SUPREME COURT
EN BANC

MGG MARINE SERVICES, INC. and/or DOROTEO C. GARLAN and CESAR ROTILO,
***Petitioners*,**

-versus-

G.R. No. 114313
July 29, 1996

NATIONAL LABOR RELATIONS COMMISSION and ELIZABETH A. MOLINA,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

SEPARATE OPINIONS:

ROMERO, J., dissenting:
PUNO, J., dissenting:
VITUG, J., dissenting:

To justify fully the dismissal of an employee, the employer — as a rule — must prove (a) that the termination was due to a just cause and (b) that the employee was afforded due process prior to dismissal. Does the violation by a comptroller-finance officer of explicit instructions from senior management on how the available liquid resources of the company are to be controlled and disbursed, such violation resulting in the collapse of the company's cash flow constitute loss of trust and confidence sufficient to justify termination of such management officer? Where the presence of just cause is shown, what is the consequence of the non-observance of due process? Is an internal audit sufficient compliance with the due process requirement? These are the questions that confronted this Court in resolving this Petition for *Certiorari* assailing the Resolution[1] of the National Labor Relations Commission (NLRC),[2] which affirmed in toto the decision of the Labor Arbiter[3] dated December 21, 1992.

After due deliberation and consultation of the petition, the comments filed by the Solicitor General and the private respondent as well as the reply thereto, the Court gave due course to the petition and considered the case submitted for resolution, without requiring the parties to submit the memoranda:

The Facts

Private respondent was initially employed by the MGG Marine Services, Inc. (MGG) on July 1, 1988.

On March 25, 1990, the president of MGG, petitioner Doroteo C. Garlan, went to the United States for a brief sojourn. On March 1, 1990, before his departure, he appointed private respondent as comptroller and the over-all supervisor, concurrently with her then position as financial officer. As comptroller, private respondent was tasked to hold in trust for the company corporate funds to pay its obligations as authorized by the president and the board of directors. Petitioner Garlan instructed private respondent to pay the company's obligations as they fell due. Ma. Lourdes G. Unson, vice-president of MGG who also traveled to the United States, left with private respondent 79 prepared and pre-signed checks, 16 in blank and 63 with specific amounts on them, with corresponding vouchers

containing the amount of debts due and the names of the creditors. Private respondent was specifically told to pay only the creditors mentioned in the cash vouchers and to place on each of the 16 blank checks the amount stated in the corresponding check voucher. The said checks were made payable to private respondent, who upon withdrawal of the money from the bank, was to pay the same to the creditors.

At the time the aforementioned officers left for abroad, the company had about P1.5 million in its bank account. The total amount payable to the creditors as appearing in the check vouchers corresponding to the 16 blank checks was P224,131.50. All payments of the company were programmed in accordance with its plans and budget for the purpose of maintaining the optimal level of cash reserve.

When the corporate officers returned from their trip in June 1990, they were dismayed to learn that the company's deposits in the bank was reduced to only P5,720.00. It turned out that private respondent disobeyed the instructions given her not to pay more than what was specified in check vouchers. She increased the amounts she wrote on the blank checks so that instead of paying only P224,131.50 as budgeted, she withdrew from the bank an aggregate sum of P1,515,823.00. Likewise, she paid some creditors who were not specified in the cash vouchers. When the company had to pay an obligation of P15,000.00 on June 7, 1990, private respondent could only withdraw P5,720.00.

In her pleadings, private respondent did not give a satisfactory explanation as to why she violated the instruction given her except to claim that she did not profit by a single centavo from the withdrawals which she paid to company creditors.

MGG filed estafa charges against private respondent which were however dismissed.

On November 12, 1990, MGG terminated private respondent's employment for loss of trust and confidence. She then filed a complaint for illegal dismissal against MGG and its officers.

In a decision dated December 21, 1992, the Labor Arbiter held that: (1) the dismissal was illegal; (2) MGG should pay private respondent (a) separation pay equivalent to one month's salary for every year of service, it appearing that strained relations between the parties rendered reinstatement impractical; (b) thirteenth month pay in the amount of P16,083.32; (c) overtime pay in the amount of P21,977.52; (d) unpaid salary in the amount of P31,166,66; (e) moral damages in the amount of P50,000.00 for the "wrongful and malicious dismissal in bad faith;" and (f) attorney's fees.[4]

The Labor Arbiter noted:

> "In the case at bar, except for their bare self-serving allegation that the complainant had allegedly misappropriated corporate funds, no proof whatsoever was adduced by respondents and not even a scintilla of evidence was presented to show that the complainant had in fact defrauded the company to the tune of more than a million pesos. The complainant on the other hand successfully defended herself from said accusations by proving that she was in fact authorized to disburse the corporate funds in question for the purpose of settling the company's various accounts with its different creditors. Significantly, respondents made no claim at all that a single centavo went to the pocket of complainant. Moreover, the complaint for estafa filed against the complainant was dismissed by Asst. City Prosecutor Eudoxia T. Gualberto in a resolution dated September 30, 1991 and a subsequent motion for reconsideration of said dismissal was denied by the City Prosecutor of Manila."[5]

MGG appealed the Labor Arbiter's decision to NLRC. In a Resolution dated February 28, 1994, NLRC dismissed the appeal and affirmed in toto the appealed decision.

Hence this petition for *certiorari*.

The Issues

The issues in this case are:

(1) Was there lawful cause for the dismissal of private respondent?

(2) Did petitioners comply with the procedural requirements for valid dismissal? And

(3) Were petitioners accorded due process at the hearing before the Labor Arbiter?

The First Issue: Loss of Trust and Confidence in the Employee

MGG asserts that it was legally justified in dismissing private respondent on the ground of loss of trust and confidence.

