



# Labor Law – Labor Standards

Case Digest



**UNIVERSITY OF SANTO TOMAS  
FACULTY OF CIVIL LAW**

**LIST OF CASES  
Labor Standards**

**GENERAL COVERAGE:**

- Books 1 to 4 of the Labor Code of the Philippines
- Corresponding provisions of the Rules to Implement the Labor Code
- R.A. No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), as amended

**SPECIFIC TOPICS:**

**1) Fundamental principles and policies**

- a) Constitutional Provisions
  - i) Article II, Secs. 9, 10, 11, 13, 14, 18, 20.
  - ii) Article III, Secs. 1, 4, 7, 8, 10, 16, 18(2).
  - iii) Article XIII, Secs. 1, 2, 3, 13, 14.
- b) Civil Code
  - i) Article 19
  - ii) Articles 1305, 1306, 1315, 1318.
  - iii) Articles 1700 to 1712
- c) Labor Code (in addition to Articles 3 and 4, which are already mentioned in the general coverage above)
  - i) Article 166
  - ii) Article 211
  - iii) Article 172 (formerly 166)
  - iv) Article 218 (formerly 211)
  - v) Article 267 (formerly 255)
  - vi) Article 292 (formerly 277)

***Case/s:***

- *Estrellita G. Salazar vs Philippine Duplicators, Inc. (G.R. No. 154628 December 6, 2006)*
- *Zenaida Paz v Northern Tobacco Redrying Co., Inc., et al., G.R. No. 199554, 18 February 2015*
- *Central Pangasinan Electric Cooperative Inc. vs NLRC. G.R. No. 163561, July 24, 2007*
- *Hocheng Philippines Corporation vs. Farrales; G.R. No. 211497, March 18, 2015*
- *Milan, et. al. vs. National Labor Relations Commission; G.R. No. 202961, February 4, 2015*
- *Racelis vs. United Philippine Lines, Inc.; G.R. No. 198408, November 12, 2014*
- *PAL v. NLRC; G.R. No. 85985, August 13, 1993*

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- *Sto. Tomas v. Salac*; G.R. No. 152642, November 13, 2012.
- *Sunace International Management Services, Inc. v. NLRC*; G.R. No. 161757. January 25, 2006.
- *Sameer Overseas Placement Agency Inc. v. Cabiles*, G.R. No. 170139, August 5, 2014
- *Elburg Shipmanagement Phils., Inc. v. Quiogue*; G.R. No. 211882. July 29, 2015.
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- *Labor Congress of the Philippines v. NLRC*; GR 123938, May 21, 1998
- *Lambo v. NLRC*; GR 111042, October 26, 1999
- *Provincial Bus Operators Association of the Philippines v. DOLE*; G.R. No. 202275. July 17, 2018
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- *Realda v. New Age Graphics, Inc.*; GR 192190, April 25, 2012
- *Lagatic v. National Labor Relations Commission*, G.R. No. 121004, January 28, 1998
- *Asian Transmission Corporation v. CA*; G.R. No. 144664, March 15, 2004
- *Jose Rizal College v. NLRC*; G.R. No. 65482, December 1, 1987
- *IBAAEU v. Inciong*; G.R. No. L-52415, October 23, 1984
- *Union of Filipro Employees v. Vivar, Jr.* ; G.R. No. 79255, January 20, 1992
- *Wellington Investment and Mfg Corp. v. Trajano*; G.R. No. 114698, July 3, 1995
- *Leyte IV Electric Cooperative, Inc. v. Leyeco IV Employees Union-ALU*; G.R. No. 157775, October 19, 2007
- *Bisig Manggawa sa Tryco, et al. vs. NLRC, et al.*, G.R. No. 151309 October 15, 2008
- *Rosario A. Gaa vs CA* G.R. No. L-44169 Dec. 3, 1985
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- *Atok-Big Wedge Mining Co., Inc. v. Atok-Big Wedge Mutual Benefit Assn.*; GR L-5276, March 3, 1953
- *Our Haus Realty Development Corporation v. Alexander Parian, et al.*, G.R. No. 204651, 06 August 2014
- *Wesleyan University-Philippines v. Wesleyan University-Philippines Faculty and Staff Association*; G.R. No. 181806, March 12, 2014
- *Arco Metal Products, Co. Inc v. SAMARM-NAFLU*; G.R. No. 170734, May 14, 2008
- *Sevilla Trading Company v. Semana*; G.R. No. 152456, 28 April 2004
- *Royal Plant Workers Union v. Coca-Cola Bottlers Philippines, Inc.-Cebu Plant*, G.R. No. 198783, April 15, 2013
- *Supreme Steel Corporation v. Nagkakaisang Manggagawa ng Supreme Independent Union (NMS-IND-APL)*; G.R. No. 166647, March 31, 2006
- *Deoferio v. Intel Technology Philippines, Inc.*; G.R. No. 202996, June 18, 2014
- *Bluer Than Blue Joint Ventures Company v Glyza Esteban*, G.R. No. 192582, 7 April 2014
- *Milan, et. al. vs. National Labor Relations Commission*; G.R. No. 202961, February 4, 2015
- *Almario v. Philippine Airlines*; G.R. No. 170928, September 11, 2007
- *DBP v. NLRC*; G.R. No. 82763-64, March 19, 1990
- *Bankard Employees Union-Workers Alliance Trade Unions vs NLRC*. G.R. No. 140689 February 17, 2004
- *National Federation of Labor v. NLRC*; G.R. No. 103586, July 21, 1994
- *Metropolitan Bank & Trust Company v. NLRC*; G.R. No. 102636. September 10, 1993

- *Duncan Association of Detailman-PGTWO v. GlaxoWellcome Phil.*; GR 162994, September 17, 2004
- *Star Paper Corp v. Simbol, et al.*; GR 164774, April 12, 2006
- *Saudia v. Rebesencio* ; GR 198587, January 14, 2015
- *Capin-Cadiz v. Brent Hospital and Colleges, Inc.* ; G.R. No. 187417, February 24, 2016
- *Del Monte Philippines, Inc. v. Velasco*; G.R. No. 153477, March 6, 2007
- *Philippine Telegraph and Telephone Co. v. National Labor Relations Commission*, G.R. No. 118978, May 23, 1997
- *Domingo v. Rayala*; GR 155831, February 18, 2008
- *Villarama v. National Labor Relations Commission*; G.R. No. 106341, September 2, 1994
- *Phil. Aeolus Automotive United Corporation v. NLRC*; G.R. No. 124617, April 28, 2000
- *Re: Anonymous Complaint Against Atty. Cresencio T. Co Untian, Jr.*; A.C. No. 5900, April 10, 2019

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- *W.M. Manufacturing vs. Richard R. Dalag*; G.R. No. 209418, December 7, 2015
- *American President Lines v. Clave*; GR L-51641, June 29, 1982
- *Aliviado v. Procter & Gamble Phils., Inc.*; GR No. 160506, March 9, 2010
- *CCBPI v. Agito*; GR No. 179546, February 13, 2009
- *Philippine Fuji Xerox Corp. v. NLRC*; GR 111501, March 5, 1996
- *Vinoya v. NLRC*; GR No. 126586, February 2, 2000
- *San Miguel Corp. vs. MAERC Integrated Systems. G.R. No. 144672; July 10, 2003*
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- *Fonterra Brands Phils. Inc. vs. Largado*; G.R. No. 205300, March 18, 2015
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- *Tiu v. Platinum Plans Phil., Inc.*, G.R. No. 163512, 28 February 2007
- *Sime Darby Pilipinas, Inc. v. NLRC*; GR 119205, April 15, 1998
- *Philippine Telegraph vs. Laplana. G.R. No. 76645; July 23, 1991*

## 6) Fundamental principles and policies

- a) Constitutional Provisions
  - i) Article II, Secs. 9, 10, 11, 13, 14, 18, 20.
  - ii) Article III, Secs. 1, 4, 7, 8, 10, 16, 18(2).
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### Notes:

1. The syllabus is intended to provide a common list of minimum topics that should be covered in the course of the semester. Moreover, the laws, issuances, and jurisprudence enumerated above are intended to supplement, not supplant, the materials that the professors have been traditionally assigning to their respective classes. Consequently:
  - a. Professors continue to have full discretion to discuss, in addition to the foregoing, any topic, law, jurisprudence, or administrative issuance which they believe to be relevant or beneficial.
  - b. Professors also have full discretion to discuss the topics covered by this syllabus in any order they deem fit.
2. The UST Labor Law Department reserves the right to modify this syllabus whenever justified by the circumstances such as, for example, whenever such modification would be beneficial to the students. Any modification shall be communicated through a written memorandum that shall be disseminated to all concerned.



**ESTRELLITA G. SALAZAR, *Petitioner*, v. PHILIPPINE DUPLICATORS, INC., and /or LEONORA FONTANILLA, *Respondents*.**  
**G.R. NO. 154628, December 6, 2006, THIRD DIVISION, VELASCO, JR., J.:**

*The requirements of due process have been met. Petitioner admitted that on December 10, 1998 she received from the union president a copy of the December 9, 1998 memorandum charging her with falsification under Category V of the company's handbook. The second requisite that a hearing or conference is set to enable the employee to respond to the charge and adduce evidence is deemed substantially complied with. Petitioner received a copy of the March 8, 1999 termination letter by registered mail which she received on March 23, 1999, or at the latest, on September 1, 1999 when she got a copy of respondent's Position Paper.*

**FACTS:**

Petitioner Estrellita Salazar became Sales Representative of respondent company, Philippine Duplicators, Inc. She was assigned at the Southern Section of Metro Manila under the direct supervision of respondent Leonora Fontanilla.

Respondent respondent Fontanilla went over the three (3) accounts of Salazar, namely, ICLARM, Bengson Law Office, and D.M. Consunji, Inc. The individual ledgers specified that Salazar visited the said customers; that she talked with the contact persons identified in the ledgers; and that she reported that these customers would not, in the meantime, purchase the equipment because of budgetary constraints.

Fontanilla asked Salazar whether she went to the aforementioned clients on November 20, 1998. The latter answered in the affirmative as reflected in her Daily Sales Report given to Fontanilla. However, respondent Fontanilla told Salazar that upon verification, the said clients alleged that they neither knew nor met the latter; but Salazar stood firm on her declaration that she met all three customers.

Petitioner claimed that on December 7, 1998, respondent Fontanilla called her to the latter's office and handed her a memorandum requesting her to receive it. Petitioner refused to receive it because it stated her termination from employment and asked Fontanilla why she should be terminated as she had done nothing wrong.

On December 9, 1998, respondent Fontanilla directed Salazar, through a memorandum to explain, within 72 hours from receipt of said document, why no disciplinary action should be taken against her in violation of Section 8, Category V of the company's Handbook on Constructive Discipline for "falsifying company records", but petitioner refused to receive the memorandum. Hence, on December 10, 1998, it was sent through registered mail to Salazar's residence.

Salazar claimed that on December 10, 1998, the union president also gave her a copy of the December 9, 1998 memorandum charging her of falsification; and that the memorandum was just a plan to comply with the procedural due process leading to her termination which had already materialized when the first memorandum of termination was allegedly shown to her on December 7, 1998. Consequently, she did not report to work anymore and readily filed a complaint for illegal dismissal against the respondents on December 15, 1998.

On December 16, 1998, through registered mail, Salazar eventually received a copy of the December 9, 1998 memorandum about the charge of falsification.



Meanwhile, respondent company sought the dismissal of Salazar's complaint of illegal dismissal, claiming it was Salazar who abandoned work.

Labor Arbiter Eduardo J. Carpio dismissed the case without prejudice for lack of interest to prosecute. Salazar refiled the labor case which was re-raffled to Labor Arbiter Manuel R. Caday, who found that petitioner's dismissal was for a just cause, but respondent Duplicators breached the twin-notice requirement for dismissal under Section 2 (c), Rule XXIII, Book V of the Implementing Rules and Regulations of the Labor Code. Thus, Duplicators was ordered to pay an indemnity of PhP 10,000.00 to petitioner Salazar.

Salazar filed a Memorandum of Appeal from the adverse Decision. The NLRC decided the appeal finding that there was actually no termination of Salazar's employment but considering that reinstatement was not advisable due to the strained relationship between the parties, separation pay was ordered paid in lieu of reinstatement.

Salazar's Motion for Reconsideration was subsequently denied for lack of merit.

Salazar filed a Petition for Certiorari with the CA. The CA ruled that the termination of Salazar's employment was legal and valid. While the dismissed employee was not entitled to separation pay, the CA nonetheless awarded severance pay pursuant to settled jurisprudence and in the interest of social justice. Lastly, it ruled that there was no breach of the due process requirements prescribed for dismissal from employment.

Salazar filed a Motion for Reconsideration but the CA consequently denied such.

Hence, this Petition for Review on Certiorari before the Court.

**ISSUE:**

1. Whether or not the termination of Salazar's employment was legal and valid
2. Whether or not Salazar was accorded due process

**RULING:**

Yes. Petitioner was dismissed for a just and valid cause

Petitioner was charged with "falsifying company records." On this issue, Labor Arbiter Caday made finding that on November 20, 1998, at around 3:00 PM complainant Salazar visited Juliet Alvarez of Banco-Filipino-Legal, Paseo de Roxas, Legaspi Village, Makati City. This belies complainant's claim that she visited the respondent's customer, D.M. Consunji, Inc. on November 20, 1998 at around 3:00P.M. Similarly, the certification issued by Mr. Frederick Sison of the D.M. Consunji, Inc. attesting to complainant's visit on November 20, 1998, at 2:00 p.m. is belied by the fact that on November 20, 1998, complainant visited Fely/Federico and Lilian at the Makati Medical Center as appearing in customer ledger of Makati Medical Center.

The findings of both Arbiter Caday and the NLRC were sustained by the CA, which ruled that "there is ample proof to bear out that the petitioner knowingly recorded erroneous entries in her Daily Sales Reports."

It is well-settled that the findings of fact of quasi-judicial agencies like the NLRC are accorded not only respect but even finality if the findings are supported by substantial evidence; more so when such findings were affirmed by the CA and such findings are binding and conclusive upon this Court. Thus, we rule that petitioner committed fraud or willful breach of the employer's trust reposed in her under Article 282 of the Labor Code.

2. Petitioner was afforded due process.

The procedure for terminating an employee is found in Book VI, Rule I, Section 2 (d) of the Omnibus Rules Implementing the Labor Code:

Standards of due process: requirements of notice. - In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Code: (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee's last known address. The aforelisted requirements have been met. Petitioner admitted that on December 10, 1998 she received from the union president a copy of the December 9, 1998 memorandum charging her with falsification under Category V of the company's handbook.

The second requisite that a hearing or conference is set to enable the employee to respond to the charge and adduce evidence is deemed substantially complied with.

Petitioner received a copy of the March 8, 1999 termination letter by registered mail which she received on March 23, 1999, or at the latest, on September 1, 1999 when she got a copy of respondent's Position Paper.

Thus the twin notice requirement that constitutes due process has been satisfied.

**ZENaida PAZ, *Petitioner*, v. NORTHERN TOBACCO REDRYING CO., INC., AND/OR ANGELO ANG, *Respondents*.**

**G.R. No. 199554, February 18, 2015, SECOND DIVISION, LEONEN, J.**

*Petitioner Paz never abandoned her argument of illegal dismissal despite the amendment of her Complaint into one for retirement pay. This implied lack of intent to retire until she reached the compulsory age of 65. Thus, she should be considered as illegally dismissed from May 18, 2003 until she reached the compulsory retirement age of 65 in 2005 and should be entitled to full backwages for this period.*

**FACTS:**

Northern Tobacco Redrying Co., Inc., a flue-curing and redrying of tobacco leaves business, employs approximately 100 employees with seasonal workers “tasked to sort, process, store and transport tobacco leaves during the tobacco season of March to September.”

NTRCI hired Zenaida Paz sometime in 1974 as a seasonal sorter, paid P185.00 daily. NTRCI regularly re-hired her every tobacco season since then. She signed a seasonal job contract at the start of her employment and a pro-forma application letter prepared by NTRCI in order to qualify for the next season.

On May 18, 2003, Paz was 63 years old when NTRCI informed her that she was considered retired under company policy. A year later, NTRCI told her she would receive P12,000.00 as retirement pay. Paz, with two other complainants, filed a Complaint for illegal dismissal against NTRCI on March 4, 2004. She amended her Complaint on April 27, 2004 into a Complaint for payment of retirement benefits, damages, and attorney’s fees as P12,000.00 seemed inadequate for her 29 years of service. The Complaint impleaded NTRCI’s Plant Manager, Angelo Ang, as respondent. The Complaint was part of the consolidated Complaints of 17 NTRCI workers.

NTRCI countered that no Collective Bargaining Agreement existed between NTRCI and its workers. Thus, it computed the retirement pay of its seasonal workers based on Article 287 of the Labor Code. NTRCI raised the requirement of at least six months of service a year for that year to be considered in the retirement pay computation. It claimed that Paz only worked for at least six months in 1995, 1999, and 2000 out of the 29 years she rendered service. Thus, Paz’s retirement pay amounted to P12,487.50 after multiplying her P185.00 daily salary by 22½ working days in a month, for three years.

The Labor Arbiter in his Decision confirmed that the correct retirement pay of Zenaida M. Paz was P12,487.50.

The National Labor Relations Commission modified the Labor Arbiter’s Decision.

The Court of Appeals dismissed the Petition and modified the National Labor Relations Commission’s Decision in that financial assistance is awarded to Zenaida Paz in the amount of P60,356.25”.

The Court of Appeals found that while applying the clear text of Article 287 resulted in the amount of P12,487.50 as retirement pay, this amount was so meager that it could hardly support Paz, now that she is weak and old, unable to find employment. It discussed jurisprudence on financial assistance and deemed it appropriate to apply the formula: One-half-month pay multiplied by 29 years of service divided by two yielded P60,356.25 as Paz’s retirement pay.

Paz comes before this court seeking to reinstate the National Labor Relations Commission’s computation. NTRCI filed its Comment and this court deemed waived the filing of a Reply.

**ISSUES:**

Whether or not the amendment of a complaint for illegal dismissal seeking separation pay into one for payment of retirement pay precludes complaint for illegal dismissal



**RULING:**

Petitioner Paz's amendment of her Complaint was not fatal to her cause of action for illegal dismissal. First, petitioner Paz never abandoned her argument that she had not reached the compulsory retirement age of 65 pursuant to Article 287, as amended, when respondent NTRCI made her retire on May 18, 2003.

Second, the National Labor Relations Commission found that respondent NTRCI failed to prove a valid company retirement policy, yet it required its workers to retire after they had reached the age of 60. The Court of Appeals also discussed that while respondent NTRCI produced guidelines on its retirement policy for seasonal employees, it never submitted a copy of its Collective Bargaining Agreement and even alleged in its Position Paper that none existed.

Petitioner Paz was only 63 years old on May 18, 2003 with two more years remaining before she would reach the compulsory retirement age of 65.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. Article 287, as amended, allows for optional retirement at the age of at least 60 years old.

Consequently, if "the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge."

The National Labor Relations Commission considered petitioner Paz's amendment of her Complaint on April 27, 2004 akin to an optional retirement when it determined her as illegally dismissed from May 18, 2003 to April 27, 2004, thus being entitled to full backwages from May 19, 2003 until April 26, 2004.

Again, petitioner Paz never abandoned her argument of illegal dismissal despite the amendment of her Complaint. This implied lack of intent to retire until she reached the compulsory age of 65. Thus, she should be considered as illegally dismissed from May 18, 2003 until she reached the compulsory retirement age of 65 in 2005 and should be entitled to full backwages for this period.

An award of full backwages is "inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld".

Backwages, considered as actual damages, requires proof of the loss suffered. The Court of Appeals found "no positive proof of the total number of months that she actually rendered work." Nevertheless, petitioner Paz's daily pay of P185.00 was established. She also alleged that her employment periods ranged from three to seven months.

Since the exact number of days petitioner Paz would have worked between May 18, 2003 until she would turn 65 in 2005 could not be determined with specificity, this court thus awards full backwages in the amount of P22,200.00 computed by multiplying P185.00 by 20 days, then by three months, then by two years.



**CENTRAL PANGASINAN ELECTRIC COOPERATIVE, INC., *Petitioner*, v. NATIONAL LABOR RELATIONS COMMISSION and LITO CAGAMPAN, *Respondents*.  
G.R. NO. 163561, July 24, 2007, SECOND DIVISION, QUISUMBING, J.**

*Separation pay shall be allowed only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.*

*In this case, private respondent was found by the Labor Arbiter and the NLRC to have been validly dismissed for violations of company rules, and certain acts tantamount to serious misconduct. Separation pay should not be awarded.*

**FACTS:**

Private respondent Lito Cagampan was the Acting Power Use Coordinator of petitioner Central Pangasinan Electric Cooperative, Inc. On November 7, 1998, Cagampan received a check amounting to P100,831 from Aurora B. Bonifacio as partial payment for the installation of a transformer in her building and expansion of a three-phase line.

In a letter, Bonifacio informed CENPELCO's General Manager Salvador de Guzman of the said transaction and that Cagampan did not issue a receipt for the partial payment made. She also requested the immediate installation of the transformer. Thereafter, Cagampan was directed to explain in writing why he should not be disciplined or dismissed for the unauthorized acceptance of payments for new electrical connections.

Upon investigation, it appeared that Cagampan knowingly entered into an unauthorized contract for the installation of a transformer, and that he was not authorized to accept payment. Hence, Cagampan was found guilty of violating CENPELCO's Code of Ethics and Discipline, namely: (1) unauthorized acceptance of payments for new connection; (2) dishonest or unauthorized activity whether for personal gain or not; and (3) defrauding others by using the name of the company. He was dismissed from service.

Cagampan filed a complaint for illegal dismissal, praying for payment of backwages and damages, and reinstatement.

The Labor Arbiter found that Cagampan used his position as a CENPELCO employee to enter into a contract with Bonifacio for the purchase of materials and hiring of labor force necessary for the installation of a transformer, in violation of company rules. The Labor Arbiter dismissed the complaint for lack of merit but ordered CENPELCO to pay Cagampan separation pay.

Both parties appealed to the NLRC. The NLRC affirmed the Labor Arbiter's decision. Private respondent's motion for reconsideration was denied. CENPELCO sought reconsideration of the award of separation pay but was also denied.

Petitioner filed a petition for certiorari with the Court of Appeals, which dismissed the petition for lack of merit.

Petitioner moved for reconsideration but was denied.

**ISSUE:**

Whether or not the award of separation pay to private respondent is proper

**RULING:**

Separation pay should not be awarded.

Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides that when the employee is dismissed for any of the just causes under Article 28213 of the Labor Code, he shall not be entitled to termination pay without prejudice to applicable collective bargaining agreement or voluntary employer policy or practice. Separation pay shall be allowed only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Separation pay in such case is granted to stand as a "measure of social justice." If the cause for the termination of employment cannot be considered as one of mere inefficiency or incompetence but an act that constitutes an utter disregard for the interest of the employer or a palpable breach of trust in him, the grant by the Court of separation benefits is hardly justifiable.

In this case, private respondent was found by the Labor Arbiter and the NLRC to have been validly dismissed for violations of company rules, and certain acts tantamount to serious misconduct. Such findings, if supported by substantial evidence, are accorded respect and even finality by this Court.

Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity under the Labor Code nor under our prior decisions. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.

**HOCHENG PHILIPPINES CORPORATION, *Petitioner*, v. ANTONIO M. FARRALES, *Respondent*.**  
**G.R. No. 211497, March 18, 2015, THIRD DIVISION, REYES, J.**

*Farrales committed no serious or willful misconduct or disobedience to warrant his dismissal. Farrales lost no time in returning the helmet to Reymar the moment he was apprised of his mistake by Eric, which proves, according to the CA, that he was not possessed of a depravity of conduct as would justify HPC's claimed loss of trust in him. Farrales immediately admitted his error to the company guard and sought help to find the owner of the yellow helmet, and this only shows that Farrales did indeed mistakenly think that the helmet he took belonged to Eric.*

**FACTS:**

Farrales is employed by HPC as assistant unit chief of production, a supervisory position. He was a consistent recipient of citations for outstanding performance, as well as appraisal and year-end bonuses.

A report reached HPC management that a motorcycle helmet of an employee, Reymar Solas, was stolen at the parking lot within its premises. Security Officer Francisco Paragas III confirmed a video sequence recorded on closed-circuit television showing Farrales taking the missing helmet from a parked motorcycle.

Later that day, HPC sent Farrales a notice to explain his involvement in the alleged theft. Farrales alleged that he borrowed a helmet from his co-worker Eric Libutan since they reside in the same barangay, to be returned when they next see each other. Eric told him that his motorcycle was black in color. As there were many motorcycles with helmets, he asked another employee, Andy Lopega who was in the parking area where he could find Eric's helmet. Andy handed over to him the supposed helmet which he believed to be owned by Eric, then he went home. He was subsequently told by Eric that it was not Eric's helmet he has gotten. He immediately phoned the HPC's guard to report the situation that he mistook the helmet which he thought belonged to Eric. He apologized to the owner, returned it, and explained that it was an honest mistake.

A hearing was held. Farrales in his defense claimed he could no longer remember the details of what transpired that time, nor could he explain why he missed Eric's specific directions that Eric's helmet was colored red and black and his motorcycle was a black Honda XRM-125 with plate number 8746-DI; while Farrales asked Andy to fetch a yellow helmet from a blue Rossi 110 motorcycle with plate number 3653-DN parked in the middle of the parking lot, opposite the location given by Eric.

The HPC issued a Notice of Termination to Farrales dismissing him for violation of Article 69, Class A, Item No. 29 of the HPC Code of Discipline, which provides that "stealing from the company, its employees and officials, or from its contractors, visitors or clients," is akin to serious misconduct and fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative, which are just causes for termination of employment under Article 282 of the Labor Code.

Farrales filed a complaint for illegal dismissal, non-payment of appraisal and mid-year bonuses, service incentive leave pay and 13th month pay. He also prayed for reinstatement, or in lieu thereof, separation pay with full backwages, plus moral and exemplary damages and attorney's fees. During the mandatory conference, HPC paid Farrales P10,914.51, representing his 13th month pay for the period of January to February 2010 and vacation leave/sick leave conversion. Farrales agreed to waive his claim for incentive bonus.

The LA ruled in favor of Farrales, finding all respondents guilty of illegal dismissal and ordered them jointly and severally to pay complainant full backwages, separation pay, appraisal year-end bonus, moral damages, exemplary damages and 10% of all sums owing as attorney's fees.

On appeal by HPC, the NLRC reversed the LA, and denied Farrales' motion for reconsideration, finding substantial evidence of just cause to terminate Farrales.

On petition for certiorari to the CA, the appellate court agreed with the LA that Farrales' act of taking Reyman's helmet did not amount to theft, holding that HPC failed to prove that Farrales' conduct was induced by a perverse and wrongful intent to gain, in light of the admission of Eric that he did let Farrales borrow one of his two helmets, only that Farrales mistook Reyman's helmet.

HPC filed a petition for review with the Supreme Court.

**ISSUE:**

Whether or not Farrales was validly dismissed



**RULING:**

To validly dismiss an employee, the law requires the employer to prove the existence of any of the valid or authorized causes, which, as enumerated in Article 282 of the Labor Code, are: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or the latter's representative in connection with his work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other causes analogous to the foregoing. As a supervisory employee, Farrales is admittedly subject to stricter rules of trust and confidence, and thus pursuant to its management prerogative HPC enjoys a wider latitude of discretion to assess his continuing trustworthiness, than if he were an ordinary rank-and-file employee. HPC therefore insists that only substantial proof of Farrales' guilt for theft is needed to establish the just causes to dismiss him, as the NLR lengthily asserted in its decision.

Article 4 of the Labor Code mandates that all doubts in the implementation and interpretation of the provisions thereof shall be resolved in favor of labor. Consistent with the State's avowed policy to afford protection to labor, as Article 3 of the Labor Code and Section 3, Article XIII of the 1987 Constitution have enunciated, particularly in relation to the worker's security of tenure, the Court held that "to be lawful, the cause for termination must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This is merely in keeping with the spirit of our Constitution and laws which lean over backwards in favor of the working class, and mandate that every doubt must be resolved in their favor." Moreover, the penalty imposed on the erring employee ought to be proportionate to the offense, taking into account its nature and surrounding circumstances.

The Court agrees with the CA that Farrales committed no serious or willful misconduct or disobedience to warrant his dismissal. It is not disputed that Farrales lost no time in returning the helmet to Rey-mar the moment he was apprised of his mistake by Eric, which proves, according to the CA, that he was not possessed of a depravity of conduct as would justify HPC's claimed loss of trust in him. Farrales immediately admitted his error to the company guard and sought help to find the owner of the yellow helmet, and this, the appellate court said, only shows that Farrales did indeed mistakenly think that the helmet he took belonged to Eric.

The CA also pointed out that although the alleged theft occurred within its premises, HPC was not prejudiced in any way by Farrales' conduct since the helmet did not belong to it but to Rey-mar, a nephew of an employee.

Theft committed by an employee against a person other than his employer, if proven by substantial evidence, is a cause analogous to serious misconduct. 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. It must be serious and of such 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.

Where there is no showing of a clear, valid and legal cause for termination of employment, the law considers the case a matter of illegal dismissal. If doubts exist between the evidence presented by the employer and that of the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.



**EMER MILAN, RANDY MASANGKAY, WILFREDO JAVIER, RONALDO DAVID, BONIFACIO MATUNDAN, NORA MENDOZA, et al., *Petitioners*, -versus- NATIONAL LABOR RELATIONS COMMISSION, SOLID MILLS, INC., and/or PHILIP ANG, *Respondents*.  
G.R. No. 202961, SECOND DIVISION, February 4, 2015, LEONEN, J.**

*An employer is allowed to withhold terminal pay and benefits pending the employee's return of its properties. The return of the property owned by their employer Solid Mills became an obligation or liability on the part of the employees when the employer-employee relationship ceased. Thus, respondent Solid Mills has the right to withhold petitioners' wages and benefits because of this existing debt or liability.*

**FACTS:**

As Solid Mills' employees, petitioners Milan, et al. and their families were allowed to occupy SMI Village, a property owned by respondent Solid Mills. According to Solid Mills, this was "out of liberality and for the convenience of its employees . . . and on the condition that the employees . . . would vacate the premises anytime the Company deems fit."

Subsequently, petitioners were informed that Solid Mills would cease its operations due to serious business losses. NAFLU (petitioner's labor union) recognized Solid Mills' closure due to serious business losses in the memorandum of agreement. The memorandum of agreement provided for Solid Mills' grant of separation pay less accountabilities, accrued sick leave benefits, vacation leave benefits, and 13th month pay to the employees. Later on, Solid Mills, through Alfredo Jingco, sent to petitioners individual notices to vacate SMI Village. As a consequence, petitioners were no longer allowed to report for work. They were required to sign a memorandum of agreement with release and quitclaim before their vacation and sick leave benefits, 13th month pay, and separation pay would be released. Employees who signed the memorandum of agreement were considered to have agreed to vacate SMI Village, and to the demolition of the constructed houses inside as condition for the release of their termination benefits and separation pay. Petitioners refused to sign the documents and demanded to be paid their benefits and separation pay.

Hence, petitioners filed complaints before the Labor Arbiter for alleged non- payment of separation pay, accrued sick and vacation leaves, and 13th month pay. They argued that their accrued benefits and separation pay should not be withheld because their payment is based on company policy and practice. Moreover, the 13th month pay is based on law, specifically, Presidential Decree No. 851. Their possession of Solid Mills property is not an accountability that is subject to clearance procedures. They had already turned over to Solid Mills their uniforms and equipment when Solid Mills ceased operations.

**ISSUE:**

Whether Solid Mills is allowed to withhold terminal pay and benefits pending the petitioners' return of its properties. (YES)

**RULING:**

Requiring clearance before the release of last payments to the employee is a standard procedure among employers, whether public or private. Clearance procedures are instituted to ensure that the

properties, real or personal, belonging to the employer but are in the possession of the separated employee, are returned to the employer before the employee's departure.

The Civil Code also provides that the employer is authorized to withhold wages for debts due: Article 1706. Withholding of the wages, except for a debt due, shall not be made by the employer.

"Debt" in this case refers to any obligation due from the employee to the employer. It includes any accountability that the employee may have to the employer. There is no reason to limit its scope to uniforms and equipment, as petitioners would argue.

More importantly, respondent Solid Mills and NAFLU, the union representing petitioners, agreed that the release of petitioners' benefits shall be "less accountabilities."

"Accountability," in its ordinary sense, means obligation or debt. The ordinary meaning of the term "accountability" does not limit the definition of accountability to those incurred in the worksite. As long as the debt or obligation was incurred by virtue of the employer-employee relationship, generally, it shall be included in the employee's accountabilities that are subject to clearance procedures.

It may be true that not all employees enjoyed the privilege of staying in respondent Solid Mills' property. However, this alone does not imply that this privilege when enjoyed was not a result of the employer-employee relationship. Those who did avail of the privilege were employees of respondent Solid Mills. Petitioners' possession should, therefore, be included in the term "accountability." The return of the property owned by their employer Solid Mills became an obligation or liability on the part of the employees when the employer-employee relationship ceased. Thus, respondent Solid Mills has the right to withhold petitioners' wages and benefits because of this existing debt or liability.

**CONCHITA J. RACELIS, *Petitioner*, -versus- UNITED PHILIPPINE LINES, INC. and/or HOLLAND AMERICA LINES, INC., and FERNANDO T. LISING, *Respondents*.  
G.R. No. 198408, FIRST DIVISION, November 12, 2014, PERLAS-BERNABE, J.**

*Section 20 (B) (4) of the 2000 POEA-SEC has created a disputable presumption in favor of compensability. This presumption should be overturned only when the employer's refutation is found to be supported by substantial evidence. Here, respondents' sole evidence to disprove that Rodolfo's illness is work-related was the medical opinion of Dr. Abaya. However, the document presented cannot be given probative value as it was a mere print out of an e-mail that was not signed or certified to by the doctor.*

*While it is true that a medical repatriation has the effect of terminating the seafarer's contract of employment, it is, however, enough that the work-related illness, which eventually becomes the proximate cause of death, occurred while the contract was effective for recovery to be had. Here, were it not for his illness, Rodolfo would not have been medically repatriated and his employment contract, in turn, terminated.*

**FACTS:**

Rodolfo L. Racelis (Rodolfo) was recruited and hired by respondent United Philippine Lines, Inc. (UPL) for its principal, respondent Holland America Lines, Inc. (HAL) to serve as "Demi Chef De Partie" on board the vessel MS Prinsendam. In the course of his last employment contract, Rodolfo experienced severe pain in his ears and high blood pressure causing him to collapse while in the performance of his duties. He consulted a doctor in Argentina and was medically repatriated on

February 20, 2008 for further medical treatment. Upon arrival in Manila, he was immediately brought to Medical City, Pasig City, where he was seen by a company-designated physician, Dr. Gerardo Legaspi, M.D. (Dr. Legaspi), and was diagnosed to be suffering from Brainstem (pontine) Cavernous Malformation. He underwent surgery twice for the said ailment but developed complications and died on March 2, 2008. Through an electronic mail (e-mail) dated July 22, 2008, a certain Dr. Antonio "Toby" Abaya (Dr. Abaya) informed Atty. Florencio L. Aquino, Managing Associate of the law firm of Del Rosario and Del Rosario, counsel for UPL, HAL, and its officer, Fernando T. Lising (respondents), that Rodolfo's illness was congenital and that there may be familial strains in his case, hence, his death was not work-related.

Rodolfo's surviving spouse, herein petitioner, sought to claim death benefits pursuant to the International Transport Workers' Federation-Collective Bargaining Agreement (ITWF-CBA), of which her husband was a member, but to no avail. Consequently, she filed a Complaint for death benefits, burial assistance, moral and exemplary damages, and attorney's fees against herein respondents before the NLRC.

In their defense, respondents averred that Rodolfo's illness was not work-related, considering that said illness is not listed as an occupational disease under the 2000 POEA-SEC. They likewise pointed out that Rodolfo's death on March 2, 2008 did not occur during the term of his employment contract in view of his prior repatriation on February 20, 2008, hence, was non-compensable.

**ISSUE:**

Whether the grant of death benefits to petitioner is proper. (YES)

**RULING:**

Among other basic provisions, the POEA-SEC – specifically, its 2000 version – stipulates that the beneficiaries of a deceased seafarer may be able to claim death benefits for as long as they are able to establish that (a) the seafarer's death is work-related, and (b) such death had occurred during the term of his employment contract.

**I. The Death of the Seafarer is Work-Related.**

While it is true that Brainstem (pontine) Cavernous Malformation is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC, Section 20 (B) (4) of the same has created a disputable presumption in favor of compensability, saying that those illnesses not listed in Section 32 are disputably presumed as work-related. This presumption should be overturned only when the employer's refutation is found to be supported by substantial evidence.

Records show that respondents' sole evidence to disprove that Rodolfo's illness is work-related was the medical opinion of Dr. Abaya. However, the document presented cannot be given probative value as it was a mere print out of an e-mail that was not signed or certified to by the doctor. Accordingly, Rodolfo's death, which appears to have been proximately caused by his Brainstem (pontine) Cavernous Malformation, must be declared as work-related.

**II. The Seafarer's Death Occurred During the Term of Employment.**



While it is true that a medical repatriation has the effect of terminating the seafarer's contract of employment, it is, however, enough that the work-related illness, which eventually becomes the proximate cause of death, occurred while the contract was effective for recovery to be had.

Here, were it not for his illness, Rodolfo would not have been medically repatriated and his employment contract, in turn, terminated. Evidently, the termination of employment was forced upon by a work-related cause.

**PHILIPPINE AIRLINES, INC. (PAL), *Petitioner*, -versus- NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ISABEL P. ORTIGUERRA, and PHILIPPINE AIRLINES EMPLOYEES ASSOCIATION (PALEA), *Respondents*.**  
**G.R. No. 85985, THIRD DIVISION, August 13, 1993, MELO, J.**

*A line must be drawn between management prerogatives regarding business operations per se and those which affect the rights of the employees. In treating the latter, management should see to it that its employees are at least properly informed of its decisions or modes of action. Here, the objectionable provisions of the Code clearly have repercussions on the employees' right to security of tenure. Hence, PAL was saddled with the obligation of sharing management prerogatives.*

**FACTS:**

On March 15, 1985, the Philippine Airlines, Inc. (PAL) completely revised its 1966 Code of Discipline. The Code was immediately implemented, and some employees were forthwith subjected to the disciplinary measures embodied therein.

Thus, on August 20, 1985, the Philippine Airlines Employees Association (PALEA) filed a complaint before the National Labor Relations Commission for unfair labor practice. PALEA maintained that the Labor Code was violated when PAL unilaterally implemented the Code, and cited provisions of the Code as defective for running counter to the construction of penal laws and making punishable any offense within PAL's contemplation.

PAL asserts that when it revised its Code on March 15, 1985, there was no law which mandated the sharing of responsibility therefor between employer and employee.

**ISSUE:**

Whether the formulation of a Code of Discipline among employees is a shared responsibility of the employer and the employees. (YES)

**RULING:**

*A line must be drawn between management prerogatives regarding business operations per se and those which affect the rights of the employees. In treating the latter, management should see to it that its employees are at least properly informed of its decisions or modes of action.*

A close scrutiny of the objectionable provisions of the Code reveals that they are not purely business-oriented nor do they concern the management aspect of the business of the company. The provisions of the Code clearly have repercussions on the employees' right to security of tenure. The implementation of the provisions may result in the deprivation of an employee's means of livelihood which is a property right.



PAL's position that it cannot be saddled with the obligation of sharing management prerogatives as during the formulation of the Code, Republic Act No. 6715 had not yet been enacted, cannot be sustained. While such obligation was not yet founded in law when the Code was formulated, the attainment of a harmonious labor-management relationship and the then already existing state policy of enlightening workers concerning their rights as employees demand no less than the observance of transparency in managerial moves affecting employees' rights.

## 7) Recruitment and placement

- a) Recruitment and placement of local and migrant workers
  - i) Illegal recruitment
    - (1) License vs. Authority
    - (2) Essential elements of illegal recruitment
    - (3) Simple illegal recruitment
    - (4) Illegal recruitment as economic sabotage
      - (a) Illegal recruitment in large scale
      - (b) Illegal recruitment by a syndicate
    - (5) Illegal recruitment vs. Estafa
    - (6) Liabilities
      - (a) Local recruitment agency
      - (b) Foreign employer
        - (i) Theory of imputed knowledge
      - (c) Solidary liability
    - (7) Pre-termination of contract of migrant worker
  - ii) Direct hiring
- b) Regulation and enforcement
  - i) Suspension or cancellation of license or authority
  - ii) Regulatory and visitorial powers of the DOLE Secretary
  - iii) Remittance of foreign exchange earnings
  - iv) Prohibited activities
- c) Seafarer claims
- d) Employment of aliens

### Case/s:

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, v  
JULIA REGALADO ESTRADA, *Accused-Appellant*.  
G.R. No. 225730, THIRD DIVISION, February 28, 2018, MARTIRES**

*Under Section 6 of R.A. No. 8042, illegal recruitment, when undertaken by a non-licensee or non-holder of authority as contemplated under Article 13(f) of the Labor Code, shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers, and including referring, contract services, promising or advertising for employment abroad, whether for profit or not.*

*Further, to sustain a conviction for illegal recruitment under R.A. No. 8042 in relation to the Labor Code, the prosecution must establish two (2) elements: first, the offender has no valid license or authority required by law to enable one to lawfully engage in the recruitment and placement of workers; and second, the offender undertakes any of the activities within the meaning of recruitment and placement defined in Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Section 6 of R.A. No. 8042.<sup>52</sup> Further, in case the illegal recruitment was committed in large scale,*

*a third element must be established, that is, the offender commits the illegal recruitment activities against three or more persons, individually or as a group.*<sup>53</sup>

*The Court is convinced that the prosecution was able to establish the essential elements of the crime of illegal recruitment in large scale.*

**FACTS:**

Estrada was indicted for the crime of Illegal Recruitment in Large Scale and *Estafa* under four (4) separate Informations. Private complainants separately met Estrada on various dates from February to April 2009.<sup>10</sup> Sevilla was encouraged by his father to seek the help of Estrada as he knew her to be recruiting for overseas work;<sup>11</sup> Cortez met Estrada through his aunt who also knew Estrada to be a recruiter for overseas work;<sup>12</sup> and Jacinto came to know Estrada after she chanced upon a tarpaulin advertisement for overseas work on which Estrada's number and address were posted.<sup>13</sup>

During their respective meetings, Estrada represented herself as having power and authority to deploy persons abroad for overseas employment.<sup>14</sup> Cortez recalled that in their initial meeting, Estrada told him that she works for Worldview International Corporation (Worldview), a private recruitment agency for overseas employment. She later told him, however, that she changed agency because Worldview's license had expired.<sup>15</sup>

The private complainants transacted only with Estrada to whom they submitted all the documents necessary for their overseas placement and to whom they paid processing, placement, and other fees. Estrada further required private complainants, with the exception of Antonio, to undergo the Pre-Departure Orientation Seminar (PDOS).<sup>29</sup> However, even after undergoing PDOS, payment of the fees required, and submission of the documentary requirements, Estrada still failed to deploy them abroad. Estrada repeatedly promised them that their plane tickets were still being processed. Estrada, however, failed to deliver on her promised deployment of the private complainants; thus, they were prompted to file criminal cases against Estrada.

**ISSUE:**

Whether the trial and appellate courts erred in finding Estrada guilty of illegal recruitment in large scale. (NO)

**RULING:**

Under Section 6 of R.A. No. 8042, illegal recruitment, when undertaken by a non-licensee or non-holder of authority as contemplated under Article 13(f) of the Labor Code, shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers, and including referring, contract services, promising or advertising for employment abroad, whether for profit or not.

Further, to sustain a conviction for illegal recruitment under R.A. No. 8042 in relation to the Labor Code, the prosecution must establish two (2) elements: *first*, the offender has no valid license or authority required by law to enable one to lawfully engage in the recruitment and placement of workers; and *second*, the offender undertakes any of the activities within the meaning of recruitment and placement defined in Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Section 6 of R.A. No. 8042.<sup>52</sup> Further, in case the illegal recruitment was committed in large scale, a *third* element must be established, that is, the offender commits the illegal recruitment activities against three or more persons, individually or as a group.

The Court is convinced that the prosecution was able to establish the essential elements of the crime of illegal recruitment in large scale.

*First*, it is not disputed that Estrada is not licensed or authorized to recruit workers for overseas placement. During the trial, the defense admitted the POEA Certification which stated that Estrada is not included among the list of employees submitted by ABCA for POEA acknowledgment. Therefore, Estrada is not authorized to recruit workers for overseas employment. This fact was not denied by Estrada in her defense anchored only on the allegation that she did not recruit the private complainants but merely mentioned ABCA and Worldview to them.

*Second*, the prosecution was able to establish that Estrada unlawfully engaged in activities which refer to recruitment and placement under Article 13(b) of the Labor Code and Section 6 of R.A. No. 8042. Specifically, the prosecution was able to sufficiently demonstrate that Estrada promised and recruited private complainants for employment abroad for a fee.

This is amply supported by the testimonies of the private complainants who categorically testified that Estrada promised them employment and placement in Dubai as baker, waiter, and cashier. More particularly, the private complainants positively identified Estrada as the person with whom they transacted relative to their alleged deployment to Dubai; the person who instructed them to complete the documents necessary for their deployment and to undergo medical examination; the person to whom they submitted these documents; and the person to whom they directly paid the processing, placement, medical examination, and other fees.

It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, especially when the CA affirmed such findings, are entitled to great weight and respect by this Court.<sup>54</sup> Further, in the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment with respect to their credibility shall not be interfered with by this Court. Thus, between the positive identification and categorical testimony by the private complainants and Estrada's unsubstantiated and uncorroborated denial, the Court finds the former more credible.

*Finally*, it is clear that Estrada committed illegal recruitment activities against the three (3) private complainants. Thus, the trial and appellate courts properly convicted Estrada of the crime of illegal recruitment in large scale.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs.  
ROSARIO "ROSE" OCHOA, Accused-Appellant.  
G.R. No. 173792, FIRST DIVISION, August 31, 2011, LEONARDO-DE CASTRO, J**

*Section 6 of Republic Act No. 8042 clearly provides that any person, whether a nonlicensee, non-holder, licensee or holder of authority may be held liable for illegal recruitment for certain acts as enumerated in paragraphs (a) to (m) thereof. Among such acts, under Section 6(m) of Republic Act No. 8042, is the "[f]ailure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault." Ochoa committed illegal recruitment as described in the said provision by receiving placement and medical fees from private complainants, evidenced by the receipts issued by her, and failing to reimburse the private complainants the amounts they had paid when they were not able to leave for Taiwan and Saudi Arabia, through no fault of their own.*

**FACTS:**

Rosario Ochoa was charged with illegal recruitment in large scale, for having recruited the private complainants for various jobs in either Taiwan or Saudi Arabia without the having secured the necessary license from the DOLE and for a consideration in the total amount of P124,000.00 as placement fee. She was also charged with three counts of estafa. The prosecution presented as witnesses Cory Aquino (Cory) of the POEA and private complainants. Cory authenticated a Certification that Ochoa, in her personal capacity, is neither licensed nor authorized by the POEA to recruit workers for overseas employment. Ochoa stated under oath that she was employed by AXIL International Services and Consultant (AXIL) as recruiter.

AXIL had a temporary license to recruit Filipino workers for overseas employment. She admitted recruiting private complainants and receiving from them the placement and medical fees but claimed that she remitted the money to the manager of AXIL. The RTC found Ochoa guilty beyond reasonable doubt of the crimes of illegal recruitment in large scale and three counts of estafa, which was affirmed by the CA.

**ISSUE:**

Should Ochoa be held personally and criminally liable for Illegal Recruitment? (YES)

**RULING:**

Ochoa could still be convicted of illegal recruitment even if we disregard the POEA certification, for regardless of whether or not Ochoa was a licensee or holder of authority, she could still have committed illegal recruitment. Section 6 of Republic Act No. 8042 clearly provides that any person, whether a nonlicensee, non-holder, licensee or holder of authority may be held liable for illegal recruitment for certain acts as enumerated in paragraphs (a) to (m) thereof. Among such acts, under Section 6(m) of Republic Act No. 8042, is the "[f]ailure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault." Ochoa committed illegal recruitment as described in the said provision by receiving placement and medical fees from private complainants, evidenced by the receipts issued by her, and failing to reimburse the private complainants the amounts they had paid when they were not able to leave for Taiwan and Saudi Arabia, through no fault of their own.

The POEA verification presented by Ochoa during trial pertains only to the status of AXIL as a placement agency with a "limited temporary authority" which had already expired. The receipts presented by some of the private complainants were issued and signed by Ochoa herself, and did not contain any indication that Ochoa issued and signed the same on behalf of AXIL. Also, Ochoa was not able to present any proof that private complainants' money were actually turned over to or received by AXIL. Under the last paragraph of Section 6 of Republic Act No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in a large scale, that is, committed against three or more persons individually or as a group. Here, there are eight private complainants who convincingly testified on Ochoa's acts of illegal recruitment.



**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus-  
BULU CHOWDURY, *Accused-Appellant*.**  
**G.R. No. 129577-80, FIRST DIVISION, February 15, 2000, PUNO, J.**

*The persons who may be held liable for illegal recruitment are the principals, accomplices and accessories. An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment.*

*Upon examination of the records, however, it shows that the prosecution failed to prove that accused-appellant was aware of Crafrade's failure to register his name with the POEA and that he actively engaged in recruitment despite this knowledge.*

**FACTS:**

Bulu Chowdury and Josephine Ong were charged before the Regional Trial Court of Manila with the crime of illegal recruitment in large scale.

For his defense, Chowdury testified that he worked as interviewer at Crafrade from 1990 until 1994. His primary duty was to interview job applicants for abroad. As a mere employee, he only followed the instructions given by his superiors.

As a mere employee, he only followed the instructions given by his superiors, Mr. Emmanuel Geslani, the agency's President and General Manager, and Mr. Utkal Chowdury, the agency's Managing Director. Chowdury admitted that he interviewed private complainants on different dates.

The trial court found Chowdury guilty beyond reasonable doubt of the crime of illegal recruitment in large scale.

**ISSUE:**

Whether or not Chowdury is guilty of illegal recruitment. (NO)

**RULING:**

Chowdury was convicted based on the fact that he was not registered with the POEA as employee of Crafrade. Neither was he, in his personal capacity, licensed to recruit overseas workers.

As stated in the first sentence of Section 6 of RA 8042, the persons who may be held liable for illegal recruitment are the principals, accomplices and accessories. An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, *if it is shown that he actively and consciously participated in illegal recruitment.*

Upon examination of the records, however, we find that the prosecution failed to prove that accused-appellant was aware of Crafrade's failure to register his name with the POEA and that he actively engaged in recruitment despite this knowledge.

A mere employee of the agency cannot be expected to know the legal requirements for its operation. The evidence at hand shows that accused-appellant carried out his duties as interviewer

of Crafrtrade believing that the agency was duly licensed by the POEA and he, in turn, was duly authorized by his agency to deal with the applicants in its behalf.

**PHIL. EMPLOY SERVICES AND RESOURCES, INC., PETITIONER, -versus- JOSEPH PARAMIO, RONALD NAVARRA, ROMEL SARMIENTO, RECTO GUILLERMO, FERDINAND BAUTISTA AND APOLINARIO CURAMENG, JR., RESPONDENTS.**

**G.R. No. 144786, SECOND DIVISION, April 15, 2004, CALLEJO, SR., J.**

*The employer is burdened to prove that the employee was suffering from a disease which prevented his continued employment, or that the employee's wound prevented his continued employment. Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code requires a certification from competent public authority that the employee was heavily wounded and had lost the ability to work.*

*In the case at bar, the petitioner did not adduce in evidence a certification from a public authority to the effect that respondent Paramio had been heavily wounded. It also failed to show that by reason of his thumb injury, he lost the ability to work. Similarly, the petitioner failed to substantiate its claim that respondent Navarra's repatriation was based on a valid, legal and just cause. As to the other respondents, the Court ruled that there was constructive dismissal because their continued employment is rendered impossible, unreasonable or unlikely. In sum, the respondents were illegally dismissed, and their employment contracts were illegally terminated.*

**FACTS:**

Respondents Joseph Paramio, Ronald Navarra, Romel Sarmiento, Recto Guillermo, Ferdinand Bautista and Apolinario Curameng, Jr. applied for employment in Taiwan<sup>2</sup> with petitioner, Phil. Employ Services and Resources, Inc. (PSRI for brevity), a domestic corporation engaged in the recruitment and deployment of Filipino Workers Overseas. They executed in the Philippines separate one-year contracts of employment with their employer in Taiwan, Kuan Yuan Fiber Co., Ltd. Hsei-Chang.

They encountered worse problems in the course of their employment, viz.:

a). Irregular and deliberate charging of deductions which were not fully accounted such as the blankets issued, charging of penalties amounting to 400 NT to all employees for a littering violation attributable only to one employee; b). Mandatory imposition of overtime work exceeding 10 hours without just overtime compensation and night shift differentials; c). Failure to comply with some stipulations stated in the Employment Contract particularly those relating to the accommodation and lodging of the contracted workers; d). Lack of observance of safety precautions at work area.

In March of 1997, Fabian Chua, local manager of the petitioner PSRI, made a surprise visit to Kuan Yuan in Taiwan and was apprised of the said complaints. However, Chua cautioned the respondents not to air their. Disappointed, the respondents contacted the Overseas Workers Welfare Administration (OWWA) but their requests were not favourably acted upon.

On May 10, 1997, respondent Navarra and, Pio Gabito, were repatriated, without specifying the ground or cause therefor. Upon respondent Navarra's arrival in Manila, the petitioner sought to settle his complaints. After the negotiations, the petitioner agreed to pay P49,000 to the said respondent but, in consideration thereof, **the latter executed a quitclaim releasing the petitioner from any or all liabilities for his repatriation.**

Meanwhile, when the other respondents learned that Navarra and Gabito were repatriated, they were disheartened at their fate. The respondents also decided to go home, but they were unable to pay NT\$30,000, therefore, respondents failed to return to the Philippines.

On May 14, 1997, respondent Paramio got ill as a result of the employer's failure to give breakfast on the said date and dinner the night before. His manager still ordered him to work. Paramio was made to carry a container weighing around 30 kilograms. Due to his condition, the container slipped from his hands and he injured his thumb. Instead of giving him financial assistance for his hospital bills, his employer told that it would be better for him to go home to the Philippines to recuperate. An official from the Taiwanese Labor Department intervened and his employer was told that it had no right to repatriate the respondent because the accident happened while the latter was at work.

