REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **07 October 2020** *which reads as follows*:

"**G.R. No. 247614 (*Rex M. Raposon v. IRM Aviation Security, Inc., Laarni Villalobos and Sherwin Reyes*).** – The petition is bereft of merit.

At the outset, *We* stress that factual issues are not proper subjects of this Court's power of judicial review. Well-settled is the rule that only questions of law can be raised in a Petition for Review under Rule 45 of the Rules of Civil Procedure.[1] As such, findings of fact and conclusion of the National Labor Relations Commission (NLRC) are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. However, if the factual findings of the Labor Arbiter (LA) and the NLRC, are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings.[2]

The exception, rather than the general rule, applies in the present case, since the NLRC and the Court of Appeals (CA) found facts supporting the conclusion that petitioner Rex M. Raposon (Raposon) was a probationary employee of IRM Aviation Security, Inc. (respondent IRM) and there were justifications for the termination of his probationary employment, while the LA's factual findings contradicted the NLRC's findings.[3]

After a judicious review of the records, the Court resolves to deny the petition.

Section 6 (d), Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code provides that if the employer fails to inform

---

1 See *NGEI Multi-Purpose Cooperative Inc. v. Filipinas Palmoil Plantation, Inc.*, 697 Phil. 433, 440-442 (2012).
2 See *Stradcom Corporation v. Orpilla*, G.R. No. 206800, July 2, 2018.
3 Id.

the probationary employee of the reasonable standards upon which the regularization would be based on at the time of the engagement, then the said employee shall be deemed a regular employee.[4]

Raposon contends that the NLRC should not have took into consideration the signed Acknowledgment dated March 30, 2016, submitted by respondent IRM for the first time on appeal without offering any explanation or justification.

We do not agree. Jurisprudence is replete with cases upholding the NLRC's act of admitting evidence submitted for the first time on appeal. Technical rules of procedure are not strictly adhered to in labor cases. In the interest of substantial justice, new or additional evidence may be introduced on appeal before the NLRC. Allowing this move would be proper, provided due process is observed by giving the opposing party sufficient opportunity to meet and rebut the new or additional evidence.[5]

Raposon's allegation in the present petition[6] itself revealed that he chose not to file an answer or opposition to respondent's Memorandum of Appeal which presented for the first time on appeal the Acknowledgment dated March 30, 2016, *viz.*:

> 13. Aggrieved, the respondents filed a Memorandum of Appeal dated 17 July 2016, to which the petitioner did not file an answer or opposition thereto.[7]

Records show that Raposon was furnished a copy of respondent's Memorandum of Appeal. His counsel was likewise furnished the same on July 20, 2017 and the NLRC rendered its decision only on January 31, 2018. This interim period gave Raposon sufficient time to rebut the newly submitted evidence, but failed with only himself to blame.[8] The NLRC cannot therefore be faulted for taking the Acknowledgment into consideration in rendering its decision.

With respect to the substantive aspect of the case, we agree with the findings of both the NLRC and the CA that Raposon was merely a probationary employee of respondent IRM and that the consequent termination of his probationary employment was justified.

When Raposon signed the Acknowledgment, he subscribed to the truth of its contents, including the fact that he received a copy, read, and understood respondent IRM's Guidelines/Policy on Performance Evaluation, *viz.*:

---

4 See *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 532-536 (2013).
5 *Andaya v. NLRC*, 502 Phil. 151, 153 (2005).
6 *Rollo*, pp. 20-42.
7 Id. at 26.
8 See *Surigao Del Norte Electric Cooperative, Inc. v. Gonzaga*, 710 Phil. 676, 687-690 (2013).

I have read, understood and acknowledged receipt of the following Company Policies and will comply with the guidelines set out in this policy and understand that failure to do so might result in disciplinary or legal action.

