LABOR LAW

2018 Cases

LABOR LAW & SOCIAL LEGISLATION

(2018 Cases)

BY:

DEAN'S CIRCLE 2019

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A. Basic policy on labor

ROLANDO DE ROCA, *Petitioner*, *v.* EDUARDO C. DABUYAN, JENNIFER A. BRANZUELA, JENNYLYN A. RICARTE, AND HERMINIGILDO F. SABANATE, *Respondents*.
G.R. No. 215281, FIRST DIVISION, March 05, 2018, DEL CASTILLO, *J.*

"In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around."In short, ***substantive law outweighs procedural technicalities*** *as in this case.*

Indeed, ***where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the Rules, we will not hesitate to relax the same in the interest of substantial justice.*** *It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus,* ***if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.***

Taking this to mind, ***the labor tribunals and the CA should have considered petitioner's repeated pleas to scrutinize the facts*** *and particularly the lease agreement executed by him and Oceanic, which would naturally exculpate him from liability as this would prove the absence of an employment relation between him and respondents. Instead, the case was determined on pure technicality which in labor disputes, is not necessarily sanctioned - given that* ***proceedings before the Labor Arbiter and the NLRC are non-litigious in nature where they are encouraged to avail of all reasonable means to ascertain the facts of the case without regard to technicalities of law or procedure****.****Petitioner's motion to dismiss, though belated, should have been given due attention.***

FACTS:

In 2012, private respondents filed a complaintfor **illegal dismissal** against "RAF Mansion Hotel Old Management and New Management and Victoriano Ewayan." Later, private respondents **amended the complaint** and **included petitioner De Roca as co-respondent**. Summons was sent through registered mail to petitioner, but it was returned.

Thereafter, a conference was set but only complainants attended. Thus, another summons was issued and personally served to petitioner by the bailiff of the NLRC. Despite service of summons, petitioner did not attend the subsequent hearings prompting the labor arbiter to direct private respondents to submit their position paper. Private respondents submitted their position paper.

On the same day, petitioner filed his **motion to dismiss on the ground of lack of jurisdiction**. He alleged that, while he was the owner of RAF Mansion Hotel building, the same was being leased by Ewayan, the owner of Oceanics Travel and Tour Agency. Petitioner claims that Ewayan was the

employer of private respondents. Consequently, he asserted that **there was no employer-employee relationship between him and private respondents** and the labor arbiter had no jurisdiction.

The labor arbiter rendered a decision directing petitioner, among others, to pay backwages and other monetary award to private respondents. The labor arbiter also **denied the motion to dismiss for having been filed beyond the reglementary period**. Petitioner filed a petitionfor annulment of judgment on the ground of lack of jurisdiction before the NLRC. However, the petition was dismissed because it was also **filed beyond the 10-day reglementary period** prescribed under Section 3, Rule XII of the 2011 NLRC Rules of Procedure. The CA affirmed the decision.

ISSUE:

Whether or not the CA erred in affirming that petitioner is solidarily liable with Ewayan/Oceanic to private respondents. (YES)

RULING:

All throughout the proceedings, petitioner has insisted that he was not the employer of respondents; that he did not hire the respondents, nor pay their salaries nor exercise supervision or control over them, nor did he have the power to terminate their services.
In support of his claim, he **attached copies of a lease agreement** - a Contract of Lease of a Building-executed by him and Oceanic represented by Ewayan through his attorney-in-fact. Petitioner likewise attached to the instant Petition copies of: 1) a January 23, 2012 letter of demand to pay and vacate sent to Ewayan, directing the latter's attention to previous demand letters sent to him and making a final demand to pay rentals in arrears; and 2) a written waiver and acknowledgmentexecuted by respondents and other Oceanic employees to the effect that petitioner should not be held liable as owner of the premises for the "problems" caused by Ewayan.

There is no connection between petitioner and Oceanic other than through the lease agreement executed by them; they are not partners in the operation of RAF Mansion Hotel. It just so happens that Oceanic decided to continue operating the hotel using the original name - "RAF Mansion Hotel".

The only claim respondents have in resorting to implead petitioner as a co-respondent in the labor case is the fact that he is the owner of the entire building called "RAF Mansion Hotel" which happens to be the very same name of the hotel which Ewayan and Oceanic continued to adopt, for reasons not evident in the pleadings.

It must be noted as well that when they originally filed the labor case, respondents did not include petitioner as respondent therein. It was only later on that they moved to amend their complaint impleading petitioner, such belated attempt to implead him must be seen as an afterthought.

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

The **contract of employment between respondents**, on the one hand, **and Oceanic and Ewayan** on the other, **is effective only between them**; it **does not extend to petitioner**, who is not a party thereto. His **only role is as lessor of the premises** which Oceanic leased to operate as a hotel; he

cannot be deemed as respondent's employer. Thus, to allow respondents to recover their monetary claims from petitioner would necessarily result in their unjust enrichment.

"In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around."In short, **substantive law outweighs procedural technicalities** as in this case.

Indeed, **where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the [r]ules, we will not hesitate to relax the same in the interest of substantial justice.** It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, **if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.**

Taking this to mind, **the labor tribunals and the CA should have considered petitioner's repeated pleas to scrutinize the facts** and particularly the lease agreement executed by him and Oceanic, which would naturally exculpate him from liability as this would prove the absence of an employment relation between him and respondents. Instead, the case was determined on pure technicality which in labor disputes, is not necessarily sanctioned - given that **proceedings before the Labor Arbiter and the NLRC are non-litigious in nature where they are encouraged to avail of all reasonable means to ascertain the facts of the case without regard to technicalities of law or procedure**.**Petitioner's motion to dismiss, though belated, should have been given due attention.**

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II. PRE-EMPLOYMENT

A. Recruitment and placement of local and migrant workers (Labor Code and RA 8042, as amended by RA 10022

1. Illegal recruitment and other prohibited activities

a. Elements

b. Types of illegal recruitment

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* MOISES DEJOLDE, JR. Y SALINO, *Accused-Appellant*.
G.R. No. 219238, FIRST DIVISION, January 31, 2018, DEL CASTILLO, *J.*

After a careful review of the records of this case, the Court finds that the prosecution, ***through its witnesses****, was able to* ***prove that appellant recruited private complainants*** *for employment as caregivers in the United Kingdom and that he collected money from them in the process.*

Appellant's defense of ***mere denial could not prevail over the positive testimonies of the prosecution's witnesses*** *as* ***the Court often views with disfavor the defense of denial****, especially* ***if it is not substantiated by any clear and convincing evidence****.It is an* ***inherently weak defense*** *as it is a self-serving negative evidence* ***that cannot be given more evidentiary weight*** *than the affirmative declarations of credible witnesses.*

FACTS:

Appellant Moises Dejolde, Jr. *y* Salino was charged with **Illegal Recruitment Committed in Large Scale** and 2 counts of **Estafa**. During trial, the prosecution presented the testimonies of private complainants Loman, Doculan, and Marcos. They testified that the appellant **recruited** them to work as caregivers in the United Kingdom; that he **charged** them P450,000 each for the processing of their visas and cost of plane fares; that Naty paid appellant the amount of P400,000 while Jessie gave the amount of P450,000; that they later discovered that the visas were fake and that **appellant was not authorized** by the Philippine Overseas Employment Administration (POEA); that they demanded the return of their monies; and that appellant returned only the amounts of P50,000 to Naty and P10,000 to Jessie.

Appellant denied that he recruited private complainants to work as caregivers in the United Kingdom. He testified that he was engaged in the business of processing student visa applications for those who want to study in the United Kingdom; that the sums of money he received from private complainants were for the payment of school tuition fees and the processing of the student visas; and that he was not able to process their applications or refund their money because he was arrested.

The RTC found the appellant guilty. The CA affirmed the decision with modifications. The CA increased to P1,000,000 the fine imposed in the case of illegal recruitment in large scale pursuant to Section 7 of RA 8042 and *People v. Chua,*as well modified the indeterminate sentence imposed in the estafa cases.

ISSUE:

Whether or not the appellant is liable for Illegal Recruitment Committed in Large Scale and Estafa. (YES)

RULING:

After a careful review of the records of this case, the Court finds that the prosecution, **through its witnesses**, was able to **prove that appellant recruited private complainants** for employment as caregivers in the United Kingdom and that he collected money from them in the process.

Appellant's defense of **mere denial could not prevail over the positive testimonies of the prosecution's witnesses** as **the Court often views with disfavor the defense of denial**, especially **if it is not substantiated by any clear and convincing evidence**.It is an **inherently weak defense** as it is a self-serving negative evidence **that cannot be given more evidentiary weight** than the affirmative declarations of credible witnesses.

Moreover, it is a settled rule that **factual findings of the trial courts are accorded great respect** because they are in the **best position to assess the credibility of the witnesses** having had the opportunity to observe their demeanor during the trial.Thus, the Court finds no reason to disturb the factual finding of the RTC, which was affirmed by the CA, that appellant was guilty beyond reasonable doubt of the crimes charged.

c. Illegal recruitment vs. estafa

2. Liability of local recruitment agency and foreign employer **PRINCESS TALENT CENTER PRODUCTION, INC., AND/OR LUCHI SINGH MOLDES, *Petitioners*, -versus- DESIREE T. MASAGCA, *Respondent*.**
G.R. No. 191310, FIRST DIVISION, April 11, 2018, LEONARDO-DE CASTRO, *J*.

Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. Unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.

To reiterate, respondent could only be dismissed for just and authorized cause, and after affording her notice and hearing prior to her termination. SAENCO had no valid cause to terminate respondent's employment. Neither did SAENCO serve two written notices upon respondent informing her of her alleged club policy violations and of her dismissal from employment, nor afforded her a hearing to defend herself. The lack of valid cause, together with the failure of SAENCO to comply with the twin-notice and hearing requirements, underscored the illegality surrounding respondent's dismissal.

FACTS:

Sometime in November 2002, respondent auditioned for a singing contest at ABC-Channel 5 in Novaliches, Quezon City. Respondent went to the office of petitioner PTCPI, a domestic corporation engaged in the business of training and development of actors, singers, dancers, and musicians in the movie and entertainment industry. At the office, respondent met petitioner Moldes, President of petitioner PTCPI, who persuaded respondent to apply for a job as a singer/entertainer in South Korea.

A Model Employment Contract for Filipino Overseas Performing Artists (OPAS) To Korea (Employment Contract) was executed on February 3, 2003 between respondent and petitioner PTCPI as the Philippine agent of SAENCO, the Korean principal/promoter.

Respondent left for South Korea on September 6, 2003 and worked there as a singer for nine months, until her repatriation to the Philippines sometime in June 2004. Believing that the termination of her contract was unlawful and premature, respondent filed a complaint against petitioners and SAENCO with the NLRC.

Respondent alleged that she was made to sign two Employment Contracts but she was not given the chance to read any of them despite her requests. Respondent had to rely on petitioner Moldes' representations that: (a) her visa was valid for one year with an option to renew; (b) SAENCO would be her employer; (c) she would be singing in a group with four other Filipinas at Seaman's Seven Pub at 82-8 Okkyo-Dong, Jung-Gu, Ulsan, South Korea; (d) her Employment Contract had a minimum term of one year, which was extendible for two years; and (e) she would be paid a monthly salary of US$400.00, less US$100.00 as monthly commission of petitioners. Petitioner Moldes also made respondent sign several spurious loan documents by threatening the latter that she would not be deployed if she refused to do so.

For nine months, respondent worked at Seaman's Seven Pub in Ulsan, South Korea without receiving any salary from SAENCO. Respondent subsisted on the 20% commission that she received for every lady's drink the customers purchased for her.

On June 24, 2004, Park Sun Na (Park), President of SAENCO,[9] went to the club where respondent worked, dragged respondent outside, and brought respondent to his office in Seoul where he tried to intimidate respondent into apologizing to petitioner Moldes with regard to respondent's refusal to pay the loan she allegedly obtained from the petitioner. However, respondent did not relent. Subsequently, Park turned respondent over to the South Korean immigration authorities for deportation on the ground of overstaying in South Korea with an expired visa. It was only at that moment when respondent found out that petitioner Moldes did not renew her visa.

Respondent filed the complaint against petitioners and SAENCO praying that a decision be rendered declaring them guilty of illegal dismissal and ordering them to pay her unpaid salaries for one year, inclusive of her salaries for the unexpired portion of her Employment Contract, backwages, moral and exemplary damages, and attorney's fees.

The Petitioner on the other hand averred that it dismissed the Respondent on the basis of alleged violations of club policies including her provocative and immoral conduct.

The Labor Arbiter dismissed Respondent's complaint. Respondent appealed the Labor Arbiter's Decision before the NLRC. The NLRC initially ruled in respondent's favor but later on reversed itself and found that the Respondent failed to prove her allegations.Respondent sought remedy from the Court of Appeals by filing a Petition for *Certiorari*, alleging that the NLRC acted with grave abuse of discretion amounting to excess or lack of jurisdiction in reinstating the Labor Arbiter's Decision.

The appellate court then held that respondent was dismissed from employment without just cause and without procedural due process, and that petitioners and SAENCO were solidarily liable to pay respondent her unpaid salaries for one year and attorney's fees.

ISSUE:

1. Whether Respondent was illegally dismissed. (YES)
2. Whether Petitioner is liable for the money claims of respondent. (YES)

RULING:

1.

Per the plain language of respondent's Employment Contract with SAENCO, her employment would be enforced for the period of six months commencing on the date respondent departed from the Philippines, and extendible by another six months by mutual agreement of the parties. Since respondent left for South Korea on September 6, 2003, the original six-month period of her Employment Contract ended on March 5, 2004.

Although respondent's employment with SAENCO was good for six months only (i.e., September 6, 2003 to March 5, 2004) as stated in the Employment Contract, the Court is convinced that it was extended under the same terms and conditions for another six months (i.e., March 6, 2004 to September 5, 2004). Respondent and petitioners submitted evidence establishing that respondent continued to work for SAENCO in Ulsan, South Korea even after the original six-month period under respondent's Employment Contract expired on March 5, 2004. Ideally, the extension of respondent's employment should have also been reduced into writing and submitted/reported to the appropriate Philippine labor authorities. Nonetheless, even in the absence of a written contract evidencing the six-month extension of respondent's employment, the same is practically admitted by petitioners, subject only to the defense that there is no proof of their knowledge of or participation in said extension and so they cannot be held liable for the events that transpired between respondent and SAENCO during the extension period. Petitioners presented nine vouchers to prove that respondent received her salaries from SAENCO for nine months. Petitioners also did not deny that petitioner Moldes, President of petitioner PTCPI, went to confront respondent about the latter's outstanding loan at the Seaman's Seven Club in Ulsan, South Korea in June 2004, thus, revealing that petitioners were aware that respondent was still working for SAENCO up to that time.

Hence, respondent had been working for SAENCO in Ulsan, South Korea, pursuant to her Employment Contract, extended for another six-month period or until September 5, 2004, when she was dismissed and repatriated to the Philippines by SAENCO in June 2004.

Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. Unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.

As previously discussed herein, SAENCO extended respondent's Employment Contract for another six months even after the latter's work visa already expired. Even though it is true that respondent could not legitimately continue to work in South Korea without a work visa, petitioners cannot invoke said reason alone to justify the premature termination of respondent's extended employment. Neither petitioners nor SAENCO can feign ignorance of the expiration of respondent's work visa at the same time as her original six-month employment period as they were the ones who facilitated

and processed the requirements for respondent's employment in South Korea. Petitioners and SAENCO should also have been responsible for securing respondent's work visa for the extended period of her employment. Petitioners and SAENCO should not be allowed to escape liability for a wrong they themselves participated in or were responsible for.

To reiterate, respondent could only be dismissed for just and authorized cause, and after affording her notice and hearing prior to her termination. SAENCO had no valid cause to terminate respondent's employment. Neither did SAENCO serve two written notices upon respondent informing her of her alleged club policy violations and of her dismissal from employment, nor afforded her a hearing to defend herself. The lack of valid cause, together with the failure of SAENCO to comply with the twin-notice and hearing requirements, underscored the illegality surrounding respondent's dismissal.

2.

The law is plain and clear, the joint and several liability of the principal/employer, recruitment/placement agency, and the corporate officers of the latter, for the money claims and damages of an overseas Filipino worker is absolute and without qualification. It is intended to give utmost protection to the overseas Filipino worker, who may not have the resources to pursue her money claims and damages against the foreign principal/employer in another country. The overseas Filipino worker is given the right to seek recourse against the only link in the country to the foreign principal/employer, i.e., the recruitment/placement agency and its corporate officers. As a result, the liability of SAENCO, as principal/employer, and petitioner PTCPI, as recruitment/placement agency, for the monetary awards in favor of respondent, an illegally dismissed employee, is joint and several. In turn, since petitioner PTCPI is a juridical entity, petitioner Moldes, as its corporate officer, is herself jointly and solidarily liable with petitioner PTCPI for respondent's monetary awards, regardless of whether she acted with malice or bad faith in dealing with respondent.

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ARIEL P. HORLADOR, *Petitioner*, -versus - PHILIPPINE TRANSMARINE CARRIERS, INC., MARINE* SHIPMANAGEMENT LTD., AND CAPTAIN MARLON L. MALANAO, *Respondents*.
G.R. No. 236576, SECOND DIVISION, September 05, 2018, PERLAS-BERNABE, J.

There are two (2) commonly accepted concepts of attorney's fees - the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.

In labor cases involving employees' wages and other benefits, the Court has consistently held that when the concerned employee is entitled to the wages/benefits prayed for, he/she is also entitled to attorney's fees amounting to ten percent (10%) of the total monetary award due him/her.

In this case, suffice it to say that the CA erred in deleting the award of attorney's fees, considering that petitioner was found to be entitled to permanent and total disability benefits and was forced to litigate to protect his valid claim. Thus, the reinstatement of such award is in order.

FACTS:

On April 18, 2012, respondent Philippine Transmarine Carriers, Inc. (PTCI), for and on behalf of its foreign principal, respondent Marine Shipmanagement Ltd. (Marine), hired petitioner as a Chief Cook on board the vessel PRAIA for a period of eight (8) months starting from his deployment on June 19, 2012. On January 3, 2013 and while on board the vessel, petitioner, while carrying provisions, suddenly felt a severe pain on his waist, abdomen, and down to his left scrotum. As the pain persisted for a number of days, he was airlifted to a hospital in Belgium where he was diagnosed with "infection

with the need to rule out Epididymitis and Prostatitis" and advised to undergo repatriation. Upon arrival in the Philippines, petitioner claimed that he immediately reported to PTCI and asked for referral for further treatment, but was ignored. As such, he used his health card in order to seek treatment at the Molino Doctors Hospital where he was diagnosed with hernia. Thereafter, petitioner consulted two (2) other physicians who similarly concluded that the nature and extent of his illness permanently and totally prohibited him from further working as a seaman due to his "Chronic prostatitis." Thus, he filed a complaint for, *inter alia*, permanent and total disability benefits against PTCI, Marine, and respondent Captain Marlon L. Malanao as the crewing manager (respondents).

In a Decision dated September 27, 2013, the Labor Arbiter (LA) dismissed petitioner's complaint for lack of merit.

In a Decision dated February 28, 2014, the NLRC reversed and set aside the LA's ruling, and accordingly, ordered respondents to pay petitioner permanent and total disability benefits in the amount of US$60,000.00 or its peso equivalent and ten percent (10%) thereof as attorney's fees.

In a Decision22 dated February 3, 2017, the CA affirmed the NLRC ruling, with modification deleting the award of attorney's fees. The CA found it appropriate to delete the award of attorney's fees for the NLRC's failure to present the factual bases therefor.

ISSUE:

Whether or not the CA correctly deleted the award of attorney's fees in petitioner's favor. (NO)

RULING:

The petition is meritorious.

There are two (2) commonly accepted concepts of attorney's fees - the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation. Particularly, Article 2208 of the Civil Code reads:

> Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
>
> **(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;**
>
> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

In labor cases involving employees' wages and other benefits, the Court has consistently held that when the concerned employee is entitled to the wages/benefits prayed for, he/she is also entitled to attorney's fees amounting to ten percent (10%) of the total monetary award due him/her.

In this case, suffice it to say that the CA erred in deleting the award of attorney's fees, considering that petitioner was found to be entitled to permanent and total disability benefits and was forced to litigate to protect his valid claim. Thus, the reinstatement of such award is in order.

2. Prohibitions regarding wages

3. Wage distortion; concept

PHILIPPINE GEOTHERMAL, INC. EMPLOYEES UNION (PGIEU), *Petitioner,* -versus- CHEVRON GEOTHERMAL PHILS. HOLDINGS, INC., *Respondent*.
G.R. No. 207252, SECOND DIVISION, January 24, 2018, REYES, JR., *J.*

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 apparent increase in Lanao and Cordovales' salaries as compared to the other company workers who also have the same salary/pay grade with them should not be interpreted to mean that they were given a premature increase for November 1, 2008, thus resulting to a wage distortion. The alleged increase in their salaries was not a result of the erroneous application of Article VII and Annex D of the

CBA, rather, it was because when they were hired by respondent in 2009, when the hiring rates were relatively higher as compared to those of the previous years. Verily, the setting and implementation of such various engagement rates were purely an exercise of the respondent's business prerogative in order to attract or lure the best possible applicants in the market and which We will not interfere with, absent any showing that it was exercised in bad faith.

FACTS:

Petitioner is a legitimate labor organization and the certified bargaining agent of the rank-and-file employees of Chevron Geothermal Phils. Holdings, Inc. (respondent).

On July 31, 2008, the petitioner and respondent formally executed a Collective Bargaining Agreement (CBA) which was made effective for the period from November 1, 2007 until October 31, 2012. Under Article VII, Section 1 thereof, there is a stipulation governing salary increases of the respondent's rank-and-file employees.

On October 6, 2009, a letter dated September 20, 2009 was sent by the petitioner's President to respondent expressing, on behalf of its members, the concern that the aforesaid CBA provision and implementing rules were not being implemented properly pursuant to the guidelines and that, if not addressed, might result to a salary distortion among union members.

On even date, respondent responded by letter denying any occurrence of salary distortion among union members and reiterating its remuneration philosophy of having "similar values for similar jobs", which means that employees in similarly-valued jobs would have similar salary rates. It explained that to attain such objective, it made annual reviews and necessary adjustments of the employees' salaries and hiring rates based on the computed values for each job.

Finding the explanation not satisfactory, petitioner, with respondent's approval, referred the subject dispute to the Voluntary Arbitration of the National Conciliation and Mediation Board (NCMB). It averred that respondent breached their CBA provision on worker's wage increase because it granted salary increase even to probationary employees in contravention of the express mandate of that particular CBA article and implementing guidelines that salary increases were to be given only to regular employees.

To cite an example, petitioner alleged that respondent granted salary increases of One Thousand Five Hundred Pesos (P1,500.00) each to then probationary employees Sherwin Lanao (Lanao) and Jonel Cordovales (Cordovales) at a time when they have not yet attained regular status. They (Lanao and Cordovales) were regularized only on January 1, 2010 and April 16, 2010, respectively, yet they were given salary increase for November 1, 2008. As a consequence of their accelerated increases, wages of said probationary workers equated the wage rates of the regular employees, thereby obliterating the wage rates distinction based on merit, skills and length of service. Therefore, the petitioner insisted that its members' salaries must necessarily be increased so as to maintain the higher strata of their salaries from those of the probationary employees who were given the said premature salary increases.

On the other hand, respondent maintained that it did not commit any violation of that CBA provision and its implementing guidelines; in fact, it complied therewith. It reasoned that the questioned increases given to Lanao and Cordovales' salaries were granted, not during their probationary

employment, but after they were already regularized. It further asseverated that there was actually no salary distortion in this case since the disparity or difference of salaries between Lanao and Cordovales with that of the other company employees were merely a result of their being hired on different dates, regularization at different occasions, and differences in their hiring rates at the time of their employment.

After due proceedings, the Voluntary Arbitrator rendered a Decision dated August 16, 2010 in favor of respondent, ruling that petitioner failed to duly substantiate its allegations that the former prematurely gave salary increases to its probationary employees and that there was a resultant distortion in the salary scale of its regular employees.

Thereafter, a Petition for Review under Rule 65 was filed with the CA on September 22, 2010. On November 5, 2012, the CA rendered its Decision. It dismissed the petition for review and sustained the Voluntary Arbitrator's decision. On November 28, 2012, petitioner filed its Motion for Reconsideration. This was, however, denied by the CA in its Resolution dated May 17, 2013. Hence, this petition.

ISSUE:

Whether or not the grant of wage increase to Lanao and Cordovales is a valid exercise of management prerogative by respondent. (YES)

RULING:

There is no wage distortion in this case. Upon the enactment of Republic Act (R.A.) No. 6727 (Wage Rationalization Act, amending among others, Article 124 of the Labor Code) on June 9, 1989, the term "*Wage Distortion" was explicitly defined as "a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rate between and among employee groups 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.*"[23]

Contrary to petitioner's claim of alleged "wage distortion", Article 124 of the Labor Code of the Philippines only cover wage adjustments and increases due to a prescribed law or wage order, *viz*.:

> **Article 124.** *Standards/Criteria for Minimum Wage Fixing*.
> x x x x
> Where the application of any **prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board** results in distortions of the wage structure within an establishment, the employer and union shall negotiate to correct the distortions. Any dispute arising from the wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration.

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 apparent increase in Lanao and Cordovales' salaries as compared to the other company workers who also have the same salary/pay grade with them should not be interpreted to mean that they were given a premature increase for November 1, 2008, thus resulting to a wage distortion. The alleged increase in their salaries was not a result of the erroneous application of Article VII and Annex D of the CBA, rather, it was because when they were hired by respondent in 2009, when the hiring rates were relatively higher as compared to those of the previous years. Verily, the setting and implementation of such various engagement rates were purely an exercise of the respondent's business prerogative in order to attract or lure the best possible applicants in the market and which We will not interfere with, absent any showing that it was exercised in bad faith.

Management prerogative gives an employer freedom to regulate according to their discretion and best judgment, all aspects of employment including work assignment, working methods, the processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.This right is tempered only by these limitations: that it must be exercised in good faith and with due regard to the rights of the employees.

Petitioner claims that the wages of other employees should also be increased in order to maintain the difference between their salaries and those of employees granted a "premature" wage increase. Such a situation may be remedied if it falls under the concept of a wage distortion as defined by Article 124 of the Labor Code of the Philippines. However, as already discussed, there is no wage distortion in the case at bench. Not all increases in salary which obliterate the salary differences of certain employees should be perceived as wage distortion.

4. Non-diminution of benefits

C. Leaves

1. Service incentive leave

2. Maternity leave

3. Paternity leave

4. Solo parent leave

5. Leave benefits for women workers under RA 9710 and RA 9262

D. Special groups of employees

1. Women

a. Discrimination

b. Stipulation against marriage

c. Prohibited acts

d. Sexual harassment (RA 7877)

2. Minors (RA 7610, as amended by RA 9231)

3. Kasambahay (RA 10361)

4. Homeworkers

5. Night workers

6. Apprentices and learners

7. Persons with Disabilities

a. Discrimination

b. Incentives for employers

IV. SOCIAL WELFARE LEGISLATION

PHILIPPINE HEALTH INSURANCE CORPORATION, *Petitioner*, - versus - COMMISSION ON AUDIT, CHAIRPERSON MICHAEL G. AGUINALDO, DIRECTOR JOSEPH B. ANACAY AND SUPERVISING AUDITOR ELENA L. AGUSTIN, *Respondents.*
G.R. No. 222710, EN BANC, July 24, 2018, TIJAM, *J.*

Based on the provisions of RA No. 7305 and the IRR, it readily shows that to be included within the coverage, an employee must be principally tasked to render health or health-related services. ***Otherwise stated, an employee performing functions not primarily connected with the delivery of health services to the public is not a public health worker within the contemplation of the law****.*

Here, PhilHealth's mandate is the administrator of the National Health Insurance Program through which, covered employees may ensure affordable, acceptable, accessible health care services for all citizens of the Philippines. PhilHealth is prohibited from providing health care directly, from buying and dispensing drugs and pharmaceuticals, from employing physicians and other professionals for the purpose of ***directly rendering care****, and from owning or investing in health care facilities.*

Clearly, the functions of the PhilHealth personnel are not principally related to health services. These functions are not similar to those of persons rendering health or health-related services, or those employees working in health-related establishments. Undoubtedly, the PhilHealth personnel cannot be considered public health workers under RA No. 7305*.*

Thus, We maintain that PhilHealth personnel were not engaged in the delivery of health or health-related services, and therefore, not public health workers. *Accordingly, PhilHealth personnel are not entitled to the longevity pay under R.A. 7305.*

FACTS:

R.A. No. 7305, otherwise known as *The Magna Carta of Public Health Workers* was signed into law in order to promote and improve the social and economic well-being of the health workers, their living and working conditions and terms of employment; develop their skills and capabilities in order that they will be more responsive and better equipped to deliver health projects and programs; and, encourage those with proper qualifications and excellent abilities to join and remain in government

service. Accordingly, public health workers (PHWs) were granted allowances and benefits, among others, the longevity pay, which states:

> Section 23. ***Longevity Pay.*** - A monthly longevity pay equivalent **to five percent (5%)** of the monthly basic pay shall be paid to a health worker **for every five (5) years of continuous, efficient and meritorious services** rendered as certified by the chief of office concerned, commencing with the service after the approval of this Act.

Pursuant to RA No. 7305, which mandates the payment of longevity pay to public health workers, former Department of Health (DOH) Secretary Alberto G. Romualdez, Jr. issued a Certification declaring PhilHealth officers and employees as public health workers.

For another, the Office of the Government Corporate Counsel (OGCC) in its Opinion 064, Series of 2001, stated that the term health-related work under Section 3 of RA No. 7305, includes not only the direct delivery or provision of health services but also the aspect of financing and regulation of health services. Thus, in its opinion, the PhilHealth officers and employees were deemed engaged in health-related works for purposes of entitlement to the longevity pay.

Former PhilHealth President and CEO Dr. Rey B. Aquino issued Office Order No. 0053, S-2011, prescribing the guidelines on the grant of longevity pay, incorporating it in the basic salary of qualified PhilHealth employees for the year 2011 and every year thereafter.

The PhilHealth Board passed and approved Resolution No. 1584, S. 2012, which confirmed the grant of longevity pay to its officers and employees for the period of January to September 2011 in the amount of PhP5,575,294.70.However, on post-audit of the Personal Services account for Calendar Year 2011, COA Supervising Auditor Ms. Elena C. Agustin, issued Audit Observation Memorandum 2012-09 (11), which found lack of legal basis for the grant of longevity pay, thus recommended the discontinuance of the grant thereof.

Philhealth received the ND No. H.O. 12-005 (11), and after 179 days from receipt thereof, it filed its appeal memorandum before the COA Corporate Government Sector.

The COA Corporate Government Sector upheld the ND No. H.O. 12-005 (11). The COA ruled that PhilHealth personnel were not public health workers but merely engaged in paying and utilization of health services by its covered beneficiaries.

ISSUE:

Whether PhilHealth personnel are public health workers. (NO)

RULING:

In the case of *Kapisanan Ng Mga Manggagawa Sa Government Service Insurance System (KMG) v. Commission on Audit, Guillermo N. Carague, et al.*, the Court held that:

> Under Section 3 of R.A. No. 7305, the term "health workers" means all persons who are engaged in health and health related work, and all persons employed in all hospitals, sanitaria, health infirmaries, health centers, rural health units, barangay health stations,

clinics and other health-related establishments owned and operated by the Government or its political subdivisions with original charters and shall include medical, allied health professionals, administrative and support personnel employed regardless of their employment status.

In this regard, the Implementing Rules defines a "health-related establishment" as a health service facility or unit which performs health service delivery functions within an agency whose legal mandate is not primarily the delivery of health services. Health-related establishments include clinics and medical departments of government corporations, medical corps and hospitals of the Armed Forces of the Philippines (AFP), and the specific health service section, division or bureau of a government agency not primarily engaged in health services.

Based on the provisions of RA No. 7305 and the IRR, it readily shows that to be included within the coverage, an employee must be principally tasked to render health or health-related services, such as in hospitals, sanitaria, health infirmaries, health centers, clinical laboratories and facilities and other similar activities which involved health services to the public; medical professionals, allied health professionals, administrative and support personnel in the aforementioned agencies or offices; employees of the health-related establishments, that is, facilities or units engaged in the delivery of health services, although the agencies to which such facilities or units are attached are not primarily involved in health or health-related services. **Otherwise stated, an employee performing functions not primarily connected with the delivery of health services to the public is not a public health worker within the contemplation of the law.**

Here, PhilHealth's mandate is the administrator of the National Health Insurance Program through which, covered employees may ensure affordable, acceptable, accessible health care services for all citizens of the Philippines.PhilHealth is prohibited from providing health care directly, from buying and dispensing drugs and pharmaceuticals, from employing physicians and other professionals for the purpose of **directly rendering care**, and from owning or investing in health care facilities.

Clearly, the functions of the PhilHealth personnel are not principally related to health services. PhilHealth personnel perform functions which pertain to the effective administration of the National Health Insurance Program or facilitating the availability of funds of health services to its covered employees, and, among others involve the determination of requirements and issue guidelines in relation to insurance program; inspection of health care institutions; inspection of medical, financial, and other records relevant to the claims, accreditation, premium contribution of employees covered by the program; and, to keep records of the operations of the Corporation and investments of the National Health Insurance Fund. **These functions are not similar to those of persons rendering health or health-related services, or those employees working in health-related establishments. Undoubtedly, the PhilHealth personnel cannot be considered public health workers under RA No. 7305.**

It is Our firm view that PhilHealth functions are not commensurate to the services rendered by those workers who actually and directly provide health care services. PhilHealth's objective as the National Health Insurance Program provider, is to help the people **pay** for health care services; unlike workers or employees of the government and private hospitals, clinics, health centers and units, medical service institutions, clinical laboratories, treatment and rehabilitation centers, health-related establishments of government corporations, and the specific health service section, division, bureau or unit of a government agency, who are actually engaged in health work services.

It will also be absurd if the same benefits and treatment will be given to the PhilHealth personnel and to those employees who actually rendered health services. Health workers or employees are not similarly situated with the PhilHealth employees. Health workers have sets of skills, training, medical background, work quality and ethical considerations to patients, and risks in transmission, occupational and hazard exposures, diseases etc., in the performance of their functions, while in PhilHealth, as National Health Insurance Program provider, its policy is only to help the people subsidize; or **pay**, or finance for the health care services.

Thus, We maintain that PhilHealth personnel were not engaged in the delivery of health or health-related services, and therefore, not public health workers. Applying the principle of *ejusdem generis*, the inescapable conclusion is that a mere incidental or slight connection between the employee's work and the delivery of health or health-related services is not sufficient to make a government employee a public health worker within the meaning of R.A. 7305. The employee must be principally engaged in the delivery of health or health-related services to be deemed a public health worker. Accordingly, PhilHealth personnel are not entitled to the longevity pay under R.A. 7305.

A. SSS Law (RA 8282)

1. Coverage and exclusions

H. VILLARICA PAWNSHOP, INC., HL VILLARICA PAWNSHOP, INC., HRV VILLARICA PAWNSHOP, INC. and VILLARICA PAWNSHOP, INC, *Petitioner*, -versus- SOCIAL SECURITY COMMISSION, SOCIAL SECURITY SYSTEM, AMADOR M. MONTEIRO, SANTIAGO DIONISIO R. AGDEPPA, MA. LUZ N. BARROS-MAGSINO, MILAGROS N. CASUGA and JOCELYN Q. GARCIA, *Respondents*.
G.R. No. 228087, THIRD DIVISION, January 24, 2018, GESMUNDO, *J.*

Evidently, there is nothing in RA 9903, particularly Section 4 thereof, that benefits an employer who has settled their delinquent contributions and/or their accrued penalties prior to the effectivity of the law. Once an employer pays all his delinquent contributions and accrued penalties before the effectivity of the law, it cannot avail of the condonation program because there is no existing obligation anymore. It is the clear intent of the law to limit the benefit of the condonation program to the delinquent employers.

FACTS:

Petitioners are private corporations engaged in the pawnshop business and are compulsorily registered with the Social Security Systemunder RA 8282, otherwise known as the Social Security Law of 1997.

In 2009, petitioners paid their delinquent contributions and accrued penalties with the different branches of the SSS. In 2010, Congress enacted RA 9903, otherwise known as the Social Security Condonation Law of 2009, which took effect on February 1, 2010. The said law offered delinquent employers the opportunity to settle, without penalty, their accountabilities or overdue contributions within six months from the date of its effectivity.

Consequently, petitioners sent letters to the different branches of the SSS seeking reimbursement of the accrued penalties, which they have paid in 2009. Invoking Section 4 of RA 9903 and Section 2 (f) of the Implementing Rules and Regulations of RA 9903, petitioners claimed that the benefits of the

condonation program extend to all employers who have settled their arrears or unpaid contributions even prior to the effectivity of the law.

The SSS denied petitioners request for refund stating that there was no provision RA 9903 allowing reimbursement of penalties paid before its effectivity. As a result, petitioners filed their respective petitions before the SSC claiming that they were entitled to avail of the benefits under RA 9903 by reason of equity because "one of the purposes of the law is to favor employers, regardless of the reason for the non-payment of the arrears in contribution;" and that the interpretation of the SSS "is manifestly contrary to the principle that, in enacting a statute, the legislature intended right and justice to prevail."

In its Resolution, the SSC denied all the petitions for lack of merit. The CA affirmed the ruling of the SSC declaring that the intent of the legislature in enacting RA 9903 was the remission of the three percent (3%) per month penalty imposed upon delinquent contributions of employers as a necessary consequence of the late payment or non-remittance of SSS contributions.

ISSUE:

Whether Section 4 of RA 9903 extends the benefit of the waiver to employers who have settled their arrears before the effectivity of the law to allow the refund of the corresponding penalties paid. (NO)

RULING:

Under RA 9903 and its IRR, an employer who is delinquent or has not remitted all contributions due and payable to the SSS may avail of the condonation program provided that the delinquent employer will remit the full amount of the unpaid contributions or would submit a proposal to pay the delinquent contributions in installment within the six month period set by law. Once an employer pays all its delinquent contributions within the six month period, the accrued penalties due thereon shall be deemed waived. In the last *proviso* of Section 4 of the law, those employers who have settled their delinquent contributions before the effectivity of the law but still have existing accrued penalties shall also benefit from the condonation program. In that situation, there is still something to condone because there are existing accrued penalties at the time of the effectivity of the law. Accordingly, RA 9903 covers those employers who (1) have existing delinquent contributions and/or (2) have accrued penalties at the time of its effectivity.

Evidently, there is nothing in RA 9903, particularly Section 4 thereof, that benefits an employer who has settled their delinquent contributions and/or their accrued penalties prior to the effectivity of the law. Once an employer pays all his delinquent contributions and accrued penalties before the effectivity of the law, it cannot avail of the condonation program because there is no existing obligation anymore. It is the clear intent of the law to limit the benefit of the condonation program to the delinquent employers.

Also, the provisions of RA 9903 and its IRR state that employers may be accorded the benefit of having their accrued penalties waived provided that they *either* remit their delinquent contributions *or* submit a proposal to pay their delinquencies in installments (on the condition that there will be no default in subsequent payments) *within* the "availment period" spanning six months from the law's effectivity.

The Court finds that employers who have paid their unremitted contributions and already settled their delinquent contributions as well as their corresponding penalties *before* RA 9903's effectivity do not have a right to be refunded of the penalties already paid.

Interpretation in favor of social justice

Social justice in the case of the laborers means compassionate justice or an implementation of the policy that those who have less in life should have more in law. And since it is the State's policy to "promote social justice and provide meaningful protection to SSS members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden," Court should adopt a rule of statutory interpretation which ensures the financial viability of the SSS. Here, the State stands to lose its resources in the form of receivables whenever it condones or forgoes the collection of its receivables or unpaid penalties. Since a loss of funds ultimately results in the Government being deprived of its means to pursue its objectives, all monetary claims based on condonation should be construed strictly against the applicants.

Delinquent contributions and penalties may be paid separately

There is no existing statutory or regulatory provision which requires the simultaneous or joint payment of corresponding penalties along with the payment of delinquent contributions. Consequently, it is possible that a class of employers who have settled their delinquent contributions but have not paid the corresponding penalties before the effectivity of RA 9903, may exist. As adequately pointed out by the SSC: It is worthy to note that there is no provision in RA 8282, as amended, nor in any SSS Circular or Office Order that requires employers to settle their arrears in contributions simultaneously with payment of the penalty. On the contrary, in its sincere effort to be a partner in nation building, along with the State's declared policy to establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the Philippines, the SSS is empowered to accept, process and approve applications for installment proposal evincing that employers are not required to settle their arrears in contributions simultaneously with the payment of the penalty.

2. Dependents and beneficiaries

3. Benefits

B. GSIS Law (RA 8291)

1. Coverage and exclusions

2. Dependents and beneficiaries

3. Benefits

C. Disability and death benefits

SOLPIA MARINE and SHIP MANAGEMENT, INC., ***Petitioner*****, -versus- MICHAEL V. POSTRANO**, ***Respondent.***

G.R. No. 232275, FIRST DIVISION, July 23, 2018, TIJAM, *J*.

Without the final assessment of the company-designated physician, Postrano is deemed suffering from temporary total disability. More so, the 120 day-period provided by law had not yet lapsed.

All told, without any final assessment from the company-designated physician, Postrano's claim for permanent total disability benefits must fail. Section 20(D) of the POEA-SEC instructs that no compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties.

Postrano was duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability grading. As held in Splash Philippines, Inc., et al. v. Ruizo*, "under the POEA-SEC, such a refusal negated the payment of disability benefits."*

FACTS:

Respondent Michael V. Postrano (Postrano) was engaged by petitioner Solpia Marine and Ship Management, Inc. (Solpia) as an able seaman aboard MV Daebo IBT, for and in behalf of its principal Daebo Ship Management Co., Ltd. on a 10-month contract signed by the parties and approved by the Philippine Overseas Employment Administration (POEA) on March 13, 2012. Postrano's work involved strenuous manual work.

On December 9, 2012, Postrano sustained a fracture on his right hand and an open wound on his left hand when he was pinned while arranging a ladder. Consequently, he was given medical attention in Indonesia and thereafter, in Korea. Although his condition was resolved, he was repatriated to the Philippines on January 1, 2013.

Upon his arrival, Postrano was referred to the YGEIA Medical Center, Inc. for x-ray. The results of the same disclosed that his right forearm suffered incomplete fracture on the middle third shaft of the right ulna. The company-designated physician then prescribed medication for pain management.Postrano was advised to undergo physical therapy. However, he opted, with permission, to continue the same in Compostela Valley as it is his place of residence. The permission secured was with the condition that Postrano must return to the company-designated physician for follow-up.

After completing 10 sessions of physical therapy in Tagum Doctors Hospital, Inc. on March 14, 2013, Postrano complied with the company-designated physician's order to come back for a follow-up. During such consultation, the latter advised him to continue with the physical therapy and to return thereafter. Despite said advice, Postrano instead merely continued with physical therapy and failed to return to the company-designated physician after completing another series of sessions.

In a letter Postrano asked Ms. Shirley E. Valbuena for the release of his remaining sickness allowance to enable him to continue his required treatment but to no avail. He once again demanded the same in another letter; still to no avail. Subsequently, he forwarded to Solpia the certification issued by the

Tagum Doctors Hospital, Inc. that he underwent physical therapy sessions, for which he demanded the reimbursement of medical and transportation expenses.

Postrano consulted an independent physician who pronounced that Postrano suffered a Grade 9 disability.Postrano filed a complaint for permanent total disability benefits against Solpia, Carlito C. Mendoza (Mendoza) and/or Daebo Ship Management Co., Ltd. He argued that the 120/240 day-period had lapsed without the company-designated physician's diagnosis of his condition. On this note, he reasoned financial constraints anent his failure to comply with the company-designated physician's instruction to return for a check-up.

The Labor Arbiter (LA) dismissed the complaint. When appealed to the NLRC, the latter affirmed the LA and maintained that Postrano prematurely consulted an independent physician as he was obligated to report to the company-designated physician after undertaking physical therapy sessions.On appeal, the CA reversed and set aside the NLRC ruling. The CA ruled that the failure of the company-designated physician to give a definitive impediment rating of respondent's disability is sufficient basis to declare that he suffered permanent and total disability.

ISSUE:

Whether respondent is entitled to the award of permanent and total disability benefits. (NO)

RULING:

We cannot give credence to Postrano's position that the company-designated physician's failure to give him a disability grading automatically amounts to a declaration that he is indeed suffering from a total permanent disability.

A careful examination of the records shows that it was important for Postrano to report to the company-designated physician after undergoing the physical therapy sessions because only then can the latter definitely assess his condition. The advice of undergoing additional physical therapy sessions was an *indicia* that Postrano's temporary total disability would be greatly addressed. Thus, the assessment of the company-designated physician would be dependent on the outcome of said sessions, as Postrano's condition was notably improving as a result of the treatment. When Postrano failed to report to the company-designated physician, there was no way for the latter to make a definitive findings.

Without the final assessment of the company-designated physician, Postrano is deemed suffering from temporary total disability. More so, the 120 day-period provided by law had not yet lapsed.

In a similar case, We overturned the findings that the complainant was suffering from permanent and total disability in the absence of a definitive assessment of the company-designated physician, which absence was attributed to the fault of the complainant who committed medical abandonment.

All told, without any final assessment from the company-designated physician, Postrano's claim for permanent total disability benefits must fail. Section 20(D) of the POEA-SEC instructs that no compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties.

Postrano was duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability grading. As held in *Splash Philippines, Inc., et al. v. Ruizo*, "under the POEA-SEC, such a refusal negated the payment of disability benefits."

MELCHOR BARCENAS DEOCARIZA, ***Petitioner***, **-versus- FLEET MANAGEMENT SERVICES PHILIPPINES, INC., MODERN ASIA SHIPPING CORPORATION, A.B.F. GAVIOLA, JR., and MA. CORAZON CRUZ**, ***Respondents***.

G.R. No. 229955, SECOND DIVISION, July 23, 2018, PERLAS-BERNABE, *J*.

When a seafarer suffers a work-related injury or illness in the course of employment, the latter's fitness or degree of disability shall be determined by the company-designated physician who is expected to arrive at a definite assessment within a period of 120 days from repatriation. If the 120 days initial period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, then the temporary total disability period ***may be extended up to a maximum of 240 days****, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. Should the company-designated physician fail in this respect and the seafarer's medical condition remain unresolved, the seafarer shall be* ***conclusively presumed totally and permanently disabled****.*

In this case, records reveal that from the time petitioner was repatriated on December 26, 2011, a total of 247 days had lapsed when he last consulted with the company-designated physician on August 29, 2012. Concededly, said period have already exceeded the maximum 240-day extension as explained by this Court in a long line of cases, without any definitive assessment of petitioner's disability. Hence, petitioner is conclusively presumed totally and permanently disabled.

FACTS:

Petitioner was initially hired in 2010 as Chief Officer by Fleet Management Services Philippines., Inc., for and in behalf of its principal, Modern Asia Shipping Corporation on board the vessel, M.V. Morning Carina. On June 15, 2011, he was re-hired by respondents for the same position under a six (6) month contract. His duties entailed, among others, the supervision in the loading and unloading of vehicles in the vessel. After undergoing the required pre-employment medical examination (PEME), where the company-designated physician declared him fit for sea duty, petitioner boarded the vessel on July 19, 2011.

In the course of his employment, petitioner complained of bruises on both thighs, rashes on his neck, delayed healing of abrasion wound on his left forearm, fever, sore throat, and loss of appetite. Thus, on December 18, 2011, he was brought to the Seacare Maritime Medical Center Pte., Ltd. in Singapore, where he was noted to have "decreased hemoglobin, total white cell count and platelet count on complete blood count" for which reason he was declared a "high-risk patient with mechanical heart valves."[16] Petitioner was thereafter confined at the Parkway East Hospital's Intensive Care Unit in Singapore. He was medically repatriated on December 26, 2011 and was, consequently, referred to a company-designated physician at the Metropolitan Medical Center (MMC) who diagnosed him to be suffering from "Aplastic Anemia."

In the Medical Report dated February 10, 2012, the company designated physician explained that the cause of Aplastic Anemia is usually "idiopathic (unknown case)," and that the specialist opined that

"exposure to benzene and its compound derivatives may predispose to development of such condition." Hence, the company-designated physician expressed that the work-relatedness of petitioner's illness would depend on his exposure to such factors.However, on September 10, 2012, the company-designated physician informed respondents that after petitioner was seen on August 29, 2012, the latter no longer appeared at his next scheduled follow-up session on September 3, 2012.

Meanwhile, claiming that his illness rendered him incapacitated to resume work as a seafarer for more than 240 days, petitioner filed a complaintdated April 16, 2013 against respondents for the payment of total and permanent disability benefits in accordance with the CBA before the NLRC.

The Labor Arbiter (LA) dismissed the complaint for failure of petitioner to establish that his illness was work-related. Aggrieved, petitioner appealed to the NLRC, and the latter agreed with the findings of the LA that petitioner was not able to discharge the burden of proving that his non-listed illness was work-related, and that the same occurred during the term of his employment.Hence, the matter was elevated to the CA via a Petition for *Certiorari*, however, the CA sustained the findings of the NLRC.

ISSUE:

Whether petitioner is entitled to permanent and total disability benefits. (YES)

RULING:

Section 20 (A) of the 2010 POEA-SEC provides that a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions therein satisfied."[71]

In this case, petitioner was medically repatriated and diagnosed by the company-designated physician to be suffering from "Aplastic Anemia." In denying petitioner's disability claims, respondents argued that his illness was not a listed disease under Section 32-A of the 2010 POEA-SEC, adding too that the former was not able to present substantial evidence to prove the work-relation of the illness.

Contrary to the claim of respondents, petitioner's illness is an occupational disease listed under Sub-Item Number 7 of Section 32-A of the 2010 POEA-SEC.

To be considered as work-related, Aplastic Anemia should be contracted under the condition that there should be exposure to x-rays, ionizing particles of radium or other radioactive substances or other forms of radiant energy. As pointed out by the company-designated physician, "exposure to benzene and its compound derivatives may predispose to development of such condition," and that work-relatedness will depend on exposure to any of the above-mentioned factors.

However, as borne out by the records, it was not disputed that petitioner, as Chief Officer of M.V. Morning Carina, actively supervised the loading and unloading operations of cars/motor vehicles in every voyage that constantly exposed him to an atmosphere of cargoes with nearly 6,000 cars in just

one voyage alone. Benzene, an important component of gasoline, is emitted from the engines of these cars in the course of their loading and unloading. Since studies show that Benzene is highly volatile, and exposure occurs mostly through inhalation, it cannot be denied that petitioner was constantly exposed to the hazards of benzene in the course of his employment. The use of safety gears in the performance of his duties, as advanced by respondents, did not foreclose the possibility of petitioner's exposure to such harmful chemical, given that he was in fact diagnosed with Aplastic Anemia brought about by chronic exposure to benzene. Under the foregoing circumstances, it is evident that petitioner's illness is clearly work-related in accordance with the POEA-SEC.

In fine, having sufficiently established by substantial evidence the reasonable link between the nature of petitioner's work as Chief Officer and the illness contracted during his last employment with no showing that he was notoriously negligent in the exercise of his functions, the latter's ailment, as well as the resulting disability, is a compensable work-related illness under Section 32-A of the 2010 POEA-SEC.

When a seafarer suffers a work-related injury or illness in the course of employment, the latter's fitness or degree of disability shall be determined by the company-designated physician who is expected to arrive at a definite assessment within a period of 120 days from repatriation. If the 120 days initial period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, then the temporary total disability period **may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. Should the company-designated physician fail in this respect and the seafarer's medical condition remain unresolved, the seafarer shall be **conclusively presumed totally and permanently disabled**.

In this case, records reveal that from the time petitioner was repatriated on December 26, 2011, a total of 247 days had lapsed when he last consulted with the company-designated physician on August 29, 2012. Concededly, said period have already exceeded the maximum 240-day extension as explained by this Court in a long line of cases, without any definitive assessment of petitioner's disability. Hence, petitioner is conclusively presumed totally and permanently disabled.

1. Labor Code

TEEKAY SHIPPING PHILIPPINES, INC., AND/OR TEEKAY SHIPPING LTD., AND/OR ALEX VERCHEZ, *Petitioners*, *v.* **ROBERTO M. RAMOGA, JR.**, *Respondent*.
G.R. No. 209582, FIRST DIVISION January 19, 2018, TIJAM, *J.*:

Under the interpretation in Vergara, both the 120-day period under Article 192 (2) of the Labor Code and the extended 240-day period under Rule X, Section 2 of its IRR are given full force and effect. This interpretation is also supported by the case of C.F. Sharp Crew Management, Inc. v. Taok, where the Court enumerated a seafarer's cause of action for total and permanent disability, to wit:

a. The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and

there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

b. *240 days had lapsed without any certification being issued by the company-designated physician;*

As it now stands, the mere lapse of 120 days from the seafarer's repatriation without the company-designated physician's declaration of the fitness to work of the seafarer does not entitle the latter to his permanent total disability benefits.

FACTS

On February 18, 2010, respondent entered into a contract of overseas employment with petitioner to work on board the vessel M/T "SEBAROK SPIRIT". After the mandatory pre-employment medical examination (PEME), respondent was declared fit for sea duty. He joined the vessel on April 9, 2010. Barely six (6) months after, he slipped and twisted his left ankle while climbing the stairs on board the said vessel. He underwent an x-ray examination and a surgery was recommended for open reduction and internal fixation of the injured ankle to prevent its further displacement. Respondent was repatriated to the Philippines. He underwent a rehabilitation program under the supervision of Dr. Esther G. Go and was operated for open reduction by the company designated physician. On April 8, 2011, the physician issued a certification stating that [respondent] was fit to return to work. Unsatisfied with the company doctor's assessment, [respondent] sought the help of his own doctor issued a medical report declaring that [respondent] is unable to work at his previous occupation. Thus, he was declared to be permanently unfit in any capacity to resume his sea duties.

Consequently, [respondent] lodged a complaint for permanent total disability benefits, sickness allowance, medical expenses, damages and attorney's fees in accordance with the terms and conditions of the Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-going Vessels.

The Labor Arbiter (LA) rendered a Decision in favor of respondent. Upon appeal to the NLRC, the latter in its Decision dated March 30, 2012, affirmed with modification the decision of the LA by deleting the award of sickness allowance. Petitioner then filed a petition for *certiorari* before the CA. The CA however affirmed the ruling of the NLRC.

ISSUE

Whether or not the CA erred in declaring that respondent is entitled to permanent total disability benefits (YES)

RULING

In the case of *Elburg Shipmanagement Phils. Inc., et. al. v. Quiogue*, this Court harmonized the periods when a disability is deemed permanent and total, thus:

An analysis of the cited jurisprudence reveals that the first set of cases did not award permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because (1) the company-designated physician opined that the seafarer required

further medical treatment or (2) the seafarer was uncooperative with the treatment. Hence, in those cases, despite exceeding 120 days, the seafarer was still not entitled to permanent and total disability benefits. In such instance, Rule X, Section 2 of the IRR gave the company-designated physician additional time, up to 240 days, to continue treatment and make an assessment on the disability of the seafarer.

The second set of cases, on the other hand, awarded permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because the company-designated physician did not give a justification for extending the period of diagnosis and treatment. Necessarily, there was no need anymore to extend the period because the disability suffered by the seafarer was permanent. In other words, there was no indication that further medical treatment, up to 240 days, would address his total disability.

If the treatment of 120 days is extended to 240 days, but still no medical assessment is given, the finding of permanent and total disability becomes conclusive.

The above-stated analysis indubitably gives life to the provisions of the law as enunciated by *Vergara.* Under this interpretation, both the 120-day period under Article 192 (2) of the Labor Code and the extended 240-day period under Rule X, Section 2 of its IRR are given full force and effect. This interpretation is also supported by the case of *C.F. Sharp Crew Management, Inc. v. Taok,* where the Court enumerated a seafarer's cause of action for total and permanent disability, to wit:

> c. The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
>
> d. 240 days had lapsed without any certification being issued by the company-designated physician;

As it now stands, the mere lapse of 120 days from the seafarer's repatriation without the company-designated physician's declaration of the fitness to work of the seafarer does not entitle the latter to his permanent total disability benefits.

Here, the records reveal that respondent was medically repatriated on October 4, 2010. It is undisputed that the company-designated physician issued a declaration as to respondent's fitness to work on April 8, 2011 or 186 days from his repatriation. Thus, to determine whether respondent is entitled to his permanent total disability benefits it is necessary to examine whether the company-designated physician has a sufficient justification to extend the period.

Examination of the records lead Us to conclude that there is a sufficient justification for extending the period. The company-designated physician has determined that respondent's condition needed further medical treatment and evaluation. Thus, it was premature for the respondent to file a case for permanent total disability benefits on March 4, 2011[20] because at that time, respondent is not yet entitled to such benefits. The company-designated physician has until June 1, 2011 or the 240th day from his repatriation to make a declaration as to respondent's fitness to work.

Neither is the declaration of respondent's own doctor that respondent is unfit to return to sea duties conclusive as to respondent's condition. It is well-settled that the assessment of the company-designated physician prevails over that of the seafarer's own doctor.

2. POEA-Standard Employment Contract

CAREER PHILIPPINES SHIPMANAGEMENT, INC.; COLUMBIA SHIPMANAGEMENT LTD. LIBERIA; AND/OR SAMPAGUITA D. MARAVE, *Petitioners, -versus-*.DONARD P. SILVESTRE, *Respondent.*

GR. NO: 213465, SECOND DIVISION, January 8, 2018, PERALTA, J.

1. *No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties. His use of use of the word "forgot" is to be taken in its literal sense. His forgetting could have been far from being deliberate. It could not have been willful.*

2. *To be effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period upon sufficient justification. Failure to give such beyond days, then the seafarer's disability becomes permanent and total, regardless of any justification. In the case at bar, Silvestre's wound was declared healed after 105 days of treatment, the company-designated physician declared that Silvestre's lacerated wound has healed. After 188 days, the company-designated physician issued a medical report declaring Silvestre as fit to work. Petitioners failed to establish that the company-designated physician declared Silvestre's fitness to work within 120 days or to sufficiently justify the application of the 240-day period in the case, hence, there is permanent total disability.*

FACTS:

In 2010, petitioners hired Silvestre as a seaman on board the vessel M/V Gallia.

He met an accident in 2011 when he was hit in the head by the closing hatch cover and sustained an avulsed wound on his right forehead which bled and caused blurred vision. His wound was treated in a hospital in Congo. He was discharged after 5 days and given medication for pain relief and antibiotics. Thereafter, he was declared unfit to work and was recommended for repatriation.He arrived in the Philippines on May 19, 2011.

Upon arrival, respondent Silvestre immediately sought medical attention at the NGC Clinic and was seen by company-designated physician Dr. Nicomedes Cruz. Silvestre was advised to undergo revision of the scar as the previously sutured wound was not healing as expected. Despite the procedures, Silvestre had complaints of intermittent pain and throbbing headaches. He was advised to continue taking pain relievers and was further observed.

Silvestre filed a complaint for disability benefits and damages against petitioners. He alleged that he has not been able to pursue his employment as an ordinary seaman from the time of his repatriation

on May 19, 2011. Thus, he was deemed suffering from permanent total disability since his disability lasted for more than 120 days.

Silvestre presented the Neurological Evaluation issued by Dr. Ramon Carlos Miguel L. Alemany declaring that he was no longer fit for sea duty. He also presented the Medical Evaluation Report wherein Dr. Renato P. Runas made the finding that the former was suffering from Grade 9 permanent disability.

Petitioners denied any liability for permanent total disability benefits. They alleged that after continuous treatment, medication, and monitoring, Silvestre's wound has healed, thus, he was found fit to work by company-designated physician Dr. Cruz.They insisted that the company-designated physician was entrusted with the task of declaring the fitness to work of the seafarer or giving an assessment of the degree of his disability.

The LA dismissed Silvestre's complaint. The circumstances enumerated in the report, e.g., Silvestre lost his helmet while the hatch was falling, and his admission that he forgot to put the safety pin of the cargo hold entrance, demonstrate that he willfully did not observe safety procedures.

The NLRC affirmed the ruling of the LA.

Silvestre sought recourse before the CA, which ruled in his favor and disagreed with the LA and the NLRC that his injury was a product of his willful or criminal act, or a result of an intentional breach of his duty. He is deemed to have suffered permanent disability because of his inability to work for more than 120 days.

ISSUE:

1. Whether or not Silvestre is entitled to disability benefits
2. Whether or not Silvestre was declared fit to work within the allowable periods.

RULING:

1. Yes.

Section 20 (D) of the 2000 POEA-SEC provides:

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, **provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer**.

The *onus probandi* falls on the petitioners to establish or substantiate their claim that Silvestre's injury was caused by his willful or intentional act with the requisite quantum of evidence.
Petitioners never presented any evidence before the LA to support the conclusion that Silvestre's injury is directly attributable to his willful or criminal act or intentional breach of duty.
The accident report, by itself, does not support the finding that Silvestre's act was willful or intentional. The Crew Member Accident Report already admits that "when the hatch was falling down, he lost his helmet," meaning Silvestre was actually wearing his helmet when the incident happened but merely lost the same when he was climbing out of the cargo hold.

When he said that "he forgot to put the safety pin in its position," he meant that he merely "failed to remember" to put the safety pin in its position His use of the word forgot is to be taken in its literal sense, still, his forgetting could have been far from being deliberate. It could not have been willful.

A willful act differs essentially from a negligent act. The one is positive and the other one is negative. If at all, there was merely inadvertence or negligence on the part Silvestre but not a willful or intentional breach of duty, as opined by both the NLRC and the Labor Arbiter.

2. No.

Article 192 (c) (1) of the Labor Code is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), states:

1. Sec. 2. *Period of entitlement*. — (a) The income benefit shall be paid beginning on the first day of such disability. **If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid.

Permanent disability transpires when the inability to work continues beyond 120 days, regardless of whether or not he loses the use of any part of his body. On the other hand, total disability means the incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do.

As per the contract, his employment is covered by the 2000 POEA-SEC which provides **that upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one-hundred twenty (120) days**. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work.

If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days (as provided by the IRR), subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.

However, the physician is now expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days. He must provide a sufficient justification to extend the original 120-day period of assessment. Otherwise, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.

In summary, to be effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period upon sufficient justification. Failure to give such beyond days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In the case at bar, after 105 days of treatment, the company-designated physician declared that Silvestre's lacerated wound has healed. Subsequently, on November 23, 2011 or after 188 days, the company-designated physician issued a medical report declaring Silvestre as fit to work.

Petitioners insist that the final medical assessment by Dr. Cruz was issued within the exceptional 240 days. It must be noted that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment.

Here, petitioners failed to establish that the company-designated physician declared Silvestre's fitness to work within 120 days or to sufficiently justify the application of the 240-day period in the case.The disability is deemed total and permanent due to the lack of timely medical assessment of Silvestre's fitness for sea service regardless of his own physician's disability assessment. There was no medical certificate or evaluation report issued to substantiate the averment that there was a fit to work declaration within the authorized 120 days. The company-designated physician's affidavit merely stated that Silvestre's lacerated wound has healed. There was also was no indication that the company-designated physician declared that further medical treatment would address Silvestre's temporary total disability.

Petitioners also assert that there was no basis for the award of maximum disability benefits for Silvestre given that his own doctor opined that he suffers from partial permanent disability Grade of 9.

Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled.

The CA ordered the payment of US$1,720.00 sickness allowance to Silvestre based on his basic monthly salary of US$430.00 for the 120-day period. The amount already paid him should be deducted from the total sickness allowance award. Thus, Silvestre is only entitled to US$186.34 as sickness allowance, with attorney’s fees and 6% interest.

RICKMERS MARINE AGENCY PHILS., INC., GLOBAL MANAGEMENT LIMITED AND/OR GEORGE C. GUERRERO, PETITIONERS, VS. EDMUND R. SAN JOSE, RESPONDENT.
[G.R. No. 220949, SECOND DIVISION, JULY 23, 2018, CAGUIOA J.]

CASE DOCTRINE:

The seafarer's condition is considered to be temporary total disability for the duration of his treatment which shall have an initial maximum period of 120 days. If the seafarer requires further medical treatment, the period may be extended to 240 days. Within the said periods, the company-designated physician must assess and certify the seafarer's condition; that is, whether he is "fit to work" or if the seafarer's permanent disability has become partial or total.

However, if after the lapse of 240 days, the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total), it is only then that the conclusive presumption that the seafarer is totally and permanently disabled arises.

FACTS:

Complainant Edmund San Jose was engaged by Respondent local manning agency Rickmers Marine Agency Phil. Inc. [and]/or George Guerrero for and in behalf of its foreign principal Global Management Limited, for deployment on board the vessel MV Maersk Edinburg under a nine month Standard POEA Employment Contract for Filipino Seamen as a wiper. Before deployment, Complainant underwent the necessary medical examinations and was declared fit for work. Thereafter, Complainant departed to join his vessel on and assumed his post as a wiper/seaman.

Sometime in February 2011, Complainant upon waking complained of loss of/impaired vision in his left eye. His condition was then reported to the ship's captain and at the port of call in Singapore allowed for a medical examination of his left eye and prescribed eye drops. Even as his condition did not improve, Complainant continued with his journey and upon arrival in Le Havre, France, was seen by an ophthalmologist on February 28, 2011 who diagnosed him with retinal detachment/tear affecting the macula and was recommended for medical repatriation.

Upon arrival in Manila sometime in March 2011, Complainant was referred to the Respondent's designated physician, Dr. Natalio G. Alegre II. Complainant was assessed to be suffering from rhegmatogenous retinal detachment with proliferative [vitreoretinopathy], lattice degeneration, myopia, OS,and was recommended for eye surgery to attach the retina. He underwent surgery and was confined for a period of three days.

Since the procedure to attach a detached retina requires more than one (1) surgical operation, a second one was scheduled for September 2011. A medical certificate dated July 4, 2011 was then issued by the Respondents' designated physician that gave the Complainant a Partial Temporary Disability Rating. Respondents' designated physician thereafter gave him a "fit for work" rating on November 21, 2011 in so far as the cause of repatriation is concerned.

LA: The LA ruled in favor of respondent. The LA considered respondent's illness as compensable as it occurred onboard the vessel and during the effectivity of the employment contract. Furthermore, the LA reasoned that respondent had failed to resume his duties as a seafarer for more than 120 days; thus, entitling him to total permanent disability benefits.

NLRC: On appeal, the NLRC issued its Decision reversing the LA's ruling. The NLRC noted that the respondent's appointed physician did not state in the medical certificate any grading for which complainant should be compensated, neither did the company-designated physician. In fact, both the medical certifications/assessments from the two doctors stated that respondent was "fit to work."

CA: The CA set aside the NLRC Decision and reinstated the LA Decision. The CA held that respondent was able to prove his claim of total permanent disability benefits with substantial evidence. Furthermore, respondent had been unable to perform his customary work for more than 120 days.

Hence, this petition.

ISSUE:

Whether or not respondent is entitled to total permanent disability benefits.

RULING:

Yes. Respondent is entitled to total permanent disability benefits.

The lapse of the 120/240-day period alone does not automatically entitle the seafarer to total permanent disability compensation. In fact, the POEA-SEC itself provides that the disability shall be based on the schedule provided therein and not on the duration of the seafarer's treatment. Section 20(B)(6) thereof provides:

"In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted."

However, this presupposes that the company-designated physician issued a valid and timely assessment. Without the assessment, there will be no other basis for the disability rating. Thus, it is mandatory for company-designated physician to issue his assessment within the 120/240-day periods. Otherwise, the seafarer's illness shall be deemed total and permanent disability.

In the instant case, respondent was repatriated on March 3, 2011. He underwent the first eye operation on March 16, 2011 (13 days from repatriation). His next operation was performed on September 18, 2011 (or 199 days from repatriation). Justifiably, the extension of the 120-day period was in order as the respondent required further treatment.

However, the company-designated physician's assessment of fitness to work was issued only on November 21, 2011, which was 263 days from repatriation. Thus, the medical assessment of respondent was made beyond the maximum 240-day period prescribed under the POEA-SEC. As such, the disability of respondent is deemed total and permanent.

