The Prudence of Complying with Due Process Requirements and its Financial Consequences in Employee Termination

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I. INTRODUCTION

Embodying the State's policy on labor, the 1987 Constitution affirmed labor as a "primary" social economic force.[1] Essentially, the provision "proclaims the primacy of the human factor over the non-human factors of

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1. PHIL. CONST. art. II, § 18.

production."[2] Thus, "in the process of production, labor is always a primary and efficient cost, while capital remains a mere instrumental cost."[3] Former Chief Justice Reynato S. Puno succinctly explained the wisdom behind the primacy of labor —

> [o]ur present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.[4]

However, as much as the Constitution mandates the protection of labor, it likewise recognizes the rights of capital, i.e., the *indispensability* of the role of the private sector in the process of production, and the right of enterprise to reasonable returns on investment and to expansion and growth.[5] To reconcile these two seemingly competing provisions, the State reserves the right to regulate the relations between workers and employers.[6] This mandate is centered on the principle of shared responsibility and the State's ultimate policy of promoting a balanced treatment of workers and employers.[7]

In the Supreme Court's own words, the Court's commitment to the "cause of labor does not prevent [It] from sustaining the employer when it is in right."[8] Thus, the protection of the rights of the laborer "authorizes neither oppression nor self-destruction of the employer ... [and] when the

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2. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 93 (2009 ed.). The Author continues by citing Commissioner Teodoro C. Bacani, who reiterated Commissioner Felicitas S. Aquino in saying that Section 18 of Article II is really an assertion of the primacy of human dignity over things. *Id.*

3. *Id.* at 94.

4. Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 446 SCRA 299, 388-89 (2004).

5. PHIL. CONST. art. II, § 18.

6. PHIL. CONST. art. XIII, § 3.

7. PHIL. CONST. art. XIII, § 3.

8. Capili v. National Labor Relations Commission, 270 SCRA 488, 495 (1997) (citing Garcia v. National Labor Relations Commission, 234 SCRA 632, 638 (1994)).

law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management."[9]

Section 3, Article XIII of the 1987 Constitution "guarantee[s] the rights of all workers to ... security of tenure."[10] In turn, Article 279 of the Labor Code[11] vests employees with the right to security of tenure by mandating that "the employer shall not terminate the services of an employee except for a just cause or when authorized under this Title."[12] These so-called "just causes" are provided under Article 282 of the Labor Code, as follows —

> ART. 282. Termination by employer. —
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> An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> (b) Gross and habitual negligence by the employee of his duties;
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> (c) Fraud or willful breach of the employee of the trust reposed in him by his employer or duly authorized representative;
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> (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 representative; and
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> (e) Other causes analogous to the foregoing.[13]

The "authorized causes" are provided under Article 283 of the Labor Code —

> ART. 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the

9. Philippine Long Distance Telephone Company, Inc. v. Balbastro, 519 SCRA 233, 248-49 (2007).

10. PHIL. CONST. art. XIII, § 3. Security of tenure was also guaranteed under Section 9, Article II of the 1973 Constitution. *See* 1973 PHIL. CONST. art. II, § 9 (superseded 1987).

11. A Decree Instituting an Labor Code thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442 (1974).

12. *Id.* art. 279. The right to security of tenure applies to managerial employees (Philippine Long Distance Telephone Company v. Tolentino, 438 SCRA 555, 560 (2004)), as well as to probationary employees (Cebu Marine Beach Resort v. National Labor Relations Commission, 414 SCRA 173, 177 (2003)), seasonal employees, and project employees, during the effectivity of their employments.

13. *Id.* art. 282.

> installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.[14]

But it is not enough that there is just or authorized cause in employer-initiated termination. Article 277, Paragraph (b) of the Labor Code further requires the employer to

> furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment.[15]

For just cause or blameworthy conduct, this requirement is set forth in Book VI, Rule I, Section 2 (d) (i)-(iii) of the Omnibus Rules Implementing the Labor Code,[16] to wit —

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14. *Id.* art. 283. Another authorized cause for termination of employment is provided under Article 284 of the Labor Code pertaining to disease as ground for termination.

15. The due process provided by law and jurisprudence is two-fold as it involves both substantive and procedural due process. The substantive due process refers to the just or authorized causes provided by law for terminating employment, while the procedural due process pertains to the right of the employee to be given the opportunity to be heard and to defend himself before he may be dismissed. *See* 2 JOSELITO G. CHAN, THE LABOR CODE OF THE PHILIPPINES ANNOTATED 572 (2005 ed.) (citing New Ever Marketing, Inc. v. Court of Appeals, 463 SCRA 284 (2005); New City Builders Inc. v. National Labor Relations Commission, 460 SCRA 220 (2005); & Shoppes Manila, Inc. v. National Labor Relations Commission, 419 SCRA 354 (2004)).

16. Department of Labor and Employment, Omnibus Rules Implementing the Labor Code (1989).

> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
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> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given the opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
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> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[17]

For economic-motivated termination, the procedure is found under Book VI, Rule I, Section 2 (d) (iii) Paragraph 2 of the Omnibus Rules Implementing the Labor Code, as follows[18] —

> For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least 30 days before the effectivity of the termination, specifying the ground or grounds for termination.[19]

The relationship between due process[20] and the right to security of tenure is well-settled as the Supreme Court has taken the more or less consistent view that procedural due process is an integral part of the employee's right to security of tenure, and that the violation of the right to due process invariably impinges on the right to security of tenure.[21] This is further bolstered by the Court's pronouncement that the right to one's employment is "property" in the constitutional sense,[22] thus creating an inextricable link between the right to security of tenure and the right to due process, which is nothing different from the constitutional right to property which cannot be taken without due process of law.[23]

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17. *Id.* Book VI, Rule 1, § 2 (d) (i)-(iii).

18. *Id.* Book VI, Rule 1, § 2 (d) (i)-(iii). The second paragraph of the Omnibus Rules Implementing the Labor Code provides for the procedure for termination of employment based on authorized causes.

19. *Id.* Book VI, Rule 1, § 2 (d) (iii), ¶ 2.

20. *See* CHAN, *supra* note 15, at 572. This entails observance of both substantive and procedural due process.

21. Offshore Industries, Inc. v. NLRC (5th Division), 177 SCRA 50, 57 (1989). *See also* Kingsize Manufacturing Corporation v. NLRC, 238 SCRA 349, 356-57 (1994).

22. Callanta v. Carnation Philippines, Inc., 145 SCRA 268, 279 (1966). *See also* Texon Manufacturing v. Millena, 427 SCRA 377 (2004).

23. PHIL. CONST. art. III, § 1.

For employers, however, doctrinal justifications may matter less than the financial consequences of violation of due process. The Supreme Court has been cognizant of this reality on the ground, and its rulings have remarkably emphasized a practical approach to the matter. It is this aspect that this Article will discuss.

