YOU'VE GOT MAIL! SERIOUS MISCONDUCT AND E-MAIL PRIVACY IN THE WORKPLACE: A CRITICAL ANALYSIS OF THE SUPREME COURT'S RULING IN PUNZAL VS. ETSI TECHNOLOGIES, INC.

Justin Christopher C. Mendoza

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*Justin Christopher C. Mendoza***

"Psychologically, privacy consists not only of what we need to exclude, but also of what we need to share or communicate. They are opposite sides of the same coin; it takes both sides of a coin to give us a full picture of social reality."

- M.C. Slough

I. LIMITS ON THE EMPLOYER'S RIGHT TO DISCIPLINE

The right or prerogative of the employer to discipline his/her employees cannot be exercised indiscriminately. Like any right, the disciplinary right of the employer is subject to the *police power*[1] of the State. Through the exercise of this power, the State seeks to strike a balance between management prerogative and employee rights. In the recent case of *Kephilco Malaya Employees Union and Leonilo Burgos vs. Kepco Philippines Corporation*[2], the Supreme Court reiterated the well-established rule that:

> The overly concern of our laws for the welfare of employees is in accord with the social justice

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[1] The U.S. Supreme Court in *Commonwealth vs. Alger, 7 Cush, 53 (Mass. 1851)*, speaking through Chief Justice Shaw defined police power as "(t)he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

[2] G.R. No. 171927, June 29, 2007

> philosophy of our Constitution. Indeed, the employer's inherent right to discipline is subject to *reasonable regulation* by the State in the exercise of its police power. (Emphasis supplied, footnotes omitted)

The enactment of the Labor Code[3] is one measure to achieve that balance. The Labor Code, and its provisions on termination for "just cause", ensures that the penalty to be imposed by the employer on the employee is commensurate to the level and character of the infraction committed by the latter.[4] Hence, in *HSBC vs. NLRC*[5] the Supreme Court ruled that the NLRC could not be bound by the provision in the employee's handbook stating that "*any form of dishonesty*" shall constitute a "serious offense(s) calling for termination". The Supreme Court has emphasized that the foundation of this rule is the notion that an employee's job is equivalent to a property right[6], thus:

> "(w)hich grounds should be *strictly construed* since a person's employment constitutes "property" under the context of the constitutional protection that "no person shall be deprived of life, liberty or property without due process of law" and, as such, the burden of proving that there exists a valid ground for termination of employment *rests upon the employer.* (Emphasis supplied, footnotes omitted)

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[3] Labor Code of the Philippines, Presidential Decree No. 442, (as amended)

[4] *Id.* Art. 282 ("*Termination by employer.*—An employer may terminate an employment for any of the following causes:

Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

Gross and habitual neglect by the employee of his duties;

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

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

Other causes analogous to the foregoing.

[5] G.R. No. 116542, July 30, 1996.

[6] Philippine Acolus Automotive United Corporation And/Or Francis Chua, vs. National Labor Relations Commission And Rosalinda C. Cortez, G.R. No. 124617. April 28, 2000.

Hence, the employer's establishment of certain *Rules of Discipline* that should govern employee conduct is subject to judicial review. The Supreme Court has ruled[7]:

> Precisely, the employer's prerogative and power to discipline and terminate an employee's services may not be exercised in an arbitrary or despotic manner as to erode or render meaningless the constitutional guarantees of security of tenure and due process. Our labor laws, both substantive and procedural, require strict compliance before an employee may be dismissed. Clearly, it is the NLRC's right and duty to review employers' exercise of their prerogative to dismiss so as to prevent abuse and arbitrariness. (Footnotes omitted)

The Supreme Court has likewise emphasized that the exercise of "management prerogative" in the discipline of employees must be fair and reasonable. In *St. Michael's Institute v. Santos*[8], the Supreme Court wrote:

> The employer's right to conduct the affairs of [its] business, according to its own discretion and judgment, is well-recognized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. This is a management prerogative, where the free will of management to conduct its own affairs to achieve its purpose takes form. The only criterion to guide the exercise of its management prerogative is that the policies, rules and regulations on work-related activities of the *employees must always be fair and reasonable* and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction. (Emphasis supplied, footnotes omitted)

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[7] The Hong Kong And Shanghai Banking Corporation, vs. National Labor Relations Commission AND Emmanuel A. Meneses, G.R. No. 116542, July 30, 1996.

[8] G.R. No. 145280, December 4, 2001.

The right of the employer to discipline is likewise circumscribed by fundamental rights and freedoms guaranteed by the Constitution. The Supreme Court, through Justice Makasiar, wrote[9]:

> While the Bill of Rights also protects property rights, *the primacy of human rights over property rights is recognized.* Because these freedoms are "delicate and vulnerable, as well as supremely precious in our society" and the "threat of sanctions may deter their exercise almost as potently as the actual application of sanctions," they "need breathing space to survive," permitting government regulation only "with narrow specificity." (Emphasis supplied, footnotes omitted)

The Supreme Court in that case, ruled that the respondent company was guilty of an unfair labor practice in refusing to permit all its employees and workers to join the mass demonstration against alleged police abuses, and in the subsequent separation of the eight petitioners from service. In the words of the highest court of the land, the act of the employer constituted "an unconstitutional restraint on the freedom of expression, freedom of assembly and freedom to petition for redress of grievances".[10] In a recent case, however, the Supreme Court held that the "human rights" so zealously defended by Justice Makasiar's in his *ponencia* are not absolute. In *Biflex Phils. Inc. Labor Union, et. al vs. Filflex Industrial and Manufacturing Corporation and Biflex Phil. Inc.*[11] the Supreme Court wrote:

> Even if petitioners' joining the *welga ng bayan* were considered merely as an exercise of their freedom of expression, freedom of assembly or freedom to petition the government for redress of grievances, the exercise of such rights is *not absolute.* For the protection of other significant state interests such as the "right of enterprises to reasonable returns on investments, and to expansion and growth" enshrined in the 1987 Constitution must also be considered, otherwise, oppression or self-destruction of capital in order to promote the interests of labor would be sanctioned. And it

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[9] Philippine Blooming Mills Employees Organization vs. Philippine Blooming Mills Co., Inc. G.R. No. L-31195, June 5, 1973.

[10] *Id.*

[11] G.R. No. 155679, December 19, 2006.

> would give imprimatur to workers' joining demonstrations/rallies even before affording the employer an opportunity to make the necessary arrangements to counteract the implications of the work stoppage on the business, and ignore the novel "principle of shared responsibility between workers and employers" aimed at fostering industrial peace.
>
> There being no showing that petitioners notified respondents of their intention, or that they were allowed by respondents, to join the *welga ng bayan* on October 24, 1990, their work stoppage is beyond legal protection. (Emphasis supplied, footnotes omitted)

In the *Biflex* case, the Supreme Court seems to have chosen to abandon the so-called "hierarchy of rights"[12] set forth in the *Philippine Blooming Mills* case. Nevertheless, it is clear from these two decisions that fundamental rights guaranteed and protected by the Constitution and other laws, constitute a limitation on the exercise by the employer of his right to discipline his/her employees.

As a general rule, therefore, the employer has complete freedom to determine how to run his/her business. This right, which is often referred to as "management prerogative", entitles the employer to decide how his employees are to be disciplined. This right, however, is not absolute. It is subject to the following limitations, namely; (1) the *police power* of the State, i.e. the Labor Code and other related laws enacted by Congress to promote public welfare, and (2) the exercise of fundamental freedoms guaranteed under the Constitution and other laws of the land. These are the interests that the judiciary has to take into consideration in reviewing the validity of the exercise by the employer of his/her right to discipline. The task of the Judiciary is to strike a balance between these conflicting rights, in order to determine the fairness and reasonableness of the exercise by the employer of his/her "management prerogative".

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[12] J. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 110 (2003 ed.).

However, in light of the preferential treatment given by the Constitution to the workingman, in case of any doubt, the courts should not hesitate to graciously tip the scales of justice in favor of the employee.[13]

This paper seeks to determine whether such balance was properly stricken in *Punzal vs. ETSI Technologies, Inc.*[14]

II. THE CASE[15]

Lorna Punzal was a Department Secretary at ETSI Technologies, Inc. On October 30, 2001, the day before *Halloween*, she sent a message through the office's electronic mail (e-mail) system addressed to her colleagues in the office. In the message, she invited her officemates to dress up their children for a "trick or treating" activity to be held in the office the following day. Punzal's immediate superior, who was one of those to whom the e-mail message was sent, advised the petitioner to first secure the approval of the Senior Vice-president, Werner Geisert, before holding the party in the office. Punzal soon learned that Geisert did not approve of her plan. On the same day, she sent another e-mail message to her officemates, reading *verbatim*:

> "Sorry for the mail that I sent you, unfortunately the SVP of ETSI Technologies, Inc. did not agree to our idea to bring our children in the office for the TRICK or TREATING. He was so unfair...para bang palagi siyang iniisahan sa trabaho...bakit most of the parents na mag-joined ang anak ay naka-VL naman. Anyway, solohin na lang niya bukas ang office.
>
> Anyway, to those parents who would like to bring their Kids in Megamall there will be Trick or Treating at McDonalds Megamall Bldg. A at 10:00 AM tomorrow and let's not spoil the fun for our

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[13] Labor Code, Art. 4:

("*Construction in Favor of Labor.*—All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.").