The seafarer's condition is considered to be temporary total disability for the duration of his treatment which shall have an initial maximum period of 120 days. If the seafarer requires further medical treatment, the period may be extended to 240 days. Within the said periods, the company-designated physician must assess and certify the seafarer's condition; that is, whether he is "fit to work" or if the seafarer's permanent disability has become partial or total.

However, if after the lapse of 240 days, the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total), it is only then that the conclusive presumption that the seafarer is totally and permanently disabled arises.

Thus, in this case, respondent is entitled to the total and permanent disability compensation because the company-designated physician failed to make an assessment within the 240-day period.

MON C. ANUAT, *Petitioner*, -versus- PACIFIC OCEAN MANNING, INC./TRAS STAR SHIPPING AGENCY CORPORATION, MASSOEL MERIDIAN LTD. AND/OR HERNANDO S. EUSEBIO, *Respondents*.

G.R. No. 220898, SECOND DIVISION, July 23, 2018, CARPIO, *J*.

In Valenzona v. Fair Shipping Corporation, this Court held that permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days.

However, ***the Rules provide that the period of 120 days may be extended to 240 days when further medical treatment is required.***

In the present case, Anuat sustained the injury on 19 May 2011 during unloading operations in a foreign port while discharging his duties as Pacific's able seaman. In a medical report dated 26 August 2011, Pacific's company-designated physician found that Anuat was still experiencing moderate pain on both the lumbosacral region and his left knee. Anuat was advised by the company-designated physician to come back on 30 September 2011. However, Anuat no longer went back to Pacific's company-designated physician on 30 September 2011. Instead, Anuat filed a claim against Pacific for total and permanent disability benefits on 26 October 2011 or ***160 days from the onset of his work-connected injury.***

This Court rules that Anuat prematurely filed his total and permanent disability claim. When Anuat filed his disability claim he was still under medical treatment by Pacific's company-designated physician.

The ruling of this Court in C.F. Sharp Crew Management, Inc. v. Taok applies in the present case. In C.F. Sharp Crew Management, Inc., the CA ruled that Taok, the seaman who filed the total and permanent disability claim, had not acquired a cause of action over his total and permanent disability claim because he filed his disability claim before the lapse of the 240-day period under the law.

However, Anuat is still entitled to partial and permanent disability benefits of "Grade 10" and "Grade 11" in accordance with the collective bargaining agreement.

FACTS:

Respondent Pacific Ocean Manning, Inc. (Pacific) is a corporation organized and existing under Philippine law which is licensed to engage in the recruitment and deployment of Filipino seafarers for vessels traveling through international waters. On 7 February 2011, petitioner Mon C. Anuat (Anuat) was hired by Pacific as an able seaman on board the vessel M/V Satigny for a period of nine (9) months with a basic monthly salary of US$662.00. Pacific and Anuat entered into a Philippine Overseas Employment Administration (POEA) standard employment contract on the same date. Prior to his deployment as an able seaman, Anuat was subjected to a pre-employment medical examination by Pacific's company-designated physician and was declared by the physician as "Fit for Sea Duty." On 10 February 2011, Anuat departed from the Philippines to join M/V Satigny in Norfolk, United States.

On 19 May 2011, Anuat had an accident during unloading operations in the port of Cabello, Venezuela. Anuat fell down the vessel's deck while he was connecting the crane hook to the vessel's grab which was located at a high position. Anuat suffered injuries on his neck, back and knee. Anuat was brought by an ambulance to a hospital in Venezuela where he was diagnosed to have sustained

head injury, whiplash injury, and trauma in his left knee. Anuat was confined in the hospital until 21 May 2011 and was advised by the hospital physician to continue treatment in the Philippines. Anuat was declared by the hospital physician as unfit to resume his work as a seaman. Thus, Anuat was medically repatriated to the Philippines on 22 May 2011.

Upon Anuat's arrival on 24 May 2011, Anuat was referred to Dr. Nicomedes Cruz (Dr. Cruz), Pacific's company-designated physician, at NGC Medical Specialist Clinic. In a medical report dated 15 July and 22 July 2011, Dr. Cruz recommended that Anuat undergo a Magnetic Resonance Imaging (MRI) on his spine and left knee.In a medical reportdated 22 September 2011, Dr. Cruz found that Anuat still suffered from a blunt traumatic injury in his back, muscular spasm of the cervical muscle, swelling and medial meniscus tear in his left knee. Dr. Cruz recommended that Anuat undergo surgery to repair his left knee and was advised to come back on 30 September 2011. However, Anuat did not return for his doctor's visit on 30 September 2011.

Anuat claimed that after surgery and despite a month of physical therapy his condition did not improve and he continued to suffer pain in his left knee. Anuat claimed that due to his injuries he could no longer work as an able seaman. Hence, on 26 October 2011, Anuat filed a Complaint with the Labor Arbiter for total and permanent disability benefits, reimbursement of medical expenses, sickness allowance, damages and attorney's fees against Pacific.

In a Position Paper dated 19 March 2012, Pacific contended that Anuat's claim for total permanent disability benefits was not supported by law. Pacific claimed that the standard in measuring the disability of a seafarer must depend on the disability grading issued by the company-designated physician. Pacific alleged that Anuat was only entitled to partial permanent disability since the company-designated physician determined that Anuat only suffered from a disability of "Grade 10" and "Grade 11."

The Labor Arbiter granted total and permanent disability benefits to Anuat. The Labor Arbiter ruled that it does not matter whether the company designated physician assessed Anuat to have suffered a "Grade 10" and "Grade 11" disability rating since it is undisputed that Anuat was unable to work for more than 120 days. In determining the value of total permanent disability benefits, the Labor Arbiter applied the schedule of disability benefits of the POEA standard employment contract which amounted to US$60,000.00. The Labor Arbiter held that the provisions of the collective bargaining agreement (CBA) did not apply since there is no substantial evidence that Pacific and Anuat were privy to the CBA.

In a Resolution, the NLRC granted Anuat's Memorandum of Partial Appeal and modified the Labor Arbiter's Decision. The NLRC held that the CBA applies in the determination of Anuat's total and permanent disability benefits.

CA granted Pacific's petition for certiorari. The CA ruled that Anuat prematurely filed his claim for total and permanent disability benefits.

ISSUE:

Whether Anuat is entitled to total and permanent disability benefits under the Labor Code. (NO)

RULING:

The Court affirm the decision of the CA and deny Anuat's claim for total and permanent disability benefits. Instead, it resolves to grant partial and permanent disability benefits of "Grade 10" and "Grade 11" to Anuat in accordance with the CBA.

In *Valenzona v. Fair Shipping Corporation,* this Court held that permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days. However, **the Rules provide that the period of 120 days may be extended to 240 days when further medical treatment is required.**

In *Gomez v. Crossworld Marine Services, Inc.,* this Court held that temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period provided by the Rules without a declaration of either fitness to work or the existence of a permanent disability. Hence, if the company-designated physician requires the employee to undergo further medical treatment beyond the initial 120 days, temporary total disability **only becomes permanent if the 240 days lapse without a prior declaration on the part of the company-designated physician of the fitness of the employee to resume his or her duties or when the company-designated physician finds that permanent disability exists during the 240-day period.**

In the present case, Anuat sustained the injury on 19 May 2011 during unloading operations in a foreign port while discharging his duties as Pacific's able seaman. In a medical report dated 26 August 2011, Pacific's company-designated physician found that Anuat was still experiencing moderate pain on both the lumbosacral region and his left knee. The report also stated that Anuat's physical therapy was still on-going. On 22 September 2011, Pacific's company-designated physician once again examined Anuat and issued a medical report recommending that Anuat undergo further surgery to medically repair the existing tear in his left knee. Lastly, Anuat was advised by the company-designated physician to come back on 30 September 2011.

Anuat no longer went back to Pacific's company-designated physician on 30 September 2011. Instead, Anuat filed a claim against Pacific for total and permanent disability benefits on 26 October 2011 or **160 days from the onset of his work-connected injury.**

This Court rules that Anuat prematurely filed his total and permanent disability claim. When Anuat filed his disability claim he was still under medical treatment by Pacific's company-designated physician. In fact, he was advised by Pacific's company-designated physician to return on 30 September 2011 for a medical examination and he chose not to do so. **Notably, the 240-day extended period of medical treatment provided by Sections 2 and 3(1), Rule X of the Amended Rules on Employees' Compensation had not yet lapsed.**

The ruling of this Court in *C.F. Sharp Crew Management, Inc. v. Taok* applies in the present case. In *C.F. Sharp Crew Management, Inc.,* the CA ruled that Taok, the seaman who filed the total and permanent disability claim, had not acquired a cause of action over his total and permanent disability claim because he filed his disability claim before the lapse of the 240-day period under the law.

However, Anuat is still entitled to partial and permanent disability benefits of "Grade 10" and "Grade 11" in accordance with the collective bargaining agreement.

It is a fundamental doctrine in labor law that the CBA is the contract between both the employer and the employees. An executed CBA, thus, is a valid and binding contract between the parties with the force and effect of law.

The records reveal that Pacific admitted that Anuat, in fact, suffered a partial and permanent disability. In its Position Paper dated 19 March 2012, Pacific alleged that Anuat had indeed sustained a work-connected injury of "Grade 10" and "Grade 11" amounting to partial and permanent disability.

The CBA, which was mutually executed by Pacific and Anuat, provides for the obligation of Pacific to compensate its seafarers for any work-related injury while serving on board including accidents and work-related illness occurring while traveling to or from the ship. Moreover, the CBA also states that the disability grade determined by Pacific's company-designated physician shall be the primary basis of Pacific's liability to its seafarer who suffers a work-connected injury.

Thus, following the obligatory effects of the CBA and Pacific's admissionthat the company-designated physician issued a disability rating of "Grade 10" on Annat's injured left knee and "Grade 11" on Annat's injured back, Pacific is liable to Anuat for the applicable disability compensation equivalent to both "Grade 10" and "Grade 11" in the CBA. Consequently, Anuat is entitled to US$17,954.00 representing "Grade 10" disability compensation for Anuat's left knee injury and US$13,303.00 representing "Grade 11" disability compensation for Anuat's back injury. Consequently, Pacific is liable to Anuat for a total amount of US$31,257.00 as disability compensation.

C.F. SHARP CREW MANAGEMENT, INC./MANNY SABINO AND/OR NORWEGIAN CRUISE LINE LTD., *Petitioners*, -versus- JOWELL P. SANTOS, *Respondent.*
G.R. No. 213731, THIRD DIVISION, August 01, 2018, GESMUNDO, *J.*

While a seafarer is entitled to temporary total disability benefits during his treatment period, it does not follow that he should likewise be entitled to permanent total disability benefits when his disability was assessed by the company-designated physician after his treatment. He may be recognized to have permanent disability because of the period he was out of work and could not work, ***but the extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages***

In this case, respondent was repatriated in the Philippines on January 12, 2012. The next day, or on January 13, 2012, he was immediately referred to CF Sharp's company-designated physicians. It was confirmed that he had Diabetes Mellitus II and hypertension. On May 4, 2012, respondent was cleared from the nephrology standpoint and was advised to continue his maintenance medications. Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and that his final disability grading assessment for his hypertension and diabetes was Grade 12.

Verily, the company-designated physicians suitably gave their medical assessment of respondent's disability before the lapse of the 120-day period. It was even unnecessary to extend the period of medical assessment to 240 days. After rigorous medical diagnosis and treatments, the company designated physicians found that respondent only had a partial disability and gave a Grade 12 disability rating.

Furthermore, the medical assessment of the company-designated physician was not validly challenged.

FACTS:

Jowell P. Santos (*respondent*) was hired as an environmental operator by C.F. Sharp Crew Management, Inc., (*CF Sharp*) for and in behalf of its principal, Norwegian Cruise Line, Ltd., collectively known as petitioners, on board the vessel "MIS Norwegian Gem" for a period of nine (9) months. He was deployed on September 9, 2011.

Sometime in December 2011, respondent experienced dizziness, over fatigue, frequent urination and blurring of the eyesight. He was brought to the ship's clinic for initial medical examination and was found to have elevated blood sugar and blood pressure. He was immediately referred to Cape Canaveral Hospital in Miami, Florida, USA, where he was found to have a history of diabetes and has been smoking a pack of cigarettes daily for ten (10) years.

On January 12, 2012, respondent was repatriated to the Philippines. The next day, or on January 13, 2012, he was immediately referred to CF Sharp's company-designated physicians at the Sachly International Health Partners Clinic (*SIHPC*). The physicians subjected respondent to different tests and treatments, which were recorded in several medical reports. It was confirmed that he had Diabetes Mellitus II and hypertension. Respondent was advised to continue his medications. Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and that his final disability grading assessment for hypertension and diabetes was Grade 12.

Unconvinced, respondent consulted Dr. May S. Donato-Tan (*Dr. Donato-Tan*), a specialist in Internal Medicine and Cardiology. In her medical certificate, Dr. Donato-Tan noted that respondent had high blood pressure and uncontrolled diabetes mellitus. She also opined that respondent's condition was work-related due to the pressure in the cruise ship, which elevated his blood pressure, and that the food therein was not balanced, which elevated his blood sugar. She concluded that respondent was permanently disabled to discharge his duties as a seafarer.

Hence, respondent filed a complaint for disability and sickness benefits with damages before the LA.

The LA ruled in favor of respondent. It found that respondent suffered from permanent and total disabilities due to his hypertension and diabetes. The NLRC modified the decision of the LA. It held that respondent did not suffer from a permanent and total disability because he failed to prove that the diabetes and hypertension he suffered were work-related. The NLRC gave credence to the medical assessment and finding of the company-designated physicians, which stated that respondent only suffered a partial disability of Grade 12.

The CA reversed and set aside the NLRC ruling and reinstated the LA ruling. It held that respondent suffered from permanent and total disabilities because of his hypertension and diabetes. The CA concluded that since 120 days had passed but respondent had not returned to work, he is entitled to permanent and total disability benefits.

ISSUE:

Whether respondent is entitled to permanent and total disability benefits due to his hypertension and diabetes. (NO)

RULING:

In the recent case of *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.* (*Elburg*), it was confirmed that a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, it was held that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

> 1.The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
>
> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

While a seafarer is entitled to temporary total disability benefits during his treatment period, it does not follow that he should likewise be entitled to permanent total disability benefits when his disability was assessed by the company-designated physician after his treatment. He may be recognized to have permanent disability because of the period he was out of work and could not work, **but the extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages**

In this case, respondent was repatriated in the Philippines on January 12, 2012. The next day, or on January 13, 2012, he was immediately referred to CF Sharp's company-designated physicians. He was then subjected to different tests and treatments, which were recorded in several medical reports. It was confirmed that he had Diabetes Mellitus II and hypertension. On May 4, 2012, respondent was cleared from the nephrology standpoint and was advised to continue his maintenance medications. Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and that his final disability grading assessment for his hypertension and diabetes was Grade 12.

Verily, the company-designated physicians suitably gave their medical assessment of respondent's disability before the lapse of the 120-day period. It was even unnecessary to extend the period of medical assessment to 240 days. After rigorous medical diagnosis and treatments, the company designated physicians found that respondent only had a partial disability and gave a Grade 12 disability rating.

Furthermore, the medical assessment of the company-designated physician was not validly challenged.

In *INC Shipmanagement, Inc. v. Rosales*, the Court stated that 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.

In this case, respondent never signified his intention to resolve the disagreement with petitioners' company-designated physicians by referring the matter to a third doctor. It is only through the procedure provided by the POEA-SEC, in which he was a party, can he question the timely medical assessment of the company-designated physician and compel the petitioners to jointly seek an appropriate third doctor. Absent proper compliance, the final medical report of the company-designated physician must be upheld. *Ergo*, he is not entitled to permanent and total disability benefits.

Finally, Hypertension and diabetes does not ipso facto result into a permanent and total disability, it must be characterized with severity.

MAGSAYSAY MITSUI OSK MARINE, INC., KOYO MARINE, CO. LTD., and CONRADO DELA CRUZ, *Petitioners*, -versus- OLIVER G. BUENAVENTURA, *Respondent.*
G.R. No. 195878, THIRD DIVISION, January 10, 2018, MARTIRES, *J.*

If the seafarer asking for disability benefits fails to secure the opinion of a third doctor, the company-designated physician's medical opinion is granted more weight and probative value over the seafarer's physician of choice. Nevertheless, the diagnosis of the company-designated physician may be set aside if it is attended with clear bias. Here, Buenaventura did not initiate the process of referring the conflicting findings to a third doctor. There is also insufficient evidence to hold that the company-designated physicians acted with clear bias against him.

The mere lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total. The period may be extended to 240 days should the circumstances justify the same (e.g., seafarer required further medical treatment or seafarer was uncooperative). Here, the extension of the initial 120-day period to issue an assessment was justified considering that during the interim, Buenaventura underwent therapy and rehabilitation and was continuously observed. He was also declared fit to work after six months from the time he was medically repatriated or within the allowable extended period of 240 days.

FACTS:

Petitioner Magsaysay Mitsui OSK Marine, Inc. (Magsaysay), on behalf of its principal Koyo Marine Co. Ltd., hired respondent Oliver G. Buenaventura (Buenaventura) as an ordinary seaman onboard the vessel Meridian. On 25 January 2007, Buenaventura met an accident wherein a mooring winch crushed his right hand. As a result, he suffered a fracture of the right first metacarpal bone and open fracture of the right second metacarpal bone, which required emergency surgical procedures both done in Japan. On 21 February 2007, Buenaventura was medically repatriated. He was referred to the Maritime Medical Service, the company-designated clinic, and was attended to by Dr. Stephen Hebron (Dr. Hebron). Dr. Hebron then referred Buenaventura to Dr. Celso Fernandez (Dr. Fernandez), an orthopedic surgeon. On 3 August 2007, Dr. Hebron declared Buenaventura fit to work after undergoing conservative management, continuous rehabilitation physiotherapy, and occupational therapy. Nevertheless, Buenaventura still felt pain in his hand especially during cold weather.

In a medical certificate dated 12 September 2007, Dr. Hebron stated that according to Dr. Fernandez, the MC plates in Buenaventura's right hand might be contributing to the pain. According to him, the removal of the MC plates would cost around P70,000.00, which would not be shouldered by Magsaysay. This prompted Buenaventura to consult Dr. Rodolfo Rosales, who found him unfit to work and recommended a 10-week physical therapy. He also consulted Dr. Venancio Garduce, Jr., an orthopedic surgeon, who opined that it would be difficult for Buenaventura to continue to work as a seaman.

Based on the differing opinions of his physicians of choice, Buenaventura filed a complaint for disability compensation.

ISSUE:

Whether Buenaventura was entitled to total and permanent disability benefits. (NO)

RULING:

As to conflicting findings between the company-designated physician and the seafarer's physician of choice

The company-designated physician has the first opportunity to examine the seafarer and to issue a certification as to the seafarer's medical status. However, the seafarer has the option to seek another opinion from a physician of his choice, without the need for bad faith or malice on the part of the company-designated physician. In case the findings of the seafarer's physician of choice differ from that of the company-designated physician, he has the duty to submit the conflicting findings to a third-party doctor, as mutually agreed upon by the parties. His failure to do so grants the company-designated physician's medical opinion more weight and probative value over his physician of choice. Nevertheless, the diagnosis of the company-designated physician may be set aside if it is attended with clear bias, manifested by the lack of scientific relation between the diagnosis and the symptom or where the opinion is not supported by the medical records.

Here, Buenaventura did not initiate the process of referring the conflicting findings of his physicians of choice to a third doctor.Consequently, the findings of the company-designated physicians deserve greater weight and could be set aside only with a showing of a clear bias against Buenaventura. In this case, Buenaventura was assessed by an orthopedic surgeon and was subjected to a lengthy evaluation and treatment before a certification of fitness to work was issued. A review of the records also shows that there is insufficient evidence to hold that the company-designated physicians acted with clear bias against Buenaventura.

As to the lapse of the 120-day period

The mere lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total. The period may be extended to 240 days should the circumstances justify the same (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative).

Here, the extension of the initial 120-day period to issue an assessment was justified considering that during the interim, Buenaventura underwent therapy and rehabilitation and was continuously observed. The company-designated physicians did not sit idly by and wait for the lapse of the said period. Buenaventura's further need of treatment necessitated the extension for the issuance of the medical assessment. It is noteworthy that Buenaventura was declared fit to work after six months from the time he was medically repatriated or within the allowable extended period of 240 days.

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.*

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." 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.

MANILA SHIPMANAGEMENT & MANNING, INC., and/or HELLESPONT HAMMONIA GMBH & CO. KG and/or AZUCENA C. DETERA *Petitioners,* -versus – RAMON T. ANINANG, *Respondent.*
G.R. No. 217135, SECOND DIVISION, January 31, 2018, REYES, JR., *J.*

*The **mandatory character** of this three-day reporting requirement has been recently reiterated by the Court in the case of Scanmar Maritime Services, Inc. v. De Leon. In that case, the Court had occasion to, once more, explain the ratio behind this rule. The Court said:*

> *"The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury."*

*This considering, in the event that a seafarer fails to comply with this mandatory reporting requirement, the POEA Contract provides that the seafarer shall not be qualified to receive his/her disability benefits. In fact, and more particularly, the POEA Contract provides that the **seafarer shall forfeit these benefits.***

*The Court poured over the records of the case, and after a detailed study thereof, rules against the respondent. Aside from the self-serving allegations of the respondent in his pleadings, there is **no evidence that would suggest that he presented himself before the petitioners upon disembarkation**. Indeed, he presented no witnesses that would support his allegations. He did not even bother to tell the Court who it is that he talked with in the petitioners' office — if indeed he went to the petitioners' office — on the day of the meeting. He did not even relay how his request for medical treatment was supposedly refused, and by whom. No date was even alleged.*

FACTS:

The respondent is a Filipino seafarer, who signed a Contract of Employment as Chief Engineer with HELLESPONT HAMMONIA GMBH & CO. KG (petitioner), through its manning agent in the Philippines, petitioner MANILA SHIPMANAGEMENT & MANNING, INC. On June 26, 2010, the respondent commenced his duties and departed the Philippines on board "MT HELLESPONT CREATION." Sometime thereafter, and while still aboard the vessel, the respondent experienced chest pain and shortness of breath. The respondent requested for early repatriation from the master of the vessel, but was refused, and instead, his contract was extended for another month. On February 2, 2011, the respondent arrived back in the Philippines.

According to the petitioners, after the respondent's repatriation, the latter "never voiced out any health concern nor did he report for a post-employment medical examination." They alleged that they had no contact whatsoever with the respondent until the time that they received the complaint filed by the respondent.

On the other hand, the respondent asserted that upon his arrival in the Philippines, he "immediately went to private respondent MANSHIP (herein petitioner) for post-employment medical examination, but private respondent MANSHIP failed to refer him to the company-designated physician." Petitioners' refusal prompted him to consult with his personal physician, Dr. Achilles C. Esguerra. According to respondent, he was diagnosed with "dilated cardiomyopathy (non-ischemic) S/P CVD

Infarct (2010) and chronic atrial fibrillation." On the basis of the foregoing, the respondent sought from the petitioners the payment of disability benefits; medical, surgical, and hospitalization expenses; and sickness allowance. The petitioners denied the claim. Hence, on June 1, 2012, the respondent filed with the Labor Arbiter (LA) a complaint against the petitioners.

The LA rendered a Decision ruling in favor of the respondent. The NLRC reversed and set aside the LA decision. The NLRC stated that the respondent's allegation that he submitted himself to the petitioners within three days from his repatriation are mere self-serving assertions that are not proved by evidence. The CA reversed the NLRC decision, stating that "there is no denying" that the respondent tried to comply with the three-day medical examination deadline, but was refused and ignored by the petitioners.

ISSUE:

Whether or not the respondent complied with the post-employment medical examination by a company-designated physician within three working days upon his return to the Philippines. (NO)

RULING:

According to Section 20 (A) (3) of the 2010 "Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Oceangoing Ships" (POEA Contract), when the seafarer suffers work-related illness during the term of his contract, the employer shall be liable to pay for: (1) the seafarer's wages; (2) costs of medical treatment both in a foreign port and in the Philippines until the seafarer is declared fit to work, or the disability rating is established by the company-designated physician; (3) sickness allowance which shall not exceed 120 days; and (4) reimbursement of reasonable medicine, traveling, and accommodation expenses.

However, to be qualified for the foregoing monetary benefits, **the same section of the POEA Contract requires the seafarer to submit himself/herself to a post-employment medical examination by a company-designated physician within three working days upon his return to the Philippines**, except when he is physically incapacitated to do so. The seafarer is likewise required to report regularly to the company-designated physician during the course of his treatment.

The **mandatory character** of this three-day reporting requirement has been recently reiterated by the Court in the case of *Scanmar Maritime Services, Inc. v. De Leon*. In that case, the Court had occasion to, once more, explain the ratio behind this rule. The Court said:

> "The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury."

This considering, in the event that a seafarer fails to comply with this mandatory reporting requirement, the POEA Contract provides that the seafarer shall not be qualified to receive his/her disability benefits. In fact, and more particularly, the POEA Contract provides that the **seafarer shall forfeit these benefits.**

The Court poured over the records of the case, and after a detailed study thereof, rules against the respondent. Aside from the self-serving allegations of the respondent in his pleadings, there is **no**

evidence that would suggest that he presented himself before the petitioners upon disembarkation. Indeed, he presented no witnesses that would support his allegations. He did not even bother to tell the Court who it is that he talked with in the petitioners' office — if indeed he went to the petitioners' office — on the day of the meeting. He did not even relay how his request for medical treatment was supposedly refused, and by whom. No date was even alleged.

In addition, the LA decision which exempts him from the application of the mandatory reporting requirement has no leg to stand on. The POEA Contract is clear and admits of no exceptions, save from the instance when the seafarer is physically incapacitated to report to the employer. In which case, Section 20 (A) (c) requires him to submit a written notice to the agency within the same period as compliance. This has not happened in this case. In this light, the Court could enter no other conclusion than that the respondent failed to comply with the requirements of Section 20 (A) (c) of the POEA Contract. Necessarily therefore, the ruling of the CA and the LA must be reversed and set aside.

ARIEL A. EBUENGA, *Petitioner*, - versus - SOUTHFIELD AGENCIES, INC., WILHEMSEN SHIP MANAGEMENT HOLDING LTD., AND CAPT. SONNY VALENCIA, *Respondents*.
G.R. No. 208396, THIRD DIVISION, March 14, 2018, LEONEN, *J.*

Section 20(B) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) mandates seafarers to see a company-designated physician for a post-employment medical examination, which must be done within three (3) working days from their arrival. Failure to comply shall result in the forfeiture of the right to claim disability benefits.

In cases where the employer refuses to have the seafarer examined, the seafarer's claim for disability benefits is not hindered by his or her reliance on a physician of his or her own choosing. The Court has in the past, under unique circumstances, sustained the award of disability benefits even if the seafarer's disability had been assessed by a personal physician. ***Petitioner, however, has nothing more than bare allegations to back him up. He falls far too short of the requisite quantum of proof in labor cases. He failed to discharge his burden to prove his allegations by substantial evidence.***

Even if this Court were to overlook petitioner's utter failure to substantiate his version of events, ***no award of disability benefits is availing as petitioner has failed to demonstrate that his affliction was work-related.*** *For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) that the illness or injury must be work-related, and (2) that the work-related illness or injury must have existed during the term of the seafarer's employment contract.*

Medical literature underscores petitioner's affliction—disc desiccation—as a degenerative change of intervertebral discs, the incidence of which climbs with age and is a normal part of disc aging. Hence, it is not a condition peculiarly borne by petitioner's occupation. *Moreover, petitioner was engaged to serve, not merely as a regular cook, but as chief cook.* ***While his designation to this position does not absolutely negate occasions of physical exertion, it can nevertheless be reasonably inferred that his engagement did not principally entail intense physical labor, as would have been the case with other seafarers such as deckhands.*** *In any case, contrary to Section 32-A of the POEA-SEC, petitioner failed to demonstrate how his work necessarily "involved the risks*

described" and how he contracted his affliction specifically "as a result of his exposure to the described risks."

In this review, this Court is bound by basic logical parameters. First, as a court without the opportunity to personally peruse the evidence, this Court cannot cavalierly disregard the uniform anterior findings of the three (3) tribunals. Second, a factual conclusion must be borne by substantial evidence. Finally, this Court should not award disability benefits absent a causal relationship between a seafarer's work and ailment. ***Petitioner's case fails in all of these parameters.*** *Hence, his Petition must be denied.*

FACTS:

Ebuenga was hired by Southfield Agencies, Inc. (Southfield) as a chief cook aboard respondent Wilhemsen Ship Management Holding Ltd.'s (Wilhemsen) vessel, MTV Super Adventure.

About two (2) months into his engagement, or on February 26, 2011, Ebuenga wrote a letter to Southfield, Wilhemsen, and Captain Sonny Valencia (Capt. Valencia) (collectively, respondents), asking that he be repatriated as soon as possible "to attend to a family problem." Respondents acted favorably on this request and Ebuenga was repatriated.

Without consulting Southfield's designated physician, Ebuenga had himself checked at St. Luke's Medical Center where he underwent Magnetic Resonance Imaging. The test revealed that he was afflicted with "Multilevel Disk Dessication, from C2-C3 to C6-C7." He was advised to undergo physical therapy.

Ebuenga went back to his hometown in Bogtong, Legaspi City to undergo physical therapy sessions. Thereafter, he consulted Dr. Misael Jonathan Ticman, who issued a Disability Report, finding him to be permanently disabled and no longer fit to work as a seafarer. Consequently, Ebuenga filed a complaint for permanent disability benefits.

In his Position Paper, Ebuenga disavowed voluntarily seeking repatriation on account of a family concern. He claimed instead that upon embarkation, a crew member died from overfatigue. He reported this death to the International Transport Workers' Federation, which took no action. Incensed at Ebuenga's actions, the captain of the vessel, Capt. Jonathan Lecias, Sr. (Capt. Lecias), coerced him to sign a letter seeking immediate repatriation. Ebuenga also claimed to have reported to Capt. Lecias that he was suffering intense back pain, but the latter refused to entertain this because of the animosity between them. **He added that upon repatriation, he sought medical assistance from the company-designated physician, but was refused. Thus, he was forced to seek treatment on his own.**

Respondents, on the other hand, denied that there was ever an incident where Ebuenga encountered medical problems while on board the vessel. However, they added that Ebuenga's claim for disability benefits could not be entertained as he failed to undergo the requisite post-employment medical examination with the company-designated physician.

Labor Arbiter Savari dismissed Ebuenga's complaint and explained that Ebuenga failed to prove that he had suffered an illness or injury while on board the M/V Super Adventure. She added that Ebuenga may no longer claim disability benefits for failing to undergo a post-employment medical

examination with the company-designated physician.The NLRC denied Ebuenga's appeal. Thereafter, the CA found no grave abuse of discretion on the part of the NLRC.

ISSUE:

Whether petitioner Ebuenga is entitled to permanent disability benefits. (NO)

RULING:

Section 20(B) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) mandates seafarers to see a company-designated physician for a post-employment medical examination, which must be done within three (3) working days from their arrival. Failure to comply shall result in the forfeiture of the right to claim disability benefits:

> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS – The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
>   For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. x x x

In *Vergara v. Hammonia Maritime Services, Inc.*, this Court read the POEA-SEC in harmony with the Labor Code and the AREC in interpreting in holding that:

> (a) the 120 days provided under Section 20-B(3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties.
>
> As these provisions operate, the seafarer, upon sign-off from his vessel, *must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment*.
>
> As we outlined above, **a temporary total disability only becomes permanent *when so declared by the company physician within the periods he is allowed to do so, or upon the***

> ***expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability***.

In *Manota v. Avantgarde Shipping Corporation* the Court clarified that:

> We note on this point that the obligation imposed by the mandatory reporting requirement under Section 20(B)(3) of the 1996 POEA-SEC is not solely on the seafarer. It requires the employer to likewise act on the report, and in this sense partakes of the nature of a reciprocal obligation. x x x While the mandatory reporting requirement obliges the seafarer to be present for the post-employment medical examination, which must be conducted within three (3) working days upon the seafarer's return, it also poses the employer the implied obligation to conduct a meaningful and timely examination of the seafarer.

In cases where the employer refuses to have the seafarer examined, the seafarer's claim for disability benefits is not hindered by his or her reliance on a physician of his or her own choosing. The Court has in the past, under unique circumstances, sustained the award of disability benefits even if the seafarer's disability had been assessed by a personal physician.

It is petitioner's claim that respondents failed to deliver their part of the reciprocal obligation by refusing to entertain him when he asked to have himself examined. He insists that their refusal is allegedly an offshoot of his acrimony with them, which began after his report of a colleague's death to the International Transport Workers' Federation. **Petitioner, however, has nothing more than bare allegations to back him up. He falls far too short of the requisite quantum of proof in labor cases. He failed to discharge his burden to prove his allegations by substantial evidence.**

In the first place, this Court is duty-bound to respect the uniform findings of Labor Arbiter Savari, the NLRC, and the CA. In the context of the present Rule 45 Petition, this Court is limited to resolving pure questions of law. Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.

Even if this Court were to overlook petitioner's utter failure to substantiate his version of events, **no award of disability benefits is availing as petitioner has failed to demonstrate that his affliction was work-related.**

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) that the illness or injury must be work-related, and (2) that the work-related illness or injury must have existed during the term of the seafarer's employment contract.

The 2000 POEA-SEC defines "work-related injury" as injury resulting in disability or death arising out of and in the course of employment and "work-related illness" as any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of the 2000 POEA-SEC. Thus, the seafarer only has to prove that his illness or injury was acquired during the term of employment to support his claim for sickness allowance and disability benefits.

To be "work-related" is to say that there is a "reasonable linkage between the disease suffered by the employee and his work." Section 32-A, paragraph 1 of the POEA-SEC, thus, requires the satisfaction of all of its listed general conditions for an occupational disease and the resulting disability or death to be compensable:

> Section 32-A. OCCUPATIONAL DISEASES – For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> (1) The seafarer's work must involve the risks described herein;
> (2) The disease was contracted as a result of the seafarer's exposure to the described risks;
> (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
> (4) There was no notorious negligence on the part of the seafarer.

Medical literature underscores petitioner's affliction—disc desiccation—as a degenerative change of intervertebral discs, the incidence of which climbs with age and is a normal part of disc aging. Hence, it is not a condition peculiarly borne by petitioner's occupation. Moreover, petitioner was engaged to serve, not merely as a regular cook, but as chief cook. **While his designation to this position does not absolutely negate occasions of physical exertion, it can nevertheless be reasonably inferred that his engagement did not principally entail intense physical labor, as would have been the case with other seafarers such as deckhands.** In any case, contrary to Section 32-A of the POEA-SEC, petitioner failed to demonstrate how his work necessarily "involved the risks described" and how he contracted his affliction specifically "as a result of his exposure to the described risks."

Likewise, petitioner needed to be repatriated merely two (2) months into his engagement. This is not disputed. Again, contrary to Section 32-A of the POEA-SEC, the brevity of his engagement contradicts the likelihood that his disc desiccation—a degenerative ailment requiring prolonged conditions—"was contracted within a period of exposure and under such other factors necessary to contract it."

Petitioner's cause is grossly deficient in several ways. First, he failed to undergo the requisite examination, thereby creating a situation resulting in the forfeiture of his claims. This alone suffices for the denial of his Petition. Second, he posited a narrative of indifference and oppression but failed to adduce even the slightest substantiation of it. He asked this Court to overturn the consistent findings of the three (3) tribunals but offered nothing other than his word as proof. Finally, he averred a medical condition from which no causal connection can be drawn to his brief engagement as chief cook.

In this review, this Court is bound by basic logical parameters. First, as a court without the opportunity to personally peruse the evidence, this Court cannot cavalierly disregard the uniform anterior findings of the three (3) tribunals. Second, a factual conclusion must be borne by substantial evidence. Finally, this Court should not award disability benefits absent a causal relationship between a seafarer's work and ailment. **Petitioner's case fails in all of these parameters.** Hence, his Petition must be denied.

INC.,INTERORIENT MARITIME ENTERPRISE LIBERIA FOR DROMON E.N.E. and JASMIN P. ARBOLEDA, *respondents*.
G.R. No. 232892, SECOND DIVISION, April 4, 2018, PERALTA, J.

In determining whether a disease is compensable, it is enough that there exists a reasonable work connection. It is sufficient that the hypothesis on which the workmen's claim is based is probable since probability, not certainty is the touchstone.

FACTS:

Petitioner has started work with respondent Interorient Maritime Enterprises, Inc. as an Able Seaman on board different vessels. Part of petitioner's job assignment was to paint the ship's pump room and due to the poor ventilation in the said room, petitioner claimed that he was able to inhale residues and vapors coming from the paint and thinner that he used. As such, petitioner suffered shortness of breath and chest pains which he claimed to have reported to the Chief Mate but was told by the latter to just rest. When his condition improved, petitioner continued to perform his duties until he was able to complete his contract on July 6, 2012.

Upon his repatriation, petitioner reported immediately to respondent company and asked for a referral to the company physician for a medical examination of his heart condition but the latter ignored petitioner's request. Petitioner then re-applied with respondent company and was recommended for Pre-Employment Medical Examination (PEME). The result of petitioner's tests revealed that he had cardiovascular disease. Petitioner was not deployed due to the said findings.

Thus, petitioner filed a complaint for payment of total and permanent disability benefits and other money claims against respondent claiming that he developed a cardiovascular disease, which is listed as an occupational disease under Section 32-A of the Philippine Overseas Employment Administration-Standard Employment Contract*(POEA-SEC)*. Petitioner claimed that his illness was brought about by his poor diet, exposure to harmful chemicals and stressful work environment on board the vessel. He added that prior to his last employment, he underwent and passed his PEME without any indication that he was suffering from any heart disease.

Respondents, however, insisted that petitioner was repatriated not for medical reasons but because his contract has already ended.

The Labor Arbiter rendered a Decision in favor of petitioner. According to the Labor Arbiter, petitioner's job as able bodied seaman contributed even in a small degree to the development of his cardiovascular disease. It was also ruled that the fact that petitioner signed-off from MT North Star due to "completion of contract" does not bar recovery of his disability claims considering that he aptly established reasonable causation of his cardiovascular disease and his work as able bodied seaman.

The NLRC affirmed the Decision of the Labor Arbiter.

The CA reversed and set aside the decision of the NLRC. The CA ruled that petitioner's bare allegations do not suffice to discharge the required quantum of proof of compensability. It added that nowhere in the records can it find any documentation or medical report that petitioner contracted such heart illness aboard M/T North Star.

ISSUE:

Whether or not petitioner's illness is compensable. (YES)

RULING:

For disability to be compensable under Section 20 (B) (4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. Notwithstanding the presumption, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or at least increased the risk of contracting the disease. In order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient — direct causal relation is not required. Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.

The findings of the Labor Arbiter and the NLRC clearly show how petitioner acquired or developed his illness during the term of his contract. The CA reversed the NLRC decision by ruling that nothing in the records, documentation or medical report, show that petitioner contracted his illness aboard M/T North Star, however, despite such, the fact that petitioner was able to pass his PEME without any finding that he had a pre-existing heart ailment **before** boarding the vessel and later on finding, after the termination of his contract that he has acquired the said heart ailment, one can conclude that such illness developed while he was on board the same vessel. The work assigned to the petitioner would all lead to the conclusion that the work of petitioner as Able Seaman caused or contributed even to a small degree to the development or aggravation of complainant's heart disease. In determining whether a disease is compensable, it is enough that there exists a reasonable work connection. It is sufficient that the hypothesis on which the workmen's claim is based is probable since probability, not certainty is the touchstone.

SCANMAR MARITIME SERVICES, INC. and CROWN SHIPMANAGEMENT, INC., *Petitioners*, - versus- CELESTINO M. HERNANDEZ, JR., *Respondent*.
G.R. No. 211187, FIRST DIVISION, April 16, 2018, DEL CASTILLO, *J*.

In this case, respondent filed his complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the company-designated physician was still in the process of assessing his condition and determining whether he was still capable of performing his usual sea duties; and when the 240-day period had not yet lapsed. From the foregoing, it is evident that respondent's complaint was prematurely filed. His cause of action for total and permanent disability benefits had not yet accrued.

Moreover, respondent's failure to comply with the procedure prescribed by the POEA-SEC, which is the law between the parties, provided a sufficient ground for the denial of his claim for total and permanent disability benefits.

Section 20B(3) of the POEA-SEC provides that it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability. The provision also provides for a procedure to contest the company-designated physician's findings. Respondent, however, failed to comply with the procedure when he filed his complaint on July 20, 2010 without a definite assessment yet being rendered by the company-designated physician.

FACTS:

On July 2, 2009, petitioner for and in behalf of its foreign principal, petitioner Crown Shipmanagement, Inc., entered into a Contract of Employment with respondent for a period of nine months as Able Seaman for the vessel Timberland. Respondent underwent the pre-employment medical examination (PEME), where he was declared fit for work. He was deployed on August 3, 2009 and boarded the vessel the next day.

During the course of his employment, respondent experienced pain in his inguinal area and pelvic bone. The pain continued for weeks radiating to his right scrotum and right medial thigh. He informed the Captain of the vessel and was brought to a hospital in Sweden on February 3, 2010 where he was found unfit to resume normal duties. Consequently, respondent was medically repatriated to the Philippines on February 6, 2010.

On February 8, 2010, respondent was referred to the company-designated physician at Metropolitan Medical Center for medical evaluation. He was diagnosed to have *Epididymitis, right, Varicocoele, left*and was recommended to undergo Varicocoelectomy. The procedure was a success and respondent was immediately discharged the following day. Thereafter, he continuously reported to Dr. Gatchalian for medical treatment and evaluation.

Despite continuing medical treatment and evaluation with the company-designated physician, respondent filed on July 20, 2010 a complaint with the NLRC for permanent disability benefits, damages, and attorney's fees against petitioners. On August 12, 2010, respondent consulted his own physician, Dr. Antonio C. Pascual (Dr. Pascual), a Cardiologist, who diagnosed him with *Essential Hypertension, Stage 2, Epididymitis, right, Varicocoele, left, S/P Varicocoelectomy* and certified him medically unfit to work as a seaman.

Meanwhile, on August 24, 2010, Dr. Gatchalian pronounced respondent fit to resume sea duties.

Petitioners, on the other hand, disclaimed respondent's entitlement to any disability compensation or benefit since his illness was not an occupational disease listed as compensable under the POEA-SECand was not considered work-related. Petitioners maintained that respondent was never declared unfit to work nor was he rendered permanently, totally or partially, disabled, averring that Dr. Gatchalian, the urological surgeon who closely monitored respondent's condition, already declared him fit to resume sea duties. Petitioners insisted that Dr. Gatchalian's assessment should prevail over that rendered by Dr. Pascual, who examined respondent only once. Further, according to petitioners, respondent's failure to consult a third doctor who is tasked to settle the inconsistencies in the medical assessments in accordance with the provisions of the POEA-SEC was fatal to his cause.

The Labor Arbiter awarded respondent total and permanent disability compensation.Petitioners appealed to the NLRC which dismissed the same and affirmed the Labor Arbiter. The Petitioner sought recourse to the Court of Appeals which likewise dismissed the same and affirmed the order.

ISSUE:

Whether Respondent is entitled to permanent disability benefits. (NO)

RULING:

We find serious error in both the rulings of the NLRC and CA that respondent's disability became permanent and total on the ground that the certification of the company-designated physician was issued more than 120 days after respondent's medical repatriation. As correctly argued by petitioners, the 120-day rule has already been clarified in the case of *Vergara v. Hammonia Maritime Services, Inc.,* where it was declared that the 120-day rule cannot be simply applied as a general rule for all cases in all contexts.

In *Vergara,* this Court has ruled that the aforequoted provisions should be read in harmony with each other, thus: (a) the 120 days provided under Section 20B(3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or disability assessment and the seafarer is still unable to resume his regular seafaring duties.

Upon respondent's repatriation on February 6, 2010, he received extensive medical attention from the company-designated physicians. He was endorsed to a urological surgeon. Dr. Gatchalian, who recommended and performed surgery on him on March 26, 2010 to address and treat his varicocoele. After surgery, his condition was continually monitored as he still complained of scrotal and groin pains. He thereafter underwent Inguinoscrotal Ultrasound on May 28, 2010 and July 16, 2010. He was subjected to further physical and laboratory exams and was recommended by Dr. Gatchalian to undergo CT Sonogram to further evaluate his condition and recovery, as shown in a Medical Report dated August 19, 2010. On August 24, 2010 or 197 days from repatriation, respondent was cleared to go back to work.

In this case, respondent filed his complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the company-designated physician was still in the process of assessing his condition and determining whether he was still capable of performing his usual sea duties; and when the 240-day period had not yet lapsed. From the foregoing, it is evident that respondent's complaint was prematurely filed. His cause of action for total and permanent disability benefits had not yet accrued.

Moreover, respondent's failure to comply with the procedure prescribed by the POEA-SEC, which is the law between the parties, provided a sufficient ground for the denial of his claim for total and permanent disability benefits.

Section 20B(3) of the POEA-SEC provides that it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability. The provision also provides for a procedure to contest the company-designated physician's findings. Respondent, however, failed to comply with the procedure when he filed his complaint on July 20, 2010 without a definite assessment yet being rendered by the company-designated physician. Worse, he sought an opinion from Dr. Pascual, an independent physician, on August 12, 2010 despite the absence of an assessment by the company-designated physician.

The medical certificate of Dr. Pascual, nevertheless, was of no use and will not give respondent that cause of action that he lacked at the time he filed his complaint. Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a certification as to his fitness or disability and he finds this disagreeable. The Court is thus unconvinced to put weight on the findings of Dr. Pascual given that respondent has breached his duty to comply with the procedure prescribed by the POEA-SEC.

ARNEL T. GERE, *Petitioner*, *v.* **ANGLO-EASTERN CREW MANAGEMENT PHILS., INC. AND/OR ANGLO-EASTERN CREW MANAGEMENT (ASIA), LTD.**, *Respondent*s.
G.R. No. 226656 & 226713, SECOND DIVISION, April 23, 2018, REYES, JR., *J.*

Only when the seafarer is duly and properly informed of the medical assessment by the company-designated physician could he determine whether or not he/she agrees with the same; and if not, only then could he/she commence the process of consulting his personal physician. If conflicting assessments arise, only then is there a need to refer the matter to a neutral third party physician. Without the proper notice, Gere was not given the opportunity to evaluate his medical assessment. In this instance, the mandatory referral to a neutral third doctor could not have been applicable.

FACTS:
Gere is a Filipino seafarer who signed a Contract of Employment with Anglo-Eastern Crew Management (Asia), Ltd., through its manning agent in the Philippines, Anglo-Eastern Crew Management Phils., Inc. Gere was accepted as an able seaman aboard the vessel "MV JENNY N" for a duration of nine (9) months.

While performing his duties on board the vessel, Gere accidentally stepped on a bulwark support causing him to lose his balance and to eventually land heavily on his right arm. Due to this, Gere was repatriated to the Philippines.

According to the respondents, the company-designated physician issued on April 28, 2014 an interim disability grading of "Grade 10 - loss of grasping power" and on August 12, 2014, a final disability grading of "Grade 10 - ankylosed wrist in normal position."

In contrast, however, Gere remained firm in asserting that the respondents have not informed him of these medical assessments. According to him, more than 240 days of treatment have already lapsed without the disability grading from the company-designated physician, and so, he consulted his personal physician who opined that Gere suffers from "partial permanent disability with Grade 8 impediment based on the POEA contract."

On the basis of the foregoing, Gere asked the respondents to pay him disability benefits based on the CBA between AMOSUP and the respondents. Since the latter denied the claim, Gere filed a Notice to Arbitrate before the Office of the Panel of Voluntary Arbitrators of the NCMB. The panel rendered its Decision in favor of Gere. Aggrieved, the respondents appealed before the CA, which later on reduced the total and permanent disability benefit awarded to Gere and deleted the award of sickness allowance for lack of merit. Hence, the instant petitions.

ISSUES:

(1) Whether or not the company-designated physician was able to issue a final disability grading of Gere's injury within 240 days from the moment of his medical attention? (NO)

(2) Whether or not the referral to a third doctor is mandatory in the event of disagreement between the company-designated physician and the seafarer's personal physician? (NO)

(3) Whether or not such injury is compensable under Philippine law? (YES)

RULING:

(1) As it now stands, the rules to be followed are:

1 The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2 If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3 If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4 If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In following the foregoing guidelines, it must be emphasized that the company-designated physician must not only "issue" a final medical assessment of the seafarer's medical condition. He must also "give" his assessment to the seafarer concerned. That is to say that the seafarer must be fully and properly informed of his medical condition. **In this regard, the company-designated physician is mandated to issue a medical certificate, which should be personally received by the seafarer, or, if not practicable, sent to him/her by any other means sanctioned by present rules.**

This elaboration acquires greater significance in light of Section 20(A)(3) of the POEA Contract, which states that in the event that a seafarer suffers a worker related/aggravated illness or an injury during the course of his/her employment, it is the company-designated physician's medical assessment that shall control the determination of the seafarer's disability grading. Should the seafarer's personal physician disagree, then the matter shall be referred to a neutral third party physician, who shall then issue a final and binding assessment.

The Court further clarified this rule by categorically saying that the referral to a third doctor is **mandatory**. In this light, only when the seafarer is duly and properly informed of the medical assessment by the company-designated physician could he determine whether or not he/she agrees

with the same; and if not, only then could he/she commence the process of consulting his personal physician. If conflicting assessments arise, only then is there a need to refer the matter to a neutral third party physician.

In the present case, the Court finds that the evidence presented by the respondents to prove that they have actually given Gere a copy of the medical assessment fail to convince. First, both interim and final disability ratings were mere suggested disability ratings. Indeed, both written and addressed, not to Gere, but to the company-designated physician. Second, all that the document showed was that Gere was informed of the disability grading only after the filing of the Notice to Arbitrate which, coincidentally, was already 250 days after his medical repatriation.

(2) Without the proper notice, Gere was not given the opportunity to evaluate his medical assessment. In this instance, the mandatory referral to a neutral third doctor could not have been applicable. **Indeed, from the perspective of Gere, there was absolutely no assessment by the company-designated physician to contest. As such, there was no impetus to seek a neutral third doctor.** Therefore, for the respondents' failure to inform Gere of his medical assessment within the prescribed period, Gere's disability grading is, by operation of law, total and permanent.

(3) The provisions of the CBA are clear: (1) only when the disability grading is at 50% or more, or (2) only when the company-designated physician certifies that the seafarer is medically unfit to continue work-even if the disability grading is less than 50%-could the seafarer be entitled to total and permanent disability benefits in accordance with the medical unfitness clause. In the present case, even Gere's personal physician assessed him only at Grade 8 disability grading, which translates to only 33.59%.

Notwithstanding this, CA is correct in applying the provisions of the POEA contract rather than the provisions of the CBA because **neither the company doctor nor his own doctor assessed his disability at 50% or more**. Moreover, while the permanent medical unfitness clause provides that any seafarer assessed at less than 50% disability is entitled to full compensation, **the same clause mandates that the certification must be made by the company doctor which is not the situation in the present case**.

SEACREST MARITIME MANAGEMENT, INC. AND/OR HERNING SHIPPING ASIA PTE. LTD.,
Petitioners, *v.* **ALMA Q. RODEROS, AS WIDOW AND LEGAL HEIR OF FRANCISCO RODEROS**, *Respondent*.
G.R. No. 230473, SECOND DIVISION, April 23, 2018, REYES, JR., *J.*

Work-related illnesses are determined by the following rules:

First, there is work relation if the illness leads to disability or death as a result of an occupational disease listed under Section 32-A of the POEA SEC with the conditions set therein satisfied;

Second, for illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. However, this presumption notwithstanding, the Court has held that the claimant-seafarer must still prove by substantial evidence that his/her work conditions caused or, at least, increased the risk of contracting the disease. In order

to establish compensability of a non-occupational disease, reasonable proof of work-connection-but not direct causal relation-is required.

FACTS:
Francisco Roderos is a Filipino seafarer who signed a Contract of Employment with Heming Shipping Asia Pte. Ltd., through its manning agent in the Philippines, Seacrest Maritime Management, Inc. He was accepted on board the vessel "MT ANNELISE THERESA" as a Chief Cook for six (6) months.

During his engagement in the vessel, Roderos experienced constipation and abdominal pains. The symptoms continued until September of the same year. While on the Port of Rostock in Germany, Roderos was brought to the Hospital where he was found to have blood in his stool. Few days thereafter, he was repatriated back to the Philippines.

Upon Roderos's arrival, he was diagnosed with "Colon Adenocarcinoma" in a stage four (4) level. Roderos underwent chemotherapy sessions under the care of the company designated physician, Dr. Alegre. Thereafter, Dr. Alegre issued a Progress Report, where he reported that Roderos's illness was "deemed not work related."

On the basis of the foregoing report, Roderos's chemotherapy treatments were discontinued. Thus, Roderos sought for the collection of disability benefits. Unfortunately, the parties did not reach any settlement. Hence, Roderos filed a complaint before the LA for disability benefits, illness allowance, attorney's fees, and medical expenses.

LA rendered a Decision against Roderos on the following grounds: (1) Stage 4 Colon Cancer is not among the occupational diseases listed in the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) and (2) the company designated physician declared that the illness is not work-related.

Aggrieved, Roderos elevated the case to the NLRC. While the case was pending, Roderos died. As a result, Roderos's widow and legal heir, filed for a motion for substitution, which was granted by the NLRC.

NLRC affirmed the LA's decision. The case was elevated to the CA via a Petition for *Certiorari* under Rule 65 of the Rules of Court. The CA held that Roderos's illness was work-related, or at the very least, work aggravated due to the dietary factors attendant to his work on board the vessel. Hence, this present petition.

ISSUE:
Whether or not Roderos's illness was work-related, and consequently, whether or not he was entitled to disability and death benefits? (NO)

RULING:
Roderos's illness, Cancer of the Large Bowel (Colon), is not an occupational disease listed in Section 32 of the POEA-SEC, and the respondent failed to discharge the burden of providing substantial evidence of the causal connection between the work done by Roderos aboard the vessel and his diagnosed illness.

In *Jebsens Maritime, Inc, Sea Chefs. Ltd. And Enrique M. Aboitiz vs. Florvin G. Rapiz*, the Court reiterated its pronouncement that the POEA-SEC is the law between the parties, and its provisions bind both of them.To determine whether an injury or illness is compensable, Section 20(A) of the contract requires the concurrence of two elements: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. Work-related illnesses are determined by the following rules:

First, there is work relation if the illness leads to disability or death as a result of an occupational disease listed under Section 32-A of the POEA SEC with the conditions set therein satisfied;

Second, for illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. However, this presumption notwithstanding, the Court has held that the claimant-seafarer must still prove by substantial evidence that his/her work conditions caused or, at least, increased the risk of contracting the disease. In order to establish compensability of a non-occupational disease, reasonable proof of work-connection-but not direct causal relation-is required.

Thus, for an occupational disease and the resulting disability or death to be compensable, all the following conditions, *as supported by substantial evidence*, must be established:

1. The seafarer's work must involve the risk described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

In this case, there is no dispute that Roderos's illness, Cancer of the Large Bowel (Colon), is not among the occupational diseases listed in the POEA-SEC. In fact, the Court has already stated in *Leonis Navigation Co., Inc. vs. Villamater* that "under Section 32-A of the POEA Standard Contract, **only two types of cancers are listed as occupational diseases** - (1) Cancer of the epithelial lining of the bladder (papilloma of the bladder); and (2) cancer, epithellematous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound products or residues of these substances."

This thus leads the discussion into the second rule in determining the work relation of the illness. Respondent's Position Paper asserted that Roderos's food intake and his exposure to dangerous chemicals aboard "MT ANNELISE THERESA" caused his diagnosed illness. It must be emphasized, however, that with regard to Roderos's dietary intake while on board the vessel, no evidence other than these self-serving allegations were presented. There was absolutely no proof of what Roderos supposedly ate during his work that would have aggravated his illness.

In contrast, the petitioners have presented several affidavits of other seafarers who served with Roderos during his last stint aboard the vessel. A reading of these statements would reveal that the vessel was well-provisioned and that there was variety in the kinds and quality of food served.

In addition, that the company-designated physician issued a medical report stating that Roderos's diagnosed illness, Cancer of the Bowel (Colon), is deemed not work-related militates against the respondent's claims. Contrary to the mandatory proceedings identified by the Court, Roderos did not

demand for his re-examination by a third doctor, and instead opted to initiate the instant case. This, as the Court already ruled, is a fatal defect that militates against his claims.

Thus, for the respondent's failure to (1) present substantial evidence that would prove reasonable causation, or at the very least, aggravation of Roderos's work while aboard the petitioners' vessel, and for Roderos's failure to (2) insist on his re-examination of a third doctor that could determine with finality as to whether or not his diagnosed illness was work-related, the Court is constrained to rule for the petitioners.

LOADSTAR INTERNATIONAL SHIPPING, INC., *Petitioner* –versus- ERNESTO AWITEN YAMSON, SUBSTITUTED BY HIS HEIRS GEORGIA M. YAMSON AND THEIR CHILDREN, NAMELY: JENNIE ANN MEDINA YAMSON, KIMBERLY SHEEN MEDINA YAMSON, JOSHUA MEDINA YAMSON AND ANGEL LOUISE MEDINA YAMSON, *Respondent.*
G.R. No. 228470, SECOND DIVISION, April 23, 2018, Peralta, J.

For disability to be compensable under the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

In Andrada v. Agemar Manning Agency, Inc., et al., this Court held that:
" In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seaman may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them"

In the present case, there is no evidence to show that the parties jointly sought the opinion of a third physician in the determination and assessment of Ernesto's disability or the absence of it. Hence, the credibility of the findings of their respective doctors was properly evaluated by the labor tribunals (LA and NLRC) as well as the CA on the basis of their inherent merits. After a review of the records at hand, the Court finds that there is no cogent reason to depart from the findings of the LA and the NLRC that Ernesto failed to establish that his subject illnesses were either work-related or work aggravated.

FACTS:

Petitioner is a domestic corporation engaged in the shipping business. On May 7, 2012, petitioner employed the services of herein respondent Ernesto Yamson (*Ernesto*) as Third Mate aboard the vessel "M/V Foxhound" for a period of twelve (12) months, with a basic monthly salary of US$582.00, as evidenced by his Employment Contract. On May 9, 2012 Ernesto commenced his employment on board "M/V Foxhound". His contract was subsequently extended.

On November 19, 2013, Ernesto, while performing his regular tasks on an extremely hot day, felt dizzy. In the evening of the same day, Ernesto started to feel the left side of his body getting numb. Ernesto was, thus, brought to the Pacific International Hospital in Papua New Guinea where he was confined and was diagnosed to have suffered from cerebrovascular disease: "left cerebellar infarct" and hypertension, Stage 2. The attending physician ordered him to cease from working for a period of two (2) weeks. Subsequently, on December 1, 2013, Ernesto was repatriated to the Philippines. Upon arrival in Manila, he was immediately brought to the Philippine General Hospital where he underwent medical check-up. Finding that he was in a stable condition, the examining doctor sent

him home as he was classified as an "out-patient." Ernesto was admitted at the Manila Doctor's Hospital where he underwent CT scans of the head and heart.

In his letter addressed to petitioner, the company-designated physician reported that the result of the CT scan conducted on Ernesto' showed, among others, that he has an "old infarct in the left superior aspect of the left cerebellum." On December 13, 2013, Ernesto was discharged from the hospital. Subsequently, he consulted another physician who diagnosed him to be suffering from Hypertensive Atherosclerotic Cardiovascular Disease and Cerebrovascular Disease and was advised to cease from working as a seaman due to his neurologic deficits.

On the basis of the findings of his own doctor, Ernesto filed a complaint praying that he be awarded the following: US$60,000.00 as total and permanent disability benefits; sickness allowance equivalent to 120 days; medical and transportation expenses in the amount of P62,514.64; P100,000.00 as moral damages; P100,000.00 as exemplary damages; and, 10% of the total judgment award as attorney's fees.

The Labor Arbiter ruled in favour of the petitioner, while the NLRC partly granted Ernesto's petition. The Court of Appeals ordered Loadstar International Shipping Inc. to pay Ernesto total and permanent disability benefits in the amount of US$60,000.00 plus ten percent (10%) thereof as attorney's fees.

Pending the resolution of the case in the Supreme Court Ernesto died and is substituted by his heirs.

ISSUE:

Whether Ernesto is entitled to disability compensation by reason of such illnesses. (NO)

RULING:

It is settled that while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-Standard Employment Contract (*POEA-SEC*) be integrated with every seafarer's contract. In the instant case, since petitioner's employment contract was executed on May 7, 2012, it is governed by the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, which was amended in 2010, pertinent portions of which read as follows:

> "3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.
> XXX
> 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."

In *Andrada v. Agemar Manning Agency, Inc., et al.,* this Court held that:
" In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seaman may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them"

In the present case, there is no evidence to show that the parties jointly sought the opinion of a third physician in the determination and assessment of Ernesto's disability or the absence of it. Hence, the credibility of the findings of their respective doctors was properly evaluated by the labor tribunals (*LA and NLRC*) as well as the CA on the basis of their inherent merits.

After a review of the records at hand, the Court finds that there is no cogent reason to depart from the findings of the LA and the NLRC that Ernesto failed to establish that his subject illnesses were either work-related or work aggravated.

For disability to be compensable under the above POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. To be entitled to compensation and benefits under the governing POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

The burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease. In this case, however, Ernesto was unable to present substantial evidence to show that his work conditions caused, or at the least increased the risk of contracting his illness. Neither was he able to prove that his illness was pre-existing and that it was aggravated by the nature of his employment.

RICKY B. TULABING, *Petitioner*, *v.* **MST MARINE SERVICES (PHILS.), INC., TSM INTERNATIONAL LTD., AND/OR CAPT. ALFONSO R. DEL CASTILLO**, *Respondent*.
GR No. 202113 , SECOND DIVISION, June 6, 2018, REYES, Jr., *J*.

In recently decided cases involving claims for disability benefits, the Court ruled that the company-designated physician must arrive at and issue a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days. If the company-designated physician fails to give his assessment within the 120-day period but there is sufficient justification for the delay (e.g. the seafarer's condition required further medical treatment or on-going rehabilitation), the 120-day period shall be extended to 240 days. If the company-designated physician still fails to give a final assessment within the extended period and the seafarer's medical condition remains unresolved after the lapse of said period, the seafarer's disability shall be deemed permanent and total.

FACTS:
MST is a Philippine-registered manning agency engaged in the recruitment of seafarers for its foreign principal, TSM, a Norwegian shipping company.

Tulabing is a seafarer formerly under the employ of TSM. His employment was covered by the Norwegian International Ship Register collective bargaining agreement (NIS-CBA), between the

Norwegian Shipowners' Association (NSA), on the one hand, and the Associate Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and the Norwegian Seafarer's Union (NSU), on the other.

On August 23, 2007, MST, in behalf of TSM, employed Tulabing as GP2 Wiper for the vessel M/T Champion. Covered by a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment, Tulabing's employment was for a period of nine months with a basic monthly salary of US$454.00. On September 13, 2007, Tulabing embarked on his voyage on board M/T Champion and commenced the performance of his duties pursuant to his Contract.

Sometime in January 2008, while engaged in the performance of his duties, he felt a sudden crack on his back which was followed by a severe pain and numbness of the left side of his body. He was referred to a physician in Brazil for medical evaluation and was given medicine but eventually his condition aggravated and radiated to his left shoulder and upper extremities.

Subsequently, Tulabing complained of chest pain, hence, he was referred by the vessel master to Dr. J.J. Voorsluis of the Medical Centre for Seamen in Amsterdam, Netherlands for medical examination. Dr. Voorsluis diagnosed him of cervical neuralgia and was declared unfit to work for four days with the recommendation that should his medical condition fail to improve, he should be repatriated back to the Philippines.On June 13, 2008, Tulabing was repatriated back to the Philippines.

On June 17, 2008, Tulabing reported to Dr. Nicomedes Cruz, the company-designated physician for medical evaluation. Dr. Cruz confirmed Dr. Voorsluis' diagnosis of Tulabing's cervical neuralgia and noted the persistence of his upper back pain which continued to radiate to his left shoulder and upper left extremities. Dr. Cruz issued a Medical Report, ordering an x-ray of Tulabing's cervical spine and his referral to an orthopedic surgeon for specialized examination, and directing him to return for further evaluation.

Tulabing underwent physical rehabilitation from October to December of 2008 under the medical attention of specialist Dr. Reynaldo Matias, who regularly submitted to Dr. Cruz his evaluations of Tulabing's condition. Based on the suggestion of Dr. Matias, Dr. Cruz assessed Tulabing's condition as Grade 10 disability.

Tulabing, however, did not agree and demanded from MST the payment of maximum disability compensation in the amount of US$70,000.00 pursuant to Article 12 of the NIS-CBA. MST denied Tulabing's claim and instead offered him compensation in the amount of US$14,105.00. Tulabing refused the offer, insisting that he is entitled to full compensation. The parties initially submitted the dispute to the AMOSUP pursuant to the grievance procedure specified in the NIS-CBA but no settlement was obtained thereat.

Subsequently, Tulabing filed with the NLRC a complaint against MST for payment of permanent total disability benefits. MST denied liability on the ground that under the provisions of his employment contract and the NIS-CBA, a seafarer is only entitled to claim maximum disability compensation of US$70,000.00 if the company-designated physician declares him to be suffering from Grade 1 disability.
On December 29, 2009, Labor Arbiter Catalino R. Laderas rendered a Decision in favor of MST. Aggrieved, Tulabing appealed to the NLRC asserting his entitlement to the full permanent total disability compensation. However, during the pendency of his appeal, Tulabing consulted orthopedic

surgeon Dr. Alan Leonardo Raymundo of the Philippine Orthopedic Institute, Makati City. In a Medical Report dated June 15, 2010, Dr. Raymundo diagnosed Tulabing of cervical neuropraxia and declared him unfit for resumption of duty.

On August 16, 2010, the NLRC rendered its Decision, setting aside the LA's decision. On September 21, 2010, MST moved for reconsideration but the same was denied by the NLRC. Undeterred, MST filed a petition for *certiorari* in the CA which affirmed the earlier Decision of the NLRC. Due to the denial of the motion for reconsideration, the case was elevated to the SC.

ISSUE:

Whether Tulabing is entitled to the award of *full* disability benefits of US$70,000.00. (NO)

RULING:

By correlating and harmonizing the provisions of Article 192(c)(1) of the Labor Code and Section 2, Rule X of the Amended Rules on Employees' Compensation, the prevailing rule as it now stands is that the 120-day initial period may be extended for the purpose of determining the seafarer's grade of disability. In recently decided cases involving claims for disability benefits, the Court ruled that the company-designated physician must arrive at and issue a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days. If the company-designated physician fails to give his assessment within the 120-day period but there is sufficient justification for the delay (e.g. the seafarer's condition required further medical treatment or on-going rehabilitation), the 120-day period shall be extended to 240 days. If the company-designated physician still fails to give a final assessment within the extended period and the seafarer's medical condition remains unresolved after the lapse of said period, the seafarer's disability shall be deemed permanent and total.

The only instance when the assessment of a company-designated physician may be challenged is when the seafarer likewise consulted with his personal physician who issued a different assessment. The conflicting assessments shall be settled by referring the matter to a neutral third-party physician, whose assessment shall be final and binding.

It bears emphasizing that Tulabing only sought a *second* opinion and consulted Dr. Raymundo when the LA decided against his claim of full disability benefits. In fact, his appeal was already pending with the NLRC when such consultation was made. This move on Tulabing's part appears to be nothing but a mere afterthought given the length of time that has already passed since Dr. Cruz's final assessment. Dr. Raymundo issued the Medical Report only on June 15, 2010 or almost two years (728 days) from the date of Tulabing's first medical evaluation after his repatriation to the Philippines. Moreover, even if the Court were to consider the irrationally late assessment issued by Dr. Raymundo, the assessment of Dr. Cruz must still prevail for failure of the parties to refer the matter to a third-party physician, as required by the Rulesand jurisprudence.

ORIENT HOPE AGENCIES, INC. AND/OR ZEO MARINE CORPORATION, *Petitioners*, *v.* **MICHAEL E. JARA**, *Respondent*.
G.R. No. 204307, THIRD DIVISION, June 06, 2018, LEONEN, *J.*

Failure of the company-designated physician to render a final and definitive assessment of a seafarer's condition within the 240-day extended period transforms the seafarer's temporary and total disability to permanent and total disability.