We find that there is basis for MGG's loss of trust and confidence in private respondent, who does not deny that she entered on the blank checks amounts in excess of what had been provided for in the cash vouchers, and made payments to creditors other than those specified in said vouchers. In his decision, the Labor Arbiter said that the herein petitioners (respondents therein) filed a position paper explaining the basis of such loss of confidence and defining the damage wrought by private respondent Molina, thus:[5a]

> "For their part, respondents filed a position paper stating that from the time complainant was appointed as liquidation officer up to her designation as comptroller of the company, she was tasked to hold in trust corporate funds; that in March 1990 when respondent Doroteo Garlan left for the United States, complainant was instructed to take care of the financial requirements of the company and to disburse amounts payable to creditors as they became due and payable; that respondent corporation through its vice-president, Ma. Lourdes Unson prepared several check vouchers with the corresponding blank checks with the amounts reflected on the check vouchers; that said checks were made payable to complainant for her to facilitate the drawing of cash from the drawee banks so that cash vouchers would then be used n paying creditors; that complainant disbursed corporate funds not as instructed but with unexplained misappropriation or the blank checks that

were supposed to have been filled up with amounts reflected on the corresponding check vouchers were intercolated (sic) with amounts different and more than she was instructed to place; that an audit was made and it was discovered that complainant was able to draw, with the use of falsified checks the amount of P1,515,823.00, instead of the amount of P224,131.50 or an excess of P1,291,691.50, which amount remains unexplained up to the present; that complainant was asked to explain the over-drawing of corporate funds but she has failed and in fact refused to submit any explanations;" (Emphasis supplied)

This was buttressed by the affidavit of petitioners' witness Renato Jose O. Unson, who explained the limits of Molina's authority as well as the "cash flow" damage that her violations thereof caused the company:[5b]

"(7) Before MGG's senior management left for abroad last March 25, 1990, being a small company with limited resources, senior management set up a very strict budget so that its company obligations would be met and paid as they fell due. Molina was informed of the purpose of senior management in setting up a strict budget and implementation thru the issuance of various checks;

(8) Thus, several checks including eleven (11) blank checks with their corresponding check vouchers specifying the amount to be placed and the purpose for which the funds were to be used were left with Molina who enjoyed complete trust and confidence from senior management. Molina knew that she was under very strict and specific instructions to fill in the blank checks with amounts only in accordance with the corresponding check vouchers and to disburse said funds in accordance with the purpose indicated in the respective check voucher.

Thus Molina knew that she had no authority to fill in the blank checks with amounts different from that as instructed. She also knew that she had no authority to disburse funds to purposes different from that indicated in the individual check vouchers;

(9) All the time that senior management was abroad, senior management was constantly in touch with Molina thru overseas phone calls. In fact, during the first two weeks (from March 25, 1990) management called up Molina at least seven times.

Up to the time of arrival sometime June, 1990. Molina consistently informed senior management that everything was normal and that the business, its operations, funds; collections and accounts were in accordance with plans and the budget.

x x x

(12) A corresponding company audit was conducted wherein Molina was further allowed to explain her actuations. It was then discovered that by taking advantage of the blank checks, she was able to withdraw amounts in excess of instructions.

In fact, within the short period from March 27, 1990 to April 6, 1990 (senior management left March 25, 1990) Molina withdrew close to P1,000,000.00 pesos in excess of that instructed her by already encashing six (6) of the blank checks with amounts in excess of those instructed her.

MGG's funds, were so depleted that Molina on June 7, 1990, could not withdraw the amount she was authorized, that is, even if she was instructed to put the amount of P15,000.00 in the blank check, Molina only placed and withdrew the amount of P5,720.00 only;

In all, Molina without any authority whatsoever, by placing in the blank checks amounts in excess of what she was specifically instructed, withdrew about P1,282,411.00 thereby creating liability and causing damage and prejudice to MGG. It should be noted that these excess amounts were part of the unbudgeted and unappropriated corporate

funds which only senior management had the right to withdraw or cause to withdraw;

(13) In short, Molina's authority was limited to the physical withdrawal of MGG's budgeted and appropriated funds from the bank as indicated in the checks/check vouchers and to disburse said funds in accordance with specific instructions given her;"

The above instructions of senior management were not denied by Molina in her testimony before said Arbiter:[5c]

Q. When they left for the U.S. did they leave you any vouchers?

Miss Molina

A. They left me vouchers and my guideline (sic) are here (producing a list with the date therein — March 27 consisting of 8 pages). They left me this one as my guidelines (sic) is supported by 79 checks, 16 blank checks and 63 with the amount.

Q. And these 16 blank checks that you mentioned these were left with you with attached checks?

A. Yes, sir.

Summing the prejudice caused by private respondent, petitioners allege as follows in their Petition[6] before us:

"While private respondent was authorized to withdraw from company coffers approximately P200,000.00, by filling-in the checks amounts in excess of those mentioned in the check vouchers, she was able to withdraw approximately P1.4 million thereby abruptly reducing the company's reserve funds by as much as P1.2 million (TSN, June 9, 1992, pp. 43- 44). Thus, when the senior officers returned from the United States, they were surprised to find out that the company's reserve funds have significantly dwindled to such an extent that private

> respondent 'on June 7, 1990, could not withdraw the amount she was authorized, that is, even if she was instructed to put the amount of P15,000.00 in blank check, Molina could only place and withdraw the amount of P5,720.00.' (par. 12, Affidavit of Atty. Unson dated March 26, 1992; Annex "D" hereof). Obviously, by June 7, 1990, the company's reserve funds have been reduced to a measly P5,720.00 by reason of the over-withdrawal of private respondent.
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> "Bearing in mind the purposes and objectives of setting-up the reserve fund, it is respectfully maintained that the abrupt reduction thereof from P1.4 million pesos to the measly sum P5,720.00 in a span of three (3) months from March to June 7, 1990, brought untold miseries on petitioner MGG. Petitioner found its checks bouncing one after the other. It failed to meet its financial obligations to its preferred creditors. It had to source financial resources elsewhere in order to pay its due and demandable debts, not to mention its obligations to its employees.
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> "It is, therefore, incorrect for public respondent NLRC to rule that private respondent's act of over-withdrawing from the company's reserve funds did not cause any damage or prejudice unto petitioner MGG."

The Labor Arbiter labored under the wrong impression that private respondent was dismissed merely because she embezzled company funds saying that "except for their bare self-serving allegation that the complainant (private respondent herein) had allegedly misappropriated corporate funds, no proof whatsoever was adduced by respondents (petitioner herein) and not even a scintilla of evidence was presented to show that the complainant had in fact defrauded the company to the tune of more than a million pesos" (supra). The NLRC, also falling into the same error as the Labor Arbiter, said:

> "The complainant had shown to Our satisfaction that in the questioned transactions, she never defrauded the company as the monies so defrayed were used to settle various corporate accounts."[7]

The NLRC and the Labor Arbiter did not realize that the acts of private respondent complained of had placed the company in great jeopardy and disturbed its financial stability, thereby causing it real and actual damage.[8]

Indeed, private respondent's disobedience and precipitated actions caused great damage to the company's cash flow. In the harsh world of business, cash flow is as important as — and oftentimes, even more critical than — profitability. So long as an enterprise has enough liquidity (cash) to pay its workers, requisition fuel, meet office rentals, maintain its equipment and satisfy its life-line creditors within tolerable limits, it will survive and bridge better days for its recovery. But once it fails to pay such bills because its liquid resources are improvidently used and disbursed, as private respondent did in the instant case, it runs the all-too-real risk of immediate collapse. No wonder, petitioners were rightfully aghast when upon their return from abroad, they discovered that their treasury was almost completely drained, with a measly P5,720.00 remaining.