- IRM Avsec Code of Employees Discipline
- IRM Avsec Drug Abuse Policy
- IRM Avsec Anti-Sexual Harassment Policy
- IRM Avsec Leave of Absence Policy
- IRM Avsec Uniform and Grooming Policy
- **IRM Guidelines/Policy on Performance Evaluation**[9]

This Guidelines/Policy on Performance Evaluation contains, among others, the company's policy on evaluating the performance of its probationary employees and the standard required to qualify for regularization, *viz.*:

B. Probationary Employees

The Probationary employee's performance is monitored and observed by his immediate officer for a required period of six (6) months. **A performance evaluation will be conducted prior to the conclusion of the six (6) month probationary period.**

A probationary employee may **be recommended for the regularization of his employment status only if he has achieved the passing percentile of 90% in his performance evaluation.**

x x x x

E. Regulations

1. A Performance Evaluation Form will be accomplished by the immediate superior for the purpose of documentation. The Form shall cover the following points:

- Job knowledge
- Quality of Work
- Quantity of Work
- Dependability
- Ability to Learn
- Work Attitude
- Supervision Needed
- Human Relations
- Attendance
- Punctuality
- Development Review
- Performance Assessment (Emphases supplied)

Having subscribed that he received a copy, read, and understood respondent IRM's Guidelines/Policy on Performance Evaluation as early as March 30, 2016, he cannot now claim that he was not made aware of the standards or conditions for his regularization in violation of the rule on

[9] *Rollo*, pp. 58-59.

notification of standards.

Too, as correctly appreciated by the NLRC and the CA, Raposon's Employment Contract explicitly provides for his engagement as a **probationary employee**, covering the period April 18, 2016 to October 17, 2016. This contract likewise provides for the conduct of periodic evaluation of Raposon's performance to determine his fitness for the job.

The Court is aware that Raposon signed the Employment Contract only in May 2016 and not upon his initial engagement as a probationary employee. Nonetheless, the Court does not find this as a fatal irregularity in his probationary employment. We have previously ruled that an employer is deemed to have substantially complied with the rule on notification of standards if he apprises his employee that he will be subjected to a performance evaluation on a particular date after his hiring.

In fine, Raposon's Acknowledgment dated March 30, 2016 and Employment Contract prove his probationary employment and the fact that he was made aware of the standard or condition required of him to qualify for regularization, in compliance with the rule on notification of standards.

Moreover, Raposon committed two (2) infractions of respondent IRM's company policies during the period of his probationary employment. He showed unfamiliarity with some security control guidelines. Likewise, he had been absent from work for four (4) days straight and accumulated tardiness totaling to nine (9) hours and fifty (50) minutes. These infractions are additional bases for the termination of Raposon's employment.

The foregoing circumstances lead us to conclude that indeed Raposon was a probationary employee of respondent IRM and that the consequent termination of his probationary employment was premised on valid grounds. Thus, there is no illegal dismissal to speak of. Consequently, Raposon's claims for backwages and separation pay have no leg to stand on.

For failure of Raposon to prove the illegal deductions and that he actually rendered service in excess of eight (8) hours on specific days, or that he worked on specific rest days and holidays, the same cannot be granted. Moral damages and exemplary damages cannot likewise be granted for Raposon's failure to prove bad faith, malice or fraud on the part of respondent IRM. The award for the payment of the unpaid salary covering the period October 1, 2016 to October 4, 2016 is proper.

At this juncture, *We* emphasize that the law in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights, which, as such, are entitled to respect and

enforcement in the interest of simple fair play.[10]

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED.** The assailed Decision[11] dated February 18, 2019 and the Resolution[12] dated May 16, 2019 of the Court of Appeals in CA-G.R. SP No. 157791 are **AFFIRMED**.

SO ORDERED." (*Baltazar-Padilla, J., on leave.*)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
24 NOV 2020 11/24

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

VERA LAW (reg)
[DEL ROSARIO RABOCA GONZALES GRASPARIL]
Counsel for Respondents
2nd Floor, A&V Crystal Tower
105 Esteban Street
Legazpi Village, Makati City

NATIONAL LABOR RELATIONS COMMISSION (reg)
PPSTA Building, Banawe St. cor. Quezon Ave.
1100 Quezon City
(NLRC LAC No. 08-002713-17;
NLRC NCR Case No. 11-14261-16)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. SP No. 157791

Please notify the Court of any change in your address.
GR247614. 10/07/2020(2)URES

[10] *PLDT v. Honrado*, 652 Phil. 331, 334 (2010).
[11] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Amy C. Lazaro-Javier (now a Member of the Court) and Marie Christine Azcarraga-Jacob; *rollo*, pp. 47-65.
[12] Id. at 67-69.