II. MANAGEMENT PREROGATIVE

A. Management Prerogative, In General

The Constitutional recognition[24] of the right of capital to reasonable returns to its investments necessarily includes the employer's right to "regulate, [generally without restraint], according to its own discretion and best judgment, all aspects of employment."[25] Aptly called "management prerogative," the law gives employers the right to control and manage their enterprise effectively[26] and to make judgments concerning the conduct of their business.[27] This means that employers can freely make legitimate business decisions without unnecessary and unreasonable court interference.[28]

The freedom and prerogative of employers to use their discretion and best judgment to regulate and control their business organization extends to "all aspects of employment."[29] This includes hiring; work assignments; working methods; time, place, and manner of work; tools to be used; processes to be followed; supervision of workers; working regulations; transfer of employees; work supervision; lay-off of workers; and the discipline, dismissal, and recall of workers.[30] Albeit this extensive range, the exercise of management prerogative is not absolute and is subject to the limitations imposed by law or by collective bargaining agreement,

24. PHIL. CONST. art. II, § 18. The constitutionally-recognized right of the employer is found in Section 18, Article II of the Constitution, whereby the State recognizes the *indispensability* of the role of the private sector in the process of production and the right of enterprise to reasonable returns on investment and to expansion and growth.

25. Deles, Jr. v. National Labor Relations Commission, 327 SCRA 540, 547 (2000).

26. Mendoza v. Rural Bank of Lucban, 433 SCRA 756, 766 (2004).

27. Philippine Industrial Security Agency Corporation v. Aguinaldo, 460 SCRA 229, 239 (2005).

28. *Id.*

29. Philippine Airlines, Inc. v. NLRC (4th Division), 337 SCRA 286, 291(2000).

30. *Id.* (citing Tierra International Construction Corp. v. NLRC, 256 SCRA 36, 42 (1996)).

employment contract, employer policy or practice, as well as the general principles of fair play and justice.[31]

B. Management Prerogative to Dismiss, In Particular

The right of the employer to dismiss its erring employees is a measure of self-protection.[32] Thus, in conducting the affairs of his business, an employer cannot be compelled to maintain in his employ undeserving, if not undesirable, employees.[33] From the employer's perspective, he continues to enjoy a certain degree of control over his choice of employees during the period of employment.[34]

The right to dismiss employees was illustrated in *Philippine Long Distance Telephone Company, Inc. v. Balbastro*,[35] where the Court upheld the dismissal of an employee whose patent abuse of sick leave privileges proved detrimental to her employer's business.[36] The Court further explained that

> [w]hile ... compassion and human consideration should guide the disposition of cases involving termination of employment ... it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer.[37]

The inherent right of the employer to dismiss is, however, subject to reasonable regulation by the State in the exercise of its police power.[38] To

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31. The Philippine American Life and General Insurance Co. v. Gramaje, 442 SCRA 274, 288 (2004). *See* Inguillo v. First Philippine Scales, Inc., 588 SCRA 471 (2009). This Case involves the validity of termination based on the violation of the Union Security Clause.

32. Perez v. Medical City General Hospital, 484 SCRA 138, 145-46 (2006).

33. Shoemart, Inc. v. National Labor Relations Commission, 176 SCRA 385, 392 (1989) (citing Wenphil Corporation v. NLRC, 170 SCRA 69, 76 (1989)).

34. This degree of control, however, must be tempered with the employee's right to security of tenure. In case an employer capriciously and wrongfully dismisses his employee, the State will not hesitate to come to the employee's aid. *See* Bascon v. Court of Appeals, 422 SCRA 122, 133 (2004).

35. *Philippine Long Distance Telephone Company, Inc.*, 519 SCRA at 233.

36. *Id.* at 248.

37. *Id. See also* Agabon v. National Labor Relations Commission, 442 SCRA 573, 607 (2004). In *Agabon*, the Court held that "[t]he employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to his interests." *Id.* (citing Philippine-Singapore Transport Services, Inc. v. National Labor Relations Commission, 277 SCRA 506, 512 (1997)).

38. *See* Associated Labor Unions-TUCP v. NLRC, 302 SCRA 708, 714 (1999) & Philippine Long Distance Telephone Company, Inc. v. NLRC, 276 SCRA 1, 6 (1997).

put this into perspective, the employer's prerogative to dismiss an employee should be exercised without abuse of discretion and its implementation be tempered with compassion and understanding.[39] Thus, in *Gutierrez v. Singer Sewing Machine Company*,[40] the Court reiterated the need for restraint and extreme caution in terminating the services of a worker in as much as

> his job may be the only lifeline on which he and his family depend for survival ... [and] that lifeline should not be cut off except for a serious, just[,] and lawful cause, for, to a worker, the loss of his job may well mean the loss of hope for a decent life for him and his loved ones.[41]

Furthermore, because employees enjoy security of tenure, management prerogative does not give the employer the right to terminate the employment of the employee at will.[42] Compliance with due process is required, which means that before an employee can be dismissed from work, there must be a ground for dismissal and there must be observance of procedural due process.[43]

III. EXERCISING THE RIGHT TO DISMISS

A. Requisites of a Valid Dismissal

To constitute a valid dismissal from employment, two requisites must concur:

(a) The dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and

(b) The employee must be afforded an ample opportunity to be heard and defend himself.[44]

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39. Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, 454 SCRA 737, 771 (2005).

40. Gutierrez v. Singer Sewing Machine Company, 411 SCRA 512 (2003).

41. *Id.* at 521 (citing Manggagawa ng Komunikasyon sa Pilipinas v. National Labor Relations Commission, 194 SCRA 573, 577 (1991)).

42. *See* CHAN, *supra* note 15, at 569. While concedingly, the court is cognizant of management's right to select the people who will manage its business as well as its right to dismiss them, this right, however, cannot be abused.

43. MGG Marine Services, Inc. v. NLRC, 259 SCRA 664, 677 (1996).

44. *Fujitsu Computer Products Corporation of the Philippines*, 454 SCRA at 759. The twin requirements are also called the two-fold due process requirement. The law, however, does not demand strict compliance. This was explained by the Court in Glaxo Wellcome Philippines, Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA (NEW-DFA), 453 SCRA 256, 270 (2005), to wit —

> Neither Section 2 of Book V of Rule XXIII nor Section 2 (d) of Rule 1 of Book VI of the Implementing Rules require[s] strict literal compliance with the stated procedure; only substantial compliance is

Simply put, the employer can terminate the services of an employee for just or authorized causes enumerated under the Labor Code, which must be supported by clear and convincing evidence.[45] Thus, termination for causes not allowed under the law or established by jurisprudence[46] is invalid.[47]

Procedurally, the employee must be given notice, with adequate opportunity to be heard as the case may be,[48] before he is notified of his actual dismissal for cause.[49]

The two-fold requirement constitutes the statutory due process necessary before a valid termination of service may be effected by the employer who

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> needed. On this basis, the Memoranda sent to respondents may be deemed to have sufficiently conformed to the first notice required under the Implementing Rules. The Memoranda served the purpose of informing them of the pending matters beclouding their employment and of extending to them an opportunity to clear the air.
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> *Id.*

45. *Fujitsu Computer Products Corporation of the Philippines*, 454 SCRA at 759.