Private respondent took it upon herself to disburse the company funds in amounts and for purposes of her own discretion, and in disregard of the program and plans of the company. She arrogated to herself the combined powers of the management and the board of directors of the company.

An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer.[9] A company has the right to dismiss its employees if only as a measure of self-protection.[10] This is all the more true in the case of supervisors or personnel occupying positions of responsibility.[11]

In the instant case, let it be remembered that the private respondent is not an ordinary rank-and-file employee. She is the Comptroller-Finance Officer who unarguably violated her duty of controlling cash flow and specific instructions on how the very limited cash of the company was to be spent. It would be extremely oppressive and cruel to require petitioners to retain in their innermost sanctum of management an officer (not just a rank-and-file employee) who has admitted not only violating specific instructions but also to being

completely unreliable and untrustworthy in the discharge of her duty to safeguard the cash flow of the company.

That the complaint for estafa filed by MGG against private respondent was dismissed is also of no moment. The rule is that an employee's acquittal in a criminal case does not preclude a finding that he has been guilty of acts inimical to the employer's interest.[12]

Corollarily, proof beyond reasonable doubt of an employee's misconduct is not required in dismissing and employee on the ground of loss of trust and confidence. The quantum of proof required is only substantial evidence.[13] In the case before us, there was an admitted, actual and real breach of duty committed by private respondent, which was the basis of MGG's loss of trust and confidence in her.

While it is true that initially during the proceedings before the labor tribunals, petitioners were also faulting Molina for estafa, in addition to loss of confidence, they have abandoned misappropriation, in the instant petition, as a ground for dismissal (since the criminal complaint against her was dismissed) and instead relied on the second ground, namely, loss of confidence resulting from her disobedience and unfaithfulness in the discharge of her duties — which we hold as sufficient cause for her dismissal under the circumstances.

The Second Issue: Procedural Due Process

To constitute a completely valid and faultless dismissal, it is well-settled that the employer must show not only sufficient ground therefor but it must also prove that it observed procedural due process by giving the employee two notices: one, of the intention to dismiss, indicating therein his acts or omissions complained against, and two, notice of the decision to dismiss; and an opportunity to answer and rebut the charges against him, in between such notices.

> "The twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal: the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal; upon the other hand, the

> requirement of hearing affords the employee an opportunity to answer his employer's charges against him accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution."[14]

In the case before us, the petitioners found out about the excess withdrawals when an audit was conducted. The record is devoid of any showing that private respondent was given notice of the charges against her. Neither was she given a hearing or opportunity to present her defense. The only allegation of petitioners was that she was asked questions about her withdrawals during the audit. But these are too scant and too bare to amount to due process. There was no indication of the nature and the type of questions asked, the process of the supposed inquiry, the time and opportunity given for her defense, and the degree of explanation allowed her.

When this issue was brought up by the Solicitor General in his Comment, all that the petitioners could say in their Reply was:

> "There is no dispute that private respondent Molina was audited upon arrival of the senior management from the United States and that she herself admits that she was asked questions and was allowed to explain her side (pp. 28-18 (sic), TSN, July 26, 1991)."[15]

Plainly, this is not sufficient compliance with due process. An audit cannot take the place of the twin requirements of notices and hearing. At the very least, petitioners failed to show they followed these requirements.

> "There is also no showing that the requirements of due process were adequately met by the petitioners.
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> "The law requires that the employer must furnish the worker sought to be dismissed with two (2) written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice

> which informs the employee of the employer's decision to dismiss him. (Sec. 13, BP 130; Sec. 2-6 Rule XIV, Book V, Rules and Regulations Implementing the Labor Code as amended). Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory; in the absence of which, any judgment reached by management is void and inexistent (Tingson, Jr. vs. NLRC, 185 SCRA 498 [1990]; National Service Corp. vs. NLRC, 168 SCRA 122 [1988]; Ruffy vs. NLRC, 182 SCRA 365 [1990])."[16]

This failure to show due process taints the dismissal. This does not mean however that the private respondent would be entitled to backwages or reinstatement or even separation pay.[17] Under prevailing jurisprudence, she is entitled only to indemnity or damages, the amount of which depends on the peculiar circumstances of each case.[18]

In Wenphil Corporation vs. NLRC, et al.,[19] which is the leading example of these "indemnity cases", the private respondent had an altercation with a co-employee, as a result of which both were suspended the following morning, and in the afternoon of the same day private respondent was dismissed. In justifying his dismissal, the Court held:

> "The Court holds that the policy of ordering the reinstatement to the service of an employee without loss of seniority and the payment of his wages during the period of his separation until his actual reinstatement but not exceeding three (3) years without qualification or deduction, when it appears he was not afforded due process, although his dismissal was found to be for just and authorized cause in an appropriate proceedings in the Ministry of Labor and Employment, should be re-examined. It will be highly prejudicial to the interests of the employer to impose on him the services of an employee who has been shown to be guilty of the charges that warranted his dismissal from employment. Indeed, it will demoralize the rank and file if the undeserving, if not undesirable, remains in the service.
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> Thus in the present case, where the private respondent, who appears to be of violent temper, caused trouble during office

> hours and even defied his superiors as they tried to pacify him, should not be rewarded with re-employment and back wages. It may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe. Under the circumstances the dismissal of the private respondent for just cause should be maintained. He has no right to return to his former employer.
>
> However, the petitioner must nevertheless be held to account for failure to extend to private respondent his right to an investigation before causing his dismissal. The rule is explicit as above discussed. The dismissal of an employee must be for just or authorized cause and after due process. Petitioner committed an infraction of the second requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from employment. Considering the circumstances of this case petitioner must indemnify the private respondent the amount of P1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer."

In Rubberworld (Phils.) Inc. et al. vs. NLRC, et al.[20] the employer was also ordered to pay the private respondent P1,000.00 "as indemnification for (petitioners') failure to observe the requirements of due process prior to termination of private respondent's employment for just cause." Following this doctrine, the Court in Aurelio vs. NLRC, et al.[21] ruled that "where there was a valid ground to dismiss an employee but there was non-observance of due process only a sanction must be imposed upon the employer " and that "the NLRC erred when it awarded separation pay."