Civil Code of the Philippines, Republic Act No. 386, Art. 1702 (as amended)

("In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living of the laborer.").

[14] G.R. Nos. 170384-85, March 9, 2007.

[15] Lorna Dising Punzal vs. ETSI Technologies, Inc., Werner Geisert, and Carmelo D. Remudaro. G.R. Nos. 170384-85, March 9, 2007 [hereinafter *Punzal*].

> kids." (Underscoring taken from Supreme Court Decision)

Punzal was later informed that Geisert got a copy of her e-mail message and that he required her to explain in writing within 48 hours why she

> "x x x should not be given disciplinary action for committing *Article IV, No. 5 & 8 Improper conduct or acts of discourtesy or disrespect and Making malicious statements concerning Company Officer,* whereby such offenses may be subject to suspension to termination depending upon the gravity of the offense/s as specified in our ETSI's Code of Conduct and Discipline." (Emphasis in the original)

Punzal was terminated for violating the aforementioned Article of the ETSI's Code of Conduct and Discipline, since her superiors were not satisfied with her explanation. She filed a complaint for illegal dismissal, which the Labor Arbiter dismissed. On appeal, the NLRC, while affirming the Labor Arbiter's finding that Punzal was indeed guilty of misconduct, found that the penalty of dismissal was disproportionate to her infraction. The NLRC ordered that Punzal be given separation pay, in lieu of reinstatement, but denied her claim for back wages and damages. Both parties filed their petition for certiorari before the Court of Appeals.

A. RULING OF THE COURT OF APPEALS

The Court of Appeals was of the opinion that the second e-mail message: (1) tended to cast *scorn and disrespect* toward a senior vice president of the company, (2) the message itself resounds of *subversion* and undermines the authority and credibility of management. It displayed a tendency of Punzal to act without management's approval, and even against management's will, as she invited her co-workers to join a trick or treating activity at another venue during office hours, (3) could not have been made in good faith, and (4) was not a mere expression of dissatisfaction privately made by one person to another, but was circulated to everyone in the work area. The Court of Appeals further ruled that this was in clear violation of Article IV, Section 5 of the company's Code of Conduct and Discipline and that the imposition of the penalty of dismissal is proper. Given these circumstances, the Court of Appeals pointed out that the fact that Punzal's infraction occurred only once should be largely insignificant. The *gravity* and

publicity of the offense as well as its adverse impact in the workplace is more than sufficient to place the same in the level of a serious misconduct.

B. RULING OF THE SUPREME COURT

1. Arguments of the Parties

Punzal argued that her second e-mail message was merely an exercise of her right to freedom of expression without any malice on her part. On the other hand, ETSI, et al. maintain that Punzal's second e-mail message was tainted with bad faith and constituted a grave violation of the company's code of discipline.

2. Reasoning of the Supreme Court

In affirming the ruling of the Court of Appeals on the legality of Punzal's dismissal, the Court discussed the following points: *First*, an employee must act in a cordial manner, giving due deference to his/her superiors, and acting in accordance with the Filipino values of *pakikisama* and *paggalang*. *Second,* the remarks of Punzal in her second e-mail message were not merely an expression of her opinion about Geisert's decision; they were directed against Geisert himself. *Third,* Punzal invited her co-workers to join a trick or treating activity at another venue during office hours (10:00 AM), October 31, 2001, which was a Wednesday and without any showing that it was declared a holiday, encouraging them to ignore Geisert's authority. *Fourth,* Geisert's decision was one which he had all the right to make as part of his management prerogative. Although it has been a tradition in ETSI to celebrate occasions such as Christmas, birthdays, Halloween, and others, Geisert nonetheless retained the prerogative to approve or disapprove plans to hold such celebrations in office premises and during company time. The disapproval of the plan to hold the Halloween party on October 31, 2001 may not be considered to have been actuated by bad faith. *Fifth,* in circulating the second e-mail message, Punzal violated Articles III (8) and IV (5) of ETSI's Code of Conduct on "making false or malicious statements concerning the Company, its officers and employees or its products and services" and "improper conduct or acts of

discourtesy or disrespect to fellow employees, visitors, guests, clients, at any time." *Sixth*, Punzal's reliance on *Samson*[16] is misplaced.

First, in that case, this Court found that the misconduct committed was not related with the employee's work as the offensive remarks were verbally made during an informal Christmas gathering of the employees, an occasion "where tongues are more often than not loosened by liquor or other alcoholic beverages" and "it is to be expected x x x that employees freely express their grievances and gripes against their employers." In petitioner's case, her assailed conduct was related to her work. It reflects an unwillingness to comply with reasonable management directives. While in *Samson*, Samson was held to be merely expressing his dissatisfaction over a management decision, in this case, as earlier shown, petitioner's offensive remarks were directed against Geisert.

Additionally, in *Samson*, this Court found that unlike in *Autobus Workers' Union (AWU) v. NLRC*[17] where dismissal was held to be an appropriate penalty for uttering insulting remarks to the supervisor, Samson uttered the insulting words against EDT in the latter's absence. In the case at bar, while petitioner did not address her e-mail message to Geisert, she circulated it knowing – or at least, with reason to know – that it would reach him.

Finally, in *Samson*, this Court found that the "lack of urgency on the part of the respondent company in taking any disciplinary action against [the employee] negates its charge that the latter's misbehavior constituted serious misconduct." In the case at bar, the management acted 14 days after petitioner circulated the quoted e-mail message.

Lastly, the petitioner's request that her 12 years of service to ETSI during which, so she claims, she committed no other offense, be taken as a mitigating circumstance, should be denied. This Court has held, however, that "the longer an employee stays in the service of the company, the greater is his responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company."

The following sections of this paper will focus on (1) inadequacies and inaccuracies in the analysis of the Supreme Court in arriving at its ruling to uphold the dismissal of Punzal due to "serious misconduct", and (2) the

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[16] Samson v. National Labor Relations Commission, 386 Phil. 669 (2000).
[17] G.R. No. 117453. June 26, 1998.

issue of employee privacy in the workplace, which was not explored by the parties and the Supreme Court, but which would have been critical to arriving at a just decision in the case.

III. SERIOUS MISCONDUCT AS A GROUND FOR TERMINATION

A. SERIOUS MISCONDICT

Punzal's dismissal was premised on her violation of an Article of the ETSI Code of Conduct and Discipline which penalizes *"(i)mproper conduct or acts of discourtesy or disrespect and Making malicious statement concerning a Company Officer"*, either with suspension or termination, depending on the gravity of the offense. The Labor Arbiter ruled that she was guilty of "misconduct" for violating the said rule. This was affirmed by the NLRC. The Court of Appeals ruled that Punzal's e-mail message constituted "Gross Disrespect" and "Serious Misconduct", which therefore warranted the imposition of the supreme penalty of dismissal. The ruling of the Court of Appeals on the legality of the dismissal was affirmed by the Supreme Court. The Highest Court found that the act of *Punzal* constituted misconduct, serious enough to warrant her dismissal.

> Article 282 of the Labor Code provides:
>
> *Termination by employer.*—An *employer* may terminate an employment for any of the following causes:
>
> Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
> x x x.

The Supreme Court, in several cases involving "serious misconduct" warranting the dismissal of the employee, ruled that for misconduct or improper behavior to be a just cause for dismissal it must: (a) be serious; (b) relate to the performance of the employee's duties; and, (c) show that the employee has become unfit to continue working for the employer.[18] Under this framework, it is the position of this article that the act of Punzal in sending the second e-mail message did not constitute "serious misconduct"

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[18] *Supra* note 6, *citing* Molato v. NLRC, G.R. No. 113085, January 2, 1997; Aris Philippine Inc. v. NLRC, G.R. No. 97817, November 10, 1994.

within contemplation of the Labor Code and existing Jurisprudence on the subject, so as to warrant her dismissal.

B. SERIOUSNESS OF THE ACT AND UNFITNESS TO CONTINUE WORKING

Punzal sent the following message to her co-employees:

> Sorry for the mail that I sent you, unfortunately the SVP of ETSI Technologies, Inc. did not agree to our idea to bring our children in the office for the TRICK or TREATING. He was so unfair...para bang palagi siyang iniisahan sa trabaho...bakit most of the parents na mag-joined ang anak ay naka-VL naman. Anyway, solohin na lang niya bukas ang office.
>
> Anyway, to those parents who would like to bring their Kids in Megamall there will be Trick or Treating at Mc Donalds Megamall Bldg. A at 10:00 AM tomorrow and let's not spoil the fun for our kids. (Underscoring taken from Supreme court Decision)

In *Punzal* the Supreme Court placed particular emphasis on the following facts, namely; (a) the statements were disrespectful and violated the Filipino values of *paggalang* and *pakikisama*, (b) the statements were directed against Geisert, the senior vice-president of the company, and (c) they encouraged her co-employees to ignore Geisert's authority. The Supreme Court did not expressly determine the existence of the three (3) requisites that must be present before the employer may dismiss an employee due to the latter's "serious misconduct". Nevertheless, for purposes of discussion, it will be assumed that the arguments of the Supreme Court were intended to satisfy the first and third requisites. In other words, the Supreme Court was illustrating the *serious* nature of the infraction of Punzal, which made her *unfit* to continue working for ETSI.