FACTS:

Jara was hired by Orient Hope, on behalf of its foreign principal, Zeo Marine, as engine cadet on board M/V Orchid Sun.The employment contract was for duration of 10 months with a basic monthly salary of US$230.00. On its way to Oman, M/V Orchid Sun sank off Muscat on July 12, 2007, during which Jara sustained leg injuries. He was treated at Khoula Hospital in Oman and thereafter repatriated and admitted on August 3, 2007 at the Metropolitan Hospital in Manila. Jara was diagnosed to have suffered from "fracture, shaft of left ulna and left fibula." On August 28, 2007 and January 9, 2008, he underwent knee operations. He did not return to the company-designated doctor after his check up on March 17, 2008.

Meanwhile, on March 6, 2008,Jara filed a complaint with the Labor Arbiter, insisting that he was entitled to total permanent disability benefits amounting to US$60,000.00.

On May 29, 2008, Assistant Medical Coordinator Dr. Mylene Cruz Balbon of the Marine Medical Services of Metropolitan Medical Center issued a letter, stating that based on his last follow-up, his suggested disability grading is Grade 11 – stretching leg or ligaments of a knee resulting in instability of the joint.

Labor Arbiter Daniel J. Cajilig found Jara entitled to compensation equivalent to Grade 11 disability. He solely relied on the assessment of the company-designated physician. He found no evidence or other medical report on record to dispute the company designated physician's determination and to support Jara's claim.

The National Labor Relations Commission affirmed the Labor Arbiter's award. Jara filed a Motion for reconsideration but it was denied by the NLRC.

Insisting that he was entitled to permanent disability compensation, Jara elevated the matter to the Court of Appeals through a Petition for Certiorari under Rule 65.

In its August 15, 2012 Decision, the Court of Appeals held that Jara was "entitled to permanent disability benefits because the assessment of the company-designated physician that he was suffering from a grade '11' disability was issued after nine (9) months or more than 120 days from the time he was medically repatriated."

ISSUE:

Whether or not respondent Jara is entitled to permanent and total disability compensation considering that there was a Grade 11 disability grading given by the company-designated physician (YES)

RULING:

The prevailing rule is that a seafarer's mere inability to perform his or her usual work after 120 days does not automatically lead to entitlement to permanent and total disability benefits because the 120-day period for treatment and medical evaluation by a company-designated physician may be extended to a maximum of 240 days.

However, there must be a sufficient justification to extend the medical treatment from 120 days to 240 days. In other words, the 240-day extended period remains to be an exception, and as such, must be clearly shown to be warranted under the circumstances of the case before it can be applied.

Applying the case of Talaroc v. Arpaphil Shipping Corp. stressed that for a company-designated physician to avail of the extended 240-day period, he or she must perform some complete and definite medical assessment to show that the illness still requires medical attendance beyond the 120 days, but not to exceed 240 days. In such case, the temporary total disability period is extended to a maximum of 240 days. Without sufficient justification for the extension of the treatment period, a seafarer's disability shall be conclusively presumed to be permanent and total. This Court summarized the following guidelines to be observed when a seafarer claims permanent and total disability benefits:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

Accordingly, in *Carcedo v. Maine Marine Philippines, Inc*.,this Court declared that a partial and permanent disability could, by legal contemplation, become total and permanent when a company-designated physician fails to arrive at a definite assessment within the 120- or 240-day periods prescribed under Article 198 [192](c)(1) of the Labor Code and the Amended Rules on Employee Compensation, implementing Book IV, Title II of the Labor Code.

PHILSYNERGY MARITIME, INC. AND/OR TRIMURTI SHIPMANAGEMENT LTD., *Petitioners*, *v.***COLUMBANO PAGUNSAN GALLANO, JR.**, *Respondent*.
G.R. No. 228504, SECOND DIVISION, June 06, 2018, PERLAS-BERNABE, *J.*

Pursuant to the 2010 POEA-SEC, an illness shall be considered as pre-existing if prior to the processing of the POEA contract, any of the following conditions is present: (a) the advice of a medical doctor on treatment was given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME.

Furthermore, Section 20 (A) of the 2010 POEA-SEC provides that a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."

FACTS:

Respondent was employed by petitioner Philsynergy Maritime, Inc. (Philsynergy), for and in behalf of petitioner Trimurti Shipmanagement Ltd. (Trimurti; collectively, petitioners), as Master (or Ship Master) on board the vessel M.V. Pearl Halo under a six (6)-month employment contractwith a basic monthly salary of US$1,847.00, among others, and covered by a CBA. After undergoing the required pre-employment medical examination (PEME) where the company-designated physician declared him fit for sea duty,respondent, who was then 62 years old, boarded the vessel on October 5, 2012.

On October 10, 2012, at around 10:00 in the evening and while in the performance of his duties, respondent felt a sudden numbness on the left side of his body and noticed that his speech was slurred. He was immediately provided first aid and his condition allegedly improved after taking an Isordil tablet which respondent had personally brought to the vessel. On the next day, his symptoms recurred, but which did not improve despite taking another dose of Isordil. Thus, respondent was brought to a local hospital in Poro, New Caledonia, where he was confined for eleven (11) days and underwent physical therapy from October 15 to 21, 2012. As a result, respondent was repatriated on October 23, 2012 for further medical treatment and referred to a company-designated physician, who diagnosed him to be suffering from "Cerebrovascular Infarct Middle Cerebral Artery, Right [and] Hypertension.

Respondent sought for the payment of total disability benefits from petitioners claiming that he suffered a brain stroke while in the performance of his duties, and that more than 120 days had lapsed from the time he was repatriated, which the latter refused. Thus, respondent filed a complaint for total permanent disability benefits, sickness allowance, damages, and attorney's fees against petitioners and Philsynergy's President, Capt. Reynold L. Torres, before the NLRC.\

Petitioners denied respondent's claim for disability benefits, averring that the latter fraudulently concealed a previously diagnosed medical condition for which he was prescribed medication (Isordil), and which he failed to disclose during his PEME; hence, he was disqualified to receive any compensation and benefits provided under Section 20 (E) of the 2010 Philippine Overseas Employment Administration Standard Employment Contract(2010 POEA-SEC). They likewise contended that even on the assumption that there was no concealment, petitioners were not liable

under the CBA since respondent's disability did not result from an accident,[25] adding too that his illnesses, Cerebrovascular Infarct Middle Cerebral Artery, Right and Hypertension, were declared by the company-designated physician as not work-related, and therefore, not compensable.

The LA ruled in favor of respondent and ordered petitioners to pay the latter US$60,000.00 in accordance with the 2010 POEA-SEC. NLRC affirmed the LA ruling. The CA found no grave abuse of discretion on the part of the NLRC in awarding total and permanent disability benefits in favor of respondent pursuant to the CBA. The CA agreed that respondent's brain stroke was work-aggravated/related which rendered him incapacitated to work.

ISSUE:

Whether or not the CA erred in upholding the NLRC's findings that respondent is entitled to total and permanent disability benefits under the CBA.

RULING:

Pursuant to the 2010 POEA-SEC, an illness shall be *considered as pre-existing* if prior to the processing of the POEA contract, *any* of the following conditions is present: *(a)* the advice of a medical doctor on treatment was given for such continuing illness or condition; or *(b)* the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME. In this case, the evidence on record is devoid of any indication that any of the conditions is present.

To properly determine whether a person suffers from hypertension, it is imperative that he or she undergoes medical check-ups, and consequently, procures a diagnosis from a medical doctor. t any rate, it is well to note that had respondent been suffering from a pre-existing hypertension at the time of his PEME, the same could have been easily detected by standard/routine tests conducted during the said examination.

Section 20 (A) of the 2010 POEA-SEC provides that a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."

Section 32-A of the 2010 POEA-SEC reads:

SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

In this case, records show that respondent's brain stroke was brought about by his hypertension which occurred only while in the performance of his duties as a Ship Master on board M.V. Pearl Halo. As discussed, there was no indication that respondent was known to be previously suffering from hypertension, and considering further that his last PEME showed normal blood pressure, chest x-ray and ECG results, his illnesses and the resulting disability were correctly declared to be compensable.

GAUDENCIO MORALES, *Petitioners,* - versus- RODEL D. DELOS REYES, *Respondent.*
G.R. No. 215111, FIRST DIVISION, June 20, 2018, DEL CASTILLO, *J.*

Referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment. The Court has consistently ruled that ***in case of conflicting medical assessments, referral to a third doctor is mandatory;*** *and that in the absence of a third doctor's opinion, it is the medical assessment of the company-designated physician that should prevail. In this case, respondent failed to refer the conflicting medical assessments to a third doctor*

FACTS:

Petitioner Abosta Shipmanagement Corp. is a duly licensed manning agency while petitioner Panstar Shipping, Co., Ltd. is a foreign principal agency based in Korea. Petitioner Gaudencio Morales, on the other hand, is an officer of petitioner Abosta.

On March 30, 2010, petitioner Abosta employed respondent Rodel D. Delos Reyes as a bosun on board the vessel MV Stellar Daisy for a period of nine months. Before boarding the vessel, respondent underwent a Pre-Employment Medical Examination and was declared fit to work. On July 2010, respondent complained of pain in his groin while performing his duties. He received treatment in Korea and was diagnosed with Inguinal Hernia.

On August 23, 2010, upon recommendation of the company-designated physician, respondent underwent right inginual herniorrhaphy with mesh imposition. Two days after, respondent was discharged from the hospital and was paid two months sickness allowance. September 2, 2010, respondent was declared fit to work by the company-designated physician. On July 19, 2011, respondent consulted Dr. Li-Ann Lara- Orencia, who found him to be permanently unfit to work and suffering from a Grade 1 disability which prompted the respondent to file a Complaint for Disability Benefits, Damages and Attorney's fees.

The Labor Arbiter dismissed the complaint for lack of merit. It gave more credence to the medical assessment of the company-designated physician as it was based on several months of treatment as against the medical assessment of the independent physician, Dr. Orencia, which was issued almost a year after respondent was repatriated. The NLRC affirmed the dismissal of the Complaints since it found no error on the part of the Labor Arbiter in giving credence to the medical assessment of the company-designated physician. It ruled that the assessment of the company-designated physician prevailed considering that respondent failed to seek the opinion of a third doctor as provided in the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).

CA reversed and set aside the Decision and Resolution of the NLRC. The CA found respondent entitled to total and permanent disability compensation since his illness rendered him unfit to resume his duties as bosun, which requires physical exertion, lifting, and carrying heavy objects.

ISSUE:

Whether respondent is entitled to total and permanent disability compensation.

RULING:

There is total disability when employee is unable "to earn wages in the same kind of work or work of similar nature that he or she was trained for, or accustomed to perform, or any kind of work which a person of his or her mentality and attainments could do." On the other hand, there is permanent disability when the worker is unable "to perform his or her job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his or her body."

In this case, respondent was repatriated for medical treatment. **Two months after his surgery or within the 120-day period, he was declared fit to work by the company-designated physician.**

Section 20 (B)(3) of the *2000 POEA-SEC* provides that:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall it exceed one hundred twenty (120) days.
>
> x x x x
>
> **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.**

In *Marlow Navigation Philippines, Inc. v. Osias,* the Court declared that

> Based on the above-cited provision, the **referral to a third doctor is mandatory** when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.

In this case, respondent, after consulting with Dr. Orencia, who happened to be the same doctor in Marlow, failed to refer the conflicting medical assessments to a third doctor. In fact, after consulting with Dr. Orencia, respondent immediately filed the instant complaint without first notifying petitioners. For this reason alone, the **CA should not have given any credence to the Medical Report of Dr. Orencia.** The Court has consistently ruled that **in case of conflicting medical assessments, referral to a third doctor is mandatory; and that in the absence of a third doctor's opinion, it is the medical assessment of the company-designated physician that should prevail.**

Moreover, we find it significant to note that medical assessment of the company-designated physician is more reliable considering that it was based on the treatment and medical evaluation done on

respondent, which showed that the treatment or surgery undergone by respondent was successful, while Dr. Orencia's medical assessment merely quoted the medical definition of hernia and some studies on the possibility of recurrence of the illness. **Under prevailing jurisprudence, "the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records."**

HEIRS OF MARCELIANO N. OLORVIDA, JR., REPRESENTED BY HIS WIFE, NECITA D. OLORVIDA, *Petitioner*, -versus- BSM CREW SERVICE CENTRE PHILIPPINES, INC., AND/OR BERNHARD SCHULTE SHIP MANAGEMENT (CYPRUS) LTD. AND/OR NARCISSUS L. DURAN, *Respondents*.
G.R. No. 218330, SECOND DIVISION, June 27, 2018, REYES, JR., J.

The first requirement for claiming death benefits is to prove that the seafarer's death was work-related. This is accomplished by establishing that: (a) the cause of death was reasonably connected to the seafarer's work; or (b) the illness, which caused the seafarer's death, is an occupational disease as defined in Section 32-A of the 2000 POEA-SEC; or (c) the working conditions aggravated or exposed the seafarer to the disease, which caused his/her death

Here, it is undisputed that Marceliano died of "Brain Herniation" as a result of his lung cancer. Lung cancer, however, is not one of the occupational diseases listed in Section 32-A of the 2000 POEA-SEC. Verily, there is a disputable presumption that the lung cancer of Marceliano was work-related. The burden is then shifted to the respondents, as the employers, to overcome this presumption by substantial evidence.

FACTS:

Petitioner filed a complaint for death benefits against a local manning agency, respondent BSM Crew, its President, Duran, and its foreign principal, Bernhard Schulte. The petitioner claimed that the respondents employed Marceliano N. Olorvida, Jr. as a seafarer and was assigned as a motorman on board various vessels. Petitioner alleged that Marceliano suffered from severe coughing, chest pains, and shortness of breath. He allegedly relayed his health conditions to his wife and the captain of Cosco Vancouver. The petitioner further purported that when Marceliano's contract of employment expired, he returned to the Philippines and reported his deteriorating health condition to BSM Crew immediately. Allegedly, Marceliano was not referred to a company-designated physician, which constrained him to seek medical attention at his own expense.

Marceliano was diagnosed with lung cancer and "Brain Metastasis." He later died due to "Brain Herniation" secondary to "Brain Metastases." His heirs claimed death benefits from the respondents, arguing that the cause of Marceliano's death was a work-related illness. In particular, the petitioner alleged that his work as a motorman exposed him to harmful substances that eventually caused his lung cancer. The respondents, for their part, argued that the claim for death benefits is unmeritorious, primarily because Marceliano died after the term of his employment. They further posited that Marceliano's diagnosis was not a work-related illness, and he failed to comply with the mandatory reporting requirement.

The LA dismissed the petitioner's claim for lack of merit. The NLRC reversed the LA's findings. The CA's, on the other hand, agreed with the earlier ruling of the LA that the illness of Marceliano was not work-connected.

ISSUE:

Whether or not Marceliano is entitled to death benefits. (NO)

RULING:

The employment of seafarers is governed not only by the terms and conditions of their employment contract, but also by the relevant regulations of the POEA. The provisions of these rules are deemed integrated into every employment contract, which employers are bound to observe as the minimum requirements for the employment of Filipino seafarers.

In this particular case, the applicable rule at the time the respondents employed Marceliano was the 2000 POEA-SEC. Section 20(A) of the 2000 POEA-SEC sets down the guidelines for obtaining compensation in cases of a seafarer's death, viz.:

> SECTION 20. COMPENSATION AND BENEFITS
>
> A. COMPENSATION AND BENEFITS FOR DEATH
>
> In case of work-related death of the seafarer, during the term of his contract[,] the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment. (Emphasis Ours)

This provision thus placed the burden on the seafarer's heirs to establish that: (a) the seafarer's death was work-related; and (b) the death occurred during the term of employment. These are proven by substantial evidence, or such level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion.

The first requirement for claiming death benefits is to prove that the seafarer's death was work-related. This is accomplished by establishing that: (a) the cause of death was reasonably connected to the seafarer's work; or (b) the illness, which caused the seafarer's death, is an occupational disease as defined in Section 32-A of the 2000 POEA-SEC; or (c) the working conditions aggravated or exposed the seafarer to the disease, which caused his/her death.

Here, it is undisputed that Marceliano died of "Brain Herniation" as a result of his lung cancer. Lung cancer, however, is not one of the occupational diseases listed in Section 32-A of the 2000 POEA-SEC. Verily, there is a disputable presumption that the lung cancer of Marceliano was work-related. The burden is then shifted to the respondents, as the employers, to overcome this presumption by substantial evidence.

Remarkably, in the clinical abstract prepared by the Philippine General Hospital (PGH) at the time of Marceliano's admission to the hospital on May 26, 2010, it was established that Marceliano was a

heavy smoker prior to being diagnosed with lung cancer. By virtue of these pieces of evidence, the respondents overcame the presumption that the lung cancer of Marceliano was work-related. Furthermore, the documentary evidence of the petitioner failed to establish a reasonable connection between Marceliano's work as a motorman and his lung cancer. The medical records specifically identified the intensity of Marceliano's previous smoking habits in relation to his diagnosis. His work as a motorman—the alleged exposure to dangerous substances and exhaust—was not even mentioned as a contributing factor to his illness that caused his death.

The second requirement for successfully claiming death benefits on behalf of the deceased seafarer is proof that the seafarer died during the term of his contract. As an exception to this rule, the heirs of a deceased seafarer may still receive the death benefits when the seafarer was medically repatriated on account of work-related injury or illness.

In this case, the death of Marceliano occurred way beyond the termination of his employment. His last employment contract with the respondents was for a period of eight (8) months, which started on January 7, 2009 and ended on November 11, 2009. He unfortunately died on January 17, 2012,61 or more than two (2) years after the end of his employment. For this reason, the Court cannot grant the petitioner's claim for death benefits.

While the petitioner alleged that Marceliano has repeatedly complained to his wife Necita and to the captain regarding his deteriorating health on board the sea vessel, there are no records to support this claim. All of the documentary evidence submitted by the petitioner are medical documents, which are dated after Marceliano returned to the Philippines—or, more precisely, after his employment ended on November 11, 2009. Hence, there is no basis for the petitioner's claim for death benefits.

ALDRINE B. ILUSTRICIMO, *Petitioner*, -versus- NYK-FIL SHIP MANAGEMENT, INC./INTERNATIONAL CRUISE SERVICES, LTD. AND/OR JOSEPHINE J. FRANCISCO, *Respondents*.

G.R. No. 237487, THIRD DIVISION, June 27, 2018, VELASCO JR., J.

For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. The same provision defines a work-related illness is "any sickness as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied." Meanwhile, illnesses not mentioned under Section 32 of the POEA-SEC are disputably presumed as work-related. Notwithstanding the presumption of work-relatedness of an illness under Section 20(A)(4), the seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease.

No less than respondents' doctor diagnosed the petitioner with bladder cancer and opined that his occupation exposed him to elements that increased his risk of contracting the illness. As found by the VA, petitioner was employed by the respondents for 21 years. It is, therefore, not implausible to conclude that petitioner's work may have caused, contributed, or at least aggravated his illness. Given the company doctors' conclusion and the afore-stated facts, the burden on the part of petitioner to prove the causality of his illness and occupation had been eliminated.

FACTS:

Petitioner was engaged by respondent International Cruise Services Ltd., through respondent NYK-Fil Ship Management, Inc. (NYK), as a Quarter Master onboard its vessels. His last employment with the respondents was on board the vessel MV Crystal Serenity. While MV Crystal Serenity was on its way to Florida, USA, petitioner started experiencing gross hematuria, or blood in his urine. He reported the matter to his superiors and was given antibiotics for suspected urinary tract infection. Due to his medical condition, petitioner was brought to a hospital in Key West, Florida, where he was subjected to a CT Scan. The results revealed the presence of three polypoid masses in his bladder. Petitioner was medically repatriated and immediately referred to the company-accredited hospital for treatment. Dr. Nicomedes Cruz, the company-designated doctor, diagnosed him with "bladder cancer." Dr. Cruz issued petitioner with a final assessment of Grade 7 disability-moderate residuals or disorder of the intra-abdominal organ.

Petitioner underwent another operation using his own funds. This prompted him to secure the opinion of another physician, Dr. Richard Combe, who diagnosed him with bladder mass and declared him unfit to work due to his need to undergo instillation chemotherapy and cystoscopy every three months. Thereafter, petitioner, thru counsel, sent respondents a letter claiming total and permanent disability benefits. Notwithstanding petitioner's communication, respondents failed to respond, prompting him to file a complaint for total and permanent disability before the NCMB.

The VA issued a Decision in favor of the petitioner and, accordingly, ordered respondents to pay him total and permanent disability benefits in the amount of USD95,949.00. The CA adjudged respondents liable only for partial permanent disability benefits under the parties' Collective Bargaining Agreement amounting to USD40,106.98.

Petitioner claims that the CA's reliance on the Grade 7 disability rating given by the company-designated doctor is based on the flawed finding that he failed to secure the opinion of a second doctor. He likewise faults the respondents for the non-referral of the case to a third doctor as required under Section 20(A)(3) of the POEA-SEC since the latter ignored his request to undergo another medical examination to prove the extent of the disability being claimed.

Respondents, for their part, insist that petitioner's illness is not compensable since it is not listed as an occupational disease under Section 32 of the POEA-SEC. Assuming that petitioner's condition is disputably presumed to be work-related, the burden lies upon him to prove that his work contributed/aggravated his illness, a burden which, according to the respondents, he failed to discharge. And even if petitioner's illness is compensable, respondents maintain that the disability rating of Grade 7 given by its doctor should prevail in view of his failure to prove that he sought a second medical opinion and to seek for the opinion of a third doctor, as provided for in the POEA-SEC.

ISSUE:

Whether or not the CA erred in ruling that petitioner is not entitled to total and permanent disability benefits.

RULING:

For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. The same provision defines a work-related illness is "any sickness as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied." Meanwhile, illnesses not mentioned under Section 32 of the POEA-SEC are disputably presumed as work-related. Notwithstanding the presumption of work-relatedness of an illness under Section 20(A)(4), the seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease.

Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

No less than respondents' doctor diagnosed the petitioner with bladder cancer and opined that his occupation exposed him to elements that increased his risk of contracting the illness. As found by the VA, petitioner was employed by the respondents for 21 years. It is, therefore, not implausible to conclude that petitioner's work may have caused, contributed, or at least aggravated his illness. Given the company doctors' conclusion and the afore-stated facts, the burden on the part of petitioner to prove the causality of his illness and occupation had been eliminated.

Anent the matter of compliance with the third-doctor referral procedure in the POEA-SEC, Section 20(A)(3) of the contract provides that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be agreed jointly between the employer and the seafarer, and the third doctor's decision shall be final and binding on both parties:

> SECTION 20. COMPENSATION AND BENEFITS
>
> COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> 3. x x x
>
> 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. (Emphasis supplied)

This referral to a third doctor has been held by the Court to be a mandatory procedure as a consequence of the provision in the POEA-SEC that the company-designated doctor's assessment should prevail in case of non-observance of the third doctor referral provision in the contract. Stated otherwise, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third

doctor who shall make his or her determination and whose decision shall be final and binding on the parties.

According to the respondents, petitioner's second medical opinion only came to their knowledge during one of the scheduled mandatory conferences before the VA. They argue that petitioner's failure to communicate his separate medical certification prior to the filing of the complaint not only constitutes a breach of his contractual obligations under the POEA-SEC, but also renders the complaint premature and is a ground for the dismissal of his claim for disability benefits.

Respondents do not deny receiving petitioner's October 16, 2015 letter despite their insistence that he failed to activate the third doctor provision. In fact, respondents repeatedly insisted that the letter was not meant to dispute the company-designated doctor's assessment, but rather to inform them that petitioner needed continued medical assistance. On the assumption that petitioner indeed "belatedly" informed respondents of the opinion of his second doctor and his intent to refer his case to a third doctor, the fact remains that they have been notified of such intent.

The POEA-SEC does not require a specific period within which the parties may seek the opinion of a third doctor, and they may do so even during the mandatory conference before the labor tribunals. Accordingly, upon being notified of petitioner's intent to dispute the company doctors' findings, whether prior or during the mandatory conference, the burden to refer the case to a third doctor has shifted to the respondents. This, they failed to do so, and petitioner cannot be faulted for the non-referral. Consequently, the company-designated doctors' assessment is not binding.

In any event, the rule that the company-designated physician's findings shall prevail in case of non-referral of the case to a third doctor is not a hard and fast rule. It has been previously held that labor tribunals and the courts are not bound by the medical findings of the company-designated physician and that the inherent merits of its medical findings will be weighed and duly considered.

In keeping with the avowed policy of the State to give maximum aid and full protection to labor, the Court has applied the Labor Code concept of disability to Filipino seafarers. Thus, We have held that the notion of disability is intimately related to the worker's capacity to earn, and what is compensated is not his injury or illness but his inability to work resulting in the impairment of his earning capacity. Hence, disability should be understood less on its medical significance but more on the loss of earning capacity.

In determining whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the disability he met. A permanent partial disability, on the other hand, presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.

Petitioner cannot be expected to resume sea duties if the risk of contracting his illness is associated with his previous occupation as Quarter Master. Indeed, records do not show that he was re-employed by respondent NYK or by any other manning agency from the time of his repatriation until the filing of the instant petition. Moreover, the recurrence of mass in petitioner's bladder, the requirement by both the company doctor and his personal doctor that he undergo repeat cystoscopy to monitor polyp growth, his subsequent operation to remove the growing polyps in his bladder even

after the lapse of the 240-day period for treatment and despite the final disability grading given, all sufficiently show that his disability is total and permanent.

Petitioner's disability being permanent and total, he is entitled to 100% compensation in the amount of US$95,949.00 as stipulated in par. 20.9 of the parties' CBA and as adjudged by the VA.

SKIPPERS UNITED PACIFIC, INC., and/or IKARIAN MOON SHIPPING, CO., LTD., *Petitioners* - versus - ESTELITO S. LAGNE, *Respondent*.
G.R. No. 217036, FIRST DIVISION, August 20, 2018, PERALTA, J.

For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

Considering the manual and laborious job that Lagne does, we surmised that he was able to reasonably prove that his working conditions exposed him to factors that could have aggravated his medical condition.

From the material dates, it can be assumed Lagne's illness started to exist or developed during his nine-month employment contract.

FACTS:

Estelito S. Lagne was hired by petitioner Skippers United Pacific, Inc. to serve as Oiler on board the vessel "Nicolaos M" which is owned and operated by its foreign principal, co-petitioner Ikarian Moon Shipping Co., Ltd. On September 14, 2009, Lagne signed his employment contract and on September 25, 2009, Lagne boarded the vessel. Part of his pre-employment requirements, Lagne was subjected to a Pre-Employment Medical Examination (PEME) where he was declared "fit for sea duty."

Sometime in January 2010, Lagne started to feel pain on his anus whenever he carries heavy weights or performs laborious tasks. He also experienced chest pains and difficulty in breathing during his work which he tried to endure. However, his ailment persisted as he even experienced intolerable pain even during defecation. Later, Lagne felt that there was a protruding mass on his anus which he noticed to be increasing in size. Alarmed, he reported the matter to his supervisor.
On May 12, 2010, Lagne was brought to the clinic at France, where he was attended by a certain Dr. Bourgois. He was diagnosed to have a "rectal mass" and was recommended for medical repatriation after having been declared "unfit for duty." Based on said findings, on May 17, 2010, Lagne was repatriated to the Philippines.

Lagne was endorsed at the Metropolitan Medical Center, under the care of Dr. Esther G. Go, the company-designated physician. Dr. Go diagnosed Lagne as suffering from "*Moderately Differentiated Rectosigmoid Adenocarcinoma*." Lagne then sought the expertise of Dr. May S. Donato-Tan, a specialist in internal medicine and cardiology. Dr. Donato-Tan found Lagne to have sustained a permanent disability due to "*Moderately Differentiated Rectosigmoid Adenocarcinoma* and *Atherosclerotic Cardiovascular Disease*" and declared him "UNFIT FOR DUTY in whatever capacity as seaman."

Lagne filed a claim for permanent total disability benefits. In his claim for disability compensation, Lagne asserted that his illness, rectosigmoid adenocarcinoma, was directly caused by his employment with petitioners. He alleged that the food regularly served in their assigned vessel involved mostly carbohydrates and meat, usually with saturated fat. He also averred that his duties as an oiler exposed him to manual and laborious tasks such as carrying heavy equipment and other materials which contributed to the worsening of his condition.

ISSUE:
Whether the claim of Lagne for permanent total disability benefits should be granted. (YES)

RULING:

For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. However, notwithstanding the presumption, we have held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions. Lagne was able to meet the required degree of proof that his illness is compensable as it is work-connected.

As to the first element, considering the manual and laborious job that Lagne does, we surmised that he was able to reasonably prove that his working conditions exposed him to factors that could have aggravated his medical condition. We give credence to his positive assertion that he felt pain on his anus whenever he carries heavy weights, chest pains and difficulty in breathing during his work, and the increasing size of the protruding rectal mass. To note, petitioners have not refuted having assigned to Lagne such task of carrying heavy weights. Further, being a seafarer, we can take judicial notice of the food provisions on a ship which are produced at one time for long journeys across the oceans and seas. The food provided to seafarers are mostly frozen meat, canned goods and seldom are there vegetables which easily rot and wilt and, therefore, impracticable for long trips. These provisions undoubtedly contributed to the aggravation of appellant's rectal illness.
In determining the compensability of an illness, we do not require that the employment be the sole factor in the growth, development, or acceleration of a claimants' illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if only in a small degree, to the development of the disease.

Even assumingthat the ailment of the worker was contracted prior to his employment, this still would not deprive him of compensation benefits. For what matters is that his work had contributed, even in a small degree, to the development of the disease. Neither is it necessary, in order to recover compensation, that the employee must have been in perfect health at the time he contracted the disease.

As to the second element, we find the same to be likewise present in this case. It is undisputed that Lagne boarded the vessel on September 25, 2009. He began experiencing pain in his anus sometime in January 2010. Later, on May 12, 2010, he was in fact brought to a clinic in France where he was attended by a certain Dr. Bourgois after he complained to his superior about his condition. It was also during said time when he was first diagnosed to have a rectal mass and was recommended for medical repatriation on May 17, 2010. Clearly, from the foregoing, it can be assumed Lagne's illness started to exist or developed during his nine-month employment contract.

OSCAR GAMBOA, *Petitioner* – versus - MANULAD TRANS, INC and/or RAINBOW MARITIME CO., LTD and CAPT. FAJARDO, *Respondents*
GR No. 232905, SECOND DIVISION, August 20, 2018, PERLAS-BERNABE, J.

Case law states that without a valid final and definitive assessment from the company-designated physician within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent. Thus, a temporary total disability becomes total and permanent by operation of law

In the case at bar, being an interim disability grade, the declaration was merely an initial determination of petitioner's condition for the time being and therefore cannot be considered as a definite prognosis , without the required final medical assessment declaring petitioner fit to resume work or the degree of his disability, the characterization of the latter's condition after the lapse of the 120-day period as total and permanent ensued in accordance with law

FACTS:

Oscar Gamboa entered into a 9-month contract with Maunlad Trans Inc (MTI). MTI is in behalf of its principal Rainbow Maritime (RMCL). After undergoing the required pre-employment medical examination (PEME) where he was declared fit for duty, Gamboa disembarked and joined the vessel MV Oriente Shine.

Gamboa assisted in the unloading of raw logs from the vessel, as well as in the clean-up of the debris and log residue. Gamboa could not withstand the strong odor of the logs and was gasping for breath, the latter asked for leave which was granted, and as such, was excused from the activity, however, the incident already triggered an asthma attack on Gamboa which initially started as a cough that was later accompanied by wheezing breath.

Later, during the voyage Gamboa slipped and lost his footing while going down the galley which caused a writhing pain on the upper left side of his back. During the rigging operation, Gamboa experienced back pain and difficulty in breathing that prompted the Captain to disembark him for medical consultation.

On February 15, 2014, Gamboa was medically repatriated and brought to Marine Medical Services where he was seen by a company-designated physician, Dr. Mylene Cruz-Balbon, who confirmed his bronchial asthma. Subsequent check-ups further disclosed that Gamboa was suffering from *"Degenerative Changes, Thoracolumbar Spine*" and was found to have a "metallic foreign body on the anterior cervical area noted on x-ray," which, as pointed out by the company-designated physician,

was not related to the cause of his repatriation. Gamboa was thereafter referred to orthopedic doctors for evaluation.

On May 14, 2014, another company designated physician Dr. Karen Frances Hao-Quan issued a medical report stating that Gamboa still has occasional asthma attacks that have not been totally controlled despite three (3) months of maintenance medication. The physician also noted that Gamboa still has tenderness and muscle spasm on his left paraspinal muscle. As such, the company-designated physician gave an interim assessment of "Grade 8 (orthopedic) - 2/3 loss of lifting power and Grade 12 - (pulmonary) slight residual or disorder."

Gamboa was recommended to undergo MRI. However, the MRI could only be done after the removal of the foreign bodies in Gamboa's neck area. MTI refused to shoulder the extraction procedure as it was not part of the cause of repatriation.

On June 4, 2014, Gamboa filed a complaint for non-payment of sickness allowance, medical expense and rehabilitation fees against MTI. The complaint was amended on June 18, 2014 to include a claim for permanent total disability.

On June 20, 2014, Gamboa's pulmonologist, Dr. Edgardo 0. Tanquieng, issued a note to the company-designated physician suggesting Gamboa's disability to be "Grade 12 - slight residual or disorder. " On the other hand, Gamboa's orthopedic specialist, Dr. Chuasuan, in his letter dated July 10, 2014, explicated that Gamboa's degenerative changes may have occurred overtime and could not have developed during his 22-day stay on board the vessel, hence, was a pre-existing condition.

MTI denied liability. Their defense was anchored that the complaint was premature given that the 120-day period had not yet expired at the time the complaint was filed (June 4). Further, the illness was not compensable considering that a specialist declared it to be pre-existing.

ISSUE:

1. Whether the disability is pre-existing (NO)

2. Whether the disability is deemed permanent by the 120-day period rule (YES)

3. Whether the complaint is premature(NO)

RULING

1. There are conditions that should be met before an illness, such as degenerative changes of the spine, can be considered as pre-existing under the 2010 POEA-SEC, namely: (a) the advice of a medical doctor on treatment was given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during PEME, and such cannot be diagnosed during the PEME. None of which had been established in this case. Respondents' assertion that the said illness also existed prior to petitioner's embarkation, and therefore a pre-existing ailment, was not substantiated given that no such declaration was made by the company-designated physician or the attending specialist. Besides, such fact alone does not detract from the compensability of an illness. It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the

claimant to the benefits incident thereto. It is enough that the employment had contributed, even in a small measure, to the development of the disease

2. **The disability is permanent**. In *Elburg Shipmanagement Philippines, Inc. v. Quiogue, Jr*, the court summarized the rules regarding the company-designated physician's duty to issue a final medical assessment on the seafarer's disability grading, as follows:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

Case law states that without a valid final and definitive assessment from the company-designated physician within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent.Thus, a temporary total disability becomes total and permanent by operation of law.

In the case at bar, there is no dispute that the company-designated physician issued an "interim" assessment on May 14, 2014, or just 88 days from petitioner's repatriation on February 15, 2014. Being an interim disability grade, the declaration was merely an initial determination of petitioner's condition for the time being and therefore cannot be considered as a definite prognosis. Notwithstanding the temporariness of his findings, the company-designated physician, however, failed to indicate the need for further treatment/rehabilitation or medication, and provide an estimated period of treatment to justify the extension of the 120-day treatment period. In fact, while petitioner had subsequent follow-up sessions, the company-designated physician still failed to arrive at a definitive assessment within the 120-day period or indicate the need for further medical treatment. Evidently, without the required final medical assessment declaring petitioner fit to resume work or the degree of his disability, the characterization of the latter's condition after the lapse of the 120-day period as total and permanent ensued in accordance with law, since the ability to return to one's accustomed work before the applicable periods elapse cannot be shown. Thus, because of these circumstances, petitioner should be entitled to permanent total disability benefits by operation of law.

3. **The complaint is not premature.** It should be made clear that what was filed on June 4, 2014 was for non-payment of sickness allowance, medical expenses, and rehabilitation fees. Petitioner only sought permanent total disability benefits when he filed his amended complaint therefor on June 18, 2014. At that time, the 120-day period within which the company-designated physician should have issued a final assessment of petitioner's condition already lapsed. As aptly ruled in *C.F Sharp Crew Management, Inc. v. Taok,* "a seafarer may pursue an action for total and permanent disability benefits if x x x the company-designated physician failed to issue a declaration

as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days xx x,"

MAGSAYSAY MARITIME CORPORATION, FLEET MARITIME SERVICE INTERNATIONAL LTD. AND/OR MARLON ROÑO, AND M/V AZURA, *Petitioners*, -versus- MANUEL R. VERGA, *Respondent*.
G.R. No. 221250, SECOND DIVISION, October 10, 2018, CARPIO, J.

In a long line of cases, most recently Tulabing v. MST Marine Services (Phils.), Inc., the Court has held that the conflicting findings of the company-designated physician and the seafarer's chosen doctor "shall be settled by referring the matter to a neutral third-party physician, whose assessment shall be final and binding."

In this case, the Court takes note that the company complied with its duty to Verga from the time of his accident until the company-designated doctor finally issued the Certificate of Fitness to Work.

To reiterate, the referral to a third doctor agreed upon by the parties is mandatory. Failure to comply 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:

Verga signed his 13th contract of deployment with petitioner Magsaysay Maritime Corporation for a nine-month stint as a "technical rating" aboard the vessel Azura-D/E. While on board the vessel, Verga slipped and fell on his back. He was taken to a medical center where he had an x-ray. He was found to be suffering from Stable Anterior Wedge Fracture T10. Because of this, Verga was repatriated to the Philippines.

Upon his return, Verga was examined by the company-designated physician, Dr. Karen Frances Hao-Quan, at the Metropolitan Medical Center. The physician's initial evaluation was that Verga had a Compression Fracture T12 and was advised to use a Jewett brace for immobilization. Over the course of several months, he went for several more consultations with the company-designated physician.Verga was still complaining of some pain in his left lateral trunk area, and Dr. Hao-Quan assessed his condition to be Grade 8, with moderate rigidity or loss of motion or lifting power of the trunk. Verga came back for re-evaluation. The company physician issued Verga a certification that he was fit to work. Verga also signed a pro forma Certificate of Fitness to Work. He then waited to be called back for re-deployment.

Verga had still not been re-deployed, so he consulted with another doctor about the pain in his back. Dr. Alan Paul Quinteroof the AMOSUP Seamen's Hospital assessed that Verga had Compression Fracture T10. According to the doctor, although the injury has partly healed, Verga still suffered through some back pain because of it, and diagnosed his impediment to be Grade 11. Dr. Quintero's recommendation was that Verga could return to work but was not allowed to lift heavy objects.Verga consulted orthopedic surgeon Dr. Renato Runas. Dr. Runas concluded that Verga was "not fit for further sea duty permanently in whatever capacity." He found that Verga still suffered from severe lower and middle back pain and could not move without his anterior brace. Such permanent

disability, the doctor said, was a result of the injury Verga sustained while on board the ship. Verga was advised to undergo physical therapy and regular check-up.

Verga filed a complaint for total disability benefits and damages.Labor Arbiter ruled in favor of Verga. NLRC reversed the Labor Arbiter's decision and dismissed the complaint. CA reversed the NLRC's decision and reinstated that of the Labor Arbiter.

ISSUE:

Whether the Court of Appeals erred in awarding the respondent seafarer total and permanent disability benefits. (YES)

RULING:

There is no doubt that the company-designated physician's certification was issued within the extended 240-day period allowed for the seafarer's medical treatment. This is not contested even by Verga. In fact, Verga did not challenge the certification when it was issued and for four months after that. That he signed the Certificate of Fitness to Work on the same day is proof of his concurrence with the company-designated physician's findings.

Likewise, within those four months before filing the complaint, he did not return to the company-designated physician or see a doctor of his choice to complain of any lingering affliction. It was only when he was not deployed that he consulted with two doctors – both of his own choosing.

Section 20(A)(3) of POEA Memorandum Circular No. 10 (Series of 2010), which sets out the amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships (POEA-SEC), states:

> SECTION 20. COMPENSATION AND BENEFITS
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> x x x x
>
> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.
>
> The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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. (Emphasis supplied)

In a long line of cases, most recently Tulabing v. MST Marine Services (Phils.), Inc., the Court has held that the conflicting findings of the company-designated physician and the seafarer's chosen doctor "shall be settled by referring the matter to a neutral third-party physician, whose assessment shall be final and binding."

In this case, the Court takes note that the company complied with its duty to Verga from the time of his accident until the company-designated doctor finally issued the Certificate of Fitness to Work.

Moreover, said certification was not a hastily issued missive but the product of months of consultations, examinations, treatments, and assessment. Compared to the findings of the two doctors Verga chose, who only examined him once and based their assessment on his previous medical treatment, the company-designated physician's certification is more credible and must be upheld.Since his doctors had findings contrary to those of the company-designated physician, Verga had the right to impugn the latter's certification. However, it is Verga who "bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician." On the other hand, "the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties[.]"The third doctor's ruling is final and binding on the parties.

To reiterate, the referral to a third doctor agreed upon by the parties is mandatory. Failure to comply 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."

Verga never questioned the company-designated physician's certification, nor informed the company of the contrary diagnosis by his doctors. There is likewise no evidence that Verga ever gave the company any chance to seek a third doctor's opinion. The diagnosis of Dr. Runas was made on 31 August 2011. Two days later, Verga filed his complaint.Further, Verga's filing of the complaint is considered a breach of his contractual obligations under the POEA-SEC, since it states that conflicting assessments by the company-designated physician and the seafarer's own doctor should be referred to a third doctor for a binding opinion.

In the end, the failure of Verga to follow procedure is considered fatal to his cause.The Court, therefore, holds that the Certificate of Fitness to Work issued by the company-designated physician to Verga is conclusive and binding on the parties.

RENERIO M. VILLAS, *Petitioner,- versus* - C.F. SHARP CREW MANAGEMENT, INC., *Respondent*
G.R. No. 221548, SECOND DIVISION, October 03, 2018, CARPIO, *J.*

In Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr., this Court set forth the following guidelines, to wit: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification then the period of diagnosis and treatment shall be extended to 240 days. In this case, the first fit to work certificate was issued by Dr. Marzan 115 days from the time of Villas' repatriation. However, as we stated earlier, there was no basis for the issuance of the fit to work certificate to Villas at that time. The Final Medical Report was issued by Dr. Ong-Salvador 141 days from the time of repatriation. Following the guidelines in Elburg, Villas' disability had become total and permanent.

FACTS:

Villas was engaged by C.F. Sharp for Blue Ocean Ship Management and for and in behalf of General Ore Carrier Corporation XIX, Ltd. Villas was hired as a Second Engineer for six months on board the vessel Rebekka N. Villas' employment was covered by a CBA between the International Transport Worker's Federation Fleet Agreement and General. Villas underwent a Pre-Employment Medical Examination and was declared fit for sea duty by the company-designated physician. On 10 February 2013, while Villas was on sea duty doing a routine inspection at the main engine cylinder lubricator no. 6, his right hand was crushed. He was subjected to an immediate surgery which resulted to the amputation of his right middle finger with debridement and suturing of his 4th digit. He was declared unfit to work and was repatriated. After reporting to the office of C.F. Sharp, Villas was referred to the company-designated physician, Dr. Ong-Salvador who then referred Villas to another company-designated physician at UST. Villas then underwent rehabilitation, with the consent of C.F. Sharp and the company-designated physician, for the next three months in his hometown in Cebu City at Perpetual Succour Hospital under the care of Dr. Mary Jeanne Oporto-Flordelis

Dr. Chan declared that Villas was already fit to work. Since he was still unable to grip objects, and the strength on all the digits on his right hand was still weaker, Villas requested for further examination and treatment. He wrote informing C.F. Sharp that he decided to consult with an independent physician. According to him, despite surgery and physiotherapy, he continued to complain about the limitation of flexion and difficulty in grasping objects, as well as pain in his right hand.

Villas sought payment of disability benefits, which C.F. Sharp denied. The Panel of Voluntary Arbitrators (PVA), on the other hand, ruled in favor of Villas. During the clarificatory hearing, the PVA and the Orthosurgeons observed and confirmed that Villas still had difficulty in gripping objects. The PVA then reviewed the report of Dr. Flordelis and noted her observation that Villas' grip strength "although better is still insufficient for full time work. The PVA further noted that Dr. Flordelis recommended the continuance of Villas' physical therapy but C.F. Sharp did not follow the recommendation. Instead, the company-designated physician cleared Villas from Rehabilitation Medicine standpoint, contrary to the recommendation of Dr. Flordelis. PVA ruled that Villas is entitled to disability benefits, but denied Villas' claims for illness allowance since C.F. Sharp was able to prove payment thereof, and for damages due to Villas' failure to substantiate the same

Court of Appeals affirmed the assailed PVA Decision with modification as to the amount of compensation. Villas filed a Motion for Partial Reconsideration assailing the Court of Appeals' failure to apply the ITF TCC Fleet Agreement. C.F. Sharp also filed a Motion for Partial Reconsideration questioning the Court of Appeals' findings that the assessment of the company-designated physician was not credible and that Villas' injury amounted to total permanent disability, and its award of attorney's fees. In its 29 October 2015 Resolution, the Court of Appeals denied the two Motions for Partial Reconsideration for lack of merit.

ISSUE:

The issues in these cases may be summed up as follows:
1. Whether Villas' injury amounted to permanent total disability; and
2. Whether Villas is entitled to compensation under the CBA;

RULING:

We deny the petitions.

There are conflicting views on the extent of disability of Villas in this case. The Court notes that before Villas initially consulted and underwent rehabilitation with Dr. Flordelis, he sought for, and was granted, approval from C.F. Sharp and the company-designated physician. The court agrees with the CA that since there were two conflicting findings by two different physicians, the parties should have moved to seek the opinion of a third doctor. They failed to do so. The Court has ruled that in the event that no third doctor is appointed by the parties, the labor tribunal and the courts shall evaluate the respective merits of the conflicting medical assessments of the company-designated doctor on one hand, and the seafarer's chosen physician, on the other.

Villas is entitled to total permanent disability benefits.

The records showed that when Dr. Chan declared that Villas was already fit to work, Villas immediately requested C.F. Sharp to allow him to avail of further treatment and therapy. When C.F. Sharp failed to respond to his request, Villas wrote again informing C.F. Sharp that he decided to seek second opinion from another doctor. Villas then consulted with Dr. Magtira who declared him to be incapacitated and not capable of working at his previous employment. Villas relied on Dr. Magtira's medical finding in claiming for disability benefits except that he asked for higher benefits in accordance with the ITF TCC Fleet Agreement, which the PVA granted. The PVA ruled that between the findings of the company-designated physician and Villas' physician of choice, Dr. Magtira, the latter's findings are more in line with the findings of Dr. Flordelis. The Court of Appeals ruled that a total disability is considered permanent if it lasts continuously for more than 120 days. C.F. Sharp countered that the 120-day rule may be extended to 240 days.

In *Aldaba v. Career Philippines Shipmanagement, Inc.*, the Court clarified the seeming conflict in jurisprudence on the 120-day and 240-day rules. *Citing Elburg Shipmanagement Phils., Inc. v. Quiogue*, the Court affirmed that a seafarer's disability should not be determined by the number of days that he could not work. However, the Court further affirmed that the company-designated physician must still make an assessment within 120 days from the date of medical repatriation, and he is only allowed to extend the medical treatment to 240 days when there is sufficient justification for it.

The current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.,* this Court set forth the following guidelines, to wit: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In this case, Villas was injured in an accident on 10 February 2013. He was repatriated on 11 February 2013. He reported to C.F. Sharp and was referred to the company-designated physician on 12 February 2013. There were actually two medical certificates issued to Villas. The first one, dated 6 June 2013, was issued by Dr. Marzan. It was issued within 115 days from Villas' repatriation. On 2 July 2013, Dr. Ong-Salvador issued Villas a Final Medical Report stating that Villas is fit to resume sea duties and despite being medically fit for work, the patient refused to sign the medical certification of fitness to work issued by our clinic.

Again, the first fit to work certificate was issued by Dr. Marzan 115 days from the time of Villas' repatriation. However, as we stated earlier, there was no basis for the issuance of the fit to work certificate to Villas at that time. The Final Medical Report was issued by Dr. Ong-Salvador 141 days from the time of repatriation**. Following the guidelines in Elburg, Villas' disability had become total and permanent.** The company-designated physician failed to give the final medical assessment within 120 days and failed to justify that Villas still needed further medical treatment to extend the medical assessment to 240 days. In fact, Dr. Marzan issued a fit to work order within 115 days, and it appears that it was made just to comply with the 120-day period but records would show that treatment had to be extended beyond that period. It was further established that Villas immediately sought the assistance of C.F. Sharp after he was issued the fit to work certificate on 6 June 2013 but his letter was unheeded, forcing him to seek further consultation. The records further show that Villas continued to have physical therapy until 5 September 2013, even beyond the issuance of the Final Medical Report. Hence, the Court of Appeals correctly ruled that Villas' disability was total and permanent.

PHILIPPINE HAMMONIA SHIP AGENCY, NARCISSUS L. DURAN, DORCHESTER MARITIME LIMITED, *Petitioners, - versus -* FERDINAND Z. ISRAEL, *Respondent.*
G.R. No. 200258, FIRST DIVISION, October 03, 2018, LEONARDO-DE CASTRO, *C.J.*

The current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative. For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.

FACTS:

Petitioner PHSA,hired respondent Ferdinand Z. Israel as a Bosun on board the NASR. Dr. Leticia C. Abesamis declared him "FIT FOR SEA SERVICE". Respondent and Capt. Vicente A. Dayo, as representative of petitioner PHSA, signed the Contract of Employment which was approved and verified by POEA. While performing his duties on board vessel NASR, respondent accidentally fell from a height of 2 to 2.5 meters while he was conducting an inspection of the crew's maintenance work. Respondent's right arm and shoulder hit the deck first, absorbing the impact of his fall. Because of the persistent pain on his right shoulder, respondent was brought to the Orthopedic Department of Cedars-Jebel Ali International Hospital in Dubai where Dr. El-Din diagnosed him with "supraspinatus tendonitis right shoulder," and recommended his repatriation. On September 11, 2005, respondent was repatriated. Respondent reported to petitioner PHSA, which referred him to company doctors Dr. Lim and Dr. Cruz-Balbon. The x-ray examination did not show any bone or joint abnormality, but the MRl revealed that respondent had Severe osteoarthritis of the right AC joint and Mild supraspinatus tendonitis/tendinopathy.

Since respondent lives in Misamis Oriental, Dr. Lim referred him to Dr. CID of Polymedic Medical Center in Cagayan de Oro City. Cid diagnosed respondent with "Rotator Cuff Tear with Adhesive Capsulitis" for which respondent underwent physical therapy sessions from September 27, 2005 to January 28, 2006. Despite a remarkable improvement in the movement of respondent's right shoulder, Dr. Cid remarked that respondent continued to feel pain on his right shoulder. Dr. Cid then referred respondent back to Dr. Lim for final disposition on January 28, 2006. On January 31, 2006, Dr. Cruz-Balbon declared respondent "Fit to Resume Sea Duties." However, PHSA refused to re-employ respondent because of his condition, or to pay him disability benefits.

On June 7, 2007, respondent filed a Complaint against petitioners for disability compensation, moral and exemplary damages, and attorney's fees. Respondent asserted that his disability is total and permanent as no manning agency or vessel owner would consider him for overseas employment because of the condition of his right shoulder, which is the same reason why petitioners refused to re-engage respondent's services. Petitioners argued that, in case of conflicting medical findings between the company-designated physicians, on one hand, and the doctors of choice of the seafarer, on the other hand, the company-designated physicians' assessment should prevail because the POEA-SEC specifically designated the company-designated physician as the person who must determine

the seafarer's fitness or degree of disability, and Dr. Lim and Dr. Cruz-Balbon, as company-designated physicians, were the ones who actually monitored and treated respondent's shoulder injury from his repatriation on September 11, 2005 until he was declared fit to work. Additionally, respondent executed a Certificate of Fitness to Work dated January 31, 2006 wherein he waived any benefits and released petitioners from my liability arising from the Contract of Employment. Thus, respondent is barred from claiming disability benefits from petitioners.

The Labor upheld the medical analysis of Dr. Pujalte and Dr. Punas that respondent did not fully recover from his shoulder injury, inhibiting him to work as a seaman permanently. Additionally, respondent's disability has become permanent and total since he was not able to perform his usual work for more than 120 days from repatriation, entitling respondent to full disability benefits. The NLRC and, subsequently, the CA affirmed.

ISSUE:

Whether respondent is entitled to disability benefits.

RULING:

The petition is not meritorious.

Article 198(c) the Labor Code of the Philippines, as Amended and Renumbered, defines permanent and total disability as follows:

> Article 198. Permanent Total Disability. — (c) The following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules.

In conjunction with the above article, the Amended Rules on Employees' Compensation, which was adopted to implement the provisions of Title II, Book IV of the Labor Code, provides:

> Section 2. Disability – x x x (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
> x x x x
> RULE X Temporary Total Disability
> x x x x
> Section 2. Period of Entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System

In *Crystal Shipping, Inc. v. Natividad*, the Court ruled that permanent disability is the 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. Thereafter, litigant-seafarers started citing Crystal Shipping to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days. The Court in *Vergara v. Hammonia Maritime Services, Inc.*, however, noted that the

doctrine expressed in Crystal Shipping should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. It was provided therein that: As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and, treatment For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, it was affirmed that the Crystal Shipping doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in Carcedo was reiterated – that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. Elburg provided a summation of periods when the company-designated physician must assess the seafarer, to wit: the Court in Elburg no longer agreed that the 240-day period provided by Vergara, which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days.

Hence; as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative. For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.

Respondent, in this case, filed his Complaint before the NLRC on June 7, 2007, prior to October 6, 2008; therefore, the 120-day rule in *Crystal Shipping v. Natividad* applies herein. It is undisputed that respondent suffered his injury during the term of his Contract of Employment and in the performance of his duties as bosun. Despite the treatment that he received and improvement in his condition, respondent continued to suffer shoulder pain. By the time that Dr. Cruz-Balbon certified that respondent is already fit to work, 142 days had passed since respondent's repatriation. During that period, respondent was incapacitated to perform his work as a bosun, which consequently deprived him of his livelihood. Pursuant to Crystal Shipping, respondent is already deemed to be suffering from permanent total disability.

JOSE JOHN C. GUERRERO, ***Petitioner***, **-versus- PHILIPPINE TRANSMARINE CARRIERS, INC., CELEBRITY CRUISES, AND CARLOS C. SALINAS**, ***Respondents*****.**
G.R. No. 222523, THIRD DIVISION, October 3, 2018, PERALTA, J.

For disability to be compensable, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. Work-related injury pertains to injury(ies) resulting in disability or death arising out of, and in the course of, employment. Jurisprudence elucidates that the words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place, and circumstances under which the accident takes place. As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.

FACTS:

The case traces its roots to a Complaint filed by petitioner Jose John C. Guerrero for permanent and total disability benefits, compensatory damages, exemplary damages, moral damages and attorney's fees against respondents Philippine Transmarine Carriers, Inc. (PTCI), Celebrity Cruises (*CC*), and/or Carlos Salinas.

Because the parties failed to reach an amicable settlement, the LA required the parties to submit their respective position papers.

In his Position Paper,Guerrero alleged that on August 15, 2011, he was employed by PTCI, represented by its President, Carlos Salinas, on behalf of its principal, CC, as a Casino Dealer on board the vessel GTS Constellation for a period of six (6) months with a basic monthly salary of US$255.00. Prior to embarkation, he underwent pre-employment medical examination at Metrics Center, Makati City, and was declared "fit to work as a seaman." He boarded the vessel on October 12, 2011. His duties and responsibilities as a casino dealer include having an understanding of all the games he will operate, dealing cards, distributing dice, operating game apparatus, as well as keeping an eye on patrons to make sure they are not cheating, and the gamblers are having a good time.

Guerrero averred that: sometime in January 2012 during a gastro-intestinal outbreak in the ship, he and other crew members were tasked and ordered to bring elderly guests out of the ship through wheelchairs; since the platform was not levelled with the ship's door exit, and the bridge connecting the platform and the door exit was too steep, they decided that the best way to move and transfer the elderly passengers was by pulling the wheelchairs; while he was pulling a wheelchair with a passenger, a sudden motion occurred which caused him to lose his balance but managed to prevent the wheelchair, the passenger and himself from falling; in order to keep the passenger safe, he had to push the wheelchair really hard to gain control over it; after said incident, he started experiencing back pains which he just ignored due to the demands of his work as a casino dealer; to manage his back pain, he took mefenamic acid tablets and applied pain relieving liniment and hot water on the painful area; and later, his back pain became unbearable prompting him to consult the doctor of the vessel who prescribed him pain reliever medication and sleeping pills.

While his vessel was docked at a port in the Caribbean, Guerrero underwent a Magnetic Resonance Imaging procedure at the Isle Imaging Center of St. George, Caribbean, and after which, the attending

physician made the following Impression: *Findings revealed changes of Lumbar Spondylosis involving L2-3, L3-4, L4-5 disc causing of compression of left L5 and bilateral L4 roots as described. No cords conus abnormality seen.*In view of his medical condition, he was recommended for medical repatriation. Upon his arrival in Manila on March 26, 2012, Guerrero immediately reported to respondents and was referred to the Manila Doctors Hospital and the Philippine General Hospital for post-employment medical examination and for further treatment. He underwent a series of physical therapy sessions at the Orthopedics Department of the PGH under the supervision of the company-designated physician/surgeon, Dr. Adrian Catbagan. On October 19, 2012, a major surgery called Transforaminal Lumbar Interbody Fusion L3-L4 & L4-L5 was performed on Guerrero by Dr. Catbagan at the Manila Doctors Hospital. On November 19, 2012, a Medical Certificate was issued stating that Guerrero was confined at the Manila Doctors Hospital on October 19, 2012 and was discharged on November 9, 2012 with the following final diagnosis: *Degenerative Disc Disease & Disc Herniation L3-L4 & L4-L5 Moyamoya Disease, resolved*. After Guerrero's surgery, he continued his therapy sessions with Dr. Catbagan until January 15, 2013.

Guerrero alleged that since the pain still persisted notwithstanding the medical procedures performed on him, he consulted, on January 17, 2013, Dr. Cesar H. Garcia, who issued on even date a medical certificatedeclaring him "UNFIT for further sea service in whatever capacity as a SEAFARER." Despite his permanent unfitness for further sea service as determined by his physician, respondents failed to compensate him of permanent and total disability benefits.

In their Position Paper, respondents maintained that Guerrero is not entitled to disability benefits because he sustained the alleged injury during an incident at the crew gym. Respondents adduced in evidence documents denominated as Crew Injury Statement,dated March 22, 2012, and Personal Injury Illness Statementin support their submission.

Respondents contended that going to the gym and the use of gym facilities are not part of Guerrero's job and could not have any relation to his duties as a Casino Dealer. Respondents theorized that disability benefits are compensable only when the seafarer, such as Guerrero, suffers work-related injury or illness during the term of his contract. They posited that Guerrero's injury is not compensable since it has not arisen from a work-related incident. By way of counterclaim, respondents alleged that the filing by Guerrero of a baseless complaint tarnished their reputations and were constrained to engage the services of an attorney to protect their rights. For these reasons, they prayed that they should be awarded damages of P200,000.00 attorney's fees and cost of litigation in the sum of P400,000.00.

On February 28, 2013, the LA rendered its Decision declaring that PTCI and CC are solidarily liable for disability compensation to Guerrero. It held that Guerrero's medical condition has rendered him permanently incapacitated to be a seafarer, as found by his chosen physician, Dr. Garcia. Lastly, it observed that Guerrero has been incapacitated to work for more than 120 days from the date he was repatriated and seen by the company-designated physician.

Aggrieved, respondents PTCI and CC filed a joint appeal before the NLRC praying for the reversal and nullification of the LA's Decision and for the dismissal of Guerrero's complaint for lack of merit. On July 31, 2013, the NLRC rendered a Decision reversing the LA's Decision and ruled that Guerrero is not entitled to disability benefits and payment of his other monetary claims because his injury is not work-related or not an injury sustained while working on-board the vessel.

Since Guerrero's motion for reconsideration was denied by the NLRC, he assailed the NLRC Decision and Resolution via a petition for *certiorari* before the CA, ascribing grave abuse of discretion on the part of the NLRC in denying his claim for permanent and total disability benefits and for attorney's fees. On September 10, 2015 Decision, the CA resolved to deny the petition for certiorari and held that the challenged decision of the NLRC was in accordance with law and prevailing jurisprudence and that no grave abuse of discretion amounting to lack or excess of jurisdiction can be imputed against said labor tribunal.

Guerrero filed a motion for reconsideration, but the same was denied by the CA. Hence, the present petition.

ISSUE:

Whether Guerrero is entitled to disability benefits. (NO)

RULING:

For disability to be compensable, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. Work-related injury pertains to injury(ies) resulting in disability or death arising out of, and in the course of, employment. Jurisprudence elucidates that the words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place, and circumstances under which the accident takes place. As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.

Work-relatedness of an injury or illness means that the seafarer's injury or illness has a possible connection to one's work, and thus, allows the seafarer to claim disability benefits therefor. Unfortunately, Guerrero utterly failed to prove a reasonable connection between his work as a Casino Dealer and his alleged lumbar disc injury. Apart from his bare allegation that he sustained an injury sometime in January 2012 while assisting an elderly passenger on a wheelchair to disembark from the vessel in compliance to an order from the management, no other competent and independent evidence was proffered to substantiate and to corroborate his foregoing claim.

At any rate, any further discussion as to whether Guerrero suffered a permanent and total disability which entitles him to disability benefits, would be a mere surplusage. The medical certificate issued by Dr. Garcia and the alleged failure of Dr. Catbagan to issue the pertinent medical certificate within the maximum period of 240 days, are of no use and will not give Guerrero that cause of action he sorely lacked at the time he filed his complaint. His injury is not work-related, hence, not compensable.

BENEDICTO O. BUENAVENTURA, JR., ***Petitioner,*****-versus-CAREER PHILIPPINES SHIPMANAGEMENT, INC., COLUMBIA SHIPMANAGEMENT LTD., AND SAMPAGUITA D. MARAVE**, ***Respondents*****.**

G.R. No. 224127, FIRST DIVISION, August 15, 2018, TIJAM, *J.*

On this note, Section 20(A)(3) of the POEA-SEC states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer and the latter's decision shall be final and binding on both parties. Hence, it is imperative that in case of conflicting assessments, the seafarer must submit to a third doctor, who should be mutually agreed upon by him and his employer. This procedure 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, Buenaventura failed to comply with such requirement. As it is, the assessment of the company-designated physician prevails.

FACTS:

Buenaventura entered into a nine-month contract with respondent Columbia Shipmanagement Ltd., through its local agent, respondent Career Shipmanagement, Inc., as a laundryman. He went on board MV Columbus 2. Later, Buenaventura allegedly slipped and hit his left shoulder on the door of a washing machine. He alleged that he immediately reported his condition to the ship doctor. He was thus given medication. However, Buenaventura continued to feel pain on his left shoulder. During a stopover in Manila, the ship doctor accompanied Buenaventura to St. Luke's Medical Center for laboratory tests. In view of the results, his repatriation was recommended.

Buenaventura underwent a surgical operation called arthroscopic superior labral repair. He was placed on therapy from March 2013 to May 2013. During this period, he was paid his sickness allowance. The company-designated physician, in his Final Report, found Benedicto Buenaventura to be suffering from a disability grading of 12 for the neck and grade 11 for the shoulder. After such report, Buenaventura consulted independent physicians who all issued Medical Certificates,stating that Buenaventura is unfit to resume work as a seaman.

Buenaventura filed a complaint for disability benefits and insisted that his condition was caused by an accident suffered while on board MV Columbus 2. Respondents denied any liability under the CBA as Buenaventura's condition did not arise from an accident and Buenaventura failed to comply with the rules relative to the matter disputing the assessment of the company-designated physicians.

The LA, as later affirmed by the NLRC, declared that Buenaventura is suffering from disability grading 1 or total and permanent disability. The LA gave credence to Buenaventura's claim that he suffered an accident on board when he slipped while in the performance of his duty. The CA, in its Decision, set aside the ruling of the NLRC. The CA ruled that Buenaventura failed to prove that his injury was caused by an accident as the pieces of evidence proving the same constitute hearsay evidence because the doctors cannot credibly testify regarding such occurrence.

ISSUE:

Whether or not Buenaventura is entitled to total and permanent disability benefits (NO)

RULING:

Deemed incorporated in every seafarer's employment contract, denominated as the POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions determined and implemented by the POEA, called the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels," which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.

For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

In the case of *Sy v. Philippine Transmarine Carriers, Inc., et al*., we had the occasion to explain work-related injury, to wit:

The two components of the coverage formula — "arising out of" and "in the course of employment" — are said to be separate tests which must be independently satisfied; however, it should not be forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, "work-connection," because an uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries. The words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident takes place.

As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.

In this case, while in the course of his employment, Buenaventura suffered a "superior labral tear" which is an injury to the glenoid labrum on his left shoulder. It is undisputed that said injury took place within the period of his employment, *i.e*., five months and 14 days into the contract; at the place where he reasonably may be, *i.e*., at the laundry area; and while he is fulfilling his duty, *i.e.*, climbing up and down the vessel's ladder to collect laundry and check on his equipment. Said circumstances correspond to the definition of "arising out of and in the course of employment"; thus, Buenaventura's injury is work-related.
As his injury is deemed work-related, we now determine the corresponding disability benefits to which Buenaventura is entitled to.

The company-designated physician issued disability grading 11 for Buenaventura's shoulders and disability grading 12 for his neck. On the other hand, the independent physicians declared him unfit for sea duty.

On this note, Section 20(A)(3) of the POEA-SEC states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer and the latter's decision shall be final and binding on both parties. Hence, it is imperative that in case of conflicting assessments, the seafarer must submit to a third doctor, who should be mutually agreed

upon by him and his employer. This procedure 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, Buenaventura failed to comply with such requirement. As it is, the assessment of the company-designated physician prevails.

LORNA B. DIONIO, *Petitioner*,-versus- ND SHIPPING AGENCY AND ALLIED SERVICES, INC., CARIBBEAN TOW AND BARGE (PANAMA) LTD., *Respondents*.

G.R. No. 231096, THIRD DIVISION, August 15, 2018, GESMUNDO, *J.*

A seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician. Moreover, it is the burden of the employer to prove that the seafarer was referred to a company-designated doctor.

The Referral Slip to the Micah Medical Clinic & Diagnostic Laboratory dated February 14, 2007 proves that Gil indeed immediately reported to the office of ND Shipping upon his repatriation in the Philippines. Accordingly, pursuant to De Andres, ***Gil has performed his duty under Sec. 20(B) (3) to immediately report to the employer within three (3) working days from repatriation****. Consequently, at that moment, it was the duty of respondents to refer Gil to a company-designated physician for a post-employment medical examination.*

FACTS:

Gil T. Dionio, Jr., the petitioner's husband, was hired by ND Shipping Agency and Allied Services, Inc., for its foreign principal, Caribbean Tow and Barge, Ltd., to serve as a Second Engineer on board the vessel MT Caribbean Tug. Gil had a clean bill of health evidenced by his Medical and Laboratory Examination Result.

While in the course of his extended employment, Gil suffered from a Urinary Tract Infection (*UTI*) and prostate enlargement. In Turk and Caicos Islands, he was examined by Dr. Victoria Smith. Dr. Smith confirmed that Gil indeed suffered UTI and an enlarged prostate. She declared him unfit for work and recommended his repatriation. Gil was medically repatriated.

On February 14, 2007, Gil arrived in the Philippines. He immediately went to ND Shipping's office where he was issued a Referral Slip for medical examination at the Micah Medical Clinic and Diagnostic Laboratory. The referral slip, however, stated that the expenses shall be paid for by Gil. A representative of the ND Shipping sent an email to K. Arnesen Shipping, the owner of the vessel, requesting for the medical check-up of Gil at the ship owner's expense. The request was denied and stated that Gil must arrange for his own medical check-up. Thus, Gil was never examined by the company-designated physician.