In Reta vs. NLRC, et al.,[22] the award was raised to P10,000.00 "considering that petitioner was given his walking papers and forced to leave his ship in a foreign port." The said sum of P10,000.00 was considered "fair, reasonable and realistic" in Alhambra Industries Inc. vs. NLRC et al.[23] the Court adding that "termination of a worker for cause, even without procedural due process, does not warrant reinstatement, but the employer incurs liability for damages."[24]

In striking down the claim for backwages and separation pay where just cause is clearly shown, the Court, through Mr. Justice Florenz D. Regalado in Cathedral School of Technology vs. NLRC, et al., (supra), said:

> "Backwages are granted on the basis of equity for earnings which a worker or employee has lost due to his illegal dismissal, where private respondent's dismissal is for just cause, as is the case herein, there is no factual or legal basis to order payment of backwages; otherwise, private respondent would be unjustly enriching herself at the expense of petitioners. Where the employee's dismissal was for a just cause, it would be neither fair nor just to allow the employee to recover something he has not earned or could not have earned.
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> Neither can there be an award for separation pay. In Cosmopolitan Funeral Homes, Inc. vs. Maalat, et al., we reiterated the categorical abandonment of the doctrine that employees dismissed for cause are entitled to separation pay on the ground of social and compassionate justice." (Citations omitted.)

In the instant case, following the jurisprudence firmly established in the aforecited cases, she is entitled to indemnity of P1,000.00.

The Third Issue: Due Process at the Labor Arbiter's Forum

Petitioners maintained that they were denied due process when the Labor Arbiter considered the case submitted for resolution notwithstanding the fact that petitioners had manifested their intention to present additional evidence.

We do not agree.

Petitioners first asked to be allowed to present additional evidence at the hearing on June 9, 1992 but they manifested that the documents they intended to present were not then available. The Labor Arbiter allowed petitioners to present the documents at the next hearing, July 7, 1994. As that next hearing day was declared a special non-working holiday, the case was reset to August 4, 1992. Inasmuch as the

counsel for petitioners had to attend to another urgent matter on August 4, 1992, he failed to appear at the hearing, although he filed a motion for postponement. The Labor Arbiter denied the motion and issued an order considering the case as submitted for resolution. On motion for reconsideration of petitioners, the Labor Arbiter reset the case for the reception of additional evidence on October 30, 1992. Petitioners again failed to appear on said date, prompting the Labor Arbiter to consider the case submitted for resolution.

Under the foregoing circumstances we cannot say that the Labor Arbiter abused his discretion in considering the case submitted for resolution on October 30, 1992. There is no denial of due process where the party was given an opportunity to present his case, which he did not take advantage of.

That being the case, the claim of private respondent for thirteenth month pay (P16,083.32), overtime pay (P21,977.56), and unpaid salary (P31,166.66) stands unrebutted.

Refutation of Mr. Justice Puno's Dissent

The dissenting opinion of Mr. Justice Reynato S. Puno contends that "there is substantial evidence on record to justify the factual finding of the Arbiter and the NLRC", and thus faults the majority with a deviation from the "age-old rule that we accord the highest consideration to the factual findings of labor arbiters especially when they are affirmed by the NLRC."

There is no such deviation. The labor tribunals, as stated earlier, found the private respondent's dismissal unjustified because "the complainant had shown to Our satisfaction that in the questioned transactions, she never defrauded the company as the monies so defrayed were used to settle various corporate accounts"[25] and none of such "monies" went to her private pocket. This is correct — and if that is all that private respondent was faulted with, we would have supported the tribunal a quo all the way. But, to repeat, we are not finding her guilty of any dishonesty. We find that her ill-considered, imprudent and precipitate acts of misusing the very limited cash of the company, in violation of her inherent duties as Comptroller/Finance Officer and of the specific instructions of top

management caused the near collapse of the company. We are not reversing the factual findings that private respondent was NOT guilty of any fraud. But based on the facts as found by the arbiter and the respondent Commission and borne out by the records, viz., (a) petitioner's position paper before the labor arbiter, (b) affidavit of witness Renato Unson, (c) admissions of private respondent during her testimony before the labor arbiter, and (d) pertinent allegations in the petition before us, we conclude that there is more than sufficient basis for the company's "loss of trust and confidence" in private respondent. Even Mr. Justice Puno concedes that (and we quote him) "there is no doubt that private respondent entered on the blank checks amounts in excess of what had been specified in the cash vouchers and she also made payments to creditors other than those named in said vouchers." This critical fact, conceded by our esteemed colleague, was altogether ignored by the respondent Commission and the arbiter. In short, we used the same facts brought out before the lower tribunals in arriving at our conclusion of law — a conclusion such tribunals ought to have made also.

Our dissenting colleague also maintains that private respondent had authority to make the above-described alterations in the checks and in paying "creditors other than those named in the vouchers", in the absence of specific instructions. His contention lacks basis. Such instructions, aside from having been presented in petitioner's position paper before the arbiter as well as through the testimony of witness Renato Unson, were also expressly admitted by respondent Molina in her testimony as quoted in the dissent when she produced her "guideline" — 8 pages long — on how the "79 checks, 16 blank checks and 63 with amounts" were to be spent/used.

And even assuming arguendo that there were no specific written instructions, still, Molina was not a mere clerk but a high corporate officer whose primary and usual duty is/was to control corporate funds. While in hindsight it is easy to blame petitioners for not documenting their instructions as insisted by the dissent, it is however not difficult to understand that ordinary business activities are performed in the normal course without anticipation nor foreknowledge of litigation, often with dispatch and usually with a minimum of documentation. Considering that the matter of paying off creditors subject to the constraints of the company's available

funds is a fairly routine business activity and part and parcel of the normal job functions of a comptroller or finance officer, and considering further that blank checks and supporting vouchers — which were all in writing — had been prepared in advance, specific detailed written instructions on what to do with them would have been appropriate only for a non-thinking clerk and would have been unusual — in fact, even insulting — for such "comptroller-finance officer". But the immutable fact is that such instructions were in fact documented. And that notwithstanding, respondent Molina still acted imprudently and contrary to those instructions.

Mr. Justice Puno also argues that there is no evidence to support petitioners' claims of "bouncing checks" as a result of Molina's acts. But the majority's ruling is NOT based at all on such claims of bouncing checks, but on the precipitate acts of the comptroller which jeopardized the cash flow of the company. Where a company's current cash resources are not enough to pay off all current liabilities and obligations, it is the fundamental role of a comptroller/finance officer, even in the total absence of "specific instructions", to allocate available funds to the most critical and immediate needs and to see to it that there are funds left over to enable the company to continue operations. Where available funds are not sufficient to meet all obligations, it is a most basic rule in management to adhere to an order of priorities in the settlement of accounts. In such situation, payment of lower-priority obligations must necessarily be postponed. For instance, paying office rentals in advance is not objectionable per se, since such obligation must be paid anyway. But where such advance payment prevents the company from discharging more pressing obligations like payment of wages, it is precipitate and ill-considered. And where the actuations of a comptroller/finance officer, instead of keeping the company afloat, almost shipwrecks it upon the shoals of illiquidity and bankruptcy, there is certainly a cause for loss of trust and confidence in the ability and judgment of said comptroller/finance officer.