Several Supreme Court decisions have dealt with the issue of whether or not employee statements and utterances made "against" their superiors, or co-employees, constitute "serious misconduct" warranting their dismissal.

In *Pacific Maritime Services, Inc. vs. Nicanor Ranay, et. al*[19] a laundryman was dismissed, among other grounds, because he assaulted a certain Armando Villegas and uttered of the words "*Putang-ina mo!*" in the presence of at least four other crew members. The Supreme Court found that the employer failed to present substantial evidence to prove that the employee made these statements. However, the Court made the following *obiter dictum* on the issue of whether or not the act of the employee constituted serious misconduct, thus:

> The Court concedes that assault, invectives, obscene insult or offensive words *against* a superior and imbibing intoxicating drinks during work may constitute serious misconduct which would justify the dismissal of an employee found guilty thereof. (Emphasis supplied)

In the case of *Marival Trading, Inc., et.al vs. National Labor Relations Commission, et. al,* promulgated on June 26, 2007, the Supreme Court made an enumeration and summary of recent cases involving dismissals based on insulting and offensive language, thus[20]:

> This case should be distinguished from the previous cases where we held that the use of insulting and offensive language constitutes gross misconduct justifying an employee's dismissal. Thus:
>
> In *De La Cruz v. National Labor Relations Commission,* the dismissed employee shouted, "*Sayang ang pagka-professional mo*!" and "*Putang ina mo*" at the company physician when the latter refused to give him a referral slip.
>
> In *Autobus Workers' Union (AWU) v. National Labor Relations Commission,* the dismissed employee told his supervisor "*Gago ka*" and taunted the latter by saying, "*Bakit anong gusto mo, tang ina mo.*"
>
> x x x
>
> In *Reynolds Philippines Corporation v. Eslava,* the dismissed employee circulated several letters to the

[19] G.R. No. 111002, July 21, 1997.
[20] G.R. No. 169600, June 26, 2007.

> members of the company's board of directors calling the executive vice-president and general manager a "big fool," "anti-Filipino" and accusing him of "mismanagement, inefficiency, lack of planning and foresight, petty favoritism, dictatorial policies, one-man rule, contemptuous attitude to labor, anti-Filipino utterances and activities."

The cases discussed above have the following common factual circumstances, namely: (1) they all involve "swear words" which are inherently insulting and manifest a clear intention on the part of the employee to disparage the superior, (2) they are addressed to and made directly against, (not simply about), and in the presence of the superior or co-employee, (3) they are made openly and publicly, as opposed to being intended as a mere private opinion of the employee. In the words of the Supreme Court in *Samson vs. NLRC*[21]:

> In these cases, the dismissed employees *personally subjected* their respective superiors to the foregoing verbal abuses. The utter lack of respect for their superiors was patent. In contrast, when the petitioner was heard to have uttered the alleged offensive words against the respondent company's president and general manager, *the latter was not around.* (Emphasis supplied)

These factual circumstances should have guided the Supreme Court in determining the degree of seriousness of the statements made by Punzal, and her unfitness to continue working for her employer.

A close scrutiny of the e-mail that Punzal sent to her officemates will show that she did not use any "swear words" or foul language in any of her remarks or statements. Her remarks merely indicated that in her opinion, her superior was "so unfair" and somewhat paranoid (*"para bang palagi siyang iniisahan sa trabaho"*). The language used by Punzal is a far cry from the derogatory and clearly offensive language used by the employees in the cases discussed above. They did not, to borrow the words of the Supreme Court in a recent case[22], "reflect a scornful attitude and depravity of conduct on the part of (Punzal) for (her) questioned remarks to be considered as serious misconduct." Furthermore, the remarks were not

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[21] G.R. No. 121035, April 12, 2000.

[22] Kephilco Malaya Employees Union, et.al Vs. Kepco-Philippines Corp., G.R. No. 171927, June 29, 2007.

addressed to or made "directly against" her superior, although they were admittedly "about" him. She did not "personally subject" her senior vice-president to any verbal abuse. As already mentioned, the e-mail was sent only to her officemates and was not intended to reach her superior. For all intents and purposes, the comments were made "in the absence" of Geisert, despite the fact that he subsequently became aware of them. The remarks and statements were hence, only intended as a private message for her officemates, contrary to the position of the Supreme Court. Her utter lack of respect, if any, was definitely not "patent".

Samson vs. NLRC[23] is a case in point. In *Samson,* the employee made the following remarks "*Si EDT* [Epitacio D. Titong, the General Manager and President of the employer], *bullshit yan,*" "*sabihin mo kay EDT yan*" and "*sabihin mo kay EDT, bullshit yan,*" while making the "dirty finger" gesture, and warning that the forthcoming national sales conference of the company would be a "very bloody one." The Supreme Court held that the penalty of dismissal was too harsh under the circumstances.

However, in *Punzal,* the Supreme Court pointed out that *Samson* was not applicable because in the latter case, the employee was "merely expressing dissatisfaction over a management decision", whereas in the former, the employee made statements directly against Geisert. Furthermore, the Court pointed out that "Samson uttered the insulting words against EDT in the latter's absence", whereas in *Punzal,* while "petitioner did not address her e-mail message to Geisert, she circulated it knowing – or at least, with reason to know – that it would reach him. As ETSI notes, "[t]hat [petitioner] circulated this e-mail message with the knowledge that it would reach the eyes of management may be reasonably concluded given that the first e-mail message reached her immediate supervisor's attention."

Noticeably, the remarks made by Punzal, were precisely in the nature of *expressions of dissatisfaction with management,* made *in the absence of her superior,* similar to those referred to by the Supreme Court in *Samson.* The line drawn by the Supreme Court between the two cases is hence, unwarranted under the circumstances. Moreover, the Supreme Court erred when it assumed that Punzal circulated the message, knowing that it would reach Geisert. There is no proof on record referred to in the decision to the effect that there was indeed such knowledge. In the absence of proof, it is

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[23] *Supra* note 19.

reasonable to presume that Punzal intended that the message be read only by its addressees, i.e. her officemates/ ETSI Colleagues.[24]

The case of *Asian Design and Manufacturing Corporation, vs. The Honorable Deputy Minister Of Labor And Crispin Lavarez, Jr.*[25] involved circumstances similar to *Punzal.* In *Asian Design*, the employee made the following statements: *"If you don't give a goat to the foreman you will be terminated. If you want to remain in this company, you have to give a goat."* On another occasion, the employee uttered the following remarks: *"You render overtime work so that you can buy a coffin."* A piece of paper posted on the wall of the comfort room contained statements which read: *"Notice to all Sander – Those who want to remain in this company, you must give anything to your foreman. Failure to do so will be terminated – Alice '80."* The Supreme Court found these statements to be clearly directed against the employee's superior and foreman, Mrs. Alice Ermac. The Supreme Court upheld the findings of the Regional Director, thus:

> We hold that the Regional Director has more sensitivity to the nature and effect of the words. He said:
>
> "It is the finding of this office that complainant's acts which were made the grounds for his dismissal were not only destructive of the morale of his co-employees and a violation of the company rules and regulations, but also *constitute gross misconduct* which is one of the grounds provided for by law to terminate services of an employee." (Emphasis supplied)

The difference between *Asian Design* and *Punzal*, however, is that in the former, the so-called obscene utterances were made publicly, with the intention that the foreman would find out about the remarks that were being made against him. Hence, in *Asian Design*, the employee wanted the foreman to know about his statements and remarks by making them publicly and posting one of them on the wall of the comfort room. In *Punzal,* the remarks were indeed about her superior, but they were not intended to be revealed to him in the same disrespectful manner that the employee in *Asian*

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[24] RULES OF COURT, R. 131, Sec. 3 ("Disputable Presumptions. The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence. x x x. (c) That a person intends the ordinary consequences of his voluntary act.").

[25] G.R. No. 70552, May 23, 1986.

Design wanted his remarks to be known to his foreman. Furthermore, the employee in *Asian Design* made the three statements on three separate occasions. The acts of the employee in *Asian Design* were clearly of a serious nature that made him unfit to continue working for the employer. The same degree of seriousness and unfitness cannot be said of the conduct of Punzal.

Furthermore, the fact that Punzal invited her co-employees to have the Halloween Party outside office premises after having been prohibited from doing so within the office, did not constitute "serious misconduct." *First,* Punzal was only prohibited from holding the party within office premises. The party in this case, was to be held at McDonald's. She therefore did not violate the directive of her superior not to hold the party in the office. *Second,* most of the employees that would attend the party were supposedly on vacation leave. They could therefore attend the party during office hours, without disrupting the business of the employer. *Lastly,* the email was in the nature of an invitation, which the other employees were free to ignore. It was not shown that Punzal held a superior position, or that she otherwise had strong influence upon her colleagues, so as to make her invitation tantamount to an order which her co-employees could not ignore, and would therefore result in great damage to the business of the employer. In the words of the Supreme Court in *Samson, "it (did) not appear in the records that the petitioner possessed any ascendancy over the employees who heard his utterances as to cause demoralization in the ranks."*

Punzal's statements about Geisert, and her open invitation to her co-employees, while, to a certain extent, defiant of the authority of Geisert, was not of such a serious nature as would render her unfit to continue working for her employer and therefore warranting her dismissal.