Gil's health condition became worse. He went for a medical examination at Biñan Doctor's Hospital in Biñan, Laguna at his own expense. Gil signed a Release, Waiver and Quitclaim in favor of respondents and he received the total amount of P31,200.00. As Gil's health was deteriorating, he went home to his hometown in Iloilo. On June 5, 2007, he was admitted at the Iloilo Doctor's Hospital. In the Medical Certificate, Dr. Glenn Maclang diagnosed Gil with "Prostatic Cancer Stage IV with wide spread metastasis." His condition worsened and after more than a year of battling cancer, Gil succumbed to his illness.

Thus, petitioner, the legal wife of Gil, filed a complaint before the LA for payment of death benefits, sickness allowance, burial expenses, moral and exemplary damages, and attorney's fees. Respondents denied any liability. They argued that Gil failed to submit himself for a post-employment medical examination within three (3) days after repatriation even though he was issued a referral slip to the company-designated physician.

The LA ruled in favor of petitioner. The NLRC set aside the LA ruling. It held that Gil failed to submit himself to the medical examination of the company-designated physician within three (3) days from repatriation, hence, he violated the POEA-SEC. This was affirmed by the CA.

ISSUE:

Whether or not Gil's failure to comply with the mandatory reporting requirement resulted in the forfeiture of the disability benefits claimed by his wife, herein petitioner (NO)

RULING:

Sec. 20(B) (3) of the 2000 Amended POEA-SEC *(Sec. 20(B) (3)*, lays down the procedure in order for a seafarer to claim disability benefits, to wit:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.** 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. (emphases supplied)

Nevertheless, in *De Andres v. Diamond H Marine Services & Shipping Agency, Inc*. (*De Andres*), the Court stated that there are exceptions to the mandatory post-employment examination, to wit:
First, Section 20 (B) (3) expressly provides that a seafarer is not required to submit himself to post-employment medical examination by a company-designated physician within three (3) working days from repatriation when he is physically incapacitated to do so. In such event, a written notice to the agency within the same period is deemed as compliance.

Second, another exception is when the seafarer failed to timely submit himself to post-employment medical examination due to the employer's fault. xxx This exception was established by jurisprudence in response to **an employer's unscrupulous practice of deliberately or inadvertently refusing to refer the seafarer to the company-designated physician to deny his disability claim**. (emphasis supplied)

In *De Andres*, the seafarer immediately reported to the employer after repatriation. However, before he could even commence the post-employment medical examination, the employer pre-empted him and stated that it would not entertain any of his claims and that he should find a lawyer instead. Thus, the seafarer was not anymore given an opportunity to submit himself to a post-employment medical examination by a company-designated physician.

In the same case, the Court ruled that the burden to prove with evidence whether the seafarer was referred to a company-designated doctor rests on the employer as the latter has custody of the documents, and not the seafarer. Accordingly, a seafarer has done his duty under Sec. 20(B) (3) once he reported to the employer within three (3) working days from repatriation. Consequently, upon the timely reporting, the employer has the duty to refer the seafarer to a company-designated physician for a post-employment medical examination knowing fully well that he has a claim for disability benefits.

To recapitulate, a seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.[35] Moreover, it is the burden of the employer to prove that the seafarer was referred to a company-designated doctor.

In this case, the Referral Slip to the Micah Medical Clinic & Diagnostic Laboratory dated February 14, 2007 proves that Gil indeed immediately reported to the office of ND Shipping upon his repatriation in the Philippines. The Court is of the view that petitioner established with substantial evidence that Gil complied with the reportorial requirement. Accordingly, pursuant to *De Andres*, **Gil has performed his duty under Sec. 20(B) (3) to immediately report to the employer within three (3) working days from repatriation**. Consequently, at that moment, it was the duty of respondents to refer Gil to a company-designated physician for a post-employment medical examination.

However, respondents did not perform their duty because they refused to refer Gil to the company-designated physician at their expense. The referral slip given to Gil provides that he will pay for the expenses of his post-employment medical examination at the company-designated physician. Glaringly, respondents did not even state when Gil should visit the company-designated physician, raising doubts on their sincerity to medically assess and treat him. Respondents left Gil to fend for himself. As he could not secure the medical assistance from respondents, Gil had no choice but to seek medical treatment elsewhere at his own expense.

Relatedly, it is the employer that shall shoulder the cost of the seafarer's medical treatment after his repatriation until such time that he is declared fit to work or the degree of his disability has been

established by the company-designated physician. The POEA-SEC is the law between the seafarer and his or her employer, thus, its provisions must be respected. A seafarer who had just been medically repatriated is already burdened with the obligation to immediately report to his employer in spite of his illness or injury. His failure to report forfeits his right to claim disability benefits. Thus, the POEA-SEC deemed it proper not to impose any financial burden to the seafarer until such time that he is fit to work or until his degree of disability is established by the company-designated physician.

The importance of respecting the provision regarding post employment medical examination cannot be overemphasized. The reporting of the seafarer to the employer from his repatriation initiates the procedure for the determination of the disability or fitness of the seafarer. Upon his reporting, he shall then be referred by the employer to the company-designated physician for medical diagnosis and treatment, at the employer's cost.[40] The company-designated physician has 120 or 240 days, depending on the circumstances to complete the medical assessment and to determine whether the seafarer is fit to work or to establish the degree of disability.[41] The seafarer may avail the separate medical assessment of his physician of choice. If there is a difference between the medical assessment of the company-designated physician and the seafarer's physician of choice, the seafarer's medical condition shall be referred to a third doctor, whose medical assessment shall be deemed final.[42]

Evidently, the first step in the procedure provided by the POEA-SEC is essential. Any improper act of the parties that causes the non-compliance with the said procedure should not be tolerated by the Court. In this case, since respondents unreasonably denied the request of Gil to be referred to the company-designated physician at the former's expense, in spite of his timely reporting, they should be held liable.

MAGSAYSAY MOL MARINE, INC. and/or MOL SHIP MANAGEMENT (SINGAPORE) PTE. LTD., *petitioners*, -versus- MICHAEL PADERES ATRAJE, *respondent*.
G.R. No. 229192, THIRD DIVISION, July 23, 2018, LEONEN, *J.*

The third doctor rule does not apply when there is no final and definitive assessment by the company-designated physicians.

FACTS:

On February 11, 2014, Atraje entered into a Contract of Employment with Mol Ship, through its local manning agent, Magsaysay Mol, to work on board the vessel Carnation Ace as Second Cook. Atraje boarded the vessel on February 28, 2014.

On March 4, 2014, at around noontime, Atraje slipped and fell while holding a casserole containing water and sliced vegetables. His head hit the stainless disposer and the floor. He had seizure and lost his consciousness for about five (5) hours. The incident was witnessed by the messman who was with him at that time. When the vessel reached Singapore on March 8, 2014, he was brought to Singapore General Hospital, where he underwent brain magnetic resonance imaging (MRI), electroencephalogram (EEG), and brain computed tomography (CT) scan. He was diagnosed to have suffered Epileptic Seizure with post-fit neurological deficit. He was declared unfit to work and recommended to be repatriated.

Atraje arrived in the Philippines on March 12, 2014, and was referred to Shiphealth, Inc. (Shiphealth) for further medical evaluation and treatment.

Shiphealth opined that "the current symptoms of weakness and spasticity of the left upper and lower extremities could be secondary to the [Ossified Posterior Longitudinal

Ligament]." Surgery was contemplated or, as an alternative, physical therapy for an indefinite period of time. The company-designated physicians further stated that the cervical Ossified Posterior Longitudinal Ligament may be pre-existing. "However, slight trauma to the neck may cause symptoms which may qualify it as work-aggravated."

Atraje continued to suffer from shoulder and neck pain, and had difficulty in using his upper extremities. He complained of tenderness on the paracervical area and was not restored to his pre-injury health status. He consulted an independent specialist, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who issued on June 19, 2014 a Medical Report, which stated that Atraje was "permanently unfit in any capacity to resume his sea duties as a seaman."

Atraje was referred to Ygeia Medical Center, Inc. for second opinion. In a letter dated October 2, 2014, Dr. Lourdes A. Quetulio the Medical Director of Ygeia Medical Center, stated that Atraje's illnesses, namely, "Herniated Nucleus Pulposus L3-4, L4-5, L5-S1 with Spondylosis and Radiculopathy, Bilateral Cervical Radiculopathy C5-C6 with degenerative changes; and Carpal Tunnel Syndrome Left, Moderate, **are not work-related."**

Atraje sought payment of disability benefits from Magsaysay Mol and Mol Ship, invoking Article 28 of the Collective Bargaining Agreement between All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines, and Mol Ship, represented by Magsaysay Mol. This Agreement is otherwise known as the IBF JSU/AMOSUP-IMMAJ CBA.

However, Atraje's demands proved futile.

Thus, he filed a Complaint against Magsaysay Mol and Mol Ship for payment of total and permanent disability benefits, damages, and attorney's fees.

On November 17, 2014, the parties agreed to terminate the mediation and to convene a Voluntary Arbitration Panel.

Not reaching an amicable settlement, the parties were directed to submit their respective pleadings.

The Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board awarded disability benefits of US$95,949.00 plus 10% of this amount as attorney's fees in favor of Atraje. Finding that his injuries were work-related, it held that there was sufficient evidence to establish that he indeed suffered a fall while on board the ship, which caused injury to his neck area and his wrist. However, pre-existence of epileptic seizure has not been proven. The Panel of Voluntary Arbiters further gave credence to the Grade 1 assessment of Atraje's physician over the company-designated physician's interim assessment of Grade 10. It further noted that while Atraje initiated submitting to examination by a third doctor, there was silence on the part of Magsaysay Mol and Mol Ship. Hence, it held that Atraje could not be faulted anymore if the appointment of a third physician was deemed waived in this case.

The Court of Appeals **affirmed** the Panel of Voluntary Arbitrators' decision and denied Magsaysay Mol and Mol Ship's subsequent motion for reconsideration.

On March 1, 2017, Magsaysay Mol and Mol Ship filed their Petition for Review on *Certiorari* before this Court.

Petitioners maintain that respondent is not entitled to permanent total disability benefits because his illnesses are not work-related, according to the letter of Dr. Quetulio on October 2, 2014. They add that respondent's repatriation was not due to his alleged accident but due to a single episode of seizure, the cause of which was unknown per the medical report of the same

company-designated doctor. Finally, petitioners argue that referral to a third doctor in case of conflicting findings of the company-designated doctor and the seafarer's personal doctor is mandatory. Since respondent failed to comply with this requirement, the assessment of the company-designated doctor should prevail.

ISSUE:

(I) Whether the respondent is entitled to permanent total disability benefits. (YES)
(II) Whether non-referral to a third doctor will prejudice respondent's claim. (NO)

RULING:

(I)

To be compensable, reasonable proof of work-connection, not direct causal relation, is sufficient. "Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings." This Court agrees with the Panel of Voluntary Arbitrators and the Court of Appeals that respondent's illnesses are work-related.

Neither did the Court of Appeals err in affirming the Panel of Voluntary Arbitrators' award of permanent total disability benefits.

In *Talaroc v. Arpaphil Shipping Corp.*, this Court summarized the rules regarding the duty of the company-designated physician in issuing a final medical assessment, as follows:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

Here, the company-designated physicians clearly breached their duty to provide a definite assessment of respondent's condition. While the records show that reports were regularly issued to update respondent's medical condition, the particular treatment administered, and the medicines prescribed to him, they were correspondences between the company-designated physicians and petitioners only. There was no indication that respondent was furnished these reports.

Evidently, his illnesses disabled him to continue his job on board the vessel. Despite medication and physical therapy, he was not restored to his pre-injury health status. Moreover, there was no declaration from the company-designated doctors about his fitness to return to work, while his own physician advised him to refrain from undergoing strenuous activities.

This Court has held that:

> [P]ermanent total disability does not mean a state of absolute helplessness but the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated but the incapacity to work.

Respondent's inability to perform his customary sea duties, coupled with the company-designated physicians' abdication of their primary duty to declare his fitness or unfitness to work within the prescribed period, transforms his disability to permanent and total by operation of law.

(II)

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 *assessment* refers to the declaration of fitness to work or the degree of disability, as can be gleaned from the first paragraph of Section 20 (A) (3). It presupposes that the company-designated physician came up with a valid, final, and definite assessment on the seafarer's fitness or unfitness to work before the expiration of the 120- or 240-day period.

In this case, the third doctor-referral provision does not apply because there is no definite disability assessment from the company-designated physicians.

In *Kestrel Shipping Co., Inc. v. Munar*:

> In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B (3) of the POEA-SEC. **A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.** (Emphasis supplied)

Respondent was kept in the dark about his medical condition. It is the height of unfairness, bordering on bad faith, for petitioners to demand from respondent compliance with the third doctor rule when they and their designated physicians, in the first place, did not fulfill their obligations under the law and the POEA-SEC. Given the company-designated physicians' inaction or failure to disclose respondent's medical progress, the extent of his illnesses, and their effect on his fitness or disability, respondent was justified in seeking the medical expertise of the physician of his choice.

Furthermore, as noted by the Panel of Voluntary Arbitrators, non-referral of the case to a third doctor was attributable to petitioners. For while respondent initiated to be submitted to examination by a third doctor, there was silence on the part of petitioners, who did not respond by setting into motion the process of choosing a third doctor who could rule with finality the disputed medical situation.

Lastly, petitioners were adamant in their position that respondent's disabling medical conditions are not work-related. The third doctor rule covers only conflicting medical findings on the fitness to work or degree of disability. It does not cover the determination of whether the disability is work-related or not. As this Court held in *Leonis Navigation Co. v. Obrero*:

[U]nder Section 20 (B) (3) of the POEA-SEC, referral to a third physician in case of contrasting medical opinions (between the company-designated physician and the seafarer-appointed physician) is a mandatory procedure that must be expressly requested by the seafarer. As a consequence of the provision, the company can insist on its disability rating even against a contrary opinion by another physician, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. We clarify, however, that Section 20 (B) (3) refers only **to the declaration of fitness to work** or **the degree of disability**. *It **does not** cover the determination of whether the disability is work-related*. There is nothing in the POEA-SEC which mandates that the opinion of the company-designated physician regarding work-relation should prevail or that the determination of such relation be submitted to a third physician.

EDILBERTO R. PALERACIO, *Petitioner*, *v.* SEALANES MARINE SERVICES, INC., SPLIETHOFF GROUP MANILA, INC. AND/OR CHRISTOPHER DINO C. DUMATOL AND CAPT. RUBEN AGMATA, *Respondents.*

G.R. No. 229153, SECOND DIVISION, July 09, 2018, PERALTA, *J.*

*As previously stated, **the company-designated physician must provide sufficient justification to extend the original 120-day period of assessment**. It must be remembered that the **employer has the burden** to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment.The Court finds that there was **no other document to establish that the company-designated physician had declared the necessity for extension** of the treatment or assessment period to address the temporary disability.*

*The lack of a conclusive and definite medical assessment from the company-designated physicians, which left Paleracio nothing to properly contest, **negates the need to comply with the third-doctor referral** provision under the POEA-SEC. Without a valid final and definite assessment from the company-designated physician, **the law already steps in to consider the seafarer's disability as total and permanent**.He had rightfully commenced his complaint for disability compensation.*

FACTS:

On November 21, 2011, Sealanes Marine Service, Inc., for and on behalf of Spliethoff Beheer B.V. (respondents), hired petitioner Paleracio as Able Bodied **Seaman** for a period of 10 months. Paleracio was on duty on September 5, 2012 when the steel chain disengaged and hit his right arm. On September 25, 2012, he was brought to the hospital in Finland and was referred to Dr. Partanen. He was found to have contusion/bruise in his upper right arm. Dr. Partanen recommended that his right antebrachium be x-rayed.

Subsequently, he arrived in Manila on September 27, 2012. He reported the pain in his right arm to the manning agency and was referred to Dr. Salvador and Dr. Bautista of the Manila Doctors Hospital. He underwent hematology testsand x-ray. On October 8, 2012, Paleracio was diagnosed with a neglected radial shaft fracture on his right arm with impending malunion, and underwent a corrector osteotomy with radial plating on the same day. He was discharged the next day and underwent therapy under Dr. Bautista.

On February 7, 2013, he consulted Dr. Ticman, a private specialist, after the respondents allegedly discontinued his treatment **after four months** with no improvement. On February 8, 2013, he filed a complaint for total and permanent disability benefit, damages and attorney's fees against respondents. In the disability reportdated March 14, 2013, Dr. Ticman declared that he is **unfit to work** as a seaman in any capacity.

For their part, respondents denied liability. They alleged that he was repatriated due to a finished contract, and reported to them 5 days upon his arrival.There was doubt that the pain was work-related since there was no accident report. Nevertheless, he was referred to the company-designated physicians, and was diagnosed with malunited radial shaft fracture. In the Medical Reportdated March 21, 2013, Dr. Bautista declared him **fit to return to work**.

The LA dismissed the complaint for lack of merit. The LA held that **Paleracio failed to submit himself to a medical examination within three working days** upon his return as provided by the *POEA-SEC*. On appeal, the NLRC reversed the decision of the LA and awarded disability compensation. The CA granted the petition for *certiorari* filed by respondents and held that the **non-compliance with the conflict resolution** provided by the POEA-SEC results in the **affirmance of the fit-to-work certification of the company-designated physician**.

ISSUE:

Whether or not the CA erred in denying to petitioner the permanent total disability benefits. (YES)

RULING:

As per Paleracio's Contractdated March 12, 2012, his employment is covered by the 2010 POEA-SEC. Pertinent portion of Section 20 (A) of the POEA-SEC reads:

> Section 20-A. *Compensation and Benefits for Injury or Illness*. —
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> > 3. x x x
> > For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply

with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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.

Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) **there is a valid and timely assessment by the company-designated physician**, and (2) **the appointed doctor of the seafarer refuted such assessment**.

It was held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.However, it should be pointed out that a seafarer's compliance with such procedure presupposes that the **company-designated physician came up with an assessment** as to his fitness or unfitness to work **before the expiration of the 120-day or 240-day periods**.

As it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that **the period** of treatment may only be **extended to 240 days** if a **sufficient justification exists** such as when further medical treatment is required or when the seafarer is uncooperative.

The foremost consideration of the courts should be to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein cannot be seriously appreciated.

Paleracio consulted his physician on February 7, 2013 and secured the latter's opinion on March 14, 2013. When he filed a complaint for permanent total disability benefits on February 8, 2013, **134 days had lapsedfrom the time he arrived on September 27, 2012**. Meanwhile, the company-designated physician issued the fit-to-work certification on March 21, 2013 or **after 175 days**.

As previously stated, **the company-designated physician must provide sufficient justification to extend the original 120-day period of assessment**. It must be remembered that the **employer has the burden** to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment.The Court finds that there was **no other document to establish that the company-designated physician had declared the necessity for extension** of the treatment or assessment period to address the temporary disability.

In fact, there was **no medical report** of the treatment or the various medical tests and procedures **was ever presented**. Dr. Bautista's certification merely mentioned the amount of time that has lapsed since the surgery, and declared Paleracio fit to return to work without restrictions despite the latter's complaint of occasional pain when lifting heavy objects. In absence of evidence of the declaration of the need for further treatment, **the period** within which the company-designated

physician must issue an assessment **was not duly extended to 240 days**. Consequently, the March 21, 2013 Certification does not matter as it was issued beyond the authorized 120-day period.

The lack of a conclusive and definite medical assessment from the company-designated physicians, which left Paleracio nothing to properly contest, **negates the need to comply with the third-doctor referral** provision under the POEA-SEC. Without a valid final and definite assessment from the company-designated physician, **the law already steps in to consider the seafarer's disability as total and permanent**.He had rightfully commenced his complaint for disability compensation.

Anent the issue on the **mandatory post-employment examination**, respondents insist that Paleracio failed to report to them within three days upon his arrival. It was held that **the three-day mandatory reporting requirement must be strictly observed** since within three days from repatriation, it would be fairly manageable for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment.

Respondents claimed that Paleracio came to them five days upon disembarkation. He underwent hematology test on October 7, 2012, and was referred to the company-designated physician only on October 8, 2012. As there was no evidence that he caused the delay, the LA erred in considering the said date of referral to conclude that he failed to comply with the reportorial requirement. **Respondents could have easily presented any proof** of the normal working days of the manning agency to support their allegation that he indeed reported for post-employment medical examination beyond the authorized period. It would be highly inequitable to the State's policy on labor to resolve this doubt against him. The Court finds that although his claim that he immediately reported to the manning agency is unsubstantiated, respondents' denial is also bare. Under the evidentiary rules, **a positive assertion is generally entitled to more weight than a plain denial.**

YIALOS MANNING SERVICES, INC., OVERSEAS SHIPMANAGEMENT S.A., RAUL VICENTE PEREZ, and MINERVA ALFONSO, *Petitioners,* -versus- RAMIL G. BORJA, *Respondent*.
G.R. No. 227216, SECOND DIVISION, July 04, 2018, CAGUIOA, *J.*

In Vergara v. Hammonia Maritime Services, Inc.:

The seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.

In the present case, Borja arrived in the Philippines on November 25, 2010. He had continuous check-ups at Marine Medical Services of Metropolitan Medical Center (MMC). On March 11, 2011, he had a follow-up check-up where he was advised to continue physical therapy and medications. He was advised to return on April 1, 2011 for re-evaluation. Thus, the 120-day period (ending on March 25, 2011) was justifiably-extended as Borja required further medical treatment. On April 15, 2011 the company-designated physician, Dr. William Chuasuan, Orthopedic Surgeon of MMC, issued a disability rating of "Grade 11 - slight rigidity of 1/3 loss of motion or lifting power of the trunk" after Borja's follow up check-up. Thus, the company-designated physician's assessment was made within the allowed 240-day period.

In summary, in case there is a conflict between the medical findings of the company-designated physician and the seafarer-appointed physician as to the disability rating of the seafarer, the parties must comply with the conflict-resolution procedure mandated under the POEA-SEC. The seafarer must be the one to signify his intent to refer to a third doctor as he is the party contesting the findings of the company-designated physician. Without the opinion of the third doctor, the medical pronouncements of the company-designated physician prevail.

FACTS:
Borja was employed as oiler by YMSI, for and on behalf of its principal OSSA, for a period of nine (9) months. He boarded the vessel M/V Thetis on April 20, 2010. On November 9, 2010, after doing maintenance work and lifting a metal plate, he felt "pain in the buttocks radiating down the back of his leg." He was referred to a company physician in Taixing, China, who diagnosed him to have inter-vertebral protrusion. He was declared unfit to work for three (3) months and was advised for "temporary palliative care" or bed rest for one month. He was medically repatriated on November 25, 2010.

Borja **reported to YMSFs office, and he was referred to Marine Medical Services in Metropolitan Medical Center (MMC) on November 27, 2010 and was diagnosed by Dr. Robert D. Lim to have "lumbar strain."** He was advised to continue with his medication and to undergo physical therapy at the UPH-DJTMC. Respondent also underwent electromyograph (EMG) test at the UPH-DJTMC wherein the result shows a "chronic bilateral L5-S1 radiculopathies probably secondary to a lumbar canal strenosis."

On April 15, 2011, **Dr. William Chuasuan of MMC issued a disability rating "grade 11 - slight rigidity of 1/3 loss of motion or lifting power of the trunk."** Borja, nevertheless, continued his therapy at UPH-DJTMC because he was still suffering from back pain. He then demanded for reimbursement of his medical expenses and for payment of total permanent disability, but YMSI denied the claims. Hence, private respondent filed a complaint for payment of salaries/wages for the unexpired portion of the contract, disability benefits and for moral and exemplary damages, as well as, attorney's fees against petitioners with the Labor Arbiter. During the conciliation hearing, the parties agreed to refer private respondent for a third (3rd) medical opinion but private respondent allegedly backed out of the agreement.

On August 20, 2011, private respondent **consulted Dr. Manuel C. Jacinto, Jr. at Sta. Teresita General Hospital, Quezon City, who diagnosed him with "chronic low back pain with L5-S1**

radiculopathy (9 months)." He was advised for "continuous therapy and repeat MRI" and **declared "physically unfit to return to work" or suffering from "total permanent disability."**

On February 9, 2012, Labor Arbiter Cheryl M. Ampil rendered a decision granting Borja's claim for total permanent disability. Petitioners appealed to the NLRC. The NLRC dismissed the appeal. It sustained Borja's entitlement to total and permanent disability and attorney's fees. A motion for reconsideration was filed, but the NLRC denied the same on July 9, 2012.

Aggrieved, petitioners elevated the case to the CA via petition for certiorari. In the Assailed Decision, the CA dismissed the certiorari petition finding no grave abuse of discretion on the part of the NLRC. Thus, petitioners elevated the case before the Court.

ISSUE:

Whether Borja is entitled to total permanent disability benefits?

RULING:

No. There is no dispute as to whether Borja's condition is work-related. Borja's employment with petitioners is covered by the Philippine Overseas Employment Administration's Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-Going Ships, commonly referred to as the POEA-SEC, which both parties signed on April 8, 2010. As a contract, the same is considered the law between the parties. The last paragraph of **Section 20(B)(3) of the POEA-SEC** provides for the solution to this common dispute:

> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and seafarer. The third doctor's decision shall be final and binding on both parties.

Thus, **in case there are conflicting findings as to the health condition of the seafarer, a third doctor may be jointly agreed upon by the parties whose findings shall be final and binding.**

In Marlow Navigation Philippines, Inc. v. Osias, the Court held that the **referral to a third doctor is mandatory** when:

(1) there is a valid and timely assessment by the company-designated physician and
(2) the appointed doctor of the seafarer refuted such assessment.

In view of this, the NLRC promulgated NLRC En Banc Resolution No. 008-14, which directs all Labor Arbiters, during mandatory conference, to give the parties a period of fifteen (15) days within which to secure the services of a third doctor and an additional period of thirty (30) days for the third doctor to submit his/her reassessment.

The duty to signify the intention to resolve the conflict by referral to a third doctor is upon the seafarer as he is the one contesting the findings of the company-designated physician. Without the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician. In the absence thereof, the medical pronouncement of the company-designated physician must be upheld.

Borja's contention that he was not obliged to comply with the conflict-resolution procedure under Section 20 (B)(3) of the POEA-SEC because he is already considered totally and permanently disabled by operation of law because the company-designated physician did not declare him fit to work within the 120-day and 240-day periods is untenable.

Under Section 32 of the POEA-SEC, only those illnesses or injuries classified as Grade 1 shall constitute total permanent disability. Thus, those from Grade 2 to Grade 14 are considered as partial permanent disability, subject to the schedule of rates also provided in the POEA-SEC. The **lapse of the 120-day or 240-day period does not automatically entitle the seafarer to a total permanent disability.** It is the **company-designated physician who will certify him as either fit to work or classify his condition as partial or total permanent disability within the said periods.**

The applicable procedure and periods have been clarified in the case of Vergara v. Hammonia Maritime Services, Inc.:

> [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.

In other words, the seafarer's condition is **considered to be temporary total disability for the duration of his treatment which shall have an initial maximum period of 120 days**. If the seafarer requires further medical treatment, the **period may be extended to 240 days.** Within the said periods, the company-designated physician must make an assessment of the seafarer's condition; that is, whether he is "fit to work" or if the seafarer's disability has become partial or total permanent. However, **if after the lapse of 240 days, the seafarer is still incapacitated to perform** his **usual sea duties and the company-designated physician has not made any assessment** at all (whether the seafarer is fit to work or whether his permanent disability is partial or total), it is only then that the **conclusive presumption that the seafarer is totally and permanently disabled arises**.

In the present case, Borja arrived in the Philippines on November 25, 2010. He had continuous check-ups at Marine Medical Services of Metropolitan Medical Center (MMC). On March 11, 2011, he had a follow-up check-up where he was advised to continue physical therapy and medications. He was advised to return on April 1, 2011 for re-evaluation. Thus, the 120-day period (ending on March 25, 2011) was justifiably-extended as Borja required further medical treatment. On April 15, 2011 the company-designated physician, Dr. William Chuasuan, Orthopedic Surgeon of MMC, issued a disability rating of "Grade 11 - slight rigidity of 1/3 loss of motion or lifting power of the trunk" after Borja's follow up check-up.

Thus, the company-designated physician's assessment was made within the allowed 240-day period. Based on the foregoing jurisprudence, therefore, such assessment must be upheld, in the absence of a contrary finding from a third doctor agreed upon by both parties.

The rulings of the LA and the NLRC were seriously flawed because they were issued in complete disregard of the conflict-resolution procedure laid down in the POEA-SEC. Thus, the Court is compelled to grant the Petition.

In summary, in case there is a conflict between the medical findings of the company-designated physician and the seafarer-appointed physician as to the disability rating of the seafarer, the parties must comply with the conflict-resolution procedure mandated under the POEA-SEC. The seafarer must be the one to signify his intent to refer to a third doctor as he is the party contesting the findings of the company-designated physician. **Without the opinion of the third doctor, the medical pronouncements of the company-designated physician prevail.**

PHIL-MAN MARINE AGENCY, INC., AND DOHLE (10M) LIMITED, *PETITIONERS,* -versus- ANIANO P. DEDACE, JR., SUBSTITUTED BY HIS SPOUSE LUCENA CAJES DEDACE, FOR AND IN BEHALF OF THEIR THREE [3] CHILDREN, NAMELY, ANGELICA, ANGELO AND STEVE MAC, ALL SURNAMED DEDACE, *RESPONDENT.*

G.R. No. 199162, Third Division, July 04, 2018, MARTIRES, *J.*

For disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it must be the result of a work-related injury or a work-related illness. The POEA-SEC defines work-related injury as "injuries resulting in disability or death arising out of and in the course of employment." On the other hand, work-related illness has been defined as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."However, the POEA-SEC's definition of a work-related illness does not necessarily mean that only those illnesses listed under Section 32-A are compensable. Section 20(B)(4) of the POEA-SEC provides that illnesses not listed under Section 32 are disputably presumed as work-related.

This disputable presumption operates in favor of the employee as the burden rests upon his employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer, this disputable presumption stands. Also, the POEA-SEC requires the company-designated physician to make an assessment on the medical condition of the seafarer within one hundred twenty (120) days from the seafarer's repatriation. Otherwise, the seafarer shall be deemed totally and permanently disabled.

In this case, the Court agrees with the CA that the petitioners failed to overcome the presumption that Dedace's illness is work-related. Dr. Cruz's reply, dated 20 May 2004, in response to Phil-Man's query on whether Dedace's illness is work-related, cannot be considered as an effective assessment for purposes of the POEA-SEC.Considering that the company-designated physician effectively failed to make an assessment, Dedace is deemed totally and permanently disabled as of the date of the expiration of the 120-day period counted from his repatriation to the Philippines. Consequently, there could no longer be any issue on whether his illness is work-related or not.

FACTS:

On 18 June 2003, petitioner Phil-Man Marine Agency, Inc. (*PhilMan*), a domestic corporation, engaged the services of respondent Aniano P. Dedace, Jr. (*Dedace*) to work on board the vessel *M/V APL Shanghai* for and on behalf of its principal, the petitioner Dohle (IOM) Limited (*Dohle*)

On 26 July 2003, Dedace boarded *M/V APL Shanghai* and performed his tasks thereon as an Able Seaman.[7]

Sometime in January 2004, Dedace started feeling frequent inermittent pains on his lower right abdomen and left groin. On 20 February 2004, he was admitted to the Gleneagles Maritime Medical Centre (*GMMC*) in Singapore where he was examined and attended to by Dr. Lee Choi Kheong (*Dr. CK Lee*),[8] whose initial diagnosis was as follows: Multiple (3) Right Liver Nodules Suspected Haemangiomata need to establish definitive diagnosis; Right Kidney Cyst benign and need not be operated.

After undergoing further tests and Computed Tomography (*CT*) Scan, Dr. CK Lee diagnosed Dedace to be suffering from Disseminated Sepsis with Multiple Liver Abscesses.
Consequently, Dedace was repatriated to the Philippines on 1 March 2004,[11] and was referred to Dr. Nicomedes G. Cruz (*Dr. Cruz*). On 27 March 2004, the radiologist, Dr. Cesar S. Co, performed Magnetic Resonance Imaging (*MRI*) on Dedace.

It appeared that Phil-Man inquired from Dr. Cruz on whether. Dedace's illness was work-related. In his Reply, dated 20 May 2004, Dr. Cruz stated that their gastroenterologist was of the opinion that Dedace's illness is not work-related.

On 7 June 2004, Phil-Man, through its President/General Manager, Captain Manolo T. Gacutan wrote a letter to Dedace informing him that his illness is not work-related and therefore not compensable. Dedace was further informed that all payments and treatment will be stopped and any further claims with regard to his condition shall likewise be denied.

In its decision, the LA ruled that Dedace's illness was not work related. It observed that Dedace failed to prove that his Disseminated Sepsis with Multiple Liver Abscesses is among the compensable occupational diseases listed under Section 32-A of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract for Filipino Seafarers (*POEA-SEC*). As such, there is neither factual nor legal basis for the claim of total and permanent disability benefits.

In its 6 March 2007 resolution, the NLRC affirmed the decision of the LA. It observed that while Dedace's illness was disputably presumed to be work-related under Section 20(B), paragraph 4 of the POEA-SEC, such disputable presumption was overcome when Dr. Cruz declared said illness was not work-related. The NLRC further stated that Phil-Man's payment of Dedace's sickness allowance and medical expenses did not amount to recognition that his illness was work-related.

In its assailed decision, the CA granted Dedace's petition. The CA opined that the petitioners failed to overcome the disputable presumption that Dedace's illness was work-related. It held that Dr. Cruz neither explained nor specified how he arrived at his conclusion that Dedace's illness was not work-

related. Thus, it held that the NLRC gravely abused its discretion when it grossly misapprehended the facts of the case.

The petitioners moved for reconsideration, but the same was denied by the CA in its 24 October 2011 resolution. Hence, this petition for review.

ISSUE:

Whether the CA erred when it ruled that Dedace's illness was work-related and therefore compensable. (NO)

RULING:

Every employment contract between a Filipino seafarer and his employer is governed, not only by their mutual agreements, but also by the provisions of the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, which contains the Standard Terms and Conditions Governing The Employment of Filipino Seafarers On-Board Ocean-Going Vessels. The provisions of the POEASEC are mandated to be integrated in every Filipino seafarer's contract.[21]

In this regard, Section 20(B) of the 2000 POEA-SEC requires an employer to compensate his employee who suffers from work-related disease or injury during the term of his employment contract.

For disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it must be the result of a work-related injury or a work-related illness. The POEA-SEC defines work-related injury as "injuries resulting in disability or death arising out of and in the course of employment." On the other hand, work-related illness has been defined as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

However, the POEA-SEC's definition of a work-related illness does not necessarily mean that only those illnesses listed under Section 32-A are compensable. Section 20(B)(4) of the POEA-SEC provides that illnesses not listed under Section 32 are disputably presumed as work-related.

This disputable presumption operates in favor of the employee as the burden rests upon his employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer, this disputable presumption stands.

In this case, the Court agrees with the CA that the petitioners failed to overcome the presumption that Dedace's illness is work-related. Dr. Cruz's reply, dated 20 May 2004, in response to Phil-Man's query on whether Dedace's illness is work-related, cannot be considered as an effective assessment for purposes of the POEA-SEC.

The POEA-SEC requires the company-designated physician to make an assessment on the medical condition of the seafarer within one hundred twenty (120) days from the seafarer's repatriation. Otherwise, the seafarer shall be deemed totally and permanently disabled.

Upon his repatriation to the Philippines, Dedace immediately submitted himself to Dr. Cruz, the company-designated physician, for his post-employment examination. He also submitted himself to several tests under the care of other doctors assisting Dr. Cruz to fully determine his medical .condition and the degree of his illness. However, even after undergoing several medical tests and consultations, Dedace was not issued a medical certificate to show Dr. Cruz's final medical assessment on him. The records show only Dr. Cruz's 20 May 2004 letter which was not even addressed to Dedace.

Even assuming, for the sake of argument, that Dr. Cruz's 20 May 2004 letter may be considered as his assessment on Dedace's medical condition and fitness to work, the same would be inadequate to overthrow the disputable presumption in favor of Dedace for being incomplete and uncertain. The Court had already stressed the importance of making a full, complete, and categorical medical assessment.

While the letter, dated 20 May 2004, stated that Dedace's illness is not work-related, nothing would suggest that the same is Dr. Cruz's definite medical assessment. In the first place, the said statement was based merely on the opinion of another specialist, a gastroenterologist, who was not even named. Certainly, Dr. Cruz did not even offer his own opinion on the matter. Furthermore, the records do not show that Dedace was examined by or was placed under the care of any gastroenterologist. Thus, the unnamed gastroenterologist's opinion on Dedace's illness is immaterial in this case.

Finally, neither Dr. Cruz nor the unnamed gastroenterologist gave an explanation for the statement that Dedace's illness is not work-related. While the company-designated physician must declare the nature of a seafarer's disability, the former's declaration is not conclusive and final upon the latter or the court. Its inherent merit will still be weighed and duly considered.[25] For this reason, it is not enough that the company-designated physician merely state or claim that the illness is not work-related, or that the seafarer is fit for sea duties. He must justify said assessment using the medical findings he had gathered during his treatment of the patient-seafarer. Surely, the POEA-SEC requires a medical assessment, not a bare claim. An unsubstantiated assessment, even if made by the company-designated physician, is tantamount to a bare claim which must be rejected by the courts.

Considering that the company-designated physician effectively failed to make an assessment, Dedace is deemed totally and permanently disabled as of the date of the expiration of the 120-day period counted from his repatriation to the Philippines. Consequently, there could no longer be any issue on whether his illness is work-related or not.

V. LABOR RELATIONS

A. Right to self-organization

1. Coverage

2. Ineligibility of managerial employees; right of supervisory employees

SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS AERONAUTIQUES (SITA), SITA INFORMATION NETWORKING COMPUTING B.V. (SITA, INC.), EQUANT SERVICES, INC. (EQUANT) AND LEE CHEE WEE, *Petitioners*, *v.* **THEODORE L. HULIGANGA**, *Respondent.*

G.R. No. 215504, FIRST DIVISION, August 20, 2018, PERALTA, *J.*

Article 245 of the Labor Code expressly states that "managerial employees are not eligible to join, assist or form any labor organization." An exception to this prohibition is when the employer extends the CBA benefits to the managerial employee as a matter of policy or established practice. Complainant failed to present evidence to justify his claim. He failed to sufficiently establish that there is an established company practice of extending the CBA concessions to managerial employees. To be considered as a company practice, the act of extending the benefits of the CBA to managerial employees must have been practiced for a long period of time and must be shown to be consistent and deliberate.

FACTS:

Huliganga was hired by SITA on April 16, 1980 as Technical Assistant to the Representative-Manager. Eventually, he became the Country Operating Officer, the highest accountable officer of SITA in the Philippines and his current position at the time of his retirement on December 31, 2008. He received his retirement benefits.

On January 27, 2009, Huliganga filed a Complaint against Petitioners for unfair labor practices, underpayment of salary/wages, moral and exemplary damages, attorney's fees, underpayment of sick and vacation leave and retirement benefits.

In his Position Paper, Huliganga alleged the following: (1) The coefficient/payment factor that applies to him should be 2 months and not 1.5 months for every year of service in accordance with the 2005-2010 Collective Bargaining Agreement; (2) The coefficient/payment factor as provided under the 2005-2010 is the applicable rate because it is already a well-established company practice of SITA to adopt, update and apply the new and/or additional economic benefits arising from the CBA as amendments to the Employee Regulations manual; (3) SITA, INC. is a foreign corporation created by SITA in 2003 to concentrate on providing Air Transport Industry application whereas EQUANT was created by SITA in the mid-1990s to cater to its non-airline customers; and (4) He was required by EQUANT to represent and manage its Philippine operations and was given the additional task of managing SITA, INC. but was not compensated for his work at EQUANT and SITA, INC.

Petitioners, on the other hand, raised the following counter-arguments: (1) Huliganga has already received from SITA the full amount of his retirement and other monetary benefits; thus, his claim for any supposed deficiency has simply no basis; (2) There is no employer-employee relationship between Huliganga, SITA, INC. and EQUANT which will entitle the former to a claim for salary and other monetary benefits from said entities; and (3) Having received the full amount of his retirement and other benefits from his employer SITA, Huliganga has no right to claim moral and exemplary damages and attorney's fees.

LA: Dismissed the complaint against SITA for lack of merit.

NLRC: Denied the appeal for lack of merit and affirmed the LA Decision.

After the denial of Huliganga's MR, he filed a petition for *certiorari* with the CA.

CA: ruled that Huliganga was able to prove that the new and/or additional economic benefits arising from the CBA as amendments to the Employee Regulations Manual has ripened into a company practice. It added that at the time of Huliganga's retirement, the applicable CBA was that concluded on April 27, 2006 and in the said CBA, it is provided that the coefficient/payment factor in the computation of retirement benefits for employees who have rendered 25 years or more of service was 2 months for every year of service and not 1.5 months for every year of service. The CA, however, held that Huliganga is not entitled to salaries and emoluments from SITA, INC. and EQUANT.

ISSUE: Whether or not the CA erred in ruling that managerial employees of SITA are entitled to the same retirement benefits as those of rank-and-file employees has no factual and legal basis. (YES)

Ruling:

The petition is meritorious.

It is an indisputable fact that Huliganga was a managerial employee of SITA and, as such, he is not entitled to retirement benefits exclusively granted to the rank-and-file employees under the CBA. It must be remembered that under Article 245 of the Labor Code, managerial employees are not eligible to join, assist or form any labor organization. [T]o be entitled to the benefits under the CBA, the employees must be members of the bargaining unit, but not necessarily of the labor organization designated as the bargaining agent.

The Labor Arbiter, therefore, did not commit any error when it applied the said provisions and ruled that Huliganga failed to sufficiently establish that there is an established company practice of extending the benefits of the CBA to managerial employees, thus:

Along this vein, it should be stressed that before his retirement on 31 December 2008, complainant occupies the position of Country Operating Officer of respondent SITA. It is beyond dispute that complainant is occupying the highest managerial position in the country for his employer SITA. Now**, Article 245 of the Labor Code expressly states that "managerial employees are not eligible to join, assist or form any labor organization." An exception to this prohibition is when the employer extends the CBA benefits to the managerial employee as a matter of policy or established practice. Complainant failed to present evidence to justify his claim. He failed to sufficiently establish that there is an established company practice of extending the CBA concessions to managerial employees. To be considered as a company practice, the act of extending the benefits of the CBA to managerial employees must have been practiced for a long period of time and must be shown to be consistent and deliberate.** x x x

The CA, however, ruled that Huliganga was able to prove that the new and/or additional economic benefits arising from the CBA as amendments to the Employee Regulations Manual has ripened into a company practice.

To be considered a company practice, the giving of the benefits should have been done over a long

period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.

To prove that the giving of the benefits claimed by Huliganga had been a company practice, he presented the affidavit of Delia M. Beaniza who was the Administrative Assistant to the Country Manager/Representative stating that SITA had adopted the formulation provided in the CBA to its managerial employees. The NLRC, however, is correct in ruling that the said affidavit deserves scant consideration because Beaniza lacks the competency to determine what is considered as a company practice, thus:

In her affidavit, Ms. Beaniza stated that respondent SITA had consistently adopted the policy to extend to managerial and confidential employees all favorable benefits agreed upon in the CBA with union members. However, as correctly held by the Labor Arbiter, the said affidavit deserves scant consideration considering that Ms. Beaniza had been retired from service since 1997 or 12 years ago. She, therefore, lacks the competency to determine with accuracy what is considered a company practice. It was also held by the Labor Arbiter that even if Ms. Beaniza's retirement was based on the rate provided in the then prevailing CBA, this does not convert the concession into a company practice.

We also have noted that though Ms. Beaniza stated that company policies have been implemented as early as the time when SITA Employees' Union was formed in the 1970s, she was employed by respondent SITA only in September 1980. Accordingly, she cannot testify on matters or circumstances that happened before she was employed by SITA.

Ms. Beaniza attested that she and other previous retirees have availed of the company practice. However, she failed to name or identify any other employee who had availed of the said company practice and given retirement benefits under the CBA. If indeed Ms. Beaniza was given retirement benefits above the amount she is entitled to, this could be interpreted to be based merely on the generosity on the part of SITA.

It is noted that Ms. Beaniza retired sometime in 1997. She, therefore, has no knowledge of circumstances that transpired after her retirement to present. She was in no position and had no authority to say that there was an established long standing company policy of extending CBA benefits to managerial employees.

In the same affidavit, Ms. Beaniza was supposed to have communicated to SITA office based in Singapore stating that SITA's practice in the grant of retirement benefits was lifted from the CBA provisions existing at the time. Even if such communication was sent, it does not categorically prove or establish that CBA benefits were actually granted to managerial and confidential employees.

Huliganga, therefore, failed to substantially establish that there is an established company practice of extending CBA concessions to managerial employees. Again, to be considered a company practice or policy, the act of extending benefits of the CBA to managerial employees must have been practiced for a long period of time and must be shown to be consistent and deliberate.

3. Effect of inclusion as employees outside of the bargaining unit

4. Non-abridgement

B. Bargaining unit

C. Bargaining representative

D. Rights of labor organizations

1. Check off, assessments, and agency fees

2. Collective bargaining

E. Unfair Labor Practices

1. Nature, aspects

2. By employers

3. By labor organizations

F. Peaceful concerted activities

1. Strikes

2. Picketing

3. Lockouts

4. Assumption of jurisdiction by the DOLE Secretary

5. Injunctions

VI. POST-EMPLOYMENT

A. Employer-employee relationship

1. Tests to determine existence

AMERICAN POWER CONVERSION CORPORATION; AMERICAN POWER CONVERSION SINGAPORE PTE. LTD.; AMERICAN POWER CONVERSION (A.P.C.), B.V.; AMERICAN POWER CONVERSION (PHILS.) B.V.; DAVID W. PLUMER, JR.; GEORGE KONG; and ALICIA HENDY, *Petitioners*, -versus- JASON YU LIM, *Respondent.*
G.R. No. 214291, FIRST DIVISION, January 11, 2018, DEL CASTILLO, *J.*

To determine the existence of an employer-employee relationship, four elements generally need to be 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. Here, it would seem that all of the petitioners are, for all practical purposes, Lim's employers. However, there is no such thing in legitimate employment arrangements. This bizarre labor relation was made possible and necessary only by the petitioners' common objective: to enable APCC to skirt the law. Thus, for all legal purposes, APCC is Lim's employer, and APC Japan, APCS, APCP BV, Plumer, Kong, Hendy, and del Ponso had no authority to devise a redundancy scheme. Hence, their supposed redundancy scheme, as against Lim, is ineffective.

This does not prevent Lim from recovering from all of the petitioners. From a labor standpoint, they are all guilty of violating the Labor Code as a result of their concerted acts of fraud and misrepresentation upon Lim.

FACTS:

Respondent Jason Yu Lim (Lim) was hired to serve as the Country Manager of American Power Conversion Philippine Sales Office (APCPSO), which was not registered with the Securities and Exchange Commission (SEC), but whose function then was to act as a liaison office for petitioner American Power Conversion Corporation (APCC), an American corporation. The only SEC-registered corporation then was American Power Conversion (Phils.), Inc. (APCPI). Since APCPSO was unregistered but doing business in the country, Lim was included in the list of employees and payroll of APCPI. Thereafter, petitioner American Power Conversion (Phils.) B.V. (APCP BV) was established in the country. It acquired APCPI and continued the latter's business here.

Lim was promoted as Regional Manager for APC North ASEAN. His appointment was announced together with the appointment of David Shao (Shao) as Regional Manager for South ASEAN. They reported directly to Larry Truong (Truong), who was subsequently replaced by petitioner George Kong (Kong). During their stint with Kong, Lim and Shao supposedly discovered irregularities committed by Kong. They reported the same to David Plumer (Plumer), Vice President for Asia Pacific of APC Japan, who advised them to discuss the matter directly with Kong. Upon being apprised of the issues against him, Kong sent electronic mail (e-mail) messages to Lim and other members of the sales and marketing team indicating his displeasure.

Kong and petitioner Alicia Hendy (Hendy), Human Resource Director for APCP BV, met with Shao. The latter was asked to resign. When he refused, he was right then and there terminated from employment with immediate effect. The Letter of Termination handed to him was written on the official stationery of American Power Conversion Singapore Pte. Ltd. (APCS) and was signed by its Human Resource Manager. It did not specify any reason why he was being fired from work.

Kong met with Lim, where he informed the latter of a supposed company restructuring which rendered his position as Regional Manager for North ASEAN redundant. Lim was then furnished by the Human Resource Manager of APCP BV Maximo del Ponso, Jr. (del Ponso) with a Termination Letter.

ISSUE:

Whether Lim was validly dismissed due to redundancy. (NO)

RULING:

To determine the existence of an employer-employee relationship, four elements generally need to be 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. These elements or indicators comprise the so-called four-fold test of employment relationship.

Here, it would seem that all of the petitioners are, for all practical purposes, Lim's employers. He was selected and engaged by APCC. His salaries and benefits were paid by APCP BV. He is under the supervision and control of APCS and APC Japan. However, there is no such thing in legitimate employment arrangements. This bizarre labor relation was made possible and necessary only by the petitioners' common objective: to enable APCC to skirt the law. Thus, for all legal purposes, APCC is Lim's employer.

While APCC was Lim's employer, the redundancy program in issue that was used to justify his dismissal from work was nonetheless implemented by Plumer and Kong, employees of APC Japan and APCS, as well as by Hendy and del Ponso, employees of APCP BV. Since APCC is Lim's true employer, APC Japan, APCS, APCP BV, Plumer, Kong, Hendy, and del Ponso had no authority to devisea redundancy scheme. Hence, their supposed redundancy scheme, as against Lim, is ineffective.

This does not prevent Lim from recovering from all of the petitioners. From a labor standpoint, they are all guilty of violating the Labor Code as a result of their concerted acts of fraud and misrepresentation upon Lim. For this gross violation of the fundamental policy of the Labor Code, petitioners must be held liable to pay back wages, damages, and attorney's fees. However, Lim may no longer be reinstated to his former position on account of strained relations.

2. Kinds of employment

a. Regular

MARIO A. ABUDA, RODOLFO DEL REMEDIOS, EDWARDO DEL REMEDIOS, RODOLFO L. ZAMORA, DIONISIO ADLAWAN, ELPIDIO GARCIA, JR., ROGELIO ZAMORA, SR., JIMMY TORRES, POLICARPIO OBANEL, JOSE FERNANDO, JOHNNY BETACHE, JAYSON GARCIA, EDWIN ESPE, NEMENCIO CRUZ, LARRY ABANES, ROLANDO SALEN, JOSEPH TORRES, FRANCISCO LIM, ARNALDO GARCIA, WILFREDO BRONOLA, GLENN MORAN, JOSE GONZALES, ROGER MARTINEZ, JAIME CAPELLAN, RICHARD ORING, JEREMIAS CAPELLAN, ARNEL CAPELLAN, MELCHOR CAPELLAN, ROLLY PUGOY, JOEY GADONES, ARIES CATIANG, LEONEL LATUGA, CAPILLAN, *Petitioners*, -versus- L. NATIVIDAD POULTRY FARMS, JULIANA NATIVIDAD, and MERLINDA NATIVIDAD, *Respondents*.
G.R. No. 200712, THIRD DIVISION, July 04, 2018, LEONEN, *J.*

De Leon v. NLRC instructs that "the primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer." The connection is determined by considering the nature of the work performed vis-a-vis the entirety of the business or trade. Likewise, if an employee has been on the job for at least one year, even if the performance of the job is intermittent, the repeated and continuous need for the employee's services is sufficient evidence of the indispensability of his or her services to the employer's business.

Respondents did not refute petitioners' claims that they continuously worked for respondents for a period ranging from 3 years to 17 years. Thus, even if the CA is of the opinion that carpentry and masonry are not necessary or desirable to the business of livestock and poultry production, the nature of their employment could have been characterized as being under the second paragraph of Article 280. Thus, petitioners' service of more than 1 year to respondents has made them regular employees for so long as the activities they were required to do subsist.

FACTS:

The workers of L. Natividad Poultry Farms (L. Natividad) filed complaints for illegal dismissal, unfair labor practice, overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, thirteenth month pay, and moral and exemplary damages" against it and its owner, Juliana Natividad, and manager, Merlinda Natividad.

The Labor Arbiter dismissed the complaint due to lack of employer-employee relationship between the workers and L. Natividad. He ruled that San Mateo General Services (San Mateo), Wilfredo Broñola (Broñola), and Rodolfo Del Remedios (Del Remedios) were the real employers as they were the ones who employed the workers, not L. Natividad.

On appeal, the NLRC found that the workers were hired as maintenance personnel by San Mateo and Del Remedios on *pakyaw* basis to perform specific services for L. Natividad.

The CAhowever modified the NLRC'sdecision and ruled that San Mateo and Del Remedios were labor-only contractors, and as such, they must be considered as L. Natividad's agents.However, the CA upheld the NLRC's finding that the maintenance personnel were only hired on a *pakyaw* basis to perform necessary repairs or construction within the farm as the need arose.

In thispetition, petitioners claim that as maintenance personnel assigned to respondent L. Natividad's farms and sales outlets, they performed functions that were necessary and desirable to L. Natividad's usual business. They assert that they have been continuously employed by L. Natividad for a period ranging from more than 1 year to 17 years.

In their Comment, respondents claim to be engaged in the business of livestock and poultry production. They also aver to have engaged San Mateo's services to clean-up the poultry farm, and to repair and maintain their chicken pens.

Respondents likewise state that they engaged petitioner Del Remedios to provide carpentry services. They assert that petitioners who claim to be maintenance personnel were actually carpenters or masons deployed by petitioner Del Remedios for his own account.

Respondents further assert that carpentry and masonry cannot be considered as necessary or desirable in their business of livestock and poultry production. They point out that petitioners, through petitioner Del Remedios, were only occasionally deployed as needed to repair and maintain their farm and sales outlets as needed.

Respondents then state that they engaged the services of petitioner Broñola to mix feeds for a specific number of tons or on a *pakyaw* system. They assert that petitioners Gonzales and Martinez were Broñola's employees, whom he hired specifically to help him mix feeds.

ISSUE:

Whether petitioners maintenance personnel in L. Natividad Poultry Farms can be considered as regular employees. (Yes)

RULING:

A regular employee is an employee who is:

> 1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or 2) *has rendered at least 1 year of service, whether such service is continuous or broken, with respect to the activity for which he is employed* and his employment continues as long as such activity exists.

De Leon v. National Labor Relations Commission instructs that "the primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer." The connection is determined by considering the nature of the work performed vis-a-vis the entirety of the business or trade. Likewise, if an employee has been on the job for at least one year, even if the performance of the job is intermittent, the repeated and continuous need for the employee's services is sufficient evidence of the indispensability of his or her services to the employer's business.

Respondents did not refute petitioners' claims that they continuously worked for respondents for a period ranging from 3 years to 17 years. Thus, even if the CA is of the opinion that carpentry and masonry are not necessary or desirable to the business of livestock and poultry production, the nature of their employment could have been characterized as being under the second paragraph of Article 280. Thus, petitioners' service of more than 1 year to respondents has made them regular employees for so long as the activities they were required to do subsist.

Nonetheless, a careful review of petitioners' activity as maintenance personnel and of the entirety of respondents' business shows that they performed activities which were necessary and desirable to respondents' business of poultry and livestock production.

As maintenance personnel, petitioners performed "repair works and maintenance services such as fixing livestock and poultry houses and facilities as well as doing construction activities within the premises of L. Natividad's farms and other sales outlets for an uninterrupted period of 3 to 17 years."

At first glance it may appear that maintenance personnel are not necessary to a poultry and livestock business. However, in this case, respondents kept several farms, offices, and sales outlets, meaning that they had animal houses and other related structures necessary to their business that needed constant repair and maintenance.

*Gapayao v. Fulo*likewise categorically stated that *pakyaw* workers may be considered as regular employees provided that their employers exercised control over them. Thus, while petitioners may have been paid on *pakyaw* or task basis, their mode of compensation did not preclude them from being regular employees.

Being regular employees, petitioners, who were maintenance personnel, enjoyed security of tenure and the termination of their services without just cause entitles them to reinstatement and full backwages, inclusive of allowances and other benefits.

b. Casual

c. Probationary

MARIA CARMELA P. UMALI, *petitioner*, **-versus-. HOBBYWING SOLUTIONS, INC.,** *respondent.*
G.R. No. 221356, SECOND DIVISION, MARCH 14, 2018, REYES, JR., J.

It bears stressing that while in a few instances the Court recognized as valid the extension of the probationary period, still the general rule remains that an employee who was suffered to work for more than the legal period of six (6) months of probationary employment or less shall, by operation of law, become a regular employee.

FACTS:

Petitioner alleged that she started working for the respondent, an online casino gaming establishment, on June 19, 2012, as a Pitboss Supervisor. She, however, never signed any employment contract before the commencement of her service but regularly received her salary every month.

Sometime in January 2013, after seven months since she started working for the respondent, the petitioner was asked to sign two employment contracts. The first employment contract was for a period of five months, specifically from June 19, 2012 to November 19, 2012. On the other hand, the second contract was for a period of three months, running from November 19, 2012 to February 18, 2013. She signed both contracts as directed.

On February 18, 2013, however, the petitioner was informed by the respondent that her employment has already ended and was told to just wait for advice whether she will be rehired or regularized. She was also required to sign an exit clearance from the company apparently to clear her from accountabilities. She was no longer allowed to work thereafter.Thus, the filing of a complaint for illegal dismissal against the respondent.

For its part, the respondent admitted that it hired the petitioner as Pitboss Supervisor on probationary basis beginning June 19, 2012 to November 18, 2012. With the conformity of the petitioner, the probationary period was extended for three months from November 19, 2012 to February 18, 2013. The respondent claimed that the engagement of the petitioner's service as a probationary employee and the extension of the period of probation were both covered by separate employment contracts duly signed by the parties. After receiving a commendable rating by the end of the extended probationary period, the petitioner was advised that the company will be retaining her services as Pitboss Supervisor. Surprisingly, the petitioner declined theoffer for the reason that a fellow employee, her best friend, will not be retained by thecompany. Thereafter, on February 18, 2013, she processed her exit clearance to clear herself of any accountability and for the purpose of processing her remaining claims from the company. As a sign of good will, the company signed and issued a Waiver of Non-Competition Agreement in her favor and a Certificate of Employment, indicating that she demonstrated a commendable performance during her stint. Thus, the respondent was surprised to receive the summons pertaining to the complaint for illegal dismissal filed by the petitioner.

LA: The LA rendered a Decision, dismissing the complaint for lack of merit. The LA ruled that the petitioner failed to substantiate her claim that she wasdismissed from employment.

NLRC: On appeal, the NLRC rendered a Decision,holding that the petitioner was illegally dismissed. The NLRC held that the petitioner attained the status of a regular employee by operation of law when she was allowed to work beyond the probationary period of employment.

CA: The CA rendered a Decision, reversing the decision of the NLRC. The CA agreed with the LA that the petitioner failed to prove the fact of herdismissal. Motion for reconsideration was denied.

Hence, this petition.

ISSUE:

Whether or not respondent was illegally dismissed. (YES)

RULING:

Respondent was illegally dismissed.

Contradicting the respondent's claim, the petitionerconsistently reiterates that she was made to sign two contracts of probationaryemployment, one covering the period from June 19, 2012 to November 18, 2012, andthe other purportedly extending the probationary employment from November 19,2012 to February 18, 2013, only on January 19, 2013.

To support her claim, she alleged that she was able to note the actual date when she signed the contracts, right beside her signature. And indeed, attached with the position paper submitted by the respondent itself, copies of the two contracts of employment signed by the petitioner clearly indicates the date "01.19.13" beside her signature. This substantiates the petitioner's claim that the documents were signed on the same day, that is, on January 19, 2013. Further, while the first contract was undated,the Probation ExtensionLetter was dated January 10, 2013,which was way beyond the end of the supposedprobationary period of employment on November 18, 2013, therefore validating thepetitioner's claim that she had already worked for more than six months when she wasasked to sign an employment contract and its purported extension. Surprisingly, the respondent never explained the disparity in the dates on the actual copies of the contracts which were submitted as annexes and that alleged in its position paper as the time they were signed by the petitioner. This brings to the conclusion that the contracts were only made up to create a semblance of legality in the employment and severance of the petitioner. Unfortunately for the respondent, the significant details left unexplained only validated the petitioner's claim that she had served way beyond the allowable period for probationary employment and therefore has attained the status of regular employment.

Petitioner commenced working for the respondent on June 19,2012 until February 18, 2013. By that time, however, she has already become a regularemployee a status which accorded her protection from arbitrary termination.

Since the extension of the period is the exception, rather than the rule, the employer has the burden of proof to show that the extension is warranted and not simply a stratagem to preclude the worker's attainment of regular status. Without a valid ground, any extension of the probationary period shall be taken against the employer especially since it thwarts the attainment of a fundamental right, that is, security of tenure.

In the instant case, there was no valid extension of the probationary period since the same had lapsed long before the company thought of extending the same. More significantly, there is no justifiable reason for the extension since, on the basis of the Performance Evaluation dated February 1, 2013, the petitioner had a commendable performance all throughout the probationary period. Having rendered service even after the lapse of the probationary period, the petitioner had attained regular employment, with all the rights and privileges pertaining thereto. Clothed with security of tenure, she may not be terminated from employment without just or authorized cause and without the benefit of procedural due process.

RAYMOND A. SON, RAYMOND S. ANTIOLA, and WILFREDO E. POLLARCO, *Petitioners*, -versus- UNIVERSITY OF SANTO TOMAS, FR. ROLANDO DELA ROSA, DR. CLARITA CARILLO, DR. CYNTHIA LOZA, FR. EDGARDO ALAURIN, and THE COLLEGE OF FINE ARTS AND DESIGN FACULTY COUNCIL, *Respondents*.

G.R. No. 211273, FIRST DIVISION, April 18, 2018, DEL CASTILLO, *J*.

In University of the East v. Pepanio, the requirement of a masteral degree for tertiary education teachers was held to be not unreasonable but rather in accord with the public interest.

Thus, when the CBA was executed between the parties in 2006, they had no right to include therein the provision relative to the acquisition of tenure by default, because it is contrary to, and thus violative of, the 1992 Revised Manual of Regulations for Private Schools that was in effect at the time. As such, said CBA provision is null and void, and can have no effect as between the parties. "A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation."

FACTS:

Petitioners Raymond A. Son (Son), Raymond S. Antiola (Antiola), and Wilfredo E. Pollarco (Pollarco) are full time professors of the UST Colleges of Fine Arts and Design and Philosophy, and are members of the UST Faculty Union, with which UST at the time had a Collective Bargaining Agreement (CBA).

Son and Antiola were hired in June, 2005, while Pollarco was employed earlier, or in June, 2004. Under their respective appointment papers, petitioners were engaged as probationary employees and will attain regular employment status upon the fulfillment of the conditions described in the University's rules and regulations and other pertinent laws including obtaining a graduate degree before the expiration of the probationary period and satisfactory performance.

Petitioners did not possess the required Master's degree, but were nonetheless hired by UST on the condition that they fulfill the requirement within the prescribed period. Petitioners enrolled in the Master's program, but were unable to finish the same. In spite of their failure to obtain the required Master's degree, they continued to teach even beyond the period given for completion thereof.

On March 3, 2010, then CHED Chairman Emmanuel Angeles issued a Memorandum addressed to the Presidents of public and private higher education institutions, directing the strict implementation of the minimum qualification for faculty members of undergraduate programs, particularly the Master's degree and licensure requirements, as mandated by Memorandum Order No. 40-08, "to ensure the highest qualification of their faculty."

Acting on the March 3, 2010 Memorandum, UST wrote the petitioners and other affected faculty members, informing them of the university's decision to cease re-appointment of those who failed to complete their Master's degrees, but allow a written appeal from the concerned faculty members who are due for thesis defense/completion of their Master's degrees.

Petitioners did not make a written appeal, operating under the belief that they have been vested tenure under the CBA for their continued employment despite failure to obtain the required Master's degree.

On June 11, 2010, petitioners received termination/thank you letterssigned by respondent Dr. Cynthia Loza, Dean of the College of Fine Arts and Design. The reason given for non-renewal of their appointments is their failure to obtain the required Master's degree.

Petitioners filed a labor case against the respondents for unfair labor practice, illegal dismissal, and recovery of money claims. Petitioners claimed that since they have already acquired tenure by default pursuant to the tenure provision in the CBA, they could not be dismissed for failure to complete their respective Master's degrees; that the UST-UST Faculty Union CBA is the law between the parties, and its provisions should be observed; that in spite of the CBA provision on tenure, respondents illegally terminated their employment.

Labor Arbiter decided in favor of the petitioners and declaring respondents guilty of illegal dismissal and unfair labor practice, as well as malice and bad faith in illegally dismissing the former. Respondents appealed before the NLRC. The NLRC affirmed the ruling of the Labor Arbiter. In a Petition for *Certiorari* before the CA, the latter reversed the decision and dismissed Petitioner's illegal dismissal case.

ISSUE:

Whether the Petitioners are illegally dismissed. (NO)

RULING:

In *University of the East v. Pepanio*, the requirement of a masteral degree for tertiary education teachers was held to be not unreasonable but rather in accord with the public interest.

Thus, when the CBA was executed between the parties in 2006, they had no right to include therein the provision relative to the acquisition of tenure by default, because it is contrary to, and thus violative of, the 1992 Revised Manual of Regulations for Private Schools that was in effect at the time. As such, said CBA provision is null and void, and can have no effect as between the parties. "A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation."

Thus, going by the requirements of law, it is plain to see that petitioners are not qualified to teach in the undergraduate programs of UST. And while they were given ample time and opportunity to satisfy the requirements by obtaining their respective master's degrees, they failed in the endeavor. Petitioners knew this - that they cannot continue to teach for failure to secure their master's degrees - and needed no reminding of this fact; "those who are seeking to be educators are presumed to know these mandated qualifications."

REYNALDO S. GERALDO, Petitioner, -versus- THE BILL SENDER CORPORATION/ MS. LOURDES NER CANDO, Respondents.
G.R. No. 222219, THIRD DIVISION, October 3, 2018, PERALTA, J.

Article 280 of the Labor Code describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

It has long been settled in labor law that in terminating the services of an employee, the employer must first furnish the employee with two (2) written notices: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.

FACTS:

On June 20, 1997, respondent The Bill Sender Corporation, engaged in the business of delivering bills and other mail matters for and in behalf of their customers, employed petitioner Reynaldo S. Geraldo as a delivery/messenger man to deliver the bills of its client, PLDT. He was paid on a "per-piece basis," the amount of his salary depending on the number of bills he delivered. On February 6, 2012, Geraldo filed a complaint for illegal dismissal alleging that on August 7, 2011, the company's operations manager, Mr. Nicolas Constantino, suddenly informed him that his employment was being terminated because he failed to deliver certain bills. He explained that he was not the messenger assigned to deliver the said bills but the manager refused to reconsider and proceeded with his termination. Thus, he claims that his dismissal was illegal for being done without the required due process under the law and that the company and its president, respondent Lourdes Ner Cando, be held liable for his monetary claims.

For its part, the company countered that Geraldo was not a full time employee but only a piece-rate worker as he reported to work only as he pleased and that it was a usual practice for messengers to transfer from one company to another to similarly deliver bills and mail matters. As such, he would only be given bills to deliver if he reports to work, otherwise, the bills would be assigned to other messengers. Moreover, contrary to Geraldo's claims, the company asserts that he was not illegally dismissed for he was the one who abandoned his job when he no longer reported for work.

On November 29, 2012, the LA held that Geraldo is considered as a regular employee of the company because he was doing work that is usually necessary and desirable to the trade or business thereof. Moreover, even if the performance of his job is not continuous or is merely intermittent, since he has been performing the same for more than a year, the law deems the repeated and continuing need thereof as sufficient evidence of the necessity, if not indispensability, of his work to the company's business. Even if it was true that he abandoned his job, it was incumbent on the company to send him a notice ordering him to report to work and to explain his absences as mandated by Sections 2 and 5, Book V, Rule XIV of the Labor Code.

The NLRC, on May 9, 2013, rendered its Decision affirming the LA Ruling with clarification that the computation of backwages must be from the time of his dismissal up to the finality of the NLRC Decision. According to the NLRC, the company failed to discharge the burden of proving a deliberate and unjustified refusal of Geraldo to resume his employment without any intention of returning as

well as to observe the twin-notice. Moreover, said commission also rejected the company's claim that Geraldo abandoned his job since he filed his complaint only after 7 months from the alleged dismissal for the lapse of time between the dismissal of an employee for abandonment and the filing of the complaint is not a material indicium of abandonment.