Respondent Paramio was made to report for work while he was still on sick leave. On June 5, 1997, respondent Paramio received his paycheck, but he discovered that his employer had deducted NT\$4,300 representing his plane ticket back to the Philippines. Furthermore, his sick leave from May 14 to June 5 were not included in his check. On July 1, 1997, he was assigned to do the second hardest job in the company, carrying containers weighing about 30 kilograms in the dyeing department

After a week, he was transferred to the hardest job in the factory, when he could no longer bear the pain in his thumb, he took a break. When the manager saw him resting, he was ordered to return to work. Respondent Paramio refused and contended that he could not resume work because of his thumb injury.

On September 23, 1997, he was given his paycheck and a plane ticket to the Philippines. He was told that the amount of NT\$3,700 was deducted from his paycheck because he neglected his duty. At around eight o'clock that evening, respondent Paramio was repatriated to the Philippines.

In October 1997, the remaining employees decided to go home. Their employer agreed to have them repatriated and to return their respective bonds, but required them to write letters of resignation.

On October 22, 1997, respondents Sarmiento, Guillermo, Curameng, Jr. and Bautista, together with respondents Paramio and Navarra, filed separate complaints before the NLRC Arbitration Branch against Bayani Fontanilla for illegal dismissal, non-payment of overtime pay, refund of placement fee, tax refund, refund of plane fares, attorney's fees and litigation expenses.

On October 29, 1998, Labor Arbiter Felipe P. Pati rendered a decision declaring that the dismissal of the respondents was illegal.

In declaring respondent Navarra's dismissal illegal, the labor arbiter held that the petitioner failed to substantiate its claim that the said respondent had an altercation with his supervisor. As such, respondent Navarra was entitled to the payment of the salaries due him for the unexpired portion of his contract. The labor arbiter likewise ruled that the dismissal of complainant Paramio was illegal. Considering that he had a thumb injury, his employer should have given him a lighter job instead of repatriating him. The dismissal of the remaining complainants was also adjudged illegal.

Aggrieved, the petitioner appealed before the National Labor Relations Commission (NLRC) insisting that the dismissal of the complainants was anchored on valid and legal grounds.



On March 29, 1999, the NLRC issued a resolution finding that the respondents were legally dismissed and set aside the decision of the labor arbiter. Dissatisfied, the respondents filed a motion for reconsideration of the resolution, but the NLRC denied the motion.

The respondents filed a petition for certiorari under Rule 65 of the Rules of Court against the petitioner before the Court of Appeals. On May 29, 2000, the CA rendered a decision partly granting the petition in that it nullified the NLRC and reinstated the decision of the labor arbiter with modification. The CA held that respondents Curameng, Bautista, Sarmiento and Guillermo were constructively dismissed, as the petitioner failed to substantiate its claim that the aforesaid petitioners voluntarily resigned from work. The CA also ruled that the repatriation of respondent Paramio was in violation of his employment contract.

The petitioner PSRI filed a motion for reconsideration but the appellate court denied the said motion. Hence, this petition.

**ISSUE:**

Whether the respondents were illegally dismissed. (Yes)

**RULING:**

Preliminarily, it bears stressing that the respondents who filed complaints for illegal dismissal against the petitioner were overseas Filipino workers whose employment contracts were approved by the Philippine and Overseas Employment Administration (POEA) and were entered into and perfected here in the Philippines. As such, the rule **lex loci contractus** (the law of the place where the contract is made) governs. Therefore, the Labor Code, its implementing rules and regulations, and other laws affecting labor, apply in this case.

The petitioner contends that the termination of respondent Paramio's employment was sanctioned by paragraph 8.2, Nos. 5 and 6, Article VIII of the employment contract, to wit:

**8.2** In the event the Employee is found offend (sic) one of the following prohibitions during his/her employment, Employer may terminate this Employment contract and repatriate him/her to his/her country of origin. Employee shall comply immediately without objection and assume the cost of round-trip transportation by air to and from R.O.C. unconditionally. In the event Employer or any other person pay the airfare for the Employee, Employee shall reimburse the fare to the person who paid it.

**(5) During the period of employment, being found out suffering HIV positive anti-body or other disease, heavily wounded or stool parasite, which cannot be cured within one month.**

**(6) Being found losing ability to work.**

The foregoing provision is akin to Article 284 of the Labor Code, which provides:

**Art. 284. Disease as a ground for termination** – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or prejudicial to his health as well as the health of his co-employees: ...

Furthermore, Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code provides, thus:

**Sec. 8. Disease as a ground for dismissal** - Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by competent public authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.

Applying the law and the rule, the employer is burdened to prove that the employee was suffering from a disease which prevented his continued employment, or that the employee's wound prevented his continued employment. Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code requires a certification from competent public authority that the employee was heavily wounded and had lost the ability to work.

In the case at bar, the petitioner did not adduce in evidence a certification from a public authority to the effect that respondent Paramio had been heavily wounded. It also failed to show that by reason of his thumb injury, he lost the ability to work. Respondent Paramio was not, for a time, able to perform the backbreaking tasks required by his manager. However, despite his injury, he managed to perform the other tasks assigned to him, including carrying of 30-kilogram containers with the exception of the work in the Lupo Department. The fact that respondent Paramio was assigned to perform the second hardest and heaviest task in the company shows the heartlessness of the company's manager. Despite his wound, the respondent tried to accomplish the work assigned to him.

The least the manager should have done was to assign the respondent to a lighter task, until such time that the latter's wound had completely healed. It must be stressed where there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal.

Consequently, respondent Paramio is entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract for three months for every year of the unexpired term, whichever is less under paragraph 5, Section 10 of Rep. Act No. 8042.

In *Skippers Pacific, Inc. v. Mira*,<sup>[63]</sup> we ruled that an overseas Filipino worker who is illegally terminated shall be entitled to his salary equivalent to the unexpired portion of his employment contract if such contract is less than one year. However, if his contract is for a period of at least one year, he is entitled to receive his salaries equivalent to the unexpired portion of his contract, or three months' salary for every year of the unexpired term, whichever is lower.

Respondent Paramio was deployed on December 6, 1996.<sup>[65]</sup> His contract was for a period of twelve months or one year.<sup>[66]</sup> He was repatriated on September 23, 1997, approximately two months from the expiration of his contract.<sup>[67]</sup> Since the termination of his employment was not based on any valid or legal ground, he is entitled to the payment of his salary equivalent to the unexpired portion of his contract. He is likewise entitled to full reimbursement of his placement fee. Based on the record,

respondent Paramio paid a placement fee of P19,000.<sup>[68]</sup> Thus, he should be reimbursed the amount of P19,000 with 12% interest per annum.

Similarly, the petitioner failed to substantiate its claim that respondent Navarra's repatriation was based on a valid, legal and just cause. Respondent Navarra was deployed on November 6, 1996.<sup>[73]</sup> He was repatriated on May 10, 1997, approximately five months prior to the expiration of his one-year contract. Consequently, he shall be entitled to an amount equivalent to three months' salary, or NT\$46,080. Similarly, having admitted that he paid a placement fee of P19,000<sup>[75]</sup> only, he is entitled to be fully reimbursed therefore, plus 12% interest per annum.

As to the other respondents, the petitioner alleges that they refused to go to work and, in fact, voluntarily resigned. However, the Court does not agree. The records reveal that the three respondents agreed to execute the resignation letter because they could no longer bear the working conditions in their place of employment. Thus, the Court ruled that there was constructive dismissal because their continued employment is rendered impossible, unreasonable or unlikely.

In sum, there can be no other conclusion than that the aforementioned respondents were illegally dismissed, and their employment contract illegally terminated.

Under Section 10, paragraph 5 of Rep. Act No. 8042, respondents Sarmiento, Bautista, Curameng and Guillermo are entitled to the full reimbursement of their placement fees. Since each of the respondents remitted only P19,000 to the petitioner, each of them is entitled to P19,000, plus 12% interest per annum.

According to Section 10, paragraph 2 of Rep. Act No. 8042,<sup>[84]</sup> the agency which deployed the employees whose employment contract were adjudged illegally terminated, shall be jointly and solidarily liable with the principal for the money claims awarded to the aforesaid employees. Consequently, the petitioner, as the agency of the respondents, is solidarily liable with its principal Kuan Yuan for the payment of the salaries due to the respondents corresponding to the unexpired portion of their contract, as well as the reimbursement of their placement fees.

Under Section 15 of the same Act, the repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the overseas contract worker. All the costs attendant thereto shall be borne by the agency concerned and/or its principal.<sup>[85]</sup> Consequently, the petitioner is obliged to refund P4,300 to each of the respondents, representing their airfare.

**HON. PATRICIA A. STO. TOMAS, ROSALINDA BALDOZ AND LUCITA LAZO, PETITIONERS, -  
versus- REY SALAC, WILLIE D. ESPIRITU, MARIO MONTENEGRO, DODGIE BELONIO, LOLIT  
SALINEL AND BUDDY BONNEVIE, RESPONDENTS.  
G.R. No. 152642, EN BANC, November 13, 2012, Abad, J.**

*R.A. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad. The rule is settled that every statute has in its favor the presumption of constitutionality. The Court cannot inquire into the wisdom or expediency of the laws enacted by the Legislative Department. Hence, in the absence of a clear and unmistakable case that the statute is unconstitutional, the Court must uphold its validity.*



**FACTS:**

n June 7, 1995 Congress enacted Republic Act (R.A.) 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 that, for among other purposes, sets the Government's policies on overseas employment and establishes a higher standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress.

***G.R. 152642 and G.R. 152710***  
***(Constitutionality of Sections 29 and 30, R.A. 8042)***

Respondent Salac et.al were recruiters questioning the validity of Sections 29 and 30 of the said Act praying that the deployment of OFWs and other workers abroad be deregulated. Petitioner, on the other hand was the Secretary of DOLE at the time, a government instrumentality that issues orders and memorandums which regulates the recruitment, placement, and sending or deploying of overseas workers abroad.

Sections 29 and 30 of the Act commanded the Department of Labor and Employment (DOLE) to begin deregulating within one year of its passage the business of handling the recruitment and migration of overseas Filipino workers and phase out within five years the regulatory functions of the Philippine Overseas Employment Administration (POEA).

On April 10, 2007 former President Gloria Macapagal-Arroyo signed into law R.A. 9422 which expressly repealed Sections 29 and 30 of R.A. 8042 and adopted the policy of close government regulation of the recruitment and deployment of OFWs.

***G.R. 167590***  
***(Constitutionality of Sections 6, 7, and 9 of R.A. 8042)***

On August 21, 1995 respondent Philippine Association of Service Exporters, Inc. (PASEI) filed a petition for declaratory relief and prohibition with prayer for issuance of TRO and writ of preliminary injunction before the RTC of Manila, seeking to annul Sections 6, 7, and 9 of R.A. 8042 for being unconstitutional.

Section 6 defines the crime of "illegal recruitment" and enumerates the acts constituting the same. Section 7 provides the penalties for prohibited acts. Finally, Section 9 of R.A. 8042 allowed the filing of criminal actions arising from "illegal recruitment" before the RTC of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense.

The RTC of Manila declared Section 6 unconstitutional after hearing on the ground that its definition of "illegal recruitment" is vague as it fails to distinguish between licensed and non-licensed recruiters<sup>[11]</sup> and for that reason gives undue advantage to the non-licensed recruiters in violation of the right to equal protection of those that operate with government licenses or authorities.

The Manila RTC also declared Section 7 unconstitutional on the ground that its sweeping application of the penalties failed to make any distinction as to the seriousness of the act committed for the application of the penalty imposed on such violation. As an example, said the trial court, the mere failure to render a report under Section 6(h) or obstructing the inspection by the Labor Department under Section 6(g) are penalized by imprisonment for six years and one day and a minimum fine of

P200,000.00 but which could unreasonably go even as high as life imprisonment if committed by at least three persons.

The Manila RTC also invalidated Section 9 of R.A. 8042 on the ground that allowing the offended parties to file the criminal case in their place of residence would negate the general rule on venue of criminal cases which is the place where the crime or any of its essential elements were committed. Venue, said the RTC, is jurisdictional in penal laws and, allowing the filing of criminal actions at the place of residence of the offended parties violates their right to due process.

***G.R. 167590, G.R. 182978-79,*<sup>[16]</sup> *and G.R. 184298-99*<sup>[17]</sup>  
(Constitutionality of Section 10, last sentence of 2nd paragraph)**

G.R. 182978-79 and G.R. 184298-99 are consolidated cases. Respondent spouses Simplicio and Mila Cuaresma (the Cuaresmas) filed a claim for death and insurance benefits and damages against petitioners Becmen Service Exporter and Promotion, Inc. (Becmen) and White Falcon Services, Inc. (White Falcon) for the death of their daughter Jasmin Cuaresma while working as staff nurse in Riyadh, Saudi Arabia.

The Labor Arbiter (LA) dismissed the claim on the ground that the Cuaresmas had already received insurance benefits arising from their daughter's death from the Overseas Workers Welfare Administration (OWWA). The LA also gave due credence to the findings of the Saudi Arabian authorities that Jasmin committed suicide.

On appeal, however, the National Labor Relations Commission (NLRC) found Becmen and White Falcon jointly and severally liable for Jasmin's death and ordered them to pay the Cuaresmas the amount of US\$113,000.00 as actual damages. The NLRC relied on the Cabanatuan City Health Office's autopsy finding that Jasmin died of criminal violence and rape.

Becmen and White Falcon appealed the NLRC Decision to the Court of Appeals (CA).<sup>[18]</sup> On June 28, 2006 the CA held Becmen and White Falcon jointly and severally liable with their Saudi Arabian employer for actual damages, with Becmen having a right of reimbursement from White Falcon. Becmen and White Falcon appealed the CA Decision to this Court.

On April 7, 2009 the Court found Jasmin's death not work-related or work-connected since her rape and death did not occur while she was on duty at the hospital or doing acts incidental to her employment. The Court deleted the award of actual damages but ruled that Becmen's corporate directors and officers are solidarily liable with their company for its failure to investigate the true nature of her death. Becmen and White Falcon abandoned their legal, moral, and social duty to assist the Cuaresmas in obtaining justice for their daughter. Consequently, the Court held the foreign employer Rajab and Silsilah, White Falcon, Becmen, and the latter's corporate directors and officers jointly and severally liable to the Cuaresmas for: **1)** P2,500,000.00 as moral damages; **2)** P2,500,000.00 as exemplary damages; **3)** attorney's fees of 10% of the total monetary award; and **4)** cost of suit.

On July 16, 2009 the corporate directors and officers of Becmen, namely, Eufrocina Gumabay, Elvira Taguiam, Lourdes Bonifacio and Eddie De Guzman (Gumabay, *et al.*) filed a motion for leave to Intervene. They questioned the constitutionality of the last sentence of the second paragraph of Section 10, R.A. 8042 which holds the corporate directors, officers and partners jointly and solidarily liable with their company for money claims filed by OFWs against their employers and the

recruitment firms. On September 9, 2009 the Court allowed the intervention and admitted Gumabay, *et al.*'s motion for reconsideration.

In G.R. 167590 (the PASEI case), the Quezon City RTC held as unconstitutional the last sentence of the 2<sup>nd</sup> paragraph of Section 10 of R.A. 8042. It pointed out that, absent sufficient proof that the corporate officers and directors of the erring company had knowledge of and allowed the illegal recruitment, making them automatically liable would violate their right to due process of law.

**ISSUE:**

1. Whether Sections 29 and 30 of R.A 8042 which commands to deregulate the recruitment, placement, and sending or deploying of overseas workers abroad is unconstitutional. (No)
2. Whether Sections 6, 7, and 9 of R.A. 8042 are unconstitutional. (No)
3. Whether Section 10 and last sentence of 2<sup>nd</sup> paragraph are unconstitutional. (No)

**RULING:**

1. The Court DISMISSED the petitions for having become moot and academic. Provisions stated in Sec. 29 and 30 of R.A 8042 have already been repealed due to passage of R.A 9422.
2. The "illegal recruitment" as defined in Section 6 is clear and unambiguous and, contrary to the RTC's finding, actually makes a distinction between licensed and non-licensed recruiters. By its terms, persons who engage in "canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers" without the appropriate government license or authority are guilty of illegal recruitment whether or not they commit the wrongful acts enumerated in that section. On the other hand, recruiters who engage in the canvassing, enlisting, etc. of OFWs, although with the appropriate government license or authority, are guilty of illegal recruitment only if they commit any of the wrongful acts enumerated in Section 6.

Apparently, the Manila RTC did not agree that the law can impose such grave penalties upon what it believed were specific acts that were not as condemnable as the others in the lists. But, in fixing uniform penalties for each of the enumerated acts under Section 6, Congress was within its prerogative to determine what individual acts are equally reprehensible, consistent with the State policy of according full protection to labor, and deserving of the same penalties. It is not within the power of the Court to question the wisdom of this kind of choice. Notably, this legislative policy has been further stressed in July 2010 with the enactment of R.A. 10022<sup>[12]</sup> which increased even more the duration of the penalties of imprisonment and the amounts of fine for the commission of the acts listed under Section 7.

Obviously, in fixing such tough penalties, the law considered the unsettling fact that OFWs must work outside the country's borders and beyond its immediate protection. The law must, therefore, make an effort to somehow protect them from conscienceless individuals within its jurisdiction who, fueled by greed, are willing to ship them out without clear assurance that their contracted principals would treat such OFWs fairly and humanely.

With regard to Section 9 of RA 8042, the Court held that there is nothing arbitrary or unconstitutional in Congress fixing an alternative venue for violations of Section 6 of R.A. 8042 that differs from the venue established by the Rules on Criminal Procedure. Indeed, Section 15(a), Rule 110 of the latter Rules allows exceptions provided by laws. It is an exception to the rule on venue of criminal actions



is, consistent with that law's declared policy of providing a criminal justice system that protects and serves the best interests of the victims of illegal recruitment.

3. The Court has already held, pending adjudication of this case, that the liability of corporate directors and officers is not automatic. To make them jointly and solidarily liable with their company, there must be a finding that they were remiss in directing the affairs of that company, such as sponsoring or tolerating the conduct of illegal activities.<sup>[19]</sup> In the case of Becmen and White Falcon,<sup>[20]</sup> while there is evidence that these companies were at fault in not investigating the cause of Jasmin's death, there is no mention of any evidence in the case against them that intervenors Gumabay, et al., Becmen's corporate officers and directors, were personally involved in their company's particular actions or omissions in Jasmin's case.

As a final note, R.A. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad. The rule is settled that every statute has in its favor the presumption of constitutionality. The Court cannot inquire into the wisdom or expediency of the laws enacted by the Legislative Department. Hence, in the absence of a clear and unmistakable case that the statute is unconstitutional, the Court must uphold its validity.

**SUNACE INTERNATIONAL MANAGEMENT SERVICES, INC. PETITIONER, -versus- NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION; HON. ERNESTO S. DINOPOL, IN HIS CAPACITY AS LABOR ARBITER, NLRC; NCR, ARBITRATION BRANCH, QUEZON CITY AND DIVINA A. MONTEHERMOZO, RESPONDENTS.**  
**G.R. NO. 161757, THIRD DIVISION, January 25, 2006, CARPIO MORALES, J.**

*The theory of imputed knowledge ascribes the knowledge of the agent, Sunace, to the principal, employer Xiong, not the other way around. The knowledge of the principal-foreign employer cannot, therefore, be imputed to its agent Sunace.*

*There being no substantial proof that Sunace knew of and consented to be bound under the 2-year employment contract extension, it cannot be said to be privy thereto. As such, it and its "owner" cannot be held solidarily liable for any of Divina's claims arising from the 2-year employment extension.*

**FACTS:**

Petitioner, Sunace International Management Services (Sunace), a corporation duly organized and existing under the laws of the Philippines, deployed to Taiwan Divina A. Montehermozo (Divina) as a domestic helper under a 12-month contract effective February 1, 1997.<sup>[1]</sup> The deployment was with the assistance of a Taiwanese broker, Edmund Wang, President of Jet Crown International Co., Ltd.

After her 12-month contract expired on February 1, 1998, Divina continued working for her Taiwanese employer, Hang Rui Xiong, for two more years, after which she returned to the Philippines on February 4, 2000.

Shortly after her return or on February 14, 2000, Divina filed a complaint<sup>[2]</sup> before the National Labor Relations Commission (NLRC) against Sunace, one Adelaide Perez, the Taiwanese broker, and the employer-foreign principal alleging that she was jailed for three months and that she was underpaid. On April 6, 2000, Divina filed her Position Paper<sup>[4]</sup> claiming that under her original one-year contract and the 2-year extended contract which was with the knowledge and consent of Sunace, the income

tax and savings for the years 1997 to 1998 were deducted in her salary. While the amounts deducted in 1997 were refunded to her, those deducted in 1998 and 1999 were not.

The Labor Arbiter, rejected Sunace's claim that the extension of Divina's contract for two more years was without its knowledge and consent. He also rejected Sunace's argument that it is not liable on account of Divina's execution of a Waiver and Quitclaim and an Affidavit of Desistance. He accordingly decided in favor of Divina.

On appeal of Sunace, the NLRC, by Resolution of April 30, 2002, affirmed the Labor Arbiter's decision. Via petition for certiorari, Sunace elevated the case to the Court of Appeals which dismissed it outright by Resolution of November 12, 2002. Its Motion for Reconsideration having been denied by the appellate court by Resolution of January 14, 2004, Sunace filed the present petition for review on certiorari.

**ISSUE:**

Whether the Sunace knew and impliedly consent to the extension of Divina's 2-year contract. (No)

**RULING:**

Contrary to the Court of Appeals finding, the alleged continuous communication was with the Taiwanese broker Wang, not with the foreign employer Xiong. The finding of the Court of Appeals solely on the basis of telefax message, that Sunace continually communicated with the foreign "principal" and therefore was aware of and had consented to the execution of the extension of the contract is misplaced. The message does not provide evidence that Sunace was privy to the new contract executed after the expiration on February 1, 1998 of the original contract. That Sunace and the Taiwanese broker communicated regarding Divina's allegedly withheld savings does not necessarily mean that Sunace ratified the extension of the contract.

The theory of imputed knowledge ascribes the knowledge of the agent, Sunace, to the principal, employer Xiong, not the other way around.<sup>[23]</sup> The knowledge of the principal-foreign employer cannot, therefore, be imputed to its agent Sunace.

There being no substantial proof that Sunace knew of and consented to be bound under the 2-year employment contract extension, it cannot be said to be privy thereto. As such, it and its "owner" cannot be held solidarily liable for any of Divina's claims arising from the 2-year employment extension. As the New Civil Code provides,

Contracts take effect only between the parties, their assigns, and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.

Furthermore, as Sunace correctly points out, there was an implied revocation of its agency relationship with its foreign principal when, after the termination of the original employment contract, the foreign principal directly negotiated with Divina and entered into a new and separate employment contract in Taiwan. Article 1924 of the New Civil Code provides:

The agency is revoked if the principal directly manages the business entrusted to the agent, dealing directly with third persons.

In light of the foregoing discussions, consideration of the validity of the Waiver and Affidavit of Desistance which Divina executed in favor of Sunace is rendered unnecessary.

**SAMEER OVERSEAS PLACEMENT AGENCY, INC., *Petitioner*, -versus- JOY C. CABILES,  
*Respondent*.**

**G.R. No. 170139, EN BANC, August 5, 2014, Leonen, J.**

*The Sameer alleges that the respondent was not illegally dismissed. The Supreme Court ruled that a valid dismissal requires both a valid cause and adherence to the valid procedure of dismissal. The employer is required to give the charged employee at least two written notices before termination. One of the written notices must inform the employee of the particular acts that may cause his or her dismissal. The other notice must "[inform] the employee of the employer's decision." Aside from the notice requirement, the employee must also be given "an opportunity to be heard.*

**FACTS:**

Respondent Joy Cabiles was hired by Wacoal Taiwan, Inc., through petitioner agency Sameer Overseas Placement Agency as a cutter. Subsequently, Cabiles was informed that her services are already terminated and that she must report to their head office for her immediate repatriation. Because of this, Cabiles filed a complaint for illegal dismissal against Sameer and Wacoal.

The Labor Arbiter ruled in favor of Sameer and held that there was no illegal dismissal that took place because the termination of the services of Cabiles was for a just cause. It gave credence to the contention of Sameer that Cabiles was terminated from service because of her inefficiency. On appeal, the NLRC ruled in favor of Cabiles and held that she is illegally dismissed. The Court of Appeals affirmed the ruling of NLRC. Hence, the current petition.

Sameer reiterates that there was just cause for termination because there was a finding of Wacoal that respondent was inefficient in her work. Therefore, it claims that respondent's dismissal was valid.

**ISSUE:**

Whether or not respondent Cabiles was illegally dismissed. (Yes)

**RULING:**

The Supreme Court affirmed the decision of the Court of Appeals and ruled that the respondent was illegally dismissed. Sameer Overseas Placement Agency failed to show that there was just cause for causing Joy's dismissal. The employer, Wacoal, also failed to accord her due process of law.

Indeed, employers have the prerogative to impose productivity and quality standards at work. They may also impose reasonable rules to ensure that the employees comply with these standards. Failure to comply may be a just cause for their dismissal. Certainly, employers cannot be compelled to retain the services of an employee who is guilty of acts that are inimical to the interest of the employer. While the law acknowledges the plight and vulnerability of workers, it does not "authorize the oppression or self-destruction of the employer." Management prerogative is recognized in law and in our jurisprudence.



This prerogative, however, should not be abused. It is "tempered with the employee's right to security of tenure." Workers are entitled to substantive and procedural due process before termination. They may not be removed from employment without a valid or just cause as determined by law and without going through the proper procedure.

Security of tenure for labor is guaranteed by our Constitution. Employees are not stripped of their security of tenure when they move to work in a different jurisdiction. With respect to the rights of overseas Filipino workers, we follow the principle of *lex loci contractus*. First, established is the rule that *lex loci contractus* (the law of the place where the contract is made) governs in this jurisdiction. There is no question that the contract of employment in this case was perfected here in the Philippines. Therefore, the Labor Code, its implementing rules and regulations, and other laws affecting labor apply in this case. Furthermore, settled is the rule that the courts of the forum will not enforce any foreign claim obnoxious to the forum's public policy. Herein the Philippines, employment agreements are more than contractual in nature.

Sameer's allegation that respondent was inefficient in her work and negligent in her duties may, therefore, constitute a just cause for termination under Article 282(b), but only if petitioner was able to prove it.

The burden of proving that there is just cause for termination is on the employer. "The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause." Failure to show that there was valid or just cause for termination would necessarily mean that the dismissal was illegal.

To show that dismissal resulting from inefficiency in work is valid, it must be shown that: 1) the employer has set standards of conduct and workmanship against which the employee will be judged; 2) the standards of conduct and workmanship must have been communicated to the employee; and 3) the communication was made at a reasonable time prior to the employee's performance assessment.

In this case, Sameer merely alleged that Cabiles failed to comply with her foreign employer's work requirements and was inefficient in her work. No evidence was shown to support such allegations. Sameer did not even bother to specify what requirements were not met, what efficiency standards were violated, or what particular acts of respondent constituted inefficiency.

There was also no showing that Cabiles was sufficiently informed of the standards against which her work efficiency and performance were judged. The parties' conflict as to the position held by respondent showed that even the matter as basic as the job title was not clear. The bare allegations of petitioner are not sufficient to support a claim that there is just cause for termination. There is no proof that respondent was legally terminated.

A valid dismissal requires both a valid cause and adherence to the valid procedure of dismissal. The employer is required to give the charged employee at least two written notices before termination. One of the written notices must inform the employee of the particular acts that may cause his or her dismissal. The other notice must "[inform] the employee of the employer's decision." Aside from the notice requirement, the employee must also be given "an opportunity to be heard."

Sameer failed to comply with the twin notices and hearing requirements. Respondent started working on June 26, 1997. She was told that she was terminated on July 14, 1997 effective on the

same day and barely a month from her first workday. She was also repatriated on the same day that she was informed of her termination. The abruptness of the termination negated any finding that she was properly notified and given the opportunity to be heard. Her constitutional right to due process of law was violated.

**ELBURG SHIPMANAGEMENT PHILS., INC., ENTERPRISE SHIPPING AGENCY SRL AND/OR  
EVANGELINE RACHO, *Petitioners*, -versus- ERNESTO S. QUIOGUE, JR., *Respondent*.  
G.R. No. 211882, SECOND DIVISION, July 29, 2015, MENDOZA, J.**

*As held in Micronesia Resources v. Cantomayor:*

*The possibility that petitioner could work as a drummer at sea again does not negate the claim for permanent total disability benefits. In the same case of Crystal Shipping, Inc., we held:*

*Petitioners tried to contest the above findings [of permanent total disability] by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was... unable to work as a chief mate for almost three years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.*

*In this case, considering that Quiogue had not been able to resume his work for more than 120 days and that his disability did not fall within the exception provided for by the Rules, the CA cannot be faulted for sustaining the award of permanent disability benefits.*

**FACTS:**

Respondent Ernesto S. Quiogue Jr. (Quiogue) was hired by Elburg Shipmanagement Philippines, Inc., for and on behalf of its principal Enterprise Shipping Agency SRL (petitioners), to work as Able Bodied Seaman on board the vessel MT Filicudi M with a basic salary of US\$363.00. The employment contract was governed by the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) and the International Transport Workers Federation Total Crew Cost Collective Bargaining Agreement (ITF TCC CBA), providing for higher benefits in the event of disability or death of a worker.

On November 11, 2010, while Quiogue was on duty transferring the fire wire, his co-worker accidentally dropped it on his left foot. He was immediately given first aid and thereafter sent to a hospital in Tarragona, Spain. The x-ray examination on his injured foot showed that one of his metatarsal bones was fractured.

On November 19, 2010, as his injury prevented him from performing his duties on board, he was repatriated and immediately referred to the Metropolitan Medical Center where he was diagnosed to have sustained "non-displaced Fracture of the Cuneiform Bone, Left Foot." Quiogue underwent treatment and therapy with the company-designated physician from November 2010 to April 2011.

On April 13, 2011, he was certified as "fit to work" by the company-designated physician. Notwithstanding the treatment procedures, Quiogue continued to feel pain and discomfort. Consequently, he sought a second opinion from Dr. Nicanor Escutin (Dr. Escutin), an orthopedic surgeon. After a battery of tests, the latter concluded that the extent of his injury rendered him permanently and totally incapable to perform his work as a seafarer.

Quiogue sought compensation based on total permanent disability from petitioners, but the latter refused, insisting that he was not entitled to total permanent disability benefits because he was declared as fit to work by the company-designated physician. This prompted Quiogue to file a complaint before the NLRC.

On September 26, 2011, the Labor Arbiter (LA) ruled in Quiogue's favor on the ground that his left foot injury affected his dexterity and flexibility in walking and enduring weights. This became a liability to Quiogue's employment as he could no longer endure the manual and laborious work required of him as a seafarer.

On appeal, the NLRC affirmed in toto the above decision and later denied petitioners' motion for reconsideration. According to the NLRC, a seafarer was not precluded from engaging the services of the physician of his own choice as it was clear from Section 20 B (3).

In work-related injury or illness during the term of the contract of a seafarer, the concerned seafarer was required to have himself examined by the company-designated physician for purposes of confirmatory medical evaluation to determine the gravity of the illness and injuries. Nonetheless, the NLRC stated that it was the competence of the attending physician, not the designation, which determined the true health status of the patient-seafarer and what was needed for the purpose of the grant of compensation. In situations where the certification of the company-designated physician would clash with the findings of the doctors of the seafarer, it would be the findings favorable to the complainant that must be adopted.

In their petition for certiorari with the CA, petitioners insisted that Quiogue was not entitled to receive permanent and total disability benefits because he was assessed as "fit to work" by the company-designated physician, whose evaluation was more accurate for having treated him for almost five (5) months. For his part, Quiogue insisted that he was entitled to permanent and total disability benefits since he was not able to pursue his usual work and earn therefrom for more than 120 days.

In the assailed decision, the CA affirmed the ruling of the NLRC that Quiogue was entitled to permanent and total disability benefits but deleted the award of attorney's fees. It held that notwithstanding the company-designated physician's assessment private respondent is already fit to work, his disability is considered permanent and total because he was only certified fit to work after the lapse of more than 120 days from the time he was repatriated on November 19, 2010. Further, the fact the Quiogue had already received permanent disability benefits from his former employer for an injury he had sustained in the past did not nullify his claim against his succeeding employers. After their motion for reconsideration was denied, petitioners filed this petition for review

**ISSUE:**

Whether Quiogue was entitled to permanent and total disability benefits?

**RULING:**

Yes.

In this case, the records show that despite the medication and therapy with the company-designated physician, Quiogue still experienced recurring pains in his injured left foot. The company-designated



physician, however, even with the recurring pains, declared him as fit to work. Thus, Quiogue sought the opinion of his own physician, Dr. Escutin, who after the necessary tests and examination declared him unfit for sea duty in whatever capacity as a seaman.

The right of a seafarer to consult a physician of his choice can only be sensible when his findings are duly evaluated by the labor tribunals in awarding disability claims.

Here, the credibility of the findings of Quiogue's private doctor was properly evaluated by the NLRC when it found that the findings of Dr. Escutin who gave Grade 1 disability rating was more appropriate and applicable to the injury suffered by Quiogue. With these medical findings and the fact that Quiogue failed to be re-deployed by petitioners despite the fit to work assessment, Dr. Escutin's assessment should be upheld.

Even in the absence of an official finding by Dr. Escutin, Quiogue is deemed to have suffered permanent total disability pursuant to the following guidelines as provided in *Fil-Star Maritime Corporation v. Rosete*, thus:

Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.

A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts... continuously for more than 120 days.

The Court likewise finds no basis for petitioners' contention that Quiogue's previous award of permanent disability benefits bar his present claim for disability benefits against petitioners. As suitably concluded by the CA, the fact that Quiogue had previously received permanent disability benefits from his former employer for an injury he sustained during the said employment was immaterial and did not nullify a similar claim against his succeeding employers. As held in *Micronesia Resources v. Cantomayor*:

The possibility that petitioner could work as a drummer at sea again does not negate the claim for permanent total disability benefits. In the same case of *Crystal Shipping, Inc.*, we held:

Petitioners tried to contest the above findings [of permanent total disability] by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was... unable to work as a chief mate for almost three years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.

Considering that Quiogue had not been able to resume his work for more than 120 days and that his disability did not fall within the exception provided for by the Rules, the CA cannot be faulted for sustaining the award of permanent disability benefits.

**NORIEL R. MONTIERRO, *Petitioner*, -versus-  
RICKMERS MARINE AGENCYPHILS., INC., *Respondent*.  
G.R. No. 210634, FIRST DIVISION, January 14, 2015, SERENO, C.J.**

*The Court has already delineated the effectivity of the Crystal Shipping and Vergara rulings in the 2013 case Kestrel Shipping Co. Inc. v. Munar, by explaining as follows:*

*Nonetheless, Vergara was promulgated on October 6, 2008, or more than two (2) years from the time Munar filed his complaint and observance of the principle of prospectivity dictates that Vergara should not operate to strip Munar of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.*

*Thus, based on Kestrel, if the maritime compensation complaint was filed prior to 6 October 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from 6 October 2008 onwards, the 240-day rule applies. In this case, Montierro filed his Complaint on 3 December 2010, which was after the promulgation of Vergara on 6 October 2008. Hence, it is the 240-day rule that applies to this case, and not the 120-day rule.*

*Vergara also definitively settled the question how a conflict between two disability assessments the assessment of the company-designated physician and that of the seafarer's chosen physician should be resolved. In that case, the Court held that there is a procedure to be followed regarding the determination of liability for work-related death, illness or injury in the case of overseas Filipino seafarers. The procedure is spelled out in the 2000 POEA-SEC, the execution of which is a sine qua non requirement in deployments for overseas work.*

*In this case, Montierro and Rickmers are covered by the provisions of the same 2000 POEA-SEC. It is the law between them. Hence, for failure of Montierro to observe the procedure provided by the POEA-SEC, the assessment of the company doctor should prevail.*

**FACTS:**

Rickmers Marine Agency Phils., Inc., on behalf of its foreign principal, Global Management Limited, hired Noriel Montierro as Ordinary Seaman. While on board the vessel and going down from a crane ladder, Montierro lost his balance and twisted his legs, injuring his right knee. On 4 June 2010, two days after his repatriation, Montierro reported to Dr. Natalio G. Alegre II, the company-designated physician, upon whose recommendation Montierro underwent arthroscopic partial medical meniscectomy of his right knee. On the 91st day of Montierro's treatment, Dr. Alegre issued an interim Disability Grade of 10 for "stretching leg of ligaments of a knee resulting in instability of the joint." On 3 January 2011, the 213th day of Montierro's treatment, Dr. Alegre issued a final assessment of Disability Grade of 10 based on Section 32 of the POEA contract. Meanwhile, one month before Dr. Alegre's issuance of the final disability grading, Montierro filed with the LA a complaint for recovery of permanent disability compensation.

The LA held that Montierro was entitled to permanent total disability benefits under the Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC). The LA relied on the 120-day rule introduced by *Crystal Shipping, Inc. v. Natividad* (510 Phil. 332 (2005)). The NLRC affirmed the Decision of the LA. The CA however, downgraded the claim of Montierro to "Grade 10" permanent partial disability benefits only, the CA ruled that his disability could not be deemed total and permanent under the 240-day rule established by *Vergara v. Hammonia Maritime Services, Inc.*

(588 Phil. 895 (2008)). Vergara extends the period to 240 days when, within the first 120-day period (reckoned from the first day of treatment), a final assessment cannot be made because the seafarer requires further medical attention, provided a declaration has been made to this effect.

**ISSUES:**

1. Whether the 240-day rule applies?
2. Whether the company doctor's opinion should prevail?

**RULING:**

1. Yes.

The Court has already delineated the effectivity of the Crystal Shipping and Vergara rulings in the 2013 case *Kestrel Shipping Co. Inc. v. Munar*, by explaining as follows:

Nonetheless, Vergara was promulgated on October 6, 2008, or more than two (2) years from the time Munar filed his complaint and observance of the principle of prospectivity dictates that Vergara should not operate to strip Munar of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.

Thus, based on *Kestrel*, if the maritime compensation complaint was filed prior to 6 October 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from 6 October 2008 onwards, the 240-day rule applies.

In this case, Montierro filed his Complaint on 3 December 2010, which was after the promulgation of Vergara on 6 October 2008. Hence, it is the 240-day rule that applies to this case, and not the 120-day rule. Moreover, Montierro cannot rely on the cases that he cited, a survey of which reveals that all of them involved Complaints filed before 6 October 2008. *Wallem Maritime Services* involved a Complaint for disability benefits filed on 26 November 1998. In *Maersk Filipinas Crewing*, while the Decision did not mention the date the Complaint was filed, the LA's Decision was rendered on 14 April 2008. Lastly, in *Valenzona*, the Complaint was filed sometime before 31 January 2003. It thus comes as no surprise that the cases Montierro banks on followed the 120-day rule.

Applying the 240-day rule to this case, we arrive at the same conclusion reached by the CA. Montierro's treatment by the company doctor began on 4 June 2010. It ended on 3 January 2011, when the company doctor issued a "Grade 10" final disability assessment. Counting the days from 4 June 2010 to 3 January 2011, the assessment by the company doctor was made on the 213th day, well within the 240-day period. The extension of the period to 240 days is justified by the fact that Dr. Alegre issued an interim disability grade of "10" on 3 September 2010, the 91st day of Montierro's treatment, which was within the 120-day period. Thus, the CA correctly ruled that Montierro's condition cannot be deemed a permanent total disability.

2. Yes.

Vergara also definitively settled the question how a conflict between two disability assessments the assessment of the company-designated physician and that of the seafarer's chosen physician should be resolved. In that case, the Court held that there is a procedure to be followed regarding the



determination of liability for work-related death, illness or injury in the case of overseas Filipino seafarers. The procedure is spelled out in the 2000 POEA-SEC, the execution of which is a sine qua non requirement in deployments for overseas work.

The procedure is as follows: when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness for work shall be determined by the company-designated physician. The physician has 120 days, or 240 days, if validly extended, to make the assessment. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on them.

Vergara ruled that the procedure in the 2000 POEA-SEC must be strictly followed; otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.

In this case, Montierro and Rickmers are covered by the provisions of the same 2000 POEA-SEC. It is the law between them. Hence, they are bound by the mechanism for determining liability for a disability benefits claim. Montierro, however, preempted the procedure when he filed on 3 December 2010 a Complaint for permanent disability benefits based on his chosen physician's assessment, which was made one month before the company-designated doctor issued the final disability grading on 3 January 2011, the 213th day of Montierro's treatment.

Hence, for failure of Montierro to observe the procedure provided by the POEA-SEC, the assessment of the company doctor should prevail.

**GENERATO M. HERNANDEZ, *Petitioner*, -versus- MAGSAYSAY MARITIME CORPORATION,  
SAFFRON MARITIME LIMITED AND/OR MARLON R. ROÑO, *Respondents*.  
G.R. No. 226103, SECOND DIVISION, January 24, 2018, PERALTA, J.**

*In INC Navigation Co. Philippines, Inc., et al. v. Rosales, We opined:*

*To definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.*

*Here, the Court is bound by the Grade 11 disability grading and assessment by the company-designated physician that was timely rendered within the 120-day period. Petitioner neither questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated doctor's competence. To reiterate what has already been settled, the referral to a third physician is mandatory and non-compliance with the procedure may militate against the claim for permanent total disability in cases where the company-designated doctor declared otherwise. This is especially so if the seafarer failed to explain why recourse to the said remedy was not made.*

**FACTS:**

Generato Hernandez, Petitioner, alleged that he has been under the employ of *Magsaysay Maritime Corp.*, the respondent agency, since 1991 and was rehired consistently by the said agency.

On February 28, 2012, he was hired by respondent agency to work on board "MV Saga Sapphire" as Head Wine Waiter for a period of six (6) months with a basic monthly salary of US\$623.00. He underwent a thorough pre-employment medical examination by the company's designated doctors and was declared "fit for sea duty".

On March 3, 2012, petitioner departed, joined his assigned vessel and everything went well without any trouble until on November 16, 2012 when he had an accident. He was then lifting a box of wine when the vessel suddenly rolled causing him to lose his balance. He fell on the floor with his back hitting the steel pavement and he felt a sharp snap on his lower back accompanied by extreme pain radiating down to his lower extremities. The ship doctor gave him a pain reliever and recommended his medical repatriation with a view to physiotherapy. Then, on December 22, 2012, he was repatriated and upon arrival he reported to respondents' office for post-employment medical examination. He was referred to the company-designated physicians at the Manila Doctors Hospital where he underwent MRI. The results of the MRI revealed Lumbar Spondylosis, Disc Protrusion, and Disc Bulges. He underwent extensive physical therapy from January 8, 2013 until his latest medical evaluation on March 11, 2013 and considered for disability assessment of slight rigidity or one-third loss of lifting power. He then sought consult from Dr. Rogelio P. Catapang, Jr., Orthopaedic Surgeon and Traumatology expert and in his medical report. Petitioner further avers that despite the conclusive findings of physical disabilities, his plea for assistance from the respondents was denied alleging that they have no liability whatsoever. His request for sickness allowance was likewise denied. Hence, this present complaint.

Respondents, on the other hand, admitted the fact of petitioner's employment on board the vessel "MV Saga Sapphire" and that petitioner complained of lumbar back pain and was given ibuprofen gel and paracetamol for relief, that the x-ray on his pelvis or lumbar spine showed no abnormality, that he was later on disembarked for medical treatment and that after his repatriation, petitioner was referred to the company physician, Dr. Benigno A. Agbayani of the Manila Doctors Hospital who recommended MRI. The MRI results showed petitioner was suffering Mild Disc Herniation and that on March 8, 2013, petitioner was assessed a partial permanent disability grade 11 – slight rigidity or one-third loss of lifting power.

The LA ruled that petitioner is entitled to permanent total disability benefits because the very nature of the grading of the company-designated physician is a minimum grading based on a purely medical schedule that does not consider the loss of earning capacity. For the LA, the fact that petitioner can no longer be employed as a seaman is essentially a total and permanent disability since the principle is that disability is measured by the loss of earning capacity and not on its medical significance.

On appeal, the NLRC deleted the award of sickness allowance. In sustaining petitioner's entitlement to permanent total disability benefits, the NLRC agreed that disability should be interpreted more in relation to the loss of earning capacity. In this case, the certification of petitioner's physician appears to reflect his actual physical condition *vis-a-vis* his work as a seafarer. Since the time he was medically repatriated, he was not able to and could not land a gainful occupation in a job that he was trained or accustomed to do. His true condition is that he has not completely and fully healed. It was noted that medical reports issued by the company-designated doctor do not necessarily bind the NLRC. Even so, respondents' physician refrained from issuing a fit-to-work certification.

For the NLRC, the case of *Splash Philippines, Inc., et al. v. Ruizo*, cited by respondents, finds no application on the following grounds: (1) petitioner was medically repatriated for a work-related illness; (2) a disability grading was issued not by petitioner's own doctor but by the company-

designated physician; and (3) petitioner is not guilty of willful refusal to undergo treatment in order to claim disability benefits; hence, there is no need to refer to a third doctor for final assessment. In any case, the NLRC opined that Section 20 (B) (3) of the Philippine Overseas Employment Administration – Standard Employment Contract (POEA-SEC), on the appointment of a third physician, is merely a directory provision. With regard to respondents' claim that petitioner is guilty of concealment or misrepresentation of a pre-existing illness, the NLRC ruled that there is no evidence presented of a pre-existing medical condition in 2003 even if petitioner recalled that he suffered a particular pain in the lumbar area that year. More importantly, there is no evidence that he knew of any back problem in 2003 or even at the time his pre-employment medical examination (*PEME*) was conducted on January 27, 2012. Lastly, the claim of concealment of a pre-existing illness is futile, since the medical condition suffered by petitioner is established to be caused by his work and not merely aggravated by it.

When the case was elevated to the CA, the appellate court agreed that petitioner is not guilty of fraudulent misrepresentation, considering that lumbar or lower back pain is not one of the pre-existing illness or condition that he was required to disclose. Nonetheless, the CA held that the referral to a third doctor is mandatory in case of conflicting findings between the company-designated physician and the seafarer's chosen doctor. Finally, according to the appellate court, there is no permanent total disability to speak of because petitioner disembarked from the vessel on December 18, 2012, while the company-designated doctor arrived at an assessment that his disability rating was Grade 11 on March 8, 2013, which is evidently prior to the expiration of the 120-day or 240-day treatment period.

Hence, petitioner filed a petition for review on certiorari under Rule 45 of the Rules of Court. **It is contended that the third-doctor-referral rule should not be applied in this case since the company-designated physician's reports are biased and doubtful.** In issuing a Disability Grade 11, there is failure to explain if petitioner can still resume his previous functions as a seafarer given the fact that he was continuously suffering from persistent low back pain. Further, petitioner asserts that the determination of disability benefits of seamen should be based not only on the disability grading issued by the company-designated doctor or the schedule under Section 32 of the POEA-SEC but also on the provisions of the Labor Code and the Amended Rules on Employees' Compensation. It is emphasized that disability should be viewed on the seafarer's loss of earning capacity and that what is being compensated is not the illness or injury but the incapacity to work.

#### **ISSUE:**

Whether the petitioner is entitled to the payment of permanent total disability benefits or to that which corresponds to Disability Grade 11 of the POEA-SEC?

#### **RULING:**

Under **Section 20(A)(3) of the 2010 POEA-SEC, "if a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties."** The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. **The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. The duty**



**to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it.**

In *INC Navigation Co. Philippines, Inc., et al. v. Rosales*, We opined:

**To definitively clarify how a conflict situation should be handled**, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, **the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties.** Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.

Here, **the Court is bound by the Grade 11 disability grading and assessment by the company-designated physician that was timely rendered within the 120-day period.** Petitioner neither questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated doctor's competence. To reiterate what has already been settled, **the referral to a third physician is mandatory and non-compliance with the procedure may militate against the claim for permanent total disability in cases where the company-designated doctor declared otherwise.** This is especially so if the seafarer failed to explain why recourse to the said remedy was not made.

Petitioner's filing of his claim before the labor arbiter was premature. In view of the fact that he did not observe the relevant provisions of the POEA-SEC after he received a definitive disability assessment from the company-designated physician, the Court is left without a choice but to uphold the certification issued with respect thereto. **Failure to follow the procedure is fatal and renders conclusive the disability rating issued by the company-designated doctor.**

We stress that the reason behind our favorable rulings on the findings of company-designated physicians is not due to their infallibility; rather, it is assumed that they have "closely monitored and actually treated the seafarer" and, therefore, are in a better position to form an accurate diagnosis and evaluation of the seafarers' degree of disability.

## **8) Labor standards**

- a) Hours of work
  - i) Coverage/exclusions
  - ii) Normal hours of work
    - (1) Compressed work week
    - (2) Telecommuting (R.A. No. 11165)
  - iii) Meal break
  - iv) Waiting time
  - v) Overtime work, overtime pay
  - vi) Night work (R.A. No. 10151)
  - vii) Night shift differential
  - viii) Part-time work
  - ix) Contract for piece of work (see Civil Code)
- b) Wages
  - i) Wage vs. salary
  - ii) Minimum wage
    - (1) Definition

- (2) Setting
- (3) Of workers paid by results
- (4) Of apprentices and learners
- (5) Of persons with disability
- iii) Commissions
- iv) Deductions from wages
- v) Non-diminution of benefits
- vi) Facilities vs. Supplements
- vii) Wage distortion/rectification of wage distortion
- viii) Divisor to determine daily rate
- c) Rest periods
  - i) Weekly rest day
  - ii) Emergency rest day work
- d) Holiday pay/premium pay
  - i) Coverage, exclusions
  - ii) Teachers, piece workers, takay, seasonal workers, seafarers
- e) Leaves
  - i) Service incentive leave
  - ii) Expanded Maternity leave (R.A. No. 11120)
  - iii) Paternity leave
  - iv) Parental leave (R.A. No. 8972)
  - v) Leave for victims of violence against women and their children (R.A. No. 9262)
  - vi) Special leave benefit for women
- f) Service charge
- g) Thirteenth month pay
- h) Women workers
  - i) Magna Carta for Women (R.A. No. 9710)
  - ii) Provisions against discrimination
  - iii) Stipulation against marriage
  - iv) Prohibited acts
  - v) Anti-Sexual Harassment Act (R.A. No. 7877)
- i) Employment of minors
  - i) Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (R.A. No. 7610, as amended by R.A. No. 9231)
- j) Househelpers
  - i) Kasambahay Law (R.A. No. 10361)
  - ii) Civil Code, Articles 1689 to 1699 (Household Service)
- k) Employment of homeworkers
- l) Apprentices and learners
- m) Persons with disability
  - i) Magna Carta for Persons with Disability (R.A. No. 7277)
  - ii) Definition
  - iii) Persons with disability vs. handicapped persons
  - iv) Rights of persons with disability
  - v) Prohibition against discrimination against persons with disability
  - vi) Incentives for employers

**Case/s:****CHARLITO PEÑARANDA, *Petitioner*, -versus- BAGANGA PLYWOOD CORPORATION and HUDSON CHUA, *Respondents*.****G.R. No. 159577, FIRST DIVISION, May 03, 2006, PANGANIBAN, C.J.**

*As shift engineer, petitioner's duties and responsibilities include supplying the required and continuous steam to all consuming units at minimum cost, supervising, checking and monitoring manpower workmanship as well as operation of boiler and accessories, evaluating the performance of machinery and manpower, training new employees for effective and safety while working, and recommending personnel actions such as: promotion, or disciplinary action.*

*The foregoing enumeration illustrates that petitioner was a member of the managerial staff. His duties and responsibilities conform to the definition of a member of a managerial staff under the Implementing Rules.*

*Petitioner supervised the engineering section of the steam plant boiler. His work involved overseeing the operation of the machines and the performance of the workers in the engineering section. This work necessarily required the use of discretion and independent judgment to ensure the proper functioning of the steam plant boiler. As supervisor, petitioner is deemed a member of the managerial staff. On the basis of the foregoing, the Court finds no justification to award overtime pay and premium pay for rest days to petitioner.*

**FACTS:**

Petitioner Charlito Peñaranda was hired as an employee of Baganga Plywood Corporation (BPC) to take charge of the operations and maintenance of its steam plant boiler. In 2001, Peñaranda filed a Complaint for illegal dismissal with money claims against BPC before the NLRC.

Peñaranda alleged that he was employed by Baganga with a monthly salary of P5,000 as Foreman/Boiler Head/Shift Engineer until he was illegally terminated. Furthermore, he was not paid his overtime pay, premium pay for working during holidays/rest days, night shift differentials.

Upon the other hand, BPC alleged that being a managerial employee, Peñaranda is not entitled to overtime pay and if ever he rendered services beyond the normal hours of work and that there was no office order/or authorization for him to do so.

According to the labor arbiter, petitioner's money claims for illegal dismissal was weakened by his quitclaim and admission during the clarificatory conference that he accepted separation benefits, sick and vacation leave conversions and thirteenth month pay. Nonetheless, the labor arbiter found petitioner entitled to overtime pay, premium pay for working on rest days.

Respondents filed an appeal to the NLRC, which deleted the award of overtime pay and premium pay for working on rest days. According to the Commission, petitioner was not entitled to these awards because he was a managerial employee.

**ISSUE:**

Whether Peñaranda is a regular, common employee entitled to monetary benefits under Art. 82 of the Labor Code. (NO)



**RULING:**

Article 82 of the Labor Code exempts managerial employees from the coverage of labor standards. Labor standards provide the working conditions of employees, including entitlement to overtime pay and premium pay for working on rest days. Under this provision, managerial employees are "those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision."

The Implementing Rules of the Labor Code state that managerial employees are those who meet the following conditions:

- (1) Their primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof;
- (2) They customarily and regularly direct the work of two or more employees therein;
- (3) They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight."

The SC disagrees with the NLRC's finding that petitioner was a managerial employee. However, petitioner was a member of the managerial staff, which also takes him out of the coverage of labor standards. Like managerial employees, officers and members of the managerial staff are not entitled to the provisions of law on labor standards. The Implementing Rules of the Labor Code define members of a managerial staff as those with the following duties and responsibilities:

- (1) The primary duty consists of the performance of work directly related to management policies of the employer;
- (2) Customarily and regularly exercise discretion and independent judgment;
- (3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute under general supervision special assignments and tasks; and
- (4) who do not devote more than 20 percent of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2), and (3) above."

As shift engineer, petitioner's duties and responsibilities include supplying the required and continuous steam to all consuming units at minimum cost, supervising, checking and monitoring manpower workmanship as well as operation of boiler and accessories, evaluating the performance of machinery and manpower, training new employees for effective and safety while working, and recommending personnel actions such as: promotion, or disciplinary action.

The foregoing enumeration illustrates that petitioner was a member of the managerial staff. His duties and responsibilities conform to the definition of a member of a managerial staff under the Implementing Rules.