C. RELATION TO THE PERFORMANCE OF EMPLOYEE'S DUTIES

The Supreme Court, in ruling on the legality of the dismissal, found that the statements made by Punzal in her e-mail message were "related to her work". In other words, the Court found that the second requisite for establishing "serious misconduct" was satisfied. What exactly is meant by misconduct that is "related to the performance of the employee's duties"? The Supreme Court has considered, in answering this question, the (1) the nature of the work performed by the employee, (2) the substance of the statements made by the employee and the possible prejudice these may have

caused to the employee, and (3) the context within which these statements were made.

1. Nature of the Work Performed by the Employee

In *Lopez vs. NLRC*[26] a psychometrician uttered defamatory and offensive words against Fr. Edwin Lao. This happened when a certain Mr. Ramon Mendoza, an employee of the Guidance Counselor Office of Letran College, asked the key to the guidance counseling office from the security guard, but respondent Fr. Edwin Lao, O.P., who was then with the security guard, refused to give the key. In ruling that the misconduct was unrelated to her work as Head Psychometrician, the Supreme Court made the following remarks:

> Note that the incident of February 16, 1991 occurred *totally unrelated* to the work of complainant as Head Psychometrician of respondent school. Complainant merely interceded in behalf of Mr. Mendoza in securing from the security guard the key to the guidance counselor office to which respondent Fr. Edwin Lao, who happened to be present, refused to give the said key. Whether or not complainant uttered defamatory words against respondent Fr. Edwin Lao on February 16, 1991 is of no moment, *the focal inquiry being addressed is whether or not such alleged misconduct was in connection with, or in relation to, with the work of complainant as Head Psychometrician.* Unfortunately, records is(sic) bereft of such fact.
>
> However, this Commission is not unmindful of the incident of February 16, 1991 and its subsequent events when complainant, after interceding in behalf of a security guard, allegedly uttered indecent and obscene remarks against one Fr. Edwin Lao. As Head Psychometrician and an erstwhile guidance counselor of an exclusive catholic school noted for its teachings of moral uprightness, her demeanor subsequent thereto, to say the least, were far from ideal as a role model not only for the whole studentry, but for her peers. (Emphasis Supplied)

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[26] G.R. No. 124548, October 8, 1998.

In other words, while recognizing that the remarks made by the petitioner were indeed inappropriate, and therefore amounted to some level of misconduct, they were unrelated to the *nature* of the work being performed by the employee, and hence, did not amount to "serious misconduct" that would warrant outright dismissal.

In a similar case, the Supreme Court held[27]:

> The act of private respondent in throwing a stapler and uttering abusive language upon the person of the plant manager may be considered, from *a lay man's perspective,* as a serious misconduct. However, in order to consider it a serious misconduct that would justify dismissal under the law, it must have been *done in relation to the performance of her duties* as would show her to be unfit to continue working for her employer. The acts complained of, under the circumstances they were done, did not in any way pertain to her duties *as a nurse.* Her employment identification card discloses the nature of her employment as a nurse and no other. (Emphasis supplied)

2. Substance of the Statements and Possible Prejudice Caused to the Employer

In *Cosep vs. NLRC*[28] what was involved was an "open letter" written by the petitioner employees and circulated among other employees, criticizing the suspension by the management of a certain Gloria Doplito. In the letter, the petitioner's mentioned that they felt that *"the Management's decision was very inconsiderate, unfair, biased, even inhuman."* They further wrote:

> x x x
>
> What you've become to tolerate this decision, you yourself can only answer. Its very scary working under this system wherein there is no justice. If they want to throw you out even if you're innocent, they can. If this can happen to the officers of the bank how much more the security of the rank and file (sic)? *Let's put some decency to (sic)*

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[27] *Supra* note 6.
[28] G.R. No. 124966, June 16, 1998.

> *the bank and most importantly, to ourselves.* If we cannot do this, we're not worth to be called educated bank employees who can carry on any tasks courageously - but ROBOTS. (Emphasis supplied)

Rule IV of the Bank's Code of Conduct in that case, strictly prohibited an employee from undermining the interest of the Bank by issuing malicious, derogatory or false statements involving the good name of the Bank or its management/stockholders. These acts were considered as a serious misconduct warranting outright dismissal. In ruling that the dismissal of the petitioners was illegal, the Supreme Court wrote:

> In this case, private respondent has not established nor presented sufficient basis for the dismissal of petitioners from service on the ground of serious misconduct. As correctly found by the Labor Arbiter, ***there is nothing wrong with the petitioners issuance of the open-letter.*** It does not lay any material claims upon the bank, nor does it threaten any sanction, nor invoke right to credit, nor preferential treatment. It merely expressed an *opinion.* Thus, *there was here no prejudice, nor intent to prejudice respondent as a banking entity.*
>
> Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct to be serious within the meaning of the Act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must, nevertheless, be in connection with the employee's work to constitute just cause for his separation. In this case however, *the misconduct has no relation to the work of petitioners; hence, not a valid ground.* (Emphasis supplied, footnotes omitted)

In determining the relationship between the misconduct, on the one hand, and the work of the employees, on the other, the Supreme Court in *Cosep* considered the *substance* of the statements and remarks made and the possible *prejudice* that could be caused to the employer as a result of those statements and remarks.

Similarly, in *Pasamba vs. NLRC*[29] a staff nurse was accused of uttering slanderous remarks against Dr. Pacita J. M. Lopez, Assistant Chairman of the Department of Pediatrics. Dr. Lopez, in her complaint alleged that the petitioner made the following statements about her in a conversation with one of the patients in the hospital:

> *"Bakit si Dra. Lopez pa ang napili mong "pedia" eh ang tanda-tanda na n'un?* x x x *Alam mo ba, kahit wala namang diperensya yung* baby, *ipinapa*-isolate *nya?* Minsan nga, meron bagong baby *siyang pasyente na ipinasok dito, sabi ko, bah, himala!* Walang ikinabit sa kanya. Tapos, kinabukasan x x x *kinabitan din pala!"*

The Supreme Court held that the dismissal of the petitioner as a staff nurse was valid. The Court pointed out that the reliance by the petitioner on the *Philippine Aeolus* case was misplaced because the petitioner was merely a probationary employee. In addition to this argument, the Supreme Court wrote:

> Petitioner's allegation that uttering slanderous remarks is not related to her tasks as a staff nurse deserves scant consideration. *SLMC is engaged in a business whose survival is dependent on the reputation of its medical practitioners.* To impute unethical behavior and lack of professionalism to a medical professional, to one who is also a hospital official, would be inimical to the interests of SLMC. This would also show tremendous disloyalty on the part of the employee who makes such derogatory statements. Moreover, the petitioner's bad faith became evident when, instead of addressing these disparaging remarks to the proper hospital officers, she addressed them to a former patient, whose child was at that time a patient in SLMC and entrusted to the care of the medical professional in question. An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer. *A company has the right to dismiss employees guilty of acts of dishonesty and disloyalty, if only as a measure of self-protection.* Dismissal of an employee guilty of such a serious

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[29] G.R. No. 168421, June 8, 2007.

> infraction would be reasonable. (Emphasis supplied)

3. Context Within Which the Statements Were Made

In *Punzal*, the Supreme Court ruled that the petitioner could not rely upon the case of *Samson vs. NLRC*[30], because:

> First, in that case, this Court found that the misconduct committed *was not related with the employee's work* as the offensive remarks were verbally made during an informal Christmas gathering of the employees, an occasion "where tongues are more often than not loosened by liquor or other alcoholic beverages" and "it is to be expected x x x that employees freely express their grievances and gripes against their employers."
>
> x x x
>
> Employees should be allowed wider latitude to freely express their sentiments during these kinds of occasions which are beyond the disciplinary authority of the employer. Significantly, it does not appear in the records that the petitioner possessed any ascendancy over the employees who heard his utterances as to cause demoralization in the ranks.[31] (Emphasis supplied)

The Supreme Court seemed to imply that the circumstances of "place" and "time" are to be considered in determining the "relation" of the misconduct to one's work. Stated differently, the Supreme Court considered the *context* within which the statements were made.

4. Application to Punzal

Punzal was a Department Secretary of ETSI when she sent the e-mail to her officemates. Her work did not involve making party arrangements with her officemates. The statements she made in her e-mail, therefore had no relation to the nature of her work as secretary.

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[30] G.R. No. 121035, April 12, 2000.

[31] The italicized part was omitted from the *Punzal* opinion.

Her e-mail referred to Geisert as "so unfair" and somewhat paranoid (*para bang palagi siyang iniisahan sa trabaho*). Similar to the *Cosep* case, Punzal was merely expressing her "opinion" about her superior. The e-mail contained an invitation to her officemates to have a Halloween party outside office premises *(McDonald's, Megamall)* during working hours *(10:00am)*. Most of the employees that would attend the party were supposedly on vacation leave. Punzal was not shown to have any ascendancy or over powering influence upon her officemates that would have made them construe her invitation as an order. The invitation could therefore not have caused prejudice to ETSI. In other words, ETSI was not in a position wherein it had no other choice but to terminate her services as a measure of "self-protection".