However, on August 7, 2014, the CA set aside the NLRC Decision and held that since Geraldo was paid on a per piece basis, he was hired on a per-result basis, and as such, he was not an employee of the company. The absence of an employer-employee relationship was further highlighted by the fact that messengers would habitually transfer from one messengerial company to another depending on the availability of mail matters. Thereafter, Geraldo's Motion for Reconsideration.

Aggrieved, Geraldo filed the instant petition.

ISSUES:

1. Whether Geraldo was a regular employee. (YES)
2. Whether Geraldo was illegally dismissed from his employment. (YES)

RULING:

I. Geraldo was a regular employee of the company.

Article 280 of the Labor Code describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

In Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission, we held that the test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.

In the instant case, it is undisputed that the company was engaged in the business of delivering bills and other mail matters for and in behalf of their customers, and that Geraldo was engaged as a delivery/messenger man tasked to deliver bills of the company's clients. Clearly, the company cannot deny the fact that Geraldo was performing activities necessary or desirable in its usual business or trade for without his services, its fundamental purpose of delivering bills cannot be accomplished. On this basis alone, the law deems Geraldo as a regular employee of the company. But even considering that he is not a full time employee as the company insists, the law still deems his employment as regular due to the fact that he had been performing the activities for more than 14 years. Without question, this amount of time that is well beyond a decade sufficiently discharges the requirement of the law. While length of time may not be the controlling test to determine if an employee is indeed a regular employee, it is vital in establishing if he was hired to perform tasks which are necessary and indispensable to the usual business or trade of the employer.

II. Geraldo was illegally dismissed from his employment.

It is incumbent upon the company to show that he was dismissed in accordance with the requirements of the law for the rule is long and well settled that, in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to prove that the employee's termination from service is for a just and valid cause. The Court finds that the company failed to adduce proof of overt acts on the part of Geraldo showing his intention to abandon his work. Time and again, the Court has held that 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. Hence, it bears emphasis that the fact that Geraldo filed the instant illegal dismissal complaint negates any intention on his part to sever his employment with the company. The records reveal that he even sought permission to return to work but was rejected by the company. Contrary to the company's assertion, moreover, the mere lapse of 7 months from Geraldo's alleged dismissal to the filing of his complaint is not a material indication of abandonment, considering that the complaint was filed within a reasonable period during the 3-year period provided under Article 291 of the Labor Code.

Apart from the absence of just and valid cause in the termination of Geraldo's employment, the Court rules that his dismissal was also done without the observance of due process required by law. It has long been settled in labor law that in terminating the services of an employee, the employer must first furnish the employee with two (2) written notices: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her. The company in the present case, however, failed to show its compliance with the twin¬ notice rule. In fact, in its Comment, it even expressly admitted its failure to serve Geraldo with any written notice, merely insisting that its oral notice should be considered substantial compliance with the law.

In view of the foregoing premises, therefore, the Court is convinced that Geraldo, a regular employee entitled to security of tenure, was illegally dismissed from his employment due to the failure of the company to comply with the substantial and procedural requirements of the law.
From a strict legal viewpoint, the parties are both in violation of the law: respondents, for maintaining professors without the mandated masteral degrees, and for petitioners, agreeing to be employed despite knowledge of their lack of the necessary qualifications. Petitioners cannot therefore insist to be employed by UST since they still do not possess the required master's degrees; the fact that UST continues to hire and maintain professors without the necessary master's degrees is not a ground for claiming illegal dismissal, or even reinstatement. As far as the law is concerned, respondents are in violation of the CHED regulations for continuing the practice of hiring unqualified teaching personnel; but the law cannot come to the aid of petitioners on this sole ground. As between the parties herein, they are in *pari delicto.*

VALENTINO S. LINGAT AND APRONIANO ALTOVEROS, *Petitioners*, *v.* **COCA-COLA BOTTLERS PHILIPPINES, INC., MONTE DAPPLES TRADING, AND DAVID LYONS,*** *Respondents*.
G.R. No. 205688, FIRST DIVISION, July 04, 2018, DEL CASTILLO, J.

A regular employee is a) one that has been engaged to perform tasks ***usually necessary or desirable in the employer's usual business*** *or trade – without falling within the category of either a fixed or a*

*project or a seasonal employee; or b) one that has been **engaged for a least one year**, whether his or her service is continuous or not, with respect to such activity he or she is engaged, and the work of the employee remains while such activity exists. To ascertain if one is a regular employee, it is primordial to determine the reasonable connection between the activity he or she performs and its relation to the trade or business of the supposed employer.*

*Relating petitioners' tasks to the nature of the business of CCBPI – which involved the manufacture, distribution, and sale of soft drinks and other beverages – it cannot be denied that **mixing and segregating** as well as loading and bringing of CCBPI's products to its customers **involved distribution and sale** of these items. Simply put, petitioners' duties were reasonably connected to the very business of CCBPI. They were **indispensable to such business** because without them the products of CCBPI would not reach its customers.*

FACTS

petitioners filed a Complaint[4] for illegal dismissal, moral and exemplary damages, and attorney's fees against Coca-Cola Bottlers Phils., Inc. (CCBPI), Monte Dapples Trading Corp. (MDTC), and David Lyons (Lyons) (respondents). Petitioners alleged that CCBPI engaged Lingat primarily as a plant driver but he also worked as forklift operator. Petitioners further stated, that after becoming regular employees (as they had been employed for more than a year), and by way of a *modus operandi*, CCBPI transferred them from one agency to another. These agencies included Lipercon Services, Inc., People Services, Inc., Interserve Management and Manpower Resources, Inc. The latest agency to where they were transferred was MDTC. They claimed that such transfer was a scheme to avoid their regularization in CCBPI. Finally, petitioners argued that CCBPI dismissed them after it found out that they were "overstaying." The LA ruled for the petitioners. On appeal, the NLRC dismissed the illegal dismissal case. It, nonetheless, ordered MDTC to pay Altoveros separation pay amounting to P10,725.00. The CA modified the NLRC Decision in that it ordered MDTC to pay separation pay to both petitioners.

ISSUE

1. Whether or not there exists [an] employer-employ[ee] relationship between Petitioners and Respondent CCBPI (YES)
2. Whether or not the Court of Appeals gravely erred in declaring [that] Petitioners [were] not regular employees of Respondent CCBPI (YES)

HELD

1. CCBPI and Lyons' contention that MDTC was a legitimate labor contractor and was the actual employer of petitioners does not hold water.

A labor-only contractor is one who enters into an agreement with the principal employer to act as the agent in the recruitment, supply, or placement of workers for the latter. A labor-only contractor 1) does not have substantial capital or investment in tools, equipment, work premises, among others, and the recruited employees perform tasks necessary to the main business of the principal; or 2) does not exercise any right of control anent the performance of the contractual employee. In such case, where a labor-only contracting exists, the principal shall be deemed the employer of the contractual employee; and the principal and the labor-only contractor shall be solidarily liable for

any violation of the Labor Code. On the other hand, a legitimate job contractor enters into an agreement with the employer for the supply of workers for the latter but the "employer-employee relationship between the employer and the contractor's employees [is] only for a limited purpose, i.e., to ensure that the employees are paid their wages."

Here, based on their Warehousing Management Agreement, CCBPI hired MDTC to perform warehousing management services, which it claimed did not directly relate to its (CCBPI's) manufacturing operations.[24] However, it must be stressed that CCBPI's business *not* only involved the manufacture of its products but also included their distribution and sale. Thus, CCBPI's argument that petitioners were employees of MDTC because they performed tasks directly related to "warehousing management services," lacks merit. On the contrary, records show that petitioners were performing tasks directly related to CCBPI's distribution and sale aspects of its business.

To reiterate, CCBPI is engaged in the manufacture, distribution, and sale of its products; in turn, as plant driver and segregator/mixer of soft drinks, petitioners were engaged to perform tasks relevant to the distribution and sale of CCBPI's products, which relate to the core business of CCBPI, not to the supposed warehousing service being rendered by MDTC to CCBPI. Petitioners' work were directly connected to the achievement of the purposes for which CCBPI was incorporated. Certainly, they were regular employees of CCBPI.

2. Article 295 of the Labor Code, as amended and renumbered, a regular employee is a) one that has been engaged to perform tasks usually necessary or desirable in the employer's usual business or trade – without falling within the category of either a fixed or a project or a seasonal employee; or b) one that has been engaged for a least one year, whether his or her service is continuous or not, with respect to such activity he or she is engaged, and the work of the employee remains while such activity exists. To ascertain if one is a regular employee, it is primordial to determine the reasonable connection between the activity he or she performs and its relation to the trade or business of the supposed employer.[17]

Relating petitioners' tasks to the nature of the business of CCBPI – which involved the manufacture, distribution, and sale of soft drinks and other beverages – it cannot be denied that mixing and segregating as well as loading and bringing of CCBPI's products to its customers involved distribution and sale of these items. Simply put, petitioners' duties were reasonably connected to the very business of CCBPI. They were indispensable to such business because without them the products of CCBPI would not reach its customers.

In *Quintanar v. Coca-Cola Bottlers, Philippines, Inc*.,[21] therein route helpers, like petitioners, were tasked to distribute CCBPI's products and were likewise successively transferred to agencies after having been initially employed by CCBPI. The Court decreed therein that said helpers were regular employees of CCBPI notwithstanding the fact that they were transferred to agencies while working for CCBPI. In the same vein, the transfer of herein petitioners from one agency to another did not adversely affect their regular employment status. Such was the case because they continued to perform the same tasks for CCBPI even if they were placed under certain agencies, the last of which was MDTC.

d. Project

REYMAN G. MINSOLA, *Petitioner,* -versus – NEW CITY BUILDERS, INC. and ENGR. ERNEL FAJARDO, *Respondents.*
G.R. No. 207613, SECOND DIVISION, January 31, 2018, REYES, JR., *J.*

For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) ***the employee was hired to carry out a specific project or undertaking****, and (ii)* ***the employee was notified of the duration and scope of the project****.*

In the case at bar, Minsola was hired by New City Builders to perform work for two different phases in the construction of the Avida 3. There is no quibbling that ***Minsola was adequately informed of his employment status (as a project employee)*** *at the time of his engagement. This is clearly substantiated by the latter's employment contracts, stating that: (i) he was hired as a project employee; and (ii) his employment was for the indicated starting dates therein, and will end on the completion of the project.*

Accordingly, it is not uncommon for a construction firm to hire project employees to perform work necessary and vital for its business. Suffice it to say, in William Uy Construction Corp. and/or Uy, et al. v. Trinidad, the Court acknowledged the ***unique characteristic of the construction industry*** *and emphasized that the laborer's performance of work that is necessary and vital to the employer's construction business, and the former's repeated rehiring, do not automatically lead to regularization, viz.:*

> *"Generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization. But this standard will not be fair, if applied to the construction industry, simply* ***because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project.****"*

FACTS:

New City Builders, Inc. (New City) is a corporation duly organized under the laws of the Philippines engaged in the construction business. On December 16, 2008, New City hired Minsola as a laborer for the structural phase of its Avida Tower 3 Project. The employment contract stated that the duration of Minsola's employment will last until the completion of the structural phase. On August 24, 2009, the structural phase of the Avida 3 was completed. Thus, Minsola received a notice of termination. On August 25, 2009, New City re-hired Minsola as a mason for the architectural phase of the Avida 3.

Sometime in December 2009, New City noticed that Minsola had no appointment paper as a mason for the architectural phase. Consequently, New City instructed Minsola to update his employment record. However, the latter ignored New City's instructions, and continued to work without an appointment paper. Minsola was again summoned to the office of New City to sign his appointment paper, however, he refused to comply and stormed out of the office and never reported back to work.

Minsola filed a Complaint for Illegal Dismissal, Underpayment of Salary, Non-Payment of 13th Month Pay, Separation Pay and Refund of Cash Bond. Minsola claimed that he was a regular employee of New City as he rendered work for more than one year and that his work as a laborer/mason is necessary and desirable to the former's business. He claimed that he was constructively dismissed by New City.

The Labor Arbiter (LA) rendered a Decision dismissing the complaint for illegal dismissal. The LA found that Minsola was a project employee who was hired for specific projects by New City. The fact that Minsola worked for more than one year did not convert his employment status to regular. The NLRC rendered a Decision reversing the LA's ruling. The NLRC found that Minsola was a regular employee and was constructively dismissed when he was made to sign a project employment contract. The CA reversed the NLRC's decision. The CA ruled that Minsola was a project employee. The CA reasoned that Minsola was hired for specific phases in the Avida 3. He was originally hired as a laborer for the structural phase of the Avida 3. Upon the completion of the structural phase, he was re-hired in a different capacity, as a mason for the architectural phase of the Avida 3 construction.

ISSUES:

I. Whether or not Minsola was a project employee. (YES)
II. Whether or not Minsola was constructively dismissed by New City. (NO)
III. Whether or not Minsola is entitled to his monetary claims consisting of his salary differential, service incentive leave pay differential, holiday pay and 10% attorney's fees. (YES)

RULING:

I. Minsola is a Project Employee of New City

Article 294 of the Labor Code, as amended, distinguishes regular from project-based employment as follows:

> Article 294. Regular and casual employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

In a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase. For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) **the employee was hired to carry out a specific project or undertaking**, and (ii) **the employee was notified of the duration and scope of the project**.

In the case at bar, Minsola was hired by New City Builders to perform work for two different phases in the construction of the Avida 3. There is no quibbling that **Minsola was adequately informed of his employment status (as a project employee)** at the time of his engagement. This is clearly

substantiated by the latter's employment contracts, stating that: (i) he was hired as a project employee; and (ii) his employment was for the indicated starting dates therein, and will end on the completion of the project.

Accordingly, it is not uncommon for a construction firm to hire project employees to perform work necessary and vital for its business. Suffice it to say, in *William Uy Construction Corp. and/or Uy, et al. v. Trinidad,* the Court acknowledged the **unique characteristic of the construction industry** and emphasized that the laborer's performance of work that is necessary and vital to the employer's construction business, and the former's repeated rehiring, do not automatically lead to regularization, viz.:

> "Generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization. But this standard will not be fair, if applied to the construction industry, simply because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project."

Additionally, in *Malicdem, et al. v. Marulas Industrial Corporation, et al.,* the Court took judicial notice of the fact that in the construction industry, an employee's work depends on the availability of projects. It would be extremely burdensome for the employer, who depends on the availability of projects, to carry the employee on a permanent status and pay him wages even if there are no projects for him to work on.

II. Minsola was not constructively dismissed by New City

In labor law, constructive dismissal, also known as a dismissal in disguise, exists "where there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. There must be an act amounting to dismissal but made to appear as if it were not.

In the case at bar, Minsola failed to advert to any particular act showing that he was actually dismissed or terminated from his employment. Neither did he allege that his continued employment with New City was rendered impossible, unreasonable or unlikely; nor was he demoted, nor made to suffer from any act of discrimination or disdain. On the contrary, it was actually Minsola who stormed out of New City's office and refused to report for work.

III. Minsola is entitled to Salary Differentials, 13th Month Pay Differentials, Service Incentive Leave Pay Differentials, Holiday Pay and Attorney's Fees

In claims for payment of salary differential, service incentive leave, holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This likewise stems from the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents are in the custody and control of the employer.

On the other hand, for overtime pay, premium pays for holidays and rest days, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business.

In the instant case, the records show that Minsola was given a daily wage of Php260.00, which falls below the prevailing minimum wage of Php382.00. Clearly, Minsola is entitled to salary differentials.

Likewise, Minsola is entitled to service incentive leave pay differentials, 13th month pay differentials and holiday pay. On the other hand, Minsola's claims for premium pay for holiday and rest day, as well as night shift differential pay are denied for lack of factual basis, as Minsola failed to specify the dates when he worked during special days, or rest days, or between 10:00 p.m. and 6:00 a.m. Finally, Minsola should likewise be awarded attorney's fees, as the instant case includes a claim for unlawfully withheld wages.

MARIO DIESTA BAJARO, *Petitioner*, *-versus-*
METRO STONERICH CORP., AND/OR IBRAHIM M. NUÑO, *Respondents*.
G.R. No. 227982, SECOND DIVISION, April 23, 2018, REYES, JR., *J.*

In view of the distinct nature of the construction industry, the Court recognizes the right of an employer to hire a construction worker for a specific project, provided that the latter is sufficiently apprised of the duration and scope of such undertaking. In this instance, the worker's tenure shall be coterminous with the project. Notably, the employee's performance of work that is necessary and desirable to the construction business, as well as his repeated rehiring, do not bestow upon him regular employment status.

FACTS:
In 2008, Metro Stonerich, a domestic entity engaged in the construction business, hired Bajaro as a concrete pump operator. He was assigned in various construction projects until May 10, 2014. Sometime in 2014, while lifting one of the pipes filled with concrete, Bajaro suddenly felt an excruciating pain on his thighs and since then, could no longer walk properly. Due to his injury, Bajaro went to the East Avenue Medical Center to have himself treated. Meanwhile, Bajaro was informed that he should no longer report for work. Instead, he was offered money in lieu of his employment.

This prompted Bajaro to file a complaint before the LA for illegal dismissal with monetary claims against Metro Stonerich. In his position paper, Bajaro asserted that he was a regular employee of Metro Stonerich, as he was continuously employed for six years and performed activities that were necessary and desirable to the latter's usual business.

On the other hand, Metro Stonerich argued that Bajaro is not a regular employee, but a project employee. Bajaro was hired for five different construction projects, with each project lasting for a period of five months or 12 months. As proof, Metro Stonerich pointed out that it even submitted reports to the DOLE upon the completion of the projects Bajaro was engaged in.

LA rendered a Decision dismissing Bajaro's complaint for illegal dismissal. The LA held that Bajaro was a project employee, as evidenced by the employment contracts he signed each time he was engaged by Metro Stonerich. Each contract clearly indicated the specific project, as well as the duration of his work. As a project employee, his employment was coterminous with each project.

Aggrieved, Bajaro appealed to the NLRC which affirmed the LA's ruling. Dissatisfied, Bajaro filed with the CA a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court. CA rendered the assailed Decision dismissing the petition. According to the CA, Bajaro was not illegally dismissed as his employment was terminated due to the completion of the project.

ISSUES:

(1) Whether or not Bajaro was a regular employee of Metro Stonerich? (NO)

(2) Whether or not he was illegally dismissed by the latter company? (NO)

RULING:

(1) Parenthetically, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase.

For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking; and (ii) the employee was notified of the duration and scope of the project. In order to safeguard the rights of workers against the arbitrary use of the word "project" as a means to prevent employees from attaining regular status, employers must prove that the duration and scope of the employment were specified at the time the employees were engaged, and prove the existence of the project.

In the case at bar, Bajaro was hired by Metro Stonerich as a concrete pump operator in five different construction projects. It is undisputed that Bajaro was adequately informed of his employment status (as a project employee) at the time of his engagement. This is clearly substantiated by his employment contracts (*Kasunduan Para sa Katungkulang Serbisyo (Pamproyekto)*, stating that: (i) he was hired as a project employee; and (ii) his employment was for the indicated starting dates therein, and will end on the completion of the project.

Furthermore, pursuant to **DO No. 19, Series of 1993, or the "Guidelines Governing the Employment of Workers in the Construction Industry**," Metro Stonerich duly submitted the required Establishment Employment Report to the DOLE for the reduction of its workforce. Bajaro was included among the 10 workers reported for termination as a consequence of the completion of the construction project effective May 23, 2014. As aptly pointed out by the CA, the submission of the said Establishment Employment Report is a clear indication of project employment.

(2) Verily, being a project employee, Metro Stonerich was justified in terminating Bajaro's employment upon the completion of the project for which the latter was hired. **Generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization. But this standard will not be fair, if applied to the construction industry, simply because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project.** And getting projects is not a matter of course. Construction companies have no control over the decisions and resources of project proponents or owners.

For this reason, the Court held in *Caseres v. Universal Robina Sugar Milling Corporation* that **the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee**. Thus, Bajaro's rendition of six years of service, and his repeated re-hiring are not badges of regularization.

In fine, *the Court affirms the right of an employer to hire project employees, for as long as the latter are sufficiently apprised of the nature and term of their employment*. Metro Stonerich was not remiss in informing Bajaro of his limited tenure as a project employee.

e. Seasonal

f. Fixed-term

g. Security guards

h. Floating status

3. Legitimate subcontracting vs. labor-only contracting

a. Elements

LEO V. MAGO AND LEILANIE E. COLOBONG, *Petitioners*, -versus- SUN POWER MANUFACTURING LIMITED, *Respondent*.
G.R. No. 210961, SECOND DIVISION, January 24, 2018, REYES, JR., *J.*

In order to become a legitimate contractor, the following elements must be present: 1) the contractor must have substantial capital or investment; and, 2) it must carry a distinct and independent business free from the control of the principal.

The first element of labor-only contracting is absent because Jobcrest has substantial capital. Substantial capital or investment was defined in DOLE DO No. 18-02 as "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." DOLE initially did not provide a specific amount as to what constitutes substantial capital. It later on specified in its subsequent issuance, DOLE DO No. 18-A, series of 2011, that substantial capital refers to paid-up capital stocks/shares of at least Php 3,000,000.00 in the case of corporations. In this case, Jobcrest established that for the year ended December 31, 2011, its paid-up capital of Jobcrest increased to Php 8,000,000.00, notably more than the required capital under DOLE DO No. 18-A.

The second element of labor-only contracting is also absent because Suncrest does not control the manner by which the petitioners accomplished their work.The element of control was defined under DOLE DO No. 18-02 as 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. In this case, the Court finds that the evidence clearly points to Jobcrest as the entity that exercised control over the petitioners' work with Sunpower. Upon the petitioners' assignment to Sunpower, Jobcrest conducted a training and certification program, during which time, the petitioners reported directly to the designated Jobcrest trainer.The fact that the petitioners were working within the premises of Sunpower, by itself, does not negate Jobcrest's control over the means, method, and result of the petitioners' work.

FACTS:

Petitioners are former employees of Jobcrest, a corporation duly organized under existing laws of the Philippines, engaged in the business of contracting management consultancy and services. Jobcrest was licensed by the Department of Labor and Employment (DOLE) through Certificate of Registration No. NCR-MUNTA-64209-0910-087-R.During the time material to this case, the petitioners' co-habited together.

On October 10, 2008, Jobcrest and Sunpower entered into a Service Contract Agreement, in which Jobcrest undertook to provide business process services for Sunpower, a corporation principally engaged in the business of manufacturing automotive computer and other electronic parts. Jobcrest then trained its employees, including the petitioners, for purposes of their engagement in Sunpower.After the satisfactory completion of this training, the petitioners were assigned to Sunpower's plant in Laguna Technopark. Leo was tasked as a Production Operator in the Coinstacking Station on July 25, 2009,while Leilanie was assigned as a Production Operator, tasked with final visual inspection in the Packaging Station on June 27, 2009.Jobcrest's On-site Supervisor, Allan Dimayuga (Allan), supervised the petitioners during their assignment with Sunpower.
It was alleged that sometime in October 2011, Sunpower conducted an operational alignment, which affected some of the services supplied by Jobcrest. Sunpower decided to terminate the Coinstacking/Material Handling segment and the Visual Inspection segment.[14] Meanwhile, Leo and Leilanie were respectively on paternity and maternity leave because Leilanie was due to give birth to their common child.

When Leo reported for work to formally file his paternity leave, Allan purportedly informed Leo that his employment was terminated due to his absences. Leo, however, further alleged that he was asked to report to Jobcrest on December 14, 2011 for his assignment to Sunpower. In their defense, both Jobcrest and Allan denied terminating Leo's employment from Jobcrest.
Leo complied with the directive to go to Jobcrest's office on December 14, 2011. While he was there, Jobcrest's Human Resource Manager, Noel J. Pagtalunan (Noel), served Leo with a "Notice of Admin Charge/Explanation Slip." The notice stated that Leo violated the Jobcrest policy against falsification or tampering because he failed to disclose his relationship with Leilanie. Leo denied the charges and explained that he already filed a complaint for illegal dismissal with the NLRC.
Leilanie, on the other hand, alleged that when she reported for work at Jobcrest on November 29, 2011, she was informed by one of the Jobcrest personnel that she will be transferred to another client company. She was likewise provided a referral slip for a medical examination, pursuant to her new assignment.

Instead of complying with Jobcrest's directives, Leo and Leilanie filed a complaint for illegal dismissal and regularization on December 15, 2011, with the NLRC Regional Arbitration Branch No. IV. Leo alleged that he was dismissed on October 30, 2011, while Leilanie alleged that she was dismissed from employment on December 4, 2011. Despite the filing of the complaint, Leilanie returned to Jobcrest on December 16, 2011, where she was served with a similar "Notice of Admin Charge/Explanation Slip," requiring her to explain why she failed to disclose her co-habitation status with Leo.[22]

During the mandatory conference, Jobcrest clarified that the petitioners were not dismissed from employment and offered to accept them when they report back to work. The petitioners refused and insisted that they were regular employees of Sunpower, not Jobcrest.

There being no amicable settlement of the matter among the parties, they proceeded to file their respective position papers.

In a Decision dated July 3, 2012, the LA held that Jobcrest is a legitimate independent contractor and the petitioners' statutory employer. On appeal, the NLRC reversed the LA's findings in its Decision dated April 24, 2013 and ruled favorably for the petitioners. In a Decision dated October 8, 2013, the CA granted Sunpower's petition for *certiorari* and enjoined the implementation of the assailed NLRC ruling.

ISSUE:

Whether Jobcrest is a labor-only contractor and that the DOLE Certificate of Registration is not conclusive of Jobcrest's legitimate status as a contractor. (NO)

RULING:

Jobcrest is a legitimate and independent contractor. Article 106 of the Labor Code defines labor-only contracting as a situation "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."

DOLE Department Order (DO) No. 18-02, the regulation in force at the time of the petitioners' assignment to Sunpower, reiterated the language of the Labor Code:

Section 5. ***Prohibition against labor-only contracting*****.** x x x [L]abor-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.

Thus, in order to become a legitimate contractor, the contractor must have substantial capital or investment, and must carry a distinct and independent business free from the control of the principal. In addition, the Court requires the agreement between the principal and the contractor or subcontractor to assure 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 welfare benefits.

The first element of labor-only contracting is absent because Jobcrest has substantial capital. The law and the relevant regulatory rules require the contractor to have substantial capital or investment, in

order to be considered a legitimate and independent contractor. *Substantial capital or investment* was defined in DOLE DO No. 18-02 as "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." DOLE initially did not provide a specific amount as to what constitutes substantial capital. It later on specified in its subsequent issuance, DOLE DO No. 18-A, series of 2011, that *substantial capital* refers to paid-up capital stocks/shares of at least Php 3,000,000.00 in the case of corporations.[68] Despite prescribing a threshold amount under DO No. 18-A, certificates of registration issued under DO No. 18-02, such as that of Jobcrest, remained valid until its expiration.

The records show that as early as the proceedings before the LA, Jobcrest established that **for the year ended December 31, 2011, its paid-up capital of Jobcrest increased to Php 8,000,000.00, notably more than the required capital under DOLE DO No. 18-A.** The balance sheet submitted by Jobcrest for the year ending on December 31, 2010 also reveals that its **total assets for the year 2009 amounted to Php 11,280,597.94, and Php 16,825,271.30 for the year 2010, which were comprised of office furniture, fixtures and equipment, land, building, and motor vehicles, among others**. As of December 31, 2012, the total assets for the years 2011 and 2012 also increased to Php 35,631,498.58 and Php 42,603,167.16, respectively.

Evidently, Jobcrest had substantial capital to perform the business process services it provided Sunpower. It has its own office, to which the petitioners admittedly reported to, possessed numerous assets for the conduct of its business, and even continuously earned profit as a result.[75] The Court can therefore reasonably conclude from Jobcrest's financial statements that it carried its own business independent from and distinctly outside the control of its principals.

The second element of labor-only contracting is also absent because Suncrest does not control the manner by which the petitioners accomplished their work.The element of *control* was defined under DOLE DO No. 18-02 as 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 control over the employees' performance of the work is, as the Court ruled in some cases, usually manifested through the power to hire, fire, and pay the contractor's employees, the power to discipline the employees and impose the corresponding penalty, and more importantly, the actual supervision of the employees' performance.

Upon review of the records, the Court finds that the evidence clearly points to Jobcrest as the entity that exercised control over the petitioners' work with Sunpower. Upon the petitioners' assignment to Sunpower, Jobcrest conducted a training and certification program, during which time, the petitioners reported directly to the designated Jobcrest trainer.[88] The affidavit of Jobcrest's Operations Manager, Kathy T. Morales (Kathy), states that operational control over Jobcrest employees was exercised to make sure that they conform to the quantity and time specifications of the service agreements with Jobcrest's clients. She narrated that manager and shift supervisors were assigned to the premises of Sunpower, with the task to oversee the accomplishment of the target volume of work. She also mentioned that there is administrative control over Jobcrest employees because they monitor the employees' attendance and punctuality, and the employees' observance of other rules and regulations.

The fact that the petitioners were working within the premises of Sunpower, by itself, does not negate Jobcrest's control over the means, method, and result of the petitioners' work. Job contracting is permissible "whether such job, work, or service is to be performed or completed within or outside the premises of the principal" for as long as the elements of a labor-only contractor are not present. The petitioners, despite working in Sunpower's plant for most of the time, admit that whenever they file their leave application, or whenever required by their supervisors in Jobcrest, they report to the Jobcrest office. Designated on-site supervisors from Jobcrest were the ones who oversaw the performance of the employees' work within the premises of Sunpower.

Based on the foregoing, since the two elements for labor-only contracting are absent. Jobcrest is a legitimate and independent contractor.

SAN MIGUEL FOODS., ***Petitioner,*** **-versus – HANNIVAL V. RIVERA, et. al,** ***Respondents.***
G.R. No. 220103, THIRD DIVISION, January 31, 2018, VELASCO, JR., *J.*

As succinctly found by both the LA and the NLRCs, not only the petitioner but even ICSI had satisfactorily proven that the latter is truly a legitimate contractor and not just a fly-by-night one, and thus, the ***employer-employee relationship between ICSI and the respondents is maintained. First, ICSI has been duly incorporated and registered*** *with the SEC, as well as with the BIR, SSS, Philhealth, PAG-IBIG, and the DOLE. Second****, ICSI has substantial capital****. Though it is unclear whether they have investment in the form of tools, equipment, machineries, etc., the same would not change the fact that they have substantial capital to be considered as a legitimate contractor. As this Court held in Neri, et al. v. NLRC, et al.,* ***the law does not require both substantial capital and investment in the form of tools, equipment, machineries****, etc. and this is clear from the* ***use of the conjunction "or."*** *Third, ICSI also has other A-list clients apart from the petitioner. Fourth, ICSI also has the control on the performance of the work of its employees. It was the officers of ICSI who has the direct supervision over the respondents.*

FACTS:

Petitioner, a corporation organized and existing under Philippine laws, is engaged in the feeds, and poultry and meats businesses. To maximize efficiency and cost effectiveness, the petitioner opted to outsource the invoicing services, which it deems merely ancillary to its business. Thus, sometime in 2005, the petitioner forged a six-month invoicing services contract with IMSHR Corporate Support, Inc. (ICSI), an independent contractor duly registered with the Department of Labor and Employment.

ICSI assigned its employees, including the respondents, to the petitioner to perform the invoicing services. Sometime in 2009, however, the petitioner decided to discontinue its invoicing operations at its JMT/GMA office, where the respondents were assigned, and set up a new one at its San Fernando, Pampanga, and Nueva Ecija Plants. The petitioner accordingly informed ICSI of this decision and the latter, in turn, informed its employees, including the respondents, of the said development and that all the affected employees shall be considered for assignment in San Fernando, Pampanga. Those interested to be transferred were instructed to submit a Request for Transfer on or before July 13, 2009. Of all the respondents, only one complied with the said directive while the

others submitted their resignation letters, some others continued working and some no longer reported to work.

Respondents filed their consolidated Complaints for Constructive Dismissal, Regularization, Underpayment of Salaries and Service Incentive Leave Pay, Non-Payment of 13th Month Pay, Vacation/Sick Leave, Maternity/Paternity Leave, Refund of Cash Bond, Tax Refund, Illegal Deduction — Variance Bond, Moral and Exemplary Damages, and Attorney's Fees (Complaints), against the petitioner before the Labor Arbiter.

Respondents alleged that the petitioner employed them as Invoicers and they were assigned to its numerous clients. They claimed that the tasks they are performing are necessary and desirable in the petitioner's usual trade or business. They also averred that it was the petitioner that assigned their individual daily work assignments and the one that monitored their attendance. Further, that the petitioner exercises control over the means and methods of accomplishing their tasks and their result as evidenced by the various policies it directly issued to them.

For its part, the petitioner vehemently maintained that it is not the respondents' employer but ICSI as the latter was the one that hired and selected them and they were simply deployed to the former. Also, ICSI was the one that paid the respondents' salaries and made the necessary deductions thereto of their Social Security System (SSS), PAG-IBIG, and Philippine Health Insurance Corporation (Philhealth) contributions. The petitioner equally insisted that the power to control the means and manner of performance of the respondents' work rests upon ICSI. ICSI affirmed that it is the respondents' employer having the power to hire, discipline, and terminate their services; it is the one responsible for the payment of their salaries; and it controlled the manner and method of their work. Even though the respondents are field employees, they are still under the supervision of ICSI's Base Controller and OIC-Invoicing Account.

The LA dismissed the Complaints for lack of merit. The LA held that ICSI is a legitimate service contractor having substantial capital and investment to carry out its business independently. The right to control the performance of the work of its employees likewise rests upon it. The NLRC affirmed the LA Decision. On further appeal, the CA reversed and set aside the NLRC Decision. The CA held that an employer-employee relationship exists between the petitioner and the respondents; and that ICSI was only its agent or intermediary.

ISSUE:

Whether an employer-employee relationship exists between the petitioner and the respondents so as to hold the former liable for the dismissal and all the other claims of the latter. (NO)

RULING:

Article 106 of the Labor Code clearly identified and distinguished the relations that may arise in a situation where there is an employer, a contractor, and employees of the contractor. It provides, thus:

> 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 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.

From the aforequoted provision, the two possible relations that may arise among the parties are: (1) the permitted legitimate job contract; or (2) the prohibited labor-only contracting.

Obviously, the permitted or permissible or legitimate job contracting or subcontracting is the one allowed and permitted by law. To determine its existence, these conditions must concur: (a) the contractor carries on a **distinct and independent business** and partakes the contract work on his 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 his work except as to the results thereof; (b) the contractor has **substantial capital or investment**; and (c) the agreement between the principal and the 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 welfare benefits. Thus, in legitimate job contracting, the employer-employee relationship between the job contractor and his employees is maintained.

Customarily, the contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like.

As succinctly found by both the LA and the NLRCs, not only the petitioner but even ICSI had satisfactorily proven that the latter is truly a legitimate contractor and not just a fly-by-night one, and thus, the **employer-employee relationship between ICSI and the respondents is maintained. First, ICSI has been duly incorporated and registered** with the SEC, as well as with the BIR, SSS, Philhealth, PAG-IBIG, and the DOLE. Second**, ICSI has substantial capital**. Though it is unclear whether they have investment in the form of tools, equipment, machineries, etc., the same would not change the fact that they have substantial capital to be considered as a legitimate contractor. As this Court held in Neri, et al. v. NLRC, et al., **the law does not require both substantial capital and investment in the form of tools, equipment, machineries**, etc. and this is clear from the **use of the**

conjunction "or." Third, ICSI also has other A-list clients apart from the petitioner. Fourth, ICSI also has the control on the performance of the work of its employees. It was the officers of ICSI who has the direct supervision over the respondents.

The Court holds that **no employer-employee relationship exists** between the petitioner and the respondents. Not being petitioner's employees, thus, they cannot attain the regular status. Along side, the petitioner cannot be charged of constructive illegal dismissal for it is beyond its power to dismiss the respondents as they were never its employees.

CONSOLIDATED BUILDING MAINTENANCE, INC. AND SARAH DELGADO, *Petitioners*, *v.* ROLANDO ASPREC, JR. AND JONALEN BATALLER, *Respondents*.
G.R. No. 217301, SECOND DIVISION, June 06, 2018, REYES, JR., *J.*

DO No. 18-02 reiterates the prohibition against labor-only contracting, viz.:

> *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 the performance of the work of the contractual employee.*
> *x x x x*

In addition to the foregoing, DO No. 18-02 requires that contractors and subcontractors be registered with the DOLE Regional Offices. But unlike the elements of substantial capital or investment and control, the absence of registration merely gives rise to the presumption that the contractor is engaged in labor-only contracting. Conversely, in the absence of evidence to the contrary, flowing from the presumption of regularity in the performance of official functions, the existence of registration in favor of a contractor is a strong badge of legitimacy in favor of the contractor.

FACTS:

CBMI is a corporation engaged in the business of providing janitorial, kitchen, messengerial, elevator maintenance and allied services to various entities.Among CBMI's clients is Philippine Pizza, Inc.-Pizza Hut (PPI). For PPI, CBMI provides kitchen, delivery, sanitation and other related services pursuant to contracts of services, which are valid for one-year periods.Records reveal that contracts of services were executed between PPI and CBMI in the years 2000and from 2002 until 2010.

Rolando Asprec, Jr. (Asprec) and Jonalen Bataller (Bataller) (collectively referred to as the respondents) alleged that they are regular employees of PPI, the former having commenced work as a "Rider" in January 2001 and the latter as "team member/slice cashier" in March 2008, both assigned at PPI's Pizza Hut, Marcos Highway, Marikina City Branch.

On the other hand, CBMI posited that the respondents are its employees. CBMI claimed that the respondents were investigated based on an Incident Report by PPI's Store Manager Karl Clemente of an attempted theft on July 23, 2010. On which date, one Jessie Revilla (Revilla) supposedly delivered an excess of two boxes to PPI's slice booth at the Light Rail Train (LRT) Santolan, Pasig Station, which the respondents failed to report.

Anent the incident, Asprec asserted that he has no knowledge of such actions by Revilla and claimed that the same is outside his responsibility as a "production person." Nonetheless, Asprec claimed that on account of the incident, he has been suspended for eight days and then was eventually dismissed.

On the other hand, Bataller, who was manning the slice booth at the LRT Santolan, Pasig Station on the day of the incident, claimed that when Revilla brought the three boxes of pizza which she ordered, she was busy attending to customers and thus did not notice that there has been an excess in the delivery. Nonetheless, she posited that immediately upon discovery, she called Revilla but the latter was already far from the station and as such could no longer go back. Revilla allegedly went back to get the two extra pizza boxes later that day.

Bataller likewise submitted that she has informed the area manager of the incident, but was thereafter asked to proceed to PPI's Marcos Highway branch. There, she was interviewed along with Asprec and Revilla, and then told to report to the head office. Starting July 24, 2010, she was allegedly no longer allowed to return to work.

On November 12, 2010, the respondents filed their Complaint against the petitioners for constructive illegal dismissal, illegal suspension, and non-payment of separation pay.

In their Complaint, the respondents argued two points: first, that their transfer from PPI to CBMI constituted labor-only contracting and was a mere scheme by PPI to prevent their regularization; and second, that they were illegally dismissed without cause and due process of law.

On December 20, 2010, the respondents amended their Complaint by impleading PPI and including a prayer for reinstatement and payment of moral and exemplary damages and attorney's fees.

The LA rendered a Decision on June 27, 2011, granting respondents' complaint.

On September 28, 2011, the NLRC rendered its Resolutionaffirming the LA's Decision.

On November 15, 2013, the CA rendered the herein assailed Decisiondenying the petition for *certiorari*.

ISSUES:

(1) Whether or not the respondents are employees of CBMI (YES); (2) Whether or not the respondents have been illegally dismissed and as such entitled to their monetary claims (YES)

RULING:

The resolution of the first issue hinges on the determination of the status of CBMI, *i.e.,* whether or not it is a labor-only contractor or an independent contractor.

Under the premises and based on the evidence presented by the parties, the Court is inclined to sustain the position of CBMI that it is an independent contractor.

Labor-only contracting is defined by Article 106 of the Labor Code of the Philippines, as an arrangement where a person, who does ***not*** have substantial capital or investment, supplies workers to an employer to perform activities which are directly related to the principal business of such employer.

The issue in this case being the status of the respondents, the pertinent Department Order (DO) implementing the aforecited provision of the Labor Code is DOLE DO No. 18-02, Series of 2002, the regulation in force at the time the respondents were hired and assigned to PPI.

DO No. 18-02 reiterates the prohibition against labor-only contracting, *viz.:*

> 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 the performance of the work of the contractual employee.
> x x x x

In addition to the foregoing, DO No. 18-02 requires that contractors and subcontractors be registered with the DOLE Regional Offices. But unlike the elements of substantial capital or investment and control, the absence of registration merely gives rise to the *presumption* that the contractor is engaged in labor-only contracting. Conversely, in the absence of evidence to the contrary, flowing from the presumption of regularity in the performance of official functions, the existence of registration in favor of a contractor is a strong badge of legitimacy in favor of the contractor.

It is not disputed that CBMI is a duly licensed labor contractor by the DOLE. As the primary agency tasked to regulate job contracting, DOLE is presumed to have acted in accordance with its mandate and after due evaluation of rules and regulations in its registration of CBMI. In this light, it then becomes incumbent upon the respondents to rebut the presumption of regularity to prove that CBMI is not a legitimate contractor as determined by the DOLE, which they failed to do.

Above all, CBMI maintains the "right of control" over the respondents. For purposes of determining whether a job contractor is engaged in legitimate contracting or prohibited labor-only contracting, DO No. 18-02, defines the "right of control" as:

> [T]he 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 in achieving that end.

Without necessarily touching on the respondents' status prior to their employment with CBMI, in the instant controversy, the petitioners' control over the respondents is manifested by the fact that they wield and exercise the following powers over them: "selection and engagement, payment of wages, dismissal, and control over the employees' conduct."

With respect to the respondents' dismissal, CBMI, as the employer has the power to impose discipline upon the respondents who are its employees, which includes the imposition of the preventive suspension pending investigation. However, the extension of the period of suspension by the CBMI is unwarranted under the attendant circumstances.

Section 4, Rule XIV of the Omnibus Rules Implementing the Labor Code is explicit in that the period of preventive suspension should not exceed 30 days, after which, the employee must be reinstated and paid the wages and other benefits due, *viz.*:

> SECTION 4. *Period of suspension.* - No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

To recall, in this case, after the conduct of administrative hearing, the respondents have been suspended by CBMI for a period of 15 days or from August 5 to 19, 2010. Thereafter, allegedly due to the reduced need of PPI and on account of the incident subject of investigation, respondents have been placed on "temporary-lay-off status" for a period of six months or from August 20, 2010 until February 20, 2011. Succinctly, respondents have been under preventive suspension for more than the maximum period allowed by law, without any word as to the result of the investigation, and without having been reinstated to their former or to a substantially equivalent position, which thus renders the period of extended suspension illegal. With these, the preventive suspension is deemed illegal as it amounts to a constructive dismissal.

Considering the dire consequences of "lay-off" to an employee, jurisprudence places upon the employer the burden to prove with sufficient and convincing evidence the justification therefor, and as well compliance with the parameters set forth by law. On account of CBMI's failure to discharge this burden in this case, the Court views that the extended period of suspension is illegal, which thus entitles the respondents to their money claims.

LINGNAM RESTAURANT, *Petitioner*, -versus- SKILLS & TALENT EMPLOYMENT POOL, INC., AND JESSIE COLASTE, *Respondents*.
G.R. No. 214667, THIRD DIVISION, December 03, 2018, PERALTA, J.

As stated by the Court in PCI Automation Center, Inc. v. NLRC, 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.

The Court notes that respondent STEP, in its Cautionary Pleading filed before the Labor Arbiter, stated that it entered into an agreement with petitioner Lingnam Restaurant in 2002, wherein it agreed to provide Lingnam Restaurant with manpower to perform activities related to the operation of its restaurant business. Thus, as stated by the Court of Appeals, respondent STEP merely acted as a placement agency providing manpower to petitioner Lingnam Restaurant. The service rendered by STEP in favor of Lingnam Restaurant was not the performance of a specific job, but the supply of

personnel to work at Lingnam Restaurant. In this case, STEP provided petitioner with an assistant cook in the person of Jessie Colaste.

FACTS:

Respondent Skills & Talent Employment Pool, Inc. (STEP) is a domestic corporation engaged in manpower management and technical services, and one of its clients is petitioner Lingnam Restaurant, a business enterprise owned and operated by Liberty C. Nacion. In a contract of employment, respondent Jessie Colaste is a project employee of respondent STEP assigned to work with petitioner Lingnam Restaurant as assistant cook.

Jessie Colaste filed with the Labor Arbiter an Amended Complaint for illegal dismissal against Lingnam Restaurant and STEP. Jessie Colaste alleged that on December 21, 2006, he started working at Lingnam Restaurant as an assistant cook/general utility with a salary of P350.00 a day. He worked six days a week, eight hours a day on two shifts. On March 5, 2008, at about 10:00 a.m., Colaste reported to the main office of STEP at Ortigas Center, Pasig City. He was informed by one Katherine R. Barrun that his contract with Lingnam Restaurant had expired. He was given a clearance form to be signed by his supervisor at Lingnam Restaurant. However, he reported for work as usual at Lingnam Restaurant from 2:00 p.m. to 10:00 p.m. On March 6, 2008, he was on day-off. On March 7, 2008, he reported for work at Lingnam Restaurant at Greenhills, San Juan City, Metro Manila. However, the Chief Cook told him not to punch in his time card because he was already terminated from work. Hence, Jessie Colaste filed this case for illegal dismissal against Lingnam Restaurant and STEP, and prayed for reinstatement, payment of backwages and other employment benefits, moral and exemplary damages and ten percent (10%) attorney's fees based on his total judgment award.

Lingnam Restaurant denied that it is the employer of complainant Jessie Colaste and alleged that STEP is Colaste's real employer. Hence, it is not liable for the claims and causes of action of Colaste, and that the complaint should be dismissed insofar as it is concerned.

STEP filed a Cautionary Pleading, manifesting the lack of service of summons upon it. Nevertheless, it alleged that it is an independent contractor engaged in the business of rendering management and technical services. One of its project employees is complainant Jessie Colaste who was assigned as kitchen helper at Lingnam Restaurant, one of STEP's clients. STEP averred that Colaste's employment was co-terminus and dependent upon its contract with Lingnam Restaurant, and STEP has the right to transfer Colaste to another assignment, project or client. In 2002, STEP and Lingnam Restaurant entered into an agreement wherein the former would provide the latter with manpower to perform activities related to the operation of its restaurant business. However, in 2007, Lingnam Restaurant reneged in paying the agreed contract salary of the manpower staff detailed at its business establishment or areas of operation. STEP was compelled to use its funds to pay the manpower staff until the time Lingnam Restaurant's total unpaid obligation amounted to P2,907,690.55 covering the period from March 2007 up to February 19, 2008. Hence, in February 2008, STEP ceased its manpower services to Lingnam Restaurant. Aside from assailing the lack of service of summons, STEP also argued that the complaint for illegal dismissal has no cause of action, since Jessie Colaste is still on floating status and has yet to be enlisted to its other business clients within a period of six months. STEP alleged that it did not terminate complainant's services. Hence, it prayed that the complaint be dismissed for lack of merit.

Meanwhile, Lingnam Restaurant filed anew its Position Paper, stating that it is a franchisor of the business establishment Lingnam Restaurant. The franchisee who hired and retained complainant Jessie Colaste was Ms. Liberty Nacion at its franchise business establishment at Shaw Boulevard, Mandaluyong City. It was at the said business establishment that Jessie Colaste rendered services through STEP. Thus, it is not liable for any claims or causes of action of Jessie Colaste.

Labor Arbiter Pablo A. Gajardo, Jr. held that Lingnam Restaurant was guilty of illegal dismissal. NLRC reversed and set aside the Decision of the Labor Arbiter. CA reversed and set aside the Decision and Resolution of the NLRC, and reinstated and affirmed the Decision of the Labor Arbiter holding that Jessie Colaste's employer is Lingnam Restaurant, which illegally dismissed Colaste; hence, Colaste is entitled to reinstatement, payment of full backwages and other monetary benefits.

ISSUE:

Whether or not the Court of Appeals correctly ruled that respondent STEP is engaged in labor-only contracting; hence, petitioner Lingnam Restaurant is the employer of complainant--respondent Jessie Colaste and it is liable for Colaste's illegal dismissal. (YES)

RULING:

Article 106 of the Labor Code describes labor-only contracting, thus:
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.
The applicable implementing rules contained in Rule VIII-A,23 Book III of the Amended Rules To Implement The Labor Code define contracting or subcontracting and labor-only contracting as follows:

> SECTION 4. Definition of Basic Terms. - The following terms as used in these Rules shall mean:
>
> (a) "Contracting" or "subcontracting" refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.
>
> 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) 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.

"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 ma nr and means to be used in reaching that end.

x x x x

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 cases, 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.

As stated by the Court in PCI Automation Center, Inc. v. NLRC, 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.

Guided by the provisions of law above, the Court agrees with the Court of Appeals that respondent STEP was engaged in labor-only contracting.

The Court notes that respondent STEP, in its Cautionary Pleading filed before the Labor Arbiter, stated that it entered into an agreement with petitioner Lingnam Restaurant in 2002, wherein it agreed to provide Lingnam Restaurant with manpower to perform activities related to the operation of its restaurant business. Thus, as stated by the Court of Appeals, respondent STEP merely acted as a placement agency providing manpower to petitioner Lingnam Restaurant. The service rendered by STEP in favor of Lingnam Restaurant was not the performance of a specific job, but the supply of personnel to work at Lingnam Restaurant. In this case, STEP provided petitioner with an assistant cook in the person of Jessie Colaste.

In the Employment Contract between Jessie Colaste and STEP from January 4, 2006 up to June 3, 2007, Colaste was assigned as kitchen helper at petitioner Lingnam Restaurant, while in the subsequent employment contracts from November 5, 2007 up to January 5, 2008; and from January 5, 2008 up to March 5, 2008, he was assigned as assistant cook at petitioner Lingnam Restaurant. The three employment contracts state that Jessie Colaste's "work result performance shall be under the Strict Supervision, Control and make sure that the end result is in accordance with the standard specified by client to STEP Inc." Hence, the Court agrees with the Court of Appeals that the work performance of Colaste is under the strict supervision and control of the client (petitioner Lingnam Restaurant) as well as the end result thereof. As assistant cook of petitioner Lingnam Restaurant, respondent Colaste's work is directly related to the restaurant business of petitioner. He works in petitioner's restaurant and presumably under the supervision of its Chief Cook. This falls under the definition of labor-only contracting under Section 5 of Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code, since the contractor, STEP, merely supplied Jessie Colaste as assistant cook to the principal, Lingnam Restaurant; the job of Colaste as assistant cook is directly related to the main business of Lingnam Restaurant, and STEP does not exercise the right to control the performance of the work of Colaste, the contractual employee.

As respondent STEP is engaged in labor-only contracting, the principal, petitioner Lingnam Restaurant, shall be deemed the employer of respondent Jessie Colaste, in accordance with Section 7, Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code. Colaste started working with petitioner since 2006 and he should be considered a regular employee of petitioner.

The reason for the termination of Jessie Colaste was his contract with petitioner Lingnam Restaurant through respondent STEP had expired. Lingnam Restaurant explained that Colaste's real employer is STEP. But since respondent STEP is engaged in labor-only contracting, petitioner Lingnam Restaurant is deemed the employer of Colaste. Thus, the reason for Colaste's termination is not a just or authorized cause for his dismissal under Articles 282 to 284 of the Labor Code. Moreover, Colaste was not afforded procedural que process, since petitioner failed to comply with the written- notice requirement under Article 277(b) of the Labor Code. The lack of valid cause for dismissal and petitioner's failure to comply with the twin-notice requirement rendered the dismissal of respondent Colaste illegal.

As respondent Colaste was illegally dismissed, the Court of Appeals correctly held that he is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

PHILIPPINE PIZZA, INC., Petitioner, v. **JENNY PORRAS*** **CAYETANO, RIZALDO G. AVENIDO, PEE JAY T. GURION, RUMEL A. RECTO, ROGELIO T. SUMBANG, JR., AND JIMMY J. DELOSO, RESPONDENTS**, Respondents.
G.R. No. 230030,SECOND DIVISION, August 29, 2018, PERLAS-BERNABE J.

A legitimate job contractor has sufficient capital and investment to properly carry out its obligations as well as adequate funds to cover its operational expenses. It must have complied with all the requirements of a legitimate job contractor in light of the Certificate of Registration issued by the DOLE.

FACTS:

Respondents were hired by were hired by CBMI, a job contractor which provides kitchen, delivery, sanitation, and allied services to PPI's Pizza Hut chain of restaurants (Pizza Hut),and were thereafter deployed to the various branches of the latter. Cayetano and Deloso worked as team members/service crew, while Avenido, Gurion, Recto, and Sumbang, Jr. served as delivery riders.

Respondents alleged that they rendered work for Pizza Hut, ranging from seven (7) to eleven (11) years, hence, they were regular employees of PPI and not of CBMI. They claimed to have been initially hired by PPI but were subsequently transferred to CBMI so as to prevent them from attaining their regular employment status. Despite the said transfer, however, they were still under the direct supervision of the managers of Pizza Hut and had been using its tools and machines for work. Thus, respondents, along with several others, filed separate complaints for Illegal Dismissal against PPI and CBMI, before the NLRC.

For its part, PPI denied any employer-employee relationship with respondents, averring that it entered into several Contracts of Serviceswith CBMI to perform janitorial, bussing, kitchen, table service, cashiering, warehousing, delivery, and allied services in PPI's favor. It also contended that respondents were assigned to various branches of Pizza Hut and were performing tasks in accordance with CBMI's manner and method, free from the direction and control of PPI.

On the other hand, CBMI admitted that respondents were its employees, and that it paid their wages and remitted their SSS,PhilHealth, and Pag-IBIG contributions. It insisted that it is a legitimate job contractor, as it possesses substantial capital and a Department of Labor and Employment (DOLE) Certificate of Registration; undertakes a business separate and distinct from that of PPI based on its Articles of Incorporation;and more importantly, retained and exercised the right of control over respondents. Moreover, CBMI explained that it had no choice but to recall, and subsequently, place respondents in floating status, considering that PPI had reduced its need for services in some Pizza Hut branches. Lastly, CBMI maintained that before it had the opportunity to re-assign respondents, the latter already filed their complaints.

The LA found PPI and CBMI jointly and severally liable for illegal dismissal. The LA ruled that respondents were regular employees of PPI and not of CBMI, as they were repeatedly hired to perform work that was usually necessary and desirable to the main business of PPI. the NLRC reversed and set aside the LA's Decision and dismissed the complaints for lack of merit.[29] The NLRC found that CBMI is a legitimate job contractor, as it has sufficient capital and investment to properly carry out its obligation with PPI, as well as adequate funds to cover its operational expenses. It also observed that CBMI is presumed to have complied with all the requirements of a legitimate job contractor in light of the Certificate of Registration issued by the DOLE. Respondents then filed a petition for Certiorari before the CA. The CA annulled and set aside the NLRC ruling, and accordingly, reinstated the LA's ruling.In holding PPI and CBMI jointly and severally liable to respondents, the CA applied the principle of stare decisis, relying on the Court's ruling in Philippine Pizza, Inc. that CBMI is engaged in prohibited labor-only contracting and thus, PPI is the principal employer of respondents.

ISSUE:
Whether or not the CA correctly relied on the ruling in Philippine Pizza, Inc. in concluding that CBMI is engaged in a prohibited labor-only contracting arrangement with PPI (NO)

Whether the CA correctly ruled that respondents were illegally dismissed from employment.(NO)

RULING:

As the NLRC aptly pointed out, CBMI is presumed to have complied with all the requirements of a legitimate job contractor, considering the Certificates of Registrationissued to it by the DOLE. Although not a conclusive proof of legitimacy, the certification nonetheless prevents the presumption of labor-only contracting from arising. It gives rise to a disputable presumption that the contractor's operations are legitimate.

The NLRC was also correct in holding that CBMI has substantial capital and investment. Based on CBMI's 2012 General Information Sheet, it has an authorized capital stock in the amount of P10,000,000.00 and subscribed capital stock in the amount of P5,000,000.00, P3,500,000.00 of which had already been paid-up. Additionally, its audited financial statements[50] show that it has considerable current and non-current assets amounting to P85,518,832.00. Taken together, CBMI has substantial capital to properly carry out its obligations with PPI, as well as to sufficiently cover its own operational expenses.

More importantly, the NLRC correctly gave credence to CBMI's claim that it retained control over respondents, as shown by the deployment of at least one (1) CBMI supervisor in each Pizza Hut branch to regularly oversee, monitor, and supervise the employees' attendance and performance. This claim was further substantiated by CBMI's area coordinators, who admitted in their Affidavitsthat: (a) they oversee, monitor, and ensure CBMI employees' compliance with company policies, rules, and regulations whichever Pizza Hut branch they may be assigned; (b) they are responsible for ensuring that CBMI employees perform their tasks and functions in the manner that CBMI mandates; (c) they regularly visit and monitor each area of deployment; (d) they track and confirm the attendance and punctuality of CBMI employees; and (e) they constantly inform CBMI's Human Resource Department (HRD) Manager of any company violations committed by the employees.
Furthermore, the existence of the element of control can also be inferred from CBMI's act of subjecting respondents to disciplinary sanctions for violations of company rules and regulations as evidenced by the various Offense Notices and Memoranda issued to them.

Lastly, the NLRC correctly found that no employer-employee relationship exists between PPI and respondents, and that the latter were employees of CBMI. Records reveal that respondents applied for work with CBMI and were consequently selected and hired by the latter. They were then required by CBMI to attend orientations and seminars wherein respondents were apprised of the working conditions, basic customer service, basic good grooming, and company rules and regulations. During the course of their employment, CBMI paid their wagesand remitted/paid their SSS, PhilHealth, and Pag-IBIG contributions.

From all indications, the Court finds that CBMI is a legitimate job contractor, and thus, the employer of respondents.

As to the issue of illegal dismissal, the Court agrees with the finding of the NLRC that respondents were not illegally dismissed from work. Records show that while PPI denied the existence of an employer-employee relationship with respondents, CBMI actually acknowledged that respondents

were its employees. CBMI likewise presented proof that it duly informed respondents of their impending lay-off, yet they immediately filed the complaints before it had the chance to re-deploy them. On the other hand, respondents did not even refute CBMI's claim that they were informed of its decision to place them in floating status pending their re-deployment. As such, respondents could not have been illegally terminated from work, for they were placed in a temporary lay-off status when they prematurely filed the complaints.There being no dismissal to speak of, respondents were thus not illegally dismissed by CBMI, their actual employer.

b. Trilateral relationship

c. Solidary liability

ALLIED BANKING CORPORATION, NOW MERGED WITH PHILIPPINE NATIONAL BANK, *Petitioner*, *v.* **REYNOLD CALUMPANG**, *Respondent*.
G.R. No. 219435, THIRD DIVISION, January 17, 2018 , VELASCO JR., *J.*:

A finding that a contractor is a labor-only contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the labor-only contractor is considered as a mere agent of the principal, the real employer.

In this case, petitioner bank is the principal employer and RCI is the labor-only contractor. Accordingly, petitioner and RCI are solidarily liable for the rightful claims of respondent.

FACTS

Petitioner Allied Banking Corporation ("Bank") and Race Cleaners, Inc. ("RCI"), a corporation engaged in the business of janitorial and manpower services, had entered into a Service Agreement whereby the latter provided the former with messengerial, janitorial, communication, and maintenance services and the personnel therefor. On September 28, 2003, respondent Reynold Calumpang was hired as a janitor by RCI. It was eventually discovered that whenever respondent went out on errands, respondent was also plying his pedicab and ferrying passengers. Petitioner also found out through several clients of the Branch who informed the Bank Manager, Mr. Oscar Infante, that respondent had been borrowing money from them. Because of these acts, Mr. Infante informed respondent that his services would no longer be required at the Branch.

Respondent thereafter filed a complaint for illegal dismissal and underpayment of wages against petitioner before the NLRC. In his position paper, respondent asserted that the four-fold test of employer-employee relationship is present between him and the Bank. He alleged that petitioner engaged his services and exercised direct control and supervision over him through the Branch Head, Oscar Infante, not only as to the results of his work but also as to the means and methods by which the same was to be accomplished. Moreover, respondent claimed that it was the Branch that directly paid his salaries and wages every "*quincina*." As for the power of dismissal, respondent further alleged that it was petitioner Bank, through its Branch Head, who terminated his services. The Labor Arbiter held that there was an employer-employee relationship between petitioner and respondent.

The NLRC affirmed the decision of the Labor Arbiter. The CA denied the petition and upheld the rulings of the Labor Arbiter and the NLRC.

ISSUE

Whether the CA erred in affirming the NLRC Decision which declared that RCI is a labor-only contractor (NO)

RULING

Permissible job contracting or subcontracting has been distinguished from labor-only contracting such that permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal, while labor-only contracting, on the other hand, pertains to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal.

As a general rule, a contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like.

In the present case, petitioner failed to establish that RCI is a legitimate labor contractor as contemplated under the Labor Code. Except for the bare allegation of petitioner that RCI had substantial capitalization, it presented no supporting evidence to show the same. Petitioner never submitted financial statements from RCI. Even the Service Agreement allegedly entered into between petitioner and RCI, upon which petitioner relied to show that RCI was an independent contractor, had lapsed in August 2005, as admitted by petitioner in its Position Paper. Notably, petitioner failed to allege when the Service Agreement was executed, thus, making its claim that respondent was hired by RCI and assigned to petitioner in 2003 even more ambiguous.

Aside from this, petitioner's claim that RCI exercised control and supervision over respondent is belied by the fact that petitioner admitted that its own Branch Manager had informed respondent that his services would no longer be required at the Branch. This overt act shows that petitioner had direct control over respondent while he was assigned at the Branch. Moreover, the CA is correct in finding that respondent's work is related to petitioner's business and is characterized as part of or in pursuit of its banking operations.

A finding that a contractor is a labor-only contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the labor-only contractor is considered as a mere agent of the principal, the real employer.

In this case, petitioner bank is the principal employer and RCI is the labor-only contractor. Accordingly, petitioner and RCI are solidarily liable for the rightful claims of respondent.

MARICALUM MINING CORPORATION, PETITIONER, VS. ELY G. FLORENTINO, GLENN BUENVIAJE, RUDY J. GOMEZ, REPRESENTED BY HIS HEIRS THELMA GOMEZ, ALEJANDRO H. SITCHON, NENET ARITA, FERNANDO SIGUAN, DENNIS ABELIDA, NOEL S. ACCOLADOR, WILFREDO TAGANILE, SR., MARTIR S. AGSOY, SR., MELCHOR APUCAY, DOMINGO LAVIDA, JESUS MOSQUEDA, RUELITO A. VILLARMIA, SOFRONIO M. AYON, EFREN T. GENISE, ALQUIN A. FRANCO, PABLO L. ALEMAN, PEPITO G. HEPRIANA, ELIAS S. TRESPECES, EDGAR SOBRINO, RESPONDENTS.

[G.R. No. 221813, THIRD DIVISION, JULY 23, 2018, GESMUNDO, J.]

A subsidiary company's separate corporate personality may be disregarded only when the evidence shows that such separate personality was being used by its parent or holding corporation to perpetrate a fraud or evade an existing obligation. Concomitantly, employees of a corporation have no cause of action for labor-related claims against another unaffiliated corporation, which does not exercise control over them.

FACTS:

The Philippine National Bank (PNB), a former government-owned-and-controlled corporationand the Development Bank of the Philippines (DBP) transferred its ownership of Maricalum Mining to the National Government for disposition or privatization because it had become a non-performing asset.

The National Government thru the Asset Privatization Trust (APT) executed a Purchase and Sale Agreement (PSA) with G Holdings, a domestic corporation primarily engaged in the business of owning and holding shares of stock of different companies. G Holding bought 90% of Maricalum Mining's shares and financial claims in the form of company notes. In exchange, the PSA obliged G Holdings to pay APT the amount of P673,161,280, with a down payment of P98,704,000 and with the balance divided into four tranches payable in installment over a period of ten years.

G Holdings also assumed Maricalum Mining's liabilities in the form of company notes. The said financial liabilities were converted into three Promissory Notes which were secured by mortgages over some of Maricalum Mining's properties. These PNs obliged Maricalum Mining to pay G Holdings the stipulated amount of P550,000,000.

Upon the signing of the PSA and paying the stipulated down payment, G Holdings immediately took physical possession of Maricalum Mining's Sipalay Mining Complex, as well as its facilities, and took full control of the latter's management and operations.

The Sipalay General Hospital, Inc. (Sipalay Hospital) was duly incorporated to provide medical services and facilities to the general public. Afterwards, some of Maricalum Mining's employees retired and formed several manpower cooperatives.

Each of the said cooperatives executed identical sets of Memorandum of Agreement with Maricalum Mining wherein they undertook, among others, to provide the latter with a steady supply of workers, machinery and equipment for a monthly fee. Maricalum Mining's Vice President and Resident Manager wrote a Memorandum to the cooperatives informing them that Maricalum Mining has

decided to stop its mining and milling operations in order to avert continuing losses brought about by the low metal prices and high cost of production.

The properties of Maricalum Mining, which had been mortgaged to secure the PNs, were extrajudicially foreclosed and eventually sold to G Holdings as the highest bidder. Some of Maricalum Mining's workers, including complainants, and some of Sipalay General Hospital's employees jointly filed a Complaint with the LA against G Holdings, its president, and officer- in-charge, and the cooperatives and its officers for illegal dismissal, underpayment and nonpayment of salaries, underpayment of overtime pay, underpayment of premium pay for holiday, nonpayment of separation pay, underpayment of holiday pay, nonpayment of service incentive leave pay, nonpayment of vacation and sick leave, nonpayment of 13th month pay, moral and exemplary damages, and attorneys fees.

Complainants and CeMPC, one of the cooperatives formed, Chairman Alejandro H. Sitchon filed the complaint for illegal dismissal and corresponding monetary claims with the LA against G Holdings, its officer-in-charge and CeMPC. Thereafter, the complaints were consolidated by the LA.

During the hearings, complainants presented the affidavits which attested that, prior to the formation of the manpower cooperatives, their services were terminated by Maricalum Mining as part of its retrenchment program. They claimed that, in 1999, they were called by the top executives of Maricalum Mining and G Holdings and informed that they will have to form a cooperative for the purpose of providing manpower services in view of the retrenchment program. Thus, they were "rehired" only after their respective manpower cooperative services were formed.

Complainants claim that they have not received any increase in wages since they were allegedly rehired. Except for Sipalay Hospital's employees, they worked as an augmentation force to the security guards charged with securing Maricalum Mining's assets which were acquired by G Holdings. Maricalum Mining's assets have been exposed to pilferage by some of its rank-and-file employees whose claims for collective bargaining benefits were undergoing litigation. The Sipalay Hospital is purportedly "among the assets" of Maricalum Mining acquired by G Holdings. The payrolls for their wages were supposedly prepared by G Holdings' accounting department. Since the second half of April 2007, they have not been paid their salary and some of their services were dismissed without any due process.

Complainants posited that the manpower cooperatives were mere alter egos of G Holdings organized to subvert the "tenurial rights" of the complainants. G Holdings implemented a retrenchment scheme to dismiss the caretakers it hired before the foreclosure of Maricalum Mining's assets and G Holdings was their employer because it allegedly had the power to hire, pay wages, control working methods and dismiss them.

G Holdings maintained that it was Maricalum Mining who entered into an agreement with the manpower corporations for the employment of complainants' services for auxiliary or seasonal mining activities. The manpower cooperatives were the ones who paid the wages, deducted social security contributions, withheld taxes, provided medical benefits and had control over the working means and methods of complainants; despite Maricalum Mining's decision to stop its mining and milling operations, complainants still continued to render their services for the orderly winding down of the mines' operations; Maricalum Mining should have been impleaded because it is supposed to be the indispensable party in the present suit; (e) Maricalum Mining, as well as the

manpower cooperatives, each have distinct legal personalities and that their individual corporate liabilities cannot be imposed upon each other; and there was no employer-employee relationship between G Holdings and complainants.