Lastly, we pass sub silencio Mr. Justice Puno's submission for the Court to re-examine the NLRC's ruling on "strained relations". In view of our holding that there was just cause for the dismissal, such NLRC ruling is now clearly irrelevant in this Decision.

Summation

IN SUM, we rule that the dismissal of private respondent had substantial basis. But because petitioners have failed to show strict observance of due process they should. in accordance with prevailing jurisprudence, pay indemnity of P1,000.00. In addition, they should also pay private respondent the unrebutted claims for thirteenth month pay, overtime pay and unpaid salary. So too, we delete the award of moral damages and attorney's fees in the absence of proof of bad faith and malice on the part of petitioners.

WHEREFORE, the Petition is partially **GRANTED**. The dismissal of private respondent is deemed with just cause. The assailed Resolution is hereby **SET ASIDE** and **ANNULLED**. Instead, petitioners are ordered to pay to private respondent the following sums, viz., (a) indemnity of P1,000.00, (b) thirteenth month pay of P16,083.32, (c) overtime pay of P21,977.56 and (d) unpaid salary of P31,166.66.

SO ORDERED.

Narvasa, *C.J.*, Padilla, Regalado, Melo, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and Torres, *JJ.*, concur.
Bellosillo, *J.*, is on leave.

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[1] Rollo, pp. 23-32.
[2] Promulgated on February 28, 1994 in NLRC-NCR Case No. 00-12-06620-90 by the First Division, composed of Comm. Alberto R. Quimpo, ponente, Pres. Comm. Bartolome S. Carale and Comm. Vicente S.E. Veloso.
[3] Executive Labor Arbiter Valentin C. Guanio.
[4] Rollo, pp. 42-44.
[5] Rollo, pp. 40-41.
  [5a] Decision of Executive Labor Arbiter Valentin Guanio in NLRC-NRC Case No. 00-12-06620-90, pp. 5 & 6; rollo, pp. 37 & 38.
  [5b] Rollo, pp. 53-55.
  [5c] TSN, July 26, 1991, pp. 23-24 as quoted in the petitioners', "Supplemental Memorandum," rollo, p. 73.
[6] Petition, p. 11; Rollo, p. 12.
[7] Resolution, p. 6; rollo, p. 28.
[8] Cf. Lu Hayco vs. Court of Appeals, 138 SCRA 229 (August 26, 1985).

[9] San Miguel Corp. vs. Deputy Minister of Labor and Employment, 145 SCRA 196 (October 27, 1986); International Hardwood and Veneer Co. of the Philippines vs. Leogardo, 117 SCRA 967 (October 28, 1982); Engineering Equipment, Inc. vs. National Labor Relations Commission, 133 SCRA 752 (December 26, 1984).

[10] Dole Philippines, Inc. vs. National Labor Relations Commission, 123 SCRA 673 (July 25, 1983); International Hardwood and Veneer Co. vs. Leogardo, 117 SCRA 967 (October 28, 1982).

[11] Kwikway Engineering Works vs. National Labor Relations Commission, 195 SCRA 526 (March 22, 1991); Lamsan Trading vs. Leogardo, 144 SCRA 571 (September 30, 1986); Reynolds vs. Eslava, 137 SCRA 259 (June 27, 1985); New Frontier vs. NLRC, 129 SCRA 502 (May 29, 1984); Associate Citizens Bank vs. Hon. Ople, 103 SCRA 130 (February 24, 1981.).

[12] Sea-Land Service, Inc. vs. National Labor Relations Commission, 136 SCRA 544 (May 24, 1985).

[13] Estiva vs. National Labor Relations Commission, 225 SCRA 169 (August 5, 1993); De Vera vs. National Labor Relations Commission, 200 SCRA 439 (August 9, 1991).

[14] Kwikway Engineering Works vs. NLRC, 195 SCRA 526, 531 (March 22, 1991). Note: In this case, the Court found just cause for the employee's dismissal. But for failure to observe due process, the employer was ordered to pay P1,000.00 as "damages".

[15] Rollo, p. 128.

[16] Pepsi-Cola Bottling Co. vs. NLRC, 210 SCRA 277, at p. 286 (June 23, 1992); J. Hugo E. Gutierrez, Jr., ponente.

[17] Separation pay, however, "may be allowed as a measure of social justice but only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character" — Cathedral School of Technology vs. NLRC et. al., 214 SCRA 551 (October 13, 1992).

[18] To which prevailing jurisprudence undersigned ponente respectfully expresses his reservations. At an appropriate opportunity, he will essay his reservations on this doctrine of granting merely indemnity in cases where due process is denied, even if lawful cause may be present.

[19] 170 SCRA 69, at 75-76 (February 8, 1989); en banc, J. Emilio A. Gancayco, ponente.

[20] 183 SCRA 421, at 425 (March 21, 1990); J. Andres R. Narvasa, ponente.

[21] 221 SCRA 432, at 443-444 (April 12, 1993); J. Jose A.R. Melo, ponente.

[22] 232 SCRA 613, at 618 (May 27, 1994); J. Camilo D. Quiazon, ponente.

[23] 238 SCRA 232, at 240 and 238 (November 18, 1994); J. Josue N. Bellosillo, ponente.

[24] See also World-wide Papermills, Inc. vs. NLRC, 244 SCRA 125 (May 12, 1995), where the indemnity was P5,000.00; Sebuguero vs. NLRC, G.R. No. L-115394 (September 27, 1995) — P2,000.00; Sampaguita Garments Corporation vs. NLRC et al., 233 SCRA 260 (June 17, 1994) — P1,000.00; Villarama vs. NLRC, 236 SCRA 280 (September 2, 1994) — P1,000.00; Segismundo vs. NLRC, 239 SCRA 167 (December 13, 1994) — P1,000.00;

Falguera vs. Labor Arbiter Linsangan, et al., G.R. No. 114848 (December 14, 1995) — P5,000.00; and Magnolia Dairy Products Corporation vs. NLRC, et al., G.R. No. 114952, (January 29, 1996) — P5,000.00. Note: Since Reta, the Court has increased the indemnity to the present maximum of P10,000.00. Prior to that, it uniformly awarded only P1,000.00, as in the following cases: Seahorse Maritime Corporation vs. NLRC, et al., 173 SCRA 390 (May 15, 1989); Shoemart, Inc., et al. vs. NLRC, et al., 176 SCRA 385 (August 11, 1989); Dela Cruz vs. NLRC, et al., 177 SCRA 626 (September 15, 1989); Great Pacific Life Assurance Corp. vs. NLRC, et al., 187 SCRA 694 (July 23, 1990); Pacific Mills, Inc. vs. Zenaida Alonzo, 199 SCRA 617 (July 26, 1991); Kwikway Engineering Works, Inc. vs. NLRC, et al., 195 SCRA 526 (March 22, 1991).