46. *See* Leonardo v. National Labor Relations Commission, 333 SCRA 589 (2000); Aparente, Sr. v. National Labor Relations Commission, 331 SCRA 82 (2000); Metro Transit Org., Inc. v. NLRC, 367 Phil. 259 (1999); Escobin v. NLRC, 351 Phil. 973 (1998); La Carlota Planters Association, Inc. v. NLRC (Fourth Division), 298 SCRA 252 (1998); Santos, Jr. v. NLRC, 287 SCRA 117 (1998); Manila Electric Company v. NLRC, 263 SCRA 531 (1996); San Miguel Corp. v. National Labor Relations Commission, 255 SCRA 133 (1996); Felix v. Buenaseda, 310 Phil. 161 (1995); Sampaguita Garments Corporation v. NLRC, 233 SCRA 260 (1994); Pearl S. Buck Foundation, Inc. v. NLRC, 182 SCRA 446 (1990); Brent School, Inc. v. Zamora, 181 SCRA 702 (1990); & Batongbacal v. Associated Bank, 168 SCRA 600 (1988).

47. *See, e.g.*, San Miguel Corporation v. Teodosio, 602 SCRA 197 (2009). In this Case, the Court found that the employment contract with a fixed period executed between petitioner San Miguel Corporation (SMC) and respondent Teodosio was meant to circumvent Teodosio's right to security of tenure and is therefore invalid. Accordingly, SMC's termination of Teodosio's employment based on employment with a fixed period contract was invalid considering that the reason advanced by SMC would not constitute a just or authorized cause.

    Id. at 214.

48. *See* Me-Shurn Corporation v. Me-Shurn Workers Union-FSM, 448 SCRA 41, 55 (2005). Termination for authorized causes or termination based on economic grounds does not require the opportunity to be heard since this is a recognized and valid exercise of management prerogative. For example, a business cannot be compelled to continue operating at a loss simply to maintain the workers in employment as this would amount to taking of property without due process of law. *Id.*

49. *Fujitsu Computer Products Corporation of the Philippines*, 454 SCRA at 759.

also bears the burden of proving that the termination was for a just or authorized cause.[50]

B. Procedural Due Process

The essence of due process in employee terminations, as enunciated in innumerable Supreme Court decisions, is simply the ample opportunity to be heard.[51] Ample opportunity in due process means that "kind of assistance that management must accord the employee to enable him to prepare adequately for his defense including legal representation."[52]

Additionally, it is not enough for the employer who wishes to dismiss an employee to charge him with some wrongdoing.[53] The validity of the charge must be sufficiently established in a manner consistent with due process. Accusations cannot take the place of proof.[54] "A suspicion or belief no matter how sincerely felt cannot substitute for factual findings carefully established through an orderly procedure."[55]

The procedures for employer-initiated termination depend on the ground of the termination.[56]

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50. *See* De la Cruz v. Maersk Filipinas Crewing, Inc., 551 SCRA 284 (2008) & Clarion Printing House, Inc. v. National Labor Relations Commission, 461 SCRA 272 (2005). *See also* Ledesma, Jr. v. National Labor Relations Commission, 537 SCRA 358 (2007), where the Court declared that "[b]efore the ... [employer] must bear the burden of proving that the dismissal was legal, ... [the employee] must first establish by substantial evidence the fact of his dismissal from service." *Id.* at 370.

51. *See, e.g.*, Arboleda v. National Labor Relations Commission, 303 SCRA 38 (1999); *La Carlota Planters Association, Inc.*, 298 SCRA 252; National Semiconductor (HK) Distribution, Ltd. v. National Labor Relations Commission (4th Division), 291 SCRA 348 (1998); & Caurdanetaan Piece Workers Union v. Laguesma, 286 SCRA 401 (1998).

52. *La Carlota Planters Association, Inc.*, 298 SCRA at 259 (citing Balayan Colleges v. NLRC, 255 SCRA 1, 13 (1996)).

53. *See Agabon*, 442 SCRA at 605, where the Court held that the employer is enjoined by the law to dismiss an employee only upon the existence of a just and valid cause and after giving the employee the opportunity to be heard.

54. *See* Landtex Industries v. Court of Appeals, 529 SCRA 631 (2007).

55. Philippine Associated Smelting and Refining Corporation (PASAR) v. National Labor Relations Commission, 174 SCRA 550, 556 (1989).

56. *See Agabon*, 442 SCRA at 608. If the termination is for causes under Article 282 of the Labor Code, the two-notice-and-hearing rule must be complied with. If the termination is for causes under Article 283 of the Labor Code, due process is deemed complied with upon the service of written notice to the employee and the Department of Labor and Employment (DOLE) at least 30 days before the effectivity of the termination, specifying the ground or grounds for termination.

1. Just Causes

In cases involving a blameworthy act[57] of the employee, the employer must comply with the two-notice-and-hearing rule.[58] The sequence goes as follows: first, a written notice of charge is sent to the employee; second, a hearing is conducted to investigate the charges; and, finally, a written notice of termination is furnished the employee.[59] The first notice "apprises the employee of the particular acts or omissions for which dismissal is sought"[60] while the second notice informs the employee of the employer's decision to dismiss him.[61]

Since the essence of due process is simply the opportunity to be heard,[62] the "hearing" contemplated in the two-notice-and-hearing rule is clarificatory in nature.[63] Consequently, it does not require a trial-type procedure, with a right to cross examine witnesses.[64] Furthermore, the procedure is summary in nature, similar to a preliminary investigation conducted by public prosecutors where the cases are resolved through affidavits and supporting documents supplemented by clarificatory questions that the prosecutor may ask of the parties.[65]

This set-up has been judicially challenged as a violation of due process because the employer seemingly acts as the complainant, prosecutor, and

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The requirements in Article 283 of the Labor Code shall also apply to terminations based on disease under Article 284.

57. LABOR CODE, art. 282. These are the causes provided for under Article 282 of the Labor Code, namely: (1) serious misconduct or willful disobedience by the employee of the lawful orders of his employer; (2) gross and habitual neglect by the employee of his duties; (3) fraud or willful breach by the employee of the trust reposed in him by his employer; (4) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family; and (5) other analogous cases. *Id.*

58. Skippers Pacific, Inc. v. Mira, 392 SCRA 371, 382 (2002). The two-notice-and-hearing requirement is mandatory, and non-compliance therewith would render any judgment of dismissal reached by the employer void and inexistent. *Id.*

59. *Id.*

60. Vinta Maritime Co., Inc. v. NLRC, 284 SCRA 656, 671-72 (1998).

61. *Id.* at 672.

62. Cyndy & Lynsy Garment v. NLRC, 284 SCRA 38, 44 (1998).

63. Consolidated Rural Bank (Cagayan Valley), Inc. v. NLRC, 301 SCRA 223, 231-32 (1999).

64. *Cyndy & Lynsy Garment*, 284 SCRA at 44.

65. *See* Manggagawa ng Komunikasyon sa Pilipinas v. National Labor Relations Commission, 206 SCRA 109, 114-15 (1992).

judge all rolled into one.[66] But while the challenge raised valid points, there is no other practical alternative; it would be too tedious if every employee termination would have to be cleared with the DOLE. Not surprisingly, the Supreme Court upheld the validity of the set-up on the ground that the employee is given the right to contest the employer's decision with the Regional Arbitration Branch of the National Labor Relations Commission (NLRC).[67] As a consequence, the set-up necessarily demands that a lot of trust is placed on the employer's good faith, that the latter would be objective enough to decide his case based only on the facts and the law.