Furthermore, Punzal sent her message one day before *Halloween,* through the company e-mail system. Although, the company e-mail system is meant primarily to facilitate communication in the workplace, it was not shown that there was a prohibition on using the system for purely private messages, which have no relation to the business of the employer. Considering the excitement in the office with just a day to go before *Halloween,* and the informal nature of the message and the medium used by Punzal in disseminating her e-mail message, it cannot be said that the statement was made "in relation" to the performance of her duties as secretary.

Hence, the statements made by Punzal in her e-mail, while possibly amounting to some level of misconduct, were nevertheless *unrelated to the performance of her duties as Secretary* of ETSI. Her dismissal for making those statements was therefore unwarranted and illegal.

IV. E-MAIL PRIVACY IN THE WORKPLACE

In illegal dismissal cases, the duty of the State is to resolve the dispute by taking all relevant interests into account. Naturally, the parties to the case are responsible for putting their respective interests in issue before the courts or quasi-judicial body, as the case may be. Otherwise, the adjudicative authority would have nothing to rule on. Therefore, the employer has to plead the validity of the exercise of management prerogative, while the employee has to plead a violation of his/her rights as a laborer. These are the two interests that often come into play in illegal dismissal cases. Nevertheless, there is an equally important dimension to labor cases, which is often forgotten.

An employee is entitled, just like any citizen or individual, to protection under the *Bill of Rights.*[32] He is entitled to exercise certain fundamental and inalienable freedoms, as a *person*, in addition to the specific rights already guaranteed to him under the Constitution and other labor laws as an *employee.* The protection of these rights and freedoms is one of the aspects which labor cases, unfortunately, do not always focus on. Yet, conduct performed in the valid exercise of these freedoms and rights will naturally place such conduct beyond the control of the employer. As such, an employer would have no power to discipline an employee for acts which involve his/her exercise of fundamental rights. A careful balance must therefore be stricken between the disciplinary power of the employer on the one hand, and the exercise by the employee of fundamental freedoms in the work place on the other. Illegal dismissal cases can, and should be, analyzed through this approach.

Hence, in several cases discussed earlier, the statements or remarks made by the employee were not considered as misconduct, when they were valid exercises of freedom of speech. For instance, in *Cosep vs. NLRC*[33], the Supreme Court found that the open letter issued by the employees criticizing how management handled the investigation and suspension of one of their co-employees, was merely an "opinion," which in no way pertained to their functions and hence, could not have caused any prejudice to the employer. In contrast, in those cases where the Supreme Court held that the statements uttered by the employees were proper grounds for disciplinary action, such statements would have been classified as "unprotected speech"[34], and would hence be beyond the scope of the protection guaranteed by the freedom of expression. To illustrate; in the *Pacific Maritime Services*[35] case, the Supreme Court considered that "obscene, insulting and offensive words", like "*Putang ina mo!!*" would possibly constitute misconduct which would warrant dismissal. Likewise, in *Marival Trading*[36]the Supreme Court enumerated several cases where obscene and insulting words like "*Gago ka!*", "*Big fool*", "*Anti-Filipino*", where found to constitute "serious

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[32] 1987 CONSTITUTION, Article III

[33] G.R. No. 124966, June 16, 1998.

[34] BERNAS, *supra* note 12, ("Both historically and doctrinally, freedom of expression, as seen in the preceding discussion, has never been understood to be an absolute right. Moreover, as noted in *Chaplinsky vs. New Hampshire (315 U.S. 568, 571-572 (1942)), "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problems".* In other words, some forms of speech are not protected by the Constitution. Two types of unprotected speech have in fact received considerable attention form the Courts; libel and obscenity.").

[35] *Supra* note 26.

[36] *Supra* note 18.

misconduct" justifying termination. Finally, in *Samson*[37]it was held that uttering the words *"bullshit yan!!"* during an informal Christmas gathering, while not serious enough under the circumstances to warrant dismissal, nevertheless constituted misconduct.

To reiterate, a line can be drawn between the power of the employer to discipline and the protection of the employee's fundamental freedoms.

Punzal is slightly different in this respect. Although counsel for Punzal argued that the e-mail was simply "an exercise of her freedom of expression", it respectfully the thrust of this paper that the freedom involved in the case was not so much the right to free speech, as it was the *right to privacy.* The Supreme Court could have factored this into its decision-making process. Admittedly, no violation of this right was assigned as error by Punzal's counsel in its petition for review on certiorari before the Supreme Court. Nevertheless, it is an important element, which when taken into consideration would surely have had serious repercussions in the manner the Court decided the case. Indeed, the Supreme Court itself has ruled that it can consider issues that were not assigned on appeal, if it finds that their consideration is necessary to arrive at a just disposition of the case and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice.[38]

In order to arrive at a just disposition of a labor case, the Supreme Court must be able to strike a balance between conflicting interests in the workplace. This part of the paper illustrates that a proper balance could not have been achieved in the case of *Punzal* because the Court, in so deciding, neglected Punzal's right to privacy.

A. FOUNDATIONS OF THE RIGHT TO PRIVACY

The right to privacy[39] has been described as "the right to be let alone." [40] The right is not enshrined in a single constitutional or statutory

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[37] G.R. No. 169600, April 1, 2000

[38] Cuyco vs. Cuyco, 487 SCRA 693, April 19, 2006, *citing* Hi-Tone Marketing Corporation vs. Baikal Realty Corporation, G.R. No. 149992, August 20, 2004.

[39] J. JACOBSON, EMPLOYEE PRIVACY IN THE WORK PLACE __ (____) ("As it has developed in the courts, the invasion of the right of privacy has been a complex of four distinct wrongs, whose only relation to one another is that each involves interference with the interest of the individual in leading, to some reasonable extent, a secluded and private life, free from the prying eyes, ears and publications of others. Restatement (Second) of Torts § 652A cmt. B (1977). The four distinct wrongs have been described as:

Unreasonable intrusion upon the seclusion of another;

Appropriation of the other's name or likeness;

provision. Neither is it accurate to say that its contours are to be traced solely within the text of black letter law. In *Ople vs. Torres*[41], the Supreme Court took the opportunity to emphasize the fundamental nature of the right to privacy, thus:

> In the 1968 case of *Morfe v. Mutuc*, we adopted the Griswold ruling that there is a *constitutional right to privacy.*
>
> x x x
>
> Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution.
>
> x x x
>
> *Zones of privacy* are likewise recognized and protected in our laws. The Civil Code provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the *Anti-Wiretapping Law*, the *Secrecy of Bank Deposits Act* and the *Intellectual Property Code.* The *Rules of Court* on privileged communication likewise recognize the privacy of certain information.

Unreasonable publicity given to the other's private life; or
Publicity that unreasonably places the other in a false light before the public.").

[40] Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890); *Griswold v* Connecticut, 381 U.S. 479, 484-85 (1965).

[41] G.R. No. 127685, July 23, 1998.

> Unlike the dissenters, we prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, x x x (Emphasis supplied, Footnotes omitted)

In *Punzal,* the statements and remarks about the superior were made through the office e-mail system. Because of the nature of an e-mail system, there is no difficulty in coming to the conclusion that the "zone of privacy" involved in *Punzal* is the "inviolability of the privacy of communication and correspondence". The *Bill of Rights*[42] provides:

> The privacy of communication and correspondence shall be *inviolable* except upon *lawful order of the court,* or when *public safety or order requires otherwise as prescribed by law.* (Emphasis supplied)

The phrase "communication and correspondence", is meant to be interpreted in its general sense,[43] and is not confined to written letters and messages. The same provision appeared in the 1935 Constitution, and Delegate Laurel emphasized that the object of the provision was to provide adequate protection for "letters and messages" carried by the agencies of the Government lest "their privacy be wantonly violated and great harm (be) inflicted upon the citizens"[44].

It is important to note, however, that Constitutional rights are meant to protect an individual against State action. Hence, a person cannot invoke the *Bill of Rights* against other private individuals. The Supreme Court emphasized this point, thus[45]:

> For one thing, the constitution, in laying down the principles of the government and fundamental liberties of the people, *does not govern relationships between individuals.* (Emphasis supplied)

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[42] 1987 CONST, Art. III, Sec. 3(1).

[43] BERNAS, *supra* note 12, at 210 *citing* 3 JOURNAL OF THE 1935 CONSTITUTIONAL CONVENTION 1120 (Francisco ed.).

[44] *Id.* at 209, *citing* 3 JOURNAL OF THE 1935 CONSTITUTIONAL CONVENTION 1120 (Francisco ed.).

[45] People vs. Marti, G.R. No. 81561, January 18, 1991. This doctrine was reiterated in Waterous Drug Corporation And Ms. Emma Co, vs. National Labor Relations Commission. G.R. No. 113271, October 16, 1997.

Nevertheless, in the peculiar case of *Zulueta vs. CA*[46] the Supreme Court applied the "inviolability of the privacy of communication and correspondence" against a woman who forcibly opened the drawers of her Doctor husband to recover letters written by the latter's paramour. In ruling that the letters were inadmissible in evidence, the Court wrote:

> Indeed the documents and papers in question are inadmissible in evidence. The constitutional injunction declaring "the privacy of communication and correspondence [to be] inviolable" *is no less applicable simply because it is the wife (who thinks herself aggrieved by her husband's infidelity) who is the party against whom the constitutional provision is to be enforced.* The only exception to the prohibition in the Constitution is if there is a "lawful order [from a] court or when public safety or order requires otherwise, as prescribed by law." Any violation of this provision renders the evidence obtained inadmissible "for any purpose in any proceeding. (Emphasis supplied, footnotes omitted)

Within the workplace, an employee's right to privacy must be balanced against the power of the employer to discipline his/her employees. Naturally, the employer is legally permitted to control only such aspects of the employees' life that have some reasonable connection or relation to the employee's work. Beyond the four corners of the workplace, the employer cannot control the life of the employee.