Petitioner supervised the engineering section of the steam plant boiler. His work involved overseeing the operation of the machines and the performance of the workers in the engineering section. This work necessarily required the use of discretion and independent judgment to ensure the proper functioning of the steam plant boiler. As supervisor, petitioner is deemed a member of the managerial staff.

On the basis of the foregoing, the Court finds no justification to award overtime pay and premium pay for rest days to petitioner.

**NATIONAL SUGAR REFINERIES CORPORATION, *Petitioner*, -versus- NATIONAL LABOR RELATIONS COMMISSION and NBSR SUPERVISORY UNION (PACIWU) TUCP, *Respondents*.  
G.R. No. 101761, SECOND DIVISION, March 24, 1993, REGALADO, J.**

*It is the submission of petitioner that while the members of respondent union, as supervisors, may not be occupying managerial positions, they are clearly officers or members of the managerial staff because they meet all the conditions prescribed by law and, hence, they are not entitled to overtime, rest day and holiday pay. It contends that the definition of managerial and supervisory employees under Article 212(m) should be made to apply only to the provisions on Labor Relations, while the right of said employees to the questioned benefits should be considered in the light of the meaning of a managerial employee and of the officers or members of the managerial staff, as contemplated under Article 82 of the Code and Section 2, Rule I, Book III of the implementing rules. In other words, for purposes of forming and joining unions, certification elections, collective bargaining, and so forth, the union members are supervisory employees. In terms of working conditions and rest periods and entitlement to the questioned benefits, however, they are officers or members of the managerial staff, hence they are not entitled thereto.*

*A cursory perusal of the Job Value Contribution Statements of the union members will readily show that these supervisory employees are under the direct supervision of their respective department superintendents and that generally they assist the latter in planning, organizing, staffing, directing, controlling, communicating and in making decisions in attaining the company's set goals and objectives. These supervisory employees are likewise responsible for the effective and efficient operation of their respective departments.*

*The members of respondent union discharge duties and responsibilities which ineluctably qualify them as officers or members of the managerial staff, as defined in Section 2, Rule I, Book III of the Rules to Implement the Labor Code and are, therefore, exempt from the coverage of Article 82. Perforce, they are not entitled to overtime, rest day and holiday pay.*

**FACTS:**

Petitioner National Sugar Refineries Corporation (NASUREFCO) operates three sugar refineries in Bukidnon, Iloilo and Batangas. Private respondent union represents the former supervisors of the NASUREFCO Batangas Sugar Refinery.

In 1988, petitioner implemented a Job Evaluation (JE) Program affecting all employees, from rank--and-file to department heads. As a result, all positions were re-evaluated, and all employees including

the members of respondent union were granted salary adjustments and increases in benefits commensurate to their actual duties and functions.

With the implementation of the JE Program, the following, the members of respondent union were re-classified under job levels which are considered managerial staff for purposes of compensation and benefits, there was an increase in basic pay on the average of 50% of their basic pay prior to the JE Program, longevity pay was increased on top of alignment adjustments; they were entitled to increased company COLA of P225 per month, and there was a grant of P100 allowance for rest day/holiday work.

In 1990, NASUREFCO recognized herein respondent union, which was organized pursuant to RA 6715 allowing supervisory employees to form their own unions, as the bargaining representative of all the supervisory employees at the NASUREFCO Batangas Sugar Refinery.

Two years after the implementation of the JE Program, the members of the union filed a complaint with the executive labor arbiter for non-payment of overtime, rest day and holiday pay allegedly in violation of Article 100 of the Labor Code.

In finding for the members of the union, the labor arbiter ruled that the long span of time during which the benefits were being paid to the supervisors has caused the payment thereof to ripen into a contractual obligation.

On appeal, the NLRC affirmed the decision of the labor arbiter on the ground that the members of union are not managerial employees, as defined under Article 212(m) of the Labor Code and, therefore, they are entitled to overtime, rest day and holiday pay. Respondent NLRC declared that these supervisory employees are merely exercising recommendatory powers subject to the evaluation, review and final action by their department heads; their responsibilities do not require the exercise of discretion and independent judgment; they do not participate in the formulation of management policies nor in the hiring or firing of employees; and their main function is to carry out the ready policies and plans of the corporation.

**ISSUE:**

Whether the union members, being supervisory employees as defined in Article 212(m), Book V of the Labor Code, should be considered as officers or members of the managerial staff under Article 82, Book III of the same Code, and hence are not entitled to overtime, rest day and holiday pay. (YES)

**RULING:**

It is not disputed that the members of respondent union are supervisory employees, as defined under Article 212(m), Book V of the Labor Code on Labor Relations, which reads:

‘Managerial employee’ is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.



Respondent NLRC, in holding that the union members are entitled to overtime, rest day and holiday pay, and in ruling that the latter are not managerial employees, adopted the definition stated in the aforementioned statutory provision.

Petitioner, however, avers that for purposes of determining whether or not the members of respondent union are entitled to overtime, rest day and holiday pay, said employees should be considered as “officers or members of the managerial staff” as defined under Article 82, Book III of the Labor Code on “Working Conditions and Rest Periods” and amplified in Section 2, Rule I, Book III of the Rules to Implement the Labor Code.

It is the submission of petitioner that while the members of respondent union, as supervisors, may not be occupying managerial positions, they are clearly officers or members of the managerial staff because they meet all the conditions prescribed by law and, hence, they are not entitled to overtime, rest day and holiday pay. It contends that the definition of managerial and supervisory employees under Article 212(m) should be made to apply only to the provisions on Labor Relations, while the right of said employees to the questioned benefits should be considered in the light of the meaning of a managerial employee and of the officers or members of the managerial staff, as contemplated under Article 82 of the Code and Section 2, Rule I, Book III of the implementing rules. In other words, for purposes of forming and joining unions, certification elections, collective bargaining, and so forth, the union members are supervisory employees. In terms of working conditions and rest periods and entitlement to the questioned benefits, however, they are officers or members of the managerial staff, hence they are not entitled thereto.

A cursory perusal of the Job Value Contribution Statements of the union members will readily show that these supervisory employees are under the direct supervision of their respective department superintendents and that generally they assist the latter in planning, organizing, staffing, directing, controlling, communicating and in making decisions in attaining the company’s set goals and objectives. These supervisory employees are likewise responsible for the effective and efficient operation of their respective departments.

The members of respondent union discharge duties and responsibilities which ineluctably qualify them as officers or members of the managerial staff, as defined in Section 2, Rule I, Book III of the Rules to Implement the Labor Code and are, therefore, exempt from the coverage of Article 82. Perforce, they are not entitled to overtime, rest day and holiday pay.

The distinction made by respondent NLRC on the basis of whether or not the union members are *managerial employees*, to determine the latter’s entitlement to the questioned benefits, is misplaced and inappropriate. It is admitted that these union members are supervisory employees and this is one instance where the nomenclatures or titles of their jobs conform with the nature of their functions. Hence, to distinguish them from a managerial employee, as defined either under Articles 82 or 212(m) of the Labor Code, is puerile and inefficacious. The controversy actually involved here seeks a determination of whether or not these supervisory employees ought to be considered as *officers or members of the managerial staff*. The distinction, therefore, should have been made along that line and its corresponding conceptual criteria.



**APEX MINING COMPANY, INC., *Petitioner*, -versus- NATIONAL LABOR RELATIONS COMMISSION and SINCLITICA CANDIDO, *Respondents*.  
G.R. No. 94951, FIRST DIVISION, April 22, 1991, GANCAICO, J.**

*Under Rule XIII, Section 1(b), Book 3 of the Labor Code, as amended, the terms "househelper" or "domestic servant" are defined as follows:*

*The term 'househelper' as used herein is synonymous to the term 'domestic servant' and shall refer to any person, whether male or female, who renders services in and about the employer's home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer's family.*

*The foregoing definition clearly contemplates such househelper or domestic servant who is employed in the employer's home to minister exclusively to the personal comfort and enjoyment of the employer's family. Such definition covers family drivers, domestic servants, laundry women, yayas, gardeners, houseboys and other similar househelps.*

*The definition cannot be interpreted to include househelp or laundrywomen working in staffhouses of a company, like petitioner who attends to the needs of the company's guests and other persons availing of said facilities. By the same token, it cannot be considered to extend to the driver, houseboy, or gardener exclusively working in the company, the staffhouses and its premises. They may not be considered as within the meaning of a "househelper" or "domestic servant" as above-defined by law.*

*The criteria is the personal comfort and enjoyment of the family of the employer in the home of said employer. While it may be true that the nature of the work of a househelper, domestic servant or laundrywoman in a home or in a company staffhouse may be similar in nature, the difference in their circumstances is that in the former instance they are actually serving the family while in the latter case, whether it is a corporation or a single proprietorship engaged in business or industry or any other agricultural or similar pursuit, service is being rendered in the staffhouses or within the premises of the business of the employer. In such instance, they are employees of the company or employer in the business concerned entitled to the privileges of a regular employee.*

**FACTS:**

Private respondent Sinclitica Candido was employed by petitioner Apex Mining Company, Inc. in 1973 to perform laundry services at its staff house located in Davao del Norte.

In 1987, while she was attending to her assigned task and she was hanging her laundry, she accidentally slipped and hit her back on a stone. She reported the accident to her immediate supervisor to the personnel office. As a result of the accident she was not able to continue with her work. She was offered the amount of P2,000 which was eventually increased to P5,000 to persuade her to quit her job, but she refused the offer and preferred to return to work. Petitioner did not allow her to return to work and dismissed.

Private respondent filed a request for assistance with the DOLE. After the parties submitted their position papers as required by the labor arbiter, the latter rendered a decision ordering the Apex Mining Company, Inc. to pay the complainant her salary differential, emergency living allowance, 13<sup>th</sup> month pay differential, and separation pay in the total amount of P55,161.

**ISSUE:**

Whether a house helper in the staff houses of an industrial company may be considered a domestic helper. (NO)

**RULING:**

Under Rule XIII, Section 1(b), Book 3 of the Labor Code, as amended, the terms "househelper" or "domestic servant" are defined as follows:

The term 'househelper' as used herein is synonymous to the term 'domestic servant' and shall refer to any person, whether male or female, who renders services in and about the employer's home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer's family.

The foregoing definition clearly contemplates such househelper or domestic servant who is employed in the employer's home to minister exclusively to the personal comfort and enjoyment of the employer's family. Such definition covers family drivers, domestic servants, laundry women, *yayas*, gardeners, houseboys and other similar househelps.

The definition cannot be interpreted to include househelp or laundrywomen working in staffhouses of a company, like petitioner who attends to the needs of the company's guests and other persons availing of said facilities. By the same token, it cannot be considered to extend to the driver, houseboy, or gardener exclusively working in the company, the staffhouses and its premises. They may not be considered as within the meaning of a "househelper" or "domestic servant" as above-defined by law.

The criteria is the personal comfort and enjoyment of the family of the employer in the home of said employer. While it may be true that the nature of the work of a househelper, domestic servant or laundrywoman in a home or in a company staffhouse may be similar in nature, the difference in their circumstances is that in the former instance they are actually serving the family while in the latter case, whether it is a corporation or a single proprietorship engaged in business or industry or any other agricultural or similar pursuit, service is being rendered in the staffhouses or within the premises of the business of the employer. In such instance, they are employees of the company or employer in the business concerned entitled to the privileges of a regular employee.

Petitioner contends that it is only when the househelper or domestic servant is assigned to certain aspects of the business of the employer that such househelper or domestic servant may be considered as such an employee. The Court finds no merit in making any such distinction. The mere fact that the househelper or domestic servant is working within the premises of the business of the employer and in relation to or in connection with its business, as in its staffhouses for its guests or even for its officers and employees, warrants the conclusion that such househelper or domestic servant is and should be considered as a regular employee of the employer and not as a mere family househelper or domestic servant as contemplated in Rule XIII, Section 1 (b), Book 3 of the Labor Code, as amended. Evidence shows that because of an accident which took place while private respondent was performing her laundry services, she was not able to work and was ultimately separated from the service. She is, therefore, entitled to appropriate relief as a regular employee of petitioner. Inasmuch as private respondent appears not to be interested in returning to her work for valid reasons, the payment of separation pay to her is in order.

**AUTO BUS TRANSPORT SYSTEMS, INC., *Petitioner*, -versus- ANTONIO BAUTISTA, *Respondent*.  
G.R. No. 156367, SECOND DIVISION, May 16, 2005, CHICO-NAZARIO, J.**

*It is necessary to stress that the definition of a "field personnel" is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. As discussed above, field personnel are those who regularly perform their duties away from the principal place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. Thus, in order to conclude whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.*

*As observed by the Labor Arbiter and concurred in by the Court of Appeals:*

*It is of judicial notice that along the routes that are plied by these bus companies, there are its inspectors assigned at strategic places who board the bus and inspect the passengers, the punched tickets, and the conductor's reports. There is also the mandatory once-a-week car barn or shop day, where the bus is regularly checked as to its mechanical, electrical, and hydraulic aspects, whether or not there are problems thereon as reported by the driver and/or conductor. They too, must be at specific place as [sic] specified time, as they generally observe prompt departure and arrival from their point of origin to their point of destination. In each and every depot, there is always the Dispatcher whose function is precisely to see to it that the bus and its crew leave the premises at specific times and arrive at the estimated proper time. These, are present in the case at bar. The driver, the complainant herein, was therefore under constant supervision while in the performance of this work. He cannot be considered a field personnel.*

**FACTS:**

Respondent Antonio Bautista was employed by petitioner Auto Bus Transport Systems, Inc. (Autobus) as driver-conductor with travel routes Manila-Tuguegarao via Baguio, Baguio-Tuguegarao via Manila and Manila-Tabuk via Baguio. Respondent was paid on commission basis, 7% of the total gross income per travel, on a twice a month basis.

While respondent was driving along Sta. Fe, Nueva Vizcaya, the bus he was driving accidentally bumped the rear portion of Autobus No. 124, as the latter vehicle suddenly stopped at a sharp curve without giving any warning. He was received a letter of termination from the management of Autobus.

Respondent averred that the accident happened because he was compelled by the management to go back to Roxas, Isabela, although he had not slept for almost twenty-four hours, as he had just arrived in Manila from Roxas, Isabela. Respondent further alleged that he was not allowed to work until he fully paid the cost of repair of the damaged buses and that despite respondent's pleas for reconsideration, the same was ignored by management. After a month, management sent him a letter of termination.

Thus, respondent instituted a Complaint for Illegal Dismissal with Money Claims for nonpayment of 13 month pay and service incentive leave pay against Autobus.



The labor arbiter dismissed the complaint for Illegal Dismissal but ordered Autobus to pay respondent his 13th month pay and his service incentive leave pay for all the years he had been in service with the respondent.

Autobus appealed the decision to the NLRC which deleted the award of 13th month pay to citing Sec 3 of the Rules and Regulations Implementing PD 851 which provides:

Section 3. Employers covered. – The Decree shall apply to all employers except to:

e) employers of those who are paid on purely commission, boundary, or task basis, performing a specific work, irrespective of the time consumed in the performance thereof. xxx."

In other words, the award of service incentive leave pay was maintained. Petitioner thus sought a reconsideration of this aspect, which denied in a Resolution by the NLRC.

Displeased with only the partial grant of its appeal to the NLRC, petitioner sought the review of said decision with the CA which was subsequently denied by the appellate court.

**ISSUE:**

Whether respondent is entitled to service incentive leave. (YES)

**RULING:**

Article 95 of the Labor Code and Section 1(D), Rule V, Book III of the Implementing Rules and Regulations of the Labor Code provide:

**Art. 95. RIGHT TO SERVICE INCENTIVE LEAVE**

(a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

**Book III, Rule V: SERVICE INCENTIVE LEAVE**

**SECTION 1.** Coverage. – This rule shall apply to all employees except:

(d) Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid in a fixed amount for performing work irrespective of the time consumed in the performance thereof; . . .

A careful perusal of said provisions of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code to apply only to those employees not explicitly excluded by Section 1 of Rule V. According to the Implementing Rules, Service Incentive Leave shall not apply to employees classified as "field personnel." The phrase "other employees whose performance is unsupervised by the employer" must not be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty."



The same is true with respect to the phrase "*those who are engaged on task or contract basis, purely commission basis.*" Said phrase should be related with "field personnel," applying the rule on *ejusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow. Hence, employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.

Therefore, petitioner's contention that respondent is not entitled to the grant of service incentive leave just because he was paid on purely commission basis is misplaced. What must be ascertained in order to resolve the issue of propriety of the grant of service incentive leave to respondent is whether or not he is a field personnel.

According to Article 82 of the Labor Code, "field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. This definition is further elaborated in the *Bureau of Working Conditions (BWC), Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association* which states that:

As a general rule, [field personnel] are those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. *If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employee.*

The definition of a "field personnel" is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. As discussed above, field personnel are those who regularly perform their duties away from the principal place of business of the employer *and whose actual hours of work in the field cannot be determined with reasonable certainty.* Thus, in order to conclude whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.

As observed by the Labor Arbiter and concurred in by the Court of Appeals:

It is of judicial notice that along the routes that are plied by these bus companies, there are its inspectors assigned at strategic places who board the bus and inspect the passengers, the punched tickets, and the conductor's reports. There is also the mandatory once-a-week car barn or shop day, where the bus is regularly checked as to its mechanical, electrical, and hydraulic aspects, whether or not there are problems thereon as reported by the driver and/or conductor. They too, must be at specific place as [sic] specified time, as they generally observe prompt departure and arrival from their point of origin to their point of destination. In each and every depot, there is always the Dispatcher whose function is precisely to see to it that the bus and its crew leave the premises at specific times and arrive at the estimated proper time. These, are present in the case at bar. The driver, the complainant herein, was therefore under constant supervision while in the performance of this work. He cannot be considered a field personnel.

We agree in the above disquisition. Therefore, as correctly concluded by the appellate court, respondent is not a field personnel but a regular employee who performs tasks usually necessary and desirable to the usual trade of petitioner's business. Accordingly, respondent is entitled to the grant of service incentive leave.

**LABOR CONGRESS OF THE PHILIPPINES, for and in behalf of its members, *Petitioner*, -versus  
- NATIONAL LABOR RELATIONS COMMISSION, EMPIRE FOOD PRODUCTS, its  
Proprietor/President & Manager, MR. GONZALO KEHYENG and MRS. EVELYN KEHYENG,  
*Respondents*.**

**G.R. No. 123938, FIRST DIVISION, May 21, 1998, DAVIDE, J.:**

*As to the other benefits, namely, holiday pay, premium pay, 13th month pay and service incentive leave which the Labor Arbiter failed to rule on but which petitioners prayed for in their complaint, we hold that petitioners are so entitled to these benefits. Three (3) factors lead us to conclude that petitioners, although piece-rate workers, were regular employees of private respondents. First, as to the nature of petitioners' tasks, their job of repacking snack food was necessary or desirable in the usual business of private respondents, who were engaged in the manufacture and selling of such food products; second, petitioners worked for private respondents throughout the year, their employment not having been dependent on a specific project or season; and third, the length of time that petitioners worked for private respondents. Thus, while petitioners' mode of compensation was on a "per piece basis," the status and nature of their employment was that of regular employees.*

**FACTS:**

Petitioners were rank-and-file employees of respondent Empire Food Products, which hired them on various dates. Petitioners filed against private respondents a complaint for payment of money claim[s] and for violation of labor standard[s] laws. They also filed a petition for direct certification of petitioner Labor Congress of the Philippines as their bargaining representative.

On October 23, 1990, petitioners represented by LCP President Benigno B. Navarro, Sr. and private respondents Gonzalo Kehyeng and Evelyn Kehyeng in behalf of Empire Food Products, Inc. entered into a Memorandum of Agreement. Mediator Arbiter Antonio Cortez approved the memorandum of agreement and certified LCP "as the sole and exclusive bargaining agent among the rank-and-file employee of Empire Food Products for purposes of collective bargaining with respect to wages, hours of work and other terms and conditions of employment".

On January 23, 1991, petitioners filed a complaint docketed as NLRC Case No. RAB-III-01-1964-91 against private respondents for Unfair Labor Practice, Union busting, violation of the Memorandum of Agreement, Underpayment of Wages, and actual, moral and exemplary damages.

Labor Arbiter absolved private respondents of the charges, but ordered the reinstatement of the individual complainants. On appeal, the National Labor Relations Commission vacated the Decision and remanded the case to the Labor Arbiter for further proceedings.

In a Decision dated July 27, 1994, Labor Arbiter Santos made the following determination:

"Complainants failed to present with definiteness and clarity the particular act or acts constitutive of unfair labor practice.

As regards the issue of harassments [*sic*], threats and interference with the rights of employees to self-organization which is actually an ingredient of unfair labor practice, complainants failed to specify what type of threats or intimidation was committed and who committed the same.

Anent the charge that there was underpayment of wages, the evidence points to the contrary.

Finally, the claim for moral and exemplary damages has no leg to stand on when no malice, bad faith or fraud was ever proven to have been perpetuated by respondents.”

On appeal, the NLRC, in its Resolution dated 29 March 1995, affirmed *in toto* the decision of Labor Arbiter Santos.

**ISSUE:**

Whether or not petitioners should be reinstated from the date of their dismissal up to the time of their reinstatement, with backwages, statutory benefits, damages and attorney's fees.

**RULING:**

Invocation of the general rule that factual findings of the NLRC bind this Court is unavailing under the circumstances. Initially, we are unable to discern any compelling reason justifying the Labor Arbiter's *volte face* from his 14 April 1992 decision reinstating petitioners to his diametrically opposed 27 July 1994 decision, when in both instances, he had before him substantially the same evidence. Neither do we find the 29 March 1995 NLRC resolution to have sufficiently discussed the facts so as to comply with the standard of substantial evidence.

Apparently, the Labor Arbiter perceived that if not for petitioners, he would not have fallen victim to this stinging rebuke at the hands of the NLRC. Thus does it appear to us that the Labor Arbiter, in concluding in his 27 July 1994 Decision that petitioners abandoned their work, was moved by, at worst, spite, or at best, lackadaisically glossed over petitioner's evidence. On this score, we find the following observations of the OSG most persuasive:

“In finding that petitioner employees abandoned their work, the Labor Arbiter and the NLRC relied on the testimony of Security Guard Rolando Cairo that on January 21, 1991, petitioners refused to work. As a result of their failure to work, the cheese curls ready for repacking on said date were spoiled.

The failure to work for one day, which resulted in the spoilage of cheese curls does not amount to abandonment of work. In fact two (2) days after the reported abandonment of work or on January 23, 1991, petitioners filed a complaint for, among others, unfair labor practice, illegal lockout and/or illegal dismissal.”

It may likewise be stressed that the burden of proving the existence of just cause for dismissing an employee, such as abandonment, rests on the employer, a burden private respondents failed to discharge. Private respondents, moreover, in considering petitioners' employment to have been terminated by abandonment, violated their rights to security of tenure and constitutional right to due process in not even serving them with a written notice of such termination.

Petitioners are therefore entitled to reinstatement with full back wages pursuant to Article 279 of the Labor Code, as amended by R.A. No. 6715. Nevertheless, the records disclose that taking into



account the number of employees involved, the length of time that has lapsed since their dismissal, and the perceptible resentment and enmity between petitioners and private respondents which necessarily strained their relationship, reinstatement would be impractical and hardly promotive of the best interests of the parties. In lieu of reinstatement then, separation pay at the rate of one month for every year of service, with a fraction of at least six (6) months of service considered as one (1) year, is in order.

That being said, the amount of back wages to which each petitioner is entitled, however, cannot be fully settled at this time. Petitioners, as piece-rate workers having been paid by the piece, there is need to determine the varying degrees of production and days worked by each worker. Clearly, this issue is best left to the National Labor Relations Commission.

As to the other benefits, namely, holiday pay, premium pay, 13th month pay and service incentive leave which the Labor Arbiter failed to rule on but which petitioners prayed for in their complaint, we hold that petitioners are so entitled to these benefits. Three (3) factors lead us to conclude that petitioners, although piece-rate workers, were regular employees of private respondents. First, as to the nature of petitioners' tasks, their job of repacking snack food was necessary or desirable in the usual business of private respondents, who were engaged in the manufacture and selling of such food products; second, petitioners worked for private respondents throughout the year, their employment not having been dependent on a specific project or season; and third, the length of time that petitioners worked for private respondents. Thus, while petitioners' mode of compensation was on a "per piece basis," the status and nature of their employment was that of regular employees.

The Rules Implementing the Labor Code exclude certain employees from receiving benefits such as nighttime pay, holiday pay, service incentive leave and 13th month pay, *inter alia*, "field personnel and other employees whose time and performance is unsupervised by the employer, including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof." Plainly, petitioners as piece-rate workers do not fall within this group. As mentioned earlier, not only did petitioners labor under the control of private respondents as their employer, likewise did petitioners toil throughout the year with the fulfillment of their quota as supposed basis for compensation. Further, in Section 8 (b), Rule IV, Book III which we quote hereunder, piece workers are specifically mentioned as being entitled to holiday pay.

*Sec. 8. Holiday pay of certain employees. –*

(b) Where a covered employee is paid by results or output, such as payment on piece work, his holiday pay shall not be less than his average daily earnings for the last seven (7) actual working days preceding the regular holiday: *Provided, however*, that in no case shall the holiday pay be less than the applicable statutory minimum wage rate.

In addition, the Revised Guidelines on the Implementation of the 13th Month Pay Law, in view of the modifications to P.D. No. 851 <sup>19</sup> by Memorandum Order No. 28, clearly exclude the employer of piece rate workers from those exempted from paying 13th month pay

The Revised Guidelines as well as the Rules and Regulations identify those workers who fall under the piece-rate category as those who are paid a standard amount for every piece or unit of work produced that is more or less regularly replicated, without regard to the time spent in producing the same.



As to overtime pay, the rules, however, are different. According to Sec. 2(e), Rule I, Book III of the Implementing Rules, workers who are paid by results including those who are paid on piece-work, *takay, pakiao*, or task basis, if their output rates are in accordance with the standards prescribed under Sec. 8, Rule VII, Book III, of these regulations, or where such rates have been fixed by the Secretary of Labor in accordance with the aforesaid section, are not entitled to receive overtime pay. Here, private respondents did not allege adherence to the standards set forth in Sec. 8 nor with the rates prescribed by the Secretary of Labor. As such, petitioners are beyond the ambit of exempted persons and are therefore entitled to overtime pay. Once more, the National Labor Relations Commission would be in a better position to determine the exact amounts owed petitioners, if any.

**AVELINO LAMBO and VICENTE BELOCURA, *Petitioners*, -versus – NATIONAL LABOR RELATIONS COMMISSION and J.C. TAILOR SHOP and/or JOHNNY CO., *Respondents*.  
G.R. No. 111042, SECOND DIVISION, October 26, 1999, MENDOZA, J.:**

*The mere fact that they were paid on a piece-rate basis does not negate their status as regular employees of private respondents. The term "wage" is broadly defined in Art. 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations. Nor does the fact that petitioners are not covered by the SSS affect the employer-employee relationship.*

*Indeed, the following factors show that petitioners, although piece-rate workers, were regular employees of private respondents: (1) within the contemplation of Art. 280 of the Labor Code, their work as tailors was necessary or desirable in the usual business of private respondents, which is engaged in the tailoring business; (2) petitioners worked for private respondents throughout the year, their employment not being dependent on a specific project or season; and, (3) petitioners worked for private respondents for more than one year.*

**FACTS:**

Petitioners Avelino Lambo and Vicente Belocura were employed as tailors by private respondents J.C. Tailor Shop and/or Johnny Co. They worked from 8:00 a.m. to 7:00 p.m. daily, including Sundays and holidays. As in the case of the other 100 employees of private respondents, petitioners were paid on a piece-work basis, according to the style of suits they made. Regardless of the number of pieces they finished in a day, they were each given a daily pay of at least P64.00.

On January 17, 1989, petitioners filed a complaint against private respondents for illegal dismissal and sought recovery of overtime pay, holiday pay, premium pay on holiday and rest day, service incentive leave pay, separation pay, 13th month pay, and attorney's fees.

Labor Arbiter Jose G. Gutierrez found private respondents guilty of illegal dismissal and accordingly ordered them to pay petitioners' claims. On appeal by private respondents, the NLRC reversed the decision of the Labor Arbiter. It found that petitioners had not been dismissed from employment but merely threatened with a closure of the business if they insisted on their demand for a "straight payment of their minimum wage,"

**ISSUE:**

Whether petitioners are entitled to overtime pay, holiday pay, premium pay on holiday and rest day, service incentive leave pay, separation pay, 13th month pay, and attorney's fees. (YES)

**RULING:**

There is no dispute that petitioners were employees of private respondents although they were paid not on the basis of time spent on the job but according to the quantity and the quality of work produced by them. There are two categories of employees paid by results: (1) those whose time and performance are supervised by the employer. (Here, there is an element of control and supervision over the manner as to how the work is to be performed. A piece-rate worker belongs to this category especially if he performs his work in the company premises.); and (2) those whose time and performance are unsupervised. (Here, the employer's control is over the result of the work. Workers on *pakyao* and *takay* basis belong to this group.) Both classes of workers are paid per unit accomplished. Piece-rate payment is generally practiced in garment factories where work is done in the company premises, while payment on *pakyao* and *takay* basis is commonly observed in the agricultural industry, such as in sugar plantations where the work is performed in bulk or in volumes difficult to quantify. Petitioners belong to the first category, *i.e.*, supervised employees.

The mere fact that they were paid on a piece-rate basis does not negate their status as regular employees of private respondents. The term "wage" is broadly defined in Art. 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations. Nor does the fact that petitioners are not covered by the SSS affect the employer-employee relationship.

Indeed, the following factors show that petitioners, although piece-rate workers, were regular employees of private respondents: (1) within the contemplation of Art. 280 of the Labor Code, their work as tailors was necessary or desirable in the usual business of private respondents, which is engaged in the tailoring business; (2) petitioners worked for private respondents throughout the year, their employment not being dependent on a specific project or season; and, (3) petitioners worked for private respondents for more than one year.

Private respondents contend, however, that petitioners refused to report for work after learning that the J.C. Tailoring and Dress Shop Employees Union had demanded their (petitioners') dismissal for conduct unbecoming of employees. To justify a finding of abandonment of work, there must be proof of a deliberate and unjustified refusal on the part of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment. Mere absence is not sufficient. It must be accompanied by manifest acts unerringly pointing to the fact that the employee simply does not want to work anymore. Private respondents failed to discharge this burden. Other than the self-serving declarations in the affidavits of their two employees, private respondents did not adduce proof of overt acts of petitioners showing their intention to abandon their work.

As petitioners were illegally dismissed, they are entitled to reinstatement with backwages. The Labor Arbiter correctly ordered private respondents to give separation pay. Considerable time has lapsed since petitioners' dismissal, so that reinstatement would now be impractical and hardly in the best interest of the parties. In lieu of reinstatement, separation pay should be awarded to petitioners at

the rate of one month salary for every year of service, with a fraction of at least six (6) months of service being considered as one (1) year.

The awards for overtime pay, holiday pay and 13th month pay are in accordance with our finding that petitioners are regular employees, although paid on a piece-rate basis.

**THE PROVINCIAL BUS OPERATORS ASSOCIATION OF THE PHILIPPINES (PBOAP), THE SOUTHERN LUZON BUS OPERATORS ASSOCIATION, INC. (SO-LUBOA), THE INTER CITY BUS OPERATORS ASSOCIATION (INTERBOA), AND THE CITY OF SAN JOSE DEL MONTE BUS OPERATORS ASSOCIATION (CSJDMBOA), *Petitioners*, -versus - DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) AND LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB), *Respondents*.  
G.R. No. 202275, EN BANC, July 17, 2018, LEONEN, J.:**

*Here, petitioners claim that Department Order No. 118-12 and Memorandum Circular No. 2012-001 violate bus operators' right to non-impairment of obligation of contracts because these issuances force them to abandon their "time-honored" employment contracts or arrangements with their drivers and conductors. Further, these issuances violate the terms of the franchise of bus operators by imposing additional requirements after the franchise has been validly issued.*

*Petitioners' arguments deserve scant consideration. For one, the relations between capital and labor are not merely contractual as provided in Article 1700 of the Civil Code. By statutory declaration, labor contracts are impressed with public interest and, therefore, must yield to the common good. Labor contracts are subject to special laws on wages, working conditions, hours of labor, and similar subjects. In other words, labor contracts are subject to the police power of the State.*

*As previously discussed on the part on due process, Department Order No. 118-12 was issued to grant bus drivers and conductors minimum wages and social welfare benefits. Further, petitioners repeatedly admitted that in paying their bus drivers and conductors, they employ the boundary system or commission basis, payment schemes which cause drivers to drive recklessly. Not only does Department Order No. 118-12 aim to uplift the economic status of bus drivers and conductors; it also promotes road and traffic safety.*

**FACTS:**

To ensure road safety and address the risk-taking behavior of bus drivers as its declared objective, the LTFRB issued Memorandum Circular No. 2012-001 requiring "all Public Utility Bus (PUB) operators ... to secure Labor Standards Compliance Certificates" under pain of revocation of their existing certificates of public convenience or denial of an application for a new certificate.

Five (5) days later or on January 9, 2012, the DOLE issued Department Order No. 118-12, elaborating on the part-fixed-part-performance-based compensation system referred to in the LTFRB Memorandum Circular No. 2012-001. Department Order No. 118-12, among others, provides for the rule for computing the fixed and the performance-based component of a public utility bus driver's or conductor's wage.

On January 28, 2012, Atty. Emmanuel A. Mahipus, on behalf of the Provincial Bus Operators Association of the Philippines, Integrated Metro Manila Bus Operators Association, Inter City Bus Operators Association, the City of San Jose Del Monte Bus Operators Association, and Pro-Bus, wrote

to then Secretary of Labor and Employment Rosalinda Dimapilis-Baldoz, requesting to defer the implementation of Department Order No. 118-12. The request, however, was not acted upon.

Meanwhile, on February 27, 2012 and in compliance with Rule III, Section 3 of Department Order No. 118-12, the National Wages and Productivity Commission issued NWPC Guidelines No. 1 to serve as Operational Guidelines on Department Order No. 118-12. NWPC Guidelines No. 1 suggested formulae for computing the fixed-based and the performance-based components of a bus driver's or conductor's wage.

On July 4, 2012, petitioners filed before this Court a Petition with Urgent Request for Immediate Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction, impleading the DOLE and the LTFRB as respondents.

Petitioners assail the constitutionality of Department Order No. 118-12 and Memorandum Circular No. 2012-001, arguing that these issuances violate petitioners' rights to non-impairment of obligation of contracts, due process of law, and equal protection of the laws. Particularly with respect to Department Order No. 118-12, its provisions on the payment of part-fixed-part-performance-based wage allegedly impair petitioners' obligations under their existing collective bargaining agreements where they agreed with their bus drivers and conductors on a commission or boundary basis. Respondents counter that petitioners have no legal standing to file the present Petition considering that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are directed against bus operators, not against associations of bus operators such as petitioners.

**ISSUES:**

- (I) Whether or not the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001 deprive public utility bus operators of their right to due process of law. (NO)
- (II) Whether or not the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001 impair public utility bus operators' right to non-impairment of obligation of contracts. (NO)

**RULING:**

(I)

It is undisputed that the DOLE created a Technical Working Group that conducted several meetings and consultations with interested sectors before promulgating Department Order No. 118-12. Among those invited were bus drivers, conductors, and operators with whom officials of the DOLE conducted focused group discussions. The conduct of these discussions more than complied with the requirements of procedural due process.

Department Order No. 118-12 and Memorandum Circular No. 2012-001 are reasonable and are valid police power issuances. The pressing need for Department Order No. 118-12 is obvious considering petitioners' admission that the payment schemes prior to the Order's promulgation consisted of the "payment by results," the "commission basis," or the boundary system. These payment schemes do not guarantee the payment of minimum wages to bus drivers and conductors. There is also no mention of payment of social welfare benefits to bus drivers and conductors under these payment schemes which have allegedly been in effect since "time immemorial."



There can be no meaningful implementation of Department Order No. 118-12 if violating it has no consequence. As such, the LTFRB was not unreasonable when it required bus operators to comply with the part-fixed-part-performance-based payment scheme under pain of revocation of their certificates of public convenience. The LTFRB has required applicants or current holders of franchises to comply with labor standards as regards their employees, and bus operators must be reminded that certificates of public convenience are not property. Certificates of public convenience are franchises always subject to amendment, repeal, or cancellation. Additional requirements may be added for their issuance, and there can be no violation of due process when a franchise is cancelled for non-compliance with the new requirement.

An equally important reason for the issuance of Department Order No. 118-12 and Memorandum Circular No. 2012-001 is to ensure "road safety" by eliminating the "risk-taking behaviors" of bus drivers and conductors. This Court in *Hernandez v. Dolor* observed that the boundary system "place[s] the riding public at the mercy of reckless and irresponsible drivers—reckless because the measure of their earnings depends largely upon the number of trips they make and, hence, the speed at which they drive."

In sum, Department Order No. 118-12 and Memorandum Circular No. 2012-001 are in the nature of social legislations to enhance the economic status of bus drivers and conductors, and to promote the general welfare of the riding public. They are reasonable and are not violative of due process.

(II)

Here, petitioners claim that Department Order No. 118-12 and Memorandum Circular No. 2012-001 violate bus operators' right to non-impairment of obligation of contracts because these issuances force them to abandon their "time-honored" employment contracts or arrangements with their drivers and conductors. Further, these issuances violate the terms of the franchise of bus operators by imposing additional requirements after the franchise has been validly issued.

Petitioners' arguments deserve scant consideration. For one, the relations between capital and labor are not merely contractual as provided in Article 1700 of the Civil Code. By statutory declaration, labor contracts are impressed with public interest and, therefore, must yield to the common good. Labor contracts are subject to special laws on wages, working conditions, hours of labor, and similar subjects. In other words, labor contracts are subject to the police power of the State.

As previously discussed on the part on due process, Department Order No. 118-12 was issued to grant bus drivers and conductors minimum wages and social welfare benefits. Further, petitioners repeatedly admitted that in paying their bus drivers and conductors, they employ the boundary system or commission basis, payment schemes which cause drivers to drive recklessly. Not only does Department Order No. 118-12 aim to uplift the economic status of bus drivers and conductors; it also promotes road and traffic safety.

**SAN MIGUEL BREWERY, INC., *Petitioner*, -versus -  
DEMOCRATIC LABOR ORGANIZATION, ET AL, *Respondents*.  
G.R. No. L-18353, EN BANC, July 31, 1963, BAUTISTA ANGELO, J.:**

*We are in accord with this view, for in our opinion the Eight-Hour Labor Law only has application where an employee or laborer is paid on a monthly or daily basis, or is paid a monthly or daily compensation, in which case, if he is made to work beyond the requisite period of 8 hours, he should be paid the additional compensation prescribed by law. This law has no application when the employee or laborer is paid on a piece-work, "pakiao", or commission basis, regardless of the time employed. The philosophy*

*behind this exemption is that his earnings in the form of commission based on the gross receipts of the day. His participation depends upon his industry so that the more hours he employs in the work the greater are his gross returns and the higher his commission.*

*The record shows that these employees during the period of their employment were paid sales commission ranging from P30, P40, sometimes P60, P70, to sometimes P90, P100 and P109 a month depending on the volume of their sales and their rate of commission per case. And so, insofar as the extra work they perform, they can be considered as employees paid on piece work, "pakiao", or commission basis. The Department of Labor, called upon to implement the Eight-Hour Labor Law, is of this opinion when on December 9, 1957 it made the ruling on a query submitted to it, thru the Director of the Bureau of Labor Standards, to the effect that field sales personnel receiving regular monthly salaries, plus commission, are not subject to the Eight-Hour Labor Law.*

**FACTS:**

On January 27, 1955, the Democratic Labor Association filed complaint against the San Miguel Brewery, Inc. embodying 12 demands for the betterment of the conditions of employment of its members. The company filed its answer to the complaint specifically denying its material averments and answering the demands point by point. The company asked for the dismissal of the complaint.

At the hearing held sometime in September, 1955, the union manifested its desire to confine its claim to its demands for overtime, night-shift differential pay, and attorney's fees, although it was allowed to present evidence on service rendered during Sundays and holidays, or on its claim for additional separation pay and sick and vacation leave compensation.

After the case had been submitted for decision, Presiding Judge Bautista, who was commissioned to receive the evidence, rendered decision expressing his disposition with regard to the points embodied in the complaint on which evidence was presented.

The demands for the application of the Minimum Wage Law to workers paid on "pakiao" basis, payment of accumulated vacation and sick leave and attorney's fees, as well as the award of additional separation pay, were either dismissed, denied, or set aside.

Anent the finding of the court *a quo*, as affirmed by the Court of Industrial Relations, to the effect that outside or field sales personnel are entitled to the benefits of the Eight-Hour Labor Law, the pertinent facts are as follows:

"After the morning roll call, the employees leave the plant of the company to go on their respective sales routes. They do not have a daily time record. The company never require them to start their work as outside sales personnel earlier than the above schedule.

The sales routes are so planned that they can be completed within 8 hours at most, or that the employees could make their sales on their routes within such number of hours variable in the sense that sometimes they can be completed in less than 8 hours.

The moment these outside or field employees leave the plant and while in their sales routes they are on their own, and often times when the sales are completed, or when making short trip deliveries only, they go back to the plant, load again, and make another round of sales. These employees receive monthly salaries and sales commissions in variable amounts. The amount of compensation they

receive is uncertain depending upon their individual efforts or industry. Besides the monthly salary, they are paid sales commission.

It is contended that since the employees concerned are paid a commission on the sales they make outside of the required 8 hours besides the fixed salary that is paid to them, the Court of Industrial Relations erred in ordering that they be paid an overtime compensation as required by the Eight-Hour Labor Law for the reason that the commission they are paid already takes the place of such overtime compensation. His situation, the company contends, can be likened to an employee who is paid on piece-work, "pakiao", or commission basis, which is expressly excluded from the operation of the Eight-Hour Labor Law.

**ISSUE:**

Whether or not the workers are entitled to the benefits of the Eight-Hour Labor Law.

**RULING:**

We are in accord with this view, for in our opinion the Eight-Hour Labor Law only has application where an employee or laborer is paid on a monthly or daily basis, or is paid a monthly or daily compensation, in which case, if he is made to work beyond the requisite period of 8 hours, he should be paid the additional compensation prescribed by law. This law has no application when the employee or laborer is paid on a piece-work, "pakiao", or commission basis, regardless of the time employed. The philosophy behind this exemption is that his earnings in the form of commission based on the gross receipts of the day. His participation depends upon his industry so that the more hours he employs in the work the greater are his gross returns and the higher his commission.

The record shows that these employees during the period of their employment were paid sales commission ranging from P30, P40, sometimes P60, P70, to sometimes P90, P100 and P109 a month depending on the volume of their sales and their rate of commission per case. And so, insofar as the extra work they perform, they can be considered as employees paid on piece work, "pakiao", or commission basis. The Department of Labor, called upon to implement the Eight-Hour Labor Law, is of this opinion when on December 9, 1957 it made the ruling on a query submitted to it, thru the Director of the Bureau of Labor Standards, to the effect that field sales personnel receiving regular monthly salaries, plus commission, are not subject to the Eight-Hour Labor Law.

We are, therefore, of the opinion that the industrial court erred in holding that the Eight-Hour Labor Law applies to the employees composing the outside service force and in ordering that they be paid the corresponding additional compensation.

The remaining point to be determined refers to the claim for pay for Sundays and holidays for service performed by some claimants who were watchmen or security guards. It is contended that these employees are not entitled to extra pay for work done during these days because they are paid on a monthly basis and are given one day off which may take the place of the work they may perform either on Sunday or any holiday.

We disagree with this claim because it runs counter to law. Section 4 of Commonwealth Act No. 444 expressly provides that no person, firm or corporation may compel an employee or laborer to work during Sundays and legal holidays unless he is paid an additional sum of 25% of his regular compensation. This *proviso* is mandatory, regardless of the nature of compensation. The only exception is with regard to public utilities who perform some public service.



**SIME DARBY PILIPINAS, INC. petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION) and SIME DARBY SALARIED EMPLOYEES ASSOCIATION (ALU-TUCP), respondents.**  
**G.R. No. 119205, FIRST DIVISION, April 15, 1998, BELLOSILLO, J.**

*In the instant case, SDP cites as reason for the adjustment **the efficient conduct of its business operations and its improved production.** It rationalizes that while the old work schedule included a 30min paid lunch break, the employees could be called upon to do jobs during that period as they were “on call.” Even if denominated as lunch break, this period could very well be considered as working time because the factory employees were required to work if necessary and were paid accordingly for working. With the new work schedule, the employees are now given a 1hr lunch break without any interruption from their employer.*

**Every business enterprise endeavors to increase its profits. In the process, it may devise means to attain that goal.** Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. Management retains the prerogative, whenever exigencies of the service so require, to change the working hours of its employees. **So long as such prerogative is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold such exercise.**

**FACTS:**

Sime Darby Pilipinas, Inc. (SDP) is engaged in the manufacture of automotive tires, tubes and other rubber products. Sime Darby Salaried Employees Association (ALU-TUCP) is an association of monthly salaried employees of petitioner at its Marikina factory. Prior to the issue, all company factory workers in Marikina including members of ALU-TUCP worked from 7:45am-3:45pm with a 30min. paid “on call” lunch break.

Subsequently, SDP issued a memorandum to all factory-based employees advising all its monthly salaried employees in its Marikina Tire Plant, except those in the Warehouse and Quality Assurance Department working on shifts, a change in work schedule.

Their work will start from 7:45am-4:45 wherein coffee break time will be 10mins only anytime and lunch break will be between 12:00nn-1:00pm. ALU-TUCP felt affected adversely by the change in the work schedule and discontinuance of the 30-minute paid “on call” lunch break, it filed on behalf of its members a complaint with the LA for unfair labor practice, discrimination and evasion of liability.

The LA dismissed the complaint on the ground that the change in the work schedule and the elimination of the 30-minute paid lunch break of the factory workers constituted a valid exercise of management prerogative and that the new work schedule, break time and one-hour lunch break did not have the effect of diminishing the benefits granted to factory workers as the working time did not exceed 8 hours.

**ISSUE:**

Whether or not the act of management in revising the work schedule of its employees and discarding their paid lunch break constitutive of ULP. (NO)



**RULING:**

The right to fix the work schedules of the employees rests principally on their employer.

In the instant case, SDP cites as reason for the adjustment **the efficient conduct of its business operations and its improved production**. It rationalizes that while the old work schedule included a 30min paid lunch break, the employees could be called upon to do jobs during that period as they were “on call.” Even if denominated as lunch break, this period could very well be considered as working time because the factory employees were required to work if necessary and were paid accordingly for working. With the new work schedule, the employees are now given a 1hr lunch break without any interruption from their employer.

For a full 1hr undisturbed lunch break, the employees can freely and effectively use this hour not only for eating but also for their rest and comfort which are conducive to more efficiency and better performance in their work. Since the employees are no longer required to work during this 1hr lunch break, there is no more need for them to be compensated for this period.

The Court agrees with the LA that the new work schedule fully complies with the daily work period of 8hrs without violating the LC. Besides, the new schedule applies to all employees in the factory similarly situated whether they are union members or not.

The case does not pertain to any controversy involving discrimination of employees but only the issue of whether the change of work schedule, which management deems necessary to increase production, constitutes ULP. As shown by the records, the change effected by management with regard to working time is made to apply to all factory employees engaged in the same line of work whether or not they are members of ALU-TUCP. Hence, it cannot be said that the new scheme adopted by management prejudices the right of ALUTUCP to self-organization.

**Every business enterprise endeavors to increase its profits. In the process, it may devise means to attain that goal.** Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. Management retains the prerogative, whenever exigencies of the service so require, to change the working hours of its employees. **So long as such prerogative is exercised in good faith for the advancement of the employer’s interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold such exercise.**

**LINTON COMMERCIAL CO., INC. and DESIREE ONG, *Petitioners*, vs. ALEX A. HELLERA, FRANCISCO RACASA, DANTE ESCARLAN, et al., *Respondents*.  
G.R. No. 163147, SECOND DIVISION, October 10, 2007, TINGA, J.**

*Certainly, management has the prerogative to come up with measures to ensure profitability or loss minimization. However, such privilege is not absolute. Management prerogative must be exercised in good faith and with due regard to the rights of labor. As previously stated, financial losses must be shown before a company can validly opt to reduce the work hours of its employees. However, to date, no definite guidelines have yet been set to determine whether the alleged losses are sufficient to justify the reduction of work hours.*

*If the standards set in determining the justifiability of financial losses under Article 283 (i.e., retrenchment) or Article 286 (i.e., suspension of work) of the Labor Code were to be considered, petitioners would end up failing to meet the standards. On the one hand, Article 286 applies only when*

*there is a bona fide suspension of the employer's operation of a business or undertaking for a period not exceeding six (6) months. Records show that Linton **continued its business operations during the effectivity of the compressed workweek, which spanned more than the maximum period.** On the other hand, for retrenchment to be justified, any claim of actual or potential business losses must satisfy the following standards: **(1)** the losses incurred are substantial and not de minimis; **(2)** the losses are actual or reasonably imminent; **(3)** the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and **(4)** the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence. Linton failed to comply with these standards.*

#### **FACTS:**

On 17 December 1997, Linton issued a memorandum addressed to its employees informing them of the company's decision to suspend its operations from 18 December 1997 to 5 January 1998 due to the currency crisis that affected its business operations. Linton submitted an establishment termination report to the DOLE regarding the temporary closure of the establishment covering the said period. The company's operation was to resume on 6 January 1998.

On 7 January 1997, Linton issued another memorandum informing them that effective 12 January 1998, it would implement a new compressed workweek of three (3) days on a rotation basis. In other words, each worker would be working on a rotation basis for three working days only instead for six days a week.

On the same day, Linton submitted an establishment termination report concerning the rotation of its workers. Linton proceeded with the implementation of the new policy without waiting for its approval by DOLE. Aggrieved, sixty-eight (68) workers (workers) filed a Complaint for illegal reduction of workdays.

#### **ISSUE:**

Whether or not there was an illegal reduction of work when Linton implemented a compressed workweek by reducing from six to three the number of working days with the employees working on a rotation basis. (YES)

#### **RULING:**

The compressed workweek arrangement was unjustified and illegal. The Bureau of Working Conditions of the DOLE, moreover, released a bulletin providing for in determining when an employer can validly reduce the regular number of working days. The said bulletin states that a reduction of the number of regular working days is valid where the arrangement is resorted to by the employer to prevent serious losses due to causes beyond his control, such as when there is a substantial slump in the demand for his goods or services or when there is lack of raw materials.

Although the bulletin stands more as a set of directory guidelines than a binding set of implementing rules, it has one main consideration, consistent with the ruling in *Philippine Graphic Arts Inc.*, in determining the validity of reduction of working hours — that the company was suffering from losses.

Certainly, **management has the prerogative to come up with measures to ensure profitability or loss minimization. However, such privilege is not absolute. Management prerogative must**

**be exercised in good faith and with due regard to the rights of labor.** As previously stated, financial losses must be shown before a company can validly opt to reduce the work hours of its employees. However, to date, no definite guidelines have yet been set to determine whether the alleged losses are sufficient to justify the reduction of work hours.

If the standards set in determining the justifiability of financial losses under Article 283 (i.e., retrenchment) or Article 286 (i.e., suspension of work) of the Labor Code were to be considered, petitioners would end up failing to meet the standards. On the one hand, Article 286 applies only when there is a bona fide suspension of the employer's operation of a business or undertaking for a period not exceeding six (6) months. Records show that Linton **continued its business operations during the effectivity of the compressed workweek, which spanned more than the maximum period.** On the other hand, for retrenchment to be justified, any claim of actual or potential business losses must satisfy the following standards: **(1)** the losses incurred are substantial and not de minimis; **(2)** the losses are actual or reasonably imminent; **(3)** the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and **(4)** the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence. Linton failed to comply with these standards.

**LUZON STEVEDORING CO., INC., petitioner, vs. LUZON MARINE DEPARTMENT UNION and THE HON. MODESTO CASTILLO, THE HON. JOSE S. BAUTISTA, THE HON. V. JIMENEZ YANSON and THE HON. JUAN L. LANTING, Judges of the Court of Industrial Relations, respondents.**  
**G.R. No. L-9265, EN BANC, April 29, 1957, FELIX, J.**

*For the purposes of this case, We do not need to set for seamen a criterion different from that applied to laborers on land, for under the provisions of the above quoted section, the only thing to be done is to determine the meaning and scope of the term "working place" used therein. As We understand this term, a laborer need not leave the premises of the factory, shop or boat in order that his period of rest shall not be counted, it being enough that he "cease to work", may rest completely and leave or may leave at his will the spot where he actually stays while working, to go somewhere else, whether within or outside the premises of said factory, shop or boat. If these requisites are complied with, the period of such rest shall not be counted.*

*In the case at bar We do not need to look into the nature of the work of claimant mariners to ascertain the truth of petitioners allegation that this kind of seamen have had enough "free time", a task of which We are relieved, for although after an ocular inspection of the working premises of the seamen affected in this case the trial Judge declared in his decision that the Company gave the complaining laborers 3 free meals a day with a recess of 20 minutes after each meal, this decision was specifically amended by the Court en banc in its Resolution of June 6, 1955, wherein it held that the claimants herein rendered services to the Company from 6:00 a.m. to 6:00 p.m. including Sundays and holidays, **which implies either that said laborers were not given any recess at all, or that they were not allowed to leave the spot of their working place, or that they could not rest completely. And such resolution being on a question essentially of fact, this Court is now precluded to review the same***

#### **FACTS:**

On June 21, 1948, herein respondent Luzon Marine Department Union filed a petition with the Court of Industrial Relations containing several demands against herein petitioner Luzon Stevedoring Co., Inc., among which were the petition for full recognition of the right of COLLECTIVE bargaining, close shop and check off. However, on July 18, 1948, while the case was still pending with the CIR, said



labor union declared a strike which was ruled down as illegal by this Court in G.R. No. L-2660 promulgated on May 30, 1950.

After the parties had submitted exhaustive memoranda, the trial Judge rendered a decision on February 10, 1955, finding that the company gave said employees 3 free meals every day and about 20 minutes rest after each mealtime; that they worked from 6:00 am. to 6:00 p.m. every day including Sundays and holidays, and for work performed in excess of 8 hours, the officers, patrons and radio operators were given overtime pay in the amount of P4 each and P2 each for the rest of the crew up to March, 1947, and after said date, these payments were increased to P5 and P2.50, respectively, until the time of their separation or the strike of July 19, 1948; that when the tugboats underwent repairs, their personnel worked only 8 hours a day excluding Sundays and holidays; that although there was an effort on the part of claimants to show that some had worked beyond 6:00 p.m., the evidence was uncertain and indefinite and that demand was, therefore, denied; that respondent Company, by the nature of its business and as defined by law (Section 18-b of Commonwealth Act as amended) is considered a public service operator by the Public Service Commission in its decision in case No. 3035-C entitled "Philippine Shipowners. Association vs. Luzon Stevedoring Co., Inc., et al.", and, therefore, exempt from paying additional remuneration or compensation for work performed on Sundays and legal holidays, pursuant to the provisions of section 4 of Commonwealth Act No. 444.