Interestingly, the Supreme Court in the recent case of *Perez v. Philippine Telegraph and Telephone Company*,[68] an *en banc* decision, held that a hearing or conference is not necessary in the observance of due process.[69] According to the Supreme Court, there is a marked difference in the standards of due process to be followed as prescribed in the Labor Code and its implementing rules.[70] While the Labor Code merely states that an employer must provide the employee ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires,[71] the implementing rules

66. *See, e.g.*, Foster Parents Plan International/Bicol v. Demetriou, 142 SCRA 505 (1986).

67. *Id.* at 508.

68. Perez v. Philippine Telegraph and Telephone Company, 584 SCRA 110 (2009).

69. *Id.* at 120.

70. *Id.* at 120-21.

71. *Id.* at 120. Article 277 (b) of the Labor Code provides:

> ART. 277. *Miscellaneous provisions.* —
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> ...
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> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination *and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires* in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

LABOR CODE, art. 277 (b) (emphasis supplied).

require a hearing and conference during which the employee concerned is given the opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.[72] However, the Supreme Court said that while the phrase "ample opportunity to be heard" may in fact include an actual hearing,[73] it is not limited to a formal hearing only, so much so that the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.[74] But the Supreme Court apparently did not want to do away altogether with the hearing requirement, so it made the hearing optional in accordance with the following guiding principles:

(a) '[A]mple opportunity to be heard' means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) [A] formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) [T]he 'ample opportunity to be heard' standard in the Labor Code prevails over the 'hearing or conference' requirement in the implementing rules and regulations.[75]

By way of exception to the two-notice-and-hearing rule, due process in termination due to abandonment does not involve the conduct of hearing.[76] Abandonment, based on case law, is considered a form of neglect of duty[77] and hence, a just cause to terminate employment under Paragraph (b) of Article 282.[78] For obvious reasons therefore, due process in abandonment cases is sufficiently complied with by furnishing the employee with the following two notices:

(a) *First* notice asking the employee to explain why he should not be declared as having abandoned his job;[79] and

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72. *Perez*, 584 SCRA at 120-21.

73. *Id.* at 122.

74. *Id.* at 124 (citing Autobus Workers' Union (AWU) v. NLRC, 291 SCRA 219 (1998)).

75. *Id.* at 125.

76. CHAN, *supra* note 15, at 587.

77. *See Leonardo*, 333 SCRA 589; *Metro Transit Org., Inc.*, 367 Phil. 259; & *Escobin*, 351 Phil. 973.

78. De Paul/King Philip Customs Tailor v. NLRC, 304 SCRA 448, 458 (1999).

79. CHAN, *supra* note 15, at 715.

(b) *Second* notice to inform him of the employer's decision to dismiss him on the ground of abandonment.[80]

2. Authorized Causes

In cases of termination on economic grounds,[81] a 30-day[82] prior written notice should be separately and simultaneously sent to the employee concerned and the Regional Office of the DOLE where the establishment is located.[83] The written notice must specify the grounds for termination and the undertaking to pay the separation pay required under Article 283 of the Labor Code.[84] There is no need for clearance from the DOLE, but the employee may contest the termination by filing a complaint with the NLRC.[85] This requirement, set out in Article 283 of the Labor Code, has been held mandatory.[86] The 30-day prior notice is intended to be the substitute for a hearing.[87]

In a sense, it is illogical to speak of due process in economic-motivated termination since the 30-day advance written notice is not intended as an opportunity to contest the validity of the termination or to allow the DOLE to give a clearance. In reality, it is intended more to allow the employee one month to adjust to his impending joblessness.[88] It is true that case law has declared that the advance notice is necessary to enable the DOLE to ascertain the veracity and truth of the cause of termination,[89] yet this judicial pronouncement is of doubtful validity inasmuch as the DOLE does not have jurisdiction to rule on illegal termination cases which belongs to the NLRC.[90] But since the 30-day written notice rule has been posited as a due

80. *Id.*

81. LABOR CODE, art. 283. The causes provided under this Article are: (1) redundancy; (2) retrenchment; (3) installation of labor-saving devices; and (4) closure due to business losses. *Id.*

82. *Id.* The law provides that the notice must be served upon the employee and appropriate DOLE Regional Office at least one month before the intended date of termination. *Id.*

83. *Id.*

84. *Id.*

85. LABOR CODE, art. 277 (b).

86. Pulp and Paper, Inc. v. NLRC, 279 SCRA 408, 421(1997).

87. Wiltshire File Co., Inc. v. NLRC, 193 SCRA 665, 676 (1991).

88. Philippine Telegraph & Telephone Corporation v. National Labor Relations Commission, 456 SCRA 264, 275-76 (2005).

89. Sebuguero v. National Labor Relations Commission, 248 SCRA 532, 546 (1995).

90. LABOR CODE, art. 217. The Provision states —

process requirement, it would be fool hardy to disregard this judicial fact in the implementation of termination decisions at the company level.

IV. CONSEQUENCES OF VIOLATION OF DUE PROCESS

The mandatory requirement of complying with both substantive and procedural due process results in four different situations, to wit:

(1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed;

(2) the dismissal is without just or authorized cause but due process was observed;

(3) the dismissal is without just or authorized cause and there was no due process; and

(4) the dismissal is for just or authorized cause but due process was not observed.[91]

Logically, no problem arises if the employee's termination is adjudged to be for cause and that the dismissal is attended with due process. In this first situation, the dismissal is valid and therefore the employee's complaint for illegal termination will not prosper.[92]

In the second situation, if the employee's dismissal is found to be without cause, and furthermore, there is violation of due process, the termination will be invalidated and the employee will be reinstated with payment of back wages.[93] The same result will happen in the third situation where the dismissal is attended by due process, but no lawful cause exists.[94]

(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

. . .

1) Termination disputes;

. . .

(b) The [National Labor Relations] Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

Id.

91. *Agabon*, 442 SCRA at 608.

92. *Id.*

93. *Id.* at 608-09. Article 279 of the Labor Code, in part, provides that —

[a]n employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and

The complication emerges in the fourth situation when the termination is found to be for lawful cause, but due process was not observed. How should the dismissal be characterized?

In certain cases, the Supreme Court tended to treat the violation of due process as bolstering the conclusion that the dismissal is without lawful causes.[95] Since the burden of proving the validity of the dismissal rests on the employer, the absence of due process could very well be taken as evidence of doubt on the existence of a lawful cause.[96] And since all doubts in the evidence or the law would have to be resolved in favor of labor,[97] the dismissal, even when attended with due process, will be voided.[98]

But where the existence of a just or authorized cause is well established by the evidence submitted at the NLRC arbitration, should it be the correct judicial attitude to invalidate the dismissal simply because there is no compliance with due process? The Supreme Court, in a span of 15 years, with the law remaining unchanged, has come up with three flip-flopping doctrines, as threshed out below. For an employer, however, the meaning of these doctrines all boils down to the financial consequences that would befall him.

A. Prior to Wenphil

Prior to the 1989 ruling of the Supreme Court in *Wenphil Corporation v. NLRC*,[99] the long standing policy then was that the dismissal of an employee without due process, even if attended with just cause, rendered the dismissal

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to his full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of actual reinstatement.