[25] Please see footnote 7 supra.

SEPARATE OPINIONS

ROMERO, J ., dissenting:

Under the facts of the case, I am for the affirmance of the ruling of both the Labor Arbiter and the NLRC that the dismissal of private respondent, being "wrongful, malicious and in bad faith," she should be reinstated. However, I part ways with the Labor Arbiter in denying said reinstatement on the plea of "strained relationship that has developed between petitioner-employer and private respondent employee."

To be sure, strained relations between the employer and employee have been considered by the Court time and again as an exception to the legal precept mandating reinstatement and payment of backwages for illegally dismissed employees. However, to my mind, it has been utilized much too often as a bar to reinstatement on the ground that the resultant antipathy and antagonism are likely to adversely affect the efficiency and productivity of the employee concerned, as well as the realization of management objectives.

I reiterate my opinion in Globe Mackay Cable and Radio Corporation vs. NLRC[1] that the doctrine of strained relations should not be applied indiscriminately to avoid thwarting the intendment of the law

to grant reinstatement to illegally dismissed employees. If at all, it must be carefully and adequately proved.

While I recognize that human nature engenders, in the normal course of things, some hostility as a result of litigation, this should not inevitably lead to the conclusion that strained relations thereby exist between the employer and employee sufficient to rule out reinstatement. Although the existence of some ill-feeling or hostility is but to be expected, it should not automatically bar reinstatement.

While there is no hard and fast rule in the application of the doctrine to dismiss rank and file workers and managerial employees, often, it is in the latter group that the strained relations principle finds application.

Granted that respondent, being comptroller, over-all supervisor and financial officer of the company belongs to the category of confidential employees, the possibility of strained relations may be more likely to arise than if she were lower down the managerial hierarchy. Still and all, to apply the doctrine automatically to bar reinstatement is much too harsh — that is, on the basis of the finding that the dismissal was unjustified, and therefore, illegal.

ROMERO, J., dissenting:

[1] G.R. No. 82511, March 3, 1992, 206 SCRA 701.

PUNO, J., dissenting:

I

The age-old rule is that we accord the highest consideration to the factual findings of labor arbiters especially when they are affirmed by the NLRC. In the case at bar, both the Arbiter and the NLRC found that the track record of private respondent shows she has always been

an efficient employee. She started as a bookkeeper in 1988 and by 1990 became the Finance officer and Comptroller of petitioners.

Petitioners dismissed her allegedly because she depleted the company cash balance by paying its due and demandable obligations in violation of contrary "instructions." Petitioners also filed a criminal complaint for estafa against the private respondent. After assessment of the parties' evidence, the Arbiter and the NLRC found that the private respondent was unjustly dismissed. The alleged "instructions" were not proved by petitioners by convincing evidence. The estafa case was also thrown out. Thus, it was held that the dismissal of private respondent was malicious and in bad faith. If private respondent was not reinstated, it was only because of the application of the "strained relationship doctrine."

The majority decision now reverses the factual findings of the public respondents and rules in favor of the employers who have been found to have dismissed the private respondent without just cause and with malice and in bad faith. With due respect, I register my dissent.

II

The first issue is whether there is substantial evidence to support the factual finding of the Labor Arbiter and the NLRC that private respondent was illegally dismissed. If there is, it is our bounden duty to affirm their decision for as we are not triers of facts, we traditionally respect their factual findings. With due respect, I submit that there is substantial evidence on record to justify the factual finding of the Arbiter and the NLRC. Article 282(c) of the Labor Code governs dismissal due to loss of trust, viz.:

> "Art. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:
>
> 'x x x
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.'"

> In International Harvester Macleod, Inc. vs. IAC,[1] we held that "ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently."

There is no doubt that private respondent entered on the blank checks amounts in excess of what had been specified in the cash vouchers and she also made payments to creditors other than those named in said vouchers. The decisive factual question is whether the private respondent has the authority to make these payments. If she has, then her act is not without a justifiable excuse. Petitioners maintain that private respondent lacks authority as said authority belongs exclusively to the senior management official of the corporation. Their witness, Atty. Renato Unson, special assistant to the President, testified as follows:[2]

> "ATTY. BENITEZ:
>
> Can you inform us about the case and what transpired?
>
> WITNESS:
>
> Briefly, this estafa case arose from the violation of the trust and confidence imposed on her by the company being the Cashier and Disbursing Officer of the company. Before the Senior Management left for abroad on March 1990, the Senior management left specific instructions in the form of check voucher that strictly instruct Miss Molina to disburse company funds in accordance with specific instructions mentioned in said voucher. However, when Senior Management arrived from abroad, they were surprised to discover that instead of the company having at least a million pesos in the bank, the company had only P500.00. Upon investigation, Miss Molina explained that what she did was to fill in the blank checks with the amount different from that it was specifically instructed from her.
>
> x x x

ATTY. GARGANTOS:

You stated also that this check was entrusted to her in blank, is that correct?

WITNESS;

Yes, sir.

ATTY. GARGANTOS:

This check if it really been entrusted to her for specific instruction, your office could have readily fill up to the amount she was required to comply with, isn't it?

WITNESS:

Yes, but because the trust reposed on Miss Molina, this check was left knowing that she would fill in the amount in accordance with the instruction.

EXEC. LABOR ARBITER/TO THE WITNESS:

You said complainant violated instructions, specific instruction given to her?

WITNESS:

Yes, sir.

EXEC. LABOR ARBITER:

As to how the checks will be filled up to specific amount?

WITNESS:

Yes, sir.

EXEC. LABOR ARBITER:

> Were those amounts stated in the vouchers?

WITNESS:

> Very clear, your honor, the amounts were specifically mentioned in the vouchers.

EXEC. LABOR ARBITER:

> And yet the checks were left blank?

WITNESS:

> Yes, because of the trust reposed on Miss Molina.

EXEC. LABOR ARBITER:

> Why were the checks left blank?

WITNESS:

> Before the Senior Management left for abroad, they were in a rush so this particular check, maybe the signatory left it in blank knowing that Molina was the cashier who claim to be a relative of the Senior Management and also this trust reposed on her, I believe she would follow the instruction.