In pursuance of Section 1 of Commonwealth Act No. 103, as amended by Commonwealth Act No. 254 and further amended by Commonwealth Act No. 559, the motions for reconsideration were passed upon by the Court *en banc*, and on June 6, 1955, a resolution modifying the decision of February 10, 1955, was issued, in the sense that the 4 hours of overtime work included in the regular daily schedule of work from 6:00 a.m. to 6:00 p.m. should be paid independently of the so-called "coffee-money", after making a finding that said extra amounts were given to crew members of some tugboats for work performed beyond 6:00 p.m. over a period of some 16 weeks.

From this resolution, the Luzon Stevedoring Co., Inc. filed the present petition for *certiorari* and when **the Court of Industrial Relations**, acting upon said Company's motion for clarification, **ruled that the 20 minutes' rest given the claimants after mealtime should not be deducted from the 4 hours of overtime worked performed by said claimants.**

**ISSUE:**

Whether or not the rest periods given to the claimants (after each meal) should be deducted from their overtime pay. (NO)

**RULING:**

Section 1 of Commonwealth Act No. 444, known as the Eight-Hour Labor Law, provides:

SEC. 1. The legal working day for any person employed by another shall be of not more than eight hours daily. **When the work is not continuous, the time during which the laborer is not working AND CAN LEAVE HIS WORKING PLACE and can rest completely, shall not be counted.**

The requisites contained in this section are further implemented by contemporary regulations issued by administrative authorities (Sections 4 and 5 of Chapter III, Article 1, Code of Rules and Regulations to Implement the Minimum Wage Law).

For the purposes of this case, We do not need to set for seamen a criterion different from that applied to laborers on land, for under the provisions of the above quoted section, the only thing to be done is to determine the meaning and scope of the term "working place" used therein. As We understand this term, **a laborer need not leave the premises of the factory, shop or boat in order that his period of rest shall not be counted, it being enough that he "cease to work", may rest completely and leave or may leave at his will the spot where he actually stays while working, to go somewhere else, whether within or outside the premises of said factory, shop or boat. If these requisites are complied with, the period of such rest shall not be counted.**

In the case at bar We do not need to look into the nature of the work of claimant mariners to ascertain the truth of petitioners allegation that this kind of seamen have had enough "free time", a task of which We are relieved, for although after an ocular inspection of the working premises of the seamen affected in this case the trial Judge declared in his decision that the Company gave the complaining laborers 3 free meals a day with a recess of 20 minutes after each meal, this decision was specifically amended by the Court en banc in its Resolution of June 6, 1955, wherein it held that the claimants herein rendered services to the Company from 6:00 a.m. to 6:00 p.m. including Sundays and holidays, **which implies either that said laborers were not given any recess at all, or that they were not allowed to leave the spot of their working place, or that they could not rest completely. And such resolution being on a question essentially of fact, this Court is now precluded to review the same**

**TEOFILO ARICA, DANILO BERNABE, MELQUIADES DOHINO, ABONDIO OMERTA, GIL TANGIHAN, SAMUEL LABAJO, NESTOR NORBE, RODOLFO CONCEPCION, RICARDO RICHA, RODOLFO NENO, ALBERTO BALATRO, BENJAMIN JUMAMOY, FERMIN DAAROL, JOVENAL ENRIQUEZ, OSCAR BASAL, RAMON ACENA, JAIME BUGTAY, and 561 OTHERS, HEREIN REPRESENTED BY KORONADO B. APUZEN, *petitioners* vs. NATIONAL LABOR RELATIONS COMMISSION, HONORABLE FRANKLIN DRILON, HONORABLE CONRADO B. MAGLAYA, HONORABLE ROSARIO B. ENCARNACION, and STANDARD (PHILIPPINES) FRUIT CORPORATION, *respondents*.**

**G.R. No. 78210, SECOND DIVISION, February 28, 1989, PARAS, J.**

**The 30-minute assembly** is a deeply-rooted, routinary practice of the employees, and the proceedings attendant thereto **are not infected with complexities as to deprive the workers the time to attend to other personal pursuits.**

In short, **they are not subject to the absolute control of the company during this period, otherwise, their failure to report in the assembly time would justify the company to impose disciplinary measures.** The evidence of the case demonstrates that the 30-minute assembly time was not primarily intended for the interests of the employer, but ultimately for the employees to indicate their availability or non-availability for work during every working day.

#### **FACTS:**

This case stemmed from a complaint filed against private respondent Stanfilco for assembly time, moral damages and attorney's fees, with the Regional Arbitration- Davao City. The Labor Arbiter rendered a decision in favor of private respondent STANFILCO, holding that:

"We cannot but agree with respondent that the pronouncement in that earlier case, i.e. the thirty-minute assembly time long practiced cannot be considered waiting time or work time and, therefore,

not compensable, has become the law of the case which can no longer be disturbed without doing violence to the time-honored principle of resjudicata.”

NLRC uphold the Labor Arbiters’ decision and declared that:

“Surely, the customary functions referred to in the above-quoted provision of the agreement includes the long-standing practice and institutionalized non-compensable assembly time. This, in effect, estopped complainants from pursuing this case.

MR was denied hence this petition for review on certiorari. Petitioners contend that the preliminary activities as workers of respondents STANFILCO in the assembly area is compensable as working time (from 5:30am to 6:00 am) since these preliminary activities are necessarily and primarily for private respondent’s benefit. These preliminary activities of the workers are as follows-

- (a) First there is the roll call. Followed by getting their individual work assignments from the foreman.
- (b) Then, they are individually required to accomplish the Laborer’s Daily Accomplishment Report during which they are often made to explain about their reported accomplishment the following day.
- (c) Then they go to the stockroom to get the working materials, tools and equipment.
- (d) Lastly, they travel to the field bringing with them their tools, equipment and materials.

All these activities take 30 minutes to accomplish.

Respondent avers that the instant complaint is not new because it is the very same claim they brought against respondent by the same group of rank and file employees in the case of Arica vs. National Labor Relations Commission which was filed before in a different case. The said case involved a claim for “waiting time”, as the complainants purportedly were required to assemble.

In the previous case, the 30-minute assembly time long practiced and institutionalized by mutual consent of the parties under their CBA cannot be considered as ‘waiting time’ within the purview of Section 5, Rule 1, Book III of the Rules and Regulations Implementing the Labor Code.

**ISSUE:**

Whether or not the “assembly time” is compensable. (NO)

**RULING:**

**The 30-minute assembly** is a deeply-rooted, routinary practice of the employees, and the proceedings attendant thereto **are not infected with complexities as to deprive the workers the time to attend to other personal pursuits.**

They are not new employees as to require the company to deliver long briefings regarding their respective work assignments. Their houses are situated right on the area where the farms are located, such that after the roll call, which does not necessarily require the personal presence, they can go back to their houses to attend to some chores.



In short, **they are not subject to the absolute control of the company during this period**, otherwise, **their failure to report in the assembly time would justify the company to impose disciplinary measures**. The evidence of the case demonstrates that the 30-minute assembly time was not primarily intended for the interests of the employer, but ultimately for the employees to indicate their availability or non-availability for work during every working day.

**BILLY M. REALDA, *Petitioner*, - versus -  
NEW AGE GRAPHICS, INC. and JULIAN I. MIRASOL, JR., *Respondents*.  
G.R. No. 192190, SECOND DIVISION, April 25, 2012, REYES, J.**

*For willful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.*

*The petitioner's arbitrary defiance to Graphics, Inc.'s order for him to render overtime work constitutes willful disobedience. Taking this in conjunction with his inclination to absent himself and to report late for work despite being previously penalized, **the petitioner is indeed defiant of the lawful orders and the reasonable work standards prescribed by his employer.***

**FACTS:**

Respondent Julian Mirasol's business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines.

Petitioner Billy Realda, who was the former machine operator of respondent New Age Graphics Inc. (Graphics, Inc.), was asked to render overtime work but he refused to do so despite the "rush" orders of customers and petitioner's need to meet its deadlines set by the former. In fact, he reneged on his promise to do the same, after being issued an Overtime Slip Form. He knew that he was going to be unavailable for work on the following day, but instead of trying to finish his work before that date by rendering overtime, due to the "rush" in meeting the deadlines, he opted to forego with the same, and thereby rejecting the order of petitioner.

Petitioner is also accused of insubordination for the reason that he stubbornly refused to follow the orders of his General Manager to show the latter and check on the computer using the CMYK guide, whether the colors he is running in his printing machine are correct. After initially following the said order, and confirming that the first color, cyan, running in the machine was correct, he failed to observe the same procedure on the second color magenta and did not even bother to remedy it after it was pointed out by the Computer Graphic Artist supervising him.

Respondent further alleges habitual tardiness on the part of petitioner for which he received a warning notice in April and May 2004. For the month of January and February 2004 alone, he reported late for work 23 times, and just prior to his suspension, he was yet again late for 6 times. The Daily Time Records of petitioner contained the entries which were personally written by him.

The LA found that the petitioner was illegally dismissed. The NLRC affirmed the LA.

The CA reversed the NLRC. It ruled that the petitioner's unjustified refusal to render overtime work, unexplained failure to observe prescribed work standards, habitual tardiness and chronic absenteeism despite warning and non-compliance with the directive for him to explain his numerous unauthorized absences constitute sufficient grounds for his termination. It found that private respondent should be dismissed on the ground of willful disobedience of the warning and memoranda issued by petitioner. Nonetheless, while the CA recognized the existence of just causes for petitioner's dismissal, it found the petitioner entitled to nominal damages in the amount of ₱5,000.00 due to Graphics, Inc.'s failure to observe the procedural requirements of due process.

**ISSUE:**

Whether the petitioner was validly dismissed. (YES)

**RULING:**

The petitioner's arbitrary defiance to Graphics, Inc.'s order for him to render overtime work constitutes willful disobedience. Taking this in conjunction with his inclination to absent himself and to report late for work despite being previously penalized, **the petitioner is indeed defiant of the lawful orders and the reasonable work standards prescribed by his employer.**

For willful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

In the present case, there is no question that petitioners' order for respondent to render overtime service to meet a production deadline complies with the second requisite. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage. The petitioner's business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines. **In this case, the petitioner exhibited willful disobedience to a reasonable order from his employer.**

The petitioner's failure to observe Graphics, Inc.'s work standards constitutes inefficiency that is a **valid cause for dismissal. Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal.** Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. As the operator of Graphics, Inc.'s printer, he is mandated to check whether the colors that would be printed are in accordance with the client's specifications and for him to do so, he must consult the General Manager and the color guide used by Graphics, Inc. before making a full run. Unfortunately, he failed to observe this simple procedure and proceeded to print without making sure that the colors were at par with the client's demands. This resulted to delays in the delivery of output, client dissatisfaction, and additional costs on Graphics, Inc.'s part.

Undoubtedly, Graphics, Inc. complied with the substantive requirements of due process in effecting employee dismissal. **However, the same cannot be said insofar as the procedural requirements are concerned. Graphics, Inc. failed to afford the petitioner with a reasonable opportunity to be heard and defend itself.** An administrative hearing set on the same day that the petitioner received the memorandum and the 24-hour period for him to submit a written explanation are far

from being reasonable. Furthermore, there is no indication that Graphics, Inc. issued a second notice, informing the petitioner of his dismissal. Graphics, Inc. decided to terminate the petitioner's employment after he ceased reporting for work from the time he received the memorandum requiring him to explain, and subsequent to his failure to submit a written explanation. However, there is nothing on record showing that Graphics, Inc. placed its decision to dismiss the petitioner in writing and that a copy thereof was sent to the latter. **Thus, Graphics, Inc was ordered to pay petitioner nominal damages in the amount of P30,000.00 pursuant to *Agabon vs. NLRC*.**

**ROMEO LAGATIC, petitioner, - versus - NATIONAL LABOR RELATIONS COMMISSION,  
CITYLAND DEVELOPMENT CORPORATION, STEPHEN ROXAS, JESUS GO, GRACE LIUSON, and  
ANDREW LIUSON, respondents.**

**G.R. No. 121004, THIRD DIVISION, January 28, 1998, ROMERO, J.**

*Willful disobedience requires the concurrence of at least two requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.*

***Petitioner's failure to comply with Cityland's policy of requiring cold call reports is clearly willful, given the 28 instances of his failure to do so, despite a previous reprimand and suspension. More than that, his written statement shows his open defiance and disobedience to lawful rules and regulations of the company. Likewise, said company policy of requiring cold calls and the concomitant reports thereon is clearly reasonable and lawful, sufficiently known to petitioner, and in connection with the duties which he had been engaged to discharge. There is, thus, just cause for his dismissal.***

#### **FACTS:**

Petitioner Romeo Lagatic was employed by Cityland as a marketing specialist. He was tasked with soliciting sales for the company, with the corresponding duties of accepting call-ins, referrals, and making client calls and cold calls. Cold calls refer to the practice of prospecting for clients through the telephone directory. Cityland, believing that the same is an effective and cost-efficient method of finding clients, requires all its marketing specialists to make cold calls. The number of cold calls depends on the sales generated by each: more sales mean less cold calls. Likewise, in order to assess cold calls made by the sales staff, as well as to determine the results thereof, Cityland requires the submission of daily progress reports on the same.

Cityland issued a written reprimand to petitioner for his failure to submit cold call reports. This notwithstanding, petitioner again failed to submit cold call reports for numerous occasions. Petitioner was required to explain his inaction, with a warning that further non-compliance would result in his termination from the company. In a reply, petitioner claimed that the same was an honest omission brought about by his concentration on other aspects of his job. Cityland found said excuse inadequate and suspended him for three days, with a similar warning.

Notwithstanding the suspension and warning, petitioner again failed to submit cold call reports. He was verbally reminded to submit the same. Instead of complying with said directive, petitioner wrote a note, "TO HELL WITH COLD CALLS! WHO CARES?" and exhibited the same to his co-employees. To worsen matters, he left the same lying on his desk where everyone could see it.



Petitioner received a memorandum requiring him to explain why Cityland should not make good its previous warning for his failure to submit cold call reports, as well as for issuing the written statement. He sent a letter-reply alleging that his failure to submit cold call reports should not be deemed as gross insubordination. He denied any knowledge of the damaging statement.

Finding petitioner guilty of gross insubordination, Cityland served a notice of dismissal upon him.

Petitioner filed a complaint against Cityland for illegal dismissal, among others. The LA dismissed the petition for lack of merit. On appeal, the same was affirmed by the NLRC.

**ISSUE:**

Whether the petitioner was validly dismissed. (YES)

**RULING:**

**Willful Disobedience**

**We find petitioner guilty of willful disobedience.** Willful disobedience requires the concurrence of at least two requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

**Petitioner's failure to comply with Cityland's policy of requiring cold call reports is clearly willful, given the 28 instances of his failure to do so, despite a previous reprimand and suspension.** More than that, his **written statement shows his open defiance and disobedience to lawful rules and regulations of the company.** Likewise, said company policy of requiring cold calls and the concomitant reports thereon is clearly reasonable and lawful, sufficiently known to petitioner, and in connection with the duties which he had been engaged to discharge. **There is, thus, just cause for his dismissal.**

**Twin Requirements of Notice and Hearing**

On the procedural aspect, petitioner claims that he was denied due process. Well settled is the *dictum* that the twin requirements of notice and hearing constitute the elements of due process in the dismissal of employees. Thus, the employer must furnish the employee with two written notices before the termination of employment can be effected. The first apprises the employee of the particular acts or omissions for which his dismissal is sought; the second informs him of the employer's decision to dismiss him.

In the case at bar, petitioner was notified of the charges against him in a memorandum, which he received. He submitted a letter-reply thereto, wherein he asked that his failure to submit cold call reports be not interpreted as gross insubordination. He was given notice of his termination thereafter. **This chronology of events clearly show that petitioner was served with the required written notices.**

Nonetheless, petitioner contends that he has not been given the benefit of an effective hearing. While we have held that in dismissing employees, the employee must be afforded ample opportunity to be heard, "ample opportunity" connoting every kind of assistance that management must afford the

employee to enable him to prepare adequately for his defense, it is also true that the requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing be conducted. **Petitioner had an opportunity to be heard as he submitted a letter-reply to the charge. We hold that petitioner's constitutional right to due process has not been violated.**

**ASIAN TRANSMISSION CORPORATION, petitioner, - versus - The Hon. COURT OF APPEALS, Thirteenth Division, HON. FROILAN M. BACUNGAN as Voluntary Arbitrator, KISHIN A. LALWANI, Union, Union representative to the Panel Arbitrators; BISIG NG ASIAN TRANSMISSION LABOR UNION (BATLU); HON. BIENVENIDO T. LAGUESMA in his capacity as Secretary of Labor and Employment; and DIRECTOR CHITA G. CILINDRO in her capacity as Director of Bureau of Working Conditions, respondents.**  
**G.R. No. 144664, THIRD DIVISION, March 15, 2004, CARPIO-MORALES, J.**

*As reflected above, Art. 94 of the Labor Code, as amended, affords a worker the enjoyment of ten paid regular holidays. **The provision is mandatory, regardless of whether an employee is paid on a monthly or daily basis. Unlike a bonus, which is a management prerogative, holiday pay is a statutory benefit demandable under the law. Since a worker is entitled to the enjoyment of ten paid regular holidays, the fact that two holidays fall on the same date should not operate to reduce to nine the ten holiday pay benefits a worker is entitled to receive.***

*Petitioner's assertion that Wellington v. Trajano has overruled the DOLE Explanatory Bulletin does not lie. In Wellington, the issue was whether **monthly-paid employees are entitled to an additional day's pay if a holiday falls on a Sunday. In the instant case, the issue is whether daily-paid employees are entitled to be paid for two regular holidays which fall on the same day.***

#### **FACTS:**

The DOLE issued an Explanatory Bulletin wherein it clarified that employees are entitled to 200% of their basic wage on April 9, 1993, whether unworked, which, apart from being Good Friday (and, therefore, a legal holiday), is also Araw ng Kagitingan (which is also a legal holiday). The bulletin reads:

On the correct payment of holiday compensation on April 9, 1993 which apart from being Good Friday is also *Araw ng Kagitingan*, i.e., **two regular holidays falling on the same day**, this Department is of the view that the covered employees are entitled to at least two hundred percent (200%) of their basic wage even if said holiday is unworked. The first 100% represents the payment of holiday pay on April 9, 1993 as Good Friday and the second 100% is the payment of holiday pay for the same date as *Araw ng Kagitingan*.

Said bulletin was reproduced on January 23, 1998, when April 9, 1998 was both Maundy Thursday and *Araw ng Kagitingan*. Despite the explanatory bulletin, petitioner Asian Transmission Corporation opted to pay its **daily paid employees** only 100% of their basic pay on April 9, 1998. Respondent Bisig ng Asian Transmission Labor Union (BATLU) protested.

Subject of interpretation in the case at bar is Article 94 of the Labor Code which reads:

(a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and

(c) As used in this Article, "holiday" includes: New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and thirtieth of December and the day designated by law for holding a general election,

The same was amended by E.O. No. 203 issued on June 30, 1987, the regular holidays are now:

1. New Year's Day January 1
2. Maundy Thursday Movable Date
3. Good Friday Movable Date
4. Araw ng Kagitingan April 9 (Bataan and Corregidor Day)
5. Labor Day May 1
6. Independence Day June 12
7. National Heroes Day Last Sunday of August
8. Bonifacio Day November 30
9. Christmas Day December 25
10. Rizal Day December 30

The VA ruled in favor of the respondent BATLU, ruling that Article 94 provides for holiday pay for every regular holiday, the computation of which is determined by a legal formula which is not changed by the fact that there are two holidays falling on one day, like on April 9, 1998 when it was Araw ng Kagitingan and at the same time was Maundy Thursday; and that that the law, as amended, enumerates ten (10) regular holidays for every year should not be interpreted as authorizing a reduction to nine the number of paid regular holidays just because April 9 (Araw ng Kagitingan) in certain years, like 1993 and 1998, is also Holy Friday or Maundy Thursday. The CA upheld the findings of the VA.

**ISSUE:**

Whether the employees are entitled to be paid for two regular holidays which fall on the same day. (YES)

**RULING:**

Holiday pay is a legislated benefit enacted as part of the Constitutional imperative that the State shall afford protection to labor. Its purpose is not merely "to prevent diminution of the monthly income of the workers on account of work interruptions. In other words, although the worker is forced to take a rest, he earns what he should earn, that is, his holiday pay."

As reflected above, Art. 94 of the Labor Code, as amended, affords a worker the enjoyment of ten paid regular holidays. **The provision is mandatory, regardless of whether an employee is paid on a monthly or daily basis.** Unlike a bonus, which is a management prerogative, holiday pay is a statutory benefit demandable under the law. **Since a worker is entitled to the enjoyment of ten paid regular holidays, the fact that two holidays fall on the same date should not operate to reduce to nine the ten holiday pay benefits a worker is entitled to receive.**

Petitioner's assertion that *Wellington v. Trajano* has overruled the DOLE Explanatory Bulletin does not lie. In *Wellington*, the issue was whether **monthly**-paid employees are entitled to an additional day's pay if a holiday falls on a Sunday. This Court, in answering the issue in the negative, observed



that in fixing the monthly salary of its employees, *Wellington* took into account "every working day of the year including the holidays specified by law and excluding only Sunday." **In the instant case, the issue is whether daily-paid employees are entitled to be paid for two regular holidays which fall on the same day.**

**JOSE RIZAL COLLEGE, petitioner, - versus - NATIONAL LABOR RELATIONS COMMISSION AND NATIONAL ALLIANCE OF TEACHERS/OFFICE WORKERS, respondents.**  
**G.R. No. L-65482, FIRST DIVISION, December 1, 1987, PARAS, J.**

*Under the foregoing provisions, apparently, the petitioner, although a non-profit institution, is under obligation to give pay even on unworked regular holidays to hourly paid faculty members subject to the terms and conditions provided for therein.*

*On the other hand, both the law and the Implementing Rules governing holiday pay are silent as to payment on Special Public Holidays. Otherwise stated, the faculty member, although forced to take a rest, does not earn what he should earn on that day. Be it noted that when a special public holiday is declared, the faculty member paid by the hour is deprived of expected income, and it does not matter that the school calendar is extended in view of the days or hours lost, for their income that could be earned from other sources is lost during the extended days. Similarly, when classes are called off or shortened on account of typhoons, floods, rallies, and the like, these faculty members must likewise be paid, whether or not extensions are ordered.*

*Thus, the petitioner is exempted from paying hourly paid faculty members their pay for regular holidays, whether the same be during the regular semesters of the school year or during semestral, Christmas, or Holy Week vacations. However, the petitioner is ordered to pay said faculty members their regular hourly rate on days declared as special holidays or for some reason classes are called off or shortened for the hours they are supposed to have taught, whether extensions of class days be ordered or not.*

**FACTS:**

Petitioner Jose Rizal College has three groups of employees categorized as follows: (a) **personnel on monthly basis**, who receive their monthly salary uniformly throughout the year, irrespective of the actual number of working days in a month without deduction for holidays; (b) **personnel on daily basis** who are paid on actual days worked and they receive unworked holiday pay; and (c) **collegiate faculty** who are paid on the basis of student contract hour. Before the start of the semester, they sign contracts with the college undertaking to meet their classes as per schedule.

Private respondent National Alliance of Teachers and Office Workers (NATOW), in behalf of the faculty and personnel of Jose Rizal College, filed with the Ministry of Labor a complaint against the college for said alleged non-payment of holiday pay.

The LA ruled that the faculty and personnel of the respondent Jose Rizal College, who are paid their salary by the month uniformly in a school year, irrespective of the number of working days in a month, without deduction for holidays, are presumed to be already paid the 10 paid legal holidays and are no longer entitled to separate payment for the said regular holidays. The personnel who are paid their wages daily are entitled to be paid the 10 unworked regular holidays. The collegiate faculty, who by contract are paid compensation per student contract hour, are not entitled to unworked regular holiday pay considering that these regular holidays have been excluded in the programming of the student contact hours. The NLRC, however, ruled that teaching personnel paid by the hour are declared to be entitled to holiday pay.

**ISSUE:**

Whether the school faculty, who according to their contracts are paid per lecture hour, are entitled to unworked holiday pay. (YES)

**RULING:**

Holiday pay is provided for in the Labor Code (P.D. No. 442, as amended), which reads:

Art. 94. Right to holiday pay —

(a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; x x x

And in the Implementing Rules and Regulations, Rule IV, Book III, which reads:

SEC. 8. *Holiday pay of certain employees.* — (a) Private school teachers, including faculty members of colleges and universities, may not be paid for the regular holidays during semestral vacations. They shall, however, be paid for the regular holidays during Christmas vacations. x x x

**Under the foregoing provisions, apparently, the petitioner, although a non-profit institution, is under obligation to give pay even on *unworked* regular holidays to hourly paid faculty members subject to the terms and conditions provided for therein.**

We believe that the aforementioned implementing rule is not justified by the provisions of the law which after all is silent with respect to faculty members paid by the hour who because of their teaching contracts are obliged to work and consent to be paid only for work actually done (except when an emergency or a fortuitous event or a national need calls for the declaration of special holidays). *Regular* holidays specified as such by law are known to both school and faculty members as no class days. Certainly, the latter do not expect payment for said unworked days, and this was clearly in their minds when they entered into the teaching contracts.

**On the other hand, both the law and the Implementing Rules governing holiday pay are silent as to payment on Special Public Holidays.** It is readily apparent that the declared purpose of the holiday pay which is the prevention of diminution of the monthly income of the employees on account of work interruptions is defeated when a regular class day is cancelled on account of a special public holiday and class hours are held on another working day to make up for time lost in the school calendar. **Otherwise stated, the faculty member, although forced to take a rest, does not earn what he should earn on that day. Be it noted that when a special public holiday is declared, the faculty member paid by the hour is deprived of expected income, and it does not matter that the school calendar is extended in view of the days or hours lost, for their income that could be earned from other sources is lost during the extended days. Similarly, when classes are called off or shortened on account of typhoons, floods, rallies, and the like, these faculty members must likewise be paid, whether or not extensions are ordered.**

Thus, the petitioner is exempted from paying hourly paid faculty members their pay for regular holidays, whether the same be during the *regular* semesters of the school year or during semestral, Christmas, or Holy Week vacations. However, the petitioner is ordered to pay said faculty members their regular hourly rate on days declared as special holidays or for some reason classes are called off or shortened for the hours they are supposed to have taught, whether extensions of class days be ordered or not. In case of extensions, said faculty members shall likewise be paid their hourly rates should they teach during said extensions.

**INSULAR BANK OF ASIA AND AMERICA EMPLOYEES' UNION (IBAAEU), PETITIONER, VS. HON. AMADO G. INCIONG, DEPUTY MINISTER, MINISTRY OF LABOR AND INSULAR BANK OF ASIA AND AMERICA, RESPONDENTS.**

**[G.R. No. L-52415, SECOND DIVISION, OCTOBER 23, 1984, MAKASIAR, J.]**

*Until the provisions of the Labor Code on holiday pay is amended by another law, monthly paid employees are definitely included in the benefits of regular holiday pay. As earlier stated, the presumption is always in favor of law, negatively put, the Labor Code is always strictly construed against management.*

**FACTS:**

Petitioner filed a complaint against the respondent bank for the payment of holiday pay. Conciliation having failed, and upon the request of both parties, the case was certified for arbitration.

Labor Arbiter Soriano rendered a decision in the above-entitled case, granting petitioner's complaint for payment of holiday pay. Respondent bank did not appeal from the said decision. Instead, it complied with the order by paying their holiday pay.

P.D. No. 850 was promulgated amending, among others, the provisions of the Labor Code on the right to holiday pay. Accordingly, by authority of Article 5 of the same Code, the Department of Labor (now Ministry of Labor) promulgated the rules and regulations for the implementation of holidays with pay. The controversial section thereof reads:

“Sec. 2. Status of employees paid by the month. — Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage shall be presumed to be paid for all days in the month whether worked or not.

For this purpose, the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve.”

Policy Instruction No. 9 was issued by the then Secretary of Labor (now Minister) interpreting the above-quoted rule, pertinent portions of which read:

“The ten (10) paid legal holidays law, to start with, is intended to benefit principally daily employees. In the case of monthly, only those whose monthly salary did not yet include payment for the ten (10) paid legal holidays are entitled to the benefit.”

Respondent bank, by reason of the ruling laid down by the aforecited rule implementing Article 94 of the Labor Code and by Policy Instruction No. 9, stopped the payment of holiday pay to all its employees.

Petitioner filed a motion for a writ of execution to enforce the arbiter's decision whereby the respondent bank was ordered to pay its employees their daily wage for the unworked regular holidays.

Respondent bank filed an opposition to the motion for a writ of execution alleging, among others, that: (a) its refusal to pay the corresponding unworked holiday pay in accordance with the award of Labor Arbiter Soriano is based on and justified by Policy Instruction No. 9 which interpreted the rules implementing P.D. 850; and (b) that the said award is already repealed by P.D. 850 which, and by said Policy Instruction No. 9 of the Department of Labor.

Labor Arbiter Soriano, instead of issuing a writ of execution, issued an order enjoining the respondent bank to continue paying its employees their regular holiday pay on the following grounds: (a) that the judgment is already final and the findings which is found in the body of the decision as well as the dispositive portion thereof is res judicata or is the law of the case between the parties; and (b) that since the decision had been partially implemented by the respondent bank, appeal from the said decision is no longer available.

The National Labor Relations Commission promulgated its resolution en banc dismissing respondent bank's appeal.

The Office of the Minister of Labor, through Deputy Minister Inciong, issued an order setting aside and a new judgment promulgated dismissing the instant case for lack of merit. Hence, this petition.

**ISSUE:**

Whether or not monthly paid employees are entitled to Holiday pay.

**RULING:**

Yes. Monthly paid employees are entitled to Holiday pay.

Petitioner's contention that Section 2, Rule IV, Book III of the implementing rules and Policy Instruction No. 9 issued by the then Secretary of Labor are null and void since in the guise of clarifying the Labor Code's provisions on holiday pay, they in effect amended them by enlarging the scope of their exclusion.

The coverage and scope of exclusion of the Labor Code's holiday pay provisions is spelled out under Article 82. (Read Art. 82)

From the above-cited provisions, it is clear that monthly paid employees are not excluded from the benefits of holiday pay. However, the implementing rules on holiday pay promulgated by the then Secretary of Labor excludes monthly paid employees from the said benefits by inserting, under Rule IV, Book III of the implementing rules, Section 2, which provides that: "employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage shall be presumed to be paid for all days in the month whether worked or not."



It is elementary in the rules of statutory construction that when the language of the law is clear and unequivocal the law must be taken to mean exactly what it says. In the case at bar, the provisions of the Labor Code on the entitlement to the benefits of holiday pay are clear and explicit — it provides for both the coverage of and exclusion from the benefits. In Policy Instruction No. 9, the then Secretary of Labor went as far as to categorically state that the benefit is principally intended for daily paid employees, when the law clearly states that every worker shall be paid their regular holiday pay. This is a flagrant violation of the mandatory directive of Article 4 of the Labor Code, which states that "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." Moreover, it shall always be presumed that the legislature intended to enact a valid and permanent statute which would have the most beneficial effect that its language permits.

Obviously, the Secretary (Minister) of Labor had exceeded his statutory authority granted by Article 5 of the Labor Code authorizing him to promulgate the necessary implementing rules and regulations.

Until the provisions of the Labor Code on holiday pay is amended by another law, monthly paid employees are definitely included in the benefits of regular holiday pay. As earlier stated, the presumption is always in favor of law, negatively put, the Labor Code is always strictly construed against management.

While it is true that the contemporaneous construction placed upon a statute by executive officers whose duty is to enforce it should be given great weight by the courts, still if such construction is so erroneous, as in the instant case, the same must be declared as null and void. It is the role of the Judiciary to refine and, when necessary, correct constitutional (and/or statutory) interpretation, in the context of the interactions of the three branches of the government, almost always in situations where some agency of the State has engaged in action that stems ultimately from some legitimate area of governmental power.

In view of the foregoing, Section 2, Rule IV, Book III of the Rules to implement the Labor Code and Policy Instruction No. 9 issued by the then Secretary of Labor must be declared null and void. Accordingly, public respondent Deputy Minister of Labor Amado G. Inciong had no basis at all to deny the members of petitioner union their regular holiday pay as directed by the Labor Code.

**UNION OF FILIPRO EMPLOYEES (UFE), PETITIONER, VS. BENIGNO VIVAR, JR., NATIONAL LABOR RELATIONS COMMISSION AND NESTLE PHILIPPINES, INC. (FORMERLY FILIPRO, INC.), RESPONDENTS.**

**[G.R. No. 79255, EN BANC, JANUARY 20, 1992, GUTIERREZ, JR., J.]**

*Art. 82 must be read in conjunction with Rule IV, Book III of the Implementing Rules which provides that holidays with pay shall apply to all employees however there are exceptions, one of which are those whose performance is unsupervised by the employer. Such provision did not amplify but merely interpreted and expounded the clause "whose actual hours of work in the field cannot be determined with reasonable certainty." The former clause is still within the scope and purview of Article 82 which defines field personnel. Hence, in deciding whether or not an employee's actual working hours in the field can be determined with reasonable certainty, query must be made as to whether or not such employee's time and performance is constantly supervised by the employer.*

**FACTS:**

The dispute originated from the exclusion of sales personnel from the holiday pay award and the change of the divisor in the computation of benefits from 251 to 261 days. On November 8, 1985, respondent Filipro, Inc. (now Nestle Philippines, Inc.) filed with the NLRC a petition for declaratory relief seeking a ruling on its rights and obligations respecting claims of its monthly paid employees for holiday pay in the light of the Court's decision in Chartered Bank Employees Association v. Ople. Both Filipro and the Union of Filipro Employees (UFE) agreed to submit the case for voluntary arbitration and appointed respondent Vivar as voluntary arbitrator.

Vivar issued an order declaring that the effectivity of the holiday pay award shall retroact to November 1, 1974 (effectivity of Labor Code). However the company's sales personnel are field personnel not entitled to holiday pay. He also ruled that with the grant of 10 days holiday pay, the divisor should be changed from 251 to 261 and ordered the reimbursement of overpayment for overtime, night differential, vacation and sick leave pay due to the use of 251 days as divisor.

**ISSUE:**

**1<sup>st</sup> issue:** Whether or not sales personnel are field personnel thus not entitled to holiday pay.

**2<sup>nd</sup> issue:** Whether or not the divisor should be changed from 251 to 261 days and whether or not the previous use of 251 as divisor resulted in overpayment for overtime, night differential, vacation and sick leave pay.

**3<sup>rd</sup> issue:** Whether or not the effectivity of the holiday pay shall retroact to the effectivity of the labor code.

**RULING:**

**1<sup>st</sup> issue:**

Yes, the controversy arises on the interpretation of the clause provided in Art. 82 of the labor code "whose actual hours of work in the field cannot be determined with reasonable certainty." Although sales personnel start their field work at 8:00 a.m. after having reported to the office and come back to the office at 4:00 p.m. (4:30 p.m. if they are Makati-based) the company has no way of determining whether or not these sales personnel, even if they report to the office before 8:00 a.m. prior to field work and come back at 4:30 p.m., really spend the hours in between in actual field work. The requirement of such hours is purely management prerogative and providing administrative control over such personnel. Consequently, they are excluded from the ten holidays with pay award.

Additionally, Art. 82 must be read in conjunction with Rule IV, Book III of the Implementing Rules which provides that holidays with pay shall apply to all employees however there are exceptions, one of which are those whose performance is unsupervised by the employer. Such provision did not amplify but merely interpreted and expounded the clause "whose actual hours of work in the field cannot be determined with reasonable certainty." The former clause is still within the scope and purview of Article 82 which defines field personnel. Hence, in deciding whether or not an employee's actual working hours in the field can be determined with reasonable certainty, query must be made as to whether or not such employee's time and performance is constantly supervised by the employer.

**2<sup>nd</sup> issue:**

No, the divisor assumes an important role in determining whether or not holiday pay is already included in the monthly paid employee's salary and in the computation of his daily rate. In the Chartered Bank case, computing overtime compensation for its employees employs a divisor of 251 days<sup>1</sup>. The 251 working days divisor is the result of subtracting all Saturdays (52), Sundays (52) and the 10 legal holidays from the total number of calendar days in a year. Should the holidays be included, the divisor should be 261 not 251.

The respondent arbitrator's order to change the divisor from 251 to 261 days would result in a lower daily rate which is violative of the prohibition on non-diminution of benefits found in Article 100 of the Labor Code. To maintain the same daily rate if the divisor is adjusted to 261 days, then the dividend, which represents the employee's annual salary, should correspondingly be increased to incorporate the holiday pay. To illustrate, if prior to the grant of holiday pay, the employee's annual salary is P25,100, then dividing such figure by 251 days, his daily rate is P100.00. After the payment of 10 days' holiday pay, his annual salary already includes holiday pay and totals P26,100 (P25,100 + 1,000). Dividing this by 261 days, the daily rate is still P100.00.

### 3<sup>rd</sup> issue:

No, the doctrine of operative fact applies in this case. In *IBAAEU v. Inciong*, the Court declared that Section 2, Rule IV, Book III of the implementing rules and Policy Instruction No. 9, issued by the then Secretary of Labor in 1976, which excluded monthly paid employees from holiday pay benefits, are null and void. However, prior to the declaration, the implementing rule and policy instruction enjoyed the presumption of validity and hence, Nestle's non-payment of the holiday benefit up to the promulgation of the IBAA case on October 23, 1984 was in compliance with these presumably valid rule and policy instruction.

DECISION MODIFIED. The divisor to be used in computing holiday pay shall be 251 days. The holiday pay as above directed shall be computed from October 23, 1984 (promulgation of IBAA case).

**WELLINGTON INVESTMENT AND MANUFACTURING CORPORATION, PETITIONER, VS.  
CRESENCIANO B. TRAJANO, UNDER-SECRETARY OF LABOR AND EMPLOYMENT, ELMER  
ABADILLA, AND 34 OTHERS, RESPONDENTS.**

**[G.R. No. 114698, SECOND DIVISION, JULY 03, 1995, NARVASA, C.J.]**

*A legal holiday falling on a Sunday creates no legal obligation for the employer to pay extra to the employee who does not work on that day, aside from the usual holiday pay to its monthly paid employees.*

### FACTS:

On 6 August 1991, a routine inspection was conducted by a Labor Enforcement Office on Wellington Flour Mills, an establishment owned & operated by petitioner Wellington Investment and Manufacturing Corporation. His report, with a copy "explained to and received by" Wellington's personnel manager, set forth the finding of "non-payment of regular holidays falling on a Sunday for monthly-paid employees." Petitioner Wellington sought reconsideration, arguing that their monthly-salaries already includes holiday pay for all regular holidays, hence there is no legal basis for LEO's finding. It pays its employees a fixed monthly compensation using the "314" factor, which undeniably covers and already includes payment for all the working days in a month as well as the 10 unworked regular holidays within a year.

The Regional Director ruled that “when a regular holiday falls on a Sunday, an extra or additional working day is created and the employer has the obligation to pay the employees for the extra day except the last Sunday of August since the payment for the said holiday is already included in the 314 factor,” and accordingly directed Wellington to pay its employees compensation corresponding to four (4) extra working days.

Petitioner filed an MR, pointing out that it was in effect being compelled to “shell out an additional pay for an alleged extra working day” despite its complete payment of all compensation lawfully due its workers, using the 314 factor. This was taken as an appeal, and acted on by respondent Undersecretary Trajano. The latter held that the “divisor being used by Petitioner does not reliably reflect the actual working days in a year,” and demanded Wellington to pay the six additional working days resulting from regular holidays falling on Sundays in 1988, 1989 and 1990. Petitioner’s reconsideration was denied.

Petitioner instituted this special civil action of certiorari to nullify the above orders. SC granted TRO enjoining respondent from enforcing the above orders.

**ISSUE:**

Whether or not a monthly-paid employee, receiving a fixed monthly compensation, is entitled to an additional pay aside from his usual holiday pay, whenever a regular holiday falls on a Sunday.

**RULING:**

Yes. Every worker should, according to the Labor Code, “be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;” this, of course, even if the worker does no work on these holidays. The regular holidays include: “New Year’s Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth of December, and the day designated by law for holding a general election (or national referendum or plebiscite).”

There is no question that petitioner complied with the minimum norm laid down by the law – by paying its employees “a salary of not less than the statutory or established minimum wage,” and that the monthly salary thus paid was “not less than the statutory minimum wage multiplied by 365 days divided by twelve.”

The monthly salary was fixed by Wellington to provide for compensation for every working day of the year including the holidays specified by law — and excluding only Sundays. The “314 factor” simply deducted 51 Sundays from the 365 days normally comprising a year, and used the difference as basis for determining the monthly salary. The monthly salary thus fixed actually covers payment for 314 days of the year, including regular and special holidays, as well as days when no work is done by reason of fortuitous cause, as above specified, or causes not attributable to the employees.

Based on the routine inspection, it was discovered that in certain years, two or three regular holidays had fallen on Sundays. According to respondent Labor Undersecretary:

“By using said (314) factor, the respondent (Wellington) assumes that all the regular holidays fell on ordinary days and never on a Sunday. Thus, the respondent failed to consider the circumstance that whenever a regular holiday coincides with a Sunday, an additional working day is created and left



unpaid. In other words, while the said divisor may be utilized as proof evidencing payment of 302 working days, 2 special days and the ten regular holidays in a calendar year, the same does not cover or include payment of additional working days created as a result of some regular holidays falling on Sundays.”

**LEYTE IV ELECTRIC COOPERATIVE, INC., PETITIONER, VS.  
LEYECO IV EMPLOYEES UNION-ALU, RESPONDENT.  
[G.R. No. 157775, THIRD DIVISION, OCTOBER 19, 2007, AUSTRIA-MARTINEZ, J.]**

*The divisor assumes an important role in determining whether or not holiday pay is already included in the monthly paid employee's salary and in the computation of his daily rate.*

*In this case, the employees are required to work only from Monday to Friday. Thus, the minimum allowable divisor is 263, which is arrived at by deducting 51 un-worked Sundays and 51 un-worked Saturdays from 365 days. Considering that petitioner used the 360-day divisor, which is clearly above the minimum, indubitably, petitioner's employees are being given their holiday pay.*

**FACTS:**

On April 6, 1998, Leyte IV Electric Cooperative, Inc. (petitioner) and Leyeco IV Employees Union-ALU (respondent) entered into a Collective Bargaining Agreement (CBA) covering petitioner rank-and-file employees, for a period of five (5) years effective January 1, 1998.

On June 7, 2000, respondent, through its Regional Vice-President, Vicente P. Casilan, sent a letter to petitioner demanding holiday pay for all employees, as provided for in the CBA.

On June 20, 2000, petitioner, through its legal counsel, sent a letter-reply to Casilan, explaining that after perusing all available pay slips, it found that it had paid all employees all the holiday pays enumerated in the CBA

After exhausting the procedures of the grievance machinery\* the parties agreed to submit the issues of the interpretation and implementation of Section 2, Article VIII of the CBA on the payment of holiday pay, for arbitration of the National Conciliation and Mediation Board (NCMB), Regional Office No. VIII in Tacloban City. The parties were required to submit their respective position papers, after which the dispute was submitted for decision.

In its position paper, the employees admitted they were paid all of the days of the month even if there was no work, respondent alleged that it is not prevented from making separate demands for the payment of regular holidays concomitant with the provisions of the CBA, with its supporting documents consisting of a letter demanding payment of holiday pay, petitioner's reply thereto and respondent's rejoinder, a computation in the amount of ₱1,054,393.07 for the unpaid legal holidays, and several pay slips.

Petitioner, on the other hand, in its Position Paper, insisted payment of the holiday pay in compliance with the CBA provisions, stating that payment was presumed since the formula used in determining the daily rate of pay of the covered employees is Basic Monthly Salary divided by 30 days or Basic Monthly Salary multiplied by 12 divided by 360 days, thus with said formula, the employees are already paid their regular and special days, the days when no work is done, the 51 un-worked Sundays and the 51 un-worked Saturdays

On March 1, 2001, Voluntary Arbitrator. rendered a Decision in favor of respondent, holding petitioner liable for payment of unpaid holidays from 1998 to 2000 in the sum of ₱1,054,393.07. He

reasoned that petitioner miserably failed to show that it complied with the CBA mandate that holiday pay be “reflected during any payroll period of occurrence” since the payroll slips did not reflect any payment of the paid holidays. He found unacceptable not only petitioner's presumption of payment of holiday pay based on a formula used in determining and computing the daily rate of each covered employee, but also petitioner's further submission that the rate of its employees is not less than the statutory minimum wage multiplied by 365 days and divided by twelve.

**ISSUE:**

Whether or not Leyte IV Electric Cooperative is liable for underpayment of holiday pay.

**RULING:**

No. Leyte IV Electric Cooperative is not liable for underpayment of holiday pay.

The Voluntary Arbitrator gravely abused its discretion in giving a strict or literal interpretation of the CBA provisions that the holiday pay be reflected in the payroll slips. Such literal interpretation ignores the admission of respondent in its Position Paper that the employees were paid all the days of the month even if not worked. In light of such admission, petitioner's submission of its 360 divisor in the computation of employees' salaries gains significance.

In *Union of Filipino Employees v. Vivar, Jr.* the Court held that “[t]he divisor assumes an important role in determining whether or not holiday pay is already included in the monthly paid employee's salary and in the computation of his daily rate”.

This ruling was applied in *Wellington Investment and Manufacturing Corporation v. Trajano, Producers Bank of the Philippines v. National Labor Relations Commission*. In this case, the monthly salary was fixed by Law and excluding only Sundays. In fixing the salary, Wellington used what it called the “314 factor”; that is, it simply deducted 51 Sundays from the 365 days normally comprising a year and used the difference, 314, as basis for determining the monthly salary. The monthly salary thus fixed actually covered payment for 314 days of the year, including regular and special holidays, as well as days when no work was done by reason of fortuitous cause, such as transportation strike, riot, or typhoon or other natural calamity, or cause not attributable to the employees.

It was also applied in *Odango v. National Labor Relations Commission*, where Court ruled that the use of a divisor that was less than 365 days cannot make the employer automatically liable for underpayment of holiday pay. In said case, the employees were required to work only from Monday to Friday and half of Saturday. Thus, the minimum allowable divisor is 287, which is the result of 365 days, less 52 Sundays and less 26 Saturdays (or 52 half Saturdays). Any divisor below 287 days meant that the employees were deprived of their holiday pay for some or all of the ten legal holidays. The 304-day divisor used by the employer was clearly above the minimum of 287 days.

In this case, the employees are required to work only from Monday to Friday. Thus, the minimum allowable divisor is 263, which is arrived at by deducting 51 un-worked Sundays and 51 un-worked Saturdays from 365 days. Considering that petitioner used the 360-day divisor, which is clearly above the minimum, indubitably, petitioner's employees are being given their holiday pay. Thus, the Voluntary Arbitrator should not have simply brushed aside petitioner's divisor formula.

In granting respondent's claim of non-payment of holiday pay, a "double burden" was imposed upon petitioner because it was being made to pay twice for its employees' holiday pay when payment thereof had already been included in the computation of their monthly salaries.

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute would automatically be decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of concern for those with less privileges in life, this Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded us to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.

**BISIG MANGGAGAWA SA TRYCO and/or FRANCISCO SIQUIG, as Union President, JOSELITO LARIÑO, VIVENCIO B. BARTE, SATURNINO EGERA and SIMPLICIO AYA-AY, petitioners, - versus- NATIONAL LABOR RELATIONS COMMISSION, TRYCO PHARMA CORPORATION, and/or WILFREDO C. RIVERA, respondents.**  
**G.R. No. 151309, THIRD DIVISION, October 15, 2008, NACHURA, J.**

*While the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied. This prerogative extends to the management's right to regulate, according to its own discretion and judgment, all aspects of employment, including the freedom to transfer and reassign employees according to the requirements of its business.*

*In the instant case, the transfer orders do not entail a demotion in rank or diminution of salaries, benefits and other privileges of the petitioners. Petitioners, therefore, anchor their objection solely on the ground that it would cause them great inconvenience since they are all residents of Metro Manila and they would incur additional expenses to travel daily from Manila to Bulacan. The Court has previously declared that mere incidental inconvenience is not sufficient to warrant a claim of constructive dismissal.*

#### **FACTS:**

Tryco Pharma Corporation (Tryco) is a manufacturer of veterinary medicines and its principal office is located in Caloocan City. Petitioners Joselito Lariño, Vivencio Barte, Saturnino Egera and Simplicio Aya-ay are its regular employees, occupying the positions of helper, shipment helper and factory workers, respectively, assigned to the Production Department. They are members of Bisig Manggagawa sa Tryco (BMT), the exclusive bargaining representative of the rank-and-file employees.

Tryco and the petitioners signed separate Memorandum of Agreement (MOA), providing for a compressed workweek schedule to be implemented in the company effective May 20, 1996. Tryco issued a Memorandum dated April 7, 1997 which directed petitioner Aya-ay to report to the company's plant site in Bulacan. When petitioner Aya-ay refused to obey, Tryco reiterated the order on April 18, 1997.[6] Subsequently, through a Memorandum dated May 9, 1997, Tryco also directed petitioners Egera, Lariño and Barte to report to the company's plant site in Bulacan.

#### **ISSUE:**

Whether the transfer orders amount to a constructive dismissal? (NO)



**RULING:**

Tryco's decision to transfer its production activities to San Rafael, Bulacan, regardless of whether it was made pursuant to the letter of the Bureau of Animal Industry, was within the scope of its inherent right to control and manage its enterprise effectively. While the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied. This prerogative extends to the management's right to regulate, according to its own discretion and judgment, all aspects of employment, including the freedom to transfer and reassign employees according to the requirements of its business. Management's prerogative of transferring and reassigning employees from one area of operation to another in order to meet the requirements of the business is, therefore, generally not constitutive of constructive dismissal. Thus, the consequent transfer of Tryco's personnel, assigned to the Production Department was well within the scope of its management prerogative.

In the instant case, the transfer orders do not entail a demotion in rank or diminution of salaries, benefits and other privileges of the petitioners. Petitioners, therefore, anchor their objection solely on the ground that it would cause them great inconvenience since they are all residents of Metro Manila and they would incur additional expenses to travel daily from Manila to Bulacan. The Court has previously declared that mere incidental inconvenience is not sufficient to warrant a claim of constructive dismissal. Objection to a transfer that is grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer.

**INTERNATIONAL SCHOOL ALLIANCE OF EDUCATORS (ISAE), petitioner, -versus- HON. LEONARDO A. QUISUMBING in his capacity as the Secretary of Labor and Employment; HON. CRESENCIANO B. TRAJANO in his capacity as the Acting Secretary of Labor and Employment; DR. BRIAN MACCAULEY in his capacity as the Superintendent of International School-Manila; and INTERNATIONAL SCHOOL, INC., respondents.**  
**G.R. No. 128845, FIRST DIVISION, June 1, 2000, KAPUNAN, J.**

*The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of "equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. This rule applies to the School, its "international character" notwithstanding.*

*While we recognize the need of the School to attract foreign hires, salaries should not be used as an enticement to the prejudice of local-hires. The local-hires perform the same services as foreign-hires and they ought to be paid the same salaries as the latter.*

**FACTS:**

International School, Inc. (the School, for short), pursuant to Presidential Decree 732, is a domestic educational institution established primarily for dependents of foreign diplomatic personnel and other temporary residents. The School hires both foreign and local teachers as members of its faculty, classifying the same into two: (1) foreign-hires and (2) local-hires. The School grants foreign-hires certain benefits not accorded local-hires. These include housing, transportation, shipping costs, taxes, and home leave travel allowance. Foreign-hires are also paid a salary rate twenty-five percent (25%) more than local-hires. The School justifies the difference on two "significant economic disadvantages" foreign-hires have to endure, namely: (a) the "dislocation factor" and (b) limited



tenure. International School Alliance of Educators (ISAE), "a legitimate labor union and the collective bargaining representative of all faculty members" of the School, contested the difference in salary rates between foreign and local-hires in a CBA negotiation. They failed to come to an agreement and ISAE filed a notice of strike. DOLE Acting Secretary ruled in favor of the school while DOLE Secretary denied their MR. Hence, this petition.

**ISSUE:**

Whether the point-of-hire classification employed by the School is discriminatory to Filipinos and that the grant of higher salaries to foreign-hires constitutes racial discrimination. (YES)

**RULING:**

The Constitution also directs the State to promote "equality of employment opportunities for all." Similarly, the Labor Code provides that the State shall "ensure equal work opportunities regardless of sex, race or creed." It would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes to unequal and discriminatory terms and conditions of employment.

Discrimination, particularly in terms of wages, is frowned upon by the Labor Code. Article 135, for example, prohibits and penalizes the payment of lesser compensation to a female employee as against a male employee for work of equal value. Article 248 declares it an unfair labor practice for an employer to discriminate in regard to wages in order to encourage or discourage membership in any labor organization.

Notably, the International Covenant on Economic, Social, and Cultural Rights, *supra*, in Article 7 thereof, provides:

Remuneration which provides all workers, as a minimum, with:  
Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of "equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. This rule applies to the School, its "international character" notwithstanding.

While we recognize the need of the School to attract foreign hires, salaries should not be used as an enticement to the prejudice of local-hires. The local-hires perform the same services as foreign-hires and they ought to be paid the same salaries as the latter. For the same reason, the "dislocation factor" and the foreign-hires' limited tenure also cannot serve as valid bases for the distinction in salary rates. The dislocation factor and limited tenure affecting foreign-hires are adequately compensated by certain benefits accorded them which are not enjoyed by local-hires, such as housing, transportation, shipping costs, taxes and home leave travel allowances.

The Constitution enjoins the State to "protect the rights of workers and promote their welfare," "to afford labor full protection." The State, therefore, has the right and duty to regulate the relations between labor and capital. These relations are not merely contractual but are so impressed with public interest that labor contracts, collective bargaining agreements included, must yield to the

common good.

Should such contracts contain stipulations that are contrary to public policy, courts will not hesitate to strike down these stipulations. In this case, we find the point-of-hire classification employed by respondent

School to justify the distinction in the salary rates of foreign-hires and local hires to be an invalid classification. There is no reasonable distinction between the services rendered by foreign-hires and local hires. The practice of the School of according higher salaries to foreign hires contravenes public policy and, certainly, does not deserve the sympathy of this Court.