This was the ruling of the California Court of Appeals in *Rulon-Miller vs. International Business Machines*[47]. The case involved an employee of IBM who was having a relationship with an employee of QYX, an IBM competitor. IBM had a "conflict of interest" policy, and on the basis thereof, decided to terminate the services of the petitioner because the relationship resulted in a "conflict" of interest. The management knew of the relationship before the petitioner was dismissed. In ruling against the validity of the dismissal, the Court wrote:

x x x

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[46] G.R. No. 107383. February 20, 1996.
[47] 162 Cal.App.3d 241, 208 Cal. Rptr. 524.

> Callahan based his actions against the respondent on a "conflict of interest". But the record shows that *IBM did not interpret this policy to prohibit a romantic relationship* x x x x
>
> It does seem clear that an overall policy established by IBM Chairman Watson was one of *no company interest in the outside activities of an employee so long as the activities did not interfere with the work of the employee.* (Emphasis supplied)

The Court also took note of the fact that "the company policy insures to the employee both the right to privacy and the right to hold a job even though "off-the-job behavior" might not be approved of by the employee's manager."[48] In other words, employer rules and regulations should not be interpreted to govern purely private aspects of the employee's life. The Supreme Court has described the extent of management rights in this wise[49]:

> Except as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all *aspects of employment*, including 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, layoff of workers and the discipline, dismissal and recall of workers. (Emphasis supplied)

Simply put, the employer can only regulate work-related aspects of the employee's life.

It is clear therefore, that the right to privacy imposes limits, not only on the extent to which the State may exercise its *police power*, but also on the manner by which other private individuals, like an employer, may exercise their own rights and prerogatives.

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[48] *Id.* Surprisingly, in Duncan Association of Detailman-PTGWO, et al. v. Glaxo Wellcome Philippines, Inc. (G.R. No. 162994, September 17, 2004), where the Supreme Court had to deal with very similar factual circumstances, the Court ruled that the dismissal of the employee on the ground that his marriage to an employee of a competitor drug company constituted a violation of its rules on "conflict of interest", was valid. It must be emphasized however, that the employee did not raise the issue of intrusion into his privacy, but instead chose to question the company rules on "conflict of interest" for being violative of the equal protection clause.

[49] San Miguel Brewery Sales vs. Ople, G.R. No. 53515, February 8, 1989.

B. THE U.S. EXPERIENCE: CONTEMPORARY LIMITS OF THE RIGHT TO PRIVACY IN THE WORKPLACE

Several court decisions in the United States have dealt extensively with the issue of privacy in the workplace. More importantly, because of the shift from the telephone, to the "intranet" as the principal means of communication within the workplace, cases have been brought before U.S. courts alleging invasion of employee privacy rights through the use of these e-mail systems. Unfortunately, many of these decisions have ruled in favor of very limited employee privacy rights in the workplace.

The *Electronic Communications Privacy Act of 1986 (ECPA)* is the chief piece of legislation relied upon by U.S. Courts in assessing the validity of employer intrusions into the privacy of employees. The act prohibits the interception of e-mail during transmission[50] and access to e-mail during storage[51]. The ECPA provides for three exceptions, which allow employers to monitor communications that would otherwise fall under the "intercepts" or "accesses" inclusion. They are[52]; (1) the system provider exception[53], (2) the business extension or ordinary course of business exception[54], and (3) the consent exception[55].

Early U.S. court decisions dealing with employee privacy in the workplace, revolved mainly around the legality of telephone call interception by the employer. These decisions emphasize that employers may monitor employee calls, only if they are not purely personal and will not unduly prejudice the business interests of the employer.

In *Briggs v. American Air Filter Co.*[56] believing that an employee was passing confidential information to a friend, who was employed by a

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[50] 18 U.S.C. Sections 2510-21.

[51] *Id.* Sec. 2701-11.

[52] These exceptions were aptly summarized in Pavlina B. Dirom, *Employers' Rights to Monitor Employee Email Under United States Law,* 8 MURDOCH U ELECTRONIC J OF LAW 4 (2001).

[53] *Id.* The "system provider" exception allows network providers to intercept, assess, disclose, or use employee e-mail if intrusion is made during the ordinary course of business and is either: (a) necessary to rendering of service or (b) necessary to protect the rights or property of the company.

[54] *Id.* This exception focuses on the type of equipment used to access transmission. It permits a network provider to access e-mail so long as (a) the intercepting devise is part of the communications network, and (b) the device is used in the ordinary course of business, where the courts would inquire into whether an employer has a "legal interest" in monitoring communications.

[55] *Id.* Prior consent exception appears to be the most certain protection against liability under the *ECPA* because interception of electronic communication is expressly allowed by the *ECPA* when "one of the parties to the communication has given prior consent"

[56] 630 F.2d 414 (5thCir. 1980).

competitor, the employer, using his extension, listened to and recorded a telephone conversation between the two in which the company's business and bidding intentions were discussed. In ruling that the listening-in occurred during the "ordinary course of business" such that it would not constitute a violation of the statute, the court held:

> When an employee's supervisor has particular suspicions about confidential information being disclosed to a business competitor, has warned the employee not to disclose such information, has reason to believe that the employee is continuing to disclose the information, and knows that a particular phone call is with an agent of the competitor, it is within the ordinary course of business to listen in on an extension phone *for at least so long as the call involves the type of information he fears is being disclosed.* (Emphasis supplied)

Similarly, in *Watkins vs. Berry & Co.*[57] Watkins' supervisor listened in on one of Watkins' personal telephone calls from a friend. The employer had "an established policy, of which all the employees were informed, of monitoring solicitation calls as part of its regular training program." In ruling against the validity of the intrusion, the U.S. Court wrote;

> We hold that a personal call may not be intercepted in the ordinary course of business under the exemption in 18 U.S.C. § 2510(5)(a)(i), except to the extent necessary to guard against unauthorized use of the telephone or to determine whether a call is personal or not. In other words, *a personal call may be intercepted in the ordinary course of business to determine its nature but never its contents.* (Emphasis supplied)

A few years later, however, the same circuit court came to a different conclusion. In *Epps v. St. Mary's Hospital*[58]a certain Smith recorded disparaging remarks being made by an employee about a supervisor using a business telephone. In ruling that there was no illegal interception the circuit court pointed out that "it occurred during office hours, between co-employees, x x x and concerned scurrilous remarks about supervisory employees in their capacities as supervisors. Certainly the potential

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[57] 704 F. 2d 577 (11th Cir., 1983)
[58] 802 F.2d 412, 417 (11th Cir., 1986).

contamination of a working environment is a matter in which the employer has a legal interest."

Recently, two California courts took the opportunity to rule squarely on the subject of e-mail privacy in the workplace, and the limits of the employer's right to discipline its employees on the basis of correspondence and communication exchanged through the office e-mail system. In both decisions, however, the courts ruled that monitoring employee e-mail messages, even if private or personal, did not constitute a violation of the employee's constitutional right to privacy.

In *Bourke vs. Nissan*[59] one of Bourke's co-workers, while conducting a training session, demonstrating the use of e-mail at an Infiniti dealership, randomly selected a message sent by Bourke to an employee of the dealership. Unfortunately, Bourke's e-mail was of a "personal, sexual, nature and not business-related". The incident was reported to her supervisor, who with management's authorization reviewed the E-mail messages of the entire workgroup and "found substantial numbers of personal, including sexual, messages from Bourke and Hall, and issued written warnings to plaintiffs for violating the company policy prohibiting the use of the company computer system for personal purposes." Eventually, however, Bourke resigned from her job. Nissan was then sued for common law invasion of privacy, violation of their constitutional right to privacy, and violation of the criminal wiretapping and eavesdropping statutes. The trial court granted summary judgment in favor of Nissan. The appellate court upheld the trial court's decision in this wise:

> Whether an individual's constitutional right to privacy has been violated depends first on a determination *whether that individual had a personal and objectively reasonable expectation of privacy which was infringed.* Nissan maintains that the evidence conclusively establishes that plaintiffs had no reasonable expectation of privacy in their E-mail messages. In support of this contention, they cite the following undisputed facts: (1) Plaintiffs each signed a Computer User Registration Form, which states that "[I]tis company policy that employees and contractors *restrict their use of company-owned computer hardware and software to company business."* (2)

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[59] Unpublished. In The Court Of Appeals Of The State Of California Second Appellate District Division Five, No. B068705, July 26, 1993