Atty. Unson's testimony is contradicted by private complainant.

She testified as follows:[3]

"ATTY. RIMORIN:

Q When they left for the U.S. did they leave you any vouchers?

MISS MOLINA:

A They left me vouchers and my guideline are (sic) here (producing a list with the date therein — March 27 consisting of 8 pages). They left me this one as my guidelines (sic) which is supported by 79 checks, 16 blank checks and 63 with amount.

Q And these 16 blank checks that you mentioned these were left with you with attached vouchers corresponding to this blank checks?

A Yes, sir.

ATTY. RIMORIN:

Q And on those vouchers were indicated the check numbers, as well as, the amount supposed to be placed in the blank check, is that correct?

MISS MOLINA:

A There are already amount in the vouchers but if the voucher is the basis of the check then they should have placed the amount in the check, but they instructed me that they left the check blank so the obligation of the company, they just told me to place the amount as the obligation comes in."

It is obvious that there is an irreconcilable variance between the testimonies of Atty. Unson and the private complainant. The Arbiter and NLRC did not give credence to Atty. Unson's testimony for good reasons. Well to note, Atty. Unson does not have personal knowledge of the alleged instructions of the corporation's senior management official. His weak testimony could have been strengthened if the petitioner corporation presented its so called "senior management" official whose instructions were allegedly violated. This senior management official was not, however, presented and the "instructions" which normally ought to appear in writing, were never proved. In contrast, private respondent testified on her authority and was thoroughly examined by the counsel of petitioners and by the Arbiter himself. At the very least, these alleged "instructions" from

the senior management official were ambiguous and I agree with the comment of the Solicitor General, thus:[4]

> "Moreover, the vouchers corresponding to the blank checks can be considered as mere guidelines in the payment of obligations. There is no explicit showing that the amounts written therein were the only amounts to be filled in the checks or that the creditors listed were the only creditors to be paid. The existence of the blank checks attest to this. Petitioners knew the obligations which were due and demandable even before they left for the United States. Hence, if they had intended to limit the money to be paid out, they could have simply instructed that the exact amount be written on all the checks. Petitioners, however, chose to leave 16 blank checks out of the 79 given to Molina. In effect, the blank checks implied that Molina was allowed to exercise some kind of discretion in the payment of the debts."

It is also difficult to divine why private respondent alone was dismissed. The blank checks were payable to both the private respondent and Mr. Cesar Ratilo, Personnel Manager of petitioner corporation. She testified:[5]

> "EXEC. LABOR ARBITER:
>
> Q The so-called 16 blank checks given to you were also blank as to the amount?
>
> MISS MOLINA:
>
> A Yes, sir.
>
> Q What about the payee is it also blank?
>
> A No sir, it is filled up.
>
> Q To whom this check made payable?
>
> A To me and Co. Cesar Ratilo, sir.

Q Is he the same Ratilo who is-the personnel manager?

A Yes, sir.

EXEC. LABOR ARBITER:

Q How were these checks made payable to you and Mr. Ratilo?

MISS MOLINA:

A For encashment, sir.

Q I thought these checks were for payment to some creditors?

A Yes, sir.

Q How were they made payable to you and not to the creditors?

A It's just an authority to settle their obligation, sir.

Q What are some of the creditors to whom you paid these checks?

A This serves as my guidelines, sir. (producing a document) Baseco, AG & P.

EXEC. LABOR ARBITER:

Q The check could have been made to Baseco, only the amount is blank, why was that not done?

A I do not know, sir.

AT THIS JUNCTURE, AN OFF-THE RECORD

DISCUSSION ENSUED

Q You said the checks were made payable to you and Mr. Ratilo?

A Yes, sir.

Q How was it made payable, for or and?

MISS MOLINA:

A "And," sir.

Q So it's not for you to encash this check without Mr. Ratilo?

A Yes, sir.

Q In fact when you encash the check, it was the two of you who encashed it?

A Yes, sir. Mr. Ratilo also signed.

Q Of course after you have filled in the amount?

A. Yes, sir."

As personnel manager, it is improbable for Mr. Ratilo not to notice the big discrepancies between the amounts in the blank checks and the amounts in the vouchers. His lack of objection bolsters the contention of private respondent that she has the authority to pay corporate obligations as they became due. In sum, the factual finding of the Arbiter and the NLRC that private respondent was illegally dismissed is not arbitrary and we have no reason to reverse the same. Their finding is also in accord with our constitutional policy of favoring labor in case there is an equipoise between the contending claims of labor and capital.

The majority also rules that the public respondents "labored under the wrong impression that private respondent was dismissed because she embezzled company funds." Again, with due respect, I submit that the ruling of the public respondents is supported by the records of the case and hence ought to be sustained. It is primarily based on the testimony of the lone witness for the petitioners, Atty. Unson, viz:[6]

> "ATTY. BENITEZ:
>
> Can you inform the Honorable Commission about the nature, the duties of the work of complainant Molina.
>
> WITNESS:
>
> First of all, Miss Molina was terminated by reason of the estafa case filed against her.
>
> x x x
>
> EXEC. LABOR ARBITER:
>
> This is the reason why the complainant was dismissed?
>
> WITNESS:
>
> Because of the violation of the trust. Well, initially because of the estafa case which we believe this actuation amounts to estafa. Of course, as a Cashier because of the violation of the important trust and confidence reposed on her being the Cashier who occupied a very important position.

The position paper of petitioners also claims that private respondent's act "resulted in the loss of corporate funds thru falsification of commercial documents."[7] Petitioners also accused private respondent of appropriating their property for her personal use.[8] Clearly then, private respondent was dismissed because of petitioners' erroneous belief that she committed estafa, an element of which is breach of trust and confidence.

The majority also holds that the act of private respondent "placed the company in great jeopardy and disturbed its financial stability, thereby causing it real and actual damage." Obviously, he gave credence to the claim that "petitioner found its checks bouncing one after the other. It failed to meet its financial obligations to its preferred creditors. It had to source financial resources elsewhere in order to pay its due and demandable debts, not to mention its obligations to its employees." Petitioners' claim is not contained in their Position Paper. It is not in the supporting affidavit of Atty. Renato Unson. It is not the subject of testimony of Atty. Unson. It is not in the Memorandum of Appeal of petitioners to the NLRC. These allegations of damage were made for the first time in the petition filed with this Court. They were never proved before the Labor Arbiter and the NLRC. Indeed, I find it difficult to accept that the act of private respondent in paying the just and demandable debts of petitioners prejudiced the petitioners. The act of private respondent may have diminished the cash reserve of petitioners but non-payment of their just and demandable debts could have brought more disastrous consequences to the petitioners.