**ROSARIO A. GAA, *petitioner*, -versus- THE HONORABLE COURT OF APPEALS, EUROPHIL INDUSTRIES CORPORATION, and CESAR R. ROXAS, Deputy Sheriff of Manila, *respondents*.  
G.R. No. L-44169, FIRST DIVISION, December 3, 1985, PATAJO, J.**

*Article 1708 used the word "wages" and not "salary" in relation to "laborer" when it declared what are to be exempted from attachment and execution. The term "wages" applies to the compensation for manual labor, skilled or unskilled, paid at stated times, and measured by the day, week, month, or season. While "salary" denotes a higher degree of employment, or a superior grade of services, and implies a position of office. By contrast, the term "wages" indicates considerable pay for a lower and less responsible character of employment, while "salary" is suggestive of a larger and more important service (See 35 Am. Jur. 496).*

*In the instant case, Gaa is definitely not within that class of laborers to exempt her salary from execution. Gaa not an ordinary or rank and file laborer but "a responsibly place employee," of El Grande Hotel. She is responsible for planning and coordinating the activities of all housekeeping personnel to ensure the maintenance and orderliness of hotel rooms. She is then, occupying a position equivalent to that of a managerial or supervisory position.*

**FACTS:**

Europhil Industries Corporation was formerly one of the tenants in Trinity Building, while Rosario A. Gaa was then the building administrator. Europhil filed an action for damages against Gaa alleging that the latter perpetrated certain acts that can be considered a trespass upon its rights namely, cutting of its electricity and removing its name from the building directory and gate passes of its officials and employees.

The lower court ordered Gaa to pay Europhil actual, moral and exemplary damages. After such decision became final and executory, the court issued a Notice of Garnishment and was served upon El Grande Hotel, where Gaa was then employed. The sheriff garnished Gaa's salary, commission and/or remuneration.

Gaa filed a motion to lift said garnishment on the ground that her "salaries, commission and, or remuneration" are exempted from execution under Article 1708 of the New Civil Code.

The lower court denied the motion. The Court of Appeals affirmed the lower court's decision and held that Gaa is a manager and not a mere laborer as contemplated under Article 1708.

**ISSUE:**

Whether the petitioner is covered by Article 1708 of the New Civil Code. (NO)

**RULING:**

Article 1708 of the New Civil Code provides that "The laborer's wage shall not be subject to execution or attachment, except for debts incurred for food, shelter, clothing and medical attendance."

In determining whether a particular laborer or employee is really a "laborer," the character of the work he does must be taken into consideration. He must be classified not according to the arbitrary designation given to his calling, but with reference to the character of the service required of him by his employer. (See *Oliver vs. Macon Hardware Co.*)

A laborer is one whose work depends on mere physical power to perform ordinary manual labor and not one engaged in services consisting mainly of work requiring mental skill or business capacity or the exercise of intellectual faculties. (See *Kline vs. Russell*)

Article 1708 used the word "wages" and not "salary" in relation to "laborer" when it declared what are to be exempted from attachment and execution. The term "**wages**" applies to the compensation for manual labor, skilled or unskilled, paid at stated times, and measured by the day, week, month, or season. While "**salary**" denotes a higher degree of employment, or a superior grade of services, and implies a position of office. By contrast, the term "wages" indicates considerable pay for a lower and less responsible character of employment, while "salary" is suggestive of a larger and more important service (See 35 Am. Jur. 496).

It is the legislature's intent to operate the exemption in Article 1708 of the New Civil Code to those who are laboring men or women in the sense that their work is manual. Persons belonging to this class usually look to the reward of a day's labor for immediate or present support, and such persons are more in need of the exemption than any others.

In the instant case, Gaa is definitely not within that class of laborers to exempt her salary from execution. Gaa is not an ordinary or rank and file laborer but "a responsibly placed employee," of El Grande Hotel. She is responsible for planning and coordinating the activities of all housekeeping personnel to ensure the maintenance and orderliness of hotel rooms. She is then, occupying a position equivalent to that of a managerial or supervisory position.

**ATOK-BIG WEDGE MINING CO., INC., petitioner, -versus- ATOK-BIG WEDGE MUTUAL BENEFIT ASSOCIATION, respondent.**  
**G.R. No. L-5276, EN BANC, March 3, 1953, LABRADOR, J.**

*Whether or not bonus forms part of wages depends upon the circumstances or condition for its payment. If it is an additional compensation which the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, then it is part of the wage. But if it is paid only if profits are realized or a certain amount of productivity achieved, it cannot be considered part of the wages but considered as bonuses.*

*In the instant case, efficiency bonus was not payable to all but to laborers only. It is also paid on the basis of actual production or actual work accomplished. If the desired goal of production is not obtained or the amount of actual work has not been accomplished, the bonus does not accrue. Hence, it is paid only when the labor becomes more efficient or more productive. It is only an inducement for efficiency, a prize therefore, and not a part of the wage.*



**FACTS:**

Atok Mutual Benefit Association demanded from Atok Corporation an increase in wages, commutation of sick and vacation leave if not used and other additional benefits. Some of the demands were granted and the others were rejected. The union filed a case against Atok.

Atok Corporation contended that the laborer and his family need at least need P2.58 for food and this should be the basis for the determination of his wage, not what he actually spends. It argued that it is not justifiable to fix a wage higher than what is provided by Republic Act No. 602 and the union made the demand in accordance with a pernicious practice of claiming more after an original demand is granted.

The Court of Industrial Relations found that P2.58 is the minimum amount actually needed by the laborer and his family but it does not mean that it is his actual expense. It declared that of P3.20 is the minimum wage. It also ruled that the additional compensation representing efficiency bonus should not be included as part of the wage.

**ISSUE:**

Whether the court is correct on setting the minimum wage at P 3.20, excluding the bonuses from the minimum wage and retroacting the effectivity of the award? (YES)

**RULING:**

The law guarantees the laborer a fair and just wage. The minimum must be fair and just. The "minimum wage" can by no means imply only the actual minimum. Some margin or leeway must be provided, over and above the minimum, to take care of contingencies such as increase of prices of commodities and desirable improvement in laborer's mode of living.

In the instant case, the amount of P0.22 increase a day in wage is not excessive. The P3 minimum wage fixed in the law is still far below what is considered a fair and just minimum. It cannot be contended that the demand for increase is due to an alleged pernicious practice. Frequent demands for increase are indicative of a healthy spirit of wakefulness to the demands of a progressing and an increasingly more expensive world.

Whether or not bonus forms part of wages depends upon the circumstances or condition for its payment. If it is an additional compensation which the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, then it is part of the wage. But if it is paid only if profits are realized or a certain amount of productivity achieved, it cannot be considered part of the wages but considered as bonuses.

In the instant case, efficiency bonus was not payable to all but to laborers only. It is also paid on the basis of actual production or actual work accomplished. If the desired goal of production is not obtained or the amount of actual work has not been accomplished, the bonus does not accrue. Hence, it is paid only when the labor becomes more efficient or more productive. It is only an inducement for efficiency, a prize therefore, and not a part of the wage.

**OUR HAUS REALTY DEVELOPMENT CORPORATION, *Petitioner*, -versus- ALEXANDER PARIAN, JAY C. ERINCO, ALEXANDER CANLAS, BERNARD TENEDERO and JERRY SABULAO, Respondents.**

**G.R. No. 204651, SECOND DIVISION, August 6, 2014, BRION, J.**

*The employer's argument is a vain attempt to circumvent the minimum wage law by trying to create a distinction where none exists. There is no substantial distinction between deducting and charging a facility's value from the employee's wage. Hence, the legal requirements for creditability apply to both. These requirements are (a) proof must be shown that such facilities are customarily furnished by the trade; (b) the provision of deductible facilities must be voluntarily accepted in writing by the employee; and (c) the facilities must be charged at fair and reasonable value.*

*For one, Our Haus only produced the documents when the NLRC had already earlier determined that Our Haus failed to prove that it was traditionally giving the respondents their board and lodging. This document did not state whether these benefits had been consistently enjoyed by the rest of Our Haus' employees. Again, in the motion for reconsideration with the NLRC, Our Haus belatedly submitted five kasunduans, supposedly executed by the respondents, containing their conformity to the inclusion of the values of the meals and housing to their total wages. Oddly, Our Haus only offered these documents when the NLRC had already ruled that respondents did not accomplish any written authorization, to allow deduction from their wages. In the present case, Our Haus never explained how it came up with the values it assigned for the benefits it provided; it merely listed its supposed expenses without any supporting document. Since Our Haus is using these additional expenses (cook's salary, water and LPG) to support its claim that it did not withhold the full amount of the meals' value, Our Haus is burdened to present evidence to corroborate its claim.*

**FACTS:**

Alexander Parian, Jay Erinco, Alexander Canlas, Jerry Sabulao and Bernardo Tenedero (respondents) were all laborers working for Our Haus Realty Development Corporation (Our Haus), a company engaged in the construction business.

Sometime in May 2010, Our Haus experienced financial distress. To alleviate its condition, Our Haus suspended some of its construction projects and asked the affected workers, including the respondents, to take vacation leaves.

Eventually, the respondents were asked to report back to work but instead of doing so, they filed with the LA a complaint for underpayment of their daily wages. They claimed that except for respondent Bernardo N. Tenedero, their wages were below the minimum rates prescribed in the following wage orders from 2007 to 2010.

Our Haus primarily argued that there is a distinction between deduction and charging. A written authorization is only necessary if the facility's value will be deducted and will not be needed if it will merely be charged or included in the computation of wages. Our Haus claimed that it did not actually deduct the values of the meals and housing benefits. It only considered these in computing the total amount of wages paid to the respondents for purposes of compliance with the minimum wage law. Hence, the written authorization requirement should not apply.

On the other hand, the respondents argued that the value of their meals should not be considered in determining their wages' total amount since the requirements set under Section 4 of DOLE Memorandum Circular No. 2 were not complied with. The respondents pointed out that Our Haus

never presented any proof that they agreed in writing to the inclusion of their meals' value in their wages. Also, Our Haus failed to prove that the value of the facilities it furnished was fair and reasonable.

**ISSUE:**

Whether there is a substantial distinction between deducting and charging a facility's value from the employee's wage. (NO)

**RULING:**

Our Haus' argument is a vain attempt to circumvent the minimum wage law by trying to create a distinction where none exists. In reality, deduction and charging both operate to lessen the actual take-home pay of an employee.

In both, the employee receives a lessened amount because supposedly, the facility's value, which is part of his wage, had already been paid to him in kind. As there is no substantial distinction between the two, the requirements set by law must apply to both.

As the CA correctly ruled, these requirements, as summarized in Mabeza, are the following:

1.Proof must be shown that such facilities are customarily furnished by the trade; 2.The provision of deductible facilities must be voluntarily accepted in writing by the employee; and 3.The facilities must be charged at fair and reasonable value

**A. The facility must be customarily furnished by the trade**

In a string of cases, we have concluded that one of the badges to show that a facility is customarily furnished by the trade is the existence of a company policy or guideline showing that provisions for a facility were designated as part of the employees' salaries.

We agree with the NLRC's finding that the sinumpaang salaysay statements submitted by Our Haus are self-serving. For one, Our Haus only produced the documents when the NLRC had already earlier determined that Our Haus failed to prove that it was traditionally giving the respondents their board and lodging. This document did not state whether these benefits had been consistently enjoyed by the rest of Our Haus' employees.

Moreover, the records reveal that the board and lodging were given on a per project basis. Our Haus did not show if these benefits were also provided in its other construction projects, thus negating its claimed customary nature.

**B. The provision of deductible facilities must be voluntarily accepted in writing by the employee.**

In Mayon Hotel, we reiterated that a facility may only be deducted from the wage if the employer was authorized in writing by the concerned employee. As it diminishes the take-home pay of an employee, the deduction must be with his express consent.

Again, in the motion for reconsideration with the NLRC, Our Haus belatedly submitted five kasunduans, supposedly executed by the respondents, containing their conformity to the inclusion



of the values of the meals and housing to their total wages. Oddly, Our Haus only offered these documents when the NLRC had already ruled that respondents did not accomplish any written authorization, to allow deduction from their wages. These five kasunduan were also undated, making us wonder if they had really been executed when respondents first assumed their jobs.

**C. The facility must be charged at fair and reasonable value.**

Our Haus admitted that it deducted the amount of P290.00 per week from each of the respondents for their meals. But it now submits that it did not actually withhold the entire amount as it did not figure in the computation the money it expended for the salary of the cook, the water, and the LPG used for cooking, which amounts to P249.40 per week per person. From these, it appears that the total meal expense per week for each person is P529.40, making Our Haus' P290.00 deduction within the 70% ceiling prescribed by the rules.

In the present case, Our Haus never explained how it came up with the values it assigned for the benefits it provided; it merely listed its supposed expenses without any supporting document. Since Our Haus is using these additional expenses (cook's salary, water and LPG) to support its claim that it did not withhold the full amount of the meals' value, Our Haus is burdened to present evidence to corroborate its claim. The records however, are bereft of any evidence to support Our Haus' meal expense computation. Even the value it assigned for the respondents' living accommodations was not supported by any documentary evidence. Without any corroborative evidence, it cannot be said that Our Haus complied with this third requisite.

**WESLEYAN UNIVERSITY-PHILIPPINES, *Petitioner*, -versus- WESLEYAN UNIVERSITY-PHILIPPINES FACULTY and STAFF ASSOCIATION, *Respondent*.  
G.R. No. 181806, SECOND DIVISION, March 12, 2014, DEL-CASTILLO, J.**

*The Non-Diminution Rule found in Article 100 of the Labor Code explicitly prohibits employers from eliminating or reducing the benefits received by their employees. This rule, however, applies only if the benefit is based on an express policy, a written contract, or has ripened into a practice. To be considered a practice, it must be consistently and deliberately made by the employer over a long period of time.*

*In this case, respondent was able to present substantial evidence in the form of affidavits to support its claim that there are two retirement plans. Based on the affidavits, petitioner has been giving two retirement benefits as early as 1997. Thus, petitioner cannot, without the consent of respondent, eliminate the two-retirement policy and implement a one-retirement policy as this would violate the rule on non-diminution of benefits.*

**FACTS:**

On August 16, 2005, petitioner, through its President, Atty. Guillermo T. Maglaya (Atty. Maglaya), issued a Memorandum providing guidelines on the implementation of vacation and sick leave credits as well as vacation leave commutation.

On February 8, 2006, a Labor Management Committee (LMC) Meeting was held during which petitioner advised respondent to file a grievance complaint on the implementation of the vacation and sick leave policy. In the same meeting, petitioner announced its plan of implementing a one-retirement policy, which was unacceptable to respondent.

Unable to settle their differences at the grievance level, the parties referred the matter to a Voluntary Arbitrator. During the hearing, respondent submitted affidavits to prove that there is an established practice of giving two retirement benefits, one from the Private Education Retirement Annuity Association (PERAA) Plan and another from the CBA Retirement Plan. Sections 1, 2, 3 and 4 of Article XVI of the CBA.

On November 2, 2006, the Voluntary Arbitrator rendered a decision declaring the one-retirement policy and the Memorandum dated August 16, 2005 contrary to law. Aggrieved, petitioner appealed the case to the CA, which affirmed the VA.

**ISSUE:**

Whether the one-retirement policy violates Art. 100 of the Labor Code. (YES)

**RULING:**

The Non-Diminution Rule found in Article 100 of the Labor Code explicitly prohibits employers from eliminating or reducing the benefits received by their employees. This rule, however, applies only if the benefit is based on an express policy, a written contract, or has ripened into a practice. To be considered a practice, it must be consistently and deliberately made by the employer over a long period of time.

An exception to the rule is when "the practice is due to error in the construction or application of a doubtful or difficult question of law." The error, however, must be corrected immediately after its discovery; otherwise, the rule on Non-Diminution of Benefits would still apply.

In this case, respondent was able to present substantial evidence in the form of affidavits to support its claim that there are two retirement plans. Based on the affidavits, petitioner has been giving two retirement benefits as early as 1997. Petitioner, on the other hand, failed to present any evidence to refute the veracity of these affidavits. Petitioner's contention that these affidavits are self-serving holds no water. The retired employees of petitioner have nothing to lose or gain in this case as they have already received their retirement benefits. Thus, they have no reason to perjure themselves. Obviously, the only reason they executed those affidavits is to bring out the truth. As we see it then, their affidavits, corroborated by the affidavits of incumbent employees, are more than sufficient to show that the granting of two retirement benefits to retiring employees had already ripened into a consistent and deliberate practice.

Moreover, petitioner's assertion that there is only one retirement plan as the CBA Retirement Plan and the PERAA Plan are one and the same is not supported by any evidence. There is nothing in Article XVI of the CBA to indicate or even suggest that the "Plan" referred to in the CBA is the PERAA Plan. Besides, any doubt in the interpretation of the provisions of the CBA should be resolved in favor of respondent. In fact, petitioner's assertion is negated by the announcement it made during the LMC Meeting on February 8, 2006 regarding its plan of implementing a "one-retirement plan." For if it were true that petitioner was already implementing a one-retirement policy, there would have been no need for such announcement. Equally damaging is the letter-memorandum dated May 11, 2006, entitled "Suggestions on the defenses we can introduce to justify the abolition of double retirement policy," prepared by the petitioner's legal counsel.

These circumstances, taken together, bolster the finding that the two-retirement policy is a practice. Thus, petitioner cannot, without the consent of respondent, eliminate the two-retirement policy and implement a one-retirement policy as this would violate the rule on non-diminution of benefits.

**ARCO METAL PRODUCTS, CO., INC., and MRS. SALVADOR UY, *Petitioners*, -versus- SAMAHAN NG MGA MANGGAGAWA SA ARCO METAL-NAFLU (SAMARM-NAFLU), *Respondent*.  
G.R. No. 170734, SECOND DIVISION, May 14, 2008, TINGA, J.**

*Any benefit and supplement being enjoyed by employees cannot be reduced, diminished, discontinued or eliminated by the employer. The principle of non-diminution of benefits is founded on the Constitutional mandate to "protect the rights of workers and promote their welfare," and "to afford labor full protection." Said mandate in turn is the basis of Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations shall be rendered in favor of labor."*

*In the years 1992, 1993, 1994, 1999, 2002 and 2003, petitioner had adopted a policy of freely, voluntarily and consistently granting full benefits to its employees regardless of the length of service rendered. True, there were only a total of seven employees who benefited from such a practice, but it was an established practice nonetheless. Jurisprudence has not laid down any rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice.*

**FACTS:**

Sometime in December 2003, petitioner paid the 13th month pay, bonus, and leave encashment of three union members in amounts proportional to the service they actually rendered in a year, which is less than a full twelve (12) months.

Respondent protested the prorated scheme, claiming that on several occasions petitioner did not prorate the payment of the same benefits to seven (7) employees who had not served for the full 12 months. The payments were made in 1992, 1993, 1994, 1996, 1999, 2003, and 2004. According to respondent, the prorated payment violates the rule against diminution of benefits under Article 100 of the Labor Code. Thus, they filed a complaint before the National Conciliation and Mediation Board (NCMB). The parties submitted the case for voluntary arbitration.

The voluntary arbitrator, Apron M. Mangabat, ruled in favor of petitioner and found that the giving of the contested benefits in full, irrespective of the actual service rendered within one year has not ripened into a practice. On appeal, the CA ruled in favor of the respondent.

Petitioner submits that the Court of Appeals erred when it ruled that the grant of 13th month pay, bonus, and leave encashment in full regardless of actual service rendered constitutes voluntary employer practice and, consequently, the prorated payment of the said benefits does not constitute diminution of benefits under Article 100 of the Labor Code.

**ISSUE:**

Whether there was a violation of Article 100 of the Labor Code. (YES)

**RULING:**



Any benefit and supplement being enjoyed by employees cannot be reduced, diminished, discontinued or eliminated by the employer. The principle of non-diminution of benefits is founded on the Constitutional mandate to "protect the rights of workers and promote their welfare," and "to afford labor full protection." Said mandate in turn is the basis of Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations shall be rendered in favor of labor."

Jurisprudence is replete with cases which recognize the right of employees to benefits which were voluntarily given by the employer and which ripened into company practice. Thus in *Davao Fruits Corporation v. Associated Labor Unions, et al.* where an employer had freely and continuously included in the computation of the 13th month pay those items that were expressly excluded by the law, we held that the act which was favorable to the employees though not conforming to law had thus ripened into a practice and could not be withdrawn, reduced, diminished, discontinued or eliminated. In *Sevilla Trading Company v. Semana*, we ruled that the employer's act of including non-basic benefits in the computation of the 13th month pay was a voluntary act and had ripened into a company practice which cannot be peremptorily withdrawn.

Meanwhile in *Davao Integrated Port Stevedoring Services v. Abarquez*, the Court ordered the payment of the cash equivalent of the unenjoyed sick leave benefits to its intermittent workers after finding that said workers had received these benefits for almost four years until the grant was stopped due to a different interpretation of the CBA provisions. We held that the employer cannot unilaterally withdraw the existing privilege of commutation or conversion to cash given to said workers, and as also noted that the employer had in fact granted and paid said cash equivalent of the unenjoyed portion of the sick leave benefits to some intermittent workers.

In the years 1992, 1993, 1994, 1999, 2002 and 2003, petitioner had adopted a policy of freely, voluntarily and consistently granting full benefits to its employees regardless of the length of service rendered. True, there were only a total of seven employees who benefited from such a practice, but it was an established practice nonetheless. Jurisprudence has not laid down any rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice. Thus, it can be six (6) years, three (3) years, or even as short as two (2) years.

**SEVILLA TRADING COMPANY, *Petitioner*, -versus- A.V.A. TOMAS E. SEMANA, SEVILLA  
TRADING WORKERS UNION-SUPER, *Respondents*.  
G.R. No. 152456, SECOND DIVISION, April 28, 2004, PUNO, J.**

*A company practice favorable to the employees had indeed been established and the payments made pursuant thereto, ripened into benefits enjoyed by them. And any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer, by virtue of Sec. 10 of the Rules and Regulations Implementing P.D. No. 851, and Art. 100 of the Labor Code of the Philippines which prohibit the diminution or elimination by the employer of the employees' existing benefits.*

*In the light of the clear ruling of this Court, there is, thus no reason for any mistake in the construction or application of the law. When petitioner Sevilla Trading still included over the years non-basic benefits of its employees, such as maternity leave pay, cash equivalent of unused vacation and sick leave, among others in the computation of the 13th-month pay, this may only be construed as a voluntary act on its part. Putting the blame on the petitioner's payroll personnel is inexcusable.*

**FACTS:**

For two to three years prior to 1999, petitioner Sevilla Trading Company (Sevilla Trading, for short) added to the base figure, in its computation of the 13th-month pay of its employees, the amount of other benefits received by the employees which are beyond the basic pay.

Petitioner claimed that it entrusted the preparation of the payroll to its office staff, including the computation and payment of the 13th-month pay and other benefits. When it changed its person in charge of the payroll in the process of computerizing its payroll, and after audit was conducted, it allegedly discovered the error of including non-basic pay or other benefits in the base figure used in the computation of the 13th-month pay of its employees.

Hence, the new computation reduced the employees' thirteenth month pay. The daily piece-rate workers represented by private respondent Sevilla Trading Workers Union – SUPER (Union, for short), a duly organized and registered union, through the Grievance Machinery in their Collective Bargaining Agreement, contested the new computation and reduction of their thirteenth month pay. The parties failed to resolve the issue.

On March 24, 2000, the parties submitted the issue of "whether or not the exclusion of leaves and other related benefits in the computation of 13th-month pay is valid" to respondent Accredited Voluntary Arbitrator Tomas E. Semana (A.V.A. Semana, for short) of the National Conciliation and Mediation Board, for consideration and resolution. The VA ruled in favor of the union.

**ISSUE:**

Whether there was a violation of Article 100 of the Labor Code. (YES).

**RULING:**

A.V.A. Semana is correct in holding that petitioner's stance of mistake or error in the computation of the thirteenth month pay is unmeritorious. Petitioner's submission of financial statements every year requires the services of a certified public accountant to audit its finances. It is quite impossible to suggest that they have discovered the alleged error in the payroll only in 1999. This implies that in previous years it does not know its cost of labor and operations. This is merely basic cost accounting. Also, petitioner failed to adduce any other relevant evidence to support its contention. Aside from its bare claim of mistake or error in the computation of the thirteenth month pay, petitioner merely appended to its petition a copy of the 1997-2002 Collective Bargaining Agreement and an alleged "corrected" computation of the thirteenth month pay. There was no explanation whatsoever why its inclusion of non-basic benefits in the base figure in the computation of their 13th-month pay in the prior years was made by mistake, despite the clarity of statute and jurisprudence at that time.

In the light of the clear ruling of this Court, there is, thus no reason for any mistake in the construction or application of the law. When petitioner Sevilla Trading still included over the years non-basic benefits of its employees, such as maternity leave pay, cash equivalent of unused vacation and sick leave, among others in the computation of the 13th-month pay, this may only be construed as a voluntary act on its part. Putting the blame on the petitioner's payroll personnel is inexcusable.

From 1975 to 1981, petitioner had freely, voluntarily and continuously included in the computation of its employees' thirteenth month pay, without the payments for sick, vacation and maternity leave, premium for work done on rest days and special holidays, and pay for regular holidays. The

considerable length of time the questioned items had been included by petitioner indicates a unilateral and voluntary act on its part, sufficient in itself to negate any claim of mistake.

A company practice favorable to the employees had indeed been established and the payments made pursuant thereto, ripened into benefits enjoyed by them. And any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer, by virtue of Sec. 10 of the Rules and Regulations Implementing P.D. No. 851, and Art. 100 of the Labor Code of the Philippines which prohibit the diminution or elimination by the employer of the employees' existing benefits.

**ROYAL PLANT WORKERS UNION, *Petitioner*, -versus- COCA-COLA BOTTLERS PHILIPPINES, INC.-CEBU PLANT, *Respondent*.**

**G.R. No. 198783, THIRD DIVISION, April 15, 2013, MENDOZA, J.**

*The Court has held that management is free to regulate, according to its own discretion and judgment, all aspects of employment. The exercise of management prerogative, however, is not absolute as **it must be exercised in good faith and with due regard to the rights of labor.***

*In the present controversy, it cannot be denied that CCBPI removed the operators' chairs pursuant to a national directive and in line with its "I Operate, I Maintain, I Clean" program, launched to enable the Union to perform their duties and responsibilities more efficiently. The chairs were not removed indiscriminately. They were carefully studied with due regard to the welfare of the members of the Union. There's also no law nor provision in the CBA requiring employers to provide chairs (except for female ees). It is not tantamount to non-diminution in Article 100 because "benefits" under such article pertains only to monetary considerations.*

**FACTS:**

Coca-Cola Bottlers Philippines, Inc. (CCBPI) is a domestic corporation engaged in the manufacture, sale and distribution of softdrink products. It has several bottling plants in the Philippines, one of which is in Cebu City. In each bottling plant, there are bottling operators. For example, in Cebu City, there are 20 bottling operators who work for its Bottling Line 1 while there are 12-14 bottling operators who work for Bottle Line 2. All of them are male and they are members of the Royal Plant Workers Union (ROPWU).

The bottling operators work in two shifts. The first is from 8-5 while the second is from 5 PM until the production operations is finished. Hence, the second shift varies and may end beyond eight hours. However, if the operators work beyond eight hours, he is compensated with overtime pay.

In Bottling Line 1, 10 operators for each shift while in Bottline Line 2, 6-7 operators per shift. Each shift has rotations of work and break time. Before September 2008, the rotation is: after 2 ½ hours of work, operators are given a 30-minute break and this goes on until the shift ends. In Sept. 2008 up to the present, the rotation has changed and operators are now given a 30 minute break after 1 ½ hours of work.

In 1974, the operators of Bottling Line 2 were provided chairs upon request. In 1988, the operators of Bottling Line 1 followed suit. In Sept 2008, the chairs were removed pursuant to a national directive of CCBPI. The directive was in line to the "I Operate, I Maintain, I Clean" program of CCBPI wherein the operators are given the responsibility to keep the machinery and equipment assigned to



him clean and safe. The program focuses the duty of operators to constantly move in the exercise of their duties.

Since they are expected to constantly move, the operators no longer need a chair. CCBPI explained that the removal of the chairs is implemented so that operators would avoid sleeping in order to prevent personal injuries, since if they fall asleep and the machines are moving, it might result to injury.

The operators, however, took issue with the removal of the chairs. Through the ROPWU, they initiated a grievance machinery of the CBA in November 2008. Sadly, they only reached a deadlock with CCBPI, insisting on the removal of the chairs. Thus, ROPWU initiated arbitration proceedings.

Arbitration Committee Decision:

In favor of ROPWU stating that the use of chairs by the operators had been a company practice for 34 years in Bottling Line 2 and 20 years in Bottling Line 1 and that it ripened into a benefit enjoyed by the employees, thus, it cannot be reduced by the employer under Article 100 of the Labor Code.

CA Decision:

Reversed the Arbitration Decision. CA held that the removal of the chairs by the CCBPI is within the province of management prerogatives and that it was part of his inherent right to control and manage its enterprise effectively; and that since it was the employer's discretion to constantly develop measures or means to optimize the efficiency of its employees, it was appropriate that it should be given wide latitude in exercising it.

#### **ISSUE:**

Whether the removal of the bottling operators' chairs from CCBPI's production/manufacturing lines a valid exercise of a management prerogative. (YES)

#### **SC:**

#### **Valid Exercise of Management Prerogative**

The Court has held that management is free to regulate, according to its own discretion and judgment, all aspects of employment. The exercise of management prerogative, however, is not absolute as **it must be exercised in good faith and with due regard to the rights of labor.**

In the present controversy, it cannot be denied that CCBPI removed the operators' chairs pursuant to a national directive and in line with its "I Operate, I Maintain, I Clean" program, launched to enable the Union to perform their duties and responsibilities more efficiently. The chairs were not removed indiscriminately. They were carefully studied with due regard to the welfare of the members of the Union. The **removal of the chairs was compensated** by: a) a reduction of the operating hours of the bottling operators from a two-and-one-half (2 ½)-hour rotation period to a one-and-a-half (1 ½) hour rotation period; and b) an increase of the break period from 15 to 30 minutes between rotations.

Apparently, the decision to remove the chairs was **done with good intentions** as CCBPI wanted to avoid instances of operators sleeping on the job while in the performance of their duties and responsibilities and because of the fact that the chairs were not necessary considering that the

operators constantly move about while working. In short, the removal of the chairs was **designed to increase work efficiency**. Hence, CCBPI's exercise of its management prerogative was made in good faith without doing any harm to the workers' rights.

#### **No Violation of Labor Laws**

The rights of the Union under any labor law were not violated. **There is no law that requires employers to provide chairs for bottling operators.** The CA correctly ruled that the Labor Code, specifically Article 132 thereof, only requires employers to provide seats for women

There was no violation either of the Health, Safety and Social Welfare Benefit provisions under Book IV of the Labor Code of the Philippines. As shown in the foregoing, the removal of the chairs was compensated by the reduction of the working hours and increase in the rest period. **The directive did not expose the bottling operators to safety and health hazards.** The Union should not complain too much about standing and moving about for one and one-half (1 ½) hours because studies show that sitting in workplaces for a long time is hazardous to one's health.

#### **No Violation of the CBA**

The CBA between the Union and CCBPI **contains no provision whatsoever requiring the management to provide chairs** for the operators in the production/manufacturing line while performing their duties and responsibilities.

#### **No Violation of the general principles of justice and fair play**

New work schedule is certainly advantageous to them because it greatly increases their rest period and significantly decreases their working time

#### **No Violation of Article 100 of the Labor Code (*chairs are not monetary considerations*)**

The term "**benefits**" mentioned in the non-diminution rule **refers to monetary benefits or privileges given to the employee with monetary equivalents.**

The aforementioned article speaks of non-diminution of supplements and other employee benefits. Supplements are privileges given to an employee which constitute as extra remuneration besides his or her basic ordinary earnings and wages. From this definition, We can only deduce that the other employee benefits spoken of by Article 100 pertain only to those which are susceptible of monetary considerations

Without a doubt, equating the provision of chairs to the bottling operators is something within the ambit of "benefits" in the context of Article 100 of the Labor Code is unduly stretching the coverage of the law.



**SUPREME STEEL CORPORATION, *Petitioner*, -versus- NAGKAKAISANG MANGGAGAWA NG SUPREME INDEPENDENT UNION (NMS-IND-APL), *Respondent*.**  
**G.R. No. 185556, SECOND DIVISION, March 28, 2011, NACHURA, J.**

*It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and compliance therewith is mandated by the express policy of the law. If the terms of a CBA are clear and there is no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall*

*prevail. Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic construction upon it. Any doubt in the interpretation of any law or provision affecting labor should be resolved in favor of labor.*

*In this case, the wording of the CBA on general wage increase cannot be interpreted any other way: The CBA increase should be given to all employees "over and above" the amount they are receiving, even if that amount already includes an anniversary increase. Stipulations in a contract must be read together, not in isolation from one another. Consideration of Article XIII, Section 2 (non-crediting provision), bolsters such interpretation. Section 2 states that "all salary increase granted by the company shall not be credited to any future contractual or legislated wage increases." Clearly then, even if petitioner had already awarded an anniversary increase to its employees, such increase cannot be credited to the "contractual" increase as provided in the CBA, which is considered "separate and distinct."*

#### **FACTS:**

On July 27, 2005, respondent filed a notice of strike with the National Conciliation and Mediation Board (NCMB) on the ground that petitioner violated certain provisions of the CBA. The parties failed to settle their dispute. Consequently, the Secretary of Labor certified the case to the NLRC for compulsory arbitration pursuant to Article 263(g) of the Labor Code.

Respondent alleged eleven CBA violations, relevant of which are:

#### *A. Denial to four employees of the CBA- provided wage increase*

Respondent alleged that petitioner has repeatedly denied the annual CBA increases to at least four individuals: Juan Niño, Reynaldo Acosta, Rommel Talavera, and Eddie Dalagon. According to respondent, petitioner gives an anniversary increase to its employees upon reaching their first year of employment. The four employees received their respective anniversary increases and petitioner used such anniversary increase to justify the denial of their CBA increase for the year.

Petitioner explained that it has been the company's long standing practice that upon reaching one year of service, a wage adjustment is granted, and, once wages are adjusted, the increase provided for in the CBA for that year is no longer implemented. Petitioner claimed that this practice was not objected to by respondent as evidenced by the employees' pay slips.

Respondent countered that petitioner failed to prove that, as a matter of company practice, the anniversary increase took the place of the CBA increase. It contended that all employees should receive the CBA stipulated increase for the years 2003 to 2005.

#### *B. Contracting-out labor*

Respondent claimed that, contrary to the CBA provision, petitioner hired temporary workers for five months based on uniformly worded employment contracts, renewable for five months, and assigned them to almost all of the departments in the company.

Respondent argued that the right to self-organization goes beyond the maintenance of union membership. It emphasized that the CBA maintains a union shop clause which gives the regular employees 30 days within which to join respondent as a condition for their continued employment. Respondent maintained that petitioner's persistent refusal to grant regular status to its employees, such as Dindo Buella, who is assigned in the Galvanizing Department, violates the employees' right



to self-organization.

For its part, petitioner admitted that it hired temporary workers. It purportedly did so to cope with the seasonal increase of the job orders from abroad. In order to comply with the job orders, petitioner hired the temporary workers to help the regular workers in the production of steel pipes. Petitioner maintained that these workers do not affect respondent's membership. Petitioner claimed that it agreed to terminate these temporary employees on the condition that the regular employees would have to perform the work that these employees were performing, but respondent refused.

Xxx

*K. Non-implementation of COLA in Wage Order Nos. RBIII-10 and 11*

Respondent posited that any form of wage increase granted through the CBA should not be treated as compliance with the wage increase given through the wage boards.

The NLRC ruled in favour of the respondent, and the CA affirmed the decision.

**ISSUE:**

Whether the CA erred in ruling in favour of the respondent. (NO)

**RULING:**

It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and compliance therewith is mandated by the express policy of the law. If the terms of a CBA are clear and there is no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall prevail. Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic construction upon it. Any doubt in the interpretation of any law or provision affecting labor should be resolved in favor of labor.

Upon these well-established precepts, we sustain the CA's findings and conclusions on all the issues, except the issue pertaining to the denial of the COLA under Wage Order No. RBIII-10 and 11 to the employees who are not minimum wage earners.

The wording of the CBA on general wage increase cannot be interpreted any other way: The CBA increase should be given to all employees "over and above" the amount they are receiving, even if that amount already includes an anniversary increase. Stipulations in a contract must be read together, not in isolation from one another. Consideration of Article XIII, Section 2 (non-crediting provision), bolsters such interpretation. Section 2 states that "all salary increase granted by the company shall not be credited to any future contractual or legislated wage increases." Clearly then, even if petitioner had already awarded an anniversary increase to its employees, such increase cannot be credited to the "contractual" increase as provided in the CBA, which is considered "separate and distinct."

Petitioner claims that it has been the company practice to offset the anniversary increase with the CBA increase. It however failed to prove such material fact. Company practice, just like any other fact, habits, customs, usage or patterns of conduct must be proven. The offering party must allege and prove specific, repetitive conduct that might constitute evidence of habit, or company practice. Evidently, the pay slips of the four employees do not serve as sufficient proof.

Again, on the issue of contracting-out labor, we sustain the CA. Petitioner, in effect, admits having hired "temporary" employees, but it maintains that it was an exercise of management prerogative, necessitated by the increase in demand for its product.

Indeed, jurisprudence recognizes the right to exercise management prerogative. Labor laws also discourage interference with an employer's judgment in the conduct of its business. For this reason, the Court often declines to interfere in legitimate business decisions of employers. The law must protect not only the welfare of employees, but also the right of employers. However, the exercise of management prerogative is not unlimited. Managerial prerogatives are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice. The CBA is the norm of conduct between the parties and, as previously stated, compliance therewith is mandated by the express policy of the law.

The CBA is clear in providing that temporary employees will no longer be allowed in the company except in the Warehouse and Packing Section. Petitioner is bound by this provision. It cannot exempt itself from compliance by invoking management prerogative. Management prerogative must take a backseat when faced with a CBA provision. If petitioner needed additional personnel to meet the increase in demand, it could have taken measures without violating the CBA.

Lastly, The implementation of the COLA under Wage Order No. RBIII-10 across the board, which only lasted for less than a year, cannot be considered as having been practiced "over a long period of time." While it is true that jurisprudence has not laid down any rule requiring a specific minimum number of years in order for a practice to be considered as a voluntary act of the employer, under existing jurisprudence on this matter, an act carried out within less than a year would certainly not qualify as such. Hence, the withdrawal of the COLA Wage Order No. RBIII-10 from the salaries of non-minimum wage earners did not amount to a "diminution of benefits" under the law. There is also no basis in enjoining petitioner to implement Wage Order No. RBIII-11 across the board. Similarly, no proof was presented showing that the implementation of wage orders across the board has ripened into a company practice.

**MARLO A. DEOFERIO, *Petitioner*, -versus- INTEL TECHNOLOGY PHILIPPINES, INC. AND/OR MIKE WENTLING, *Respondents*.**  
**G.R. No. 202996, SECOND DIVISION, June 18, 2014, BRION, J.**

*The present case involves termination due to disease – an authorized cause for dismissal under Article 284 of the Labor Code. Its third element **substantiates** the contention that the employee has indeed been suffering from a disease that: (1) is prejudicial to his health as well as to the health of his co-employees; and (2) cannot be cured within a period of six months even with proper medical treatment. Without the medical certificate, there **can be no authorized cause** for the employee's dismissal. The absence of this element thus renders the dismissal **void and illegal**.*

*Simply stated, this requirement **is not merely a procedural requirement**, but a substantive one. The certification from a competent public health authority is precisely the **substantial evidence** required by law to prove the existence of the disease itself, its non-curability within a period of six months even with proper medical treatment, and the prejudice that it would cause to the health of the sick employee and to those of his co-employees.*

*In the current case, Court agrees with the CA that Dr. Lee's psychiatric report substantially proves that Deoferio was suffering from schizophrenia, that his disease was not curable within a period of six months*

*even with proper medical treatment, and that his continued employment would be prejudicial to his mental health. This conclusion is further substantiated by the unusual and bizarre acts that Deoferio committed while at Intel's employ.*

**FACTS:**

On February 1, 1996, respondent Intel Technology Philippines, Inc. (*Intel*) employed Deoferio as a product quality and reliability engineer with a monthly salary of P9,000.00. In July 2001, Intel assigned him to the United States as a validation engineer for an agreed period of two years and with a monthly salary of US\$3,000.00. On January 27, 2002, Deoferio was repatriated to the Philippines after being confined at Providence St. Vincent Medical Center for major depression with psychosis. In the Philippines, he worked as a product engineer with a monthly salary of P23,000.00.

Deoferio underwent a series of medical and psychiatric treatment at Intel's expense after his confinement in the United States. In 2002, Dr. Elizabeth Rondain of Makati Medical Center diagnosed him to be suffering from mood disorder, major depression, and auditory hallucination. He was also referred to Dr. Norieta Balderrama, Intel's forensic psychologist, and to a certain Dr. Cynthia Leynes who both confirmed his mental condition. On August 8, 2005, Dr. Paul Lee, a consultant psychiatrist of the Philippine General Hospital, concluded that Deoferio was suffering from schizophrenia. After several consultations, Dr. Lee issued a psychiatric report dated January 17, 2006 concluding and stating that Deoferio's psychotic symptoms are not curable within a period of six months and "will negatively affect his work and social relation with his co-workers." Pursuant to these findings, Intel issued Deoferio a notice of termination on March 10, 2006.

Deoferio responded to his termination of employment by filing a complaint for illegal dismissal with prayer for money claims against respondents Intel and Mike Wentling (*respondents*). He denied that he ever had mental illness and insisted that he satisfactorily performed his duties as a product engineer. He argued that Intel violated his statutory right to procedural due process when it summarily issued a notice of termination.

In defense, the respondents argued that Deoferio's dismissal was based on Dr. Lee's certification that: (1) his schizophrenia was not curable within a period of six months even with proper medical treatment; and (2) his continued employment would be prejudicial to his and to the other employees' health.

The respondents further asserted that the twin-notice requirement in dismissals does not apply to terminations under Article 284 of the Labor Code. They emphasized that the Labor Code's implementing rules (*IRR*) only requires a competent public health authority's certification to effectively terminate the services of an employee. They insisted that Deoferio's separation and retirement payments for P247,517.35 were offset by his company car loan which amounted to P448,132.43. He was likewise not entitled to moral and exemplary damages, as well as attorney's fees, because the respondents faithfully relied on Dr. Lee's certification that he was not fit to work as a product engineer.

The Labor Arbiter (*LA*) ruled that Deoferio had been validly dismissed. The *LA* gave weight to Dr. Lee's certification that Deoferio had been suffering from schizophrenia and was not fit for employment. This was affirmed by the NLRC and CA.

**ISSUE:**

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Whether the respondent violated the petitioner's right to due process. (YES)

**RULING:**

Concomitant to the employer's right to freely select and engage an employee is the employer's right to discharge the employee for just and/or authorized causes. Thus, in termination cases, the law places the burden of proof upon the employer to show by substantial evidence that the termination was for a lawful cause and in the manner required by law.

In concrete terms, these qualifications embody the due process requirement in labor cases - **substantive and procedural due process**. Substantive due process means that the termination must be based on just and/or authorized causes of dismissal. On the other hand, procedural due process requires the employer to effect the dismissal in a manner specified in the Labor Code and its IRR.

The present case involves termination due to disease – an authorized cause for dismissal under Article 284 of the Labor Code. As **substantive requirements**, the Labor Code and its IRR require the presence of the following elements:

- (1) An employer has been found to be suffering from any disease.
- (2) His continued employment is prohibited by law or prejudicial to his health, as well as to the health of his co-employees.
- (3) A competent public health authority certifies that the disease is of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment.

With respect to the first and second elements, the Court liberally construed the phrase “prejudicial to his health *as well as* to the health of his co-employees” to mean “prejudicial to his health *or* to the health of his co-employees.” We did not limit the scope of this phrase to contagious diseases for the reason that this phrase is preceded by the phrase “**any** disease” under Article 284 of the Labor Code. The third element **substantiates** the contention that the employee has indeed been suffering from a disease that: (1) is prejudicial to his health as well as to the health of his co-employees; and (2) cannot be cured within a period of six months even with proper medical treatment. Without the medical certificate, there **can be no authorized cause** for the employee's dismissal. The absence of this element thus renders the dismissal **void** and **illegal**.

Simply stated, this requirement **is not merely a procedural requirement**, but a substantive one. The certification from a competent public health authority is precisely the **substantial evidence** required by law to prove the existence of the disease itself, its non-curability within a period of six months even with proper medical treatment, and the prejudice that it would cause to the health of the sick employee and to those of his co-employees.

In the current case, Court agrees with the CA that Dr. Lee's psychiatric report substantially proves that Deoferio was suffering from schizophrenia, that his disease was not curable within a period of six months even with proper medical treatment, and that his continued employment would be prejudicial to his mental health. This conclusion is further substantiated by the unusual and bizarre acts that Deoferio committed while at Intel's employ.

***The twin-notice requirement applies to terminations under Article 284 of the Labor Code***

The Labor Code and its IRR are silent on the **procedural due process** required in terminations due to disease. Despite the seeming gap in the law, Section 2, Rule 1, Book VI of the IRR expressly states that the employee should be afforded procedural due process in **all** cases of dismissals.

***Deoferio is entitled to nominal damages for violation of his right to statutory procedural due process***

With respect to Article 284 of the Labor Code, terminations due to disease do not entail any wrongdoing on the part of the employee. It also does not purely involve the employer's willful and voluntary exercise of management prerogative – a function associated with the employer's inherent right to control and effectively manage its enterprise. Rather, terminations due to disease are occasioned by matters generally beyond the worker and the employer's control.

In fixing the amount of nominal damages whose determination is addressed to our sound discretion, the Court should take into account several factors surrounding the case, such as: (1) the employer's financial, medical, and/or moral assistance to the sick employee; (2) the flexibility and leeway that the employer allowed the sick employee in performing his duties while attending to his medical needs; (3) the employer's grant of other termination benefits in favor of the employee; and (4) whether there was a *bona fide* attempt on the part of the employer to comply with the twin-notice requirement as opposed to giving no notice at all.

The Court awards Deoferio the sum of P30,000.00 as nominal damages for violation of his statutory right to procedural due process.

**BLUER THAN BLUE JOINT VENTURES COMPANY/MARY ANN DELA VEGA, *Petitioners*, -versus-  
GLYZA ESTEBAN, *Respondent*.  
G.R. No. 192582, FIRST DIVISION, April 07, 2014, REYES, J.**

*Loss of trust and confidence is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds. "With respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient."*

*"It is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence." In this case, while respondent's position was denominated as Sales Clerk, the nature of her work included inventory and cashiering, a function that clearly falls within the sphere of rank-and-file positions imbued with trust and confidence.*

**FACTS:**

Respondent Glyza Esteban (Esteban) was employed in January 2004 as Sales Clerk, and assigned at Bluer Than Blue Joint Ventures Company's (petitioner) EGG boutique in SM City Marilao, Bulacan, beginning the year 2006. Part of her primary tasks were attending to all customer needs, ensuring efficient inventory, coordinating orders from clients, cashiering and reporting to the accounting department.

In November 2006, the petitioner received a report that several employees have access to its point-

of-sale (POS) system through a universal password given by Elmer Flores (Flores). Upon investigation, it was discovered that it was Esteban who gave Flores the password. The petitioner sent a letter memorandum to Esteban on November 8, 2006, asking her to explain in writing why she should not be disciplinary dealt with for tampering with the company's POS system through the use of an unauthorized password. Esteban was also placed under preventive suspension for ten days.

On November 13, 2006, Esteban's preventive suspension was lifted, but at the same time, a notice of termination was sent to her, finding her explanation unsatisfactory and terminating her employment immediately on the ground of loss of trust and confidence. Esteban was given her final pay, including benefits and bonuses, less inventory variances incurred by the store amounting to P8,304.93. Esteban signed a quitclaim and release in favor of the petitioner.

On December 6, 2006, Esteban filed a complaint for illegal dismissal, illegal suspension, holiday pay, rest day and separation pay.

The Labor Arbiter (LA) ruled in favor of Esteban and found that she was illegally dismissed. The NLRC reversed the decision of the LA and dismissed the case for illegal dismissal. The CA granted Esteban's petition and reinstated the LA decision.

The petitioner argues that it had just cause to terminate the employment of Esteban, that is, loss of trust and confidence. Esteban, the petitioner believes, is a rank-and-file employee whose nature of work is reposed with trust and confidence. Her unauthorized access to the POS system of the company and her dissemination of the unauthorized password, which Esteban admitted, is a breach of trust and confidence, and justifies her dismissal.

**ISSUE:**

Whether Esteban's acts constitute just cause to terminate her employment with the company on the ground of loss of trust and confidence. (NO)

**RULING:**

Loss of trust and confidence is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds. "With respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient."

Esteban is, no doubt, a rank-and-file employee. The question now is whether she occupies a position of trust and confidence.

Among the fiduciary rank-and-file employees are cashiers, auditors, property custodians, or **those who, in the normal exercise of their functions, regularly handle significant amounts of money or property**. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

In this case, Esteban was a sales clerk. Her duties, however, were more than that of a sales clerk. Aside from attending to customers and tending to the shop, Esteban also assumed cashiering duties. This, she does not deny; instead, she insists that the competency clause provided that her



tasks were that of a sales clerk and the cashiering function was labelled “to follow.” A perusal of the competency clause, however, shows that it is merely an attestation on her part that she is competent to “meet the basic requirements needed for the position [she] is applying for x x x”. It does not define her actual duties. As consistently ruled by the Court, it is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence. In *Philippine Plaza Holdings, Inc. v. Episcope*, the Court ruled that a service attendant, who was tasked to attend to dining guests, handle their bills and receive payments for transmittal to the cashier and was therefore involved in the handling of company funds, is considered an employee occupying a position of trust and confidence. Similarly in Esteban’s case, given that she had in her care and custody the store’s property and funds, she is considered as a rank-and-file employee occupying a position of trust and confidence.

Proceeding from the above conclusion, the pivotal question that must be answered is whether Esteban’s acts constitute just cause to terminate her employment.

Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show **the employee concerned to be unfit to continue working for the employer and it must be based on a wilful breach of trust and founded on clearly established facts**. Such breach is wilful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The loss of trust and confidence must spring from the voluntary or wilful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.

In this case, the Court finds that the acts committed by Esteban do not amount to a wilful breach of trust. She admitted that she accessed the POS system with the use of the unauthorized “123456” password. She did so, however, out of curiosity and without any obvious intention of defrauding the petitioner. As professed by Esteban, “she was acting in good faith in verifying what her co-staff told her about the opening of the computer by the use of the “123456” password, x x x. She even told her co-staff not to open again said computer, and that was the first and last time she opened said computer.” Moreover, the petitioner even admitted that Esteban has her own password to the POS system. If it was her intention to manipulate the store’s inventory and funds, she could have done so long before she had knowledge of the unauthorized password. But the facts on hand show that she did not. The petitioner also failed to establish a substantial connection between Esteban’s use of the “123456” password and any loss suffered by the petitioner. Indeed, it may be true that, as posited by the petitioner, it is the fact that she used the password that gives cause to the loss of trust and confidence on Esteban. However, as ruled above, such breach must have been done intentionally, knowingly, and purposely, and without any justifiable excuse, and not simply something done carelessly, thoughtlessly, heedlessly or inadvertently. To the Court’s mind, Esteban’s lapse is, at best, a careless act that does not merit the imposition of the penalty of dismissal.

**EMER MILAN, RANDY MASANGKAY, WILFREDO JAVIER, RONALDO DAVID, BONIFACIO  
MATUNDAN, NORA MENDOZA, et al., *Petitioners, vs.*  
NATIONAL LABOR RELATIONS COMMISSION, ·SOLID MILLS, INC., and/or PHILIP  
ANG, *Respondents.*  
(G.R. No. 202961, SECOND DIVISION, February 4, 2015, LEONEN, J.)**

*Art. 1706 of the Civil Code provides that the employer is authorized to withhold wages for debts due. "Debt" in this case refers to any obligation due from the employee to the employer. It includes any accountability that the employee may have to the employer. There is no reason to limit its scope to uniforms and equipment, as petitioners would argue.*

*More importantly, Solid Mills and NAFLU, the union representing petitioners, agreed that the release of petitioners' benefits shall be "less accountabilities." "Accountability," in its ordinary sense, means obligation or debt. The ordinary meaning of the term "accountability" does not limit the definition of accountability to those incurred in the worksite. As long as the debt or obligation was incurred by virtue of the employer-employee relationship, generally, it shall be included in the employee's accountabilities that are subject to clearance procedures.*

**FACTS:**

As Solid Mills' employees, petitioners and their families were allowed to occupy SMI Village, a property owned by Solid Mills. According to Solid Mills, this was "out of liberality and for the convenience of its employees . . . and on the condition that the employees . . . would vacate the premises anytime the Company deems fit."

In 2003, petitioners were informed that Solid Mills would cease its operations due to serious business losses. After Solid Mills filed its DOLE termination report, it sent to the petitioners individual notices to vacate SMI Village.

Petitioners were required to sign a memorandum of agreement with release and quitclaim before their vacation and sick leave benefits, 13th month pay, and separation pay would be released. Employees who signed the memorandum of agreement were considered to have agreed to vacate SMI Village.

Hence, petitioners filed complaints before the LA, arguing that their possession of Solid Mills property is not an accountability that is subject to clearance procedures. They had already turned over to Solid Mills their uniforms and equipment when Solid Mills ceased operations.

The LA ruled in favor of petitioners. According to the LA, petitioners' right to the payment of their benefits and separation pay was vested by law and contract. On appeal, NLRC reversed the LA's decision. NLRC ruled that the termination of Solid Mills and petitioners' employer-employee relationship made it incumbent upon petitioners to turn over the property to Solid Mills. When elevated to the CA, the decision of the NLRC was affirmed. Hence, this petition.

**ISSUE:**

Whether or not payment of the monetary claims of petitioners should be held in abeyance pending compliance of the petitioners' accountabilities to Solid Mills by turning over the subject lots they respectively occupy at SMI Village? (YES)

**RULING:**

Requiring clearance before the release of last payments to the employee is a standard procedure among employers, whether public or private. Clearance procedures are instituted to ensure that the properties, real or personal, belonging to the employer but are in the possession of the separated employee, are returned to the employer before the employee's departure.

As a general rule, Art. 116 of the Labor Code prohibits employers from withholding wages from employees. Furthermore, Art. 100 of the Labor Code prohibits elimination or diminution of benefits.

However, the Art. 113 of the Labor Code supports the employers' institution of clearance procedures before the release of wages. Also, Art. 1706 of the Civil Code provides that the employer is authorized to withhold wages for debts due. "Debt" in this case refers to any obligation due from the employee to the employer. It includes any accountability that the employee may have to the employer. There is no reason to limit its scope to uniforms and equipment, as petitioners would argue.

