal. In other words, the CA corrected the NLRC’s error in *appreciating the evidence presented before it*. Assuming that there was, indeed, such an error, it is an error in judgment and not the error in jurisdiction that characterizes grave abuse of discretion.

Relatedly, Gregorio’s petition for *certiorari* filed before the CA raises the argument that the NLRC acted with grave abuse of discretion because:

A). PRIVATE RESPONDENT HAS MISERABLY FAILED TO ESTABLISH A VALID GROUND FOR THE DISMISSAL OF HEREIN PETITIONER.

B). THE CHARGE OF GROSS MISCONDUCT AND WILLFUL BREACH OF TRUST AND CONFIDENCE HAS NO FACTUAL AND LEGAL BASIS.

C). THERE WAS NO SINGLE INCIDENT THAT HAS GIVEN RISE TO THE ALLEGED WILLFUL BREACH OF TRUST AND CONFIDENCE AS WELL AS [THE] ALLEGED GROSS MISCONDUCT.

D). ON THE CONTRARY, AS BRANCH MANAGER, PETITIONER PERFORMED HER DUTIES AND FUNCTIONS EXEMPLARILY:

1. NOT ONLY AS EVIDENCED BY THE “COMMENDATIONS” SHE RECEIVED, AND “OUTSTANDING” RATINGS ACCORDED IN HER PERFORMANCE APPRAISAL;
2. MORE IMPORTANTLY – BEING IN THE WORLD OF BUSINESS – PETITIONER HAS BROUGHT SUBSTANTIAL INCOME TO HEREIN PRIVATE RESPONDENT BANK.
3. THE BANK INCURRED NO LOSS IN ITS OPERATIONS PARTICULARLY INVOLVED IN THE TRANSACTIONS IN QUESTION, BUT ON THE CONTRARY, HUGELY [PROFITED THEREFROM].<sup>64</sup> (Emphasis in the original; citations omitted.)

None of these allegations shows that the NLRC was capricious, whimsical or arbitrary in issuing its Decision. The tenor of Gregorio’s pleading, in truth, seeks a review of the merits of the case. This can only be properly done in an appeal which, as we have constantly repeated, is not available to challenge the decision of the NLRC. It is only in special cases where there is grave, and not mere abuse of discretion, when the CA may interfere in the exercise of its review power.

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<sup>63</sup> *Id.*

<sup>64</sup> CA rollo, p. 9

The proceedings in question here are those that transpired at the level of the NLRC. When a complaint for illegal dismissal is filed, the complainant has the duty to prove that he or she was dismissed and that this dismissal is not legal because there is no valid cause or no compliance with due process. Corollarily, it is incumbent upon the respondent to prove that the dismissal was legal by establishing the valid cause and compliance with due process. In a case such as the one before us, where the question presented is whether there was a ground to dismiss Gregorio for a just cause, the burden of PNB is to prove that it had, in fact, sufficient basis to find Gregorio guilty of gross dishonesty, gross misconduct and willful breach of trust or duty. This entails the presentation of evidence showing that Gregorio indeed performed the acts imputed against her.

Under the Labor Code, an employee may be dismissed for a just or authorized cause. Notably, the PNB invokes just cause in dismissing Gregorio from service. Article 297 [282] enumerates the acts considered as just cause for the valid termination of an employee:

Art. 297 [282]. *Termination by Employer* – An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the following.

In this case, PNB charged Gregorio with gross dishonesty, gross misconduct, and willful breach of trust. All these qualify as just causes for termination. Hence, the next logical question is whether PNB presented sufficient evidence to prove that Gregorio indeed committed these acts.

In cases filed before quasi-judicial bodies, the quantum of proof required is substantial evidence. This means that “amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.”<sup>65</sup>

The CA found that PNB failed to prove by substantial evidence that Gregorio committed the acts imputed against her. According to the CA, PNB

<sup>65</sup> RULES OF COURT, Rule 133, Sec. 5.

based its decision to terminate Gregorio on the basis of three affidavits, two of which have been retracted. As to the remaining Pollard affidavit, the CA ruled that this does not merit consideration because Gregorio was never given the opportunity to confront Pollard.

We disagree.

The evidence available before the NLRC to establish that Gregorio indeed committed the acts which became the basis for her dismissal are the following: the IAG Memorandum, which was the result of the investigation of the IAG, the charges against Gregorio, Gregorio's answers to these charges, the three affidavits, the affidavits of retraction, the testimonies of the tellers of PNB Sucat, and Gregorio's own testimony at the PNB meetings.<sup>66</sup>

We agree with the NLRC that all these, taken together, are adequate to convince a reasonable mind that Gregorio engaged in an unauthorized lending business within PNB Sucat.

The evidence presented before the NLRC painted a clear picture of Gregorio's irregular loan activities: Gregorio facilitated the application for loans secured by deposit hold-outs of some of PNB Sucat's depositors. These depositors agreed to invest in this scheme on the promise that they will earn a 5% interest, although 2% of this will supposedly go to the bank as commission. The proceeds of these loans were lent to other people. The 3% interest which the depositors were promised were transferred to their accounts under Gregorio's authority, supervision, and direction. Notably, the supposed 2% commission that ought to go to the bank are not reflected in any of the records of PNB Sucat. We note that Gregorio's allegation in her comment that PNB raised a new theory when it said that Gregorio "ran a bank within [a] [b]ank"<sup>67</sup> is incorrect. PNB merely described Gregorio's irregular transactions.