III

I agree with the majority that private respondent was denied due process before she was illegally dismissed. As we held in Tingson Jr. vs. NLRC: [9]

> "The law requires that the employer must furnish the worker sought to be dismissed with two (2) written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. (Sec. 13, BP 130; Sec. 2-6 Rule XIV, Book V, Rules and Regulations Implementing the Labor Code as amended). Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory; in the absence of which, any judgment reached by management is void and in existence (Tingson, Jr. vs. NLRC, 185 SCRA 498 [1990]; National Service Corp. vs. NLRC, 168 SCRA 122 [1988]; Ruffy vs. NLRC, 182 SCRA 365 [1990])."

In the case at bar, private respondent was merely audited. By no means is this the hearing contemplated by law.

It was clearly hasty for petitioners to dismiss private respondent without hearing her side. As aforestated, private respondent's track record shows she has been an efficient employee. Her act of paying the petitioners' due and demandable debts did not benefit herself. The diminution of the corporate funds as a consequence of these payments by itself is not a basis for loss of trust especially considering that the offense, if that were an offense, was the first committed by private respondent.

IV

With due respect, I submit that it is high time for the Court to re-examine the ruling of the Labor Arbiter and the NLRC which denied the reinstatement of the private respondent on the ground of strained relationship. The Labor Arbiter held:[10]

> "x x x
>
> Since respondents have failed to prove a just cause for complainant's dismissal, the same is therefore held illegal and hence she should be reinstated to her former position and paid backwages at the rate of her salary of P10,000.00 per month starting the date of her dismissal on November 12, 1990 until she is actually reinstated. However, due to the apparent strained relations between the parties which became very evident during the trial, complainant is hereby granted separation pay equivalent to one month salary for every year of service or P20,000.00 corresponding to her two (2) year tenure, in lieu of reinstatement, without prejudice to her right to backwages which to date already amounts to P250,000.00."

Let us note that private respondent was not reinstated despite the finding of the Arbiter and the NLRC that her dismissal was wrongful, malicious and in bad faith.[11]

"Strained relationship" is a question of fact. In her affidavit of complaint, private respondent did not allege that she did not want to be reinstated on the ground that her relationship with petitioners has become "strained." In their position paper, petitioners did not also allege that they could not re-employ the private respondents because of "strained relationship." The factual issue of strained relationship was not an issue, hence was not the subject of proof before the Labor Arbiter. There was no factual basis for the Arbiter to hold that "due to the apparent strained relations between the parties which became very evident during the trial" and then deny reinstatement to the private respondent.

I ask for re-examination because our rulings on "strained relationship" cases have been indiscriminately used to justify non-reinstatement of illegally dismissed employees. I respectfully submit that the too liberal use of this "strained relationship" doctrine has eroded the security of tenure of employees guaranteed in our Constitution. Not infrequently, the doctrine is used just because of the vehemence with which the dismissal of an employee is pressed by an employer.

The case at bar shows how the doctrine has been misapplied. Petitioners were found to be guilty of malice and bad faith in dismissing the private respondent. Yet, the petitioners were not compelled to reinstate the private respondent. Instead she was just paid P21,000.00 by the employer. The payment diminishes the right of an employee to security of tenure which ought not to be given any price tag. She has a right to security of tenure even if she belongs to the management level of petitioners' corporation.

In the case at bar, it may be argued that the private respondent did not appeal the Arbiter ruling denying her reinstatement. Be that as it may, I respectfully submit that we can use this case as a vehicle to tighten our rulings on "strained relationship" cases. At the very least, I suggest that henceforth, we should require that the alleged "strained relationship" must be pleaded and proved if either the employer or the employee does not want the employment tie to remain. By making "strained relationship" a triable issue of fact before the Arbiter or the NLRC we will eliminate rulings on "strained relationship" based on impressions alone.

IN VIEW WHEREOF, I vote to Dismiss the Petition.

Davide, Jr., *J.*, dissents.

PUNO, J., dissenting:

[1] 149 SCRA 641 [1987].
[2] TSN, June 2, 1992, pp. 11-12; 32-33; 40-43.
[3] TSN, July 26, 1991, pp. 23-25.
[4] Comment, p. 7.
[5] TSN, July 26, 1991. pp.
[6] TSN, June 9, 1992, p. 8, p. 45.
[7] Par. 13 of Position Paper.
[8] Par. 14 of Position Paper.
[9] 185 SCRA 498 [1990].
[10] Decision, p. 9.
[11] Ibid, p. 12.

VITUG, J., dissenting:

I opine thusly:

I.

A. Just cause and due process are essential in order to make the dismissal of an employee valid and legal.

B. Where there is no just cause, the reinstatement of the employee and the payment of back salaries would be warranted and should be ordered. If the dismissal is attended by bad faith or if the employer acted in wanton or oppressive manner, moral and exemplary damages might additionally be awarded.

> "ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are

justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

"x x x

"ART. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner." (Civil Code).

Separation pay can substitute for reinstatement if such reinstatement is not feasible, such as in case of a clearly strained employer-employee relationship (limited to managerial positions and contracts of employment predicated on trust and confidence) or when the work or position formerly held by the dismissed employee simply no longer exists.

C. Where there is just cause for dismissal but due process has not been properly observed by an employer, it would not be right to order either the reinstatement of the dismissed employee or the payment of backwages to him. In failing, however, to comply with the procedure prescribed by law in terminating the services of the employee, the employer must be deemed to have opted or, in any case, should be made liable, for the payment of separation pay. It might be pointed out that the notice to be given and the hearing to be conducted generally constitute the two-part due process requirement of law to be accorded to the employee by the employer. Nevertheless, peculiar circumstances might obtain in certain situations where to undertake the above steps would be no more than a useless formality and where, accordingly, it would not be imprudent to apply the res ipsa loquitur rule and award, in lieu of separation pay, nominal damages to the employee. The pertinent provisions of the Civil Code on nominal damages provide:

"ART. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or

recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

"ART. 2222. The court may award nominal damages in every obligation arising from any source enumerated in article 1157, or in every case where any property right has been invaded.

"ART. 2223. The adjudication of nominal damages shall preclude further contest upon the right involved and all accessory questions, as between the parties to the suit, or their respective heirs and assigns."

II

In the case before us, I perceive no grave abuse of discretion on the part of either the Labor Arbiter or the National Labor Relations Commission in their assessment of the facts, as well as in their conclusions, including particularly the order for the payment of separation pay, in lieu of reinstatement, due to strained relationship considering private respondent's high position in the company as "comptroller and over-all supervisor" concurrently as its "financial officer."

ALL TAKEN, I vote to Dismiss the Petition.