> In November or December of 1989, more than a year before her termination, Hall learned from co-workers that E-mail messages were, from time to time, read by individuals other than the intended recipient. Hall relayed this information to Bourke in March of 1990. (3) In June 1990, a full six months before Bourke's termination, a fellow employee, Lori Eaton, contacted Bourke to complain about the personal, sexual nature of Bourke's E-mail message which Eaton had retrieved for demonstration purposes during a training session at an Infiniti dealership.
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> Nissan contends that the foregoing *uncontroverted facts regarding plaintiffs knowledge that E-mail messages could in fact be read without the author's knowledge or consent establishes as a matter of law that plaintiffs had no objectively reasonable expectation of privacy in those messages.* In contradiction of that conclusion, plaintiffs assert that they had such an expectation because they were given passwords to access the computer system and were told to safeguard their passwords. While plaintiffs' statements that they believed that their E-mail messages would remain private may be sufficient, on a motion for summary judgment, to raise the issue of plaintiffs' subjective understanding, the question presented to us is whether their expectations of privacy were objectively reasonable as a matter of law. We agree with the trial court that they were not.
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> *In the absence of a reasonable expectation of privacy, there can be no violation of the right to privacy.* Thus, plaintiffs' causes of actions for common law invasion of privacy and violation of the constitutional right to privacy were properly dismissed on summary judgment. (Emphasis supplied, footnotes Omitted)

Similarly, in *Shoars vs. Epson*[60] the employer provided an electronic mail (e-mail) system, which allowed about 700 employees to communicate, through telephone connections, with other computer users outside Epson. Epson informed the employees that the e-mails would remain private and confidential. Shoars alleged that her supervisor tapped her e-mail, printed it

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[60] *Id.*

and read it. The email contained a request for a personal e-mail line. When Shoars reported the incident to the manager, the supervisor caused her to be terminated. In her complaint, Shoars sued Epson and alleged that her termination was violative of the public policy against wire-tapping and eavesdropping. The court granted the motion for summary judgment in favor of the defendant employer. This was affirmed on appeal. The court ruled that there was no violation of any public policy against wire tapping and eavesdropping because the employer had a right to monitor communications in the work place.

Lastly in *Fraser vs. Nationwide Mutual Ins. Co.*[61], Nationwide discovered two letters in the form of e-mails, from Fraser to its competitors inquiring whether they would be interested in acquiring Nationwide's policyholders. The two letters were drafted but not sent. Nationwide then searched its main file server for similar e-mail to or from Fraser demonstrating similar improper behavior. Nationwide, then decided to terminate its Agent's Agreement with Fraser due to disloyalty. Fraser argued that the e-mail search violated both the ECPA. The trial court held that Nationwide did not violate the ECPA because Nationwide was a "provider" of services, and hence administered its own "electronics communications system." As a provider, Nationwide could "do as it wished" with the e-mails.

A case decided by a Pennsylvania District Court in 1996, involved almost identical factual circumstances to *Punzal.* Unfortunately, the U.S. District Court in that case ruled that there was no undue intrusion into the privacy of the employee when he was dismissed on the basis of inappropriate remarks made in an e-mail message sent thought the company's e-mail system. *Michael A. Smyth vs. Pillsbury Company*[62] involved an "at-will" employee, Smyth, who held a position of regional operations manager in The Pillsbury Company. The Company maintained an electronic mail communications system ("e-mail"). It assured its employees that all e-mail communications would remain confidential and privileged, and that they would not be intercepted or used by the company against its employees as grounds for termination or reprimand. Smyth used the company e-mail system to send a message to his supervisor, which contained remarks about sales management such as threats to "kill the backstabbing bastards" and referred to a planned Holiday party as the "Jim Jones Koolaid affair". These statements became the basis for Smyth's termination. The issue before the

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[61] 352 F.3d 107 (3rd Cir. 2003).

[62] 914 F.Supp. 97; 1996 U.S. Dist. LEXIS 776; 131 Lab. Cas.

United States District Court for the Eastern District of Pennsylvania was whether or not Smyth's discharge was unlawful. Smyth argued that his termination was in violation of a "public policy which precludes an employer from terminating an employee in violation of the employee's right to privacy as embodied in Pennsylvania common law." In upholding the validity of the dismissal, the Court ruled:

> One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, *if the intrusion would be highly offensive to a reasonable person.*
>
> x x x
>
> Applying the Restatement definition of the tort of intrusion upon seclusion to the facts and circumstances of the case *sub judice*, we find that plaintiff has failed to state claim upon which relief can be granted. In the *first instance,* unlike urinalysis and personal property, *we do not find a reasonable expectation or privacy in e-mail communications voluntarily made by an employee to his supervisor over the company e-mail system notwithstanding any assurances that such communications would not be intercepted by management.* One plaintiff communicated the alleged unprofessional comments to a second person (his supervisor) over an e-mail system which was apparently utilized by the entire company, any reasonable expectation or privacy was lost. Significantly, the defendant did not require plaintiff, as in the case of urinalysis or personal property search to disclose any personal information about himself. Rather, plaintiff voluntarily communicated the alleged unprofessional comments over the company e-mail system. We find no privacy interests in such circumstances.
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> In the *second instance*, even if we found that an employee had a reasonable expectation of privacy in the contents if his e-mail communications over the company e-mail system, *we do not find that a reasonable person would consider the defendant's interception of these communications to be substantial and*

> *highly offensive invasion of his privacy* x x x x. Moreover, the company's interest in preventing inappropriate and unprofessional comments or even illegal activity over its e-mail system outweighs any privacy interest the employee may have in those comments. (Emphasis supplied, footnotes omitted)

C. ADVOCACY OF PUNZAL'S RIGHT TO PRIVACY

The issue that comes to mind therefore, is whether Punzal's dismissal based on her remarks in her e-mail message, was illegal for being a violative of her right to privacy. Given the legal precepts discussed, one would be inclined to answer in the affirmative.

First, the e-mail message falls within the protection of the *general* right to privacy as discussed by the Supreme Court in *Ople vs. Torres.* Undoubtedly, the e-mail message was a personal message meant only for her colleagues in the office. The fact that it was sent to several colleagues, or that her superior (Geisert) became aware of the message and its contents, does not take the e-mail message out of the protection of the right to privacy. Furthermore, the fact that these messages were sent during office hours, within office premises and through the company e-mail system, does not mean that any protection under right to privacy that Punzal had in the message had been waived. The United States Supreme Court in *Katz vs. United States*[63] held that the right to privacy was "intended to protect people, not places". In other words, neither the place nor the time of sending the message determines the availability of protection under the right to privacy. Simply put, the termination of Punzal on the basis of her private message was violative of her right to be *let alone*, and was therefore illegal.

Second, the electronic mail (e-mail) is a way of sending text, graphics, and computer files from one computer to another computer.[64] Companies are increasingly making use of an e-mail system known as the "intranet" as a local-area network for the employees of the company. This was precisely the type of system used by Punzal in sending the controversial second e-mail message. Furthermore, there was no lawful order issued by any court, and neither was there any law allowing any intrusion into her privacy of communication and correspondence. Lastly, given the broad interpretation

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[63] 389 U.S. 347, 351, 19 L Ed 2d 576, 88 S Ct 507

[64] Ronald B. Standler, *Privacy of E-mail in the U.S.A*, (1998), available at http://www.rbs2.com/email.htm.

of the phrase "communication and correspondence", the e-mail message sent by Punzal to her co-employees was clearly protected by the *Bill of Rights.*

Third, the e-mail message cannot be used as evidence against Punzal for any purpose and in any proceeding. Although it is true, that as a general rule, the *Bill of Rights* and the *exclusionary rule*[65] are meant to protect a person against State action, the Court has recognized that this rule can admit of exceptions[66]. Admittedly, the Constitution is not meant to govern the relationships between private individuals. Nevertheless, it is also true that the employer-employee relationship is not an ordinary private relationship. Given the fact that labor relations are not merely contractual, but imbued with public interest[67], it is not far fetched to argue that the *Bill of Rights* may be invoked by the employee against his/her employer, as an exception to the general rule laid down in *People vs. Marti.* The Supreme Court, in applying the exclusionary rule in *Zulueta*, held that the privacy of communication and correspondence "is no less applicable simply because it is the wife (who thinks herself aggrieved by her husband's infidelity) who is the party against whom the constitutional provision is to be enforced". In the same vein, it can be argued that an employee does not shed the inviolability of the privacy of his/her communication and correspondence simply because it is the employer against whom the constitutional right is being enforced. Punzal's e-mail message should therefore never have been admitted as proof of her alleged "serious misconduct".

Fourth, in dismissing *Punzal* on the basis of her private message, the employer clearly went beyond its power to discipline. To reiterate, the employer has no power to control the private life of the employee. As earlier mentioned, the employer can only control the "employment aspects" of the employee's life. Terminating an employee on the basis of a private e-mail message is an unwarranted attempt to control the "private life" of the employee.

Lastly, although recent Supreme Court decisions have shown a trend towards strengthening the freedom of enterprise, one can still validly argue that the "hierarchy of rights" as set forth in *Philippine Blooming Mills* has not been discarded as a fundamental principle in Constitutional law. Hence,

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[65] 1987 CONST. Art. III, Sec. 3(2) ("Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.").

[66] See Zulueta vs. CA, *supra* note 44.

[67] Civil Code, Art. 1700 The relation between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good xxx.

"human rights", arguably including the right to privacy, still occupy a preferred status in the realm of protected freedoms. One can validly assert, therefore, that the employee's right to privacy has a "primacy" over the employer's right to property.