LABOR CODE, art. 279.

94. *Id.*

95. *See, e.g.*, Saballa v. National Labor Relations Commission, 260 SCRA 697 (1996); *De la Cruz*, 551 SCRA 284 (2008); *Skippers United Pacific, Inc.*, 494 SCRA 661 (2006); & Gandara Mill Supply v. NLRC, 300 SCRA 702 (1998).

96. Pascua v. NLRC, 351 Phil. 48, 62-63 (1998) & *Skippers United Pacific, Inc.*, 494 SCRA at 667 (citing *Pascua*, 351 Phil. at 62-63).

97. LABOR CODE, art. 4.

98. CHAN, *supra* note 15, at 587 (citing ACD Investigation Security Agency, Inc. v. Daquera, 426 SCRA 494 (2004); Pioneer Texturizing Corp. v. NLRC, 280 SCRA 806 (1997); Oania v. National Labor Relations Commission, 244 SCRA 668 (1995); & Citytrust Finance Corporation v. NLRC, 157 SCRA 87 (1998)).

99. *Wenphil Corporation*, 170 SCRA at 69.

illegal.[100] The employee was thereby entitled to reinstatement to his former position with full back wages.[101]

B. Wenphil Doctrine

In the landmark case of *Wenphil Corporation*,[102] however, the Supreme Court reversed the prevailing doctrine and held that an employee whose dismissal was for lawful cause,[103] even without attendance of due process, will be deemed legal.[104] In this Case, the Court found private respondent Mallare, who appeared to be of violent temper, guilty of causing trouble during office hours, and defying his superiors as they tried to pacify him.[105] Hence, the Court sustained his dismissal for just cause albeit petitioner Wenphil Corporation's (Wenphil) failure to grant Mallare an investigation before causing his dismissal.[106] The Court's rationale was that it would be arbitrary and unfair to order the reinstatement and payment of back wages to an employee whose dismissal was predicated on a lawful cause.[107] Otherwise stated, the erring employee should not be rewarded for his misconduct on account simply of the employer's failure to comply with the due process requirement.[108]

In re-examining the prevailing policy of ordering reinstatement without loss of seniority and payment of back wages in favor of an employee who has been dismissed for a just or authorized cause but without observance of procedural due process, the Court reasoned that "[i]t will be highly prejudicial to the interests of the employer to impose on him the services of an employee who has shown to be guilty of the charges that warranted his dismissal from employment ... [demoralizing] the rank and file if the undeserving, if not undesirable, remains in service."[109] Nonetheless, for failing to accord its employee due process, Wenphil was held accountable,

100. *See, e.g.*, Bacus v. Ople, 138 SCRA 690 (1984).

101. CHAN, *supra* note 15, at 588. This is the same as declaring the dismissal illegal whereby the employee is entitled to the same remedies under Article 279 of the Labor Code.

102. *See Agabon*, 442 SCRA at 611. The Wenphil Doctrine is also known as the Belated Due Process Rule.

103. *See* CHAN, *supra* note 15, at 572. Lawful cause includes both just and authorized causes.

104. *Wenphil Corporation*, 170 SCRA at 76.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

through the payment of indemnity in the amount of ₱1,000.00.[110] The penalty clearly amounted to no more than a slap in the wrist.

In *Seahorse Maritime Corporation v. NLRC*,[111] the Supreme Court reiterated the *Wenphil* doctrine where petitioner Seahorse Maritime was held liable to indemnify private respondent Singian in the sum of ₱1,000.00 as damages for failure to comply with the requirements of due process in terminating Singian's services.[112] In *Rubberworld v. NLRC*,[113] the Court declared that it was now axiomatic that the absence of due process will not operate to eradicate the existence of just cause for the dismissal.[114] Subsequent cases[115] imposed varying amounts, depending on the facts of each case, but none exceeded ₱10,000.00.[116] The amounts of indemnity imposed were certainly of little deterrence to employers, as they were clearly insubstantial to effect modification in their attitude and behavior towards the due process requirement.

But despite the pronouncement in *Rubberworld*, few stray cases refused to adhere to the *Wenphil* doctrine. Thus, it was categorically declared in *De Vera v. NLRC*[117] that "the petitioner, Norman de Vera, was denied due process [and] accordingly, his dismissal [was] illegal."[118] The Supreme Court

110. *Wenphil Corporation*, 170 SCRA at 76.

111. Seahorse Maritime Corporation v. NLRC, 173 SCRA 390 (1989).

112. *Id.* at 395-96. The Court found respondent Singian, who was employed as Chief Engineer of the vessel M/V "UNAMONTE," guilty of "serious misconduct in the form of drunkenness and disorderly and violent behavior, habitual neglect of duty, and insubordination or willful disobedience of the lawful orders of his superior officer." Thus, his dismissal based on these causes was deemed lawful. *Id.*

113. Rubberworld (Phils.), Inc. v. NLRC, 183 SCRA 421 (1990).

114. *Id.* at 424.

115. *See, e.g.*, Agao v. National Labor Relations Commission (3rd Division), 280 SCRA 684 (1997). In this Case, the Court awarded ₱1,000.00 to each employee who was found guilty of committing pilferages. *See also* Bondoc v. National Labor Relations Commission, 276 SCRA 288 (1997) (In this Case, the Court awarded petitioner Bondoc ₱2,000.00 after being dismissed for serious misconduct) & Malaya Shipping Services, Inc. v. NLRC, 288 SCRA 181 (1998) (The Court found that the charge of serious misconduct against private respondent Rey was amply supported by the evidence in record but held petitioner Malaya Shipping liable to pay Rey ₱5,000.00 as nominal damages for non-observance of full procedural due process in effecting his dismissal.).

116. *See* Reta v. National Labor Relations Commission, 232 SCRA 613 (1994). This Case involved dismissal based on negligence and insubordination by the employee. *Id.*

117. De Vera v. NLRC, 200 SCRA 439 (1991).

118. *Id.* at 447.

rejected the argument that the proceedings before the Labor Arbiter cured the denial of due process at the company level, reiterating a previous judicial declaration that "firing the employee and letting him explain later"[119] is not in accord with due process.[120] In another case,[121] while the Court ultimately held that private respondent Germano's prolonged suspension was constitutive of illegal dismissal, the Court nevertheless elucidated that while Germano's prolonged absence without leave may constitute a just cause of dismissal, the illegality of his dismissal stems from the non-observance of due process.[122] Strangely enough, the Court analogously referred to *Wenphil* when it stated that "where dismissal was not preceded by the twin requirement of notice and hearing, the legality of the dismissal in question, is under heavy clouds and therefore illegal."[123]

It may be surmised that certain Justices, aware that the nominal indemnity awards pose no deterrent to employers, were convinced that due process violations deserved a stricter judicial oversight. Despite the occasional deviation from *Wenphil* and the reservations from some dissents as to the effectiveness of this judicial policy, *Wenphil* remained the orthodox doctrine for a decade or so.