More importantly, Solid Mills and NAFLU, the union representing petitioners, agreed that the release of petitioners' benefits shall be "less accountabilities." "Accountability," in its ordinary sense, means obligation or debt. The ordinary meaning of the term "accountability" does not limit the definition of accountability to those incurred in the worksite. As long as the debt or obligation was incurred by virtue of the employer-employee relationship, generally, it shall be included in the employee's accountabilities that are subject to clearance procedures.

The return of the property's possession became an obligation or liability on the part of the employees when the employer-employee relationship ceased. Thus, respondent Solid Mills has the right to withhold petitioners' wages and benefits because of this existing debt or liability.

**VICENTE S. ALMARIO, Petitioner, vs. PHILIPPINE AIRLINES, INC., Respondent.  
(G.R. No. 170928, SECOND DIVISION, September 11, 2007, CARPIO MORALES, J.)**

*The pertinent provision of the CBA and its rationale aside, contrary to Almario's claim, Article 22 of the Civil Code applies to him. This provision on unjust enrichment recognizes the principle that one may not enrich himself at the expense of another.*

*Admittedly, PAL invested for the training of Almario to enable him to acquire a higher level of skill, proficiency, or technical competence so that he could efficiently discharge the position of A-300 First Officer. Given that, PAL expected to recover the training costs by availing of Almario's services for at least three years. The expectation of PAL was not fully realized, however, due to Almario's resignation after only eight months of service following the completion of his training course. He cannot, therefore, refuse to reimburse the costs of training without violating the principle of unjust enrichment.*

**FACTS:**

Almario, then about 39 years of age and a Boeing 737 (B-737) First Officer at PAL, successfully bid for the higher position of Airbus 300 (A-300) First Officer. Since said higher position required additional training, he underwent, at PAL's expense, more than five months of training consisting of ground schooling in Manila and flight simulation in Melbourne, Australia. After completing the training course, Almario served as A-300 First Officer of PAL, but after eight months of service as such, he tendered his resignation for personal reasons. Despite a letter coming from PAL to reconsider his resignation, Almario still proceeded with such.

Later on, PAL filed a Complaint against Almario before the RTC, for reimbursement of P851,107 worth of training costs, attorney's fees equivalent to 20% of the said amount, and costs of litigation. PAL invoked the existence of an innominate contract of *do ut facias* (I give that you may do) with Almario in that by spending for his training, he would render service to it until the costs of training were recovered in at least three years. Almario having resigned before the 3-year period, PAL prayed that he should be ordered to reimburse the costs for his training. In his Answer, Almario denied the existence of any agreement with PAL that he would have to render service to it for three years after his training failing which he would reimburse the training costs. He pointed out that the CBA between



PAL and the Airline Pilot's Association of the Philippines (ALPAP), of which he was a member, carried no such agreement.

Makati RTC rendered judgment in favor of Almario. According to RTC, there is no provision in the CBA between PAL and ALPAP stipulating that a pilot who underwent a training course for the position of A-300 First Officer must serve PAL for at least three years failing which he should reimburse the training expenses. On appeal, CA reversed the trial court's decision. It found Almario liable under the CBA between PAL and ALPAP and, in any event, under Article 22 of the Civil Code. His Motion for Reconsideration having been denied, Almario filed the instant Petition for Certiorari.

**ISSUE:**

Whether or not the prohibitive cost training principle applies in this case? (YES)

**RULING:**

PAL's contention is basically premised on prohibitive training costs. The return on this investment in the form of the pilot promoted is allegedly five (5) years. Considering the pilot's age, the chances of full recovery [are] asserted to be quite slim.

In *re Labor Dispute at the Philippine Airlines, Inc.*, a similar case between PAL and ALPAP, the Court ruled that a pilot should remain in the position where he is upon reaching age fifty-seven (57), irrespective of whether or not he has previously qualified in the Company's turbo-jet operations. The rationale behind this is that a pilot who will be compulsorily retired at age sixty (60) should no longer be burdened with training for a new position. But if a pilot is only at age fifty-five (55), and promotional positions are available, he should still be considered and promoted if qualified, provided he has previously qualified in any company turbo-jet aircraft. In the latter case, the prohibitive training costs are more than offset by the maturity, expertise, and experience of the pilot.

Thus, the provision on age limit in Section 1, Article XXIII of the 1985-1987 CBA should now read:

Pilots fifty-seven (57) years of age shall be frozen in their positions. Pilots fifty-five (55) [sic] years of age provided they have previously qualified in any company turbo-jet aircraft shall be permitted to occupy any position in the company's turbo-jet fleet.

The same section of Article XXIII of the 1991-1994 CBA was reproduced in the 1994-2000 CBA. The CBA is the law between the contracting parties – the collective bargaining representative and the employer-company. Compliance with a CBA is mandated by the expressed policy to give protection to labor.

It bears noting that when Almario took the training course, he was about 39 years old, 21 years away from the retirement age of 60. Hence, with the maturity, expertise, and experience he gained from the training course, he was expected to serve PAL for at least three years to offset "the prohibitive costs" thereof.

The pertinent provision of the CBA and its rationale aside, contrary to Almario's claim, Article 22 of the Civil Code applies to him. This provision on unjust enrichment recognizes the principle that one may not enrich himself at the expense of another.

Admittedly, PAL invested for the training of Almario to enable him to acquire a higher level of skill, proficiency, or technical competence so that he could efficiently discharge the position of A-300 First Officer. Given that, PAL expected to recover the training costs by availing of Almario's services for at least three years. The expectation of PAL was not fully realized, however, due to Almario's resignation after only eight months of service following the completion of his training course. He cannot, therefore, refuse to reimburse the costs of training without violating the principle of unjust enrichment.

Thus, Almario must pay PAL the sum of ₱559,739.90, to bear the legal interest rate of 6% per annum from the filing of PAL's complaint on February 11, 1997 until the finality of this decision.

**DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner*, vs.  
NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ISABEL P. ORTIGUERRA, and  
LABOR ALLIANCE FOR NATIONAL DEVELOPMENT, *respondents*.  
(G.R. Nos. 82763-64, EN BANC, March 19, 1990, MELENCIO-HERRERA, J.)**

*In fine, the right to preference given to workers under Article 110 of the Labor Code cannot exist in any effective way prior to the time of its presentation in distribution proceedings. It will find application when, in proceedings such as insolvency, such unpaid wages shall be paid in full before the "claims of the Government and other creditors" may be paid. But, for an orderly settlement of a debtor's assets, all creditors must be convened, their claims ascertained and inventoried, and thereafter the preferences determined in the course of judicial proceedings which have for their object the subjection of the property of the debtor to the payment of his debts or other lawful obligations.*

**FACTS:**

In 1981, LIRAG started terminating the services of its employees on the ground of retrenchment. By December of the said year there were already 180 regular employees separated from the service. LIRAG has since ceased operations presumably due to financial reverses.

Joselito Albay, one of the employees dismissed, filed a complaint before the NLRC against LIRAG for illegal dismissal. Labor Alliance for National Development (LAND), on behalf of 180 dismissed members, also filed a Complaint against LIRAG seeking separation pay, 13th month pay, gratuity pay, sick leave and vacation leave pay and emergency allowance. These two cases were consolidated and jointly heard by the NLRC. In a Decision, LA ordered LIRAG to pay the individual complainants. The NLRC affirmed the same.

However, DBP extrajudicially foreclosed the mortgaged properties for failure of LIRAG to pay its mortgage obligation. For this reason, the Writ of Execution issued in favor of the complainants remained unsatisfied. LAND filed a "Motion for Writ of Execution and Garnishment" of the proceeds of the foreclosure sale. Over the opposition of DBP, LA granted the Writ of Garnishment and directed DBP to remit to the NLRC the sum of P6,292,380.00 out of the proceeds of the foreclosed properties of LIRAG sold at public auction in order to satisfy the judgment previously rendered. Hence, this petition.

**ISSUE:**

Whether or not a Writ of Garnishment may be issued against the proceeds of LIRAG's properties foreclosed by DBP to satisfy the judgment in these cases? (NO)

**RULING:**

Article 110 has been amended by Republic Act No. 6715 and now reads as follows:

Art. 110. *Worker preference in case of bankruptcy.* — In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their unpaid wages *and other monetary claims*, any provision of law to the contrary notwithstanding. *Such unpaid wages and monetary claims* shall be paid in full *before the claims of the Government and other creditors may be paid*.

The amendment expands worker preference to cover not only unpaid wages but also other monetary claims to which even claims of the Government must be deemed subordinate.

Section 10, Rule III, Book III of the Omnibus Rules Implementing the Labor Code has also been amended by Section 1 of the Rules and Regulations Implementing RA 6715 on 24 May 1989, and now provides:

Sec. 10. *Payment of wages and other monetary claims in case of bankruptcy.* — In case of bankruptcy or liquidation of the employer's business, the unpaid wages and other monetary claims of the employees shall be given first preference and shall be paid in full before the claims of government and other creditors may be paid.

Notably, the terms "declaration" of bankruptcy or "judicial" liquidation have been eliminated. This does not mean that liquidation proceedings have been done away with due to the following considerations:

"1. Because of its impact on the entire system of credit, Article 110 of the Labor Code cannot be viewed in isolation but must be read in relation to the Civil Code scheme on classification and preference of credits.

"2. In the same way that the Civil Code provisions on classification of credits and the Insolvency Law have been brought into harmony, so also must the kindred provisions of the Labor Law be made to harmonize with those laws.

"3. In the event of insolvency, a principal objective should be to effect an equitable distribution of the insolvent's property among his creditors. To accomplish this there must first be some proceeding where notice to all of the insolvent's creditors may be given and where the claims of preferred creditors may be bindingly adjudicated.

"4. A distinction should be made between a preference of credit and a lien. A preference applies only to claims which do not attach to specific properties. A lien creates a charge on a particular property. The right of first preference as regards unpaid wages recognized by Article 110 does not constitute a lien on the property of the insolvent debtor in favor of workers. It is but a preference of credit in their favor, a preference in application. It is a method adopted to determine and specify the order in which credits should be paid in the final distribution of the proceeds of the insolvent's assets. It is a right to a first preference in the discharge of the funds of the judgment debtor.

5. The DBP anchors its claim on a mortgage credit. A mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted (Article 2176, Civil Code). It creates a real right which is enforceable against the whole world. It is a lien on an identified immovable property, which a



preference is not. A recorded mortgage credit is a special preferred credit under Article 2242 (5) of the Civil Code on classification of credits. The preference given by Article 110, when not falling within Article 2241 (6) and Article 2242 (3) of the Civil Code and not attached to any specific property, is an ordinary preferred credit although its impact is to move it from second priority to first priority in the order of preference established by Article 2244 of the Civil Code

"6. Even if Article 110 and its Implementing Rule, as amended, should be interpreted to mean 'absolute preference,' the same should be given only prospective effect in line with the cardinal rule that laws shall have no retroactive effect, unless the contrary is provided (Article 4, Civil Code). Thereby, any infringement on the constitutional guarantee on non-impairment of the obligation of contracts (Section 10, Article III, 1987 Construction) is also avoided. In point of fact, DBP's mortgage credit antedated by several years the amendatory law, RA No. 6715. To give Article 110 retroactive effect would be to wipe out the mortgage in DBP's favor and expose it to a risk which it sought to protect itself against by requiring a collateral in the form of real property.

In fine, the right to preference given to workers under Article 110 of the Labor Code cannot exist in any effective way prior to the time of its presentation in distribution proceedings. It will find application when, in proceedings such as insolvency, such unpaid wages shall be paid in full before the "claims of the Government and other creditors" may be paid. But, for an orderly settlement of a debtor's assets, all creditors must be convened, their claims ascertained and inventoried, and thereafter the preferences determined in the course of judicial proceedings which have for their object the subjection of the property of the debtor to the payment of his debts or other lawful obligations.

**BANKARD EMPLOYEES UNION-WORKERS ALLIANCE TRADE UNIONS, petitioner, vs.  
NATIONAL LABOR RELATIONS COMMISSION and BANKARD, INC., respondents.  
(G.R. No. 140689, THIRD DIVISION, February 17, 2004, CARPIO MORALES, J.)**

*The employees of private respondent have been "historically" classified into levels, i.e. I to V, and not on the basis of their length of service. Put differently, the entry of new employees to the company ipso facto place[s] them under any of the levels mentioned in the new salary scale which private respondent adopted retroactive [to] April 1, 1993. Petitioner cannot make a contrary classification of private respondent's employees without encroaching upon recognized management prerogative of formulating a wage structure, in this case, one based on level.*

*It is thus clear that there is no hierarchy of positions between the newly hired and regular employees of Bankard, hence, the first element of wage distortion is wanting. While seniority may be a factor in determining the wages of employees, it cannot be made the sole basis in cases where the nature of their work differs. Moreover, for purposes of determining the existence of wage distortion, employees cannot create their own independent classification and use it as a basis to demand an across-the-board increase in salary. The formulation of a wage structure through the classification of employees is a matter of management judgment and discretion.*

*In trying to prove wage distortion, petitioner union presented a list of five employees allegedly affected by the said increase. Even assuming that there is a decrease in the wage gap between the pay of the old employees and the newly hired employees, said gap is not significant as to obliterate or result in severe contraction of the intentional quantitative differences in the salary rates between the employee group.*

**FACTS:**

Bankard, Inc. classifies its employees by levels, to wit: Level I, Level II, Level III, Level IV, and Level V. In 1993, its Board of Directors approved a "New Salary Scale" for the purpose of making its hiring rate competitive in the industry's labor market. The "New Salary Scale" increased the hiring rates of new employees, to wit: Levels I and V by one thousand pesos (P1,000.00), and Levels II, III and IV by nine hundred pesos (P900.00). Accordingly, the salaries of employees who fell below the new minimum rates were also adjusted to reach such rates under their levels.

Bankard's move drew the Bankard Employees Union-WATU, the duly certified exclusive bargaining agent of the regular rank and file employees of Bankard, to press for the increase in the salary of its old, regular employees.

Bankard took the position, however, that there was no obligation on the part of the management to grant to all its employees the same increase in an across-the-board manner.

The Second Division of the NLRC, finding no wage distortion, dismissed the case for lack of merit. Petitioner thereupon filed a petition for certiorari before the Supreme Court. In accordance with its ruling in *St. Martin Funeral Homes v. NLRC*, the petition was referred to the CA which denied the same for lack of merit. Hence, the present petition.

**ISSUE:**

Whether or not there is wage distortion in this case? (NO)

**RULING:**

*Prubankers Association v. Prudential Bank and Trust Company* laid down the four elements of wage distortion, to wit: (1.) An existing hierarchy of positions with corresponding salary rates; (2) A significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one; (3) The elimination of the distinction between the two levels; and (4) The existence of the distortion in the same region of the country.

The employees of private respondent have been "historically" **classified into levels, i.e. I to V, and not on the basis of their length of service.** Put differently, the entry of new employees to the company ipso facto place[s] them under any of the levels mentioned in the new salary scale which private respondent adopted retroactive [to] April 1, 1993. **Petitioner cannot make a contrary classification of private respondent's employees without encroaching upon recognized management prerogative of formulating a wage structure, in this case, one based on level.**

It is thus clear that there is no hierarchy of positions between the newly hired and regular employees of Bankard, hence, the first element of wage distortion is wanting. While seniority may be a factor in determining the wages of employees, it cannot be made the **sole** basis in cases where the nature of their work differs. Moreover, for purposes of determining the existence of wage distortion, employees cannot create their own independent classification and use it as a basis to demand an across-the-board increase in salary. The formulation of a wage structure through the classification of employees is a matter of management judgment and discretion.

In trying to prove wage distortion, petitioner union presented a list of five employees allegedly affected by the said increase. Even assuming that there is a decrease in the wage gap between the pay of the old employees and the newly hired employees, said gap is not significant as

to obliterate or result in severe contraction of the intentional quantitative differences in the salary rates between the employee group.

Petitioner cannot legally obligate Bankard to correct the alleged "wage distortion" as the increase in the wages and salaries of the newly-hired was not due to a prescribed law or wage order. The wordings of Article 124 are clear. If applied to voluntary and unilateral increases by the employer in fixing hiring rates which is inherently a business judgment prerogative, then the hands of the employer would be completely tied even in cases where an increase in wages of a particular group is justified due to a re-evaluation of the high productivity of a particular group, or as in the present case, the need to increase the competitiveness of Bankard's hiring rate. An employer would be discouraged from adjusting the salary rates of a particular group of employees for fear that it would result to a demand by all employees for a similar increase, especially if the financial conditions of the business cannot address an across-the-board increase.

In fine, absent any indication that the voluntary increase of salary rates by an employer was done arbitrarily and illegally for the purpose of circumventing the laws or was devoid of any legitimate purpose other than to discriminate against the regular employees, the Court will not step in to interfere with this management prerogative. Employees are of course not precluded from negotiating with its employer and lobby for wage increases through appropriate channels, such as through a CBA.

**NATIONAL FEDERATION OF LABOR, *Petitioner,***  
**-versus- NATIONAL LABOR RELATIONS COMMISSION and FRANKLIN BAKER COMPANY OF**  
**THE PHILIPPINES (DAVAO PLANT), *Respondents.***  
**G.R. No. 103586, THIRD DIVISION, July 21, 1994, FELICIANO, J.**

*We believe and so hold that the re-establishment of a significant gap or differential between regular employees and casual employees by operation of the CBA was more than substantial compliance with the requirements of the several Wage Orders (and of Article 124 of the Labor Code). That this re-establishment of a significant differential was the result of collective bargaining negotiations, rather than of a special grievance procedure, is not a legal basis for ignoring it.*

*In Apex Mining Company, Inc. v. National Labor Relations Commission, the Supreme Court said: It is important to note that the creditability provisions in Wage Orders Nos. 5 and 6 (as well as the parallel provisions in Wage Orders Nos. 2, 3 and 4) are grounded in an important public policy. That public policy may be seen to be the encouragement of employers to grant wage and allowance increases to their employees higher than the minimum rates of increases prescribed by statute or administrative regulation. To obliterate the creditability provisions in the Wage Orders through interpretation or otherwise, and to compel employers simply to add legislated increases in salaries or allowances without regard to what is already being paid, would be to penalize employers who grant their workers more than the statutorily prescribed minimum rates of increases.*

**FACTS:**

Between 1 November 1983 and 1 November 1984, Wage Orders Nos. 3, 4, 5 and 6 were successively promulgated. Before the effectivity of Wage Order No. 3, there existed between the wage rates of regular employees and of casual (or non-regular) employees a positive differential in the amount of P4.56. Upon the effectivity of Wage Order No. 5, dated 16 June 1984, the positive differential between the two groups of employees was eliminated. Thus, grievance meetings were held by petitioner National Federation of Labor ("NFL") and private respondent.



On 21 June 1984, all the casual or non-regular employees of private respondent Company were "regularized," pursuant to the request of petitioner NFL. On 1 July 1984, the effectivity date of the 1984 Collective Bargaining Agreement between NFL and the Company, all regular employees of the Company received an increase of P1.84 in their daily wage; the regular daily wage of the regular employees thus became P35.84 as against P34.00 per day for non-regular employees.

As a result of the implementation of Wage Order No. 6, the daily wage of casual employees was increased to P36.00. At the same time, the Company unilaterally granted an across-the-board increase of P2.00 in the daily rate of all regular employees, thus increasing their daily wage to P37.84. On 1 July 1985, the anniversary date of the increases under the CBA, all regular employees who were members of the collective bargaining unit got a raise of P1.76 in their basic daily wage, which pushed that daily wage from P37.84 to P39.60, as against the non-regular's basic wage of P36.00 per day.

Meantime, while the above wage developments were unfolding, the Company experienced a work output slow down. The Company directed some workers to explain the reduction in their work output, but they failed to comply. This situation eventually escalated into a labor dispute, which was certified by the Secretary of Labor to the National Labor Relations Commission for compulsory conciliation. Although the Union and the Company reached an agreement on other matters, the wage distortion issue was left unresolved.

The NLRC *En Banc* rendered a decision which in effect found the existence of wage distortion and required the Company to pay a P1.00 wage increase effective 1 May 1984.

On motion for partial reconsideration filed by the Company, the NLRC *En Banc's* decision was reconsidered and set aside by the NLRC Fifth Division. The Fifth Division of the NLRC in effect found that while a wage distortion did exist commencing 16 June 1984, the distortion persisted only for a total of fifteen days and accordingly required private respondent company to pay "a wage increase of P2.00 per day to all regular workers effective June 16, 1984 up to June 30, 1984 or a total of fifteen days.

According to the NLRC Fifth Division, from July 1, 1984, the regular employees received an increase of P1.84 making their daily wage P35.84 as against the wage of casual employees of P34.00 per day. The difference in the wage scale between the two groups of employees was maintained even after the implementation of Wage Order No. 6 which took effect on November 1, 1984

**ISSUE:**

Whether or not the wage distortion had ceased to exist after 1 July 1984 (YES)

**RULING:**

The claim of NFL was that the initial — prior to effectivity of Wage Order No. 3 — differential of P4.56 in the wage rate of regular employees and that of casual employees, should be re-created *this time between the wage rates of the newly "regularized" employees (i.e., the casual employees regularized by the Company on 21 June 1984) and the "old" regular employees* (employees who, allegedly, had been regular employees for at least three years before the "regularization" of the casuals). NFL stresses that seniority is a valid basis of distinction between differing groups of employees, under the Labor Code.

A statutory definition of "wage distortion" is now found in Article 124 of the Labor Code, as amended by Republic Act. No. 6727 (dated 9 June 1989), which reads as follows:

Article 124. Standards/Criteria for Minimum Wage Fixing — . . .

xxx xxx xxx

As used herein, a wage distortion shall mean a situation where an increase in prescribed wage rates results in the *elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups* in an establishment as to *effectively obliterate the distinctions embodied in such wage structure* based on skills, length of service, or other logical bases of differentiation. (Emphasis supplied)

From the above quoted material, it will be seen that the concept of wage distortion assumes an *existing grouping or classification of employees* which establishes *distinctions* among such employees on some relevant or legitimate basis. This classification is reflected in a differing wage rate for each of the existing classes of employees. The wage distortion anticipated in Wage Orders Nos. 3, 4, 5 and 6 was a "distortion" (or "compression") which ensued from the impact of those Wage Orders upon the different wage rates of the several classes of employees. Thus distortion ensued where the result of implementation of one or another of the several Wage Orders was the total elimination or the severe reduction of the differential or gap existing between the wage rates of the differing classes of employees.

It is important to note that the remedy contemplated in the Wage Orders, and now in Article 124 of the Labor Code, for a wage distortion consisted of negotiations between employer and employees for the rectification of the distortion by re-adjusting the wage rates of the differing classes of employees. As a practical matter, this ordinarily meant a wage increase for one or more of the affected classes of employees so that some gap or differential would be *re-established*. There was no legal requirement that the historical gap which existed before the implementation of the Wage Orders be restored in precisely the same form or amount.

Applying the above concept to the case at bar, we note that there did exist a two-fold classification of employees within the private respondent Company: *regular* employees on the one hand and casual (or *non-regular*) employees on the other. As can be seen from the figures referred to earlier, the differential between these two (2) classes of employees existing before Wage Order No. 3 was reduced to zero upon the effectivity of Wage Order No. 5 on 16 June 1984. Obviously, distortion — consisting of complete elimination of the wage rate differential — had occurred. It is equally clear, however, that fifteen (15) days later, on 1 July 1984, upon effectivity of the wage increase stipulated in the collective bargaining agreement between the parties, a gap or differential of P1.84 was re-created. This restored differential persisted after the effectivity of Wage Order No. 6 on 1 November 1984. By operation of the same CBA, by 1 July 1985, the wage differential had grown to P3.60.

We believe and so hold that the re-establishment of a significant gap or differential between regular employees and casual employees by operation of the CBA was more than substantial compliance with the requirements of the several Wage Orders (and of Article 124 of the Labor Code). That this re-establishment of a significant differential was the result of collective bargaining negotiations, rather than of a special grievance procedure, is not a legal basis for ignoring it. The NLRC *En Banc* was in serious error when it disregarded the differential of P3.60 which had been restored by 1 July 1985 upon the ground that such differential "represent[ed] negotiated wage increase[s] which should not be considered covered and in compliance with the Wage Orders." The Wage Orders referred to above

had provided for the crediting of increases in wages or allowances granted or paid by employers within a specified time against the statutorily prescribed increases in minimum wages. A similar provision recognizing crediting of increases in daily basic wage rates granted by employers pursuant to collective bargaining agreements, is set out in Section 4(d) of R.A. No. 6727, a statute which sought to "rationalize wage policy determination by establishing the mechanism and proper standards therefor —." In *Apex Mining Company, Inc. v. National Labor Relations Commission*, the Supreme Court said:

It is important to note that the creditability provisions in Wage Orders Nos. 5 and 6 (as well as the parallel provisions in Wage Orders Nos. 2, 3 and 4) are grounded in an important public policy. That public policy may be seen to be the *encouragement* of employers to grant wage and allowance increases to their employees *higher than the minimum rates of increases prescribed by statute or administrative regulation*.

To obliterate the creditability provisions in the Wage Orders through interpretation or otherwise, and to compel employers simply to add legislated increases in salaries or allowances without regard to what is already being paid, would be to penalize employers who grant their workers more than the statutorily prescribed minimum rates of increases. Clearly, this would be counter-productive so far as securing the interests of labor is concerned. The creditability provisions in the Wage Orders prevent the penalizing of employers who are industry leaders and who do not wait for statutorily prescribed increases in salary or allowances and pay their workers more than what the law or regulations require. (Emphases in the original)

We consider, still further, that the "regularization" of the casual or non-regular employees on 21 June 1984 which was unilaterally effected by the Company (albeit upon the request of petitioner NFL), in conjunction with the coming into effect of the increases in daily wage stipulated in the CBA, had the effect of rendering the whole problem of wage distortion academic. *The act of "regularization" eliminated the classification scheme in respect of which the wage distortion had existed.*

Petitioner NFL's principal contention that the wage distortion persisted with respect to the "old" regular employees and the "newly regularized" employees, is realistically a claim or demand that the classification of "regular" employees be broken down into a sub-classification of "new regulars" and "old regulars." A basic problem with this contention is that, per the record of this case and during the period of time here relevant, there was in fact no pre-existing sub-classification of regular employees into "new regulars" and "old regulars" (*i.e.*, on the basis of seniority or longevity) in the Company. It follows that, as pointed out by the Solicitor-General, no wage distortion within the meaning of Wage Orders Nos. 3 through 6 (and of Article 124 of the Labor Code) continued beyond the "regularization" of the casual employees on 21 June 1984. It may be — though here again the record is silent — that the Company had some other sub-grouping of regular employees on the basis, for instance, of the kind of functions discharged by employees (*e.g.*, rank and file; supervisory; middle management; senior management; highly technical, etc.).

**METROPOLITAN BANK & TRUST COMPANY EMPLOYEES UNION-ALU-TUCP and ANTONIO V. BALINANG, Petitioners, -versus- NATIONAL LABOR RELATIONS COMMISSION (2nd Division) and METROPOLITAN BANK and TRUST COMPANY, Respondents.**  
**G.R. No. 102636, THIRD DIVISION, September 10, 1993, VITUG, J.**

*The definition of "wage distortion," aforequoted, shows that such distortion can so exist when, as a result of an increase in the prescribed wage rate, an "elimination or severe contraction of intentional quantitative differences in wage or salary rates" would occur "between and among employee groups in*



*an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation." In mandating an adjustment, the law did not require that there be an elimination or total abrogation of quantitative wage or salary differences; a severe contraction thereof is enough. As has been aptly observed by Presiding Commissioner Edna Bonto-Perez in her dissenting opinion, the contraction between personnel groupings comes close to eighty-three (83%), which cannot, by any stretch of imagination, be considered less than severe.*

**FACTS:**

On 25 May 1989, the bank entered into a collective bargaining agreement with the MBTCEU, granting a monthly P900 wage increase effective 01 January 1989, P600 wage increase 01 January 1990, and P200 wage increase effective 01 January 1991. Only regular employees as of 01 January 1989 were given the increase to the exclusion of probationary employees.

On 01 January 1989, Republic Act 6727 took effect. Its provisions, pertinent to this case, state:

Sec. 4. (a) Upon the effectivity of this Act, the statutory minimum wage rates of all workers and employees in the private sector, whether agricultural or non-agricultural, shall be increased by twenty-five pesos per day . . . : *Provided*, That those already receiving above the minimum wage rates up to one hundred pesos shall also receive an increase of twenty-five pesos per day . . .

xxx xxx xxx

(d) If expressly provided for and agreed upon in the collective bargaining agreements, all increase in the daily basic wage rates granted by the employers three months before the effectivity of this Act shall be credited as compliance with the increases in the wage rates prescribed herein, *provided* that, where such increases are less than the prescribed increases in the wage rates under this Act, the employer shall pay the difference. Such increase shall not include anniversary wage increases, merit wage increase and those resulting from the regularization or promotion of employees.

Pursuant to the above provisions, the bank gave the P25 increase per day, or P750 a month, to its probationary employees and to those who had been promoted to regular or permanent status before 01 July 1989 but whose daily rate was P100 and below. The bank refused to give the same increase to its regular employees who were receiving more than P100 per day and recipients of the P900 CBA increase.

Contending that the bank's implementation of Republic Act 6727 resulted in the categorization of the employees into (a) the probationary employees as of 30 June 1989 and regular employees receiving P100 or less a day who had been promoted to permanent or regular status before 01 July 1989, and (b) the regular employees as of 01 July 1989, whose pay was over P100 a day, and that, between the two groups, there emerged a substantially reduced salary gap, the MBTCEU sought from the bank the correction of the alleged distortion in pay. The parties ultimately agreed to refer the issue for compulsory arbitration to the NLRC.

The labor arbiter, in finding for petitioner, disregarded the bank's contention that the increase in its implementation of Republic Act 6727 did not constitute a distortion because "only 143 employees or 6.8% of the bank's population of a total of 2,108 regular employees" benefited. He stressed that "it is not necessary that a big number of wage earners within a company be benefited by the mandatory

increase before a wage distortion may be considered to have taken place," it being enough, he said, that such increase "result(s) in the severe contraction of an intentional quantitative difference in wage between employee groups."

The bank appealed to the NLRC. The NLRC Second Division reversed the decision of the Labor Arbiter. The NLRC said: We noted that in the new wage salary structure, the wage gaps between Level 6 and 7 levels 5 and 6, and levels 6 and 7 (*sic*) were maintained. While there is a noticeable decrease in the wage gap between levels 2 and 3, Levels 3 and 4, and Levels 4 and 5, the reduction in the wage gaps between said levels is not significant as to obliterate or result in severe contraction of the intentional quantitative differences in salary rates between the employees groups.

**ISSUE:**

Whether or not the wage increase effected by the bank in compliance with RA 6727 constituted wage distortion, such that adoption of corrective measures is warranted (YES)

**RULING:**

The term "wage distortion", under the Rules Implementing Republic Act 6727, is defined, thus:  
(p) Wage Distortion means a situation where an increase in prescribed wage rates results in the elimination or severe contradiction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

In this case, the majority of the members of the NLRC, as well as its dissenting member, agree that there is a wage distortion arising from the bank's implementation of the P25 wage increase; they do differ, however, on the extent of the distortion that can warrant the adoption of corrective measures required by law.

The definition of "wage distortion," aforequoted, shows that such distortion can so exist when, as a result of an increase in the prescribed wage rate, an "elimination or severe contraction of intentional quantitative differences in wage or salary rates" would occur "between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation." In mandating an adjustment, the law did not require that there be an elimination or total abrogation of quantitative wage or salary differences; a severe contraction thereof is enough. As has been aptly observed by Presiding Commissioner Edna Bonto-Perez in her dissenting opinion, the contraction between personnel groupings comes close to eighty-three (83%), which cannot, by any stretch of imagination, be considered less than severe.

The "intentional quantitative differences" in wage among employees of the bank has been set by the CBA to about P900 per month as of 01 January 1989. It is intentional as it has been arrived at through the collective bargaining process to which the parties are thereby concluded. The Solicitor General, in recommending the grant of due course to the petition, has correctly emphasized that the intention of the parties, whether the benefits under a collective bargaining agreement should be equated with those granted by law or not, unless there are compelling reasons otherwise, must prevail and be given effect.

In keeping then with the intendment of the law and the agreement of the parties themselves, along with the often repeated rule that all doubts in the interpretation and implementation of labor laws should be resolved in favor of labor, we must approximate an acceptable quantitative difference between and among the CBA agreed work levels. We, however, do not subscribe to the labor arbiter's exacting prescription in correcting the wage distortion. Like the majority of the members of the NLRC, we are also of the view that giving the employees an across-the-board increase of P750 may not be conducive to the policy of encouraging "employers to grant wage and allowance increases to their employees higher than the minimum rates of increases prescribed by statute or administrative regulation," particularly in this case where both Republic Act 6727 and the CBA allow a credit for voluntary compliance.

**DUNCAN ASSOCIATION OF DETAILMAN-PTGWO and PEDRO A. TECSON, *Petitioners,*  
-versus- GLAXO WELLCOME PHILIPPINES, INC., *Respondent.*  
G.R. No. 162994 , SECOND DIVISION, September 17, 2004, TINGA, J.**

*Glaxo has a right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and information from competitors, especially so that it and Astra are rival companies in the highly competitive pharmaceutical industry. The prohibition against personal or marital relationships with employees of competitor companies upon Glaxo's employees is reasonable under the circumstances because relationships of that nature might compromise the interests of the company. In laying down the assailed company policy, Glaxo only aims to protect its interests against the possibility that a competitor company will gain access to its secrets and procedures.*

**FACTS:**

Petitioner Pedro A. Tecson (Tecson) was hired by respondent Glaxo Wellcome Philippines, Inc. (Glaxo) as medical representative in the Camarines Sur-Camarines Norte sales area. Tecson signed a contract of employment which stipulates, among others, that he agrees to abide by existing company rules; to disclose to management any existing or future relationship by consanguinity or affinity with co-employees or employees of competing drug companies and should management find that such relationship poses a possible conflict of interest, to resign from the company.

Subsequently, Tecson entered into a romantic relationship with Bettsy, an employee of Astra Pharmaceuticals (Astra), a competitor of Glaxo. Bettsy was Astra's Branch Coordinator in Albay. Even before they got married, Tecson received several reminders from his District Manager regarding the conflict of interest which his relationship with Bettsy might engender. Still, Tecson married Bettsy. Tecson's superiors informed him that his marriage to Bettsy gave rise to a conflict of interest. Tecson's superiors reminded him that he and Bettsy should decide which one of them would resign from their jobs, although they told him that they wanted to retain him as much as possible because he was performing his job well. Tecson requested for more time resolve the problem, but his actions proved futile. Later, Glaxo transferred Tecson to the Butuan City-Surigao City-Agusan del Sur sales area. Tecson asked Glaxo to reconsider its decision, but his request was denied.

Tecson sought Glaxo's reconsideration regarding his transfer and brought the matter to Glaxo's Grievance Committee. Meanwhile, Tecson defied the transfer order and continued acting as medical representative in the Camarines Sur-Camarines Norte sales area. During the pendency of the grievance proceedings, Tecson was paid his salary, but was not issued samples of products which were competing with similar products manufactured by Astra. He was also not included in product conferences regarding such products.



For failure to resolve the issue at the grievance machinery level, they submitted the matter for voluntary arbitration. The National Conciliation and Mediation Board (NCMB) rendered its *Decision* declaring as valid Glaxo's policy on relationships between its employees and persons employed with competitor companies, and affirming Glaxo's right to transfer Tecson to another sales territory. On appeal, the Court of Appeals held that Glaxo's policy prohibiting its employees from having personal relationships with employees of competitor companies is a valid exercise of its management prerogatives.

**ISSUE:**

Whether or not Glaxo's policy prohibiting its employees from marrying an employee of a competitor company is valid (YES)

**RULING:**

The stipulation in Tecson's contract of employment with Glaxo being questioned by petitioners provides:

...

10. You agree to disclose to management any existing or future relationship you may have, either by consanguinity or affinity with co-employees or employees of competing drug companies. Should it pose a possible conflict of interest in management discretion, you agree to resign voluntarily from the Company as a matter of Company policy.

...

The same contract also stipulates that Tecson agrees to abide by the existing company rules of Glaxo, and to study and become acquainted with such policies. In this regard, the Employee Handbook of Glaxo expressly informs its employees of its rules regarding conflict of interest:

1. Conflict of Interest

...

1.1. Employee Relationships

Employees with existing or future relationships either by consanguinity or affinity with co-employees of competing drug companies are expected to disclose such relationship to the Management. If management perceives a conflict or potential conflict of interest, every effort shall be made, together by management and the employee, to arrive at a solution within six (6) months, either by transfer to another department in a non-counter checking position, or by career preparation toward outside employment after Glaxo Wellcome. Employees must be prepared for possible resignation within six (6) months, if no other solution is feasible.

No reversible error can be ascribed to the Court of Appeals when it ruled that Glaxo's policy prohibiting an employee from having a relationship with an employee of a competitor company is a valid exercise of management prerogative. Glaxo has a right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and information from competitors, especially so that it and Astra are rival companies in the highly competitive pharmaceutical industry. The prohibition against personal or marital relationships with employees of competitor companies upon Glaxo's employees is reasonable under the circumstances because relationships of that nature might compromise the interests of the company. In laying down the assailed company policy, Glaxo

only aims to protect its interests against the possibility that a competitor company will gain access to its secrets and procedures.

That Glaxo possesses the right to protect its economic interests cannot be denied. No less than the Constitution recognizes the right of enterprises to adopt and enforce such a policy to protect its right to reasonable returns on investments and to expansion and growth.

From the wordings of the contractual provision and the policy in its employee handbook, it is clear that Glaxo does not impose an absolute prohibition against relationships between its employees and those of competitor companies. Its employees are free to cultivate relationships with and marry persons of their own choosing. What the company merely seeks to avoid is a conflict of interest between the employee and the company that may arise out of such relationships. As succinctly explained by the appellate court, thus:

The policy being questioned is not a policy against marriage. An employee of the company remains free to marry anyone of his or her choosing. The policy is not aimed at restricting a personal prerogative that belongs only to the individual. However, an employee's personal decision does not detract the employer from exercising management prerogatives to ensure maximum profit and business success. . .

The Court of Appeals also correctly noted that the assailed company policy which forms part of respondent's Employee Code of Conduct and of its contracts with its employees, such as that signed by Tecson, was made known to him prior to his employment. Tecson, therefore, was aware of that restriction when he signed his employment contract and when he entered into a relationship with Bettsy. Since Tecson knowingly and voluntarily entered into a contract of employment with Glaxo, the stipulations therein have the force of law between them and, thus, should be complied with in good faith." He is therefore estopped from questioning said policy.

The Court finds no merit in petitioners' contention that Tecson was constructively dismissed when he was transferred from the Camarines Norte-Camarines Sur sales area to the Butuan City-Surigao City-Agusan del Sur sales area, and when he was excluded from attending the company's seminar on new products which were directly competing with similar products manufactured by Astra. Constructive dismissal is defined as a quitting, an involuntary resignation resorted to when continued employment becomes impossible, unreasonable, or unlikely; when there is a demotion in rank or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.<sup>30</sup> None of these conditions are present in the instant case. The record does not show that Tecson was demoted or unduly discriminated upon by reason of such transfer. As found by the appellate court, Glaxo properly exercised its management prerogative in reassigning Tecson to the Butuan City sales area.

**STAR PAPER CORPORATION, JOSEPHINE ONGSITCO & SEBASTIAN CHUA, *Petitioners,***  
**-versus- RONALDO D. SIMBOL, WILFREDA N. COMIA & LORNA E. ESTRELLA, *Respondents.***  
**G.R. No. 164774, SECOND DIVISION, April 12, 2006, PUNO, J.**

*The cases of **Duncan** and **PT&T** instruct us that the requirement of reasonableness must be **clearly** established to uphold the questioned employment policy. The employer has the burden to prove the existence of a reasonable business necessity.*

*It is significant to note that in the case at bar, respondents were hired after they were found fit for the job, but were asked to resign when they married a co-employee. Petitioners failed to show how the*

*marriage of Simbol, then a Sheeting Machine Operator, to Alma Dayrit, then an employee of the Repacking Section, could be detrimental to its business operations. Neither did petitioners explain how this detriment will happen in the case of Wilfreda Comia, then a Production Helper in the Selecting Department, who married Howard Comia, then a helper in the cutter-machine. The policy is premised on the mere fear that employees married to each other will be less efficient. If we uphold the questioned rule without valid justification, the employer can create policies based on an unproven presumption of a perceived danger at the expense of an employee's right to security of tenure.*

**FACTS:**

Petitioner Star Paper Corporation is a corporation engaged in trading – principally of paper products. Josephine Ongsitco is its Manager of the Personnel and Administration Department while Sebastian Chua is its Managing Director. The evidence for the petitioners show that respondents Ronaldo D. Simbol (Simbol), Wilfreda N. Comia (Comia) and Lorna E. Estrella (Estrella) were all regular employees of the company.

Simbol was employed by the company on October 27, 1993. He met Alma Dayrit, also an employee of the company, whom he married on June 27, 1998. Prior to the marriage, Ongsitco advised the couple that should they decide to get married, one of them should resign pursuant to a company policy promulgated in 1995. Simbol resigned on June 20, 1998 pursuant to the company policy.

Comia was hired by the company on February 5, 1997. She met Howard Comia, a co-employee, whom she married on June 1, 2000. Ongsitco likewise reminded them that pursuant to company policy, one must resign should they decide to get married. Comia resigned on June 30, 2000.

Estrella was hired on July 29, 1994. She met Luisito Zuñiga (Zuñiga), also a co-worker. Petitioners stated that Zuñiga, a married man, got Estrella pregnant. The company allegedly could have terminated her services due to immorality but she opted to resign on December 21, 1999.

According to petitioners, the respondents each signed a Release and Confirmation Agreement. They stated therein that they have no money and property accountabilities in the company and that they release the latter of any claim or demand of whatever nature.

Respondents offer a different version of their dismissal. Simbol and Comia allege that they did not resign voluntarily; they were compelled to resign in view of an illegal company policy. As to respondent Estrella, she alleges that she had a relationship with co-worker Zuñiga who misrepresented himself as a married but separated man. After he got her pregnant, she discovered that he was not separated. Thus, she severed her relationship with him to avoid dismissal due to the company policy. On November 30, 1999, she met an accident and was hospitalized for twenty-one days. When she returned to work, she found out that her name was on-hold at the gate, and she was being dismissed for immoral conduct. She refused to sign the memorandum because she has not been given a chance to explain. However, after submission of the explanation, she was nonetheless dismissed by the company. Due to her urgent need for money, she later submitted a letter of resignation in exchange for her thirteenth month pay.

Respondents later filed a complaint for unfair labor practice, constructive dismissal, separation pay and attorney's fees. They averred that the aforementioned company policy is illegal and contravenes Article 136 of the Labor Code. The Labor Arbiter dismissed the complaint for lack of merit. The NLRC affirmed the decision of the Labor Arbiter. However, the Court of Appeals reversed the NLRC decision.



**ISSUE:**

Whether or not petitioner's policy was a valid exercise of management prerogative (NO)

**RULING:**

The case at bar involves Article 136 of the Labor Code which provides:

Art. 136. It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

Unlike in our jurisdiction where there is no express prohibition on marital discrimination, there are twenty state statutes in the United States prohibiting marital discrimination. Some state courts have been confronted with the issue of whether no-spouse policies violate their laws prohibiting both marital status and sex discrimination.

The courts that have **broadly** construed the term "marital status" rule that it encompassed the identity, occupation and employment of one's spouse. They strike down the no-spouse employment policies based on the broad legislative intent of the state statute. They reason that the no-spouse employment policy violate the marital status provision because it arbitrarily discriminates against all spouses of present employees without regard to the actual effect on the individual's qualifications or work performance. These courts also find the no-spouse employment policy invalid for failure of the employer to present any evidence of **business necessity** other than the general perception that spouses in the same workplace might adversely affect the business. They hold that the absence of such a **bona fide occupational qualification** invalidates a rule denying employment to one spouse due to the current employment of the other spouse in the same office. Thus, they rule that unless the employer can prove that the reasonable demands of the business require a distinction based on marital status and there is no better available or acceptable policy which would better accomplish the business purpose, an employer may not discriminate against an employee based on the identity of the employee's spouse. This is known as the **bona fide occupational qualification exception**.

The concept of a bona fide occupational qualification is not foreign in our jurisdiction. We employ the standard of **reasonableness** of the company policy which is parallel to the bona fide occupational qualification requirement. In the recent case of **Duncan Association of Detailman-PTGWO and Pedro Tecson v. Glaxo Wellcome Philippines, Inc.**, we passed on the validity of the policy of a pharmaceutical company prohibiting its employees from marrying employees of any competitor company. We held that Glaxo has a right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and information from competitors. We considered the prohibition against personal or marital relationships with employees of competitor companies upon Glaxo's employees **reasonable** under the circumstances because relationships of that nature might compromise the interests of Glaxo. In laying down the assailed company policy, we recognized that Glaxo only aims to protect its interests against the possibility that a competitor company will gain access to its secrets and procedures.

The requirement that a company policy must be **reasonable** under the circumstances to qualify as a valid exercise of management prerogative was also at issue in the 1997 case of **Philippine Telegraph and Telephone Company v. NLRC**. In said case, the employee was dismissed in violation of

petitioner's policy of disqualifying from work any woman worker who contracts marriage. We held that the company policy violates the right against discrimination afforded all women workers under Article 136 of the Labor Code, but established a permissible exception, *viz.*:

[A] requirement that a woman employee must remain unmarried could be justified as a "**bona fide occupational qualification**," or BFOQ, where the particular requirements of the job would justify the same, but not on the ground of a general principle, such as the desirability of spreading work in the workplace. A requirement of that nature would be valid provided it reflects an inherent quality **reasonably necessary** for satisfactory job performance. (*Emphases supplied.*)

The cases of **Duncan** and **PT&T** instruct us that the requirement of reasonableness must be **clearly** established to uphold the questioned employment policy. The employer has the burden to prove the existence of a reasonable business necessity. The burden was successfully discharged in **Duncan** but not in **PT&T**.

We do not find a reasonable business necessity in the case at bar.

Petitioners' sole contention that "the company did not just want to have two (2) or more of its employees related between the third degree by affinity and/or consanguinity" is lame. That the second paragraph was meant to give teeth to the first paragraph of the questioned rule is evidently not the valid reasonable business necessity required by the law.

It is significant to note that in the case at bar, respondents were hired after they were found fit for the job, but were asked to resign when they married a co-employee. Petitioners failed to show how the marriage of Simbol, then a Sheeting Machine Operator, to Alma Dayrit, then an employee of the Repacking Section, could be detrimental to its business operations. Neither did petitioners explain how this detriment will happen in the case of Wilfreda Comia, then a Production Helper in the Selecting Department, who married Howard Comia, then a helper in the cutter-machine. The policy is premised on the mere fear that employees married to each other will be less efficient. If we uphold the questioned rule without valid justification, the employer can create policies based on an unproven presumption of a perceived danger at the expense of an employee's right to security of tenure.

Petitioners contend that their policy will apply only when one employee marries a co-employee, but they are free to marry persons other than co-employees. The questioned policy may not facially violate Article 136 of the Labor Code but it creates a disproportionate effect and under the disparate impact theory, the only way it could pass judicial scrutiny is a showing that it is **reasonable** despite the discriminatory, albeit disproportionate, effect. The failure of petitioners to prove a legitimate business concern in imposing the questioned policy cannot prejudice the employee's right to be free from arbitrary discrimination based upon stereotypes of married persons working together in one company.

Lastly, the absence of a statute expressly prohibiting marital discrimination in our jurisdiction cannot benefit the petitioners. The protection given to labor in our jurisdiction is vast and extensive that we cannot prudently draw inferences from the legislature's silence that married persons are not protected under our Constitution and declare valid a policy based on a prejudice or stereotype. Thus, for failure of petitioners to present undisputed proof of a reasonable business necessity, we rule that the questioned policy is an invalid exercise of management prerogative.

**SAUDI ARABIAN AIRLINES (SAUDIA) AND BRENDA J. BETIA, *Petitioners*, - versus - MA. JOPETTE M. REBESENCIO, MONTASSAH B. SACAR-ADIONG, ROUEN RUTH A. CRISTOBAL AND LORAIN S. SCHNEIDER-CRUZ, *Respondents*.**  
**G.R. No. 198587, SECOND DIVISION, January 14, 2015, LEONEN, J.**

*Nevertheless, while a Philippine tribunal (acting as the forum court) is called upon to respect the parties' choice of governing law, such respect must not be so permissive as to lose sight of considerations of law, morals, good customs, public order, or public policy that underlie the contract central to the controversy. We emphasize the glaringly discriminatory nature of Saudia's policy. As argued by respondents, Saudia's policy entails the termination of employment of flight attendants who become pregnant. At the risk of stating the obvious, pregnancy is an occurrence that pertains specifically to women. Saudia's policy excludes from and restricts employment on the basis of no other consideration but sex.*

**FACTS:**

Petitioner Saudi Arabian Airlines (Saudia) is a foreign corporation established and existing under the laws of Jeddah, Kingdom of Saudi Arabia. Respondents (complainants before the Labor Arbiter) were recruited and hired by Saudia as Temporary Flight Attendants with the accreditation and approval of the Philippine Overseas Employment Administration.

Respondents continued their employment until they are separated from service on various dates in 2006. Respondents contended that the termination of their employment was illegal. They alleged that the termination was made solely because they were pregnant. They allege that they had informed Saudia of their respective pregnancies and had gone through the necessary procedures to process their maternity leaves. Initially, Saudia had given its approval but later informed respondents that its management in Jeddah, Saudi Arabia had disapproved their maternity leaves. In addition, it required respondents to file their resignation letters.

Saudia anchored its disapproval of respondents' maternity leaves and demand for their resignation on its "Unified Employment Contract for Female Cabin Attendants" (Unified Contract). Under the Unified Contract, the employment of a Flight Attendant who becomes pregnant is rendered void. Saudia assailed the jurisdiction of the Labor Arbiter. It claimed that all the determining points of contact referred to foreign law and insisted that the Complaint ought to be dismissed on the ground of forum non conveniens.

**ISSUE:**

Whether forum non conveniens is applicable. (NO)

**RULING:**

Forum non conveniens, like the rules of forum shopping, *litis pendentia*, and *res judicata*, is a means of addressing the problem of parallel litigation. While the rules of forum shopping, *litis pendentia*, and *res judicata* are designed to address the problem of parallel litigation within a single jurisdiction, forum non conveniens is a means devised to address parallel litigation arising in multiple jurisdictions.

Consistent with the principle of comity, a tribunal's desistance in exercising jurisdiction on account of forum non conveniens is a deferential gesture to the tribunals of another sovereign. It is a measure that prevents the former's having to interfere in affairs which are better and more competently



addressed by the latter. Further, forum non conveniens entails a recognition not only that tribunals elsewhere are better suited to rule on and resolve a controversy, but also, that these tribunals are better positioned to enforce judgments and, ultimately, to dispense justice.

Forum non conveniens finds no application and does not operate to divest Philippine tribunals of jurisdiction and to require the application of foreign law. Saudia invokes forum non conveniens to supposedly effectuate the stipulations of the Cabin Attendant contracts that require the application of the laws of Saudi Arabia. Forum non conveniens relates to forum, not to the choice of governing law. That forum non conveniens may ultimately result in the application of foreign law is merely an incident of its application. In this strict sense, forum non conveniens is not applicable. It is not the primarily pivotal consideration in this case.

Our law on contracts recognizes the validity of contractual choice of law provisions. Where such provisions exist, Philippine tribunals, acting as the forum court, generally defer to the parties' articulated choice. This is consistent with the fundamental principle of autonomy of contracts. Article 1306 of the Civil Code expressly provides that "[t]he contracting parties may establish 'such stipulations, clauses, terms and conditions as they may deem convenient.'" Nevertheless, while a Philippine tribunal (acting as the forum court) is called upon to respect the parties' choice of governing law, such respect must not be so permissive as to lose sight of considerations of law, morals, good customs, public order, or public policy that underlie the contract central to the controversy.

We emphasize the glaringly discriminatory nature of Saudia's policy. As argued by respondents, Saudia's policy entails the termination of employment of flight attendants who become pregnant. At the risk of stating the obvious, pregnancy is an occurrence that pertains specifically to women. Saudia's policy excludes from and restricts employment on the basis of no other consideration but sex.

We do not lose sight of the reality that pregnancy does present physical limitations that may render difficult the performance of functions associated with being a flight attendant. **Nevertheless, it would be the height of iniquity to view pregnancy as a disability so permanent and immutable that, it must entail the termination of one's employment.** It is clear to us that any individual, regardless of gender, may be subject to exigencies that limit the performance of functions. However, we fail to appreciate how pregnancy could be such an impairing occurrence that it leaves no other recourse but the complete termination of the means through which a woman earns a living.

Apart from the constitutional policy on the fundamental equality before the law of men and women, it is settled that contracts relating to labor and employment are impressed with public interest. Article 1700 of the Civil Code provides that "[t]he 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."

As the present dispute relates to (what the respondents allege to be) the illegal termination of respondents' employment, this case is immutably a matter of public interest and public policy. Consistent with clear pronouncements in law and jurisprudence, Philippine laws properly find application in and govern this case. Moreover, as this premise for Saudia's insistence on the application forum non conveniens has been shattered, it follows that Philippine tribunals may properly assume jurisdiction over the present controversy.

**CHRISTINE JOY CAPIN-CADIZ, *Petitioners* – versus –**

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**BRENT HOSPITAL AND COLLEGES, INC., Respondents,  
G.R. No. 187417, THIRD DIVISION, February 24, 2016, REYES, J,**

*With particular regard to women, Republic Act No. 9710 or the Magna Carta of Women protects women against discrimination in all matters relating to marriage and family relations, including the right to choose freely a spouse and to enter into marriage only with their free and full consent.*

*Weighed against these safeguards, it becomes apparent that Brent's condition is coercive, oppressive and discriminatory. There is no rhyme or reason for it. It forces Cadiz to marry for economic reasons and deprives her of the freedom to choose her status, which is a privilege that inheres in her as an intangible*

**FACTS:**

Cadiz was the Human Resource Officer of respondent Brent Hospital and Colleges, Inc. (Brent) at the time of her indefinite suspension from employment in 2006. The cause of suspension was Cadiz's Unprofessionalism and Unethical Behavior Resulting to Unwed Pregnancy. It appears that Cadiz became pregnant out of wedlock, and Brent imposed the suspension until such time that she marries her boyfriend in accordance with law.

**ISSUE:**

Whether the suspension imposed by Brent is valid. (NO)

**RULING:**

In this case, Brent imposed on Cadiz the condition that she subsequently contract marriage with her then boyfriend for her to be reinstated. According to Brent, this is "in consonance with the policy against encouraging illicit or common-law relations that would subvert the sacrament of marriage." Statutory law is replete with legislation protecting labor and promoting equal opportunity in employment. No less than the 1987 Constitution mandates that the "State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all." The Labor Code of the Philippines, meanwhile, provides:

Art. 136. Stipulation against marriage. It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

With particular regard to women, Republic Act No. 9710 or the Magna Carta of Women protects women against discrimination in all matters relating to marriage and family relations, including the right to choose freely a spouse and to enter into marriage only with their free and full consent.