Likewise, the manpower cooperatives jointly filed their Position Paper arguing that: complainants had exhibited a favorable response when they were properly briefed of the nature and benefits of working under a cooperative setup; complainants received their fair share of benefits; complainants were entitled to cast their respective votes in deciding the affairs of their respective cooperatives; complainants, as member of the cooperatives, are also co-owners of the said cooperative and they cannot bargain for higher labor benefits with other co-owners; and the LA has no jurisdiction over the case because there is no employer-employee relationship between a cooperative and its members.

LA: The LA ruled in favor of complainants. It held that G Holdings is guilty of labor-only contracting with the manpower cooperatives thereby making all of them solidarily and directly liable to complainants.

NLRC: The NLRC modified the LA ruling. The NLRC imposed the liability of paying the monetary awards imposed by the LA against Maricalum Mining, instead of G Holdings, stating that it was Maricalum Mining-not G Holdings-who entered into service contracts by way of a Memorandum of Agreement with each of the manpower cooperatives. The NLRC found that complainants continued rendering their services at the insistence of Maricalum Mining through their cooperatives and Maricalum Mining never relinquished possession over the Sipalay Mining Complex.

Further, the NLRC observed that Maricalum Mining continuously availed of the services of complainants through their respective manpower cooperatives. Citing G Holdings, Inc. vs. National Mines and Allied Workers Union Local 103 (NAMAWU), et al. (NAMA WU Case), the SC already held that G Holdings and Maricalum Mining have separate and distinct corporate personalities.

CA: The CA affirmed the NLRC in all respects.

Hence, this petition.

ISSUE:

Whether or not the CA committed a reversible error in upholding the NLRC's Decision declaring Maricalum Mining as the proper party liable to pay the monetary awards in favor of complainants.

RULING:

No. The CA did not commit a reversible error in upholding the NLRC's Decision declaring Maricalum Mining as the proper party liable to pay the monetary awards in favor of complainants, because the complainants failed to satisfy the second and third tests to justify the application of the alter ego theory.

The doctrine of piercing the corporate veil applies only in three basic areas, namely: (a) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or

defend a crime; or (c) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.This principle is basically applied only to determine established liability.However, piercing of the veil of corporate fiction is frowned upon and must be done with caution.This is because a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.

A "holding company" is organized and is basically conducting its business by investing substantially in the equity securitiesof another company for the purposes of controlling their policies (as opposed to directly engaging in operating activities) and "holding" them in a conglomerate or umbrella structure along with other subsidiaries. Significantly, the holding company itself-being a separate entity-does not own the assets of and does not answer for the liabilities of the subsidiaryor affiliate.The management of the subsidiary or affiliate still rests in the hands of its own board of directors and corporate officers. It is in keeping with the basic rule a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.The corporate form was created to allow shareholders to invest without incurring personal liability for the acts of the corporation.

While the veil of corporate fiction may be pierced under certain instances, mere ownership of a subsidiary does not justify the imposition of liability on the parent company.It must further appear that to recognize a parent and a subsidiary as separate entities would aid in the consummation of a wrong.Thus, a holding corporation has a separate corporate existence and is to be treated as a separate entity; unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth.

In the case at bench, complainants mainly harp their cause on the alter ego theory. Under this theory, piercing the veil of corporate fiction may be allowed only if the following elements concur:

1) Control-not mere stock control, but complete domination-not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
2) Such control must have been used by the defendant to commit a fraud or a wrong, to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiffs legal right; and
3) The said control and breach of duty must have proximately caused the injury or unjust loss complained of.

The elements of the alter ego theory were discussed in PNB vs. Hydro Resources Contractors Corporation. In said case, the SC summarized the rule on piercing the corporate veil based on the alter ego theory as requiring the concurrence of three elements: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation.The absence of any of these elements prevents piercing the corporate veil.

Control Test:

In the instant case, there is no doubt that G Holdings-being the majority and controlling stockholder-had been exercising significant control over Maricalum Mining. This is because this Court had already upheld the validity and enforceability of the PSA between the APT and G Holdings.It was stipulated in the PSA that APT shall transfer 90% of Maricalum Mining's equity securities to G Holdings and it establishes the presence of absolute control of a subsidiary's corporate affairs. Moreover, the Court evinces its observation that Maricalum Mining's corporate name appearing on the heading of the cash vouchers issued in payment of the services rendered by the manpower cooperatives is being superimposed with G Holding's corporate name. Due to this observation, it can be reasonably inferred that G Holdings is paying for Maricalum Mining's salary expenses. Hence, the presence of both circumstances of dominant equity ownership and provision for salary expenses may adequately establish that Maricalum Mining is an instrumentality of G Holdings.

However, mere presence of control and full ownership of a parent over a subsidiary is not enough to pierce the veil of corporate fiction. It has been reiterated by this Court time and again that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.

Fraud Test:

The corporate veil may be lifted only if it has been used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith or perpetuate injustice.To aid in the determination of the presence or absence of fraud, the factors in the "Totality of Circumstances Test" may be considered.

Aside from these circumstances, it must be determined whether the transfer of assets from Maricalum Mining to G Holdings is enough to invoke the equitable remedy of piercing the corporate veil. The same issue was resolved in Y-I Leisure Phils., Inc., et al. v. Yuwhere this Court applied the "Nell Doctrine"regarding the transfer of all the assets of one corporation to another. It was discussed in that case that as a general rule that where one corporation sells or otherwise transfers all of its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor, except:

1) Where the purchaser expressly or impliedly agrees to assume such debts;
2) Where the transaction amounts to a consolidation or merger of the corporations;
3) Where the purchasing corporation is merely a continuation of the selling corporation; and
4) **Where the transaction is entered into fraudulently in order to escape liability for such debts.**

If any of the above-cited exceptions are present, then the transferee corporation shall assume the liabilities of the transferor.

In this case, G Holdings cannot be held liable for the satisfaction of labor-related claims against Maricalum Mining under the fraud test for the reason, among others, that there was no clear and convincing evidence was presented by the complainants to conclusively prove the presence of fraud on the part of G Holdings. Although the quantum of evidence needed to establish a claim for illegal dismissal in labor cases is substantial evidence, the quantum need to establish the presence of fraud

is clear and convincing evidence.Thus, to disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly-it cannot be presumed.

Here, the complainants did not satisfy the requisite quantum of evidence to prove fraud on the part of G Holdings. They merely offered allegations and suppositions that, since Maricalum Mining's assets appear to be continuously depleting and that the same corporation is a subsidiary, G Holdings could have been guilty of fraud. As emphasized earlier, bare allegations do not prove anything. There must be proof that fraud-not the inevitable effects of a previously executed and valid contract such as the PSA-was the cause of the latter's total asset depletion. To be clear, the presence of control per se is not enough to justify the piercing of the corporate veil.

Harm or Causal Connection Test:

In the case at bench, complainants have not yet even suffered any monetary injury. They have yet to enforce their claims against Maricalum Mining. It is apparent that complainants are merely anxious that their monetary awards will not be satisfied because the assets of Maricalum Mining were allegedly transferred surreptitiously to G Holdings. However, as discussed earlier, since complainants failed to show that G Holdings's mere exercise of control had a clear hand in the depletion of Maricalum Mining's assets, no proximate cause was successfully established. The transfer of assets was pursuant to a valid and legal PSA between G Holdings and APT.

Accordingly, complainants failed to satisfy the second and third tests to justify the application of the alter ego theory. This inevitably shows that the CA committed no reversible error in upholding the NLRC's Decision declaring Maricalum Mining as the proper party liable to pay the monetary awards in favor of complainants.

B. Termination by employer

PRINCESS TALENT CENTER PRODUCTION, INC., AND/OR LUCHI SINGH MOLDES, *Petitioners*, - versus- DESIREE T. MASAGCA, *Respondent*.
G.R. No. 191310, FIRST DIVISION, April 11, 2018, LEONARDO-DE CASTRO, *J*.

Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. Unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.

To reiterate, respondent could only be dismissed for just and authorized cause, and after affording her notice and hearing prior to her termination. SAENCO had no valid cause to terminate respondent's employment. Neither did SAENCO serve two written notices upon respondent informing her of her alleged club policy violations and of her dismissal from employment, nor afforded her a hearing to

defend herself. The lack of valid cause, together with the failure of SAENCO to comply with the twin-notice and hearing requirements, underscored the illegality surrounding respondent's dismissal.

FACTS:

Sometime in November 2002, respondent auditioned for a singing contest at ABC-Channel 5 in Novaliches, Quezon City. Respondent went to the office of petitioner PTCPI, a domestic corporation engaged in the business of training and development of actors, singers, dancers, and musicians in the movie and entertainment industry. At the office, respondent met petitioner Moldes, President of petitioner PTCPI, who persuaded respondent to apply for a job as a singer/entertainer in South Korea.

A Model Employment Contract for Filipino Overseas Performing Artists (OPAS) To Korea (Employment Contract) was executed on February 3, 2003 between respondent and petitioner PTCPI as the Philippine agent of SAENCO, the Korean principal/promoter.

Respondent left for South Korea on September 6, 2003 and worked there as a singer for nine months, until her repatriation to the Philippines sometime in June 2004. Believing that the termination of her contract was unlawful and premature, respondent filed a complaint against petitioners and SAENCO with the NLRC.

Respondent alleged that she was made to sign two Employment Contracts but she was not given the chance to read any of them despite her requests. Respondent had to rely on petitioner Moldes' representations that: (a) her visa was valid for one year with an option to renew; (b) SAENCO would be her employer; (c) she would be singing in a group with four other Filipinas at Seaman's Seven Pub at 82-8 Okkyo-Dong, Jung-Gu, Ulsan, South Korea; (d) her Employment Contract had a minimum term of one year, which was extendible for two years; and (e) she would be paid a monthly salary of US$400.00, less US$100.00 as monthly commission of petitioners. Petitioner Moldes also made respondent sign several spurious loan documents by threatening the latter that she would not be deployed if she refused to do so.

For nine months, respondent worked at Seaman's Seven Pub in Ulsan, South Korea without receiving any salary from SAENCO. Respondent subsisted on the 20% commission that she received for every lady's drink the customers purchased for her.

On June 24, 2004, Park Sun Na (Park), President of SAENCO,[9] went to the club where respondent worked, dragged respondent outside, and brought respondent to his office in Seoul where he tried to intimidate respondent into apologizing to petitioner Moldes with regard to respondent's refusal to pay the loan she allegedly obtained from the petitioner. However, respondent did not relent. Subsequently, Park turned respondent over to the South Korean immigration authorities for deportation on the ground of overstaying in South Korea with an expired visa. It was only at that moment when respondent found out that petitioner Moldes did not renew her visa.

Respondent filed the complaint against petitioners and SAENCO praying that a decision be rendered declaring them guilty of illegal dismissal and ordering them to pay her unpaid salaries for one year, inclusive of her salaries for the unexpired portion of her Employment Contract, backwages, moral and exemplary damages, and attorney's fees.

The Petitioner on the other hand averred that it dismissed the Respondent on the basis of alleged violations of club policies including her provocative and immoral conduct.

The Labor Arbiter dismissed Respondent's complaint. Respondent appealed the Labor Arbiter's Decision before the NLRC. The NLRC initially ruled in respondent's favor but later on reversed itself and found that the Respondent failed to prove her allegations.Respondent sought remedy from the Court of Appeals by filing a Petition for *Certiorari*, alleging that the NLRC acted with grave abuse of discretion amounting to excess or lack of jurisdiction in reinstating the Labor Arbiter's Decision.

The appellate court then held that respondent was dismissed from employment without just cause and without procedural due process, and that petitioners and SAENCO were solidarily liable to pay respondent her unpaid salaries for one year and attorney's fees.

ISSUE:

1. Whether Respondent was illegally dismissed. (YES)
2. Whether Petitioner is liable for the money claims of respondent. (YES)

RULING:

1.

Per the plain language of respondent's Employment Contract with SAENCO, her employment would be enforced for the period of six months commencing on the date respondent departed from the Philippines, and extendible by another six months by mutual agreement of the parties. Since respondent left for South Korea on September 6, 2003, the original six-month period of her Employment Contract ended on March 5, 2004.

Although respondent's employment with SAENCO was good for six months only (i.e., September 6, 2003 to March 5, 2004) as stated in the Employment Contract, the Court is convinced that it was extended under the same terms and conditions for another six months (i.e., March 6, 2004 to September 5, 2004). Respondent and petitioners submitted evidence establishing that respondent continued to work for SAENCO in Ulsan, South Korea even after the original six-month period under respondent's Employment Contract expired on March 5, 2004. Ideally, the extension of respondent's employment should have also been reduced into writing and submitted/reported to the appropriate Philippine labor authorities. Nonetheless, even in the absence of a written contract evidencing the six-month extension of respondent's employment, the same is practically admitted by petitioners, subject only to the defense that there is no proof of their knowledge of or participation in said extension and so they cannot be held liable for the events that transpired between respondent and SAENCO during the extension period. Petitioners presented nine vouchers to prove that respondent received her salaries from SAENCO for nine months. Petitioners also did not deny that petitioner Moldes, President of petitioner PTCPI, went to confront respondent about the latter's outstanding loan at the Seaman's Seven Club in Ulsan, South Korea in June 2004, thus, revealing that petitioners were aware that respondent was still working for SAENCO up to that time.

Hence, respondent had been working for SAENCO in Ulsan, South Korea, pursuant to her Employment Contract, extended for another six-month period or until September 5, 2004, when she was dismissed and repatriated to the Philippines by SAENCO in June 2004.

Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. Unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.

As previously discussed herein, SAENCO extended respondent's Employment Contract for another six months even after the latter's work visa already expired. Even though it is true that respondent could not legitimately continue to work in South Korea without a work visa, petitioners cannot invoke said reason alone to justify the premature termination of respondent's extended employment. Neither petitioners nor SAENCO can feign ignorance of the expiration of respondent's work visa at the same time as her original six-month employment period as they were the ones who facilitated and processed the requirements for respondent's employment in South Korea. Petitioners and SAENCO should also have been responsible for securing respondent's work visa for the extended period of her employment. Petitioners and SAENCO should not be allowed to escape liability for a wrong they themselves participated in or were responsible for.

To reiterate, respondent could only be dismissed for just and authorized cause, and after affording her notice and hearing prior to her termination. SAENCO had no valid cause to terminate respondent's employment. Neither did SAENCO serve two written notices upon respondent informing her of her alleged club policy violations and of her dismissal from employment, nor afforded her a hearing to defend herself. The lack of valid cause, together with the failure of SAENCO to comply with the twin-notice and hearing requirements, underscored the illegality surrounding respondent's dismissal.

2.

The law is plain and clear, the joint and several liability of the principal/employer, recruitment/placement agency, and the corporate officers of the latter, for the money claims and damages of an overseas Filipino worker is absolute and without qualification. It is intended to give utmost protection to the overseas Filipino worker, who may not have the resources to pursue her money claims and damages against the foreign principal/employer in another country. The overseas Filipino worker is given the right to seek recourse against the only link in the country to the foreign principal/employer, i.e., the recruitment/placement agency and its corporate officers. As a result, the liability of SAENCO, as principal/employer, and petitioner PTCPI, as recruitment/placement agency, for the monetary awards in favor of respondent, an illegally dismissed employee, is joint and several. In turn, since petitioner PTCPI is a juridical entity, petitioner Moldes, as its corporate officer, is herself jointly and solidarily liable with petitioner PTCPI for respondent's monetary awards, regardless of whether she acted with malice or bad faith in dealing with respondent.

STRADCOM CORPORATION AND JOSE A. CHUA, *Petitioners*, -versus- JOYCE ANNABELLE L. ORPILLA, *Respondent*.

G.R. No. 206800, FIRST DIVISION, July 2, 2018, TIJAM, *J.*

Among the just causes for termination is the employer's loss of trust and confidence in its employee. In order for the said cause to be properly invoked, however, certain requirements must be complied with, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there

must be an act that would justify the loss of trust and confidence. Here, Orpilla was holding a managerial position and was performing key and sensitive functions. Her acts caused petitioners' loss of trust and confidence in her. Since she was not illegally dismissed, her monetary claims for back wages, separation pay, moral and exemplary damages, as well as attorney's fees must necessarily fail.

It is well-settled that the employer must furnish the employee with two written notices before termination of employment can be legally effected. The first apprises the employee of the particular acts or omissions for which dismissal is sought. The second informs the employee of the employer's decision to dismiss him. Here, Stradcom failed to comply with the twin-notice requirement. Hence, it must pay Orpilla nominal damages.

FACTS:

On November 15, 2001, respondent Joyce Annabelle L. Orpilla (Orpilla) was employed by petitioner Stradcom Corporation (Stradcom) as Human Resources Administration Department (HRAD) Head, a managerial position. As HRAD Head, Orpilla's duties and responsibilities included administration, personnel, and training matters.

Sometime in December 2002, Stradcom's Chief Financial Officer, Raul C. Pagdanganan (Pagdanganan), gave instructions to Orpilla to commence preparations for Stradcom's 2002 Christmas party. Petitioner Jose A. Chua (Chua), Stradcom's President and Chief Executive Officer, also gave instructions to Orpilla to include the Land Registration Systems, Inc. (Lares) officers and employees, an affiliate of Stradcom. Later, it had come to Stradcom's attention that Orpilla was not comfortable with the idea to include Lares in the Christmas party. Hence, Chua decided to strip Orpilla of any responsibility in organizing the Christmas party and transferred the same to another committee.

On December 16, 2002, the new committee which took over the preparations for the said party discovered that Orpilla overpriced the food. Stradcom began its investigation and interviewed some employees regarding the conduct of Orpilla. After the investigation, Stradcom also discovered that Orpilla required her staff to prepare presentation / training materials / manuals using company resources for purposes not related to the affairs of the company on overtime and on Sundays. Pagdanganan called for a conference with Orpilla and discussed her non-inclusion of Lares in Stradcom's Christmas party, the overpricing of the food, and her moonlighting. Orpilla made a bare denial.

On January 3, 2003, Chua notified his employees about the reorganization of the HRAD and the Business Operations Department. Orpilla approached Chua to discuss the reorganization and her infractions. Chua told Orpilla that the management has lost its trust and confidence in her due to the said infractions. According to Chua, Orpilla conveyed her willingness to resign, and in view of this, Stradcom's officers agreed that any formal investigation was unnecessary. However, according to Orpilla, she protested the resignation and insisted that if there were charges against her, she was open for formal investigation.

On June 29, 2003, Orpilla filed a complaint for constructive dismissal with monetary claims of back wages, attorney's fees, and damages.

ISSUE:

Whether Orpilla was illegally dismissed. (NO)

RULING:

Among the just causes for termination is the employer's loss of trust and confidence in its employee. In order for the said cause to be properly invoked, however, certain requirements must be complied with, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.

It is undisputed that at the time of Orpilla's dismissal, she was holding a managerial position, which was HRAD Head of Stradcom and directly reported to the President, herein Chua and other high-ranking officials of Stradcom. Likewise, she performed key and sensitive functions, as her duties and responsibilities included the administration, personnel, and training matters of the company. Orpilla held a trust and critical position which required the conscientious observance of the company rules and procedures. The presence of the first requisite is thus certain.

Anent to the second requisite, the acts alleged to have caused the loss of trust and confidence of petitioners in Orpilla were her mishandling of Stradcom's 2002 Christmas party and her using of company personnel and resources for purposes not beneficial to Stradcom's interest. The evidence on record supports Stradcom's claims. Such dishonesty is prejudicial to the interest of Stradcom and constitutes just cause to terminate her employment.

Since Orpilla was not illegally dismissed, her monetary claims for back wages, separation pay, moral and exemplary damages, as well as attorney's fees must necessarily fail.

Even if there is a just cause to terminate Orpilla's employment, her right to due process was not satisfied. It is well-settled that the employer must furnish the employee with two written notices before termination of employment can be legally effected. The first apprises the employee of the particular acts or omissions for which dismissal is sought. The second informs the employee of the employer's decision to dismiss him. Here, Stradcom failed to comply with the twin-notice requirement. Thus, as a measure of equity, Stradcom must pay Orpilla nominal damages.

1. Just causes

SAMUEL MAMARIL, *Petitioner,* -versus – THE RED SYSTEM COMPANY, INC., DANILO PADRIGON, AGNES TUNPALAN, ALEJANDRO ALVAREZ, JODERICK LOZANO, ENRIQUE ROMMEL MIRAFLORES, DOMINGO RIVERO, *Respondents.*

G.R. No. 229920, SECOND DIVISION, July 4, 2018, REYES, JR., J.

*For an employee to be validly dismissed **on the ground of willful disobedience**, the employer must prove by substantial evidence that: (i) "the employee's assailed conduct must have been willful or intentional, the **willfulness being characterized by a wrongful and perverse attitude**; and (ii) 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**."*

It bears noting that Red System was not remiss in reminding its drivers of the importance of abiding by their safety regulations. To ensure a strict observance of the rules, the company required its drivers to

attend various safety seminars, in addition to a mandated pre-employment orientation. In fact, ***Mamaril attended a pre-orientation seminar and five safety seminars over the course of his two-year stint with Red System****. Accordingly, Mamaril was duty-bound to comply with such safety orders, as his main task consisted in driving and delivering fragile products. This notwithstanding, Mamaril still willfully and negligently failed to abide by the safety rules.*

Notably, Mamaril violated Red System's safety rules twice, and caused damage amounting to over Php40,000.00. To make matters worse, he even ***deliberately and willfully concealed his transgressions****. Such flagrant violation of the rules, coupled with the perversity of concealing the incidents, patently show a wrongful and perverse mental attitude rendering Mamaril's acts inconsistent with proper subordination. Indubitably, this shows that Mamaril was indeed guilty of willful disobedience.*

FACTS:

Red System is a company engaged in the business of transporting Coca Cola Products from Coca-Cola warehouses to its various customers. On June 1, 2011, Red System employed Mamaril as a delivery service representative. Mamaril was assigned in Davao and was tasked to transport goods from various depots to the end users.

Prior to his employment as a delivery service representative, Mamaril was required to undergo seminars to orient him on the rules and regulations of Red System. During the orientation, drivers like Mamaril, were reminded to always observe the safety rules.

Apparently, three days after Mamaril's employment, he failed to put a tire choke, and worse, shifted the gear to neutral after parking the truck he was driving. This caused the truck to move, which caused damage to Coca-Cola products valued at Php14,556.00. Mamaril did not report the incident, and even concealed the matter. Upon discovering Mamaril's mishap, Red System immediately re-assigned the former as a warehouse yard driver. As a yard driver, Mamaril was tasked to maneuver trucks to ensure their proper parking in preparation for the safe and efficient loading and unloading of products. However, days after Mamaril's transfer, he was involved in yet another accident. Mamaril again concealed the incident.

Sometime in February 2012, Red System suddenly received a Job Order amounting to Php25,500.00, for the repair of the truck with plate number PIK 726. Red System conducted an investigation which pointed to Mamaril as the person responsible for the damage. Red System sent Mamaril a Notice to Explain. In the said Notice, Mamaril was likewise apprised that the charges against him were serious and may warrant the penalty of dismissal.

Mamaril submitted his written explanation, where he admitted that he violated the safety rules, which caused damage to the truck. Red System held an administrative hearing.Meanwhile, during the pendency of the administrative hearing against Mamaril, Red Systems' officers noticed that the former encountered several near-accident misses and exhibited a lack of concern towards his work. Thus, to protect the safety of the company personnel and equipment, Red System placed Mamaril under preventive suspension for a period of one month.

Red System found Mamaril guilty of violating the Company Code of Conduct, particularly, Article 4 or Unacceptable Conduct and Behavior, as well as Rule 5, Section 2. Accordingly, Mamaril was

terminated for willful disobedience and willful breach of trust as provided under Article 297 of the Labor Code.

Mamaril filed a Complaint for illegal dismissal with damages and attorney's fees. In his Position Paper, he claimed that he was illegally dismissed by Red System.

The Labor Arbiter (LA) dismissed the complaint for illegal dismissal. The LA ratiocinated that Mamaril was validly dismissed, as he was found to have been negligent, for failing to follow Red System's safety instructions. Likewise, the LA refused to award Mamaril his 13th month pay and service incentive leave (SIL) pay considering that they were never substantiated, properly discussed and included in Mamaril's position paper.

Echoing the ruling of the LA, the NLRC held that Mamaril was validly dismissed from employment. However, the NLRC awarded 13th month pay and SIL pay in favor of Mamaril. It noted that Red System failed to present any document proving that it had indeed paid Mamaril his 13th month pay and SIL pay. The CA affirmed the NLRC resolution.

ISSUES:

(I) Whether or not Mamaril was illegally dismissed by Red System, and is consequently entitled to reinstatement and full backwages. (NO)

(II) Whether or not Red System was guilty of imposing a double penalty against Mamaril. (NO)

RULING:

(I)

Article 297 of the Labor Code affirms the right of an employer to dismiss a miscreant employee on account of the latter's willful disobedience:

> "Article 282. (now Article 297) Termination by employer. — An employer may terminate an employment for any of the following causes:
>
> 1. **Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;**
> 2. Gross and habitual neglect by the employee of his duties;
> 3. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
> 4. 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 representatives; and
> 5. **Other causes analogous to the foregoing."**

For an employee to be validly dismissed on the ground of willful disobedience, the employer must prove by substantial evidence that: (i) "the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (ii) 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."

It bears noting that Red System was not remiss in reminding its drivers of the importance of abiding by their safety regulations. To ensure a strict observance of the rules, the company required its drivers to attend various safety seminars, in addition to a mandated pre-employment orientation. In fact, Mamaril attended a pre-orientation seminar and five safety seminars over the course of his two-year stint with Red System. Accordingly, Mamaril was duty-bound to comply with such safety orders, as his main task consisted in driving and delivering fragile products. This notwithstanding, Mamaril still willfully and negligently failed to abide by the safety rules.

Rule 5, Section 2 (b) (3) of Red System's Code of Conduct penalizes other acts of negligence or inefficiency in the performance of duties or in the care, custody and/or use of company property, funds and/or equipment, where the amount of loss or damage amounts of more than Php25,000.00. A violation of such rule warrants a penalty of dismissal.

Notably, Mamaril violated Red System's safety rules twice, and caused damage amounting to over Php40,000.00. To make matters worse, he even deliberately and willfully concealed his transgressions. Such flagrant violation of the rules, coupled with the perversity of concealing the incidents, patently show a wrongful and perverse mental attitude rendering Mamaril's acts inconsistent with proper subordination. Indubitably, this shows that Mamaril was indeed guilty of willful disobedience. The Court is convinced that Red System had sufficient and valid reason for terminating Mamaril's services, as his continued employment would be patently inimical to its interest.

(II)

Mamaril's initial suspension was a preventive suspension that was necessary to protect Red System's equipment and personnel. The employer's right to place an employee under preventive suspension is recognized in Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code.

In the case at bar, Mamaril was placed under preventive suspension considering that during the pendency of the administrative hearings, he was noticed to have several near-accident misses and he had exhibited a lack of concern for his work.

Red System's decision to place Mamaril on preventive suspension eight months after the incident does not in any way render the said decision questionable. What matters is that Mamaril's continued employment posed a threat to the company's properties and personnel. Thus, having settled that Mamaril's one-month suspension was in fact a preventive suspension, there was nothing excessive or harsh about Red System's decision to subsequently dismiss Mamaril after finding him guilty of willful disobedience of its lawful and reasonable orders.

Essentially, it is settled that in claims for 13th month pay and SIL pay, the burden rests on the employer to prove the fact of payment. In the instant case, Red System failed to present proof showing that it had indeed paid Mamaril his 13th month pay and SIL pay, thereby entitling the latter to the same monetary claims. All amounts due shall earn legal interest of six percent (6%) per annum from the finality of this ruling until full satisfaction.

DIGITAL TELECOMMUNICATIONS PHILS., INC. JOHN GOKONGWEI, JR.,*Petitioner* vs. NEILSON M. AYAPANA, *Respondent*
G.R. No. 195614, THIRD DIVISION, January 10, 2018, MARTIRES, J:

The series of irregularities relative to Ayapana's transaction with Lim, constituted the just cause of willful breach of trust reposed in the employee, and therefore, the company's exercise of management prerogative, and his subsequent dismissal is held to be valid. However, due to the lack of moral depravity on respondent's part, separation pay may be awarded as a measure of social justice.

FACTS:

Petitioner Digital Telecommunications Philippines, Inc. hired respondent as Key Accounts Manager for its telecommunication products and services. Respondent was tasked, among others, to offer and sell DIGITEL's foreign exchange *(FEX)* line to prospective customers.

Ayapana successfully offered 2 FEX lines for Atimonan, Quezon, to Estela Lim, the owner of Star Lala Group of Companies. He received the total amount of ₱7,000.00, for which he issued 2 official receipts. Respondent, however, did not remit the subject amount to petitioner on the same date.

In a meeting, Ayapana learned that there was no available FEX line in Atimonan, Quezon; and that it was not possible to have a FEX line in the area due to technical constraints. Respondent retrieved from Lim the 2 official receipts and replaced them with an acknowledgment receipt.

Cielo, secretary of Lim, went to petitioner to pay bills and to ask for a refund of the subject amount. Upon verification by petitioner's customer representative Santiago, Cielo found that there was no existing application under the name of Star Lala. Ayapana was informed of Cielo's request for refund on that same day; but it was able to make the refund only 5 days from notice.

Digital issued a Notice to Explain to respondent, asking him to explain: why he offered an inexistent FEX line; why he withdrew the official receipts issued to Lim and replaced them with an acknowledgment receipt; why he did not immediately remit the proceeds of the transaction to petitioner's business center; and why he retained the subject amount for 84 days.

Ayapana submitted a written response explaining that he was not aware of the unavailability of the Atimonan line at the time he offered it to Lim; that he retrieved the official receipts to avoid explaining the late remittance to the treasury department because, at the time, Lim was still undecided whether to take up respondent's alternative offer of subscribing to a FEX line in Lucena until such time that an Atimonan line could become available; that he issued the acknowledgment receipt as proof that the subject amount is in his possession; that prior to 23 November 2006, he made several attempts to obtain Cielo's advice as to the return of the subject amount, to no avail; and that after being informed of Cielo's request on 23 November 2006, he went to Star Lala's office, which was closed, and thereafter tried to obtain Cielo's address in order to return the money, to no avail, and that he handed the subject amount to Santiago after she informed him that Cielo would retrieve the money from her.

Digital sent a Notice of Offense, scheduling his administrative hearing and requesting his presence there. Subsequently, it issued a Notice of Dismissal finding respondent guilty of "breach by the

employee of the trust and confidence reposed in him by management or by a company representative" under petitioner's disciplinary rules, which merited dismissal for the first offense.

Aggrieved, respondent filed a complaint for illegal dismissal.

The Labor Arbiter dismissed the complaint, ruling that he was validly dismissed from employment

The NLRC reversed the decision of the Labor Arbiter, and held that respondent was merely guilty of imprudence and not of bad faith or malice. The NLRC found that dismissal was too harsh a penalty, especially since respondent appeared to have a clean record except for this incident. It ordered payment of separation pay in the amount of ₱78,600.00 computed at one-month pay for every year of service.

Respondent thereafter filed a motion for reconsideration, which was denied by the NLRC. Unsatisfied with the decision, respondent appealed to the CA.

The CA affirmed the NLRC ruling with modification that petitioner was further ordered to pay full back wages inclusive of allowances and other benefits or their monetary equivalent. The CA held that respondent's dismissal was not valid because neglect of duty, as a just cause for dismissal, must not only be gross but also habitual. Aggrieved, petitioner filed a motion for reconsideration, which was denied by the CA. Hence, this petition.

ISSUE: Whether or not respondent validly dismissed?

RULING:

The Court rules in the affirmative. Respondent held a position of trust and confidence and committed an act that justified petitioner's loss of trust and confidence.

The willful breach by the employee of the trust reposed in him by his employer or the latter's duly authorized representative is a just cause for dismissal. However, the validity of a dismissal based on this ground is premised upon the concurrence of these conditions: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be a willful act that would justify the loss of trust and confidence.

The first requisite is certainly present. In a number of cases, this Court has held that rank-and-file employees who are routinely charged with the care and custody of the employer's money or property are classified as occupying positions of trust and confidence. It is not disputed that **respondent was tasked to solicit subscribers for petitioner's FEX line and, in the course thereof, collect money for subscriptions and issue official receipts** therefor, as was the case in the transaction subject of this controversy. Being **involved in the handling of the company's funds, respondent undeniably occupies a position of trust and confidence**.

The second requisite is present. A finding that an employer's trust and confidence has been breached by the employee must be supported by substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The totality of the circumstances in the case at bar supports a conclusion that respondent's dismissal was based on

substantial evidence that he had willfully breached the trust reposed upon him by petitioner, and that petitioner was not actuated by mere whim or capriciousness.

It is uncontroverted that **respondent took part in a series of irregularities relative to his transaction with Lim, to wit**: he offered an inexistent FEX line to Lim (even granting he did not know that the Atimonan line was unavailable at the time he offered the same to Lim, he was remiss in not ascertaining its availability before he concluded his transaction with Lim and received from her the subscription payment), he failed to remit the proceeds without explanation, he did not immediately effect a refund nor inform management of his decision to retain the money supposedly pending Lim's decision to acquire another line.

Respondent's act of retrieving and cancelling the official receipts without petitioner's knowledge or conformity was also highly irregular and prejudicial to the company, as its cancellation has tax and reportorial implications that may result in liability. He also failed to explain why he did not at least inform management about his oral agreement with Lim, considering that the company could incur liability arising from his continued retention of the subscription money. Lim's consent to such retention is immaterial, because the duty to remit the proceeds was mandatory to the company.

All the above circumstances militated against respondent's claim of good faith and clearly established an act that justified the Company's loss of trust and confidence in him. Employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Furthermore, no bad faith or ill will could be imputed to the company in dismissing respondent because the latter was apprised of the charges against him and was given an opportunity to submit a written explanation, which he complied with. A hearing was also conducted.

It must be remembered that the **discipline, dismissal, and recall of employees are management prerogatives**, limited only by those imposed by labor laws and dictated by the principles of equity and social justice. This Court finds that **petitioner exercised its management prerogatives consistent with these principles.**

Even with a finding that respondent was validly dismissed, separation pay may be granted as a measure of social justice.

Generally, an employee dismissed for any of the just causes under Article 297 is not entitled to separation pay. By way of exception, the Court has allowed the grant of separation pay based on equity and as a measure of social justice, as long as the dismissal was for causes other than serious conduct or those manifesting moral depravity.

Here, while it is clear that respondent's act constitutes a willful breach of trust and confidence that justified his dismissal, it also appears that he was primarily actuated by zealousness in acquiring and retaining subscribers rather than any intent to misappropriate company funds as he said that offering an alternative FEX line to Lim was part of his strategy to ensure her subscription.

The lack of moral depravity on respondent's part is also shown by certificates of commendation, service award, promotional increases, merit increases with only one other known infraction embodied in a notice of final warning that petitioner failed to expound on. Lim did allow respondent to retain the subject amount for a time.

This Court rules that he is validly dismissed and should be granted separation pay in the amount of one (1) month pay for every year of service.

DEBRA ANN P. GAITE, *Petitioner*, *v.* **FILIPINO SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, INC., ARTURO LUI PIO, NOEL G. CABANGON, ALVIN F. DE VERA, LEOCADIO ERNESTO A. SANCHEZ III, ADORACION SATURNO AND CEASAR* APOSTOL**, *Respondent.*
G.R. No. 219324, SECOND DIVISION, August 08, 2018, PERALTA, *J.*

For misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

In the instant case, the Court finds that Gaite's actuations constitutes serious misconduct.

> *First, the seriousness of the same cannot be denied. Not only is the amount involved herein a staggering amount of P17,720,455.77, the alleged reallocation violated an express provision of the company's Distribution Rules and was accomplished without the knowledge, consent, or authorization of the Board.*
>
> *Second, Gaite committed said transfer in the performance of her duties as General Manager of FILSCAP who is responsible for the overall operations thereof, including the regular review and updating of its distribution guidelines to facilitate royalty distribution to FILSCAP members and foreign affiliates.*
>
> *Third, because of this grave infraction causing the depletion of the company's Special Accounts held in trust for the rightful copyright owners, Gaite's ability to duly perform and accomplish her duties and responsibilities as General Manager has been seriously put into question.*

On the second ground for termination, the Court has held that "loss of trust and confidence" will validate an employee's dismissal when it is shown that: (a) the employee concerned holds a position of trust and confidence; and (b) he performs an act that would justify such loss of trust and confidence.

Here, the Court finds that FILSCAP validly terminated Gaite's employment on the ground of loss of trust and confidence.

> *First, there is no doubt that she held a position of trust and confidence. As General Manager of the company, Gaite clearly falls under the first class of employee (managerial employees) for as earlier pointed out, she was responsible for the overall operations thereof, including the regular review and updating of its distribution guidelines to facilitate royalty distribution to FILSCAP members and foreign affiliates.*
>
> *Second, it is rather obvious to the Court that the act of transferring the aforementioned staggering amount from the Special Accounts to cover the company's Operating Expenses, without the knowledge and consent of the Board of Directors, and in direct contravention of FILSCAP's Distribution Rules is sufficient reason for the loss of trust and confidence in Gaite.*

FACTS:
Filipino Society of Composers, Authors, and Publishers, Inc. *(FILSCAP),* a non-stock, non-profit

association that collectively enforces the public performance rights granted by law to copyright owners of musical works, employed Debra Ann P. Gaite as its General Manager.

In 2012, several issues pertaining to Gaite were brought to the attention of FILSCAP's Board of Trustees. Before conducting administrative disciplinary proceedings against Gaite, FILSCAP discussed a graceful exit and separation package with Gaite and scheduled the signing of a Release, Waiver, and Quitclaim.

Days before the scheduled signing, however, FILSCAP discovered that for several fiscal years already, Gaite had been allowing funds from its Special Accounts to be transferred and credited to cover the shortage in the Operating Expenses resulting in the dwindling of the total amount of P17,720,455.77. In view of said discovery, FILSCAP issued a Show Cause Notice to Gaite requiring her to explain why no disciplinary sanctions should be imposed on her. In her reply, Gaite denied any misappropriation and informed the Board that she had already filed a case for constructive dismissal against FILSCAP.

LA rendered a Decision ordering FILSCAP to pay Gaite the amount stated in the Quitclaim declaring that there was already a perfected and binding contract between the parties. On appeal, the NLRC partially set aside the LA Decision and declared that Gaite was constructively dismissed, ordering FILSCAP to pay her backwages, separation pay, moral and exemplary damages and attorney' fees. In a Decision, however, the CA reversed and set aside the NLRC Decision. Hence, this petition.

ISSUE:
Whether or not Gaite’s dismissal was proper? (YES)

RULING:
It is evident from the facts of this case that Gaite was validly dismissed on the grounds of serious misconduct and loss of trust and confidence for her unauthorized reallocation of funds, pursuant to Article 296(a) and (c) of the Labor Code.

On the first ground for termination, case law characterizes "misconduct" as an improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

In the instant case, the Court finds that Gaite's actuations constitutes serious misconduct.

> *First,* the seriousness of the same cannot be denied. Not only is the amount involved herein a staggering amount of P17,720,455.77, the alleged reallocation violated an express provision of the company's Distribution Rules and was accomplished without the knowledge, consent, or authorization of the Board.
>
> *Second,* Gaite committed said transfer in the performance of her duties as General Manager of FILSCAP who is responsible for the overall operations thereof, including the regular review and updating of its distribution guidelines to facilitate royalty distribution to FILSCAP members and foreign affiliates.

> *Third,* because of this grave infraction causing the depletion of the company's Special Accounts held in trust for the rightful copyright owners, Gaite's ability to duly perform and accomplish her duties and responsibilities as General Manager has been seriously put into question. It is clear, therefore, that Gaite's acts amounted to serious misconduct warranting her dismissal.

On the second ground for termination, the Court has held that "loss of trust and confidence" will validate an employee's dismissal when it is shown that: (a) the employee concerned holds a position of trust and confidence; and (b) he performs an act that would justify such loss of trust and confidence. Moreover, certain guidelines must be observed for the employer to cite loss of trust and confidence as a ground for termination. It is never intended to provide the employer with a blank check for terminating its employees. Neither should it be loosely applied in justifying the termination of an employee nor should it be used as a subterfuge for causes which are improper, illegal, or unjustified.

Here, the Court finds that FILSCAP validly terminated Gaite's employment on the ground of loss of trust and confidence.

> *First,* there is no doubt that she held a position of trust and confidence. The law contemplates two (2) classes of positions of trust. The first class consists of managerial employees. They are as those who are vested with the power or prerogative to lay down management policies and to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc. who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.
>
> As General Manager of the company, Gaite clearly falls under the first class of employee for as earlier pointed out, she was responsible for the overall operations thereof, including the regular review and updating of its distribution guidelines to facilitate royalty distribution to FILSCAP members and foreign affiliates.
>
> *Second,* it is rather obvious to the Court that the act of transferring the aforementioned staggering amount from the Special Accounts to cover the company's Operating Expenses, without the knowledge and consent of the Board of Directors, and in direct contravention of FILSCAP's Distribution Rules is sufficient reason for the loss of trust and confidence in Gaite. It bears stressing that as managerial employee, Gaite could be terminated on the ground of loss of confidence by mere existence of a basis for believing that she had breached the trust of her employer, which in this case is FILSCAP. Proof beyond reasonable doubt is not required. It would already be sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the concerned employee is responsible for the purported misconduct and the nature of his participation therein. This distinguishes a managerial employee from a fiduciary rank-and-file where loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertion and accusation by the employer will not be sufficient.

Regardless of whether FILSCAP has sufficiently proven actual damage to FILSCAP or that she personally benefited from her actuations, the mere existence of a basis for believing that she breached FILSCAP's trust and confidence suffices as grounds for her dismissal. Time and again, the

Court has emphasized that an employer has the right to exercise its management prerogative in dealing with its company's affairs including its right to dismiss its erring employees.

MARLON L. ARCILLA, *Petitioner*, *v.* ZULISIBS, INC., PIANDRE SALON, AND ROSALINDA FRANCISCO, *Respondents*.
G.R. No. 225125, Second Division, June 6, 2018, Carpio, *J.*

Dismissals under the Labor Code have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process.

FACTS:

Respondent Zulisibs, Inc. is a corporation organized and existing under Philippine laws with respondent Rosalinda Francisco as its President and Chief Executive Officer. Zulisibs operates respondent Piandre Salon, an establishment engaged in the operation of beauty salons.

Petitioner Marlon L. Arcilla was hired by Piandre on 8 February 2000 and was assigned to the Alabang, Muntinlupa City branch. Maricel Arcilla, Marlon's wife, was hired on 12 November 2000 and was assigned to the Salcedo Village, Makati City branch. After several years, both Marlon and Maricel were promoted as senior hair stylists earning a monthly salary of P11,672.00 plus commissions from customers and sale of products.

Sometime in September 2014, Zulisibs, through its officers, received information that Marlon was establishing a beauty salon somewhere in Daang Hari, Alabang, Muntinlupa City, near the Piandre Salon where Marlon was working.

On 6 September 2014, Marlon received a notice from Piandre and Francisco placing Marlon under preventive suspension from 6 to 14 September 2014 and requiring him to appear on 12 September 2014 at Francisco's office in Sta. Ana, Manila.

During the 12 September 2014 investigative hearing, Marlon was accused of, among other things, being involved in the opening of a salon near Piandre Alabang. Marlon denied that he had an agreement or contract with the owner of the salon along Daang Hari, Alabang. However, he admitted the following: (1) that he extended help to the salon owner who happens to be his brother-in-law; (2) that he called up two former employees of Piandre and recommended them to his brother-in-law; and (3) that he gave P50,000.00 to the salon owner which amount was a portion of the P250,000.00 loan he borrowed from the employees' cooperative of Piandre. Further investigation revealed that Marlon was often absent from work and whenever he was working, he would entertain phone calls, thus, disrupting his work.

On 11 September 2014, Maricel received a notice from Piandre and Francisco, asking her to explain her alleged involvement with her husband, Marlon, in setting up a salon along Daang Hari, Alabang and requiring her to appear on 13 September 2014 at the Sta. Ana office. On 14 September 2014, Maricel received a notice placing her under preventive suspension from 14 September to 13 October 2014. Marlon received a copy of his notice of termination on 14 September 2014. Maricel received

her notice of termination on 26 September 2014. Both were found guilty of violating Piandre's Code of Discipline 3F No. 2: *Pagkawala ng tiwala dahil sa ginawang masama.*

Subsequently, Marlon and Maricel filed two separate complaints for illegal dismissal. However, said complaints were denied by the Labor Arbiter for lack of merit. The NLRC likewise denied Marlon and Maricel's appeal, and consequently, their motion for reconsideration. The case was elevated to the CA via petition for certiorari under Rule 65. The said petition was partially granted. The CA held Marlon's termination to be valid. As to Maricel's dismissal, the CA held that the LA and the NLRC erred in upholding the validity of such. Hence, the present petition.

ISSUE:

Whether Marlon's dismissal was valid and for just cause. (YES)

RULING:

Dismissals under the Labor Code have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process.

The Labor Arbiter, the NLRC, and the Court of Appeals all held that the respondents presented substantial evidence to justify Marlon's dismissal. We affirm all the rulings. We adopt *in toto* the Court of Appeals' decision with regard to Marlon's dismissal. It held:

> …As private respondents' trusted Senior Hairstylists for quite a number of years, it is incumbent upon them to have read and understood its provisions and be fully aware of the prohibitions and penalties imposed upon erring employees.
> …The important fact remains that petitioner Marlon made an admission that he gave funds to his brother-in-law for the new salon in Alabang which directly competes with the business of his employer. It is not disputed that the new beauty salon is located less than a kilometer away from Piandre Salon in Alabang.
> …His involvement in setting up a competing salon, which albeit indirect, constitutes serious misconduct because of his blatant disregard [of] the terms and conditions of his contract/agreement with the private respondents. His act of allowing himself to be involved with his brother-in-law's business displays an act of disloyalty to the company which is likewise sufficient to warrant his dismissal for loss of trust and confidence…

All told, there is sufficient basis to dismiss Marlon on the grounds of serious misconduct or willful disobedience of the company's lawful orders, and of fraud or willful breach of the trust reposed in him by the company when he helped his brother-in-law open a salon along Daang Hari, Alabang. The Court of Appeals acted in accordance with the evidence on record and case law when it affirmed and upheld the resolutions of the NLRC.

2. Authorized causes

FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP), *Petitioner* – versus – PHILIPPINE AIRLINES, INC., PATRIA CHIONG and THE COURT OF APPEALS, *Respondents*

IN RE: LETTERS OF ATTY. ESTELITO P. MENDOZA RE: G.R. NO. 178083 - FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP) – versus – PHILIPPINE AIRLINES, INC., ET AL.

G.R. No. 178083, EN BANC, March 13, 2018, BERSAMIN, *J.*

Retrenchment or downsizing is a mode of terminating employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business.

Evidently, FASAP's express recognition of PAL's grave financial situation meant that such situation no longer needed to be proved, the same having become a judicial admission in the context of the issues between the parties. By FASAP's admission of PAL's severe financial woes, PAL was relieved of its burden to prove its dire financial condition to justify the retrenchment. Thusly, PAL should not be taken to task for the non-submission of its audited financial statements in the early part of the proceedings inasmuch as the non-submission had been rendered irrelevant.

PAL could not have been motivated by ill will or bad faith when it decided to terminate FASAP's affected members. On the contrary, good faith could be justly inferred from PAL's conduct before, during and after the implementation of the retrenchment plan.

In selecting the employees to be dismissed, the employer is required to adopt fair and reasonable criteria, taking into consideration factors like: (a) preferred status; (b) efficiency; and (c) seniority, among others. ***Following this standard, PAL validly implemented its retrenchment program. We hold that for as long as PAL followed a rational criteria defined or set by the CBA and existing laws and jurisprudence in determining who should be included in the retrenchment program, it sufficiently met the standards of fairness and reason in its implementation of its retrenchment program.***

Indeed, not all quitclaims are per se invalid or against public policy. A quitclaim is invalid or contrary to public policy only: (1) where there is clear proof that the waiver was wrangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face. ***Based on these standards, We uphold the release and quitclaims signed by the retrenched employees herein. The release and quitclaim signed by the affected employees substantially satisfied the requirements.***

FACTS:

The Philippine Airlines, Inc. (PAL), by virtue of the June 15, 1998 retrenchment and demotion scheme, retrenched cabin crew personnel, which was made effective on July 15, 1998.

The Labor Arbiter found that there was illegal retrenchment. Thereafter, the NLRC reversed and set aside the Labor Arbiter's finding of illegal retrenchment.

The CA, in its Decision on August 23, 2006, affirmed the Decision of the NLRC.

Flight Attendants and Stewards Association of the Philippines (FASAP) then appealed to the SC. **The Third Division of the SC, in its Decision on July 22, 2008, reversed the August 23, 2006 Decision of the CA, and entered a new one finding PAL guilty of unlawful retrenchment.**

The SC Third Division found that PAL was guilty of illegal dismissal. It disbelieved the veracity of PAL's claim of severe financial losses, and concluded that PAL had not established its severe financial losses because of its non-presentation of audited financial statements. It further concluded that PAL had implemented the retrenchment program in bad faith and had not used fair and reasonable criteria in selecting the employees to be retrenched.

PAL filed a Motion for Reconsideration. Oral arguments were held, and upon conclusion, the Court directed the parties to explore a possible settlement and to submit their respective memoranda. Unfortunately, the parties did not reach any settlement. **Hence, the SC Special Third Division, in its Resolution on October 2, 2009, resolved the issues on the merits, denying PAL's motion for reconsideration.** The Special Third Division was unconvinced by PAL's change of theory in urging the June 1998 Association of Airline Pilots of the Philippines (ALPAP) pilots' strike as the reason behind the immediate retrenchment, and observed that the strike was a temporary occurrence that did not require the immediate and sweeping retrenchment of around 1,400 cabin crew.

Unsatisfied, PAL filed a Motion for Reconsideration of the October 2, 2009 Resolution and Second Motion for Reconsideration of the July 22, 2008 Decision.

On October 5, 2009, the writer of the October 2, 2009 Resolution, Justice Consuelo Ynares-Santiago, compulsorily retired from the Judiciary. Pursuant to A.M. No. 99-8-09-SC, G.R. No. 178083 (the instant petition) was then raffled to Justice Presbitero J. Velasco, Jr., a Member of the newly-constituted regular Third Division.

Upon the Court's subsequent reorganization, G.R. No. 178083 was then transferred to the First Division where Justice Velasco, Jr. was meanwhile re-assigned. Justice Velasco, Jr. subsequently inhibited himself from the case due to personal reasons. Pursuant to SC Administrative Circular No. 84-2007, G.R. No. 178083 was again re-raffled to Justice Arturo D. Brion, whose membership in the Second Division resulted in the transfer of G.R. No. 178083 to said Division.

On September 7, 2011, the Second Division denied with finality PAL's Second Motion for Reconsideration of the July 22, 2008 Decision.

Thereafter, PAL, through Atty. Estelito P. Mendoza, its collaborating counsel, sent a series of letters inquiring into the propriety of the successive transfers of G.R. No. 178083. His letters were docketed as A.M. No. 11- 10-1-SC.

The Court *En Banc* issued a Resolution on October 4, 2011: (a) assuming jurisdiction over G.R. No. 178083; (b) recalling the September 7, 2011 Resolution of the Second Division; and (c) ordering the re-raffle of G.R. No. 178083 to a new Member-in-Charge.

The Court *En Banc* promulgated its Resolution in A.M. No. 11-10-1-SC on March 13, 2012, in which it resolved the issues raised by Atty. Mendoza in behalf of PAL, as well as the issues raised against the recall of the resolution of September 7, 2011. It summarized the intricate developments involving G.R. No. 178083, and ruled that all these developments, in no small measure, contributed in their own peculiar way, to the confusing situations that attended the September 7, 2011 Resolution, resulting in the recall of the said Resolution by the Court *en banc.*

In the same March 13, 2012 Resolution, the Court *En Banc* directed the re-raffle of G.R. No. 178083 to the remaining Justices of the former Special Third Division who participated in resolving the issues pursuant to Section 7, Rule 2 of the Internal Rules of the Supreme Court.

This last resolution impelled FASAP to file the Motion for Reconsideration *(Re: The Honorable Court's Resolution dated 13 March 2012),* praying that the September 7, 2011 Resolution in G.R. No. 178083 be reinstated. Thereafter, the SC directed the consolidation of G.R. No. 178083 and A.M. No. 11- 10-1-SC.

PAL insists that FASAP, while admitting PAL's serious financial condition, only questioned before the Labor Arbiter the alleged unfair and unreasonable measures in retrenching the employees, and that FASAP categorically manifested before the NLRC, the CA, and this Court that PAL's financial situation was not the issue but rather the manner of terminating the 1,400 cabin crew. Thus, the Court's disregard of FASAP's categorical admissions was contrary to the dictates of fair play, and considering that the LA, the NLRC, and the CA unanimously found PAL to have experienced financial losses, the Court should have accorded such unanimous findings with respect and finality. Further, its [PAL] being placed under suspension of payments and corporate rehabilitation and receivership already sufficiently indicated its grave financial condition. Lastly, the Court should have also taken judicial notice of the suspension of payments and monetary claims filed against PAL that had reached and had been consequently resolved by the Court.

As regards the implementation of the retrenchment program in good faith, PAL argues that it exercised sound management prerogatives and business judgment despite its critical financial condition. It did not act in due haste in terminating the services of the affected employees considering that FASAP was being consulted thereon as early as February 17, 1998. It proceeded to implement "Plan 22" which led to the recall/rehire of some of the retrenched employees, and that in selecting the employees to be retrenched, it adopted a fair and reasonable criteria pursuant to the collective bargaining agreement (CBA) where performance efficiency ratings and inverse seniority were basic considerations.

PAL contends that the October 2, 2009 Resolution focused on an entirely new basis - that of PAL's supposed change in theory. It denies having changed its theory, however, and maintains that the reduction of its workforce had resulted from a confluence of several events, like the flight expansion, the 1997 Asian financial crisis, and the ALPAP pilots' strike. PAL explains that when the pilots struck in June 1998, it had to decide quickly as it was then facing closure in 18 days due to serious financial hemorrhage. Hence, the strike came as the final blow.

FASAP, on the other hand, counters that a second motion for reconsideration was a prohibited pleading, and that PAL failed to prove compliance with the requirements for a valid retrenchment because it did not submit its audited financial statements. PAL had also immediately terminated the employees without prior resort to less drastic measures, and it did not observe any criteria in selecting the employees to be retrenched.

FASAP stresses that the October 4, 2011 Resolution recalling the September 7, 2011 Decision was void for failure to comply with Section 14, Article VIII of the 1987 Constitution. The participation of Chief Justice Renato C. Corona who later on inhibited from G.R. No. 178083 had further voided the proceedings. Further, the 1987 Constitution did not require that a case should be raffled to the Members of the Division who had previously decided it. Lastly, there was no error in raffling the case to Justice Brion, or even granting that there was error, such error was merely procedural.

ISSUE:

Whether the retrenchment of the 1,400 cabin crew personnel was valid, despite the non-submission of the audited financial statements. (YES)

RULING:

The SC granted the Motion for Reconsideration of the October 2, 2009 Resolution and Second Motion for Reconsideration of the July 22, 2008 Decision filed by PAL and Patria Chiong. It then denied FASAP's Motion for Reconsideration (Re: The Honorable Court's Resolution dated 13 March 2012).

Accordingly, the SC reversed the July 22, 2008 Decision and the October 2, 2009 Resolution, and affirmed the August 23, 2006 Decision promulgated by the CA.

PAL implemented a valid retrenchment program

Retrenchment or downsizing is a mode of terminating employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business.

Accordingly, the employer may resort to retrenchment in order to avert serious business losses. To justify such retrenchment, the following conditions must be present, namely:

(1) The retrenchment must be reasonably necessary and likely to prevent business losses;
(2) The losses, if already incurred, are not merely *de minimis,* but substantial, serious, actual and real, or, if only expected, are reasonably imminent;
(3) The expected or actual losses must be proved by sufficient and convincing evidence;
(4) The retrenchment must be in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and
(5) There must be fair and reasonable criteria m ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

Based on the July 22, 2008 Decision, PAL failed to: (1) prove its financial losses because it did not submit its audited financial statements as evidence; (2) observe good faith in implementing the retrenchment program; and (3) apply a fair and reasonable criteria in selecting who would be terminated. **However, upon a critical review of the records, We are convinced that PAL had met all the standards in effecting a valid retrenchment.**

PAL's serious financial losses were duly established PAL was discharged of the burden to prove serious financial losses in view of FASAP's admission

It is quite notable that the matter of PAL's financial distress had originated from the complaint filed by FASAP whereby it raised the sole issue of *"whether or not respondents committed unfair labor practice."* FASAP believed that PAL, in terminating the 1,400 cabin crew members, had violated Section 23, Article VII and Section 31, Article IX of the 1995-2000 PAL-FASAP CBA. Interestingly, FASAP averred in its position paper therein that it was not opposed to the retrenchment program because it understood PAL's financial troubles, and that it was only questioning the *manner and lack of standard* in carrying out the retrenchment.

Evidently, FASAP's express recognition of PAL's grave financial situation meant that such situation no longer needed to be proved, the same having become a judicial admission in the context of the issues between the parties. By FASAP's admission of PAL's severe financial woes, PAL was relieved of its burden to prove its dire financial condition to justify the retrenchment. Thusly, PAL should not be taken to task for the non-submission of its audited financial statements in the early part of the proceedings inasmuch as the non-submission had been rendered irrelevant.

Yet, the July 22, 2008 decision ignored the judicial admission and unfairly focused on the lack of evidence of PAL's financial losses. The Special Third Division should have realized that PAL had been discharged of its duty to prove its precarious fiscal situation in the face of FASAP's admission of such situation. Indeed, PAL did not have to submit the audited financial statements because its being in financial distress was not in issue at all.

Judicial notice could be taken of the financial losses incurred; the presentation of audited financial statements was not required in such circumstances

After having been placed under corporate rehabilitation and its rehabilitation plan having been approved by the SEC on June 23, 2008, PAL's dire financial predicament could not be doubted. Incidentally, the SEC's order of approval came a week after PAL had sent out notices of termination to the affected employees. It is thus difficult to ignore the fact that PAL had then been experiencing difficulty in meeting its financial obligations long before its rehabilitation.

Moreover, the fact that airline operations were capital intensive, but earnings were volatile because of their vulnerability to economic recession, among others. The Asian financial crisis in 1997 had wrought havoc among the Asian air carriers, PAL included. The peculiarities existing in the airline business made it easier to believe that at the time of the Asian financial crisis, PAL incurred liabilities amounting to ₱90,642,933,919.00, which were way beyond the value of its assets that then only stood at ₱85,109,075,35l.

We emphasize, too, that the presentation of the audited financial statements should not be the sole means by which to establish the employer's serious financial losses. The presentation of audited

financial statements, although convenient in proving the unilateral claim of financial losses, is not required for all cases of retrenchment. The evidence required for each case of retrenchment really depends on the particular circumstances obtaining. In short, to require a distressed corporation placed under rehabilitation or receivership to still submit its audited financial statements may become unnecessary or superfluous.

PAL retrenched in good faith

The employer is burdened to observe good faith in implementing a retrenchment program. Good faith on its part exists when the retrenchment is intended for the advancement of its interest and is not for the purpose of defeating or circumventing the rights of the employee under special laws or under valid agreements.

PAL could not have been motivated by ill will or bad faith when it decided to terminate FASAP's affected members. On the contrary, good faith could be justly inferred from PAL's conduct before, during and after the implementation of the retrenchment plan. Notable in this respect was PAL's candor towards FASAP regarding its plan to implement the retrenchment program.

The records also show that the parties met on several occasions to explore cost-cutting measures, including the implementation of the retrenchment program. PAL likewise manifested that the retrenchment plan was temporarily shelved while it implemented other measures (like termination of probationary cabin attendant, and work-rotations). Given PAL's dire financial predicament, it becomes understandable that PAL was constrained to finally implement the retrenchment program when the ALPAP pilots strike crippled a major part of PAL's operations. Such observations sufficed to show that retrenchment became a last resort, and was not the rash and impulsive decision that FASAP would make it out to be now.

As between maintaining the number of its flight crew and PAL's survival, it was reasonable for PAL to choose the latter alternative. This Court cannot legitimately force PAL as a distressed employer to maintain its manpower despite its dire financial condition. To be sure, the right of PAL as the employer to reasonable returns on its investments and to expansion and growth is also enshrined in the 1987 Constitution. Thus, although labor is entitled to the right to security of tenure, the State will not interfere with the employer's valid exercise of its management prerogative.

Moreover, being under a rehabilitation program, PAL had no choice but to implement the measures contained in the program, including that of reducing its manpower. Far from being an impulsive decision to defeat its employees' right to security of tenure, retrenchment resulted from a meticulous plan primarily aimed to resuscitate PAL's operations.

Moreover, PAL reasonably demonstrated that the recall was devoid of bad faith or of an attempt on its part to circumvent its affected employees' right to security of tenure. Far from being tainted with bad faith, the recall signified PAL's reluctance to part with the retrenched employees. Indeed, the prevailing unfavorable conditions had only compelled it to implement the retrenchment.

PAL used fair and reasonable criteria in selecting the employees to be retrenched pursuant to the CBA

In selecting the employees to be dismissed, the employer is required to adopt fair and reasonable criteria, taking into consideration factors like: (a) preferred status; (b) efficiency; and (c) seniority, among others. The requirement of fair and reasonable criteria is imposed on the employer to preclude the occurrence of arbitrary selection of employees to be retrenched. Absent any showing of bad faith, the choice of who should be retrenched must be conceded to the employer for as long as a basis for the retrenchment exists.

In fine, the Court will only strike down the retrenchment of an employee as capricious, whimsical, arbitrary, and prejudicial in the absence of a clear-cut and uniform guideline followed by the employer in selecting him or her from the work pool. **Following this standard, PAL validly implemented its retrenchment program.**

PAL resorted to both efficiency rating and inverse seniority in selecting the employees to be subject of termination. However, to insist on seniority as the sole basis for the selection would be unwarranted, it appearing that the applicable CBA did not establish such limitation.

We found no indication that the retrenchment was tainted with illegality. PAL relied on specific categories of criteria, such as merit awards, physical appearance, attendance and *checkrides,* to guide its selection of employees to be removed. We did not find anything legally objectionable in the adoption of the foregoing norms. On the contrary, these norms are most relevant to the nature of a cabin attendant's work. To require PAL to further limit its criteria would be inconsistent with jurisprudence and the principle of fairness. **Instead, We hold that for as long as PAL followed a rational criteria defined or set by the CBA and existing laws and jurisprudence in determining who should be included in the retrenchment program, it sufficiently met the standards of fairness and reason in its implementation of its retrenchment program.**

The retrenched employees signed valid quitclaims

In *EDI Staffbuilders International, Inc. v. National Labor Relations Commission,* We laid down the basic contents of valid and effective quitclaims and waivers, to wit:

> In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following:
>
> 1. A **fixed amount** as full and final compromise settlement;
> 2. The **benefits** of the employees if possible with the corresponding amounts, **which the employees arc giving up in consideration of the fixed compromise amount;**
> 3. A statement **that the employer has dearly explained to the employee in English, Filipino, or in the dialect known to the employees** - that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law; and
> 4. A statement that the **employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given** without any threat, violence, duress, intimidation, or undue influence exerted on their person.

The release and quitclaim signed by the affected employees substantially satisfied the aforestated requirements. The consideration was clearly indicated in the document in the English language, including the benefits that the employees would be relinquishing in exchange for the amounts to be received. There is no question that the employees who had occupied the position of flight crew knew and understood the English language. Hence, they fully comprehended the terms used in the release and quitclaim that they signed.

Indeed, not all quitclaims are *per se* invalid or against public policy. A quitclaim is invalid or contrary to public policy only: (1) where there is clear proof that the waiver was wrangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face. **Based on these standards, We uphold the release and quitclaims signed by the retrenched employees herein.**

LA CONSOLACION COLLEGE OF MANILA, SR. IMELDA A. MORA, OSA, ALBERT D. MANALILI, AND ALICIA MANABAT, *petitioners*, -versus- VIRGINIA PASCUA, M.D., *respondent*.

G.R. No. 214744, THIRD DIVISION, March 14, 2018, LEONEN, *J*.

When termination of employment is occasioned by retrenchment to prevent losses, an employer must declare a reasonable cause or criterion for retrenching an employee. Retrenchment that disregards an employee's record and length of service is an illegal termination of employment.

FACTS:

Respondent Virginia Pascua's services as school physician were engaged by La Consolacion.She started working part-time before serving full-time.

Pascua was handed an Inter-Office Memo from Manalili, La Consolacion's Human Resources Division Director, inviting her to a meeting concerning her "working condition."The meeting was set the following day at the office of La Consolacion's President, Sr. Mora. In that meeting, Pascua was handed a termination of employment letter,explaining the reasons for and the terms of her dismissal, including payment ofseparation pay.

Not satisfied, Pascua wrote to Sr. Mora, pointing out that the part-time school physician, Dr. Dimagmaliw, should have been considered for dismissal first. She also noted that rather than dismissing her outright, La Consolacion could have asked her to revert to part-time status instead.

In the meantime, Pascua underwent La Consolacion's clearance procedures and completed them on November 3, 2011. However, Pascua made a handwritten note on her Exit Clearance, stating that she was reserving the right "to question the validity/legality of her termination … " Following this, Pascua proceeded to file a complaint for illegal dismissal against La Consolacion, Sr. Mora, Manalili, and Manabat.

On November 28, 2011, Sr. Mora replied to Pascua's letter. She indicated the futility of her response considering that Pascua had opted to file a complaint in the interim. She nevertheless answered Pascua's queries "as a matter of courtesy." She explained that Pascua in particular was retrenched because her position, the highest paid in the health services division, was dispensable:

"… Since the purpose of the downsizing was to reduce payroll costs, theemployees with the highest rates of pay would be the first to be retrenched, iftheir services could be dispensed with. For this reason, you were the employeeterminated. This same objective criterion was used in downsizing the nursingfaculty which resulted in the retrenchment of the six highest paid faculty members out of a faculty of eleven."

LA: TheLabor Arbiter Roque rendered a Decision holding that Pascua's employment was illegally terminated and noting that "[La Consolacion, Sr. Mora, Manalili, and Manabat] failed to justify the criteria used in terminating the employment of [Pascua]."

NLRC: On appeal, the National Labor Relations Commission reversed Labor Arbiter Roque's Decision.

CA: In its assailed June 2, 2014 Decision, the Court of Appeals reinstated Labor Arbiter Roque's January 8, 2013 Decision. Motion for reconsideration was denied.

Hence, this petition

ISSUE:

Whether or not the reason cited for Virginia Pascua's retrenchment — that she had the highest rate of pay — justified her dismissal. (NO)

RULING:

The reason cited for Virginia Pascua's retrenchment — that she had the highest rate of pay — did not justify her dismissal.

La Consolacion's failure was non-compliance with the third substantive requisite of using fair and reasonable criteria that considered the status and seniority of the retrenched employee.

As early as 1987, this Court in Asia World Publishing House, Inc. v. Ople considered seniority, along with efficiency rating and less-preferred status, as a crucialfacet of a fair and reasonable criterion for effecting retrenchment. Emcor, Inc. v.Sienes was categorical, a "[r]etrenchment scheme without taking seniority intoaccount rendered the retrenchment invalid."

There is no dispute here about respondent's seniority and preferred status.Petitioners acknowledge that she had been employed by La Consolacion since January 2000, initially as a part-time physician then serving full-time beginning 2008. It is alsonot disputed that while respondent was a full-time physician, La Consolacion hadanother physician, Dr. Dimagmaliw, who served part-time. Precisely, respondent'spreeminence is a necessary implication of the very criteria used by La Consolacion inretrenching her, i.e., that she was the highest paid employee in health services division.

La Consolacion's disregard of respondent's seniority and preferred statusrelative to a part-time employee indicates its resort to an unfair and unreasonablecriterion for retrenchment.

Indeed, it may have made mathematical sense to dismiss the highest paid employee first. However, appraising the propriety of retrenchment is not merely a matter of enabling an employer to augment financial prospects. It is as much a matter of giving employees their just due. Employees who have earned their keep by demonstrating exemplary performance and securing roles in their respective

organizations cannot be summarily disregarded by nakedly pecuniary considerations. The Labor Code's permissiveness towards retrenchments aims to strike a balance between legitimate management prerogatives and the demands of social justice. Concern for the employer cannot mean a disregard for employees who have shown not only their capacity, but even loyalty. La Consolacion's pressing financial condition may invite commiseration, but its flawed standard for retrenchment constrains this Court to maintain that respondent was illegally dismissed.