C. *Serrano Doctrine*

In *Serrano v. NLRC*,[124] the Supreme Court decided to re-examine *Wenphil*. It expressed the thoughts of individual Justices that the monetary sanctions for violations of due process are "too insignificant, too niggardly, and sometimes even too late"[125] and that they have in effect fostered a policy of "dismiss now, pay later."[126] With these strong observations, the Court proceeded to modify *Wenphil*. It reiterated the doctrine of *Wenphil* that an employee dismissed for just cause but denied of due process would not have the right to reinstatement but declared such dismissal to be *ineffectual*.[127] Furthermore, the Court refused to revert back to the pre-*Wenphil* policy of

119. *Id.* at 448-49 (citing Ruffy v. National Labor Relations Commission, 182 SCRA 365, 370 (1990)).

120. *Id.*

121. *Gandara Mill Supply*, 300 SCRA 702.

122. *Id.* at 709-10.

123. *Id.* at 710.

124. Serrano v. National Labor Relations Commission, 323 SCRA 445 (2000). This Case involved the alleged illegal termination of Ruben Serrano who was hired by Isetann Department Store as a security checker to apprehend shoplifters and prevent pilferage of merchandise. *Id.*

125. *Id.* at 465. *See also Serrano*, 323 SCRA at 541 (J. Panganiban, separate opinion).

126. *Id. See also Serrano*, 323 SCRA at 503 (J. Puno, dissenting opinion).

127. *Id.* at 467.

declaring the dismissal void as doing so would amount to an unjust denial of the employer's right to dismiss for cause.[128]

By abandoning the award of nominal damages, the Supreme Court declared that the violation of due process would necessitate payment of:

(1) Full back wages from the time employment was terminated until it is determined that the termination is for just cause with respect to dismissals for cause under Article 282;[129] and

(2) Full back wages *and* separation pay with respect to dismissals for cause under Articles 283 and 284.[130]

Notably, the new doctrine was quickly applied in another case involving mass terminations.[131]

The doctrine laid down by *Serrano*, while claiming that the dismissal is upheld if there is just cause even though due process is violated, in reality is tantamount to invalidating the dismissal.[132] This is because the relief

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128. *Id.* at 466.

129. *Id.* at 476.

130. *Serrano*, 323 SCRA at 475. The inclusion of Article 284 was deduced from the Court's decision, to wit —

> For the same reason, if an employee is laid off for any of the causes under Arts. 283-284, *i.e.*, installation of a labor-saving device, but the employer did not give him and the DOLE a 30-day written notice of termination in advance, then the termination of his employment should be considered ineffectual and he should be paid backwages. However, the termination of his employment should not be considered void but he should simply be paid separation pay as provided in Art. 283 in addition to backwages.

Id. at 467.

See LABOR CODE, art. 284. Notably, Article 284 expressly provides for the payment of separation pay for termination due to disease.

131. *See* Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos, 326 SCRA 428 (2000).

132. *See Serrano*, 323 SCRA at 541 (J. Bellosillo, separate opinion). Justice Bellosillo opines that —

> to say that the termination is 'simply ineffectual' for failure to comply with the 30-day written notice and at the same time, to conclude that it has 'legal effect' appears to be contradictory. *Ineffectual* means 'having no legal force.' If a dismissal has no legal force or effect, the consequence should be the reinstatement of the dismissed employee and the grant of full back wages thereto, as provided by the law — not the latter only.

Id. at 544 (emphasis supplied).

accorded the employee is the same relief granted the employee who is illegally dismissed, i.e., full back wages and separation pay.[133] The non-reinstatement of the erring employee is simply substituted with the alternative relief of separation pay.[134]

The ruling in *Serrano* virtually equates the right to due process with the right to security of tenure, if the matter is viewed from its financial consequence, which is the foremost concern of any business enterprise.

The consequences of a *Serrano* ruling would reasonably have the desired effect of modifying employer attitude and behavior with respect to due process compliance. At the same time, it may have bred a highly mercenary motive for pursuing dismissal cases which may have no merit insofar as the existence of a legal cause is concerned but which were attended by due process violation. A due process violation would appear to be an unexpected "gift" to an otherwise undeserving employee who would stand to benefit from his employer's ignorance, haste, or reckless disregard of the due process requirements. The indemnity granted the employee — full back wages and separation pay — would seem too disproportionate to his injury, considering that he provided the occasion for the employer's exercise of the management prerogative to terminate the employment. Viewed from another angle, *Serrano* imposes too severe a penalty on the employer to the extent than an erring employee is virtually rewarded with an undeserved compensation. No doubt, the extreme results of *Serrano* left some Justices uneasy about the fairness of the doctrine.[135]

D. Agabon and Jaka Foods Doctrines

While the intent of the Court in *Serrano* was to reinforce and make more effective the requirement of notice and hearing,[136] the Supreme Court abandoned *Serrano* a mere four years later with its pronouncement in *Agabon v. NLRC.*[137] In abandoning its ruling in *Serrano*, the Court basically went

133. CHAN, *supra* note 15, at 843 (citing Air Services Cooperative v. Court of Appeals (Special Second Division), 293 SCRA 101 (1998)). An *illegally dismissed* employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable *plus* back wages. *See* Macasero v. Southern Industrial Gasses Philippines, 577 SCRA 500, 507 (2009) (citing Mt. Carmel College v. Resuena, 535 SCRA 518, 541 (2007)).

134. *Serrano*, 323 SCRA at 475-76.

135. *Agabon*, 442 SCRA at 611.

136. *Malayang Samahan ng mga Manggagawa sa M. Greenfield*, 326 SCRA at 471.

137. *Agabon*, 442 SCRA at 613. The Case involves dismissal due to abandonment of work.

back to *Wenphil* with the major modification on the amount of indemnity.[138]

In *Agabon*, the Supreme Court sought a middle ground between *Wenphil* and *Serrano*.[139] Aware of the valid criticism that *Wenphil* imposed ineffectual penalties for violation of due process but at the same time self-conscious that awarding back wages to an erring employee unjustly rewards an undeserving individual,[140] the Court ruled than an employee dismissed for cause but denied due process would not be entitled to either reinstatement or payment of back wages.[141] Instead of indemnity, the amount of which would be left to the discretion of the labor tribunals, the Supreme Court set a *fixed amount* of ₱30,000.00 as an indemnity that an employer must pay.[142] The indemnity is not supposed to be a reward to the employee, but a penalty on the employer, which is intended to have a deterrent effect on future violations of due process.[143]

The new doctrine was applied in the due process case of *Cajucom VII v. TPI Philippines Cement Corporation*.[144] In this Case, the Court found that while petitioner Cajucom VII was lawfully retrenched from his service as the Vice-President of Legal Affairs, TPI Philippines did not comply with the one-month notice requirement.[145] In modifying the appellate court's decision which relied on *Serrano*, the Court referred to *Agabon* to ultimately resolve the issue on due process.[146] Accordingly, instead of affirming the appellate court's award of backwages, the Court awarded Cajucom VII separation pay and nominal damages in the amount of ₱20,000.00.[147]

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138. *Id.* at 614, 617.

139. *Id.* at 613-17. Note, however, that even if the Court sought a middle ground between the *Wenphil* and *Serrano* rulings, It nonetheless did not consider them to be incorrect, stressing that, "Social Justice is not based on rigid formulas set in stone," but has to "allow for changing times and circumstances." *Id.*

140. *Id.* at 611.