Weighed against these safeguards, it becomes apparent that Brent's condition is coercive, oppressive and discriminatory. There is no rhyme or reason for it. It forces Cadiz to marry for economic reasons and deprives her of the freedom to choose her status, which is a privilege that inheres in her as an intangible and inalienable right. While a marriage or no-marriage qualification may be justified as a "bona fide occupational qualification," Brent must prove two factors necessitating its imposition, viz: (1) that the employment qualification is reasonably related to the essential operation of the job

involved; and (2) that there is a factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the job. Brent has not shown the presence of neither of these factors. Perforce, the Court cannot uphold the validity of said condition.

**DEL MONTE PHILIPPINES, INC., *Petitioner*, - versus - LOLITA VELASCO, *Respondent*.  
G.R. NO. 153477, SECOND DIVISION, March 6, 2007, AUSTRIA-MARTINEZ, J.**

*Art. 137. Prohibited acts. – It shall be unlawful for any employer:*

*(2) To discharge such woman on account of her pregnancy, while on leave or in confinement due to her pregnancy;*

*The Court finds no cogent reason to disturb the findings of the NLRC and the CA that the respondent was able to subsequently justify her absences in accordance with company rules and policy; that the respondent was pregnant at the time she incurred the absences; that this fact of pregnancy and its related illnesses had been duly proven through substantial evidence*

**FACTS:**

Lolita M. Velasco (respondent) started working with Del Monte Philippines (petitioner) as a seasonal employee but was later regularized.

For being absent on August 15-18, 29-31 and September 1-10, 1994, a notice of hearing was sent to respondent notifying her of the charges filed against her for violating the Absence Without Official Leave rule: that is for excessive absence without permission.

After hearing, the petitioner terminated the services of respondent due to excessive absences without permission.

Feeling aggrieved, respondent filed a case for illegal dismissal against petitioner asserting that her dismissal was illegal because her absences was due on suffering from urinary tract infection, a pregnancy-borne, at the time she committed the alleged absences.

She explained that for her absence from work on August 15, 16, 17 & 18, 1994 she had sent an application for leave to her supervisor. Thereafter, she went to the company hospital for check-up and was advised accordingly to rest in quarters for four (4) days or on August 27 to 30, 1994. Still not feeling well, she failed to work on September 1, 1994 and was again advised two days of rest in quarters on September 2-3, 1994. Unable to recover, she went to see an outside doctor and the latter ordered her to rest for another five (5) consecutive days, or from September 5 to 9, 1994. She declared she did not file the adequate leave of absence because a medical certificate was already sufficient per company policy. On September 10, 1994 she failed to report to work but sent an application for leave of absence to her supervisor, Prima Ybañez, which was not anymore accepted.

Petitioner posits that the evidence proffered by respondent establish respondent's sickness only from August 23, 1994 up to August 30, 1994 and from September 4, 1994 up to September 8, 1994. In other words, respondent was absent without permission on several other days which were not supported by any other proof of illness, specifically, on August 15, 16, 17, 18, 31, 1994 and September 1, 2, 3, 9, and 10, 1994, and, hence, she is guilty of ten unjustified absences. Petitioner cited *Filflex Industrial and Manufacturing Co. v. National Labor Relations Commission* (Filflex) wherein it was held that if the medical certificate fails to refer to the specific period of the employee's absence, then such



absences, attributable to chronic asthmatic bronchitis, are not supported by competent proof and, hence, they are unjustified. Hence, by parity of reasoning, in the absence of evidence indicating any pregnancy-borne illness outside the period stated in respondent's medical certificate, such illness ought not to be considered as an acceptable excuse for respondent's excessive absences without leave

**ISSUE:**

Whether the dismissal is valid. (NO)

**RULING:**

The *Filflex* case is not applicable, principally because the nature and gravity of the illness involved in that case chronic asthmatic bronchitis – are different from the conditions that are present in the instant case, which is pregnancy and its related illnesses.

The Court takes judicial notice of the fact that the condition of asthmatic bronchitis may be intermittent, in contrast to pregnancy which is a continuing condition accompanied by various symptoms and related illnesses. Hence, as to the former, if the medical certificate or other proof proffered by the worker fails to correspond with the dates of absence, then it can be reasonably concluded that, absent any other proof, such absences are unjustified. This is the ruling in *Filflex* which cannot be applied in a straight-hand fashion in cases of pregnancy which is a long-term condition accompanied by an assortment of related illnesses. In this case, by the measure of substantial evidence, what is controlling is the finding of the NLRC and the CA that respondent was pregnant and suffered from related ailments. It would be unreasonable to isolate such condition strictly to the dates stated in the Medical Certificate or the Discharge Summary. It can be safely assumed that the absences that are not covered by, but which nonetheless approximate, the dates stated in the Discharge Summary and Medical Certificate, are due to the continuing condition of pregnancy and related illnesses, and, hence, are justified absences.

The Court agrees with the CA in concluding that respondent's sickness was pregnancy-related and, therefore, the petitioner cannot terminate respondent's services because in **doing so, petitioner will, in effect, be violating the Labor Code which prohibits an employer to discharge an employee on account of the latter's pregnancy.**

Article 137 of the Labor Code provides:

Art. 137. Prohibited acts. – It shall be unlawful for any employer:

(2) To discharge such woman on account of her pregnancy, while on leave or in confinement due to her pregnancy;

The Court finds no cogent reason to disturb the findings of the NLRC and the CA that the respondent was able to subsequently justify her absences in accordance with company rules and policy; that the respondent was pregnant at the time she incurred the absences; that this fact of pregnancy and its related illnesses had been duly proven through substantial evidence; that the respondent attempted to file leaves of absence but the petitioner's supervisor refused to receive them; that she could not have filed prior leaves due to her continuing condition; and that the petitioner, in the last analysis, dismissed the respondent on account of her pregnancy, a prohibited act.

**PHILIPPINE TELEGRAPH AND TELEPHONE COMPANY, *Petitioner*, - versus - NATIONAL LABOR RELATIONS COMMISSION and GRACE DE GUZMAN, *Respondents*.  
G.R. No. 118978, SECOND DIVISION, May 23, 1997, REGALADO, J.**

*The government, to repeat, abhors any stipulation or policy in the nature of that adopted by petitioner PT&T. The Labor Code states, in no uncertain terms, as follows: It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of marriage.*

*In the case at bar, petitioners' policy of not accepting or considering as disqualified from work any woman worker who contracts marriage runs afoul of the test of, and the right against, discrimination, afforded all women workers by our labor laws and by no less than the Constitution.*

**FACTS:**

Grace de Guzman (respondent) was employed by petitioner. In the job application form that was furnished her to be filled up for the purpose, she indicated in the portion for civil status therein that she was single although she had contracted marriage a few months earlier.

When petitioner supposedly learned about the same later, its branch supervisor sent to respondent a memorandum requiring her to explain the discrepancy. In that memorandum, she was reminded about the companys policy of not accepting married women for employment. Respondent was later dismissed by petitioner.

**ISSUE:**

Whether the dismissal is valid. (NO)

**RULING:**

In the case at bar, petitioners' policy of not accepting or considering as disqualified from work any woman worker who contracts marriage runs afoul of the test of, and the right against, discrimination, afforded all women workers by our labor laws and by no less than the Constitution.

Verily, private respondents act of concealing the true nature of her status from PT&T could not be properly characterized as willful or in bad faith as she was moved to act the way she did mainly because she wanted to retain a permanent job in a stable company. In other words, she was practically forced by that very same illegal company policy into misrepresenting her civil status for fear of being disqualified from work. While loss of confidence is a just cause for termination of employment, it should not be simulated. It must rest on an actual breach of duty committed by the employee and not on the employers' caprices. Furthermore, it should never be used as a subterfuge for causes which are improper, illegal, or unjustified.

Petitioner would have the Court believe that although private respondent defied its policy against its female employees contracting marriage, what could be an act of insubordination was inconsequential. What it submits as unforgivable is her concealment of that marriage yet, at the same time, declaring that marriage as a trivial matter to which it supposedly has no objection. In other words, PT&T says it gives its blessings to its female employees contracting marriage, despite the

maternity leaves and other benefits it would consequently respond for and which obviously it would have wanted to avoid. If that employee confesses such fact of marriage, there will be no sanction; but if such employee conceals the same instead of proceeding to the confessional, she will be dismissed. This line of reasoning does not impress us as reflecting its true management policy or that we are being regaled with responsible advocacy.

This Court should be spared the ennui of strained reasoning and the tedium of propositions which confuse through less than candid arguments. **Indeed, petitioner glosses over the fact that it was its unlawful policy against married women, both on the aspects of qualification and retention, which compelled private respondent to conceal her supervenient marriage.** It was, however, that very policy alone which was the cause of private respondents' secretive conduct now complained of. It is then apropos to recall the familiar saying that he who is the cause of the cause is the cause of the evil caused.

A requirement that a woman employee must remain unmarried could be justified as a bona fide occupational qualification, or BFOQ, where the particular requirements of the job would justify the same, but not on the ground of a general principle, such as the desirability of spreading work in the workplace. A requirement of that nature would be valid provided it reflects an inherent quality reasonably necessary for satisfactory job performance. Thus, in one case, a no-marriage rule applicable to both male and female flight attendants, was regarded as unlawful since the restriction was not related to the job performance of the flight attendants.

The government, to repeat, abhors any stipulation or policy in the nature of that adopted by petitioner PT&T. The Labor Code states, in no uncertain terms, as follows:

ART. 136. Stipulation against marriage. - It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of marriage.

Petitioners policy is not only in derogation of the provisions of Article 136 of the Labor Code on the right of a woman to be free from any kind of stipulation against marriage in connection with her employment, but it likewise assaults good morals and public policy, tending as it does to deprive a woman of the freedom to choose her status, a privilege that by all accounts inheres in the individual as an intangible and inalienable right. Hence, while it is true that the parties to a contract may establish any agreements, terms, and conditions that they may deem convenient, the same should not be contrary to law, morals, good customs, public order, or public policy. Carried to its logical consequences, it may even be said that petitioners' policy against legitimate marital bonds would encourage illicit or common-law relations and subvert the sacrament of marriage.

**MA. LOURDES T. DOMINGO, petitioner, vs. ROGELIO I. RAYALA, respondent.**  
**G.R. Nos. 155831, 155840 & 158700, THIRD DIVISION, February 18, 2008, NACHURA, J.**

*But it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender. Holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones — all these acts of Rayala resound with deafening clarity the unspoken request for a sexual favor.*



**FACTS:**

On November 16, 1998, Ma. Lourdes T. Domingo (Domingo), then Stenographic Reporter III at the NLRC, filed a Complaint for sexual harassment against Rayala before Secretary Bienvenido Laguesma of the Department of Labor and Employment (DOLE).

Upon receipt of the Complaint, the DOLE Secretary referred the Complaint to the Office of the President (OP), Rayala being a presidential appointee. A committee was created for the purpose of investigating the matter. It found Rayala guilty and ordered for the latter's suspension. The Committee submitted the report to the OP. The OP rendered a decision wherein Rayala was dismissed from service due to disgraceful and immoral conduct. Rayala filed a Motion for Reconsideration, but the same was denied.

**CA:** held that there was sufficient evidence on record to create moral certainty that Rayala committed the acts he was charged with. Rayala filed a Motion for Reconsideration. This time, the CA modified its decision. Instead of the penalty of dismissal, Rayala was only meted the penalty of suspension.

In GR No. 155831, Domingo assailed the CA's resolution. The SC later on upheld the CA decision.

In GR No. 155840, Rayala raised the current issue.

In GR No. 158700, the Republic raised the issue of whether the President of the Philippines may validly dismiss Rayala. The Republic further claimed that even though AO 250 provides only a penalty of suspension, it will not prevent the OP from imposing the penalty of dismissal. The SC later on held that the president is the proper disciplining authority. However, the President cannot impose a penalty other than the penalty provided by law for such offense. Thus, it was error for the Office of the President to impose upon Rayala the penalty of dismissal from the service, a penalty which can only be imposed upon commission of a second offense.

**ISSUE:**

Whether or not Rayala committed sexual harassment. (YES)

**RULING:**

...Yet, even if we were to test Rayala's acts strictly by the standards set in Section 3, RA 7877, he would still be administratively liable. It is true that this provision calls for a "demand, request or requirement of a sexual favor." But it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender. Holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones — all these acts of Rayala resound with deafening clarity the unspoken request for a sexual favor.

Likewise, contrary to Rayala's claim, it is not essential that the demand, request or requirement be made as a condition for continued employment or for promotion to a higher position. It is enough that the respondent's acts result in creating an intimidating, hostile or offensive environment for the employee. That the acts of Rayala generated an intimidating and hostile environment for

Domingo is clearly shown by the common factual finding of the Investigating Committee, the OP and the CA that Domingo reported the matter to an officemate and, after the last incident, filed for a leave of absence and requested transfer to another unit. EScAID

Rayala's invocation of *Aquino v. Acosta* is misplaced, because the factual setting in that case is different from that in the case at bench. In *Aquino*, Atty. Susan Aquino, Chief of the Legal and Technical Staff of the Court of Tax Appeals (CTA), charged then CTA Presiding Judge (now Presiding Justice) Ernesto Acosta of sexual harassment. She complained of several incidents when Judge Acosta allegedly kissed her, embraced her, and put his arm around her shoulder. The case was referred to CA Justice Josefina G. Salonga for investigation. In her report, Justice Salonga found that "the complainant failed to show by convincing evidence that the acts of Judge Acosta in greeting her with a kiss on the cheek, in a 'beso-beso' fashion, were carried out with lustful and lascivious desires or were motivated by malice or ill motive. It is clear from the circumstances that most of the kissing incidents were done on festive and special occasions", and they "took place in the presence of other people and the same was by reason of the exaltation or happiness of the moment".

xxx

**DELFIN G. VILLARAMA, petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION and GOLDEN DONUTS, INC., respondents.**  
**G.R. No. 106341, SECOND DIVISION, September 2, 1994, PUNO, J.**

*Moreover, loss of trust and confidence is a good ground for dismissing a managerial employee. It can be proved by substantial evidence which is present in the case at bench. Xxx*

*As a managerial employee, petitioner is bound by a more exacting work ethics. He failed to live up to this higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from over sexed superiors.*

**FACTS:**

Petitioner DELFIN VILLARAMA was employed by private respondent GOLDEN DONUTS, INC., as its Materials Manager.

On July 15, 1989, petitioner Villarama was charged with sexual harassment by Divina Gonzaga, a clerk-typist assigned in his department. The humiliating experience compelled her to resign from work. The resignation letter by Gonzaga addressed to Mr. Prieto, President of Golden Donuts, Inc., prompted the latter to call petitioner to a meeting.

Petitioner was then required to explain the letter against him. It appears that petitioner agreed to tender his resignation. Private respondent moved swiftly to separate petitioner. Thus, private respondent approved petitioner's application for leave of absence with pay. It also issued an inter-office memorandum advising "all concerned" that petitioner was no longer connected with the company effective August 5, 1989. Two (2) days later, or on August 7, 1989, Mr. Prieto sent a letter to petitioner confirming their agreement that petitioner would be officially separated from the private respondent.

In the interim, petitioner had a change of mind. In a letter dated August 16, 1989, petitioner sought reconsideration of the management's decision to terminate him.

For his failure to tender his resignation, petitioner was dismissed by private respondent on August 23, 1989. Feeling aggrieved, petitioner filed an illegal dismissal case against private respondent.

**LA:** held that due process was not observed in the dismissal of petitioner and there was no valid cause for dismissal.

Private respondent appealed to the National Labor Relations Commission.

**NLRC:** reversed the decision of the labor arbiter. The dispositive portion of its Resolution reads: Hence, this petition.

**ISSUE:** Whether or not there was a valid cause to terminate Villarama. (YES)

**RULING:**

Petitioner claims that his alleged immoral act was unsubstantiated, hence, he could not be dismissed. We hold otherwise. The records show that petitioner was confronted with the charge against him. Initially, he voluntarily agreed to be separated from the company. He took a leave of absence preparatory to his separation. This agreement was confirmed by the letter to him by Mr. Prieto dated August 7, 1989. A few days after, petitioner reneged on the agreement. He refused to be terminated on the ground that the seriousness of his offense would not warrant his separation from service. So he alleged in his letter to Mr. Prieto dated August 16, 1989. But even in this letter, petitioner admitted his "error" *vis-a-vis* Miss Gonzaga. As a manager, petitioner should know the evidentiary value of his admissions. Needless to stress, he cannot complain there was no valid cause for his separation.

Moreover, loss of trust and confidence is a good ground for dismissing a managerial employee. It can be proved by substantial evidence which is present in the case at bench. Xxx

As a managerial employee, petitioner is bound by a more exacting work ethics. He failed to live up to this higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from over sexed superiors.

To be sure, employers are given wider latitude of discretion in terminating the employment of managerial employees on the ground of lack of trust and confidence

We next rule on the monetary awards due to petitioner. The public respondent erred in awarding separation pay of P17,000.00 as indemnity for his dismissal without due process of law. The award of separation pay is proper in the cases enumerated under Articles 283 and 284 of the Labor Code, and in cases where there is illegal dismissal (for lack of valid cause) and reinstatement is no longer feasible. But this is not to state that an employer cannot be penalized for failure to give formal notice and conduct the necessary investigation before dismissing an employee. Thus, in *Wenphil vs. NLRC* and *Pacific Mills, Inc. vs. Alonzo*, this Court awarded P1,000.00 as penalty for non-observance of due process.

Petitioner is not also entitled to moral and exemplary damages. There was no bad faith or malice on the part of private respondent in terminating the services of petitioner.



Petitioner is entitled, however, to his unused vacation/sick leave and proportionate 13th month pay, as held by the labor arbiter. These are monies already earned by petitioner and should be unaffected by his separation from the service.

**PHILIPPINE AEOLUS AUTO-MOTIVE UNITED CORPORATION and/or FRANCIS CHUA, petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION and ROSALINDA C. CORTEZ, respondents**  
**G.R. No. 124617, SECOND DIVISION, April 28, 2000, BELLOSSILLO, J.**

*The penalty of dismissal was too excessive and not proportionate to the alleged infractions committed considering that it did not appear that private respondent was an incorrigible offender or that she inflicted serious damage to the company, nor would her continuance in the service be patently inimical to her employer's interest. The Court, therefore, affirmed with modification the decision of the NLRC.*

**FACTS:**

Petitioner corporation terminated private respondent, company nurse, from the service on grounds of gross and habitual neglect of duties, serious misconduct and fraud or willful breach of trust, specifically — 1. The act of private respondent in throwing a stapler and uttering abusive language upon the person of the plant manager; 2. That the money entrusted to private respondent for transmittal was lost; 3. The act of private respondent in asking a co-employee to punch-in her time card; 4. Private respondent allegedly failed to process the ATM cards of her co-employees.

On 6 December 1994, private respondent filed with the Labor Arbiter a complaint for illegal dismissal, non-payment of annual service incentive leave pay, 13th month pay and damages against petitioner corporation. Thereafter, the Labor Arbiter rendered a decision holding the termination of private respondent as valid and legal, at the same time dismissing her claim for damages for lack of merit. On appeal, the NLRC reversed the Labor Arbiter's decision and found petitioner corporation guilty of illegal dismissal and ordered the reinstatement of private respondent with backwages. Hence, this petition for *certiorari*.

**ISSUES:**

Whether the NLRC gravely abused its discretion in holding as illegal the dismissal of private respondent (NO)

**RULING:**

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.

The act of private respondent in asking a co-employee to punch-in her time card, although a violation of company rules, likewise did not constitute serious misconduct. It was done by her in good faith considering that she was asked by an officer to perform a task outside the office, which was for the benefit of the company, with the consent of the plant manager.

As regards the fourth alleged infraction, the money entrusted to private respondent was not lost but in fact deposited in the respective accounts of the employees concerned, although belatedly.

The negligence, to warrant removal from service, should not merely be gross but also habitual. Likewise, the ground "willful breach by the employee of the trust reposed in him by his employer" must be founded on facts established by the employer who must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss of confidence in the employee may fairly be made to rest. All these requirements prescribed by law and jurisprudence were wanting in the case at bar.

The penalty of dismissal was too excessive and not proportionate to the alleged infractions committed considering that it did not appear that private respondent was an incorrigible offender or that she inflicted serious damage to the company, nor would her continuance in the service be patently inimical to her employer's interest. The Court, therefore, affirmed with modification the decision of the NLRC.

The Decision of public respondent NLRC finding the dismissal of private respondent to be without just cause and ordering petitioners Philippine Aeolus Automotive United Corporation and/or Francis Chua to pay her back wages computed from the time of her dismissal, which should be full back wages, is AFFIRMED. However, in view of the strained relations between the adverse parties, instead of reinstatement ordered by public respondent, petitioners should pay private respondent separation pay equivalent to one (1) month salary for every year of service until finality of this judgment. In addition, petitioners are ordered to pay private respondent P25,000.00 for moral damages and P10,000.00 for exemplary damages.

**RE: ANONYMOUS COMPLAINT AGAINST ATTY. CRESENCIO P. CO UNTIAN, JR.  
A.C. No. 5900, EN BANC, April 10, 2019, J.C. REYES, JR., J.**

*R.A. No. 7877 does not require that the victim had acceded to the sexual desires of the abuser. Further, it is not necessary that a demand or request for sexual favor is articulated in a categorical manner as it may be discerned from the acts of the offender. In addition, sexual harassment is also committed in an educational environment when the sexual advances result in an intimidating, hostile or offensive environment. In short, it is not necessary that there was an offer for sex for there to be sexual harassment as a superior's conduct with sexual underpinnings, which offends the victim or creates a hostile environment would suffice.*

**FACTS:**

Subject of this Resolution is an Anonymous Complaint dated May 14, 2002 against Atty. Cresencio P. Co Untian, Jr. (respondent) for his alleged sexual harassment of students of Xavier University, Cagayan de Oro City (Xavier).

The Complaint requested the Court to investigate the alleged sexual harassments that respondent had committed against students of Xavier, particularly Antoinette Toyco (Toyco), Christina Sagarbarria (Sagarbarria) and Lea Dal (Dal). The complaint was written in the local dialect and made by an individual identifying himself or herself only as "law practitioner." In a September 26, 2002 Letter, the "law practitioner" sent copies of the complaint-affidavits of the victims of sexual harassment and the Resolution of the Committee on Decorum.

In its Resolution, the Committee on Decorum explained that respondent was guilty of violating Xavier's anti-sexual harassment guidelines.

The IBP Commissioner recommended that respondent be suspended from the practice of law for two years.

In its Resolution the IBP-Board of Governors (IBP-BOG) affirmed with modification the recommendation of Commissioner Hababag. It resolved to disbar respondent on the ground of gross immoral conduct.

Respondent moved for reconsideration. The IBP-BOG partially granted his motion for reconsideration. It reduced the penalty to two years suspension and directed the Director of the Commission on Bar Discipline to prepare an extended resolution explaining its actions.

In an Extended Resolution, Director Esguerra explained that respondent was not guilty of sexual harassment as defined under Republic Act (R.A.) No. 7877 or the "Anti-Sexual Harassment Law of 1995."

**ISSUE:**

Whether or not respondent was guilty of sexual harassment under Republic Act (R.A.) No. 7877 or the "Anti-Sexual Harassment Law of 1995." (YES)

**RULING:**

The Court modifies the recommended penalty of the IBP-BOG. xxx

R.A. No. 7877 does not require that the victim had acceded to the sexual desires of the abuser. Further, it is not necessary that a demand or request for sexual favor is articulated in a categorical manner as it may be discerned from the acts of the offender. In addition, sexual harassment is also committed in an educational environment when the sexual advances result in an intimidating, hostile or offensive environment. In short, it is not necessary that there was an offer for sex for there to be sexual harassment as a superior's conduct with sexual underpinnings, which offends the victim or creates a hostile environment would suffice.

In *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*, the Court explained that the essence of sexual harassment is not the violation of the victim's sexuality but the abuse of power by the offender. In other words, what the law aims to punish is the undue exercise of power and authority manifested through sexually charged conduct or one filled with sexual undertones. In *Domingo v. Rayala*, the Court clarified that R.A. No. 7877 speaks of the criminal infraction of sexual harassment and without prejudice to any administrative charge which may be filed against one who sexually harasses another. xxx

Respondent's conduct towards Sagarbarria, Dal and Toyco created a hostile and offensive environment which has no place in a learning institution. He publicly showed a lewd picture to Sagarbarria in the presence of other students. The incident deeply distressed her to the extent that she was unable to continue with her Moot Court practice because she became emotional and cried uncontrollably. The fact that Sagarbarria was bothered and humiliated was even supported by one of respondent's witnesses who stated that respondent demanded that the photograph be surrendered to him because Sagarbarria was disturbed by it. xxxSTE



On the other hand, respondent should not brush aside his text messages to Toyco and his joke to Dal as innocent remarks devoid of any impropriety. He readily admits that he would text "luv u" and "miss u" but explains that these are sweet nothings and used in everyday ordinary text messages. These are not harmless text messages especially since it appears that these were unwelcome flirtations which made Toyco uncomfortable. In addition, they cast a cloud of impropriety considering that respondent was Toyco's teacher when he sent them.

Meanwhile, respondent's statement to Dal during her recitation in class cannot be categorized as an innocent joke only meant to lighten the mood of the class. When she was unable to comprehend the question propounded to her, she asked him "to come again." In response, respondent said, "Never use slang language in my class because you might be misinterpreted. What do you mean by 'come again'? It takes me several minutes before I come again."

It is readily apparent that the remark is tasteless, vulgar and crude and has no place in any academic setting. It is not a clever word play or a mere statement with sexual innuendos as its intended meaning is obviously discernable. Respondent's attempt at humor miserably fails as his words clearly refer to him needing five minutes to ejaculate again. Respondent's statements made Dal uncomfortable and embarrassed in front of her classmates as it went beyond an innocent joke and was instead a gross, graphic and an insensitive remark.

Clearly, respondent abused the power and authority he possessed over the complainants. His sexually laced conduct had created a hostile and offensive environment which deeply prejudiced his students. In what was supposed to be a safe place for them to learn and develop, they were instead subjected to unwarranted sexual advances.

What makes respondent's act of sexual harassment even more reprehensible is the fact that he is both a professor and a member of the legal profession. xxx

Much is expected of lawyers in that it does not suffice that they are persons of integrity and values, but must also appear to be so in the eyes of the people, and of God. Notwithstanding the relativity of morality, lawyers, as keepers of public faith, are burdened with a high degree of social responsibility — they must handle their personal affairs with greater caution. In other words, members of the bar are measured in a more demanding light because their actions or inactions not only affect themselves, but also the legal profession and the public's trust and respect for the law. As such, any errant behavior on the part of the lawyer, whether in a public or private capacity, which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment

Respondent Atty. Cresencio P. Co Untian, Jr. is **SUSPENDED** from the practice of law for five (5) years and ten (10) years from teaching law in any school effective upon the finality of this Resolution, with a **STERN WARNING** that a repetition of the same or similar act will be dealt with more severely.

#### 9) Job contracting

- a) Department Order 174-17
- b) Department Circular No. 01-17
- c) Effects of labor-only contracting
- d) Trilateral relationship in job contracting

*Case/s:*

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**RUBEN SERRANO, *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION and ISETANN DEPARTMENT STORE, *respondents*.**  
**G.R. No. 117040, EN BANC, January 27, 2000, Mendoza, J.**

*If termination of employment is not for any of the cause provided by law, it is illegal and the employee should be reinstated and paid backwages.*

**FACTS:**

Serrano was a regular employee of Isetann Department Store as the head of Security Checker. In 1991, as a cost-cutting measure, Isetann phased out its entire security section and engaged the services of an independent security agency. Petitioner filed a complaint for illegal dismissal among others. Labor arbiter ruled in his favor as Isetann failed to establish that it had retrenched its security section to prevent or minimize losses to its business; that private respondent failed to accord due process to petitioner; that private respondent failed to use reasonable standards in selecting employees whose employment would be terminated. NLRC reversed the decision and ordered petitioner to be given separation pay.

**ISSUE:**

Whether or not the hiring of an independent security agency by the private respondent to replace its current security section a valid ground for the dismissal of the employees classed under the latter.

**RULING:**

An employer's good faith in implementing a redundancy program is not necessarily put in doubt by the availment of the services of an independent contractor to replace the services of the terminated employees to promote economy and efficiency. Absent proof that management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer.

If termination of employment is not for any of the cause provided by law, it is illegal and the employee should be reinstated and paid backwages. To contend that even if the termination is for a just cause, the employee concerned should be reinstated and paid backwages would be to amend Art 279 by adding another ground for considering dismissal illegal.

If it is shown that the employee was dismissed for any of the causes mentioned in Art 282, the in accordance with that article, he should not be reinstated but must be paid backwages from the time his employment was terminated until it is determined that the termination of employment is for a just cause because the failure to hear him before he is dismissed renders the termination without legal effect.

**W.M. MANUFACTURING, INC., *Petitioner*, v. RICHARD R. DALAG AND GOLDEN ROCK MANPOWER SERVICES, *Respondent*.**  
**G.R. No. 209418, THIRD DIVISION, December 07, 2015, Velasco, Jr. J.**

*There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing... activities which are directly related to the principal business of such employer.*

**Facts:**

Petitioner, as client, and respondent Golden Rock, as contractor, executed a contract denominated as "Service Agreement,"

In relation to the Service Agreement, Golden Rock... engaged the services of respondent Dalag as a factory worker to be assigned at petitioner's factory. For this purpose, respondents inked a five-month Employment Contract For Contractual Employees

Dalag claimed that he was illegally dismissed, his employment having been terminated... without either notice or cause, in violation of his right to due process, both substantive and procedural.

Dalag further claimed that his assignment at WM MFG as side seal machine operator was necessary and desirable for the company's plastic manufacturing business, making him a regular employee entitled to benefits under such classification.

**Issues:**

Whether or not WM MFG and Golden Rock engaged in labor-only contracting

**Ruling:**

The petition is meritorious.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing... activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly... employed by him.

It is clear from the above section that the essential element in labor-only contracting is that the contractor merely recruits, supplies or places workers to perform a job, work or service for a principal. However, the presence of this essential element is not enough and must... in fact, be accompanied by any one of the confirmatory elements to be considered a labor-only contractor within the contemplation of the rule.

**AMERICAN PRESIDENT LINES, *Petitioner*, v. HONORABLE JACOBO C. CLAVE, in his capacity as Presidential Executive Assistant in representation of the Office of the President, THE NATIONAL LABOR RELATIONS COMMISSION, THE MINISTRY OF LABOR, THE HONORABLE BLAS F. OPLE, MARITIME SECURITY UNION, INDIVIDUAL COMPLAINANTS HEADED BY JULIAN ADVINCULA AND SHERIFF LEON NAVEA, in representation of the Execution Arm of the Ministry of Labor, *Respondents*.**

**G.R. No. L-51641, SECOND DIVISION, June 29, 1982, Barredo, J.**

*In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct — although the latter is the most important element*



**FACTS:**

On January 4, 1960, the petitioner entered into a contract with the Marine Security Agency for the latter to guard and protect the petitioner's vessels while they were moored at the port of Manila. It was stipulated in the contract that its term was for one year commencing from the date of its execution and it may be terminated by either party upon 30 days' notice to the other.

The relationship between the petitioner and Marine Security Agency is such that it was the latter who hired and assigned the guards who kept watching over the petitioner's vessels. The guards were not known to petitioner who dealt only with the agency on matters pertaining to the service of the guards. A lump sum would be paid by the petitioner to the agency who in turn determined and paid the compensation of the individual watchmen.

**ISSUE:**

Whether or not an employer-employee relationship exists between the petitioner and the watchmen.

**RULING:**

No.

In the light of the standards set forth in *Viana v. Al-Lagadan and Pica*, 99 Phil. 408, 411-12, enumerating the elements considered in determining the existence of employer-employee relationship, In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct — although the latter is the most important element. We fail to see how the complaining watchmen of the Marine Security Agency can be considered as employees of the petitioner. It is the agency that recruits, hires, and assigns the work of its watchmen. Hence, a watchman cannot perform any security service for the petitioner's vessel unless the agency first accepts him as its watchman. With respect to his wages, the amount to be paid to a security guard is beyond the power of the petitioner to determine. Certainly, the lump sum amount paid by the petitioner to the agency in consideration of the latter's service is much more than the wages of any one watchman. In point of fact, it is the agency that quantifies and pays the wages to which a watchman is entitled. Neither does the petitioner have any power to dismiss the security guards. In fact, We fail to see any evidence in the record that it wielded such a power. It is true that it may request the agency to change a particular guard. But this, precisely, is proof that the power lies in the hands of the agency. Since the petitioner has to deal with the agency, and not the individual watchmen, on matters pertaining to the contracted task, it stands to reason that the petitioner does not exercise any power over the watchmen's conduct. Always, the agency stands between the petitioner and the watchmen; and it is the agency that is answerable to the petitioner for the conduct of its guards.

**JOEB M. ALIVIADO, et. al., *Petitioners*, -versus- PROCTER & GAMBLE PHILS., INC., and PROMM-GEM INC., *Respondents*.**

**G.R. No. 160506, SECOND DIVISION, March 9, 2010, DEL CASTILLO, J.**

*Labor laws expressly prohibit "labor-only" contracting. To prevent its circumvention, the Labor Code establishes an employer-employee relationship between the employer and the employees of the 'labor-only' contractor.*

*In the instant case, the financial statements of Promm-Gem show that it has authorized capital stock. It also has long term assets. Promm-Gem has also proven that it maintained its own warehouse and office space. It also had under its name three registered vehicles which were used for its promotional/merchandising business. Promm-Gem also has other clients aside from P&G. Under the circumstances, we find that Promm-Gem has substantial investment which relates to the work to be performed. These factors negate the existence of the element specified in Section 5(i) of DOLE Department Order No. 18-02.*

*The records also show that Promm-Gem supplied its complainant-workers with the relevant materials, such as markers, tapes, liners and cutters, necessary for them to perform their work. Promm-Gem also issued uniforms to them. It is also relevant to mention that Promm-Gem already considered the complainants working under it as its regular, not merely contractual or project, employees.*

*Under the circumstances, Promm-Gem cannot be considered as a labor-only contractor. We find that it is a legitimate independent contractor.*

*On the other hand, considering that SAPS has no substantial capital or investment and the workers it recruited are performing activities which are directly related to the principal business of P&G, we find that the former is engaged in "labor-only contracting".*

*Consequently, some of the petitioners, having been recruited and supplied by SAPS -- which engaged in labor-only contracting -- are considered as the employees of P&G.*

*On the other hand, some of the petitioners, having worked under, and been dismissed by Promm-Gem, are considered the employees of Promm-Gem, not of P&G.*

**FACTS:**

Petitioners worked as merchandisers of P&G from various dates, allegedly starting as early as 1982 or as late as June 1991, to either May 5, 1992 or March 11, 1993.

They all individually signed employment contracts with either Promm-Gem or SAPS for periods of more or less five months at a time. They were assigned at different outlets, supermarkets and stores where they handled all the products of P&G. They received their wages from Promm-Gem or SAPS.

SAPS and Promm-Gem imposed disciplinary measures on erring merchandisers for reasons such as habitual absenteeism, dishonesty or changing day-off without prior notice.

P&G is principally engaged in the manufacture and production of different consumer and health products, which it sells on a wholesale basis to various supermarkets and distributors. To enhance consumer awareness and acceptance of the products, P&G entered into contracts with Promm-Gem and SAPS for the promotion and merchandising of its products.

In December 1991, petitioners filed a complaint against P&G for regularization, service incentive leave pay and other benefits with damages. The complaint was later amended to include the matter of their subsequent dismissal.

On November 29, 1996, the Labor Arbiter dismissed the complaint for lack of merit and ruled that there was no employer-employee relationship between petitioners and P&G. He found that the selection and engagement of the petitioners, the payment of their wages, the power of dismissal and

control with respect to the means and methods by which their work was accomplished, were all done and exercised by Promm-Gem/SAPS. He further found that Promm-Gem and SAPS were legitimate independent job contractors.

On July 27, 1998, the NLRC rendered a Decision affirming the dismissal of the complaint by the Labor Arbiter.

Petitioners then filed a petition for *certiorari* with the CA, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Labor Arbiter and the NLRC. However, said petition was also denied by the CA.

**ISSUE:**

Whether Promm-Gem and SAPS are both employer of petitioners. (NO)

**RULING:**

It is necessary to first determine whether Promm-Gem and SAPS are labor-only contractors or legitimate job contractors.

The pertinent Labor Code provision on the matter states:

ART. 106. Contractor or subcontractor. – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

*The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.*

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 18-02, distinguishes between legitimate and labor-only contracting:

x x x x



Section 3. Trilateral Relationship in Contracting Arrangements. In legitimate contracting, there exists a trilateral relationship under which there is a contract for a specific job, work or service between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers. Hence, there are three parties involved in these arrangements, the principal which decides to farm out a job or service to a contractor or subcontractor, the contractor or subcontractor which has the capacity to independently undertake the performance of the job, work or service, and the contractual workers engaged by the contractor or subcontractor to accomplish the job[,] work or service.

x x x x

Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

- i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- ii) [T]he contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

x x x x

Clearly, the law and its implementing rules allow contracting arrangements for the performance of specific jobs, works or services. Indeed, it is management prerogative to farm out any of its activities, regardless of whether such activity is peripheral or core in nature. However, in order for such outsourcing to be valid, it must be made to an independent contractor because the current labor rules expressly prohibit labor-only contracting.

To emphasize, there is labor-only contracting when the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal and any of the following elements are present:

- i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such

contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.

In the instant case, the financial statements of Promm-Gem show that it has authorized capital stock of ₱1 million and a paid-in capital, or capital available for operations, of ₱500,000.00 as of 1990. It also has long term assets worth ₱432,895.28 and current assets of ₱719,042.32. Promm-Gem has also proven that it maintained its own warehouse and office space with a floor area of 870 square meters. It also had under its name three registered vehicles which were used for its promotional/merchandising business. Promm-Gem also has other clients aside from P&G. Under the circumstances, we find that Promm-Gem has substantial investment which relates to the work to be performed. These factors negate the existence of the element specified in Section 5(i) of DOLE Department Order No. 18-02.

The records also show that Promm-Gem supplied its complainant-workers with the relevant materials, such as markers, tapes, liners and cutters, necessary for them to perform their work. Promm-Gem also issued uniforms to them. It is also relevant to mention that Promm-Gem already considered the complainants working under it as its regular, not merely contractual or project, employees. This circumstance negates the existence of element (ii) as stated in Section 5 of DOLE Department Order No. 18-02, which speaks of *contractual* employees. This, furthermore, negates – on the part of Promm-Gem – bad faith and intent to circumvent labor laws which factors have often been tipping points that lead the Court to strike down the employment practice or agreement concerned as contrary to public policy, morals, good customs or public order.

Under the circumstances, Promm-Gem cannot be considered as a labor-only contractor. We find that it is a legitimate independent contractor.

On the other hand, the Articles of Incorporation of SAPS shows that it has a paid-in capital of only ₱31,250.00. There is no other evidence presented to show how much its working capital and assets are. Furthermore, there is no showing of substantial investment in tools, equipment or other assets.

In *Vinoya v. National Labor Relations Commission*, the Court held that "[w]ith the current economic atmosphere in the country, the paid-in capitalization of PMCI amounting to ₱75,000.00 cannot be considered as substantial capital and, as such, PMCI cannot qualify as an independent contractor." Applying the same rationale to the present case, it is clear that SAPS – having a paid-in capital of only ₱31,250 - has no substantial capital. SAPS' lack of substantial capital is underlined by the records which show that its payroll for its merchandisers alone for one month would already total ₱44,561.00. It had 6-month contracts with P&G. Yet SAPS failed to show that it could complete the 6-month contracts using its own capital and investment. Its capital is not even sufficient for one month's payroll. SAPS failed to show that its paid-in capital of ₱31,250.00 is sufficient for the period required for it to generate its needed revenue to sustain its operations independently. Substantial capital refers to capitalization used in the *performance or completion* of the job, work or service contracted out. In the present case, SAPS has failed to show substantial capital.

Furthermore, the petitioners have been charged with the merchandising and promotion of the products of P&G, an activity that has already been considered by the Court as doubtlessly directly related to the manufacturing business, which is the principal business of P&G. Considering that SAPS has no substantial capital or investment and the workers it recruited are performing activities which

are directly related to the principal business of P&G, we find that the former is engaged in "labor-only contracting".

"Where 'labor-only' contracting exists, the Labor Code itself establishes an employer-employee relationship between the employer and the employees of the 'labor-only' contractor." The statute establishes this relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.

Consequently, some of the petitioners, having been recruited and supplied by SAPS -- which engaged in labor-only contracting -- are considered as the employees of P&G.

On the other hand, some of the petitioners, having worked under, and been dismissed by Promm-Gem, are considered the employees of Promm-Gem, not of P&G.

**COCA-COLA BOTTLERS PHILS., INC., Petitioner, -versus- ALAN M. AGITO, REGOLO S. OCA III, ERNESTO G. ALARIAO, JR., ALFONSO PAA, JR., DEMPSTER P. ONG, URRIQUIA T. ARVIN, GIL H. FRANCISCO, and EDWIN M. GOLEZ, Respondents.**  
**G.R. No. 179546, THIRD DIVISION, February 13, 2009, CHICO-NAZARIO, J.**

*The law establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "There is 'labor-only' contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, **and** the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer." Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment. The Court finds that both indicators exist in the case at bar.*

*With the finding that Interserve was engaged in prohibited labor-only contracting, petitioner shall be deemed the true employer of respondents. As regular employees of petitioner, respondents cannot be dismissed except for just or authorized causes, none of which were alleged or proven to exist in this case, the only defense of petitioner against the charge of illegal dismissal being that respondents were not its employees.*

**FACTS:**

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) and engaged in manufacturing, bottling and distributing soft drink beverages and other allied products.

On 15 April 2002, respondents filed before the NLRC two complaints against petitioner, Interserve, Peerless Integrated Services, Inc., Better Builders, Inc., and Excellent Partners, Inc. for reinstatement with backwages, regularization, nonpayment of 13th month pay, and damages.

Respondents alleged in their Position Paper that they were salesmen assigned at the Lagro Sales Office of petitioner. They had been in the employ of petitioner for years, but were not regularized. Their employment was terminated on 8 April 2002 without just cause and due process. However,



they failed to state the reason/s for filing a complaint against Interserve; Peerless Integrated Services, Inc.; Better Builders, Inc.; and Excellent Partners, Inc.

Petitioner filed its Position Paper (with Motion to Dismiss), where it averred that respondents were employees of Interserve who were tasked to perform contracted services in accordance with the provisions of the Contract of Services executed between petitioner and Interserve on 23 March 2002. Said Contract between petitioner and Interserve, covering the period of 1 April 2002 to 30 September 2002, constituted legitimate job contracting, given that the latter was a *bona fide* independent contractor with substantial capital or investment in the form of tools, equipment, and machinery necessary in the conduct of its business.

Petitioner, thus, sought the dismissal of respondents' complaint against it on the ground that the Labor Arbiter did not acquire jurisdiction over the same in the absence of an employer-employee relationship between petitioner and the respondents.

In a Decision dated 28 May 2003, the Labor Arbiter found that respondents were employees of Interserve and not of petitioner.

Unsatisfied with the Decision of the Labor Arbiter, respondents filed an appeal with the NLRC.

The NLRC, in a Resolution dated 30 October 2003, affirmed the Labor Arbiter's Decision dated 28 May 2003 and pronounced that no employer-employee relationship existed between petitioner and respondents.

Aggrieved once more, respondents sought recourse with the Court of Appeals by filing a Petition for *Certiorari* under Rule 65.

The Court of Appeals promulgated its Decision on 9 February 2007, reversing the NLRC Resolution dated 30 October 2003. The appellate court ruled that Interserve was a labor-only contractor, with insufficient capital and investments for the services which it was contracted to perform. With only ₱510,000.00 invested in its service vehicles and ₱200,000.00 in its machineries and equipment, Interserve would be hard-pressed to meet the demands of daily soft drink deliveries of petitioner in the Lagro area. The Court Appeals concluded that the respondents used the equipment, tools, and facilities of petitioner in the day-to-day sales operations.

**ISSUE:**

Whether Interserve is a legitimate job contractor. (NO)

**RULING:**

The relations which may arise in a situation, where there is an employer, a contractor, and employees of the contractor, are identified and distinguished under Article 106 of the Labor Code:

Article 106. Contractor or subcontractor. - Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or

subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restriction, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

The afore-quoted provision recognizes two possible relations among the parties: (1) the permitted legitimate job contract, or (2) the prohibited labor-only contracting.

A legitimate job contract, wherein an employer enters into a contract with a job contractor for the performance of the former's work, is permitted by law. Thus, the employer-employee relationship between the job contractor and his employees is maintained. In legitimate job contracting, the law creates an employer-employee relationship between the employer and the contractor's employees only for a limited purpose, i.e., to ensure that the employees are paid their wages. The employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the employer is not responsible for any claim made by the contractor's employees.

On the other hand, labor-only contracting is an arrangement wherein the contractor merely acts as an agent in recruiting and supplying the principal employer with workers for the purpose of circumventing labor law provisions setting down the rights of employees. It is not condoned by law. A finding by the appropriate authorities that a contractor is a "labor-only" contractor establishes an employer-employee relationship between the principal employer and the contractor's employees and the former becomes solidarily liable for all the rightful claims of the employees.

Section 5 of the Rules Implementing Articles 106-109 of the Labor Code, as amended, provides the guidelines in determining whether labor-only contracting exists:

Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work or service for a principal, and any of the following elements are [is] present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work, or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii) The contractor does not exercise the right to control the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248(C) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted out.

The "right to control" shall refer to the right reversed to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

When there is labor-only contracting, Section 7 of the same implementing rules, describes the consequences thereof:

Section 7. Existence of an employer-employee relationship.—The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following case, as declared by a competent authority:

- a. where there is labor-only contracting; or
- b. where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.

According to the foregoing provision, labor-only contracting would give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the contractor or subcontractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code.

Petitioner argues that there could not have been labor-only contracting, since respondents did not perform activities that were indispensable to petitioner's principal business. And, even assuming that they did, such fact alone does not establish an employer-employee relationship between petitioner and the respondents, since respondents were unable to show that petitioner exercised the power to select and hire them, pay their wages, dismiss them, and control their conduct.

The argument of petitioner is untenable.

The law clearly establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "There is 'labor-only' contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, **and** the workers recruited and placed



by such persons are performing activities which are directly related to the principal business of such employer." Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment. The Court finds that both indicators exist in the case at bar.

Respondents worked for petitioner as salesmen, with the exception of respondent Gil Francisco whose job was designated as leadman. In the Delivery Agreement between petitioner and TRMD Incorporated, it is stated that petitioner is engaged in the manufacture, **distribution and sale** of softdrinks and other related products. The work of respondents, constituting distribution and sale of Coca-Cola products, is clearly indispensable to the principal business of petitioner. The repeated re-hiring of some of the respondents supports this finding.

As to the supposed substantial capital and investment required of an independent job contractor, petitioner calls the attention of the Court to the authorized capital stock of Interserve amounting to ₱2,000,000.00.

This Court is unconvinced.

At the outset, the Court clarifies that although Interserve has an authorized capital stock amounting to ₱2,000,000.00, only ₱625,000.00 thereof was paid up as of 31 December 2001. The Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, but it measures the same against the type of work which the contractor is obligated to perform for the principal. However, this is rendered impossible in this case since the Contract between petitioner and Interserve does not even specify the work or the project that needs to be performed or completed by the latter's employees, and uses the dubious phrase "tasks and activities that are considered contractible under existing laws and regulations." Even in its pleadings, petitioner carefully sidesteps identifying or describing the exact nature of the services that Interserve was obligated to render to petitioner. The importance of identifying with particularity the work or task which Interserve was supposed to accomplish for petitioner becomes even more evident, considering that the Articles of Incorporation of Interserve states that its primary purpose is to operate, conduct, and maintain the business of janitorial and allied services. But respondents were hired as salesmen and leadman for petitioner. The Court cannot, under such ambiguous circumstances, make a reasonable determination if Interserve had substantial capital or investment to undertake the job it was contracting with petitioner.

In *Vinoya v. NLRC*, we clarified that it was not enough to show substantial capitalization or investment in the form of tools, equipment, machinery and work premises, etc., to be considered an independent contractor. In fact, jurisprudential holdings were to the effect that in determining the existence of an independent contractor relationship, several factors may be considered, such as, but not necessarily confined to, whether the contractor was carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.

Insisting that Interserve had substantial investment, petitioner assails, for being purely speculative, the finding of the Court of Appeals that the service vehicles and equipment of Interserve, with the values of ₱510,000.00 and ₱200,000.00, respectively, could not have met the demands of the Coca-Cola deliveries in the Lagro area.

Yet again, petitioner fails to persuade.

The contractor, not the employee, has the burden of proof that it has the substantial capital, investment, and tool to engage in job contracting. Although not the contractor itself (since Interserve no longer appealed the judgment against it by the Labor Arbiter), said burden of proof herein falls upon petitioner who is invoking the supposed status of Interserve as an independent job contractor. Noticeably, petitioner failed to submit evidence to establish that the service vehicles and equipment of Interserve, valued at ₱510,000.00 and ₱200,000.00, respectively, were sufficient to carry out its service contract with petitioner. Certainly, petitioner could have simply provided the courts with records showing the deliveries that were undertaken by Interserve for the Lagro area, the type and number of equipment necessary for such task, and the valuation of such equipment. Absent evidence which a legally compliant company could have easily provided, the Court will not presume that Interserve had sufficient investment in service vehicles and equipment, especially since respondents' allegation – that they were using equipment, such as forklifts and pallets belonging to petitioner, to carry out their jobs – was uncontroverted.

In sum, Interserve did not have substantial capital or investment in the form of tools, equipment, machineries, and work premises; and respondents, its supposed employees, performed work which was directly related to the principal business of petitioner. It is, thus, evident that Interserve falls under the definition of a "labor-only" contractor, under Article 106 of the Labor Code; as well as Section 5(i) of the Rules Implementing Articles 106-109 of the Labor Code, as amended.

The Court, however, does not stop at this finding. It is also apparent that Interserve is a labor-only contractor under Section 5(ii)44 of the Rules Implementing Articles 106-109 of the Labor Code, as amended, since it did not exercise the right to control the performance of the work of respondents.

With the finding that Interserve was engaged in prohibited labor-only contracting, petitioner shall be deemed the true employer of respondents. As regular employees of petitioner, respondents cannot be dismissed except for just or authorized causes, none of which were alleged or proven to exist in this case, the only defense of petitioner against the charge of illegal dismissal being that respondents were not its employees.

**PHILIPPINE FUJI XEROX CORPORATION, JENNIFER A. BERNARDO, and ATTY. VICTORINO LUIS, *Petitioners*, -versus- NATIONAL LABOR RELATIONS COMMISSION (First Division), PAMBANSANG KILUSAN NG PAG-GAWA, (KILUSAN)-TUCP, PHILIPPINE XEROX EMPLOYEES UNION-KILUSAN and PEDRO GARADO, *Respondents*.  
G.R. No. 111501, SECOND DIVISION, March 5, 1996, MENDOZA, J.**

*According to Art. 106 of the Labor Code:*

*There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.*

*Petitioner Fuji Xerox argues that Skillpower, Inc. had typewriters and service vehicles for the conduct of its business independently of the petitioner. But typewriters and vehicles bear no direct relationship to*

*the job for which Skillpower, Inc. contracted its service of operating copier machines and offering copying services to the public. The fact is that Skillpower, Inc. did not have copying machines of its own. What it did was simply to supply manpower to Fuji Xerox. The phrase "substantial capital and investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business," in the Implementing Rules clearly contemplates tools, equipment, etc., which are directly related to the service it is being contracted to render. One who does not have an independent business for undertaking the job contracted for is just an agent of the employer.*

**FACTS:**

On May 6, 1977, petitioner Fuji Xerox entered into an agreement under which Skillpower, Inc. supplied workers to operate copier machines of Fuji Xerox as part of the latter's "Xerox Copier Project" in its sales offices. Private respondent Pedro Garado was assigned as key operator at Fuji Xerox's branch. at Buendia, Makati, Metro Manila, in February of 1980.

In February of 1983, Garado went on leave and his place was taken over by a substitute. Upon his return in March, he discovered that there was a spoilage of over 600 copies. Afraid that he might be blamed for the spoilage, he tried to talk a service technician of Fuji Xerox into stopping the meter of the machine.

The technician refused Garado's request, but this incident came to the knowledge of Fuji Xerox which, on May 31, 1983, reported the matter to Skillpower, Inc. The next day, Skillpower, Inc. wrote Garado, ordering him to explain. In the meantime, it suspended him from work. Garado filed a complaint for illegal dismissal.

The Labor Arbiter held in a decision rendered on October 30, 1986 that Garado was an employee of Skillpower, Inc., and that he had merely been assigned by Skillpower, Inc. to Fuji Xerox. Hence, the Labor Arbiter dismissed Garado's complaint.

On the other hand, the NLRC found Garado to be infact an employee of petitioner Fuji Xerox and by it to have been illegally dismissed.

**ISSUE:**

Whether private respondent is an employee of Fuji Xerox. (YES)

**RULING:**

Fuji Xerox argues that Skillpower, Inc. is an independent contractor and that Garado is its employee for the following reasons:

- (1) Garado was recruited by Skillpower, Inc.;
- (2) The work done by Garado was not necessary to the conduct of the business of Fuji Xerox;
- (3) Garado's salaries and benefits were paid directly by Skillpower, Inc.;
- (4) Garado worked under the control of Skillpower, Inc.; and
- (5) Skillpower, Inc. is a highly-capitalized business venture.



The contentions are without merit.

Fuji Xerox contends that Garado was actually recruited by Skillpower, Inc. as part of its personnel pool and later merely assigned to it (petitioner) . It is undisputed, however, that since 1980, when Garado was first assigned to work at Fuji Xerox, he had never been assigned to any other company so much so that by 1984, he was already a member of the union which petitioned the company for his regularization. From 1980 to 1984 he worked exclusively for petitioner. Indeed, he was recruited by Skillpower, Inc. solely for assignment to Fuji Xerox to work in the latter's Xerox Copier Project.

Petitioners claim that Skillpower, Inc. has other clients to whom it provided "temporary" services. That, however, is irrelevant. What is important is that once employed, Garado was never assigned to any other client of Skillpower, Inc. In fact, although under the agreement Skillpower, Inc. was supposed to provide only "temporary" services, Skillpower, Inc. actually supplied Fuji Xerox the labor which the latter needed for its Xerox Copier Project for seven (7) years, from 1977 to 1984.