Nevertheless, recent experience in the United States clearly shows that an employee may well have a very limited expectation of privacy within the workplace. One wonders whether the Philippine Supreme Court would have used the same line of reasoning used in the cases of *Epps, Shoars, Bourke, Fraser and Smyth*, if a similar claim to privacy were raised in *Punzal*. There is indeed a striking similarity in factual circumstances presented by these U.S. cases and the circumstances surrounding *Punzal's* termination. Furthermore, the right to privacy in the Philippines, as it stands today, has been heavily influenced by common-law principles, and U.S. law and jurisprudence.[68] Nevertheless, there is reason to believe that our Supreme Court would have ruled differently in *Punzal*.

To begin with, decisions rendered by U.S. Courts are not binding in our jurisdiction, and are at best, only persuasive authorities to guide the bench. Furthermore, the fact that the decisions earlier cited are mostly district and superior court decisions also diminishes their persuasive value. More importantly, however, existing Philippine labor policy and legislation favor the working (wo)man, hence any doubt that arises, either in the interpretation of labor contracts or labor code provisions, or the appreciation of evidence, is resolved in favor of the employee.[69] Admittedly, United States law does not regard a labor contract as "ordinary", and the United States Supreme Court has ruled that the State is obligated to come to the aid of the "weaker party" to that contract. Hence in *Holden vs. Hardy*[70] the U.S. Supreme Court wrote:

> The court recognized what has been dimly seen or implied from the beginning of labor legislation, that inequality of bargaining power is a justification under which the *State may come to the aid of the weaker party to the bargain* x x x *Inequality of bargaining power has long been ground for legislative and judicial protection of the weaker party.* (Emphasis supplied)

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[68] Ople vs. Torres, citing Morfe vs. Mutuc, which in turn cited Griswold vs. Connecticut, *Supra* note 40.
[69] See J. BERNAS, *Supra* note 12.
[70] 169 U.S. 366, 18 S. Ct. 383, 42 L. Ed. 780 (1898).

It is significant to note, however, that many U.S. courts have consistently upheld "at-will" employment. An employee is an "at-will employee" when the employee can be legally terminated for any cause.[71] These courts have held that:[72]

> Absent a contract, employees may be discharged at any time, for any reason, for no reason at all. (The rule has since been reaffirmed so often that it defies citation)
>
> x x x
>
> In an "at-will" employment, where there is no contract limiting the employer's right to discharge at will, the reason for the discharge was not subject to review in a judicial forum. This non-reviewable (except for public policy violations and where there is a specific intent to harm) is the sine qua non of the at-will relationship.
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> x x x
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> Moreover, because of its vitality, courts insist that to contract away the at-will presumption, much clarity is required. The intention to overcome the presumption will not be unheedingly inferred. This Court has recently held that the modification that a very clear statement of an intention to so modify is required. (Emphasis supplied)

Punzal, was not an at-will employee. No less than the Constitution grants Punzal her right to security of tenure[73], which means that she may not be terminated except for cause as provided by law[74]. Hence, despite the statements of the Supreme Court of the United States in *Holden*, the favor

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[71] *Id.* ("As a general rule, Pennsylvania law does not provide a common law cause of action for the wrongful discharge of an at-will employee such as the plaintiff. Pennsylvania is an employment at-will jurisdiction and an employer "may discharge an employee with or without cause, at pleasure, unless restrained by some contract.").

[72] Veno vs. Meredith, 357 Pa. Super. 85, 585 A.2d. 571, citing Banar vs. Matthews International Corp 348 Pa. Super. 464, 502 A.2d. 637 (1985); Darlington vs. General Electric 350 Pa. Super 183, 504 A.2d. 306; and Martin vs. Capital Cities Media, Inc. 511 A.2d. 830 (1986); *Veno* cited in FINTIN, GOLDMAN AND SUMMERS, LEGAL PROTECTION FOR THE INDUSTRIAL EMPLOYEE 72 (1989).

[73] Labor Code, Art. XIII, Sec. 3 ("The State shall x x x guarantee the rights of all workers x x x x. They shall be entitled to security of tenure, x x x x.").

[74] Bondoc vs. People's Bank & trust Co., L-43835, March 31, 1981.

granted to the Filipino worker under Philippine law is greater than that bestowed upon workers in the United States.

These Constitutional and legal precepts, which are settled doctrines in Philippine labor law and jurisprudence, would arguably impel our Supreme Court to be more circumspect in yielding to the business interests of the company/employer, in the way U.S. courts have been inclined to do in the past. The special concern given by the law to the plight of the Filipino worker would arguably make intrusions into employee privacy of the kind discussed in *Epps, Shoars, Bourke, Fraser, Smyth,* and *Punzal,* fall within the category of "substantial" and "highly offensive" invasions of privacy prohibited by law and public policy. It would, indeed, be difficult for the Philippine Supreme Court to deny an employee a "reasonable expectation of privacy" in his personal comments and remarks in the workplace, simply because these were sent through a company-controlled e-mail system.

In one of the more recent decisions of the Philippine Supreme Court involving the right to privacy, the Court wrote:[75]

> That a law is required before an executive officer could intrude on a citizen's privacy rights–is a guarantee that is available *only to the public at large but not to persons who are detained or imprisoned.* The right to privacy of those detained is subject to Section 4 of RA 7438, as well as to the limitations inherent in lawful detention or imprisonment. By the very fact of their detention, pre-trial detainees and convicted prisoners have a *diminished expectation of privacy rights.* (Emphasis Supplied)

Using this line of reasoning, the Supreme Court held that the officials of the ISAFP Detention Center did not violate the detainees' right to privacy when the ISAFP officials opened and read the letters handed by detainees Trillanes and Maestrecampo to one of the petitioners for mailing.[76]

The workplace is definitely not a prison where the employee is reduced to a detainee behind bars. The employer is not akin to an official of a detention center, who according to the Supreme Court, is allowed to open and read mail sent out by the prisoner/detainee (employee) because the

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[75] Alejano vs. Cabuay, G.R. No. 160792, August 25, 2005.
[76] *Id.*

latter has a "diminished expectation of privacy". If the Philippine Supreme Court were to decide *Punzal*, in the same way that the cases of *Epps, Shoars, Bourke, Fraser,* and *Smyth* were decided[77], it would be tantamount to ruling that a person's expectation of privacy in the work place is comparable to his/her expectation of privacy in prison. Any fair and reasonable protection of an employee's right to privacy in the workplace would abhor such an interpretation of the law.

V. CONCLUSION

An employer's disciplinary right is not absolute. It ought to be balanced against the *Police Power* of the State and the employee's fundamental rights.

The Labor Code is one measure to achieve that balance. It provides for "just cause" that would warrant the termination of an employee, one of which is "serious misconduct". The Supreme Court has carefully crafted standards to determine the existence of "serious misconduct" in the form of utterances, remarks and statements made in the workplace. Nevertheless, the Supreme Court in *Punzal* found "serious misconduct" where there was none. The Supreme Court in *Marival Trading,* held:[78]

> Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful character, and implies wrongful intent and not mere error of judgment. *The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant.* (Emphasis supplied)

Punzal wrote in her e-mail message to her officemates that she found the senior Vice President to be very unfair and somewhat paranoid. She then invited her officemates to a party outside the office to be held during office hours. These acts perhaps amounted to misconduct. Nevertheless, the misconduct was too trivial and unimportant to have warranted her termination. In upholding the dismissal of Punzal, the Supreme Court elevated the bar for the preservation of the values of

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[77] The employer is free to read e-mail messages sent by employees through the company controlled e-mail system.

[78] G.R. No. 169600, June 26, 2007.

pakikisama and *paggalang* in the workplace, to an unreasonable and unprecedented level.

The Supreme Court likewise failed to consider the possible violation of Punzal's right to privacy. Still, a possible violation of her privacy arose as soon as her e-mail message intended solely for her officemates, was read by her employer. Psychologically, her privacy consisted not merely in her need to exclude her employer from reading her e-mail message, but also in her need to share and communicate her thoughts and feelings to her officemates.[79]

Indeed, Philippine Jurisprudence has yet to grapple extensively with the novel issue of the limits of employer intrusion into the privacy of employees in the workplace. Yet, it is inevitable that the rapid emergence of new means of communication and correspondence in the workplace will force the Supreme Court to redefine the scope of an employee's right to privacy in the years to come. With the issue of Punzal's termination before the bench, the Court had an opportunity to commence this redefinition. The Court had the power to reaffirm the notion that the right to privacy, especially in the workplace, is far from being reduced to an illusion despite recent technological advances. Unfortunately, the issue of privacy in the workplace was never raised, nor considered. However, assuming that the issue was raised, one could argue that the Supreme Court would have ruled against the validity of Punzal's dismissal. The comments in her e-mail message were within a zone of privacy into which the controlling hands of her employer should never have extended.

There was indeed a failure in *Punzal* to properly balance the disciplinary right of the employer vis-a-vis well-established statutory and jurisprudential standards on "serious misconduct", as well as the employee's right to privacy. This failure resulted in the unwarranted imposition of the supreme penalty of dismissal. As a result, Punzal was stripped of her employment at the hands of an unreasonable and unfair exercise of management prerogative. She was unduly deprived of her property, and in the process, the much guarded favor and protection granted by the Constitution to the working (wo)man, was rendered meaningless.

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[79] See M.C. SLOUGH, PRIVACY, FREEDOM AND RESPONSIBILITY (1969).