141. *Id.* at 616.

142. *Agabon*, 442 SCRA at 617.

143. *Id.*

144. Cajucom VII v. TPI Philippines Cement Corporation, 451 SCRA 70 (2005). This Case involves Benedicto A. Cajucom VII who was employed as Vice-President for Legal Affairs but retrenched due to cost-cutting measures implemented by petitioner TPI Philippines in light of the economic slowdown in the Philippines. *Id.*

145. *Id.* at 80.

146. *Id.* at 80-81.

147. *Id.* at 82. Notably, while the Court in *Agabon* fixed the amount of indemnity at ₱30,000.00 in cases where the employee was terminated for a lawful cause but

Within six months, the Supreme Court modified *Agabon* with its pronouncement in *JAKA Food Processing Corporation v. Pacot*.[148] In *JAKA*, the Court made a distinction between dismissals without due process in case of blameworthy conduct[149] and dismissal without due process in economic-motivated terminations.[150] For blameworthy conduct dismissals, the indemnity was pegged at ₱30,000.00;[151] for economic-motivated dismissals, the due process penalty was increased to ₱50,000.00.[152] The Supreme Court justified the distinction by stating that in termination for blameworthy conduct, the dismissal is ultimately initiated by an act attributable to the employee, whereas in economic termination the dismissal is initiated by the employer's exercise of its management prerogative.[153] Accordingly, sanctions to be imposed upon an employer for dismissals based on a just cause under Article 282 should be *tempered*, while sanctions imposed due to dismissals based on an authorized cause under Article 283 should be *stiffer*.[154] The distinction, however, may have been rendered less relevant with the Court's pronouncement in *Philippine Pizza, Inc. v. Bungabong*,[155] declaring that the amount of damages to be awarded should be addressed to the sound discretion of the Court, taking into account the relevant circumstances.[156]

E. Recent Trends

With the Court's pronouncement in *Philippine Pizza* and other subsequent cases, the determination of the amount of nominal damages to be awarded by the Court has become more unpredictable. Thus, while *JAKA* had intended to set a standard on the amount of damages awarded for dismissals

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denied due process, the Court nonetheless fixed the award of nominal damages at ₱20,000.00.

148. Jaka Food Processing Corporation v. Pacot, 454 SCRA 119 (2005).

149. *See* LABOR CODE, art. 282.

150. *See* LABOR CODE, art. 283.

151. *Jaka Food Processing Corporation*, 454 SCRA at 123-25. The Court adhered to the indemnity fixed by the *Agabon* ruling.

152. *Id.* at 126-27. Before fixing the amount, the Court first considered the audited financial statements that JAKA submitted as evidence, which revealed how the corporation was sustaining significant business losses at the time it terminated the respondent (Pacot).

153. *Id.* at 125-26.

154. *Id.*

155. Philippine Pizza, Inc. v. Bungabong, 458 SCRA 288 (2005). *See also* Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. National Labor Relations Commission, 504 SCRA 692 (2006) & Business Services of the Future Today, Inc. v. Court of Appeals, 480 SCRA 571 (2006).

156. *Philippine Pizza, Inc.*, 458 SCRA at 300.

based on just causes and dismissals based on authorized causes,[157] jurisprudence show that the Court's discretion is wide enough to rule otherwise. But in general, the Court has awarded nominal damages as an indemnity to the employer's violation of the employee's right to statutory due process provided the termination was for lawful cause.

Reiterating its ruling in *JAKA*, the Supreme Court, in *DAP Corporation v. Court of Appeals*,[158] ordered the employer to indemnify its employee for nominal damages in the amount of ₱50,000.00.[159] The Court held that actual knowledge of the termination of the contract for which the employee was hired was not sufficient to replace the formal and written notice required by law.[160] Analogously, in *Smart Communications, Inc. v. Astorga*,[161] the Court rejected petitioner Smart Communications' (Smart) contention that formal and written notice was not necessary since its employee, respondent Astorga, had actual knowledge of [the] company's impending reorganization.[162] As a sanction on Smart for non-compliance with the notice requirement, the Court increased the amount of damages to ₱50,000.00 in light of the *JAKA* ruling.[163]

Notwithstanding the abovementioned rulings, the award of ₱50,000.00 pursuant to the *JAKA* ruling is not a steadfast rule.[164] In *Business Services of the Future Today, Inc. v. CA*,[165] the Court reduced the amount of indemnity awarded to each of the employees to ₱40,000.00 after affirming the NLRC and appellate court's finding that the company's closure was *bona fide*.[166] In another case,[167] the Court reduced the award of nominal damages to each of the 97 respondents from ₱50,000.00, which was awarded earlier in the main decision, to ₱10,000.00 for the purpose of harmonizing the disposition of the case with the prevailing circumstances.[168]

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157. *JAKA Food Processing Corporation*, 454 SCRA at 123-27.

158. DAP Corporation v. Court of Appeals, 477 SCRA 792 (2005). *See also* San Miguel Corporation v. Aballa, 461 SCRA 392 (2005).

159. *DAP Corporation*, 477 SCRA at 800.

160. *Id.* at 798.

161. Smart Communications, Inc. v. Astorga, 542 SCRA 434 (2008).

162. *Id.* at 451.

163. *Id.* at 452.

164. *See, e.g.*, *Business Services of the Future Today, Inc.*, 480 SCRA at 571 & Industrial Timber Corporation v. Ababon, 485 SCRA 652 (2006), where the awards were lower than the ₱50,000.00 amount set in *JAKA*.

165. *Business Services of the Future Today, Inc.*, 480 SCRA at 571.

166. *Id.* at 581.

167. *Industrial Timber Corporation*, 485 SCRA at 652.

168. *Id.* at 657.

Similarly, while most Supreme Court decisions[169] relying on *Agabon* have consistently awarded the prescribed amount of ₱30,000.00 as nominal damages for termination due to lawful causes, the Court has aptly reduced the amount in several cases but has not increased it beyond this amount.[170] For example, in *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*,[171] the Court found the amount of ₱20,000.00 in nominal damages sufficient to vindicate each employee's right to due process, after the employer failed to serve a written termination notice to each of its employees.[172] Another example is *Television and Production Exponents, Inc. v. Servaña*,[173] where the Court awarded respondent Servaña ₱10,000.00 as nominal damages after his employment as security guard was validly terminated on the ground of redundancy.[174] Equally interesting is *Clarion Printing House, Inc. v. NLRC*,[175] where the Court awarded private respondent Miclat ₱6,500.00, the amount equivalent to Miclat's one month salary, as nominal damages.[176] The relatively small amount awarded by the Court is reasonably expected in light of the peculiar fact that Clarion Printing House was in the course of liquidation during the promulgation of the decision.[177]

Indeed, as the Court takes a less stringent approach in determining the amount of nominal damages, the ability of businesses to accurately anticipate costs arising from violations of the statutory due process rights of employees

169. *See, e.g.*, Agullano v. Christian Publishing, 566 SCRA 353 (2008); R.B. Michael Press v. Galit, 545 SCRA 23 (2008); Coca-Cola Bottlers Philippines, Inc. v. Garcia, 543 SCRA 364 (2008); Genuino v. National Labor Relations Commission, 539 SCRA 342 (2007); EDI-Staffbuilders International, Inc. v. National Labor Relations Commission, 537 SCRA 409 (2007); Suico v. National Labor Relations Commission, 513 SCRA 325 (2007); Chua v. National Labor Relations Commission, 453 SCRA 244 (2005); & DMA Shipping Philippines, Inc. v. Cabillar, 452 SCRA 551 (2005).