On January 1, 1983, private respondent signed a contract entitled "Appointment as Contract Worker," in which it was stated that private respondent's status was that of a contract worker for a definite period from January 1, 1983 to June 30, 1983. As such, private respondent's employment was considered temporary, to terminate automatically six (6) months afterwards, without necessity of any notice and without entitling private respondent to separation or termination pay. Private respondent was made to understand that he was an employee of Skillpower, Inc., and not of the client to which he was assigned. Therefore, the termination of the contract or any renewal or extension thereof did not entitle him to become an employee of the client and the latter was not under any obligation to appoint him as such, "notwithstanding the total duration of the contract or any extension or renewal thereof."

This is nothing but a crude attempt to circumvent the law and undermine the security of tenure of private respondent by employing workers under six-month contracts which are later extended indefinitely through renewals. As this Court held in the *Philippine Bank of Communications v. NLRC*:

It is not difficult to see that to uphold the contractual arrangement between the bank and CESI would in effect be to permit employers to avoid the necessity of hiring regular or permanent employees and to enable them to keep their employees indefinitely on a temporary or casual status, thus to deny them security of tenure in their jobs. Article 106 of the Labor Code is precisely designed to prevent such a result.

Second. Petitioner contends that the service provided by Skillpower, Inc., namely, operating petitioners' xerox machine, is not directly related nor necessary to the business of selling and leasing copier machines of petitioner. Petitioners claim that their Xerox Copier Project is just for public service and is purely incidental to its business. What petitioners earn from the project is not even sufficient to defray their expenses, let alone bring profits to them. As such, the project is no different from other services which can legally be contracted out, such as security and janitorial services. Petitioners contend that the copier service can be considered as part of their "housekeeping" tasks which can be let to independent contractors.

We disagree. The Xerox Copier Project of petitioners promotes goodwill for the company. It may not generate income for the company but there are activities which a company may find necessary to engage in because they ultimately redound to its benefit. Operating the company's copiers at its branches advertises the quality of their products and promotes the company's reputation and public

image. It also advertises the utility and convenience of having a copier machine. It is noteworthy that while not operated for profit the copying service is not intended either to be "promotional," as, indeed, petitioner charged a fee for the copies made.

It is wrong to say that if a task is not directly related to the employer's business, or it falls under what may be considered "housekeeping activities," the one performing the task is a job contractor. The determination of the existence of an employer-employee relationship is defined by law according to the facts of each case, regardless of the nature of the activities involved.

Third. Petitioners contend that it never exercised control over the conduct of private respondent. Petitioners allege that the salaries paid to Garado, as well as his employment records, vouchers and loanchecks from the SSS were coursed through Skillpower, Inc. In addition private respondent applied for vacation leaves to Skillpower, Inc.

This claim is belied by two letters written by Atty. Victorino H. Luis, Legal and Industrial Relations Officer of the company, to the union president, Nick Macaraig. These letters reveal the role which Fuji Xerox played in the dismissal of the private respondent. They dispel any doubt that Fuji Xerox exercised disciplinary authority over Garado and that Skillpower, Inc. issued the order of dismissal merely in obedience to the decision of petitioner.

Fourth. Petitioner avers that Skillpower, Inc. is a highly-capitalized business venture, registered as an "independent employer" with the Securities and Exchange Commission as well as the Department of Labor and Employment. Skillpower, Inc. is a member of the Social Security System. In 1984 it had assets exceeding P5 million pesos and at least 20 typewriters, office equipment and service vehicles. It had employees of its own and a pool of 25 clerks assigned to clients on a temporary basis.

The Rules to Implement of the Labor Code, Book III, Rule VIII, §8, provide that there is job contracting when the following conditions are fulfilled:

- (1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and
- (2) The contractor has substantial capital or investment in the form of tools equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Otherwise, according to Art. 106 of the Labor code,

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Petitioner Fuji Xerox argues that Skillpower, Inc. had typewriters and service vehicles for the conduct of its business independently of the petitioner. But typewriters and vehicles bear no direct relationship to the job for which Skillpower, Inc. contracted its service of operating copier machines and offering copying services to the public. The fact is that Skillpower, Inc. did not have copying

machines of its own. What it did was simply to supply manpower to Fuji Xerox. The phrase "substantial capital and investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business," in the Implementing Rules clearly contemplates tools, equipment, etc., which are directly related to the service it is being contracted to render. One who does not have an independent business for undertaking the job contracted for is just an agent of the employer.

Fifth. The Agreement between petitioner Fuji Xerox and Skillpower, Inc. provides that Skillpower, Inc. is an independent contractor and that the workers hired by it "shall not, in any manner and under any circumstances, be considered employees of [the] Company, and that the Company has no control or supervision whatsoever over the conduct of the Contractor or any of its workers in respect to how they accomplish their work or perform the Contractor's obligations under this AGREEMENT."

In *Tabas v. California Manufacturing Company, Inc.*, this Court held on facts similar to those in case at bar:

There is no doubt that in the case at bar, Livi performs "manpower services," meaning to say, it contracts out labor in favor of clients. We hold that it is one notwithstanding its vehement claims to the contrary, and notwithstanding the provision of the contract that it is "an independent contractor." The nature of one's business is not determined by self-serving appellations one attaches thereto but by the tests provided by statute and prevailing case law. The bare fact that Livi maintains a separate line of business does not extinguish the equal fact that it has provided California with workers to pursue the latter's own business. In this connection, we do not agree that the petitioners had been made to perform activities "which are not directly related to the general business of manufacturing," California's purported "principal operation activity." The petitioners had been charged with "merchandising [sic] promotion or sale of the products of [California] in the different sales outlets in Metro Manila including task and occasional [sic] price tagging," an activity that is doubtless, an integral part of the manufacturing business. It is not, then, as if Livi had served as its (California's) promotions or sales arm or agents, or otherwise, rendered a piece of work it (California) could not have itself done; Livi as a placement agency, had simply supplied it with the manpower necessary to carry out its (California's) merchandising activities, using its (California's) premises and equipment.

xxx xxx xxx

The fact that the petitioners have allegedly admitted being Livi's "direct employees" in their complaints is nothing conclusive. For one thing, the fact that the petitioners were (are), will not absolve California since liability has been imposed by legal operation. For another, and as we indicated, the relations of parties must be judged from case to case and the decree of law, and not by declaration of parties.

Skillpower, Inc. is, therefore, a "labor-only" contractor and Garado is not its employee. No grave abuse of discretion can thus be imputed to the NLRC for declaring petitioner Fuji Xerox guilty of illegal dismissal of private respondent.

**ALEXANDER VINOYA, *Petitioner*, -versus- NATIONAL LABOR RELATIONS COMMISSION,  
REGENT FOOD CORPORATION AND/OR RICKY SEE (PRESIDENT), *Respondents*.  
G.R. No. 126586, FIRST DIVISION, February 2, 2000, KAPUNAN, J.**



*Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:*

*(a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility;*

*(b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.*

*Whereas, the elements of a permissible job contracting are:*

*(a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;*

*(b) The contractor or subcontractor has substantial capital or investment; and*

*(c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.*

**FACTS:**

Petitioner Alexander Vinoya was a sales representative at Regent Food Corp (RFC). He was given an RFC ID card and he reported daily to RFC's office, where he was under the direct supervision of the plant manager and senior salesman of RFC. He booked sales, collected payments, and was even required to put up a monthly bond of P200.00 as security to guarantee the performance of his obligations.

A year after this employment, he was transferred by RFC to Peninsula Manpower Company Inc (PMCI), an agency which provides RFC with additional contractual workers. After his transfer to PMCI, he was allegedly reassigned to RFC as sales representative. A few months after, he was informed by an officer of RFC that his employment has been terminated. He was told the dismissal was due to the expiration of the Contract of Service between RFC and PMCI.

Thereafter, Vinoya filed a case against RFC before the Labor Arbiter for illegal dismissal and non-payment of 13<sup>th</sup> month pay.

Private respondent Regent Food Corporation, on the other hand, maintains that no employer-employee relationship existed between petitioner and itself. It insists that petitioner is actually an employee of PMCI, allegedly an independent contractor, which had a Contract of Service with RFC. To prove this fact, RFC presents an Employment Contract signed by petitioner on 1 July 1991, wherein PMCI appears as his employer. RFC denies that petitioner was ever employed by it prior to 1 July 1991. It avers that petitioner was issued an ID card so that its clients and customers would recognize him as a duly authorized representative of RFC. With regard to the P200.00 pesos monthly bond posted by petitioner, RFC asserts that it was required in order to guarantee the turnover of his collection since he handled funds of RFC. While RFC admits that it had control and supervision over petitioner, it argues that such was exercised in coordination with PMCI. Finally, RFC contends that

the termination of its relationship with petitioner was brought about by the expiration of the Contract of Service between itself and PMCI and not because petitioner was dismissed from employment.

On 15 June 1994 the Labor Arbiter rendered a decision in favor of petitioner. The Labor Arbiter concluded that RFC was the true employer of petitioner for the following reasons: (1) Petitioner was originally with RFC and was merely transferred to PMCI to be deployed as an agency worker and then subsequently reassigned to RFC as sales representative; (2) RFC had direct control and supervision over petitioner; (3) RFC actually paid for the wages of petitioner although coursed through PMCI; and, (4) Petitioner was terminated per instruction of RFC.

RFC appealed the adverse decision of the Labor Arbiter to the NLRC. On 21 June 1996, the NLRC reversed the findings of the Labor Arbiter. The NLRC opined that PMCI is an independent contractor because it has substantial capital and, as such, is the true employer of petitioner. The NLRC, thus, held PMCI liable for the dismissal of petitioner.

Separate motions for reconsideration of the NLRC decision were filed by petitioner and PMCI. On 20 August 1996, the NLRC denied both motions. However, it was only petitioner who elevated the case before the Supreme Court.

**ISSUE:**

Whether PMCI is a labor-only contractor. (YES)

**RULING:**

Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:

- (a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility;
- (b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.

Whereas, the elements of a permissible job contracting are:

- (a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
- (b) The contractor or subcontractor has substantial capital or investment; and
- (c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.

Although PMCI has substantial capital, the Court held that it is not enough to show substantial capitalization or investment in the form of tools, equipment, machineries and work premises, among

others, to be considered as an independent contractor. In fact, jurisprudential holdings are to the effect that in determining the existence of an independent contractor relationship, several factors might be considered such as, but not necessarily confined to, whether the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.

The Court has to agree with the conclusion of the Labor Arbiter that PMCI is engaged in labor-only contracting. First, PMCI does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises, among others, to qualify as an independent contractor. Second, PMCI did not carry on an independent business nor did it undertake the performance of its contract according to its own manner and method, free from the control and supervision of its principal, RFC. Third, PMCI was not engaged to perform a specific and special job or service, which is one of the strong indicators that an entity is an independent contractor. Lastly, In labor-only contracting, the employees recruited, supplied or placed by the contractor perform activities which are directly related to the main business of its principal. In this case, the work of petitioner as sales representative is directly related to the business of RFC.

Even granting PMCI is an independent contractor, RFC would still be the employer, applying the four-fold test. Also, the position of sales representative does not appear in the Contract of service between RFC and PMCI as those that the latter will supply the former. Clearly, it was not the intention of the parties to contract out petitioner.

Having established that RFC is the employer, it has not discharged the burden of proving that petitioner's dismissal was for a cause allowed under the Law. Petitioner is entitled to reinstatement to his former position without loss of seniority rights and to payment of full backwages corresponding to the period from his illegal dismissal up to actual reinstatement.

**SAN MIGUEL CORPORATION, *Petitioner*, -versus- MAERC INTEGRATED SERVICES, INC.; and EMERBERTO ORQUE, ROGELIO PRADO, JR., EDDIE SELLE, et al., *Respondents*.  
G.R. No. 144672, SECOND DIVISION, July 10, 2003, BELLOSILLO, J.**

*In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, i.e., to ensure that the employees are paid their wages. The principal employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees.*

*On the other hand, in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees.*

**FACTS:**



Two hundred ninety-one workers filed their complaints (9 complaints in all) against San Miguel Corporation and Maerc Integrated Services, Inc., for illegal dismissal, underpayment of wages, non-payment of service incentive leave pays and other labor standards benefits, and for separation pays from 25 June to 24 October 1991. The complainants alleged that they were hired by San Miguel Corporation through its agent or intermediary Maerc Integrated Services, Inc. to work in 2 designated workplaces in Mandaue City: one, inside the SMC premises at the Mandaue Container Services, and another, in the Philphos Warehouse owned by MAERC. They washed and segregated various kinds of empty bottles used by SMC to sell and distribute its beer beverages to the consuming public. They were paid on a per piece or *pakiao* basis except for a few who worked as checkers and were paid on daily wage basis.

Complainants alleged that long before SMC contracted the services of MAERC a majority of them had already been working for SMC under the guise of being employees of another contractor, Jopard Services, until the services of the latter were terminated on 31 January 1988.

SMC denied liability for the claims and averred that the complainants were not its employees but of MAERC, an independent contractor whose primary corporate purpose was to engage in the business of cleaning, receiving, sorting, classifying, etc., glass and metal containers.

MAERC for its part admitted that it recruited the complainants and placed them in the bottle segregation project of SMC but maintained that it was only conveniently used by SMC as an intermediary in operating the project or work directly related to the primary business concern of the latter with the end in view of avoiding its obligations and responsibilities towards the complaining workers.

The 9 cases were consolidated. On January 31, 1995, the Labor Arbiter rendered a decision holding that MAERC was an independent contractor. He dismissed the complaints for illegal dismissal but ordered MAERC to pay complainants' separation benefits.

The complainants appealed the Labor Arbiter's decision. On January 7, 1997, the National Labor Relations Commission ruled that MAERC was a labor-only contractor and that complainants were employees of SMC. The NLRC also held that whether MAERC was a job contractor or a labor-only contractor, SMC was still solidarily liable with MAERC for the latter's unpaid obligations, citing Art. 109 of the Labor Code.

On March 12, 1998, SMC filed a petition for certiorari with prayer for the issuance of a temporary restraining order and/or injunction with this Court which then referred the petition to the Court of Appeals. On April 28, 2000, the CA denied the petition and affirmed the decision of the NLRC.

Hence, the present petition.

**ISSUE:**

Whether the Court of Appeals erred in ruling that "whether MAERC is an independent contractor or a labor-only contractor, SMC is liable with MAERC for the latter's unpaid obligations to MAERC's workers." (NO)

**RULING:**

We agree with petitioner as distinctions must be made.

In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, *i.e.*, to ensure that the employees are paid their wages. The principal employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees.

On the other hand, in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees.

This distinction between job contractor and labor-only contractor, however, will not discharge SMC from paying the separation benefits of the workers, inasmuch as MAERC was shown to be a labor-only contractor; in which case, petitioner's liability is that of a direct employer and thus solidarily liable with MAERC.

**DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC., *Petitioner*, -versus- DIGITEL  
EMPLOYEES UNION (DEU), ARCELO RAFAEL A. ESPLANA, ALAN D. LICANDO, FELICITO C.  
ROMERO, JR., ARNOLD D. GONZALES, REYNEL FRANCISCO B. GARCIA, ZOSIMO B. PERALTA,  
REGINO T. UNIDAD and JIM L. JAVIER, *Respondents*.  
G.R. Nos. 184903-04, SECOND DIVISION, October 10, 2012, PEREZ, J.**

*Labor-only contracting is expressly prohibited by our labor laws. Article 106 of the Labor Code defines labor-only contracting as "supplying workers to an employer [who] does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer."*

*Section 5, Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code (Implementing Rules), as amended by Department Order No. 18-02, expounds on the prohibition against labor-only contracting, thus:*

*Section 5. Prohibition against labor-only contracting. – Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:*

- i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or*
- ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.*

*The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.*

x x x x

*The "right to control" shall refer to the right reserved to the person for whom, the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.*

*The law and its implementing rules allow contracting arrangements for the performance of specific jobs, works or services. Indeed, it is management prerogative to farm out any of its activities, regardless of whether such activity is peripheral or core in nature. However, in order for such outsourcing to be valid, it must be made to an independent contractor because the current labor rules expressly prohibit labor-only contracting.*

**FACTS:**

DIGITEL Employees Union (DEU) became the exclusive bargaining agent of all rank and file employees of DIGITEL Telecommunications Philippines, Inc. (DIGITEL). Collective bargaining negotiations ensued which however reached in a bargaining deadlock. The Acting Labor Secretary assumed jurisdiction due to DEU' threats to go on strike. Despite the Acting Labor Secretary's order for the execution of a Collective Bargaining Agreement, none was forged as DIGITEL was reluctant to negotiate. DEU's officers filed a Preventive Mediation based on DIGITEL's violation of the duty to bargain. DEU also filed a notice of strike. The Acting Labor Secretary assumed jurisdiction over the dispute.

During the proceedings, Digital Service, Inc. (DIGISERV), the customer help service of DIGITEL, filed a Termination report stating that they will cease operations. Almost half of the employees affected by the closure were DEU members, thus, DEU reacted by filing another notice of strike. The second notice of strike was subsumed to the Assumption Order of the Labor Secretary.

DIGITEL filed a petition before the Bureau of Labor Relations seeking the cancellation of the DEU's registration, which the Regional Director dismissed. The Secretary of Labor ordered DIGITEL to commence with the CBA negotiation with DEU. On appeal, the Court of Appeals sustained the finding that DIGISERV is engaged in labor-only contracting and that its employees are actually employees of DIGITEL.

**ISSUE:**

Whether DIGISERV is a legitimate contractor. (NO)

**RULING:**

Labor-only contracting is expressly prohibited by our labor laws. Article 106 of the Labor Code defines labor-only contracting as "supplying workers to an employer [who] does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer."

Section 5, Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code (Implementing Rules), as amended by Department Order No. 18-02, expounds on the prohibition against labor-only contracting, thus:



Section 5. *Prohibition against labor-only contracting.* – Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

iii) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

iv) The contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

x x x x

The "right to control" shall refer to the right reserved to the person for whom, the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

The law and its implementing rules allow contracting arrangements for the performance of specific jobs, works or services. Indeed, it is management prerogative to farm out any of its activities, regardless of whether such activity is peripheral or core in nature. However, in order for such outsourcing to be valid, it must be made to an independent contractor because the current labor rules expressly prohibit labor-only contracting.

After an exhaustive review of the records, there is no showing that first, DIGISERV has substantial investment in the form of capital, equipment or tools. Under the Implementing Rules, substantial capital or investment refers to "capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out." The NLRC, as echoed by the CA, did not find substantial DIGISERV's authorized capital stock of ₱ 1,000,000.00. It pointed out that only ₱ 250,000.00 of the authorized capital stock had been subscribed and only ₱ 62,500.00 had been paid up. There was no increase in capitalization for the last 10 years.

Moreover, in *PCI Automation Center, Inc. v. National Labor Relations Commission*, the Court made the following distinction: "the legitimate job contractor provides services while the labor-only contractor provides only manpower. The legitimate job contractor undertakes to perform a specific job for the principal employer while the labor-only contractor merely provides the personnel to work for the principal employer." In this case, the services provided by employees of DIGISERV are directly related to the business of DIGITEL.

Furthermore, DIGISERV does not exercise control over the affected employees. The NLRC highlighted the fact that DIGISERV shared the same Human Resources, Accounting, Audit and Legal Departments with DIGITEL which manifested that it was DIGITEL who exercised control over the performance of the affected employees.

**FONTERRA BRANDS PHILS., INC., *Petitioner*, - versus – LEONARDO LARGADO AND TEOTIMO ESTRELLADO, *Respondents*.**  
**G.R. No. 205300, THIRD DIVISION, March 18, 2015, VELASCO JR., J.**

*Fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects with predetermined dates of completion; they also include those to which the parties by free choice have assigned a specific date of termination. The determining factor of such contracts is not the duty of the employee but the day certain agreed upon by the parties for the commencement and termination of the employment relationship. In the case at bar, the respondents, by accepting the conditions of the contract with A.C. Sicat, were well aware of and even acceded to the condition that their employment thereat will end on said pre-determined date of termination. They cannot now argue that they were illegally dismissed by the latter when it refused to renew their contracts after its expiration.*

**FACTS:**

Petitioner Fonterra contracted the services of Zytron for the marketing and promotion of its milk and dairy products. Zytron provided Fonterra with trade merchandising representatives (TMRs), including respondents Largado and Estrellado.

Fonterra sent Zytron a letter terminating its promotions contract, effective June 5, 2006. Fonterra then entered into an agreement for manpower supply with A.C. Sicat. Respondents submitted their job applications with A.C. Sicat, which hired them for a term of five (5) months. When respondents' 5-month contracts with A.C. Sicat were about to expire, they allegedly sought renewal thereof, but were allegedly refused. This prompted respondents to file complaints for illegal dismissal, regularization, non-payment of service incentive leave and 13th month pay, and actual and moral damages, against petitioner, **Zytron**, and **A.C. Sicat**.

The Labor Arbiter dismissed the complaint and ruled that: (1) respondents were not illegally dismissed; and (2) they were consecutively employed by Zytron and A.C. Sicat, not by Fonterra. The NLRC affirmed the Labor Arbiter.

The **CA held that respondents were illegally dismissed**. It found that A.C. Sicat satisfies the requirements of legitimate job contracting, but Zytron does not. According to the CA: (1) Zytron's paid-in capital of P250,000 cannot be considered as substantial capital; (2) its Certificate of Registration was issued by the DOLE months after respondents' supposed employment ended; and (3) its claim that it has the necessary tools and equipment for its business is unsubstantiated. Therefore, according to the CA, respondents were Fonterra's employees. However, the illegal dismissal should be reckoned from the termination of their supposed employment with Zytron. Furthermore, respondents' transfer to A.C. Sicat is tantamount to a completely new engagement by another employer. Lastly, the termination of their contract with A.C. Sicat arose from the expiration of their respective contracts with the latter. The CA, thus, ruled that Fonterra is liable to respondents and ordered the reinstatement of respondents without loss of seniority rights, with full backwages, and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement.

**ISSUE:**

Whether or not respondents were illegally dismissed.

**RULING:****Respondents' employment with Zytron was not illegally terminated.**

The termination of respondents' employment with Zytron was brought about by the cessation of their contracts with the latter. The respondents were the ones who refused to renew their contracts with Zytron, and they themselves acquiesced to their transfer to A.C. Sicat. By refusing to renew their contracts with Zytron, respondents effectively resigned from the latter. Resignation is the voluntary act of employees who are compelled by personal reasons to dissociate themselves from their employment, done with the intention of relinquishing an office, accompanied by the act of abandonment.

In short, respondents voluntarily terminated their employment with Zytron by refusing to renew their employment contracts with the latter, applying with A.C. Sicat, and working as the latter's employees, thereby abandoning their previous employment with Zytron. Resignation is inconsistent with illegal dismissal. This being the case, Zytron cannot be said to have illegally dismissed respondents, contrary to the findings of the CA.

**Respondents' employment with AC Sicat was not illegally terminated.**

\* It is proper to dispose of the issue on A.C. Sicat's status as a job contractor first before resolving the issue on the legality of the cessation of respondents' employment.

The CA correctly found that A.C. Sicat is engaged in legitimate job contracting. It duly noted that A.C. Sicat was able to prove its status as a legitimate job contractor for having presented the necessary evidence. Furthermore, A.C. Sicat has substantial capital.

Agreement with Fonterra clearly sets forth that A.C. Sicat shall be liable for the wages and salaries of its employees or workers, including benefits, premiums, and protection due them, as well as remittance to the proper government entities. These sufficiently show that A.C. Sicat carries out its merchandising and promotions business, **independent of Fonterra's business**. Thus, having settled that A.C. Sicat is a legitimate job contractor, We now determine whether the termination of respondents' employment with the former is valid.

Respondents were fixed-term employees. Fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects with predetermined dates of completion; they also include those to which the parties by free choice have assigned a specific date of termination. The determining factor of such contracts is not the duty of the employee but the day certain agreed upon by the parties for the commencement and termination of the employment relationship.

In the case at bar, it is clear that respondents were employed by A.C. Sicat as project employees. Respondents, by accepting the conditions of the contract with A.C. Sicat, were well aware of and even acceded to the condition that their employment thereat will end on said pre-determined date of termination. They cannot now argue that they were illegally dismissed by the latter when it refused to renew their contracts after its expiration. This is so since the non-renewal of their contracts by A.C. Sicat is a management prerogative, and failure of respondents to prove that such was done in bad faith militates against their contention that they were illegally dismissed. The expiration of their contract with A.C. Sicat simply caused the natural cessation of their fixed-term employment there at.



**MANILA MEMORIAL PARK CEMETERY, INC., *Petitioner*, - versus - EZARD D. LLUZ, NORMAN CORRAL, ERWIN FUGABAN, VALDIMAR BALISI, EMILIO FABON, JOHN MARK APLICADOR, MICHAEL CURIOSO, JUNLIN ESPARES, GAVINO FARINAS, AND WARD TRADING AND SERVICES, *Respondents*.**

**G.R. No. 208451, SECOND DIVISION, February 03, 2016, CARPIO, J.**

*There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. In this case, , a closer look at the Contract of Services reveals that Ward Trading does not have substantial capital or investment in the form of tools, equipment, machinery, work premises and other materials since it is Manila Memorial which owns the equipment used in the performance of. work needed for interment and exhumation services. Thus, the presumption that Ward Trading is a labor-only contractor stands. Consequently, Manila Memorial is deemed the employer of respondents.*

**FACTS:**

Manila Memorial entered into a Contract of Services with respondent Ward Trading. The Contract of Services provided that Ward Trading, as an independent contractor, will render interment and exhumation services and other related work to Manila Memorial in order to supplement operations at Manila Memorial Park. Among those assigned by Ward Trading to perform services at the Manila Memorial Park were the respondents. They worked six days a week for eight hours daily and were paid P250 per day.

On 26 June 2007, respondents filed a Complaint for regularization and Collective Bargaining Agreement benefits against Manila Memorial; Enrique B. Lagdameo, Manila Memorial's Executive Vice-President and Director in Charge for Overall Operations, and Ward Trading. On 6 August 2007, respondents filed an amended complaint to include illegal dismissal, underpayment of 13th month pay, and payment of attorney's fees.

Respondents alleged that they asked Manila Memorial to consider them as regular workers. Manila Memorial refused the request since respondents were employed by Ward Trading, an independent labor contractor. The MMP Union, on behalf of respondents, sought their regularization which Manila Memorial again declined. Subsequently, respondents were dismissed by Manila Memorial. Thus, respondents amended the complaint to include the prayer for their reinstatement and payment of back wages. Manila Memorial sought the dismissal of the complaint for lack of jurisdiction since there was no employer-employee relationship.

The Labor Arbiter dismissed the complaint for failing to prove the existence of an employer-employee relationship. NLRC reversed the Labor Arbiter's findings. The CA affirmed the ruling of the NLRC.

**ISSUE:**

Whether or not an employer-employee relationship exists between Manila Memorial and respondents for the latter to be entitled to their claim for wages and other benefits.

**RULING:**

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Contracting must be made to a legitimate and independent job contractor since labor rules expressly prohibit labor-only contracting.

Labor-only contracting exists when the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal and any of the following elements are present:

1. The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
2. The contractor does not exercise the right to control the performance of the work of the contractual employee.

In the present case, Manila Memorial entered into a Contract of Services with Ward Trading. In the Contract of Services, it was provided that Ward Trading, as the contractor, had adequate workers and substantial capital or investment in the form of tools, equipment, machinery, work premises and other materials which were necessary in the conduct of its business.

However, a closer look at the Contract of Services reveals that Ward Trading does not have substantial capital or investment in the form of tools, equipment, machinery, work premises and other materials since it is Manila Memorial which owns the equipment used in the performance of work needed for interment and exhumation services.

Moreover, the Contract of Service provides that:

"5. The COMPANY reserves the right to rent all or any of the CONTRACTOR'S equipment in the event the COMPANY requires the use of said equipment, x x x."

This provision is clear proof that Ward does not have an absolute right to use or enjoy subject equipment, considering that its right to do so is subject to respondent MMPCI's use thereof at any time the latter requires it.

Further, the Service Contract states that:

"For its part, the COMPANY agrees to provide the following: a) Area to store CONTRACTOR'S equipment and materials b) Office space for CONTRACTOR'S staff and personnel"

This provision is clear proof that even the work premises actually and directly used by Ward in the performance of the services contracted out is owned by respondent MMPCI.

A perusal of the Service Contract would reveal that respondent Ward is still subject to petitioner's control as it specifically provides that although Ward shall be in charge of the supervision over individual respondents, the exercise of its supervisory function is heavily dependent upon the needs of petitioner Memorial Park. The contract further provides that petitioner has the option to take over the functions of Ward's personnel if it finds any part or aspect of the work or service provided to be unsatisfactory.

It is obvious that the aforementioned provision leaves respondent Ward at the mercy of petitioner Memorial Park as the contract states that the latter may take over if it finds any part of the services to be below its expectations, including the manner of its performance.

The NLRC also found that Ward Trading's business documents fell short of sound business practices. For failing to register as a contractor, a presumption arises that one is engaged in labor-only contracting unless the contractor overcomes the burden of proving that it has substantial capital, investment, tools and the like. In this case, however, Manila Memorial failed to adduce evidence to prove that Ward Trading had any substantial capital, investment or assets to perform the work contracted for. Thus, the presumption that Ward Trading is a labor-only contractor stands. Consequently, Manila Memorial is deemed the employer of respondents.

**EMMANUEL D. QUINTANAR, BENJAMIN O. DURANO, CECILIO C. DELAVIN, RICARDO G GABORNI, ROMEL G GERARMAN, JOEL JOHN P. AGUILAR, RAMIRO T. GAVIOLA, RESTITUTO D. AGSALUD, MARTIN E. CELIS, PATRICIO L. ARIOS, MICHAEL S. BELLO, LORENZO C. QUINLOG, JUNNE G. BLAYA, SANTIAGO B. TOLENTINO, JR., NESTOR A. MAGNAYE, ARNOLD S. POLVORIDO, ALLAN A. AGAPITO, ARIEL E. BAUMBAD, JOSE T. LUTIVA, EDGARDO G. TAPALLA, ROLDAN C. CADAYONA, REYNALDO V. ALBURO, RUDY C. ULTRA, MARCELO R. CABILI, ARNOLD B. ASIATEN, REYMUNDO R. MACABALLUG, JOEL R. DELEÑA, DANILO T. OQUIÑO, GREG B. CAPARAS AND ROMEO T. ESCARTIN, *Petitioners, - versus - COCA-COLA BOTTLERS, PHILIPPINES, INC., Respondent.*  
G.R. No. 210565, EN BANC, June 28, 2016, MENDOZA, J.**

*The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company.*

**FACTS:**

Complainants allege that they are former employees directly hired by respondent Coca-Cola on different dates from 1984 up to 2000, assigned as regular Route Helpers under the direct supervision of the Route Sales Supervisors. Their duties consist of distributing bottled Coca-Cola products to the stores and customers in their assigned areas/routes.

complainants were transferred successively as agency workers to the different manpower agencies. Further, complainants allege that the Department of Labor and Employment (DOLE) conducted an inspection of Coca-Cola to determine whether it is complying with the various mandated labor standards, wherein complainants were declared to be regular employees of Coca-Cola. The latter was held liable to pay complainants the underpayment of their 13th month pay, emergency cost of living allowance (ECOLA), and other claims.



Their claims were later settled by the respondent company, but the settlement allegedly did not include the issues on reinstatement and payment of CBA benefits. Thus, on November 10, 2006, they filed their complaint for illegal dismissal. Respondent Coca-Cola denies employer-employee relationship with the complainants pointing to respondent Interserve with whom it has a service agreement as the complainants' employer.

As alleged independent service contractor of respondent Coca-Cola, respondent Interserve "is engaged in the business of rendering substitute or reliever delivery services to its own clients and for CCBPI. Coca-Cola alleges that it is free from the control and direction of CCBPI in all matters connected with the performance of the work, except as to the results thereof, pursuant to the service agreement. Further, respondent Coca-Cola argued that all elements of employer-employee relationship exist between respondent Interserve and the complainants.

The Labor Arbiter concluded that the petitioners were simply employees of Coca-Cola who were "seconded" to Interserve. The LA ordered Coca-Cola to reinstate the petitioners to their former positions and to pay their full backwages. The NLRC affirmed the LA. On the other hand, CA opined that the petitioners were not employees of Coca-Cola but of Interserve.

**ISSUE:**

Whether the petitioners were illegally dismissed from their employment with Coca-Cola.

**RULING:****The petitioners were illegally dismissed.**

*First.* Contrary to the position taken by Coca-Cola, it cannot be said that route-helpers, such as the petitioners no longer enjoy the employee-employer relationship they had with Coca-Cola since they became employees of Interserve. The Court in *Magsalin* struck down the defense of Coca-Cola that the complainants therein, who were route-helpers, were its "temporary" workers.

The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company. The Court of Appeals has found each of respondents to have worked for at least one year with petitioner company. The Court also determined the existence of an employer-employee relationship between the parties therein considering that the contract of service between Coca-Cola and Interserve showed that the former indeed exercised the power of control over the complainants therein.

It bears mentioning that the arguments raised by Coca-Cola in the case at bench even bear a striking similarity with the arguments it raised before the CA in other cases wherein it was also involved. From all these, a pattern emerges by which Coca-Cola consistently resorts to various methods in order to deny its route-helpers the benefits of regular employment. Despite this, the Court, consistent with sound pronouncements above, adopts the rulings made in *Pacquin* that Interserve was a labor-only contractor and that Coca-Cola should be held liable pursuant to the principle of *stare decisis et non quieta movere*.

*Second.* A reading of the decision of the CA and the pleadings submitted by Coca-Cola before this Court reveals that they both lean heavily on the service agreement entered into by Coca-Cola and Interserve. However, the service agreement all reveal that they were entered into (1) after the

petitioners were hired by Coca-Cola, (2) after they were dismissed from their employment sometime in January 2004, and (3) after the petitioners filed their complaint for illegal dismissal on November 10, 2006 with the LA. The most formidable obstacle against the respondent's theory of lack of employer-employee relationship is that complainants have been performing the tasks of route-helpers for **several years** and that practically all of them have been rendering their services as such even before respondent Interserve entered into a service agreement with Coca-Cola.

As to the payment of salaries, although the CA made mention that it was Interserve which paid the petitioners' salaries, no reference was made to any evidence to support such a conclusion. Aside from their collective account that it was Coca-Cola's Route Supervisors who provided their daily schedules for the distribution of the company's products, the petitioners' payslips, tax records, SSS, and Pag-Ibig records more than adequately showed that they were being compensated by Coca-Cola.

*Third.* As to the characterization of Interserve as a contractor, the Court finds that, contrary to the conclusion reached by the CA, the petitioners were made to suffer under the prohibited practice of labor-only contracting.

In this case, the appellate court considered the evidence of Interserve that it was registered with the DOLE as independent contractor and that it had a total capitalization of P27,509,716.32 and machineries and equipment worth P12,538,859.55. As stated above, however, the possession of substantial capital is only one element. Even if the Court would indulge Coca-Cola and admit that Interserve had more than sufficient capital or investment in the form of tools, equipment, machineries, work premises, still, it cannot be denied that the **petitioners were performing activities which were directly related to the principal business of such employer**. Also, it has been ruled that no absolute figure is set for what is considered 'substantial capital' because the same is measured against the type of work which the contractor is obligated to perform for the principal.

*Fourth.* In this connection, even granting that the petitioners were last employed by Interserve, the record is bereft of any evidence that would show that the petitioners voluntarily resigned from their employment with Coca-Cola only to be later hired by Interserve. Other than insisting that the petitioners were last employed by Interserve, Coca-Cola failed not only to show by convincing evidence how it severed its employer relationship with the petitioners, but also to prove that the termination of its relationship with them was made through any of the grounds sanctioned by law.

#### **10) Management prerogative**

- a) Discipline
- b) Transfer of employees
- c) Productivity standard
- d) Grant of bonus
- e) Change of working hours
- f) Rules on marriage between employees of competitor-employers
- g) Post-employment ban

#### ***Cases/s:***

**ROLANDO C. RIVERA, *Petitioner*, -versus- SOLIDBANK CORPORATION, *Respondent*.**  
**G.R. No. 163269, FIRST DIVISION, April 19, 2006, CALLEJO, SR., J.**

*The strong weight of authority is that forfeitures for engaging in subsequent competitive employment*

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*included in pension and retirement plans are valid even though unrestricted in time or geography.*

*The Undertaking and the Release, Waiver and Quitclaim do not provide for the automatic forfeiture of the benefits petitioner received under the SRP upon his breach of said deeds. Thus, the post-retirement competitive employment ban incorporated in the Undertaking of respondent does not, on its face, appear to be of the same class or genre as that contemplated in Rochester.*

**FACTS:**

In December 1994, Solidbank offered two retirement programs to its employees: (a) the Ordinary Retirement Program (ORP), under which an employee would receive 85% of his monthly basic salary multiplied by the number of years in service; and (b) the Special Retirement Program (SRP), under which a retiring employee would receive 250% of the gross monthly salary multiplied by the number of years in service.

Subsequently, Solidbank required Rivera to sign an undated Release, Waiver and Quitclaim, which was notarized on March 1, 1995. Aside from acknowledging that he had no cause of action against Solidbank or its affiliate companies, Rivera agreed that the bank may bring any action to seek an award for damages resulting from his breach of the Release, Waiver and Quitclaim, and that such award would include the return of whatever sums paid to him by virtue of his retirement under the SRP. Rivera was likewise required to sign an undated Undertaking as a supplement to the Release, Waiver and Quitclaim in favor of Solidbank. In this Undertaking, he promised that [he] will not seek employment with a competitor bank or financial institution within one (1) year from February 28, 1995, and that any breach of the Undertaking or the provisions of the Release, Waiver and Quitclaim would entitle Solidbank to a cause of action against him before the appropriate courts of law. Unlike the Release, Waiver and Quitclaim, the Undertaking was not notarized.

On May 1, 1995, the Equitable Banking Corporation (Equitable) employed Rivera as Manager of its Credit Investigation and Appraisal Division of its Consumers Banking Group. Upon discovering this, Solidbank First Vice-President for Human Resources Division (HRD) Celia J.L. Villarosa wrote a letter dated May 18, 1995, informing Rivera that he had violated the Undertaking. She likewise demanded the return of all the monetary benefits he received in consideration of the SRP within five (5) days from receipt. When Rivera refused to return the amount demanded within the given period, Solidbank filed a complaint for Sum of Money with Prayer for Writ of Preliminary Attachment before the Regional Trial Court (RTC) of Manila.

**ISSUE:**

Whether or not the Undertaking was a valid contract. (NO)

**RULING:**

Thus, in determining whether the contract is reasonable or not, the trial court should consider the following factors: (a) whether the covenant protects a legitimate business interest of the employer; (b) whether the covenant creates an undue burden on the employee; (c) whether the covenant is injurious to the public welfare; (d) whether the time and territorial limitations contained in the covenant are reasonable; and (e) whether the restraint is reasonable from the standpoint of public policy.

The strong weight of authority is that forfeitures for engaging in subsequent competitive



employment included in pension and retirement plans are valid even though unrestricted in time or geography. The *raison d'être* is explained by the United States Circuit Court of Appeals in **Rochester Corporation v. W.L. Rochester, Jr.:**

x x x The authorities, though, generally draw a clear and obvious distinction between restraints on competitive employment in employment contracts and in pension plans. The strong weight of authority holds that forfeitures for engaging in subsequent competitive employment, included in pension retirement plans, are valid, even though unrestricted in time or geography. The reasoning behind this conclusion is that the forfeiture, unlike the restraint included in the employment contract, is not a prohibition on the employees engaging in competitive work but is merely a denial of the right to participate in the retirement plan if he does so engage. A leading case on this point is *Van Pelt v. Berefco, Inc.*, supra, 208 N.E.2d at p. 865, where, in passing on a forfeiture provision similar to that here, the Court said: A restriction in the contract which does not preclude the employee from engaging in competitive activity, but simply provides for the loss of rights or privileges if he does so is not in restraint of trade. A post-retirement competitive employment restriction is designed to protect the employer against competition by former employees who may retire and obtain retirement or pension benefits and, at the same time, engage in competitive employment.

We have reviewed the Undertaking which respondent impelled petitioner to sign, and find that in case of failure to comply with the promise not to accept competitive employment within one year from February 28, 1995, respondent will have a cause of action against petitioner for protection in the courts of law. The words cause of action for protection in the courts of law are so broad and comprehensive, that they may also include a cause of action for prohibitory and mandatory injunction against petitioner, specific performance plus damages, or a damage suit (for actual, moral and/or exemplary damages), all inclusive of the restitution of the P963,619.28 which petitioner received from respondent. The Undertaking and the Release, Waiver and Quitclaim do not provide for the automatic forfeiture of the benefits petitioner received under the SRP upon his breach of said deeds. Thus, the post-retirement competitive employment ban incorporated in the Undertaking of respondent does not, on its face, appear to be of the same class or genre as that contemplated in Rochester.

**DAISY B. TIU, *Petitioner* –versus- PLATINUM PLANS PHIL., INC., *Respondent*.  
G.R. No. 163512, SECOND DIVISION, February 28, 2007, QUISUMBING, J.**

*A non-involvement clause is not necessarily void for being in restraint of trade as long as there are reasonable limitations as to time, trade, and place. In this case, the non-involvement clause has a time limit: two years from the time petitioner's employment with respondent ends. It is also limited as to trade, since it only prohibits petitioner from engaging in any pre-need business akin to respondent's.*

**FACTS:**

Respondent Platinum Plans Philippines, Inc. is a domestic corporation engaged in the pre-need industry. Petitioner Daisy B. Tiu was its Division Marketing Director. In 1993, respondent re-hired petitioner as Senior Assistant Vice-President and Territorial Operations Head in charge of its Hongkong and Asean operations. The parties executed a contract of employment valid for five years. Petitioner stopped reporting for work. In November 1995, she became the Vice-President for Sales of Professional Pension Plans, Inc., a corporation engaged also in the pre-need industry.

Consequently, respondent sued petitioner for damages. Respondent alleged, among others, that petitioner's employment with Professional Pension Plans, Inc. violated the non-involvement clause

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in her contract of employment. On the other hand, Petitioner countered that the non-involvement clause was unenforceable for being against public order or public policy: First, the restraint imposed was much greater than what was necessary to afford respondent a fair and reasonable protection. Petitioner contended that the transfer to a rival company was an accepted practice in the pre-need industry. Second, respondent did not invest in petitioner's training or improvement. At the time petitioner was recruited, she already possessed the knowledge and expertise required in the pre-need industry and respondent benefited tremendously from it. Third, a strict application of the non-involvement clause would amount to a deprivation of petitioner's right to engage in the only work she knew.

In upholding the validity of the non-involvement clause, the trial court ruled that a contract in restraint of trade is valid provided that there is a limitation upon either time or place. In the case of the pre-need industry, the trial court found the two-year restriction to be valid and reasonable. On appeal, the Court of Appeals affirmed the trial court's ruling.

**ISSUE:**

Whether or not the non-involvement clause is valid. (YES)

**RULING:**

As early as 1916, we already had the occasion to discuss the validity of a non-involvement clause. In *Ferrazzini v. Gsell*, we said that such clause was unreasonable restraint of trade and therefore against public policy. However, in *Del Castillo v. Richmond*, we upheld a similar stipulation as legal, reasonable, and not contrary to public policy. Finally, in *Consulta v. Court of Appeals*, we considered a non-involvement clause in accordance with Article 1306 of the Civil Code. Conformably then with the aforementioned pronouncements, a non-involvement clause is not necessarily void for being in restraint of trade as long as there are reasonable limitations as to time, trade, and place. In this case, the non-involvement clause has a time limit: two years from the time petitioner's employment with respondent ends. It is also limited as to trade, since it only prohibits petitioner from engaging in any pre-need business akin to respondent's.

More significantly, since petitioner was the Senior Assistant Vice-President and Territorial Operations Head in charge of respondent's Hongkong and Asean operations, she had been privy to confidential and highly sensitive marketing strategies of respondent's business. To allow her to engage in a rival business soon after she leaves would make respondent's trade secrets vulnerable especially in a highly competitive marketing environment. In sum, we find the non-involvement clause not contrary to public welfare and not greater than is necessary to afford a fair and reasonable protection to respondent.

In any event, Article 1306 of the Civil Code provides that parties to a contract may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. Article 1159 of the same Code also provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Not being contrary to public policy, the non-involvement clause, which petitioner and respondent freely agreed upon, has the force of law between them, and thus, should be complied with in good faith.

**SIME DARBY PILIPINAS, INC., *Petitioner* -versus- NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION) and SIME DARBY SALARIED EMPLOYEES ASSOCIATION (ALU-TUCP),**

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**Respondents.****G.R. No. 119205, FIRST DIVISION, April 15, 1998, BELLOSILLO, J.**

*It is thus essential to stress that the Voluntary Arbitrator had plenary jurisdiction and authority to interpret the agreement to arbitrate and to determine the scope of his own authority subject only, in a proper case, to the certiorari jurisdiction of this Court. The Arbitrator, as already indicated, viewed his authority as embracing not merely the determination of the abstract question of whether or not a performance bonus was to be granted but also, in the affirmative case, the amount thereof.*

**FACTS:**

On 13 June 1989, petitioner Sime Darby and private respondent SDEA executed a Collective Bargaining Agreement (CBA) providing, among others, that:

*"Article X, Section 1. A performance bonus shall be granted, the amount of which [is] to be determined by the Company depending on the return of [sic] capital investment as reflected in the annual financial statement."*

On 31 July 1989, the Sime Darby Salaried Employees Association-ALU (SDSEA-ALU) wrote petitioner demanding the implementation of a provision identical to the above contained in their own CBA with petitioner. On 1 August 1989, the parties were called to a conciliation meeting and in such meeting, both parties agreed to submit their dispute to voluntary arbitration.

The Voluntary Arbitrator held that a reading of the CBA provision on the performance bonus would show that said provision was mandatory hence the only issue to be resolved was the amount of performance bonus. Thereafter, VA issued an award which declared respondent union entitled to a performance bonus equivalent to 75% of the monthly basic pay of its members.

Petitioner Sime Darby urges that the Arbitrator gravely abused his discretion in passing upon not only the question of whether or not a performance bonus is to be granted but also, in the affirmative case, the matter of the amount thereof. The position of petitioner, to the extent we can understand it, is that the Arbitrator was authorized to determine only the question of whether or not a performance bonus was to be granted, the second question being reserved for determination by the employer Sime Darby.

**ISSUE:**

Whether or not the VA possess the power not only to determine whether or not performance bonus is to be granted but also the amount thereof. (YES)

**RULING:**

In their agreement to arbitrate, the parties submitted to the Voluntary Arbitrator "the issue of performance bonus." The language of the agreement to arbitrate may be seen to be quite cryptic. There is no indication at all that the parties to the arbitration agreement regarded "the issue of performance bonus" as a two-tiered issue, only one tier of which was being submitted to arbitration. Possibly, Sime Darby's counsel considered that issue as having dual aspects and intended in his own mind to submit only one of those aspects to the Arbitrator; if he did, however, he failed to reflect his thinking and intent in the arbitration agreement.



It is thus essential to stress that the Voluntary Arbitrator had plenary jurisdiction and authority to interpret the agreement to arbitrate and to determine the scope of his own authority subject only, in a proper case, to the *certiorari* jurisdiction of this Court. The Arbitrator, as already indicated, viewed his authority as embracing not merely the determination of the abstract question of whether or not a performance bonus was to be granted but also, in the affirmative case, the amount thereof.

Analysis of the relevant provisions of the CBA cited *supra* between the parties and examination of the record of the instant case lead us to the conclusion that the Arbitrator's reading of the scope of his own authority must be sustained.

Article X, Section 1 of the CBA is, grammatically speaking, cast in mandatory terms: "A performance bonus shall be granted x x x." The CBA provision goes on, however, immediately to say that the amount of the performance bonus "(is) to be determined by the Company." Thus, notwithstanding the literal or grammatical tenor of Article X, Section 1, as a practical matter, only the issue relating to the amount of the bonus to be declared appears important. Not much reflection is needed to show that the critical issue is the scope of authority of the company to determine the amount of any bonus to be granted. If the company's discretionary authority were to be regarded as unlimited and if the company may declare in any event a merely nominal bonus, the use of mandatory language in Article X, Section 1, would seem largely illusory and cosmetic in effect. Alternatively, even if one were to disregard the use of "shall" rather than "may" in Article X, Section 1, the question of whether or not a performance bonus is to be granted, still cannot realistically be dissociated from the intensely practical issue of the amount of the bonus to be granted. It is noteworthy that petitioner Sime Darby itself did not spend much time discussing as an abstract question whether or not the grant of a performance bonus is *per se* obligatory upon the company. Petitioner instead focused upon the production performance of the company's employees as bearing upon the appropriateness of any amount of bonus. Further, if petitioner Sime Darby's argument were to be taken seriously, one must conclude that the parties to the arbitration agreement intended to refer only a theoretical and practically meaningless issue to the Voluntary Arbitrator, a conclusion that we find thoroughly unacceptable.

**PHILIPPINE TELEGRAPH AND TELEPHONE CORPORATION, *petitioner*, -versus-  
ALICIA LAPLANA, Hon. RICARDO ENCARNACION, and NATIONAL LABOR RELATIONS  
COMMISSION, *respondents*.**

**G.R. No. 76645, FIRST DIVISION, July 23, 1991, NARVASA, J**

*The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right must be exercised. Thus it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. Nor when the real reason is to penalize an employee for his union activities and thereby defeat his right to self-organization. But the transfer can be upheld when there is no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee.*

**FACTS:**

Alicia Laplana was the cashier of the Baguio City Branch Office of the Philippine Telegraph and Telephone Corporation. PT & T's treasurer, Mrs. Alicia A. Arogo, directed Laplana to transfer to the company's branch office at Laoag City. Laplana refused the reassignment and proposed instead that qualified clerks in the Baguio Branch be trained for the purpose. She set out her reasons therefor in her letter to Mrs. Arogo. Mrs. Arogo reiterated her directive for Laplana's transfer to the Laoag Branch, this time in the form of a written Memorandum, informing Laplana that "effective April 16,

1984, you will be reassigned to Laoag branch assuming the same position of branch cashier," and ordering her "to turn over your accountabilities such as PCF, undeposited collections, used and unused official receipts, other accountable forms and files to Rose Caysido who will be in charge of cashiering in Baguio."

Apparently Laplana was not allowed to resume her work as Cashier of the Baguio Branch when April 16, 1984 came. She thereupon wrote again to Mrs. Arogo advising that the directed transfer was unacceptable, reiterating the reasons already given by her in her first letter. Laplana received a telegram from Mrs. Arogo directing her to report to Manila for her new job assignment. Thereafter, Laplana sent a letter to Mrs. Arogo expatiating on her telex message and reiterating her request to be retrenched instead.

Termination of Laplana's employment on account of retrenchment thereupon followed. On May 19, 1984, PT & T issued an "Employees's Service Report" which contained the following remarks regarding Laplana: "Services terminated due to retrenchment with corresponding termination pay effective May 16, 1984." Mrs. Arogo sent a Memorandum to the company's Baguio Branch Manager embodying the computation of the separation and 13th month pay due to Laplana, together with a check for the amount thereof, P2,512.50 and a quitclaim deed, and instructing said manager to have the quitclaim signed by Alicia Laplana before releasing the check. Laplana signed the quitclaim and received the check representing her 13th month and separation pay.

Laplana filed with the Labor Arbiters' Office a complaint against PT & T its "Baguio Northwestern Luzon Branch, Baguio City," and Paraluman Bautista, Area Manager. In her complaint, she alleged, as right of action, that "when she insisted on her right of refusing to be transferred, the Defendants made good its warning by terminating her services on May 16, 1984 on alleged ground of "retrenchment," although the truth is, she was forced to be terminated and that there was no ground at all for the retrenchment; that the company's act of transferring is not only without any valid ground but also arbitrary and without any purpose but to harass and force her to eventually resign.

Upon the issues thus raised, judgment was rendered by the Labor Arbiter in Laplana's favor. The National Labor Relations Commission affirmed the Arbiter's judgment and dismissed the respondents' appeal, by Resolution dated August 5, 1986.

**ISSUE:**

Whether or not the transfer is a valid exercise of management prerogative. (YES)

**RULING:**

The Arbiter acknowledges the inherent right of an employer to transfer or assign an employee in the pursuit of its legitimate business interests subject only to the condition that it be not motivated by discrimination or (made) in bad faith, or effected as a form of punishment or demotion without sufficient cause. This is a principle uniformly adhered to by this Court.

But like all other rights, there are limits. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right must be exercised. Thus it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. Nor when the real reason is to penalize an employee for his union activities and thereby defeat his right to self-organization. But the transfer can be upheld when there is no showing that it is unnecessary,

inconvenient and prejudicial to the displaced employee.

In *Dosch v. NLRC, supra*, this Court found itself unable to agree with the NLRC that the petitioner employee was guilty of disobedience and insubordination in refuse to accept his transfer from the Philippines to an *overseas post*. Withal, it is evident that the courteous tone of the employee's letter did not alter the actuality of his refusal to accept the transfer decreed by his employer in the exercise of its sound business judgment and discretion; and that the transfer of an employee to an overseas post cannot be likened to a transfer from a city to another within the country, as in the case at bar.

In this case, the employee (Laplana) had to all intents and purposes resigned from her position. She had unequivocally asked that she be considered dismissed, herself suggesting the reason therefor -- retrenchment. When so dismissed, she accepted separation pay. On the other hand, the employer has not been shown to be acting otherwise than in good faith, and in the legitimate pursuit of what it considered its best interests, in deciding to transfer her to another office. There is no showing whatever that the employer was transferring Laplana to another work place, not because she would be more useful there, but merely "as a subterfuge to rid . . . (itself) of an undesirable worker," or "to penalize an employee for . . . union activities. . . ." The employer was moreover not unmindful of Laplana's initial plea for reconsideration of the directive for her transfer to Laoag; in fact, in response to that plea not to be moved to the Laoag Office, the employer opted instead to transfer her to Manila, the main office, offering at the same time the normal benefits attendant upon transfers from an office to another.

The situation here presented is of an employer transferring an employee to another office in the exercise of what it took to be sound business judgment and in accordance with pre-determined and established office policy and practice, and of the latter having what was believed to be legitimate reasons for declining that transfer, rooted in considerations of personal convenience and difficulties for the family. Under these circumstances, the solution proposed by the employee herself, of her voluntary termination of her employment and the delivery to her of corresponding separation pay, would appear to be the most equitable. Certainly, the Court cannot accept the proposition that when an employee opposes his employer's decision to transfer him to another work place, there being no bad faith or underhanded motives on the part of either party, it is the employee's wishes that should be made to prevail. In adopting that proposition by way of resolving the controversy, the respondent NLRC gravely abused its discretion.