We also agree with the NLRC that there was no need for Gregorio to confront Pollard. Confronting a witness is not a matter of right in company investigations as in the one undertaken by PNB.<sup>68</sup> To meet the requirements of due process, it is sufficient that Gregorio had the opportunity to be heard and to refute the allegations in Pollard's affidavit.<sup>69</sup>

We also highlight that the CA erroneously harped on PNB's alleged refusal to take into consideration the affidavits of retraction subsequently executed by Rebollo and Villar. A reading of the PNB's decision to terminate Gregorio clearly shows that it took the affidavits into consideration but ultimately found them unreliable. The NLRC agreed with

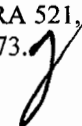
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<sup>66</sup> *Rollo*, p. 159.

<sup>67</sup> *Id.* at 455.

<sup>68</sup> *Muaje-Tuazon v. Wenphil Corporation*, G.R. No. 162447, December 27, 2006, 511 SCRA 521, 531.

<sup>69</sup> *Samalio v. Court of Appeals*, G.R. No. 140079, March 31, 2005, 454 SCRA 462, 472-473.



this appreciation of the affidavits of retraction. Citing jurisprudence, the NLRC held that retractions are “generally unreliable and looked upon with considerable disfavor by the courts as they can easily be fabricated.”<sup>70</sup>

We concur with the NLRC’s appreciation of the affidavits of retraction. We have often repeated that “[j]ust because one has executed an affidavit of retraction does not imply that what has been previously said is false or that the latter is true.”<sup>71</sup> The reliability of an affidavit of retraction is determined in the same manner that the reliability of any other documentary evidence is ascertained. In particular, it is necessary to examine the circumstances surrounding it. In the case of Villar’s affidavit of retraction, we note that this has never been identified and authenticated. Thus, its weight as evidence is highly suspect. As to Rebollo’s alleged affidavit of retraction, a reading of its contents, as correctly pointed out by the NLRC, reveals that Rebollo in fact affirmed Gregorio’s participation in the lending activities within PNB Sucat when she said in this affidavit that Gregorio introduced her to a certain Realina Ty who became her borrower.

Moreover, the NLRC ruled that even if it gave credence to the retraction, the IAG Memorandum nevertheless established that Gregorio enticed clients to loan money from PNB Sucat secured by their deposits to be lent out to other borrowers.<sup>72</sup>

Meanwhile, the NLRC found that Gregorio merely made general denials of the allegations against her. While she may have presented affidavits from other borrowers stating that Gregorio never induced them to invest in any high yield PNB product, this, by no means, explained the paper trail which the IAG found showing the peculiar transactions authorized or participated in by Gregorio in PNB Sucat. While she may have presented affidavits from other borrowers of the bank stating that she did not convince them to invest in the loan against hold-out scheme as well as Rebollo and Villar’s affidavits of retraction, the NLRC did not consider these sufficient to rule that she did not commit the acts imputed against her. There is no showing that the NLRC acted arbitrarily, whimsically or capriciously in its appreciation of the evidence on record.

In sum, the NLRC arrived at its Decision based on an appreciation of the evidence presented before it. It made its conclusions based on law and prevailing jurisprudence. We cannot agree with the CA that the challenged NLRC Decision is tainted with grave abuse of discretion. As we have stated above, there is a patent lack of any allegation in Gregorio’s petition for *certiorari* filed before the CA as to any conduct by the NLRC that can amount to grave abuse of discretion. Neither does the CA’s Decision make any clear finding as to which act of the NLRC constitutes grave abuse of

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<sup>70</sup> *Rollo*, p. 324.

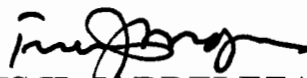
<sup>71</sup> *Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation*, G.R. No. 165995, August 14, 2007, 530 SCRA 132, 139. Citation omitted.

<sup>72</sup> *Rollo*, pp. 323-324.

discretion. Our own scrutiny of the decisions, pleadings, and records of this case reveal no grave abuse of discretion on the part of the NLRC. Its decision was based on substantial evidence and rooted in law. We must perform grant PNB's petition.

**WHEREFORE**, in view of the foregoing, the Philippine National Bank's petition for review on *certiorari* is **GRANTED**. The Decision of the Court of Appeals dated July 15, 2010 and Resolution dated December 21, 2010 in CA-G.R. SP No. 110045 are **REVERSED**. The NLRC Decision dated September 26, 2008 is **REINSTATED**.

**SO ORDERED.**




**FRANCIS H. JARDELEZA**  
*Associate Justice*

WE CONCUR:

*(On Official Leave)*

**MARIA LOURDES P. A. SERENO**  
*Chief Justice*

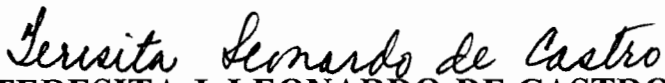
  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*  
*Acting Chairperson*

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*


**A T T E S T A T I O N**

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.

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*  
*Acting Chairperson, First Division*

**C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the 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.

  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Acting Chief Justice*