Besides, La Consolacion could have also modified respondent's status from fulltime to part-time. When retrenchment becomes necessary, the employer may, in the exercise of its business judgment, implement cost-saving measures, but at the same time, should respect labor rights.

3. Due process

a. Twin-notice requirement

CHARLIE HUBILLA, et. al. *Petitioners* vs. **HSY MARKETING LTD., CO., WANTOFREE ORIENTAL TRADING, INC., COEN FASHION HOUSE AND GENERAL MERCHANDISE, ASIA CONSUMER VALUE TRADING, INC., FABULOUS JEANS & SHIRT & GENERAL MERCHANDISE, LSG MANUFACTURING CORPORATION, UNITE GENERAL MERCHANDISE, ROSARIO Q. CO, LUCIA PUN LING YEUNG, and ALEXANDER ARQUEZA, *Respondents***
G.R. No. 207354, THIRD DIVISION, January 10, 2018, LEONEN, *J*:

No evidence has been presented proving that each and every petitioner received a copy of the First Notice of Termination of Employment. On the other hand, respondents have not presented any proof that petitioners intended to abandon their employment.

Where both parties in a labor case have not presented substantial evidence to prove their allegations, the scales of justice are tilted in favor of labor. Thus, petitioners are hereby considered to have been illegally dismissed.

FACTS:

Respondents are engaged in manufacturing and selling goods under the brand Novo Jeans & Shirt & General Merchandise (Novo Jeans).

In 2010 their employees went to Raffy Tulfo's radio program to air their grievances against their employers for alleged labor violations. They were referred to the DOLE Camanava Regional Office.

These employees claimed that on June 7, 2010, they were not allowed to enter the Novo Jeans branches they were employed in. They further averred that while Novo Jeans sent them a show cause letter the next day, they were in truth already dismissed from employment. They sent a demand letter on July 19, 2010 to amicably settle the case before the Department of Labor and Employment but no settlement was reached. They alleged that upon learning that the Department of Labor and Employment was not the proper forum to address their grievances, they decided to file a notice of withdrawal and file their complaint with the Labor Arbiter.

On the other hand, Novo Jeans claimed that these employees voluntarily severed their employment but that they filed complaints later with the Department of Labor and Employment. They alleged that

the employees' notice of withdrawal was not actually granted by the Department of Labor and Employment but that the employees nonetheless filed their complaints before the Labor Arbiter.

The Labor Arbiter rendered a Decision dismissing the complaints. He found that other than the employees' bare allegations that they were dismissed they did not present any other evidence showing that their employment was terminated or that they were prevented from reporting for work. The employees voluntarily severed their employment since the airing of their grievances on Raffy Tulfo's radio program was enough reason for them not to report for work, simply because of a possible disciplinary action by Novo Jeans.

The NLRC reversed the LA decision and held that the employees were illegally dismissed. It ruled that the allegations of both parties were unsubstantiated and applied the equipoise rule that if doubt exists between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter.

The CA reversed the NLRC and reinstated the Labor Arbiter Decision. It ruled that while the employees merely alleged that they were no longer allowed to report to work on a particular day, Novo Jeans was able to present the First Notice of Termination of Employment sent to them. The equipoise rule was inapplicable in this case since it only applied when the evidence between the parties was equally balanced. Considering that only Novo Jeans was able to present proof of its claims, the Court of Appeals was inclined to rule in its favor.

ISSUE:

Whether or not petitioners were illegally dismissed by respondents

RULING:

Yes. In illegal dismissal cases, the burden of proof is on the employer to prove that the employee was dismissed for a valid cause and that the employee was afforded due process prior to the dismissal.

Respondents allege that there was no dismissal since they sent petitioners a First Notice of Termination of Employment, asking them to show cause why they should not be dismissed for their continued absence from work. However, **no evidence has been presented proving that each and every petitioner received a copy of the First Notice of Termination of Employment**. There are no receiving copies or acknowledgement receipts. What respondents presented were "Sample Letters of Respondents" and not the actual Notices that were allegedly sent out. While **petitioners admitted that the Notices may have been sent, they have never actually admitted to receiving any** of them. The lack of evidence of petitioners' receipts suggests that the Notices were an afterthought, designed to free respondents from any liability without having to validly dismiss petitioners.

There is likewise **no proof that petitioners abandoned their employment**. To constitute abandonment, the employer must prove that "first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act."

Abandonment is essentially a matter of intent. It cannot be presumed from the occurrence of certain equivocal acts. There must be a positive and overt act signifying an employee's deliberate intent to sever his or her employment. Thus, mere absence from work, even after a notice to return, is insufficient to prove abandonment. The employer must show that the employee unjustifiably refused to report for work *and* that the employee deliberately intended to sever the employer-employee relation. Furthermore, there must be a concurrence of these two (2) elements. Absent this concurrence, there can be no abandonment.

Respondents have not presented any proof that petitioners intended to abandon their employment. They **merely alleged that petitioners have already voluntarily terminated** their employment due to their continued refusal to report for work. However, this is insufficient to prove abandonment.

Where both parties in a labor case have not presented substantial evidence to prove their allegations, the evidence is considered to be in equipoise. In such a case, the scales of justice are tilted in favor of labor. Thus, petitioners are hereby considered to have been illegally dismissed.

This Court notes **that had petitioners been able to substantially prove their dismissal, it would have been rendered invalid not only for having been made without just cause but also for being in violation of their constitutional rights**. A laborer does not lose his or her right to freedom of expression upon employment. **When laborers air out their grievances regarding their employment in a public forum, they do so in the exercise of their right to free expression**.

However, **there not being sufficient proof that the dismissal was meant to suppress petitioners' constitutional rights, this Court is constrained to limit its conclusions to that of illegal dismissal** under the Labor Code.

Petitioners were not dismissed under any of the causes mentioned in Article 279 [282] of the Labor Code. They were **not validly informed of the causes** of their dismissal. Thus, their dismissal was illegal. Respondents are directed to reinstate petitioners to their former positions without loss of seniority rights or other privileges.

SHERYLL R. CABAÑAS, *Petitioner*, -versus- ABELARDO G. LUZANO LAW OFFICE/ABELARDO G. LUZANO, *Respondents*.

G.R. No. 225803, SECOND DIVISION, July 02, 2018, PERALTA, *J*.

In employment parlance, the turnover of work by an employee signifies severance of employment. Petitioner narrated that when she asked respondent, she was told that it was her last day of work and that her unpaid salary would just be deposited in her ATM, which is an overt act of dismissal.

As petitioner Cabañas has proven that she was dismissed, the burden to prove that such dismissal was not done illegally is now shifted to her employer, respondents herein. Respondents did not issue a notice to apprise/explain and a notice of termination on the ground of abandonment; hence, respondents failed to comply with procedural due process.

FACTS:

Petitioner Sheryll Cabañas was employed by respondent as an Administrative Secretary tasked to act as receptionist/lawyer's staff, monitor petty cash disbursements and office employees, make demand letters and do other clerical tasks.

In June 2013, Cabañas received a final warning notifying her that her performance as Administrative Secretary failed to meet the performance requirements of the position due to the following erroneous entry of data for the liquidation of petty cash; erroneous computation of accounts for mailing; erroneous breakdown of expenses for cash payments; instructions from colleagues are not being strictly followed; and not strict in releasing gas allowance for skiptracers. Cabañas was warned that a similar violation in the future would mean termination of her employment.

Cabañas alleged that the office manager, Detera, would lose her requests relating to the demand letters that she prepares. She was even asked to cover-up irregularities committed by Detera's messenger and not report the same to Mrs. Ivy Theresa Buenaventura, the General Manager. Cabañas refused to do Detera's wishes. Thus, Detera's angry actuation began toward Cabañas. Detera would also belatedly submit receipts for liquidating the petty cash disbursements. Allegedly, it was Cabañas who bore the ire of her superiors for the delays of other personnel.

Cabañas stated that she was summoned and asked to resign and execute a resignation letter, but she did not do so. On September 13 2013, Cabañas received another Memorandum with the subject: "Notice of Termination," alleging her commission of the following infractions: erroneous computation of accounts for mailing; erroneous encoding of petty cash liquidation report; erroneous breakdown of expenses for cash payments; instructions from superiors and collectors are not being strictly followed; careless releasing of gas allowance for skiptracers; erroneous filing of court orders to the wrong case folders; erroneous photocopying of a different legal document; reproduction of excessive copies of documents for case filing; wastage of company resources such as paper and ink due to failure to request for mailing expenses for demand letters; and erroneous listing for mailing of a new batch of accounts.

Cabañas was given up until the next day to submit her explanation why her employment will not be terminated. According to Cabañas, she verbally explained her side to Atty. Luzano and informed him that Detera was going through her work. Atty. Luzano advised her to prepare an incident report. Cabañas stated that on the same day, she was summoned by Atty. Luzano. He asked her to execute a resignation letter, but Cabañas refused.

The next day, Cabañas submitted her explanation letter to the charges against her contained in the Memorandum dated September 19, 2013. She spoke with Atty. Luzano and inquired why she was no longer given any work and she was not informed that she already had a replacement. Atty. Luzano informed her that the same date was her last day of work and that her salary would just be deposited in her account. However, no salary was deposited in her ATM account.

Thus, she filed a complaint for illegal dismissal and the payment of her monetary claims against respondents.

On the other hand, respondents contended that Cabañas was not terminated from her employment, but she abandoned her work. Respondents prayed for the dismissal of the complaint.

Cabañas maintained that she did not abandon her work. She averred that other than the fact that she was asked to execute a resignation letter, which she refused to do, she was also asked to turn over all the files assigned to her to respondents' Head Administrative Assistant Antoinette Castro. She asserted that she was not absent without leave because respondents terminated her employment; hence, she is entitled to her monetary claims.

The Labor Arbiter held that Cabañas was illegally dismissed and ordered respondents to pay her backwages, separation pay, service incentive leave pay and 13th month pay.

Upon appeal, the NLRC affirmed the Decision of the Labor Arbiter and dismissed the appeal. Respondents' motion for reconsideration was denied for lack of merit by the NLRC.

Respondents filed a petition for certiorari with the Court of Appeals, which ruled in favor of herein respondents, holding that Cabañas was not illegally dismissed, but she abandoned her job.

ISSUE:

Whether or not the Court of Appeals correctly held that petitioner was not illegally dismissed, but petitioner abandoned her job

RULING:

No.

In illegal dismissal cases, the general rule is that the employer has the burden of proving that the dismissal was legal. To discharge this burden, the employee must first prove, by substantial evidence, that he/she had been dismissed from employment.

The records show the document evidencing petitioner's turnover of all the files assigned to her to respondents' Head Administrative Assistant Antoinette L. Castro, who acknowledged receipt of the turnover by affixing her signature on the document. In employment parlance, **the turnover of work by an employee signifies severance of employment**. In addition, petitioner narrated that **when she asked respondent Atty. Luzano, she was told that it was her last day of work and that her unpaid salary would just be deposited in her ATM, which is an overt act of dismissal** by petitioner's employer who had the authority to dismiss petitioner. In effect, petitioner was terminated on that day.

As **petitioner Cabañas has proven that she was dismissed, the burden to prove that such dismissal was not done illegally is now shifted to her employer, respondents** herein. It is incumbent upon the employer to show by substantial evidence that the dismissal of the employee was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.

For abandonment of work to fall under Article 282 (b) of the Labor Code as gross and habitual neglect of duties, which is a just cause for termination of employment, there must be concurrence of two elements. First, there should be a failure of the employee to report for work without a valid or justifiable reason; and, second, there should be a showing that the employee intended to sever the

employer-employee relationship, the second element being the more determinative factor as manifested by overt acts.

The Court does not agree with the ruling of the Court of Appeals that petitioner abandoned her job and the intent to do so was manifested by her overt act of voluntarily turning over the files.

Petitioner stated that she was asked to turn over all the files assigned to her. Respondents did not mention the fact that it was the petitioner who voluntarily turned over the files assigned to her in their position paper, reply, and appeal but only mentioned it for the first time in their Reply Memorandum to Complainant's Comment/Opposition before the NLRC. Hence, **the belated allegation before the NLRC was merely an afterthought on the part of respondents**. If petitioner wanted to abandon her job, she could just have left without turning over all the files. It must be emphasized that the filing of an illegal dismissal case is inconsistent with abandonment of work.

Moreover, the termination of an employee must be effected in accordance with law. Therefore, the employer must furnish the worker or employee sought to be dismissed with two (2) written notices, i.e., (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her. In this case, as observed by the Labor Arbiter and the NLRC, **respondents did not issue a notice to apprise/explain and a notice of termination on the ground of abandonment; hence, respondents failed to comply with procedural due process**. In fine, petitioner Cabañas was dismissed by respondents without just cause and without procedural due process.

The ruling in Jo v. National Labor Relations Commission that the employee's prayer for separation pay, not reinstatement, belied his claim of illegal dismissal was made in consideration of all the circumstances that showed the employee's intention to sever his ties with his employers, including the employee's contemporaneous conduct, and not only because of his prayer for separation pay. Hence, it does not apply in this case.

REYNALDO S. GERALDO, *Petitioner,* -versus- THE BILL SENDER CORPORATION/ MS. LOURDES NER CANDO, Respondents.

G.R. No. 222219, THIRD DIVISION, October 3, 2018, PERALTA, J.

Article 280 of the Labor Code describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

It has long been settled in labor law that in terminating the services of an employee, the employer must first furnish the employee with two (2) written notices: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.

FACTS:

On June 20, 1997, respondent The Bill Sender Corporation, engaged in the business of delivering bills and other mail matters for and in behalf of their customers, employed petitioner Reynaldo S. Geraldo as a delivery/messenger man to deliver the bills of its client, PLDT. He was paid on a "per-piece basis," the amount of his salary depending on the number of bills he delivered. On February 6, 2012, Geraldo filed a complaint for illegal dismissal alleging that on August 7, 2011, the company's operations manager, Mr. Nicolas Constantino, suddenly informed him that his employment was being terminated because he failed to deliver certain bills. He explained that he was not the messenger assigned to deliver the said bills but the manager refused to reconsider and proceeded with his termination. Thus, he claims that his dismissal was illegal for being done without the required due process under the law and that the company and its president, respondent Lourdes Ner Cando, be held liable for his monetary claims.

For its part, the company countered that Geraldo was not a full time employee but only a piece-rate worker as he reported to work only as he pleased and that it was a usual practice for messengers to transfer from one company to another to similarly deliver bills and mail matters. As such, he would only be given bills to deliver if he reports to work, otherwise, the bills would be assigned to other messengers. Moreover, contrary to Geraldo's claims, the company asserts that he was not illegally dismissed for he was the one who abandoned his job when he no longer reported for work.

On November 29, 2012, the LA held that Geraldo is considered as a regular employee of the company because he was doing work that is usually necessary and desirable to the trade or business thereof. Moreover, even if the performance of his job is not continuous or is merely intermittent, since he has been performing the same for more than a year, the law deems the repeated and continuing need thereof as sufficient evidence of the necessity, if not indispensability, of his work to the company's business. Even if it was true that he abandoned his job, it was incumbent on the company to send him a notice ordering him to report to work and to explain his absences as mandated by Sections 2 and 5, Book V, Rule XIV of the Labor Code.

The NLRC, on May 9, 2013, rendered its Decision affirming the LA Ruling with clarification that the computation of backwages must be from the time of his dismissal up to the finality of the NLRC Decision. According to the NLRC, the company failed to discharge the burden of proving a deliberate and unjustified refusal of Geraldo to resume his employment without any intention of returning as well as to observe the twin-notice. Moreover, said commission also rejected the company's claim that Geraldo abandoned his job since he filed his complaint only after 7 months from the alleged dismissal for the lapse of time between the dismissal of an employee for abandonment and the filing of the complaint is not a material *indicium* of abandonment.

However, on August 7, 2014, the CA set aside the NLRC Decision and held that since Geraldo was paid on a per piece basis, he was hired on a per-result basis, and as such, he was not an employee of the company. The absence of an employer-employee relationship was further highlighted by the fact that messengers would habitually transfer from one messengerial company to another depending on the availability of mail matters. Thereafter, Geraldo's Motion for Reconsideration.

Aggrieved, Geraldo filed the instant petition.

ISSUE:

1. Whether Geraldo was a regular employee. (YES)
2. Whether Geraldo was illegally dismissed from his employment. (YES)

RULING:

I. Geraldo was a regular employee of the company.

Article 280 of the Labor Code describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

In *Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission*,we held that the test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.

In the instant case, it is undisputed that the company was engaged in the business of delivering bills and other mail matters for and in behalf of their customers, and that Geraldo was engaged as a delivery/messenger man tasked to deliver bills of the company's clients. Clearly, the company cannot deny the fact that Geraldo was performing activities necessary or desirable in its usual business or trade for without his services, its fundamental purpose of delivering bills cannot be accomplished. On this basis alone, the law deems Geraldo as a regular employee of the company. But even considering that he is not a full time employee as the company insists, the law still deems his employment as regular due to the fact that he had been performing the activities for more than 14 years. Without question, this amount of time that is well beyond a decade sufficiently discharges the requirement of the law. While length of time may not be the controlling test to determine if an employee is indeed a regular employee, it is vital in establishing if he was hired to perform tasks which are necessary and indispensable to the usual business or trade of the employer.

II. Geraldo was illegally dismissed from his employment.

It is incumbent upon the company to show that he was dismissed in accordance with the requirements of the law for the rule is long and well settled that, in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to prove that the employee's termination from service is for a just and valid cause. The Court finds that the company failed to adduce proof of overt acts on the part of Geraldo showing his intention to abandon his work. Time and again, the Court has held that 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. Hence, it bears emphasis that the fact that Geraldo filed the instant illegal dismissal complaint negates any intention on his part to sever his employment with the company. The records reveal that he even sought permission to return to

work but was rejected by the company. Contrary to the company's assertion, moreover, the mere lapse of 7 months from Geraldo's alleged dismissal to the filing of his complaint is not a material indication of abandonment, considering that the complaint was filed within a reasonable period during the 3-year period provided under Article 291 of the Labor Code.

Apart from the absence of just and valid cause in the termination of Geraldo's employment, the Court rules that his dismissal was also done without the observance of due process required by law. It has long been settled in labor law that in terminating the services of an employee, the employer must first furnish the employee with two (2) written notices: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.The company in the present case, however, failed to show its compliance with the twin notice rule. In fact, in its Comment, it even expressly admitted its failure to serve Geraldo with any written notice, merely insisting that its oral notice should be considered substantial compliance with the law.

In view of the foregoing premises, therefore, the Court is convinced that Geraldo, a regular employee entitled to security of tenure, was illegally dismissed from his employment due to the failure of the company to comply with the substantial and procedural requirements of the law.

b. Hearing

DIONELLA A. GOPIO, doing business under the name and style, JOB ASIA MANAGEMENT SERVICES, Petitioner vs. **SALVADOR B. BAUTISTA**, Respondent

G.R. No. 205953, June 06, 2018, JARDELEZA, *J.*

The due process requirement is not a mere formality that may be dispensed with at will... To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with ***two written notices*** *before termination of employment can be legally effected, i.e.: (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him. The* ***Labor Code requires both notice and hearing; notice alone will not suffice.***

FACTS:

Bautista was hired as a Project Manager for Shorncliffe in Papua New Guinea through Job Asia which is engaged in the business of recruitment, processing, and deployment of land based manpower for overseas work. Bautista's contract stated that his employment shall be valid and effective for 31 months. Just nine months after his deployment in Papua New Guinea, Bautista was served a notice of termination on the alleged grounds of unsatisfactory performance and failure to meet the standards of the company. He was paid his salary for the period July 1 to 10, 2009, annual leave credits, and one-month pay net of taxes. Thereafter, he was repatriated on July 11, 2009.

Bautista lodged a complaint for illegal dismissal and monetary claims.

ISSUE:

1) Whether or not Bautista was illegally dismissed from employment (YES)

2) Whether or not he is entitled to his monetary claims (YES)

RULING:

I. Petitioner failed to prove by substantial evidence that the respondent was validly dismissed.

The Philippine Constitution and laws guarantee special protection to workers here and abroad. Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.

Here, petitioner argues that there was justifiable cause for the termination of Bautista' s employment since the latter has fallen short of Shomcliffe's employment and work standards…

The Court is not convinced.

As observed by the CA, the evaluation report was made…**beyond the date of termination of Bautista's employment** on July 10, 2009. The CA correctly concluded that these were made as **an afterthought in order to lend credence to the claim that the termination of Bautista's employment was for a valid reason**.

The Court thus finds that Bautista's incompetence as the alleged just cause for his dismissal was not proven by substantial evidence.

II. Article 4.3 of the employment contract is void.

In addition, Bautista was not accorded due process. Consequently, the Court is not convinced that he was legally dismissed.

The due process requirement is not a mere formality that may be dispensed with at will… To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with **two written notices** before termination of employment can be legally effected, *i.e.:* (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him.

Here, Bautista was dismissed under Article 4.3 of the employment contract which allegedly permits his employer, Shomcliffe, to terminate the contract on unspecified "other grounds" by giving one month's written notice of its intention to terminate, or in lieu thereof, to pay the employee a sum equivalent to one month's salary.

Bautista was notified on July 6, 2009 that his services will be terminated effective on the close of business hours on July 10, 2009, allegedly because his performance was "unsatisfactory and did not meet the standards of the Company." He was also paid one-month salary in lieu of one month's notice of the termination of his employment. **Surely, this cannot be considered compliance with the two-notice requirement mandated by the Labor Code in effecting a valid dismissal. The Labor Code requires both notice and hearing; notice alone will not suffice.** The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal. On the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly defend himself therefrom before dismissal is effected. In this case, Bautista was not given a chance to defend himself. Five days after the notice was served, he was repatriated. Clearly, he was denied his right to due process.

The CA aptly observed that Article 4.3 deprives the employee of his right to due process of law as it gives the employer the option to do away with the notice requirement provided that it grants one-month salary to the employee in lieu thereof. It denies the employee of the right to be apprised of the grounds for the termination of his employment without giving him an opportunity to defend himself and refute the charges against him. Moreover, the term "other grounds" is all-encompassing. It makes the employee susceptible to arbitrary dismissal. The employee may be terminated not only for just or authorized causes but also for anything under the sun that may suit his employer. Thus, the employee is left unprotected and at the mercy of his employer, subjected to the latter's whims.

We cannot sustain the validity of Article 4.3 of the employment contract as it contravenes the constitutionally-protected right of every worker to security of tenure.

Bautista's employment was for a fixed period of 31 months. Article 4.3 took back this period from him by rendering it in effect a facultative one at the option of Shomcliffe, which may shorten that term at any time and for any cause satisfactory to itself, to a one-month period or even less, by simply paying Bautista a month's salary. **The net effect of Article 4.3 is to render Bautista's employment basically employment at the pleasure of Shomcliffe.** The Court considers that the provision is intended to prevent any security of tenure from accruing in favor of Bautista even during the limited period of 31 months.

To emphasize, **overseas workers, regardless of their classification, are entitled to security of tenure, at least for the period agreed upon in their contracts**. This means that they cannot be dismissed before the end of their contract terms without due process. The law recognizes the right of an employer to dismiss employees in warranted cases, but it frowns upon the arbitrary and whimsical exercise of that right when employees are not accorded due process. If they were illegally dismissed, the workers' right to security of tenure is violated.

Indeed, while our Civil Code recognizes that parties may stipulate in their contracts such terms and conditions as they may deem convenient, these terms and conditions must not be contrary to law, morals, good customs, public order or policy**. The employment contract between Shomcliffe and Bautista is governed by Philippine labor laws. Hence, the stipulations, clauses, and terms and conditions of the contract must not contravene our labor law provisions.**

Time and again, we have held that a contract of employment is imbued with public interest. The parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other. Also, while a contract is the law between the parties, the provisions of positive law that regulate such contracts are deemed included and shall limit and govern the relations between the parties.

In sum, there being no showing of any clear, valid, and legal cause for the termination of Bautista's employment and that he was not afforded due process, **the law considers the matter a case of illegal dismissal for which Bautista is entitled to indemnity.** We uphold the Labor Arbiter's award of indemnity equivalent to Bautista's salaries for the unexpired term of his employment contract, and damages.

III. Respondent shall be entitled to monetary claims

Section 10 of R.A. No. 8042 provides that in case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers **shall be entitled to the full reimbursement of his placement fee with interest of 12% *per annum,* plus his salaries for the unexpired portion of his employment contract or for three months for every year of the unexpired term, whichever is less.**

We declared the clause "or for three months for every year of the unexpired term, whichever is less" **unconstitutional** in the 2009 case of *Serrano v. Gallant ,Maritime Services, Inc.,* and again in the 2014 case of *Sameer Overseas Placement Agency, Inc. v. Cabiles,* after the provision found its way again in R.A. No. 10022 which took effect in 2010. We held that the clause violated substantive due process and the equal protection clause of the Constitution in that it generated classifications among workers that do not rest on any real or substantial distinctions that would justify different treatments in terms of the computation of money claims resulting from illegal termination.

We also upheld the Labor Arbiter's award of moral and exemplary damages to Bautista on the ground that his dismissal was without just and authorized cause, in complete disregard of his right to due process of law, and done in bad faith, in addition to being anti-Filipino and capricious. Likewise, we find the award of attorney's fees proper.

IV. Petitioner is jointly and severally liable with Shomcliffe.

Petitioner's argument that she should not be held jointly and severally liable with Shomcliffe for the payment of monetary awards to Bautista as she had no control over the manner of implementation of the employment contract, she had no hand whatsoever in Bautista' s dismissal, and that her agency was extinguished as soon as the employee was deployed to and have worked in Shomcliffe's construction project in Papua New Guinea, has no merit.

In the first place, such joint and solidary liability is required prior to the issuance of a license to petitioner to operate a recruitment agency.

The liability of the principal/employer and the recruitment/placement -agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

C. Termination by employee

1. Resignation versus constructive dismissal

ST. PAUL COLLEGE, PASIG, AND SISTER TERESITA BARICAUA, SPC, *Petitioners*, -versus- ANNA LIZA L. MANCOL AND JENNIFER CECILE S. VALERA, *Respondents*.
G.R. No. 222317, SECOND DIVISION, January 24, 2018, PERALTA, *J.*

Constructive dismissal arises "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee." In such cases, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but made to appear as if it were not. In fact, the employee who is constructively dismissed may be allowed to keep on coming to work. Constructive dismissal is therefore a dismissal in disguise. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.

FACTS:

Respondents Mancol and Valera were both hired as pre-school teachers of petitioner St. Paul College, Pasig (SPCP), Mancol having been employed on June 1, 2004 with a monthly basic salary of P20,311.50 and Valera having been employed sometime in 2003 with a basic monthly salary of P22,044.00.

Mancol, on May 18, 2010, filed a leave of absence for the period May 21 to June 18, 2010 as she was to undergo a fertility check-up in Canada. When she returned to the Philippines, Mancol received a letter dated June 10, 2010 from the Directress of SPCP, petitioner Sister Baricaua, **requiring her to explain why she should not be dismissed for taking a leave of absence without approval.** On June 21, 2010, **Mancol reported back to SPCP, but she was allegedly barred by SPCP and Sister Baricaua from teaching in her class, entering her classroom, being introduced to her students,**

preparing teaching aids and materials, and going to other offices within the campus. Thus, Mancol alleged that all these acts constitute constructive dismissal.

Valera, on the other hand, took a leave of absence without pay from April 13 to June 11, 2010 to undergo surgical operation for scoliosis. On June 15, 2010, Valera received a letter from Sister Baricaua **advising her to file a leave of absence (Sick Leave) for the entire school year 2010-2011; otherwise, she will be reassigned to a higher grade level where the students are more independent learners.The letter also required her to submit a waiver absolving SPCP from any liability in case of any untoward incident that may take place while in the performance of her teaching duties as well as notarized certification of her physician as to her fitness to resume work.** Valera, thus, averred that she was constructively dismissed when petitioners stripped her of her teaching load and being forced to take a leave of absence for the school year 2010-2011.

The parties having failed to strike an amicable settlement during the scheduled mandatory conference, respondents filed on June 22, 2010, a complaint for constructive dismissal, non-payment of overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, 13th month pay, nightshift differential overload pay, damages and attorney's fees against SPCP and Sister Baricaua in her personal and official capacity as Directress of SPCP.

Herein petitioners deny having terminated Mancol and Valera either actually or constructively. For Mancol, they aver that she was merely meted a penalty of suspension for one (1) week for taking a leave of absence without the approval of the Directress. As for Valera, they insist that she was never dismissed from work but was only advised to take either one (1) year sick leave for her to fully recover from her spine operation or to be assigned to a higher grade level. On the issue of money claims, they aver that the same was already dismissed by the DOLE-NCR Regional Director for lack of basis.

The Labor Arbiter ruled that respondents were constructively dismissed from their employment and ordered their immediate reinstatement and payment of monetary awards. Respondents St. Paul College of Pasig, Inc. (sic) and Sister Teresita Baricaua are likewise ordered to pay complainant Valera full backwages, overtime pay, a weekly overload pay, holiday pay, 13th month pay and service incentive leave pay. Lastly, respondents St. Paul College of Pasig, Inc. (sic) and Sister Teresita Baricaua are ordered to pay Mancol and Valera attorney's fees equivalent to ten percent of the total judgment award.

Petitioners elevated the case to the National Labor Relations Commission (NLRC) and the latter in its Decision reversed the decision of the Labor Arbiter. Aggrieved, respondents filed a petition for certiorari under Rule 65 of the Rules of Court with the CA. The CA granted respondent's petition and reversed the decision of the NLRC. Petitioners filed their motion for reconsideration but it was denied by the CA in its Resolution. Hence, the present petition

ISSUE:

Whether Mancol and Valera were constructively dismissed by petitioners?

RULING:

Constructive dismissal arises "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee." In such cases, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment. As it is a question of whether an employer acted fairly, it is inexorable that any allegation of constructive dismissal be contrasted with the validity of exercising management prerogative.

Based on the facts of this case, respondents **Mancol and Valera were constructively dismissed**. The CA, in affirming the findings of the Labor Arbiter, correctly found that **petitioners committed acts that are considered to be gratuitous, unjustified, unwarranted and unfair on the part of the respondents**, thus:

> In case of Valera, she underwent a successful scoliosis operation on April 14, 2010 covered by an approved leave until June 11, 2010. The Human Resource Office assured her that she may report back for work on June 15, 2010 and all she needs to bring is a medical certificate attesting her fitness to go back to work. However, much to her surprise, Sister Baricaua insisted that she should go on leave for one year. When Valera reasoned out her desire to teach, **Sister Baricaua uttered harsh remarks:** "Why are you insisting on working? Can't your mom and dad feed you anymore? x x x "Ask help from your brothers and sisters, tell them, 'please help me, I have no work anymore. 'I know Jeng, it is hard and painful to accept the truth, but I am sorry, I cannot accept you. " Valera was later on informed by Sister Lota that she has no more teaching load or class to teach with. When Valera submitted her medical certificate, as previously advised, both the Human Resource Office and Sister Baricaua refused to accept the same. Worse, **Valera received a letter dated June 2, 2010, from Sister Baricaua accompanied by insults and forcing her to go on leave for 1 year.** Not only that, **after filing the complaint for illegal dismissal** on June 22, 2010, **Valera received on June 30, 2010, a letter dated June 28, 2010, requiring her to submit documents and to report for work within the period specified therein, and yet, when Valera reported back for work as instructed on July 5, 2010, she was shocked to know that she was already barred from working** in utter contradiction of private respondents' June 28, 2010 letter.
>
> For Mancol's part, **she was allegedly prevented** from: 1.) teaching in her class; 2.) entering her classroom; 3.) being introduced to her students; 4.) preparing teaching aids and materials; and 5.) going to other offices within the institution when she reported back for work on June 16, 2010, after going through a fertility test in Canada with her husband.

The **test of constructive dismissal** is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but made to appear as if it were not. In fact, the employee who is constructively dismissed may be allowed to keep on coming to work. Constructive dismissal is therefore a dismissal in disguise. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.

Both Mancol and Valera constantly attempted to report back to work. However, the private respondents barred them from resuming their work. In case of Mancol, she was prevented from teaching in her class, going inside her classroom, being introduced to her students, preparing teaching aids and materials, and going to other offices within the institution when she reported back for work. Neither the preschool principal nor the Human Resource Office offered any reason for the same. She also exerted every effort to explain that she was on leave for health reasons. She even submitted a copy of a medical certificate issued by her attending physician in Canada and photocopies of her tickets. Valera, on the other hand, submitted her medical certificate stating that she is fit to work before the Human Resource Office. However, Sister Baricaua all the more insisted that she should take a leave of one year; otherwise, she will be reassigned to a higher year level where students are more independent learners. She was also given no teaching load for that academic year.

From the above findings alone, it is clear that petitioners employed means whereby the respondents were intentionally placed in situations that resulted in their being coerced into severing their ties with the same petitioners, thus, resulting in constructive dismissal. An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee as to leave him or her with no option but to forego with his or her continued employment.

Anent the argument raised by petitioners that the CA erred in ruling that Mancol was placed on preventive suspension, such is no longer relevant due to the above findings proving that respondents Mancol and Valera were indeed constructively dismissed.

DIWA ASIA PUBLISHING, INC. AND SATURNINO BELEN, *Petitioners*, *v.*
MARY GRACE U. DE LEON, *Respondent*.
G.R. No. 203587, FIRST DIVISION**,** August 13, 2018, TIJAM, *J.*

The circumstances of the case indubitably present a hostile and unbearable working environment that reasonably compelled De Leon to leave her employment. De Leon, therefore, was constructively dismissed. Granting, as petitioners claimed, that De Leon's performance had been deficient or unsatisfactory, the management's actuations cannot be excused. As this Court previously held, no employee should be subjected to constant harassment and ridicule on the basis of management prerogative or even for poor performance at work.

Backwages are aimed to replenish the income that was lost by reason of the unlawful dismissal.For this reason, the Court cannot sustain petitioners' argument that the award of backwages must be reduced owing to the period spent in reconstituting the CA's records of the case. The petitioners, nonetheless, claim that it was not their fault why the amounts due ballooned to the present level. They are mistaken. Suffice it to state that had they not illegally dismissed De Leon, they will not be where they are today. They took the risk and must suffer the consequences.

FACTS:

De Leon was hired by Diwa Learning Systems, Inc. (DLSI) and began working as its Human Resource (HR) Manager. In 2004, De Leon filed a Complaint against petitioners for constructive dismissal, alleging that when she gave her opinion on the conversion of the employment status of an editor who had been working for Diwa for two (2) continuous years, management found her opinion unacceptable and even construed it as an insult. From then on, her working relationship with the company turned sour. The management even made imputations that she took part in inciting employees to file labor cases against Diwa.

LA dismissed De Leon's complaint for constructive dismissal for lack of merit. De Leon's appeal was initially granted in the NLRC Decision. When petitioners sought reconsideration, however, NLRC rendered another Decisionwhich set aside its previous ruling. De Leon elevated the case to the CA via a petition for *certiorari*, which was granted in the assailed Decision. Hence, this petition.

ISSUES:
(1) Whether or not there was constructive dismissal in this case? (YES)
(2) Whether or not the award of backwages should be deleted? (NO)

RULING:

(1) Constructive dismissal is a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee." It is an act amounting to dismissal but made to appear as if it were not. In other words, it is a dismissal in disguise.

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. Considering the facts of this case, the Court agrees with the CA that De Leon was constructively dismissed.

First, the petitioners would have the Court believe that the electronic mails (e-mails) between the respondent and Asuncion, the Executive Director for HR, were mere replies, instructions and comments couched in "mild terms," to be viewed as constructive criticisms, but the communications, both as to language and tone, indicate a pattern of fault-finding and nitpicking, and an attitude of disdain.

Petitioners' efforts to discredit De Leon are at once apparent in the e-mails. Such clearly depict an atmosphere of "open disdain and hostility" towards De Leon, which is further established by the Affidavit of De Leon's co-employee, Lusterio, who corroborated De Leon's assertion that the management made work difficult and unbearable for her.

In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and actions were for valid and legitimate grounds. Petitioners must not rely on the weakness of De Leon's evidence but must stand on the merits of their own defense.

Second, De Leon was excluded from important HR decisions which she was expected not only to be privy to, but also to have a say in, by virtue of her position in the company. Records show that petitioners made the decision to terminate the services of two (2) employees, without De Leon's knowledge or participation. The Court cannot sustain petitioners' claim that De Leon's act of signing the Notice of Termination constitutes proof that she was given "substantial participation" and was aware of the facts and issues surrounding the termination.

The signing or issuance of the Notice of Termination was thus a ministerial function that simply conveyed said decision; it does not establish that De Leon took part in the deliberation. Besides, mere knowledge of such facts and issues does not equate to involvement in the decision as it could have been derived from records or secondhand information.

Third, the reduction in De Leon's duties and responsibilities as HR Manager amounted to a demotion that was tantamount to constructive dismissal. As this Court previously held: There is constructive dismissal when an employee's functions, which were originally supervisory in nature, were reduced; and such reduction is not grounded on valid grounds such as genuine business necessity.

The circumstances of the case indubitably present a hostile and unbearable working environment that reasonably compelled De Leon to leave her employment. De Leon, therefore, was constructively dismissed.

Granting, as petitioners claimed, that De Leon's performance had been deficient or unsatisfactory, the management's actuations cannot be excused. As this Court previously held, no employee should be subjected to constant harassment and ridicule on the basis of management prerogative or even for poor performance at work.

(2) The CA's award of full backwages and separation pay is sustained. Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Furthermore, inasmuch as reinstatement is no longer feasible given the strained relations between petitioners and De Leon, the award of separation pay equivalent to one (1) month's salary for every year of service was just and reasonable as an alternative to reinstatement.

Both the separation pay and backwages shall be computed up to the finality of the decision as it is at that point that the employment relationship is effectively ended. De Leon's backwages shall be paid with interest at twelve percent (12%) *per annum* from June 23, 2004 to June 30, 2013 and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction. Her separation pay, in lieu of reinstatement, shall earn interest at six percent (6%) *per annum* from the finality of this Decision until full payment.

Backwages are aimed to replenish the income that was lost by reason of the unlawful dismissal.For this reason, the Court cannot sustain petitioners' argument that the award of backwages must be

reduced owing to the period spent in reconstituting the CA's records of the case. The petitioners, nonetheless, claim that it was not their fault why the amounts due ballooned to the present level. They are mistaken. Suffice it to state that had they not illegally dismissed De Leon, they will not be where they are today. They took the risk and must suffer the consequences.

PERFECTO M. PASCUA, *Petitioner*, *v.* BANK WISE, INC. AND PHILIPPINE VETERANS BANK, *Respondent.*
G.R. No. 191460, THIRD DIVISION, January 31, 2018, LEONEN, *J.*
BANKWISE, INC., *Petitioner*, *v.* PERFECTO M. PASCUA AND PHILIPPINE VETERANS BANK, *Respondents*.
G.R. No. 191464, THIRD DIVISION, January 31, 2018, LEONEN, *J.*

Labor is a constitutionally protected social class due to the perceived inequality between capital and labor. The presumption is that the employer and the employee are on unequal footing so the State has the responsibility to protect the employee. This presumption, however, must be taken on a case-to-case basis.

In situations where special qualifications are required for employment, such as a Master's degree or experience as a corporate executive, prospective employees are at a ***better position to bargain or make demands from the employer****.* ***Employees with special qualifications would be on equal footing with their employers,*** *and thus****, would need a lesser degree of protection from the State*** *than an ordinary rank-and-file worker****.***

Pascua, as the ***Head of Marketing*** *with annual salary of P2,250,000,would have been* ***in possession of the special qualifications needed for his post****. He would have supervised several employees in his long years in service and might have even processed their resignation letters. He would have been completely aware of the implications of signing a categorically worded resignation letter. If he did not intend to resign, he would not have submitted a resignation letter. He would have continued writing letters to Bankwise signifying his continued refusal to resign.*

Pascua's resignation letter, however, was ***unconditional****. It contained* ***no reservations that it was premised on his subsequent claim for severance pay and other benefits****. His resignation was also accepted by his employers. In this instance, Pascua is* ***not considered to have been constructively dismissed****.*

FACTS:

Pascua was employed by Bankwise as its **Executive Vice President for Marketing**. On September 29, 2004, Philippine Veterans Bank and Bankwise entered into a Memorandum of Agreement for the purchase of Bankwise's entire outstanding capital stock. Philippine Veterans Bank allegedly assumed full control and management of Bankwise. Pascua was **reassigned to a Special Accounts Unit** but his duties, functions, and responsibilities were not clearly delineated or defined.

Pascua was informed by Buhain, President of Bankwise, that as part of the **merger or trade-offagreement** with Philippine Veterans Bank, he **should tender his resignation**. Buhain **assured** Pascua **that he would be paid all his money claims** during this transition. Instead of tendering his resignation, Pascua wrote a letter wherein he pleaded that he stay in office until the end of the year.

Vicente Campa, a director of Bankwise, told him that it was imperative that he submit his resignation and assured his continued service with Philippine Veterans Bank. Pascua tendered his resignation. His letter of resignation read:

> IN ACCORDANCE WITH THE INSTRUCTIONS OF THE PREVIOUS OWNERS OF THE BANK, I HEREBY TENDER MY RESIGNATION FROM THE BANK.

Pascua wrote a letter to Campa reminding him of his money claims due to his resignation. Because of "the urgency of [his] financial needs," he proposed the initial payment of his midyear bonus of P150,000 or the transfer of his Bankwise loan amounting to P1,000,000 to offset his claim. Pascua allegedly inquired from Buhain how his money claims would be paid in view of "the passive attitude" of the banks. Buhain allegedly assured him that he already sought a meeting with Campa on the matter. During the meeting Campa also assured him that all his money claims would be paid by the previous owners of Bankwise.

Due to the inaction of Philippine Veterans Bank and Bankwise, Pascua sent Buhain a letter dated April 13, 2005, demanding the early settlement of his money claims. The demand was not heeded. Thus, Pascua filed a Complaint for illegal dismissal, non-payment of salary, overtime pay, etc. against Bankwise and Philippine Veterans Bank.

The Labor Arbiter dismissed the Complaint on the ground that Pascua had voluntarily resigned. The NLRC reversed the decision and held that Pascua was **constructively dismissed**. The CA partly affirmed the decision and held that only Bankwise should be made liable to Pascua.

ISSUE:

Whether or not Pascua was constructively dismissed. (NO)

RULING:

The **employer has the burden of proving**, in illegal dismissal cases, that the **employee wasdismissed for a just or authorized cause**. Even if the employer claims that the employee resigned, the **employer still has the burden of proving that the resignation was voluntary**. It is constructive dismissal when resignation "was made under compulsion or under circumstances approximating compulsion, such as when an employee's act of handing in his [or her] resignation was a reaction to circumstances leaving him [or her] no alternative but to resign."

"Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment."In order to prove that resignation is voluntary, "the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."

Pascua wrote 3 letters addressed to Bankwise's officers. The first letter dated February 7, 2005, was not a letter of resignation, but a plea from Pascua to remain in service until the end of the year. However, this is the **only evidence that shows Pascua was unwilling to resign**.

Pascua admitted that he voluntarily sent a resignation letter on the condition that his money claims would be made. Thus, his second letter was a reluctant acceptance of his fate. Consistent with his intention to tender his resignation upon the payment of his money claims, his third letter was a proposal for a payment plan to cover his severance pay.

Labor is a Constitutionally protected social class due to the perceived inequality between capital and labor. The presumption is that the employer and the employee are on unequal footing so the State has the responsibility to protect the employee. This presumption, however, must be taken on a case-to-case basis.

In situations where special qualifications are required for employment, such as a Master's degree or experience as a corporate executive, prospective employees are at a **better position to bargain or make demands from the employer**. **Employees with special qualifications would be on *equal* footing with their employers,** and thus**, would need a lesser degree of protection from the State** than an ordinary rank-and-file worker**.**

Pascua, as the **Head of Marketing** with annual salary of P2,250,000,would have been **in possession of the special qualifications needed for his post**. He would have supervised several employees in his long years in service and might have even processed their resignation letters. He would have been completely aware of the implications of signing a categorically worded resignation letter. If he did not intend to resign, he would not have submitted a resignation letter. He would have continued writing letters to Bankwise signifying his continued refusal to resign.

Pascua's resignation letter, however, was **unconditional**. It contained **no reservations that it was premised on his subsequent claim for severance pay and other benefits**. His resignation was also accepted by his employers. In this instance, Pascua is **not considered to have been constructively dismissed**.

Pascua's third letter likewise indicates that he has already accepted the consequences of his voluntary resignation but that it would be subject to the payment of severance pay. However, his claim for severance pay cannot be granted. **An employee who voluntarily resigns is not entitled to separation pay unless it was previously stipulated in the employment contract or has become established company policy or practice.**

There is **nothing in** Pascua's **Contract of Employment** that states that he would be receiving any monetary compensation if he resigns. He has also **not shown** that the payment of separation pay upon resignation is **an established policy or practice** of Bankwise since his third letter indicated that he was unaware of any such policy.

Pascua cannot also rely on the verbal assurances of Buhain and Campa that he would be paid his severance pay if he resigns. Number 8 of his Contract of Employment states that verbal agreements between him and the Bankwise's officers on the terms of his employment are not binding on either party. It was incumbent on Pascua to ensure that his severance pay in the event of his resignation be embodied on a written agreement before submitting his resignation letter. He should have, at the very least, indicated his conditions in his resignation letter. His third letter cannot be considered the written statement of his money claims contemplated in his Contract of Employment since it was unilateral and was not signed by Bankwise's officers.

RENANTE B. REMOTICADO, *Petitioner* –versus- TYPICAL CONSTRUCTION TRADING CORP. AND ROMMEL M. ALIGNAY, *Respondents*
G.R. No. 206529, THIRD DIVISION, April 23, 2018, Leonen, *J.*

There can be no case for illegal termination of employment when there was no termination by the employer. While, in illegal termination cases, the burden is upon the employer to show just cause for termination of employment, such a burden arises only if the complaining employee has shown, by substantial evidence, the fact of termination by the employer.

In this case, contrary to what he alleged, Remoticado failed to prove how his indebtness in the canteen made his employer terminate him. Significantly, he never disavowed the waiver and quitclaim he signed, thereby negating his illegal dismissal and manifesting his voluntary resignation in Typical Construction.

FACTS:

Remoticado's services were engaged by Typical Construction Trading Corporation as a helper/laborer in its construction projects, the most recent being identified as the Jedic Project at First Industrial Park in Batangas.

Pedro Nielo, Typical Construction's Field Human Resources Officer, and two of Remoticado's co-workers, recalled that on December 6, 2010, Remoticado was absent without an official leave. He remained absent until December 20, 2010 when, upon showing up, he informed Nielo that he was resigning. Prodded by Nielo for his reason, Remoticado noted that they were "personal reasons considering that he got sick." Nielo advised Remoticado to return the following day as he still had to report Remoticado's resignation to Typical Construction's main office, and as his final pay had yet to be computed.

Remoticado returned the following day and was handed P5,082.53 as his final pay. He protested, saying that he was entitled to "separation pay computed at two (2) months for his services for two (2) years." In response, Nielo explained that Remoticado could not be entitled to separation pay considering that he voluntarily resigned. Nielo added that if Remoticado was not satisfied with P5,082.53, he was free to continue working for Typical Construction. However, Remoticado was resolute and proceeded to sign and affix his thumb marks on a *Kasulatan ng Pagbawi ng Karapatan at Kawalan ng Paghahabol*, a waiver and quitclaim.

Remoticado filed a Complaint for illegal dismissal against Typical Construction and its owner and operator, Rommel M. Alignay. He claimed that on December 23, 2010, he was told to stop reporting for work due to a "debt at the canteen"and thereafter was prevented from entering Typical Construction's premises.

The Labor Arbiter, NLRC, and Court of Appeals ruled in favour of the respondents.

ISSUE:

Whether or not Remoticado was illegally dismissed. (NO)

RULING:

It is true that in illegal termination cases, the burden is upon the employer to prove that termination of employment was for a just cause. Logic dictates, however, that the complaining employee must first establish by substantial evidence the fact of termination by the employer. If there is no proof of

termination by the employer, there is no point in even considering the cause for it. There can be no illegal termination when there was no termination.

In contrast with petitioner's bare allegation are undisputed facts and pieces of evidence adduced by respondents, which cast serious doubt on the veracity of petitioner's recollection of events.

It is not disputed that the establishment identified as Bax Canteen, to which petitioner owed P2,115.00, is not owned by, or otherwise connected with any of the respondents, or with any of Typical Construction's owners, directors, or officers. Petitioner failed to show why Typical Construction would go out of its way to concern itself with the affairs of another company. What stands, therefore, is the sheer improbability that Typical Construction would take petitioner's indebtedness as an infraction, let alone as a ground for terminating his employment.

In addition, jurisprudence frowns upon waivers and quitclaims forced upon employees. Waivers and quitclaims are, however, not invalid in themselves. When shown to be freely executed, they validly discharge an employer from liability to an employee." A legitimate waiver representing a voluntary settlement of a laborer's claims should be respected by the courts as the law between the parties." In this case, petitioner has never disavowed the waiver and quitclaim. It does not appear also that petitioner has accounted for why this document exists, such as by alleging that he was coerced into executing it.

MARIA DELEON TRANSPORTATION, INC., represented by MA. VICTORIA D. RONQUILLO, Petitioner vs. **DANIEL M. MACURAY**, Respondent
G.R. No. 214940, FIRST DIVISION, June 06, 2018, DEL CASTILLO, *J.*

There is no abandonment when an employee, in this case a bus driver, goes on sabbatical or vacation leave to take breaks from work in order to afford the opportunity to recover from the stresses of driving the same long and monotonous bus routes as sanctioned by company practice.

FACTS:

Respondent Daniel M. Macuray filed a Complaint for illegal dismissal against petitioner Maria De Leon Transportation, Inc.

In his Position Paper, respondent claimed that he was employed as a bus driver of petitioner, a company engaged in paid public transportation. He claimed that petitioner's dispatcher did not assign a bus to him, for no apparent reason; that for a period of one month, he continually returned to follow up if a bus had already been assigned to him; that finally, when he returned to the company premises, the bus dispatcher informed him that he was already considered AWOL (absent without leave), without giving any reason therefore; that he went back to follow up his status for about six months in 2010, but nobody attended to him; that he was not given any notice or explanation regarding his employment status and that he considered himself illegally dismissed, among other matters.

For its part, petitioner claims that respondent simply stopped reporting for work; that he left his post as bus driver to work for his family's trucking business; and that he was seen driving the family truck on public roads and highways. This was not denied by the respondent. Petitioner further contends

that what respondent did was typical of its bus drivers; they simply stop reporting for work for short periods of time, even years, only to re-appear looking to work for the company once again. Petitioner states that this is allowed in order to give its drivers the needed break from boredom typically encountered from driving on long trips on familiar, boring routes, a sort of therapy and sabbatical, a time to refresh oneself from monotonous work that benefits the driver, passengers, and the bus company itself; that this practice also affords its drivers the opportunity to find more lucrative employment or greener pastures elsewhere without foreclosing the possibility of returning to work for the company in the future.

ISSUE:

Whether or not there is abandonment of work if the employee is on sabbatical leave permitted by company practice. (NO)

RULING:

The Court is inclined to believe petitioner's allegations: respondent left his work as bus driver to work for his family's trucking business. There is no truth to the allegation that respondent was dismissed, actually or constructively. He claims that the dispatcher informed him that he was AWOL; however, a mere bus dispatcher does not possess the power to fire him from work-this is a prerogative belonging to management. Respondent did not show that he met with management to inquire on his status. On the other hand, it appears that the Assistant Manager, Corporate Secretary, and Director of the bus company, Elias Dimaya, resided with his family within the bus company's station and compound in San Nicolas, Ilocos Norte. Having worked for the bus company for 18 years, respondent should have known this fact, and he could have visited with Elias Dimaya at anytime, if his employment was so important that it meant his own survival and that of his family. Apparently, however, it would appear that this was not the case, for the simple reason that respondent had found employment elsewhere.

Thus, respondent's failure to show that his follow-ups were properly directed at management bolsters petitioner's claim that no follow-ups were made by him. The logical explanation for this is that he found employment elsewhere and thus opted to stop reporting for work, as was the practice of other bus drivers working for petitioner.

At any rate, even assuming that respondent was indeed told by respondent's bus dispatcher Roger Pasion that he was AWOL, this was not tantamount to dismissal, actual or constructive. An ordinary bus dispatcher has no power to dismiss an employee; in a typical bus company, a driver might even be of more significance than an ordinary dispatcher. Bus drivers are a more valuable resource than a dispatcher; without the former, the latter is useless. Without a driver, there could be no bus to dispatch or trip to schedule. It cannot therefore be said that an ordinary dispatcher is superior to a bus driver; at most, they are equal in rank.

The fact that respondent made no sincere effort to meet with the management of the bus company gives credence to petitioner's allegation that he was never fired from work.

However, it cannot be said that respondent abandoned his employment. Petitioner itself admitted that it sanctioned the practice of allowing its drivers to take breaks from work in order to afford them the opportunity to recover from the stresses of driving the same long and monotonous bus routes by accepting jobs elsewhere, as some form of sabbatical or vacation, without losing productivity and income and to safeguard the interests of the company and its patrons, as well as to avoid fatal accidents were the drivers to be suffered to work under continuous stressful conditions occasioned by driving on the same monotonous routes day in and day out.

XXX

Thus, since respondent was not dismissed from work, petitioner may not be held liable for his (respondent's) monetary **claims, except those that were actually owing to him by way of unpaid salary/commission, and retirement benefits**, which are due to him for the reason that he reached the age of retirement while under petitioner's employ. As to unpaid salaries/commissions, it appears from the record that petitioner failed to pay respondent three months' worth, that is, for the period January to March, 2009 - which, at ₱10,000.00 per month - amounts to ₱30,000.00. Indeed, this could be one of the reasons why respondent stopped reporting after March 31, 2009, as he complained of petitioner's failure to pay his salaries/commissions for the said period.

As for retirement benefits, respondent is entitled to them considering that he was never dismissed from work, either for cause or by resignation or abandonment. X X X

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits w1cler any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who. has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

In the absence of a retirement plan or agreement in Maria De Leon Transportation, Inc., the Court hereby declares that respondent is entitled to one month's salary for every year of service, that is:

₱10,000.00 x 18 years = ₱180,000.00

Retirement compensation equivalent to one month's salary for every year of service is more equitable and just than the CA's pronouncement of one-half month's salary per year of service, which the Court finds insufficient. This is considering that petitioner has been paying its drivers commission equivalent to less than the minimum wage for the latter's work, and in respondent's case, it has delayed payment of the latter's compensation for three months. On the other hand, petitioner's lax policies regarding the corning and going of its drivers, as well as the fact that respondent's layovers are considerable - it appears that throughout his employment, respondent spends a good number of days each month not driving for petitioner, which thus allows him to accept other work outside - makes up for deficiencies in the parties' compensation arrangement.

JONALD O. TORREDA, *Petitioner*, -versus - INVESTMENT and CAPITAL OF THE PHILIPPINES, *Respondent*.
GR No. 229881, THIRD DIVISION, September 05, 2018, GESMUNDO, J.

In Fortuny Garments/Johnny Co v. Castro, the Court clarified the procedure to determine the voluntariness of an employee's resignation, viz.:

> *xxx the intention to relinquish an office must concur with the overt act of relinquishment.* ***The act of the employee before and after the alleged resignation must be considered to determine whether in fact, he or she intended to relinquish such employment****. If the employer introduces evidence purportedly executed by an employee as proof of voluntary resignation and the employee specifically denies the authenticity and due execution of said document, the employer is burdened to prove the due execution and genuineness of such document.*

The affidavit of Valtos shows the circumstances before the alleged resignation. The affidavit shows that he gave petitioner two options, either to resign or be terminated from his services. Based on the admission of Valtos, it is clear that petitioner was not given any chance of continued employment by respondent; it was either he resign or he would be terminated.

Petitioner promptly assailed the constructive dismissal committed by respondent because six (6) days after his supposed resignation, he immediately filed a complaint before the LA. Clearly, petitioner had no intention of abandoning his work when he filed the complaint and questioned his purported dismissal.

Based on the foregoing circumstances, which transpired before and after the signing of the prepared resignation letter, it is clear that petitioner was constructively dismissed. Respondent forced petitioner to sign the prepared resignation letter. In fact, he was not given any viable option; it was either he sign the resignation letter or he would be terminated from the company. Doubtless, the resignation of petitioner was involuntary and not genuine.

FACTS:

Jonald O. Torreda *(petitioner)* was hired by Investment and Capital Corporation of the Philippines *(respondent)* on May 17, 2010 as an IT Senior Manager and had a monthly salary of P93,200.00. He was tasked to supervise his team in the Information Technology *(IT)*Department and manage the IT-related projects. He reported to William M. Valtos, Jr. *(Valtos),* the Officer in-Charge of the IT Department and the Group President of the Financial Service of respondent.

On January 5, 2012, petitioner went to the office of Valtos for a closed-door conference meeting supposedly regarding his IT projects. In said meeting, Valtos discussed another matter with petitioner and told him that if his performance were to be appraised at that time, Valtos would give him a failing grade because of the negative feedback from the senior management and the IT staff. The performance appraisal of petitioner, however, was not due until May 2012.

Valtos then gave petitioner a prepared resignation letter and asked him to sign; otherwise, the company would terminate him. The said letter indicated that the resignation of petitioner would be effective on February 4, 2012. Petitioner refused to sign the resignation letter but Valtos did not accept his refusal. Thus, Valtos edited the resignation letter. Petitioner thought of leaving the room by making an excuse to go to the restroom, but Valtos and respondent's legal counsel followed him. Because of Valtos' insistence, petitioner placed his initials in the resignation letter to show that the letter was not official. Valtos then accompanied petitioner to his room to gather his belongings and escorted him out of the building. Petitioner was not allowed to report for work anymore and his company e-mail address was deactivated.

Six (6) days after the incident, petitioner filed the instant complaint for illegal dismissal (constructive), moral and exemplary damages and attorney's fees against respondent before the LA.

In its Decision dated September 27, 2012, the LA held that petitioner was constructively dismissed by respondent.

In its Decision dated June 28, 2013, the NLRC affirmed the LA ruling.

In its Decision dated June 13, 2016, the CA reversed and set aside the NLRC ruling. It ruled that petitioner voluntarily resigned from the company because he willingly signed the resignation letter.

ISSUE:

Whether the Court of Appeals erred in finding that petitioner's resignation was voluntary. (YES)

RULING:

The Court finds the petition meritorious.

Constructive dismissal;forced resignation

Constructive dismissal is an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; or when there is a demotion in rank and/or a

diminution in pay.It exists when there is a clear act of discrimination, insensibility or disdain by an employer, which makes it unbearable for the employee to continue his/her employment. In cases of constructive dismissal, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment.

By definition, constructive dismissal can happen in any number of ways. At its core, however, is the gratuitous, unjustified, or unwarranted nature of the employer's action. As it is a question of whether an employer acted fairly, it is inexorable that any allegation of constructive dismissal be contrasted with the validity of exercising management prerogative.

There is a difference between illegal and constructive dismissal. Illegal dismissal is readily shown by the act of the employer in openly seeking the termination of an employee while constructive dismissal, being a **dismissal in disguise,** is not readily indicated by any similar act of the employer that would openly and expressly show its desire and intent to terminate the employment relationship.

In *SHS Perforated Materials, Inc., et al. v. Diaz,* the Court ruled that there is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment.

In this case, respondent argues that even though it was Valtos who initially presented the resignation letter, petitioner still voluntarily signed the same because he substantially edited the letter and added words of courtesy. Respondent insists that petitioner failed to overcome the validity of his resignation letter.

The Court is not convinced.

In *Fortuny Garments/Johnny Co v. Castro,* the Court clarified the procedure to determine the voluntariness of an employee's resignation, *viz.:*

> xxx the intention to relinquish an office must concur with the overt act of relinquishment. **The act of the employee before and after the alleged resignation must be considered to determine whether in fact, he or she intended to relinquish such employment**. If the employer introduces evidence purportedly executed by an employee as proof of voluntary resignation and the employee specifically denies the authenticity and due execution of said document, the employer is burdened to prove the due execution and genuineness of such document.

Circumstances before the resignation

The affidavit of Valtos shows that he gave petitioner two options, either to resign or be terminated from his services, to wit:

> I explained to him that if he stayed, this may be bad for the Company given that he is not able to deal directly with the Company's customers and the employees did not want to work with him. He was not successful in motivating his team members in the IT Department. **I felt**

compelled to discuss with him the option of resignation because I am aware that the Company would commence termination proceedings against him which may lead to his termination due to loss of trust and confidence. His termination will surely destroy his chances for future employment.

Based on the admission of Valtos, it is clear that petitioner was not given any chance of continued employment by respondent; it was either he resign or he would be terminated. It was Valtos, the Officer-in-Charge of the IT Department and the Group President of the Financial Service of respondent, who presented the prepared resignation letter, and insisted that the petitioner should sign the same. These acts demonstrate the real intent and desire of respondent to remove petitioner. Glaringly, petitioner's supposed resignation was a subterfuge to dismiss him without any just cause.

Further, Valtos prepared the resignation letter, which contained the name and details of petitioner. Verily, it was respondent, not petitioner, which had a prior contemplation of removing the latter as its employee. Through Valtos, respondent wanted petitioner to sign the prepared resignation letter so that it could effortlessly get rid of him.

Circumstances after the resignation

Petitioner promptly assailed the constructive dismissal committed by respondent because six (6) days after his supposed resignation, he immediately filed a complaint before the LA. It is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus, negating any suggestion of abandonment.

Clearly, petitioner had no intention of abandoning his work when he filed the complaint and questioned his purported dismissal.

Based on the foregoing circumstances, which transpired before and after the signing of the prepared resignation letter, it is clear that petitioner was constructively dismissed. Respondent forced petitioner to sign the prepared resignation letter. In fact, he was not given any viable option; it was either he sign the resignation letter or he would be terminated from the company. Doubtless, the resignation of petitioner was involuntary and not genuine.

D. Preventive Suspension

E. Reliefs from illegal dismissal

UNIVERSITY OF THE EAST AND DR. ESTER GARCIA, *Petitioners*, -versus - VERONICA M. MASANGKAY AND GERTRUDO R. REGONDOLA, *Respondents.*
G.R. No. 226727, THIRD DIVISION, April 25, 2018, VELASCO JR., J.

Within the context of a termination dispute, waivers are generally looked upon with disfavor and are commonly frowned upon as contrary to public policy and ineffective to bar claims for the measure of a worker's legal rights. ***If (a) there is clear proof that the waiver was wangled from an unsuspecting***

or gullible person; or (b) the terms of the settlement are unconscionable, and on their face invalid, such quitclaims must be struck down as invalid or illegal. Thus, not all waivers and quitclaims are invalid as against public policy.

In the case at bar, We find no reason to rule that respondents did not waive their right to contest UE's decision. Based on their actuations subsequent to their termination, it is clear that they were amenable to UE's decision of terminating their services on the ground of academic dishonesty.

FACTS:

Respondents Veronica M. Masangkay (Masangkay) and Gertrudo R. Regondola (Regondola) were regular faculty members, Associate Professors, and Associate Deans of petitioner University of the East (UE) – Caloocan. Masangkay and Regondola submitted three manuals requesting said manuals' temporary adoption as instructional materials. Accompanying said requests are certifications under oath, signed by them, declaring under pain of perjury, and openly certifying that the manuals are entirely original and free from plagiarism. UE approved the request.

Thereafter, UE received two (2) complaint-letters via electronic mail (e-mail) from a certain Harry H. Chenoweth and Lucy Singer Block. Chenoweth and Block's father are authors, respectively, of three books. They categorically denied giving respondents permission to copy, reproduce, imitate, or alter said books, and asked for assistance from UE to stop the alleged unlawful acts and deal with this academic dishonesty.

Prompted by the seriousness of the allegations, UE investigated the matter. After a thorough evaluation of the alleged plagiarized portions, UE conducted an investigation in which Masangkay and Regondola actively participated and filed their Answer. Eventually, UE's Board of Trustees issued Resolution No. 2007-11-84 dismissing respondents.

Masangkay and Regondola did not appeal the decision terminating them and instead opted to claim their benefits due them, which consisted of leave credits, sick leave, holiday pay, bonuses, shares in tuition fee increase, COLA, and RATA. Masangkay even requested that a portion of her benefits be applied to her existing car loan. For the amounts that they received, they signed vouchers and pay slips. These were duly acted upon by UE.

Almost three years having been dismissed from service, Masangkay and Regondola filed a complaint for illegal dismissal

ISSUE:

Whether the acceptance of Masangkay and Regondola of their benefit amounted to waiver (Yes)

RULING:

Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right to be recognized by law. Within the context of a termination dispute, waivers are generally looked upon with disfavor and are commonly frowned upon as contrary to public policy and ineffective to bar claims for the measure of a worker's legal rights. If (a) there is clear proof that the waiver was wangled from an unsuspecting or gullible person; or (b) the terms of the settlement are unconscionable, and on their face invalid, such quitclaims must be struck down as invalid or illegal. Thus, not all waivers and quitclaims are invalid as against public

policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.

In the case at bar, We find no reason to rule that respondents did not waive their right to contest UE's decision. Based on their actuations subsequent to their termination, it is clear that they were amenable to UE's decision of terminating their services on the ground of academic dishonesty. Nowhere can we find any indication of unwillingness or lack of cooperation on respondents' part with regard to the events that transpired so as to convince Us that they were indeed constrained to forego their right to question the management's decision. Neither do we find any sign of coercion nor intimidation, subtle or otherwise, which could have forced them to simply accept said decision. In fact, based on their qualifications, this Court cannot say that respondents and UE do not stand on equal footing so as to force respondents to simply yield to UE's decision. Furthermore, there is no showing that respondents did not receive or received less than what is legally due them in said termination.

CONSOLIDATED DISTILLERS OF THE FAR EAST, INC., *Petitioner*, -versus- ROGEL N. ZARAGOZA, *Respondent*.

G.R. No. 229302, SECOND DIVISION, June 20, 2018, CAGUIOA, *J.*

The reason for this, as the Court explained in Bani, is that "[w]hen there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other."

Here, the award of separation pay in lieu of reinstatement, which Condis does not question, was made subsequent to the finality of the Decision in the Illegal Dismissal Case (G.R. No. 196038). Condis cannot therefore evade its liability to Rogel for backwages and separation pay computed until the finality of this Decision which affirms the order granting separation pay.

FACTS:

In G.R. No. 196038, a petition entitled *Consolidated Distillers of the Far East, Inc. v. Rogel N. Zaragoza*, the Court affirmed the CA decision which had affirmed the NLRC's and LA's findings that petitioner Condis had illegally dismissed Rogel, and thus ordered his reinstatement and payment of his backwages.

After the finality of the resolution of the Court in G.R. No. 196038, Rogel moved for the issuance of an alias writ of execution against Condis for his reinstatement, and the payment of full backwages, accrued salaries and allowances. Condis opposed the motion and argued that its execution of the

Asset Purchase Agreement with Emperador Distillers, Inc. (EDI) was a supervening event that made it impossible to reinstate Rogel to his former position.

The LA ruled in favor of Rogel and directed Condis to pay the backwages/reinstatement salaries, including allowances, from December 3, 2007, the date of Rogel's illegal dismissal, up to August 3, 2013, the date of the LA resolution. The NLRC, upon Condis' petition, declared the LA's Resolution null and void. It ruled that the reinstatement was indeed rendered impossible because of the Asset Purchase Agreement, but that backwages should be computed only until the finality of the Court's Resolution in G.R. No. 196038 on March 30, 2012.

The CA affirmed the NLRC but with modification that the backwages should be computed from the date of illegal dismissal until the finality of the decision of the CA, and separation pay computed from the date of employment until finality of the CA Decision.