170. CHAN, *supra* note 15, at 763-64.

171. *Galaxie Steel Workers Union,* 504 SCRA at 692.

172. *Id.* at 703. In this Case, Galaxie had to close down its business operations on account of serious business losses. While Galaxie filed a written notice to the DOLE regarding its intent to close and the consequent termination of its employees, Galaxie failed to serve the same notice to each of its employees and instead, posted the notice of closure on the corporate bulletin board. *Id.*

173. Television and Production Exponents, Inc. v. Servaña, 542 SCRA 578 (2008). *See also Industrial Timber Corporation*, 485 SCRA at 652.

174. *Television and Production Exponents, Inc.*, 542 SCRA at 592.

175. Clarion Printing House, Inc. v. National Labor Relations Commission, 461 SCRA 272 (2005).

176. *Id.* at 297.

177. *Id.* at 296-97.

in terminations for cause is fairly improbable. Verily, the Court has enumerated a number of factors it takes into account in determining the amount of nominal damages, to wit:

> (1) [T]he authorized cause invoked, whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious business losses or financial reverses or otherwise;
>
> (2) [T]he number of employees to be awarded;
>
> (3) [T]he capacity of the employers to satisfy the awards, taken into account their prevailing financial status as borne by the records;
>
> (4) [T]he employer's grant of other termination benefits in favor of the employees; and
>
> (5) [W]hether there was a *bona fide* attempt to comply with the notice requirements as opposed to give no notice at all.[178]

Perhaps by analogy, the same factors can be applied to terminations for just causes. Interestingly, there is no prevailing doctrine regarding the violation of due process in terminations due to disease or health reasons. Although the Court has declared the necessity of procedural due process for termination based on health reasons,[179] the same has yet to be tested.

What causes concern for employers, however, is that recent jurisprudence show that the Court has been more liberal in extending the *Agabon* doctrine for various cases involving the employee's deprivation of statutory due process in addition to the award of backwages and reinstatement,[180] thus treating the lack of observance of due process as a separate offense by the employer. For instance, in *Mobilia Products, Inc. v. Demecillo*,[181] the Court awarded nominal damages in the amount of ₱30,000.00 for the employer's failure to give 30-day prior notices of termination.[182] The Court awarded nominal damages *in addition* to the award of back wages after finding that the retrenchment was illegal.[183] In another case,[184] the Court held the employer liable to pay nominal damages in the amount of ₱30,000.00 for failure to observe the two-notice-and-hearing rule in addition to reinstatement after the Court found the termination due to alleged abandonment was not sufficiently established.[185] This is evidently

178. *Industrial Timber Corporation*, at 656-57.

179. *Agabon*, 442 SCRA at 608.

180. *See, e.g.*, *Inguillo*, 588 SCRA at 471 (2009).

181. Mobilia Products, Inc. v. Demecillo, 578 SCRA 39 (2009).

182. *Id.* at 50-51.

183. *Id.* at 53.

184. Faeldonia v. Tong Yak Groceries, 602 SCRA 677 (2009).

185. *Id.* at 686.

erroneous because the Labor Code is clear that an employee who is unjustly dismissed from work (meaning that there was no due process at all) shall be entitled to reinstatement and payment of backwages.[186] Therefore, the consequence for failure to observe the procedural due process requirement is already subsumed in the bigger charge of unlawful or unjust dismissal of the employee.[187]

V. CONCLUSION

The debates on the soundness of these judicial doctrines and the effect they have on employer behavior in complying with due process requirements would no doubt continue for some time. The pattern of judicial decisions on this issue certainly gives no assurance that the present doctrine would not be reversed, modified, or even to some extent, altogether ignored in future cases. Lawyers, with their supposed penchant for stability in the judicial pronouncements, certainly do not relish too frequent overturning of precedents. Employers would do well to ponder on the unpredictability of Supreme Court decisions and consider what may be a fundamental rule in termination decisions, i.e., it always pays to observe due process.

While the *Agabon* and subsequent Supreme Court decisions allow, in effect, the employer to "dismiss now, pay later" the employee, observance of due process is still the most prudent approach. In fact, in *Agabon*, many Supreme Court Justices expressed dissent on the ruling of the majority and insisted that violation of procedural due process, notwithstanding the presence of just cause, renders the dismissal null and void and entitles the employee to reinstatement and backwages. Thus, in all probability, the *Agabon* ruling will not be the last we shall hear from the Supreme Court on this matter.

The following lessons to be learned are practical, in the sense that they will help employers avoid adverse financial consequences.

First, the Supreme Court's injunction that "a suspicion or belief no matter how sincerely felt cannot substitute for factual findings carefully established through orderly procedure"[188] is not a mere slogan. Even if the employer is convinced that the employee is guilty of the charge, the possibility that the labor tribunals would consider the denial of due process as

186. *See* LABOR CODE, art. 279.

187. *See, e.g.*, Rodriguez, Jr. v. National Labor Relations Comission, 393 SCRA 511, 517 (2002), where the Court reiterated that a dismissal effected without observing the requirements of procedural due process i.e., the lack of notice of dismissal given to the employee renders it illegal.

188. Landtex Industries v. Court of Appeals, 529 SCRA 631, 653 (2007) & Philippine Associated Smelting and Refining Corporation (PASAR) v. National Labor Relations Commission, 174 SCRA 550, 556 (1989).

evidence of the weakness of its case cannot be discounted. If evidence exists to find the employee culpable, there is no reason why the employee should not be confronted with the same during the company-level termination proceedings. And in the case of economic dismissals, there is no conceivable reason for not complying with the 30-day prior notice rule.

Second, there is no guarantee that the Supreme Court will not revert to *Serrano* or a variant of it. Reliance on *Agabon* and *JAKA* is no assurance that the Supreme Court will not overturn or modify these doctrines in the next appropriate case that comes for review. Statutes may have prospective applications, but Supreme Court decisions overturning existing doctrines will, by necessity, apply to the case in which the new doctrine is established, or else such pronouncement would be nothing more than an expression of an opinion. The employer in *Serrano* would have felt it unfair to be condemned to pay back wages and separation pay when *Wenphil* (the prevailing doctrine when the termination was effected) would have only made it pay a maximum ₱10,000.00 penalty.

Finally, there is no assurance that the Supreme Court will silently ignore *Agabon* and *JAKA* without overturning or modifying them and proceed to effectively apply *Serrano*. The doctrine enunciated in *Wenphil* certainly did not pose an obstacle on certain Supreme Court rulings to disregard its otherwise clear doctrine.

The back-and-forth swing of judicial doctrines in due process in employee termination disputes may pose some valid issues on the predictability of case law. But the same characteristic of unpredictability should prod employers to be more compliant with the due process requirements.