ISSUE:

Whether or not the CA was correct in ruling that the backwages and separation pay should be computed until the finality of the decision ordering separation pay (YES)

RULING:

Condis does not question the propriety of the award of separation pay in lieu of reinstatement by the NLRC during the Execution Proceedings. It only takes issue with the NLRC's and CA's computation of the backwages and separation pay. Condis argues that it should only be liable for backwages and separation pay until the year 2007. It claims that the execution of the Asset Purchase Agreement and the termination of the subsequent Service Agreement with EDI was the reason for its failure to reinstate Rogel. It claims that the foregoing were supervening events that made Rogel's position inexistent as of 2007 and that there is no position to which Rogel could be reinstated into.

The Court agrees with the CA that Condis is liable for backwages and separation pay until the finality of the decision awarding separation pay as ruled in *Bani*.

In *Bani*, the decision there finding that the employee was illegally dismissed and directing his reinstatement had also already attained finality. During the execution proceedings, since the employees manifested that they no longer wanted to be reinstated, the LA directed that separation pay be given to them in lieu of reinstatement. On appeal, the NLRC affirmed the payment of separation pay but modified the basis of the computation. This also became final and executory.

The LA then recomputed the award and ruled that backwages should only be paid until the date that the employees manifested that they no longer wanted to be reinstated. The NLRC and the CA, however, both ruled that the backwages should be counted until the finality of the NLRC decision awarding separation pay. The Supreme Court held therein that when there is a supervening event that renders reinstatement impossible, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay, thus:

x x x when separation pay is ordered after the finality of the decision ordering the reinstatement by reason of a supervening event that makes the award of reinstatement no longer possible (as in the case), backwages is computed from the time of dismissal until the finality of the decision **ordering separation pay**.

The reason for this, as the Court explained in *Bani*, is that "[w]hen there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other."

Here, the award of separation pay in lieu of reinstatement, which Condis does not question, was made subsequent to the finality of the Decision in the Illegal Dismissal Case (G.R. No. 196038). Condis cannot therefore evade its liability to Rogel for backwages and separation pay computed until the finality of this Decision which affirms the order granting separation pay. As the Court further held in *Bani*:

The above computation of backwages, when separation pay is ordered, has been the Court's consistent ruling. In *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*, we explained that the finality of the decision becomes the reckoning point because in allowing separation pay, the **final** decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.

F. Money claims arising from employer-employee relationship

G. Retirement

ALFREDO F. LAYA, JR., *Petitioner,* -versus- PHILIPPINE VETERANS BANK and RICARDO A. BALBIDO, JR., *Respondents.*
G.R. No. 205813, EN BANC, January 10, 2018, BERSAMIN, *J.*

An employee in the private sector who did not expressly agree to the terms of an early retirement plan cannot be separated from the service before he reaches the age of 65 years. The employer who retires the employee prematurely is guilty of illegal dismissal. Consequently, he is liable to pay back wages and to reinstate the illegally dismissed employee without loss of seniority and other benefits, unless the employee has meanwhile reached the mandatory retirement age under the Labor Code. In that case, the employee is entitled to separation pay pursuant to the terms of the plan, with legal interest on the back wages and separation pay reckoned from the finality of the decision. Here, Laya was dismissed pursuant to a retirement provision he had not knowingly and voluntarily agreed to. Hence, PVB is guilty of illegal dismissal, and Laya is entitled to the aforementioned reliefs.

FACTS:

Petitioner Alfredo F. Laya, Jr. (Laya) was hired by respondent Philippine Veterans Bank (PVB) as its Chief Legal Counsel. The terms and conditions of his appointment include, among others, "Membership in the Provident Fund Program/Retirement Program." PVB's Retirement Plan Rules and Regulations had been in existence more than five years prior to Laya's employment by PVB. It was established solely by PVB and was approved by its president. It provides, among others, as

follows: “Section 1. Normal Retirement. The normal retirement date of a Member shall be the first day of the month coincident with or next following his attainment of age 60.”

On 14 June 2007, Laya was informed of his retirement effective on 1 July 2007. Laya claims that he was made aware of PVB’s retirement plan only after he had long been employed and was shown a photocopy of the Retirement Plan Rules and Regulations. To protest his unexpected retirement, he filed a complaint for illegal dismissal against PVB.

ISSUE:

Whether Laya was validly retired by PVB at age 60. (NO)

RULING:

The retirement of employees in the private sector is governed by Article 287 of the Labor Code, which, among others, fixes the compulsory retirement age at 65 years. Acceptance by employees of an early retirement age option must be explicit, voluntary, free, and uncompelled.

Here, Laya’s letter of appointment merely mentioned the retirement plan. It did not sufficiently inform him of the contents or the details of the retirement program. His implied knowledge, regardless of duration, did not equate to the voluntary acceptance required by law in granting an early retirement age option to the employee. The law demanded more than a passive acquiescence on the part of the employee, considering that his early retirement age option involved conceding the constitutional right to security of tenure.

It is also notable that the retirement plan was in the nature of a contract of adhesion, in respect to which Laya was reduced to mere submission by accepting his employment. Thus, to consider him to have voluntarily and freely given his consent to the terms thereof as to warrant his being compulsorily retired at the age of 60 years is improper.

The pertinent rule on retirement plans does not presume consent or acquiescence from the high educational attainment or legal knowledge of the employee. As such, despite Laya’s legal expertise and educational attainment, PVB has the burden to prove that the former had been fully apprised of the terms of the retirement program at the time of his acceptance of the offer of employment.

The employer who retires the employee prematurely is guilty of illegal dismissal. Consequently, he is liable to pay back wages and to reinstate the illegally dismissed employee without loss of seniority and other benefits, unless the employee has meanwhile reached the mandatory retirement age under the Labor Code. In that case, the employee is entitled to separation pay pursuant to the terms of the plan, with legal interest on the back wages and separation pay reckoned from the finality of the decision.

Here, Laya was dismissed pursuant to a retirement provision he had not knowingly and voluntarily agreed to. Hence, PVB is guilty of illegal dismissal, and Laya is entitled to the aforementioned reliefs.

ARMANDO M. TOLENTINO (DECEASED), HEREIN REPRESENTED BY HIS SURVIVING SPOUSE MERLA F. TOLENTINO AND CHILDREN NAMELY: MARIENELA, ALYSSA, ALEXA, AND AZALEA, ALL SURNAMED TOLENTINO, *Petitioners*, -versus- PHILIPPINE AIRLINES, INC., *Respondent*.
G.R. No. 218984, SECOND DIVISION, January 24, 2018, CARPIO, *J.*

An employee who knowingly defies a return-to-work order issued by the Secretary of Labor is deemed to have committed an illegal act which is a just cause to dismiss the employee under Article 282 of the Labor Code. 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. Loss of employment carries with it the forfeiture of benefits and privileges, which include retirement benefits and the equity in the retirement fund under a Retirement Benefit Plan.

FACTS:

The Petitioners in this case areMerla F. Tolentino, as the surviving spouse of Armando M. Tolentino (Tolentino), and Marienela, Alyssa, Alexa and Azalea, all surnamed Tolentino, as the children of Tolentino.

Tolentino was hired by respondent Philippine Airlines, Inc. (PAL) as a flight engineer on October 22, 1971. By July 16, 1999, Tolentino had the rank of A340/A330 Captain. As a pilot, Tolentino was a member of the Airline Pilots Association of the Philippines (ALPAP), which had a collective bargaining agreement (CBA) with PAL.

On June 5, 1998, ALPAP members went on strike. On June 7, 1998, the Secretary of Labor issued an Order requiring all striking officers and members of ALPAP to return to work within 24 hours from receipt of the Order and requiring PAL management to accept them under the same terms and conditions of employment prior to the strike. On June 8, 1998, the Secretary of Labor served the Order on the officers of ALPAP but **some pilots – including Tolentino – continued to participate in the strike.** On June 26, 1998, when Tolentino and other striking pilots returned to work, PAL refused to readmit these returning pilots. Thus, they filed a complaint for illegal lockout against PAL.

On July 20, 1998, Tolentino reapplied for employment with PAL as a newly hired pilot, and thus voluntarily underwent the six months probationary period. **After less than a year, Tolentino tendered his resignation effective July 16, 1999.**

Meanwhile, on June 1, 1999, the Secretary of Labor declared the strike conducted by ALPAP illegal for being procedurally infirm and in open defiance of the return-to-work order. **Members and officers of ALPAP who participated in the strike in defiance of return-to-work order were declared to have lost their employment status.**

Tolentino informed PAL of his intention of collecting his separation and/or retirement benefits under the CBA. PAL refused to pay Tolentino the separation and/or retirement benefits as stated in the CBA. Thus, Tolentino filed a complaint against PAL.

On March 14, 2013, the Labor Arbiter rendered his Decision dismissing the complaint of Tolentino. **The Labor Arbiter found that Tolentino was not entitled to separation pay and other benefits as he was not illegally dismissed.The Labor Arbiter also denied the claim for retirement benefits because Tolentino resigned from work less than a year after he was rehired by PAL.**

On April 4, 2013, petitioners appealed the Decision of the Labor Arbiter to the NLRC. On June 28, 2013, the NLRC affirmed the Decision of the Labor Arbiter. The NLRC found that (1) the severance of Tolentino's employment was not due to any of the authorized causes under the Labor Code of the Philippines; (2) Tolentino was validly terminated from employment because of his participation in the illegal strike; and (3) when he resigned after he reapplied with PAL, he was not able to complete the required period of five years of continuous service under the CBA.

The Motion for Reconsideration was denied by the NLRC in its Resolution dated August 27, 2013. In a Decision dated September 30, 2014, the CA affirmed, with modification, the June 28, 2013 Decision and August 27, 2013 Resolution of the NLRC. The CA found that under the CBA, Tolentino was entitled to the payment of his vacation time and days off earned but not taken.

Petitioners filed a Motion for Partial Reconsideration. On the other hand, PAL filed its own Motion for Partial Reconsideration. In its Motion, PAL argued that Tolentino was not entitled to his supposed accrued vacation leave pay June 10, 2015. The CA denied the Motion for Partial Reconsideration filed by petitioners. Hence, this petition.

ISSUE:

Whether or not petitioner-heirs are entitled to receive Capt. Tolentino's retirement benefits?

RULING:

No. **An employee who knowingly defies a return-to-work order issued by the Secretary of Labor is deemed to have committed an illegal act** which is a just cause to dismiss the employee under **Article 282 of the Labor Code.**

In PAL, Inc. v. Acting Secretary of Labor, we held:

> A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption and/or certification is a prohibited activity and thus illegal. The union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act. Stated differently, from the moment a worker defies a return-to-work order, he is deemed to have abandoned his job. The loss of employment status results

from the striking employees' own act — an act which is illegal, an act in violation of the law and in defiance of authority.

It has already been settled that those who participated in the June 5, 1998 strike of ALPAP are deemed to have lost their employment status with PAL. Thus, Tolentino, who did not deny his participation in the strike and his failure to promptly comply with the return-to-work order of the Secretary of Labor, could not claim any retirement benefits because he did not retire – he simply lost his employment status.

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.

It is clear, therefore, Tolentino had not retired from PAL – it was not a result of a voluntary agreement. Tolentino lost his employment status because of his own actions. Admittedly, Tolentino was hired again by PAL on July 20, 1998. It was made clear to Tolentino, and he certainly admitted, that he was rehired on the condition that his employment would be as a new hire. **On July 16, 1999, or less than one year after he was rehired as a new pilot, Tolentino resigned from PAL.**

In this instance, Tolentino had voluntarily resigned from work. Tolentino is not entitled to any of the retirement benefits under the PAL-ALPAP Retirement Plan. He had not completed even one year of his new employment with PAL. The Rules and Regulations of the PAL-ALPAP Retirement Plan provide that the member-pilot must have completed at least five years of continuous service with PAL to be entitled to the resignation benefit. His resignation in July 1999, which was only about a year from when he was rehired by the company, did not qualify him for such resignation benefit. For purposes of the **retirement plan**, the **computation of Tolentino's length of service** to the company should be reckoned from the date he was rehired after his own voluntary application as a new pilot. His services from October 1971 to June 1998 cannot be tacked to his new employment starting in July 1998 because the first employment had already been finally terminated – not due to his voluntary resignation or retirement, but because of termination due to just causes.

Additionally, petitioners argue that Tolentino is also entitled to the equity in the retirement fund under the PAL Pilots' Retirement Benefit Plan, which is separate from the retirement benefits under the PAL-ALPAP Retirement Plan. Contrary to petitioners' claim that the retirement fund comes from salary deductions, we find that it is non-contributory and there is no financial burden on the pilots for the establishment of this fund. Again, similar to the retirement benefits under the PAL-ALPAP Retirement Plan, it is clear that the pilot must have retired first before he receives the full amount of the contribution or the equity of the retirement fund. As earlier established, Tolentino never retired. When he was first separated from work, it was not due to resignation or retirement – he simply lost his employment status as a result of his participation in the illegal strike and failure to promptly comply with the return-to-work order of the Secretary of Labor. When he resigned from work after subsequently being rehired by PAL, it could not be said that he retired as he barely completed one

year of service. Simply put, he was not able to satisfy the retirement requirements. As Tolentino was not a retiring pilot, he was not entitled to receive the return of equity in the retirement fund.

Further, we find that PAL's Personnel Policies and Procedures Manual which provides that generally, a dismissed employee forfeits all his entitlements to the company benefits and privileges, is a valid employer policy which is applicable to Tolentino. PAL's assertion that the loss of employment of Tolentino carried with it the forfeiture of his benefits and privileges, which include retirement benefits under the PAL-ALPAP Retirement Plan and the equity in the retirement fund under the PAL Pilots' Retirement Benefit Plan, is meritorious.

MANILA HOTEL CORPORATION, *petitioner* –versus- ROSITA DE LEON, *respondent*.
G.R. No. 219774, FIRST DIVISION, July 23, 2018, TIJAM, *J.*

All told, an employee in the private sector who did not expressly agree to an early retirement cannot be retired from the service before he reaches the age of 65 years. "Acceptance by the employee of an early retirement age option must be explicit, voluntary, free and uncompelled." "The law demanded more than a passive acquiescence on the part of the employee, considering that his early retirement age option involved conceding the constitutional right to security of tenure."

FACTS:

On June 7, 2011, respondent received petitioner's June 6, 2011 letter, captioned as a Notice of Compulsory Retirement. At the time she received said Notice, respondent was 57 years old and held the position of Assistant Credit and Collection Manager/Acting General Cashier. She had by then rendered 34 years of service to petitioner.

Respondent subsequently filed against petitioner and its Chairman, President, Vice President for Finance and Human Resources Assistant Director (officers), a Complaint for illegal dismissal, underpayment of salaries and 13th month pay, non-payment of service charges, transportation allowance and other related benefits, and illegal deductions, with prayer for reinstatement without loss of seniority rights, backwages, actual, moral and exemplary damages and attorney's fees.

Ruling in respondent's favor, the LA held that respondent was a managerial employee, as evinced by the Personnel Status Form and Appraisal Sheets she submitted and based on her responsibilities and duties and the benefits and privileges that came with her post. The LA, thus, concluded that the CBA did not apply to respondent and her compulsory retirement resultantly constituted constructive dismissal.

The NLRC reversed and granted the appeal interposed by petitioner and its officers. According to the NLRC, while managerial employees are ordinarily outside the scope of CBA, nothing prevents employers from granting them benefits equal to or higher than those given to union members. It held that in extending the retirement benefits under the CBA to respondent, petitioner was merely exercising a management prerogative, and by immediately processing her retirement requirements, including the Personnel Clearance, respondent accepted petitioner's offer of retirement. The NLRC thus concluded that petitioner's offer of retirement and respondent's acceptance thereof constituted a bilateral agreement — the "applicable employment contract" on retirement sanctioned under Article 287 of the Labor Code, the existence of which rendered unimportant the issue of whether respondent was a managerial

employee or not. The NLRC held that having assented to her compulsory retirement, respondent was already estopped from contesting the same.

Granting respondent's petition for *certiorari*, the CA rendered its Decision which annulled and set aside the decision of NLRC

ISSUE:

Whether respondent was not illegally dismissed because she voluntarily accepted her inclusion in its compulsory retirement program, and that by such acceptance, she made the CBA provision on retirement applicable to her. (NO)

RULING:

Because respondent is a managerial employee, petitioner's CBA with its rank-and-file employees does not apply to her. Furthermore, as the CA held, there is nothing in petitioner's submissions showing that respondent had assented to be covered by the CBA's retirement provisions.

Thus, in the absence of an agreement to the contrary, managerial employees cannot be allowed to share in the concessions obtained by the labor union through collective negotiation. Otherwise, they would be exposed to the temptation of colluding with the union during the negotiations to the detriment of the employer.

Accordingly, the fact that respondent had rendered more than 20 years of service to petitioner will not justify the latter's act of compulsorily retiring her at age 57, absent proof that she agreed to be covered by the CBA's retirement clause.

As amended by Republic Act No. 7641, under Article 287 of the Labor Code the retirement age is primarily determined by the existing agreement or employment contract." "By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at below 60 years." Absent such an agreement, the retirement age shall be that fixed by law, and the above-cited law mandates that the compulsory retirement age is 65 years, while the minimum age for optional retirement is set at 60 years.

Petitioner maintains that it had an implied agreement with respondent for the latter's compulsory retirement, which constitutes a retirement contract sanctioned under Article 287 of the Labor Code. According to petitioner, this agreement was perfected when respondent verbally accepted its retirement offer as provided in its June 6, 2011 letter, and when she personally and voluntarily processed her Personnel Clearance.

The Court is not persuaded.

The Court cannot subscribe to petitioner's argument that respondent's act of signing and processing her Personnel Clearance amounts to indubitable proof that she accepted its retirement offer. To reiterate, there was no such offer that respondent was at liberty to consider, accept or reject; petitioner already resolved to compulsorily retire respondent when Buena informed her of such decision and when it formally served upon her its Notice. Furthermore, faced with unemployment, respondent would naturally want to have her last pay released and this requires the accomplishment of the Personnel Clearance.

Furthermore, the CA correctly observed that respondent's refusal to accept her retirement pay and her objections to being retired early, as well as the filing of her complaint for illegal dismissal, confirm that she did not consent to her compulsory retirement. Apropos is the following pronouncement in *Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabatt v. Caballeda, et al.*:

> Furthermore, the fact that respondents filed a complaint for illegal dismissal against petitioners completely negates their claim that respondents voluntarily retired. To note, respondents vigorously pursued this case against petitioners, all the way up to this Court. Without doubt, this is a manifestation that respondents had no intention of relinquishing their employment, wholly incompatible to petitioners' assertion that respondents voluntarily retired.

All told, an employee in the private sector who did not expressly agree to an early retirement cannot be retired from the service before he reaches the age of 65 years. "Acceptance by the employee of an early retirement age option must be explicit, voluntary, free and uncompelled." "The law demanded more than a passive acquiescence on the part of the employee, considering that his early retirement age option involved conceding the constitutional right to security of tenure." Thus, We held that "[r]etirement 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."

In the instant case, respondent's early retirement arose not from a bilateral act but a unilateral decision on the part of petitioner. Respondent's consent was neither sought nor procured by petitioner in deciding to prematurely retire her services. For this reason, respondent's compulsory retirement, as imposed by petitioner in its June 6, 2011 letter, constitutes illegal dismissal.

ASSOCIATION OF RETIRED COURT OF APPEALS JUSTICES, INC. (ARCAJI), REPRESENTED BY TEODORO P. REGINO, *PETITIONER*, -versus- HON. FLORENCIO ABAD, JR., AS SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, *RESPONDENT.*
G.R. No. 210204, EN BANC, July 10, 2018, VELASCO JR., *J.*

Section 3-A clearly states that ***"all pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired."***

In this case, any increase in the salary of the incumbent justice shall redound to the benefit of the retiree if given during the five (5) year period reckoned from date of retirement. The law cannot be any clearer. The rationale behind the law is that the lump sum of 5 years gratuity is actually the equivalent of the 60 monthly pensions which the retiree is allowed to receive under R.A. No. 910 as amended. If the retiree is to be paid the monthly pension for 60 months or within the 5 year period, then he/she will definitely be entitled to the increases in salary granted during the said period.

FACTS:
In the case now before the Court, all the twenty eight (28) CA associate justices retired from the judiciary on various dates from 2005 to 2010. During the five-year span after their retirement, a series of salary increases were granted to all employees in the public sector, thereby increasing the salaries being received by incumbent CA Justices at the time of said adjustments. These salary

increases were brought about by the implementation of Salary Standardization Law 2 (SSL 2) and Salary Standardization Law 3 (SSL 3). The first round of salary increase was implemented under Executive Order No. 611, effective July 1, 2007, which upped the salary by ten percent (10%). The second round of salary increase was implemented under Executive Order No. 719, effective July 1, 2008, which further increased the salary by another 10%. These two salary increases were a result of the full implementation of SSL 2.

The next round of salary increases were brought about by the passing and implementation of SSL 3. The first *tranche* of increases under SSL 3 was implemented under Executive Order No. 811, effective July 1, 2009; the second *tranche* under Executive Order No. 900, effective June 24, 2010; and the third *tranche* under Executive Order No. 40, effective June 1, 2011.
The aforesaid increases in the salary of incumbent CA Justices prompted the petitioners, the twenty-eight retired Justices, to file a claim for their retirement gratuity differentials. Since the retirement gratuity that they received was computed solely on the basis of their salary at the time of their retirement, they asked for the payment of said differentials anchored on the salary increases given to incumbents of similar rank during the 5-year period after their retirement. They thus petitioned the DBM to allow the adjustment and release of their retirement gratuity differentials.

In fine, the petitioners are arguing that due to the increase in the salaries received by the incumbent Justices of the CA, they are also entitled to receive as part of their retirement gratuity all the increases in salaries that have been implemented within five years after their retirement from service.

For example, in the case of petitioner Justice Delilah V. Magtolis, who retired on November 29, 2005, she is claiming a differential of **P17,027.26**.The P17,027.26 differential claimed by Justice Magtolis can be attributed to the implementation of the second *tranche* of SSL 3 starting June 24, 2010. Prior increases in the salary of incumbent CA Justices implemented after Justice Magtolis's retirement are already deemed part of the retirement gratuity that she received when retired in 2005, due to the provision in Republic Act (R.A.) No. 9227 providing that the SAJ component are deemed advanced implementation of future salary increases. Hence, the Special Allowance for the Judiciary (SAJ) component of the retirement gratuity she received in 2005 would have already covered for such salary increases. With the implementation of the second *tranche* of SSL 3, however, the SAJ has been fully integrated in the basic salary, i.e. there is no more SAJ component to the basic salary given to incumbent Justices. Consequently, the SAJ component that Justice Magtolis received in 2005 would no longer suffice to cover the differential brought about by the implementation of the second *tranche* of SSL 3. This situation, which occurs in the case of all 28 petitioners, necessitates the recomputation of their respective retirement gratuities, and the granting of differentials in their favor. Thus, their request for the DBM to recomputed their retirement gratuities.

Rejecting the claim of petitioners for retirement gratuity differentials, the DBM, in its letter dated October 8, 2012, stated that the claimed differentials must be sourced from the SAJ, and not from the Pension and Gratuity Fund.

ISSUE:

Whether there is a duty on the part of the DBM to pay the differentials during the 5 year period after date of retirement under existing laws. (YES)

RULING:

R.A. No. 910, as amended by R.A. No. 1797 and R.A. No. 9946, which captures the rules on retirement of justices of the Supreme Court and of the Court of Appeals. Sections 3, 3-A and 3-B of R.A. No. 910 respectively read as follows:

> Sec. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, Municipal Circuit Trial Court, Shari'a District Court, Shari'a Circuit Court, or any other court hereafter established **shall be automatically entitled to a lump sum of five (5) years gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement and thereafter upon survival after the expiration of five (5) years x xx**
> x xxx
>
> **Sec. 3-A. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired.**
>
> Sec. 3-B. The benefits under this Act shall be granted to all those who have retired prior to the effectivity of this Act: Provided, that the benefits shall be applicable only to members of the Judiciary: Provided, further, That the benefits to be granted shall be prospective.

Section 3 is unequivocal and is straightforward enough. Upon retirement, the justice shall be "automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation etc. up to further annuity payable monthly during the residue of his/her natural life pursuant to section 1 hereof x xx."

In A.M. No. 91-8-225-CA (Re: Request of the retired justices of the Court of Appeals for re-adjustment of their monthly pension) issued on October 24, 1995, the Court elucidated that the lump sum of five (5) years' gratuity granted to the retiring justice consist of the 60 monthly entitlements "GIVEN FIVE YEARS IN ADVANCE" and are guaranteed for five years. Thus, the usual 60 monthly pensions to which the justice is entitled to receive is converted by law into a lump sum payment to accord him/her more flexibility or maximization in the use of the funds.

To shed light on the issue whether herein claimants are entitled to increases in the salaries of the incumbent justices occupying the same position from which they retired during the 5 year period after the date of retirement, Section 3-A clearly states that **"all pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired."** Thus, any increase in the salary of the incumbent justice shall redound to the benefit of the retiree if given during the five (5) year period reckoned from date of retirement. The law cannot be any clearer. The rationale behind the law is that the lump sum of 5 years gratuity is actually the equivalent of the 60 monthly pensions which the retiree is allowed to receive under R.A. No. 910 as amended. If the retiree is to be paid the monthly pension for 60 months or within the 5 year period, then he/she will definitely be entitled to the increases in salary granted during the said period.

In light of the foregoing, the Court finds that Section 3-A of R.A. No. 910, as amended, buttressed by the Resolution in A.M. No. 91-8-225-CA, prescribes a duty under the law upon the DBM to pay to the petitioners the increases in salary granted by law during the 5 year period after date of retirement. *Mandamus* will lie to compel respondent DBM to fulfil its duty under the law.
To sum up, the rules on payment of retirement gratuities of Supreme Court and appellate court justices are as follows:

1. Under Section 3 of RA No. 910, as amended by RA No. 1797 and RA No. 9946, "a justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the Regional Trial Court x xx or any other court hereafter established shall be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement x xx."

   The lump sum of five (5) years' gratuity are actually payment of the sixty (60) monthly pensions for the period of five (5) years from date of retirement but are given in ADVANCE in the form of a lump sum payment equal to said 60 monthly pensions.

2. After receipt of said lump sum payment of five years gratuity and during the five year period from date of retirement, the justice or judge who retired is entitled to any increase in the salary of the incumbent justice or judge granted by law based on Section 3-A of RA No. 910, as amended, that "[a]ll pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired."

3. After surviving the 5 year period from date of retirement, the retiree shall be entitled to a monthly pension for the rest of his/her natural life. Any increase in the salary of the incumbent justice of judge shall automatically redound to the benefit of the retiree and his/her monthly pension shall be automatically adjusted.

VII. MANAGEMENT PREROGATIVE

A. Discipline

CENTRAL AZUCARERA DE BAIS and ANTONIO STEVEN L. CHAN, *petitioners*, -versus- HEIRS OF ZUELO APOSTOL, *respondents*.
G.R. No. 215314, SECOND DIVISION, March 14, 2018, REYES, JR., *J.*

Time and again, the Court has put emphasis on the right of an employer to exercise its management prerogative in dealing with its company's affairs, including the right to dismiss erring employees. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to

advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.

FACTS:

Respondent Zuelo Apostol, now deceased and represented herein by his heirs, commenced his 20 years of employment with petitioner Central Azucarera de Bais (CAB) when he was hired as the latter's Motor Pool Over-All Repairs Supervisor. As a supervisor, one of the pre-requisites accorded to the respondent was the enjoyment of a company house where the respondent could live so long as he remains as a CAB employee.

The parties' harmonious working relationship was disturbedwhen, during the inspection of Tomasito A. Rosel (Rosel), one of CAB's security guards,it was discovered that the respondent "was using his company house, as well as other company equipment to repair privately owned vehicles."

This then triggered the CAB management, through its resident manager, RobertyY. Dela Rosa, to issue a memorandum addressed to the respondent for violating Rule 9 of CAB's Rules of Discipline.

In response, the respondent submitted a handwritten explanation practically admitting the violating and asking for apology.

Respondent received a copy of the termination letterwhich was signed by CAB's president, herein petitioner AntonioSteven L. Tan.

Thereafter, the respondent vacated the company house assigned to him, and he filed a Complaint against the petitioners for constructive dismissal, illegal suspension, unfair labor practice, among others

LA: The Labor Arbiter dismissed the respondent's submissions and ruled in favor of petitioners.

NLRC: On appeal, reversed the ruling of the Labor Arbiter. The NRLC ruled, among others, that while the respondent did indeed violate the company rules, the ultimate penalty of dismissal should not have been meted out to him.

CA: The CA affirmed NLRC's ruling. Motion for reconsideration was denied.

Hence, this petition.

ISSUE:

Whether or not the penalty meted out to respondent Zuelo Apostol was commensurate to the violation that he committed. (YES)

RULING:

The penalty meted out to respondent Zuelo Apostol was commensurate to the violation that he committed.

Article 297 (c) [formerly Article 282 (c)] of the Labor Code provides that anemployer may terminate the services of an employee for fraud or willful breach of thetrust reposed in him. According to the case of Top Form Mfg. Co., Inc. vs. NLRC, an employer has a distinct prerogative to dismiss an employee if the former has amplereason to distrust the latter or if there is sufficient evidence to show that the employeehas been guilty of breach of trust. This authority of the employer to dismiss anemployee cannot be denied whenever acts of violation are noted by the employer.

Following the ruling in The Coca-Cola Export Corporation v. Gacayan, the employers have a right to impose a penalty of dismissal on employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust, justifies termination of employment. Loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property.

In order to invoke this cause, certain requirements must be complied with, namely: (1)the employee concerned must be holding a position of trust and confidence; and (2)there must be an act that would justify the loss of trust and confidence.

In the case at hand, a perusal of the entirety of the records would reveal that all the requirements for the valid dismissal of the respondent exist.

To begin with, there is no doubt that the respondent, as CAB's motor pool over-all repairs supervisor, is in a position of trust and confidence. He was in charge of repairing company vehicles and was designated with the responsibility of (a) assigning the personnel and equipment for each and every repair job, and (b) taking custody of all repair equipment and materials owned by CAB.
Secondly, the respondent's violation of CAB's rules and regulations relating to the use of company property for personal purposes was consistently held and upheld not only by the Labor Arbiter and the NLRC, respectively, but also by the CA itself. That the respondent committed this act could not be denied. What's more is that the respondent himself admitted to it.

Finally, the respondent's action was successfully conducted precisely because ofhis position in the company. As CAB's motor pool over-all repairs supervisor, he was inthe position to effect the repairs of his personal property in the company house whichwas assigned to him. It could not be emphasized further that this violation of companyrules — from a supervisor no less — carries with it an impact to the operations andmanagement of a company, and a company's decision to terminate an employee forthese purposes is a decision that should be respected.

To be sure, the petitioners herein validly dismissed their erring employee.

B. Transfer of employees

MARSMAN & COMPANY, INC., *Petitioner* –versus- **RODIL C. STA. RITA**, *Respondent*.
G.R. No. 194765, FIRST DIVISION, April 23, 2018, LEONARDO-DE CASTRO, *J.*

The Court has upheld the transfer/absorption of employees from one company to another, as successor employer, as long as the transferor was not in bad faithand the employees absorbed by a successor-

employer enjoy the continuity of their employment status and their rights and privileges with their former employer.

In this case, it is imperative to point out that the integration and transfer was a necessary consequence of the business transition or corporate reorganization that Marsman and CPDSI had undertaken, which had the characteristics of a corporate spin-off. The spin-off and the attendant transfer of employees are legitimate business interests of Marsman. The transfer of employees through the Memorandum of Agreement was proper and did not violate any existing law or jurisprudence.

Jurisprudence has long recognized what are termed as "management prerogatives."Thus, Sta.Rita has no cause of action against Marsman in the absence of employee-employer relationship.

FACTS:

Marsman, a domestic corporation, was formerly engaged in the business of distribution and sale of pharmaceutical and consumer products for different manufacturers within the country. Marsman purchased Metro Drug Distribution, Inc. (Metro Drug), now Consumer Products Distribution Services, Inc. (CPDSI), which later became its business successor-in-interest. The business transition from Marsman to CPDSI generated confusion as to the actual employer of Sta. Rita at the time of his dismissal.

Marsman temporarily hired Sta. Rita on November 16, 1993 as a warehouse helper. Marsman then confirmed Sta. Rita's status as a regular employee on September 18, 1994 and adjusted his monthly wage to P3,796.00. Marsman administered Sta. Rita's warehouse assignments.

Sometime in July 1995, Marsman purchased Metro Drug, a company that was also engaged in the distribution and sale of pharmaceutical and consumer products, from Metro Pacific, Inc. The similarity in Marsman's and Metro Drug's business led to the integration of their employees which was formalized in a Memorandum of Agreement.

Concomitant to the integration of employees is the transfer of all office, sales and warehouse personnel of Marsman to Metro Drug and the latter's assumption of obligation with regard to the affected employees' labor contracts and Collective Bargaining Agreement. The integration and transfer of employees ensued out of the transitions of Marsman and CPDSI into, respectively, a holding company and an operating company.

In the meantime, on an unspecified date, CPDSI contracted its logistic services to EAC Distributors (EAC). CPDSI and EAC agreed that CPDSI would provide warehousemen to EAC's tobacco business which operated in EAC-Libis Warehouse.

Parenthetically, EAC's use of the EAC-Libis Warehouse was dependent upon the lease contract between EAC and Valiant Distribution (Valiant), owner of the EAC-Libis Warehouse. Hence, EAC's operations were affected when Valiant decided to terminate their contract of lease on January 31, 2000. In response to the cessation of the contract of lease, EAC transferred their stocks into their own warehouse and decided to operate the business by themselves, thereby ending their logistic service agreement with CPDSI.

This sequence of events left CPDSI with no other option but to terminate the employment of those assigned to EAC-Libis Warehouse, including Sta. Rita.

Aggrieved, Sta. Rita filed a complaint in the NLRC against Marsman for illegal dismissal with damages in the form of moral, exemplary, and actual damages and attorney's fees. Sta. Rita alleged that his dismissal was without just or authorized cause and without compliance with procedural due process.

Marsman filed a Motion to Dismisson March 16, 2000 on the premise that the Labor Arbiter had no jurisdiction over the complaint for illegal dismissal because Marsman is not Sta. Rita's employer. Marsman averred that the Memorandum of Agreement effectively transferred Sta. Rita's employment from Marsman and Company, Inc. to CPDSI.

The Labor Arbiter found Marsman as Sta.Rita's employer and declared it guilty of illegal dismissal. The NLRC, on the contrary, found that using the four-fold test, there is no employee-employer relationship. Meanwhile, the Court of Appeals held that Marsman was Sta. Rita's employer because Sta. Rita was allegedly not part of the integration of employees between Marsman and CPDSI.

ISSUE:

Whether or not an employer-employee relationship existed between Marsman and Sta. Rita at the time of Sta. Rita's dismissal. (NO)

RULING:

It is imperative to point out that the integration and transfer was a necessary consequence of the business transition or corporate reorganization that Marsman and CPDSI had undertaken, which had the characteristics of a corporate spin-off. To recall, a proviso in the Memorandum of Agreement limited Marsman's function into that of a holding company and transformed CPDSI as its main operating company. In business parlance, a corporate spin-off occurs when a department, division or portions of the corporate business enterprise is sold-off or assigned to a new corporation that will arise by the process which may constitute it into a subsidiary of the original corporation. Jurisprudence has long recognized what are termed as "management prerogatives."

The spin-off and the attendant transfer of employees are legitimate business interests of Marsman. The transfer of employees through the Memorandum of Agreement was proper and did not violate any existing law or jurisprudence.

Analogously, the Court has upheld the transfer/absorption of employees from one company to another, as successor employer, as long as the transferor was not in bad faithand the employees absorbed by a successor-employer enjoy the continuity of their employment status and their rights and privileges with their former employer.

Sta. Rita's contention that the absence of his signature on the Memorandum of Agreement meant that his employment remained with Marsman is merely an allegation that is neither proof nor evidence. It cannot prevail over Marsman's evident intention to transfer its employees.

To assert that Marsman remained as Sta. Rita's employer even after the corporate spin-off disregards the separate personality of Marsman and CPDSI. Sta. Rita failed to support his claim that both companies were managed and operated by the same persons, or that Marsman still had complete control over CPDSI's operations. Moreover, the existence of interlocking directors, corporate officers

and shareholders without more, is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.

Sta. Rita also failed to satisfy the four-fold test which determines the existence of an employer-employee relationship. The elements of the four-fold test are: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct. There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status.

C. Productivity standard

D. Bonus

E. Change of working hours

F. Bona Fide Occupational Qualifications

G. Post-employment restrictions

VIII. JURISDICTION AND RELIEFS

A. Labor Arbiter

NICANOR F. MALCABA, CHRISTIAN C. NEPOMUCENO, AND LAURA MAE FATIMA F. PALIT-ANG, ***Petitioners***, *v.* **PROHEALTH PHARMA PHILIPPINES, INC., GENEROSO R. DEL CASTILLO, JR., AND DANTE M. BUSTO**, ***Respondents***.
G.R. No. 209085, THIRD DIVISION, June 06, 2018, LEONEN, *J*

Before any labor tribunal takes cognizance of termination disputes, it must first have jurisdiction over the action. The Labor Arbiter and the National Labor Relations Commission only exercise jurisdiction over termination disputes between an employer and an employee. They do not exercise jurisdiction over termination disputes between a corporation and a corporate officer.

FACTS:

ProHealth Pharma Philippines, Inc. (ProHealth) is a corporation engaged in the sale of pharmaceutical products and health food on a wholesale and retail basis. Generoso Del Castillo (Del Castillo) is the Chair of the Board of Directors and Chief Executive Officer while Dante Busto (Busto) is the Executive Vice President. Malcaba, Tomas Adona, Jr. (Adona), Nepomuceno, and Palit-Ang were employed as its President, Marketing Manager, Business Manager, and Finance Officer, respectively.

Malcaba alleged that Del Castillo did acts that made his job difficult. He asked to take a leave on October 23, 2007. When he attempted to return on November 5, 2007, Del Castillo insisted that he had already resigned and had his things removed from his office. He attested that he was paid a lower salary in December 2007 and his benefits were withheld.On January 7, 2008, Malcaba tendered his resignation effective February 1, 2008.

On March 24, 2008, Nepomuceno applied for vacation leave for the dates April 24, 25, and 28, 2008, which Busto approved. When he left for Malaysia on April 23, 2008, ProHealth sent him a Memorandum dated April 24, 2008 asking him to explain his absence. He replied through email that he tried to call ProHealth to inform them that his flight was on April 22, 2008 at 9:00p.m. and not on April 23, 2008 but was unable to connect on the phone. He tried to explain again on May 2, 2008 and requested for a personal dialogue with Del Castillo.

On May 7, 2008, Nepomuceno was given a notice of termination, which was effective May 5, 2008, on the ground of fraud and willful breach of trust.

On November 26, 2007, Del Castillo instructed Palit-Ang to give P3,000.00 from the training funds to Johnmer Gamboa (Gamboa), a District Business Manager, to serve as cash advance.

On December 3, 2007, Palit-Ang was invited to a fact-finding investigation, which was held on December 10, 2007, where Palit-Ang was again asked to explain her actions. On December 17, 2007, she was handed a notice of termination effective December 31, 2007, for disobeying the order of ProHealth's highest official.

Malcaba, Nepomuceno, Palit-Ang, and Adona separately filed Complaintsbefore the Labor Arbiter for illegal dismissal, nonpayment of salaries and 13th month pay, damages, and attorney's fees.

The Labor Arbiter found that Malcaba was constructively dismissed. Palit-Ang's dismissal was also found to have been illegal as delay in complying with a lawful order was not tantamount to disobedience. The Labor Arbiter further noted that delay in giving a cash advance for car maintenance would not have affected the company's operations. He declared that Palit-Ang's dismissal was too harsh of a penalty.

ProHealth appealed to the National Labor Relations Commission.On September 29, 2010, the National Labor Relations Commission rendered its Decision,affirming the Labor Arbiter's April 5, 2009 Decision.

On February 19, 2013, the Court of Appeals rendered its Decisionreversing and setting aside the National Labor Relations Commission September 29, 2010 Decision.

ISSUE:

Whether or not the Labor Arbiter and National Labor Relations Commission had jurisdiction over petitioner Nicanor F. Malcaba's termination dispute considering the allegation that he was a corporate officer, and not a mere employee (NONE)

RULING:

Under the Labor Code, the Labor Arbiter exercises original and exclusive jurisdiction over termination disputes between an employer and an employee while the National Labor Relations Commission exercises exclusive appellate jurisdiction over these cases:

> Article 224. Jurisdiction of the Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:
> (2) Termination disputes;
> . . .
> (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

The presumption under this provision is that the parties have an employer-employee relationship. Otherwise, the case would be cognizable in different tribunals even if the action involves a termination dispute.

Petitioner Malcaba alleges that the Court of Appeals erred in dismissing his complaint for lack of jurisdiction, insisting that he was an employee of respondent, not a corporate officer.

At the time of his alleged dismissal, petitioner Malcaba was the President of respondent corporation. Strangely, this same petitioner disputes this position as respondents' bare assertion,yet he also insists that his name appears as President in the corporation's General Information Sheet for 2007.

Under Section 25 of the Corporation Code,the President of a corporation is considered a corporate officer. The dismissal of a corporate officer is considered an intra-corporate dispute, not a labor dispute.

Further, in *Matling Industrial and Commercial Corporation v. Coros*,this Court stated that jurisdiction over intra-corporate disputes involving the illegal dismissal of corporate officers was with the Regional Trial Court, not with the Labor Arbiter. Effective on August 8, 2000, upon the passage of Republic Act No. 8799, otherwise known as The Securities Regulation Code, the SEC's jurisdiction over all intra-corporate disputes was transferred to the RTC, pursuant to Section 5.2 of RA No. 8799.

The mere designation as a high-ranking employee, however, is not enough to consider one as a corporate officer. In *Tabang vs. NLRC*, this Court discussed the distinction between an employee and a corporate officer, regardless of designation:

> The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.
>
> It has been held that an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.

The clear weight of jurisprudence clarifies that to be considered a corporate officer, *first*, the office must be created by the charter of the corporation, and *second*, the officer must be elected by the board of directors or by the stockholders.

Petitioner Malcaba was an incorporator of the corporation and a member of the Board of Directors. Respondent corporation's By-Laws creates the office of the President.

This case is similar to *Locsin v. Nissan Lease Philippines*:

> Locsin was undeniably Chairman and President, and was elected to these positions by the Nissan board pursuant to its By-laws. As such, he was a corporate officer, not an employee. The CA reached this conclusion by relying on the submitted facts and on Presidential Decree 902-A, which defines corporate officers as "those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws." Likewise, Section 25 of Batas Pambansa Blg. 69, or the Corporation Code of the Philippines (*Corporation Code*) provides that corporate officers are the **president**, secretary, **treasurer** and such **other officers as may be provided for in the by-laws**.

Finding that petitioner Malcaba is the President of respondent corporation and a corporate officer, any issue on his alleged dismissal is beyond the jurisdiction of the Labor Arbiter or the National Labor Relations Commission. Their adjudication on his money claims is void for lack of jurisdiction. As a matter of equity, petitioner Malcaba must, therefore, return all amounts received as judgment award pending final adjudication of his claims. This Court's dismissal of petitioner Malcaba's claims, however, is without prejudice to his filing of the appropriate case in the proper forum.

DEMETRIO ELLAO Y DELA VEGA, *Petitioner*, - versus - BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I), RAQUEL ROWENA RODRIGUEZ BOARD PRESIDENT, *Respondents*.
G.R. No. 209166, FIRST DIVISION, July 09, 2018, TIJAM, *J.*

In Matling Industrial and Commercial Corporation, et al., v. Ricardo Coros, the Court held that a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. Matling held that the only officers of a corporation were those given that character either by the Corporation Code or by the By-Laws so much so that the rest of the corporate officers could be considered only as employees or subordinate officials.

Here, the position of General Manager is expressly provided for under Article VI, Section 10 of BATELEC I's By-laws, *enumerating the cooperative offices as follows:*

> ***ARTICLE VI- <u>OFFICERS</u>***
>
> ***SECTION 10. <u>General Manager</u>***
>
> *a. The management of the Cooperative shall be vested in a General Manager who shall be appointed by the Board and who shall be responsible to the Board for performance of his duties as set forth in a position description adopted by the Board, in conformance with guidelines established by the National Electrification Administration. It is incumbent upon the Manager to keep the Board fully informed of all aspects of the*

operations and activities of the Cooperative. The appointment and dismissal of the General Manager shall require approval of NEA. x x x

Evidently, the functions of the office of the General Manager, i.e., management of the Cooperative and to keep the Board fully informed of all aspects of the operations and activities of the Cooperative are specifically laid down under BATELEC I's By-laws itself. ***It is therefore beyond cavil that Ellao's position as General Manager is a cooperative office. Accordingly, his complaint for illegal dismissal partakes of the nature of an intra-cooperative controversy. It involves a dispute between a cooperative officer on one hand, and the Board of Directors, on the other.***

FACTS:

BATELEC I is an electric cooperative organized and existing under P.D. No. 269 and is engaged in the business of distributing electric power or energy in the province of Batangas. At that time, respondent Raquel Rowena Rodriguez was the President of BATELEC I's Board of Directors. Petitioner Demetrio Ellao was employed by BATELEC I initially as Office Supplies and Equipment Control Officer until he was appointed as General Manager.

A complaint was filed by Nestor de Sagun and Conrado Cornejo against petitioner Ellao, charging the latter of committing irregularities in the discharge of his functions as General Manager. A fact-finding body was created to investigate these charges. The fact-finding body issued a report recommending Ellao's termination. Thereafter, the Board of Directors adopted and issued Board Resolution No. 24-09 terminating Ellao as General Manager on the grounds of gross and habitual neglect of duties and responsibilities and willful disobedience or insubordination resulting to loss of trust and confidence.

The National Electrification Administration (NEA) confirmed BATELEC I's Board Resolution No. 24-09 and approved Ellao's termination.

Ellao filed a complaint for illegal dismissal and money claims before the Labor Arbiter against BATELEC I and/or its President Rowena Rodriguez. Alleging illegal dismissal, Ellao complained that the charges against him were unsubstantiated. There was no compliance with procedural due process as he was not afforded the opportunity to explain and there was no written notice of termination specifying the grounds of his termination.

BATELEC I, on the other hand, moved to dismiss Ellao's complaint on the ground that it is the NEA, and not the NLRC which has jurisdiction over the complaint. Assuming the NLRC enjoys jurisdiction, BATELEC I nevertheless asserts that Ellao was validly dismissed.

The Labor Arbiter affirmed jurisdiction over the complaint. It held that while P.D. No. 279, the law creating the NEA, as amended by P.D. 1645, granted NEA the power to suspend or dismiss any employee of electric cooperatives, the same does not authorize NEA to hear and decide a labor termination case which power is exclusively vested by P.D. No. 442 or the Labor Code, to Labor Arbiters. Thus, assuming jurisdiction over the complaint, the Labor Arbiter held that Ellao was illegally dismissed as the grounds for his dismissal were unsubstantiated.

The NLRC held that BATELEC I is not a corporation registered with the SEC, but that it was formed and organized pursuant to P.D. 269, and that Ellao is not an officer but a mere employee. Accordingly, the NLRC denied BATELEC I's appeal.

The CA found that Ellao, as BATELEC I's General Manager, is a corporate officer. The CA found that under BATELEC I's By-laws, its Board of Directors is authorized to appoint such officers as it may deem necessary. It noted that Ellao was appointed as General Manager by virtue of a board resolution and that Ellao's appointment was duly approved by the NEA Administrator. The CA also found that the position of General Manager is specifically provided for under BATELEC I's By-laws. As such, the CA concluded that Ellao's dismissal is considered an intra-corporate controversy which falls under the jurisdiction of the SEC, now the RTC's, and not with the NLRC.

ISSUE:
Whether Ellao's dismissal is an intra-corporate controversy falling under the jurisdiction of the RTC. (YES)

RULING:

By jurisprudence, termination disputes involving corporate officers are treated differently from illegal dismissal cases lodged by ordinary employees. As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the Labor Arbiter pursuant to Article 217 of the Labor Code, as amended.

By way of exception, where the complaint for illegal dismissal involves a corporate officer, the controversy falls under the jurisdiction of the SEC, because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association.

In *Matling Industrial and Commercial Corporation, et al., v. Ricardo Coros*, the Court held that a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Matling* held that the only officers of a corporation were those given that character either by the Corporation Code or by the By-Laws so much so that the rest of the corporate officers could be considered only as employees or subordinate officials.

Here, the position of General Manager is expressly provided for under Article VI, Section 10 of BATELEC I's By-laws, enumerating the cooperative offices as follows:

> **ARTICLE VI- <u>OFFICERS</u>**
>
> **SECTION 10. <u>General Manager</u>**
>
> b. The management of the Cooperative shall be vested in a General Manager who shall be appointed by the Board and who shall be responsible to the Board for performance of his duties as set forth in a position description adopted by the Board, in conformance with guidelines established by the National Electrification Administration. It is incumbent upon the Manager to keep the Board fully informed

of all aspects of the operations and activities of the Cooperative. The appointment and dismissal of the General Manager shall require approval of NEA. x x x

Evidently, the functions of the office of the General Manager, *i.e.*, management of the Cooperative and to keep the Board fully informed of all aspects of the operations and activities of the Cooperative are specifically laid down under BATELEC I's By-laws itself. **It is therefore beyond cavil that Ellao's position as General Manager is a cooperative office. Accordingly, his complaint for illegal dismissal partakes of the nature of an intra-cooperative controversy. It involves a dispute between a cooperative officer on one hand, and the Board of Directors, on the other.**

B. National Labor Relations Commission

LINO A. FERNANDEZ, *Petitioner,* -versus- MANILA ELECTRIC COMPANY, *Respondent.*
G.R. No. 226002, SECOND DIVISION, June 25, 2018, PERALTA, *J.*

It is a basic principle that the National Labor Relations Commission is "not bound by strict rules of evidence and of procedure." Between two modes of action - first, one that entails a liberal application of rules but affords full relief to an illegally dismissed employee; and second, one that entails the strict application of procedural rules but the possible loss of reliefs properly due to an illegally dismissed employee - the second must be preferred. Thus, it is more appropriate for the National Labor Relations Commission to have instead considered the appeal filed before it as a petition to modify or annul.

Similarly, in the present case, the NLRC Rules of Procedure must be liberally applied so as to prevent injustice and grave or irreparable damage or injury to an illegally dismissed employee. The matter should be remanded to the NLRC for determination of the inclusions to, and the computation of, the monetary awards due to Fernandez.

FACTS:

Petitioner Fernandez was an employee of respondent MERALCO from October 3, 1978 until his termination on September 14, 2000 for allegedly participating in an illegal strike. As a result, he filed a case for illegal dismissal.

Contrary to the conclusion reached by the Labor Arbiter (LA) and the NLRC, the CA declared that Fernandez was illegally dismissed. The CA ruling was sustained in Our Resolution. The judgment became final and executory on May 26, 2008.

During the execution proceedings, both parties filed several motions regarding the inclusions to, and computation of, the monetary awards due to Fernandez. LA Suarez denied, among others, Fernandez's: [1] Urgent Motion to Require MERALCO to Reinstate Fernandez and [2] Motion for Recomputation of Backwages.

Fernandez seasonably filed a Notice of Appeal and Memorandum on Appeal. Realizing the procedural defect, Fernandez filed a Motion to Treat Remedy Previously Filed As Verified Petition With Motion To Admit Original Copy Of The Assailed Order As Part Thereof. He alleged that his remedy was properly verified and certified (against non-forum shopping) and the only technical

issue/discrepancy therein is that it was entitled/treated as "Notice of Appeal and Memorandum of Appeal" instead of a "Verified Petition."

Despite his submissions, the appeal and motion were merely "NOTED WITHOUT ACTION" in the Order of LA Suarez, who opined that these are prohibited pleadings under Section 5 (i) and (j), Rule V of the NLRC Rules. After Fernandez received a copy of the Order on August 14, 2014, he filed a Verified Petitionon August 26, 2014.

On August 29, 2014, the NLRC Fifth Division resolved to deny Fernandez's Verified Petition. His motion for reconsideration was denied. His petition for certiorari before the CA suffered the same fate.

ISSUE:
Whether or not petitioner's notice of appeal may be treated as a verified petition (YES)

RULING:

The sole issue in *Velasco v. Matsushita Electric Philippines Corp.* was whether the NLRC, in noting without action petitioner's Notice of Appeal from the Order issued by the LA during the execution proceedings, committed grave abuse of discretion amounting to lack or excess of jurisdiction. There, Velasco filed a Notice of Appeal before the NLRC after the LA denied her Manifestation and Motion claiming that Matsushita had not complied with the judgment in her favor. In ruling for Velasco, this Court held:

Rule 5, Section 5 of the 2011 Rules of Procedure of the National Labor Relations Commission explicitly provides that an appeal from an order issued by a Labor Arbiter in the course of execution proceedings is a prohibited pleading. This is affirmed by Rule XII, Section 15 of the same Rules. Rule 12, Section 1 provides that, instead of an appeal, the proper remedy is a verified petition to annul or modify the assailed order or resolution.

Nevertheless, while it was an error for petitioner to seek relief from the National Labor Relations Commission through an appeal, it is in the better interest of justice that petitioner be afforded the opportunity to avail herself of the reliefs that this Court itself, in its November 23, 2009 ruling, found to be due to her.

It is a basic principle that the National Labor Relations Commission is "not bound by strict rules of evidence and of procedure." Between two modes of action - first, one that entails a liberal application of rules but affords full relief to an illegally dismissed employee; and second, one that entails the strict application of procedural rules but the possible loss of reliefs properly due to an illegally dismissed employee - the second must be preferred. Thus, it is more appropriate for the National Labor Relations Commission to have instead considered the appeal filed before it as a petition to modify or annul.

Similarly, in the present case, the NLRC Rules of Procedure must be liberally applied so as to prevent injustice and grave or irreparable damage or injury to an illegally dismissed employee. The matter should be remanded to the NLRC for determination of the inclusions to, and the computation of, the monetary awards due to Fernandez.

Without prejudice to the factual findings of the NLRC and the power of review of the CA, We take note of the following for guidance:

Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement **as a matter of right**. The award of separation pay is a **mere exception** to the rule.[31] It is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee.

Reinstatement cannot be barred especially when the employee has not indicated an aversion to returning to work, or does not occupy a position of trust and confidence in, or has no say in the operation of the employer's business.

Here, Fernandez's intent and willingness to be reinstated to his former position is evident as early as July 10, 2008 when he filed his Comment with Motion for Re-computation of Monetary Award. He reiterated this in his Urgent Motionto require MERALCO to reinstate him and in his Comment/Oppositionto MERALCO's motion to declare full satisfaction of his monetary awards.

About three months before Fernandez reached the retirement age of 60 years old in April 2009, MERALCO filed a Motion to Declare Full Satisfaction of Complainant's Monetary Awards Granted in the Decision of the Court of Appeals and the Supreme Court.

MERALCO conveniently claimed that the filing of the case, which had dragged for a long period of time, severed the employee-employer relationship; hence, Fernandez's reinstatement was no longer feasible. Later, it echoed the reasoning of LA Suarez by contending that his alleged participation in the illegal strike definitely tainted the relations of the parties.

The bare allegations of MERALCO, which later on became the basis of a mere presumption on the part of LA Suarez, appear to be without any factual basis. To stress, strained relationship may be invoked only against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement.

Here, the confidential relationship between Fernandez, as a supervisory employee, and MERALCO has not been established. For lack of evidence on record, it appears that his designation as a Leadmanwas not a sensitive position as would require complete trust and confidence, and where personal ill will would foreclose his reinstatement.

Thus, the appeal filed by petitioner Lino A. Fernandez, Jr. before the NLRC is considered as a Verified Petition assailing the June 27, 2014 Order of Labor Arbiter Marie Josephine C. Suarez. The case is remanded to the NLRC for it to resolve the petition with reasonable dispatch.

C. Judicial review of labor rulings

WILFREDO P. ASAYAS, *Petitioner*, -versus- XXX, SEA POWER SHIPPING ENTERPRISES, INC., and/or AVIN INTERNATIONAL S.A., and/or ANTONIETTE GUERRERO, RESPONDENTS.
G.R. No. 201792, THIRD DIVISION, January 24, 2018, BERSAMIN, *J.*

With the service by registered mail being complete, the respondents only had 10 calendar days from the return of the mail within which to appeal in accordance with the Labor Code. When they did not so appeal, the LA's decision became final and executory. With the LA's decision attaining finality, it was no longer legally feasible or permissible to modify the ruling through the expediency of a petition claiming that the termination of the petitioner's employment had been legal. Verily, the decision could no longer be reviewed, or in any way modified directly or indirectly by a higher court, not even by the Supreme Court. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business; and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

FACTS:

Respondent Sea Power Shipping Enterprises employed petitioner Wilfredo Asayas as Third Officer on board the M/T Samaria, a vessel owned by Avin International SA. Prior to the expiration of his employment contract, the shipowner sold the M/T Samaria to the Swiss Singapore Overseas Enterprise. As a consequence of the sale, petitioner was discharged from the vessel and repatriated to the Philippines under the promise to transfer him to the M/T Platinum, another vessel of the respondents. After he was not ultimately deployed on the M/T Platinum, he was engaged to work as a Second Mate on board the M/T Kriti Akti. Before his deployment on board the M/T Kriti Akti, however, the shipowner also sold the vessel to the Mideast Shipping and Trading Limited. Thereafter, he was no longer deployed to another vessel to complete his contract.

Petitioner complained against the respondents in the Philippine Overseas Employment Administration (POEA) demanding the full payment of his employment contract. His claim was settled through a compromise agreement with quitclaim, pursuant to which he received separation pay after deducting his cash advances.

Two months thereafter, petitioner filed another complaint against the respondents for alleged illegal dismissal and non-payment of the unexpired portion of his contract. The Labor Arbiter (LA) rendered a decision declaring the termination of the petitioner's employment as illegal.

The copy of the LA's decision sent to the respondents by registered mail was returned with the notation "Moved Out." Thus, the LA issued a writ of execution. Respondents moved to quash the writ of execution, but the LA denied their motion.

Apprised of the LA's decision upon receipt of the writ of execution, the respondents appealed the LA's decision to the NLRC. However, the NLRC dismissed the respondents' appeal ruling in this wise: “We presume regularity of the service in the absence of proof to the contrary. Since the postal service

stated that the respondents-appellants have moved out of their address on record and since the latter failed to present substantial evidence to disprove it, We find no valid reason to rule otherwise."

After the NLRC denied their motion for reconsideration, the respondents brought their petition for *certiorari* in the CA, submitting that the NLRC committed grave abuse of discretion in dismissing their appeal and denying their motion for reconsideration.

The CA granted respondents' petition fo*r certiorari* thus setting the aside the decision of the Labor Arbiter and dismissing petitioner's complaint for lack of merit. The CA denied the petitioner's motion for reconsideration.

ISSUE

Whether the CA seriously erred in granting the respondents' petition for *certiorari* despite the absence of grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the LA and the NLRC in issuing their decisions and resolutions, in clear derogation of the settled doctrine of conclusiveness of a final and immutable judgment. (YES)

RULING:

It was entirely unwarranted on the part of the CA to have granted the respondents' petition for *certiorari* despite the absence of the showing that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction.

The LA's decision that was served on the respondents by registered mail was returned with the notation "Moved Out." The service of the LA's decision by registered mail was deemed complete five days after the copy of decision sent to the respondents was returned to the NLRC as the sender. Such consequence was unavoidable even if the addressees did not actually receive the copy of the decision. In *Philippine Airlines v. Heirs of Zamora*, the petitioner moved to another address without giving a notice of the change of address to the NLRC. As a result, the copy of the NLRC's decision dispatched to the petitioner's address of record by registered mail was returned. The Court ruled there as follows:

> The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee. Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee.

With the service by registered mail being complete, the respondents only had 10 calendar days from the return of the mail within which to appeal in accordance with the *Labor Code*. When they did not so appeal, the LA's decision became final and executory. With the LA's decision attaining finality, it was no longer legally feasible or permissible to modify the ruling through the expediency of a petition claiming that the termination of the petitioner's employment had been legal. Verily, the decision

could no longer be reviewed, or in any way modified directly or indirectly by a higher court, not even by the Supreme Court. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business; and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

Grave abuse of discretion, as held in *De los Santos v. Metropolitan Bank and Trust Company*, "must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction." Accordingly, the dismissal of the respondents' appeal, being fully warranted and in accord with jurisprudence, did not constitute grave abuse of discretion simply because the NLRC did not thereby act whimsically, or capriciously, or arbitrarily.

ANGELITO N. GABRIEL, *petitioner* –versus- PETRON CORPORATION, ALFRED A. TRIO, and FERDINANDO ENRIQUEZ, *respondents*.
G.R. No. 194575, THIRD DIVISION, April 11, 2018, MARTIRES, *J.*

However, we are constrained from reviewing these issues in the present case because the CA, at the outset, denied Gabriel's motion for extension to file a petition for certiorari and did not make any finding on the presence or absence of grave abuse of discretion. In other words, we cannot dwell on matters covered under Gabriel's petition for certiorari because what was elevated before us via petition for review on certiorari was the CA's denial of his motion for extension. Under these circumstances, we can only look into the legal soundness behind the denial of the motion for extension because of our limited mode of judicial review under Rule 45 of the Rules of Court.

FACTS:

Gabriel was hired by Petron Corporation as Maintenance Technician sometime in May 1987. Owing to his years of service and continued education, Gabriel rose from the ranks and eventually became a Quality Management Systems Coordinator. However, Gabriel did not get any increase in his salary or any additional benefits despite his new position in the company.

Gabriel lamented that he was unable to reap the benefits of his promotion because of a complaint letter filed by Ms. Charina Quiwa. According to his complaint, Gabriel thereafter suffered a series of harassment acts from private respondents as the company interpreted all his acts as violations of its rules and regulations. Hence, Gabriel claimed that he was constructively dismissed from Petron.

The labor arbiter rendered a decision in favor of Gabriel. The NLRC reversed the labor arbiter's ruling and dismissed the complaint against Petron. After his motion for reconsideration was denied, Gabriel turned to the CA for recourse.

Gabriel's counsel on record received the denial of his motion for reconsideration on 14 May 2010, he had sixty (60) days or until 13 July 2010, to file a petition for *certiorari*. However, on 10 July

2010, Gabriel had to file a motion for extension due to time and distance constraints for Gabriel to secure an authentication from the Philippine Consular Office in Australia.

In its 21 July 2010 resolution, the CA denied the motion for extension saying that no extensions are allowed under the amended Rule 65 of the Rules of Court.

In the present petition, Gabriel wants to correct the serious error the CA committed in denying his motion for extension out of sheer technicality. At the same time, Gabriel imputes grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the NLRC for setting aside the findings of constructive dismissal and reversing the decision of the labor arbiter. |||

ISSUE:

(1) Whether the Court can give due course to the petition imputing grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the NLRC without the CA rendering its decision on the petition for review under Rule 65. (NO)

(2) Whether the motion for extension should be granted. (NO)

RULING:

(1) From the CA, a labor case is then elevated to this Court for final review. In reviewing labor cases through a petition for review on *certiorari*, we are solely confronted with whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not whether the NLRC decision on the merits of the case was correct. Specifically, we are limited to:

> (1) Ascertaining the correctness of the CA's decision in finding the presence or absence of grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC's findings; and
>
> (2) Deciding other jurisdictional error that attended the CA's interpretation or application of the law.

However, we are constrained from reviewing these issues in the present case because the CA, at the outset, denied Gabriel's motion for extension to file a petition for *certiorari* and did not make any finding on the presence or absence of grave abuse of discretion. In other words, we cannot dwell on matters covered under Gabriel's petition for *certiorari* because what was elevated before us via petition for review on *certiorari* was the CA's denial of his motion for extension. Under these circumstances, we can only look into the legal soundness behind the denial of the motion for extension because of our limited mode of judicial review under Rule 45 of the Rules of Court.

(2) Under Section 4, Rule 65 of the Rules of Court and as applied in the *Laguna Metts Corporation* case, the general rule is that a petition for *certiorari* must be filed within sixty (60) days from notice of the judgment. In *Labao v. Flores*, however, we laid down exceptions to the strict application of this rule:

However, there are recognized exceptions to their strict observance, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.

Unlike those mentioned exceptions when the period to file a petition for *certiorari* was not strictly applied, we do not find Gabriel's reason to meet the deadline compelling. In the first place, his counsel, who is supposed to be well-versed in our rules of procedure, should have anticipated that Gabriel needed to take his oath before the Philippine Consular Office. By giving Gabriel only one (1) week to comply with this requirement, his lawyer did not give him much time and simply assumed that Gabriel could deliver on time. On the other hand, Gabriel, assuming he really wanted to pursue his case against Petron, could have easily visited the Philippine Consular Office as soon as possible. Instead, he opted to wait for a few days thinking that time was not of the essence.

DEPARTMENT OF AGRARIAN REFORM MULTI-PURPOSE COOPERATIVE (DARMPC), *Petitioner*, VS. CARMENCITA DIAZ, REPRESENTED BY MARY CATHERINE M. DIAZ; EMMA CABIGTING; AND NINA T. SAMANIEGO , *Respondents.*
G.R. No. 206331, THIRD DIVISION, June 04, 2018, Leonen, J.

No court, not even this Court, may thereafter modify, alter, or let alone reverse a final and immutable judgment.The only exceptions are the correction of clerical errors, nunc pro tunc entries that cause no prejudice to the parties, and void judgments.Even when there are facts or circumstances that would render the execution of a final judgment unjust and inequitable, it must be shown that they arose after the finality as to warrant a court's modification or alteration. All litigation must come to an end, however unjust the result of error may appear.

Here, petitioner concedes that the Court of Appeals May 11, 2012 Decision has become final. It even prays for the issuance of a temporary restraining order or writ of preliminary injunction to enjoin the Labor Arbiter from executing the Court of Appeals ruling. However, it has not pointed to, much less alleged, the presence of any exceptions to the doctrine of immutability of judgments.

Facts:

Diaz, Cabigting, and Samaniego worked for the Cooperative as Accounting Clerk, Loan Officer and Verifier, and Lending Supervisor, respectively. On 2003, the accountant of petitioner Cooperative

(DARMPC) discovered that the duplicate original receipts showing the members' cash payments of share capital contributions were missing and unrecovered. Other employees Matel and Sengson confessed to the misappropriation of funds.

On October 26, 2003, Diaz, Cabigting, and Samaniego learned that Matel and Sengson allegedly claimed that they were all in a conspiracy in the anomalous transactions.

Diaz, Cabigting, and Samaniego were placed under a 30-day preventive suspension on October 29, 2003. After the period lapsed, they tried to return to work but were told that the Cooperative had already terminated their employment. This prompted Diaz, Cabigting and Samaniego to file an illegal dismissal case against the Cooperative.

The LA dismissed the complaint on the ground that their dismissal was justified. When appealed to the NLRC, the NLRC upheld the legality of the dismissal but awarded damages since the requirements of procedural due requirements were not observed. Through a petition for Certiorari, the case was elevated to the Court of Appeals.

On May 11, 2012 the CA granted the petition and held that the Cooperative based its dismissal only on the ground of the admission made by Matel and Sengson. Since the cooperative was not able to prove the participation of Diaz, Cabigting and Samaniegoin in the conspiracy, their dismissal was illegal. Hence they are entitled to reinstatement. However, due to the circumstances showing the Cooperative's loss of trust and confidence in them, the Court of Appeals granted separation pay in lieu of reinstatement.

On September 12, 2012, the CA through a resolution denied the Cooperative's motion for reconsideration.

On April 5, 2013, the Cooperative filed an urgent motion to admit attached petition for review on Certiorari. In the motion, Atty. Tamaca, counsel for the Cooperative, alleges that a copy of the Court of Appeals September 12, 2012 Resolution was "misplaced at his office during the holiday season last December when it was served at his office." Further, he claims that he was staying in his province during that period and was busy preparing for elections in Carigara, Leyte. He likewise admits that due to his secretary's resignation, he failed to know that the CA decision had become final and executor and the period to appeal had already lapsed.

ISSUE:

Whether the Petition for Review should be denied for being filed out of time (YES)

Ruling

Failure to file a petition for review on certiorari, or a motion for extension to file it, within the period prescribed under Rule 45, Section 2 results in a party's loss of right to appeal. It is settled that appeal, being a mere statutory right, must "be exercised in the manner and according to procedures laid down by law."Failure to file one's appeal within the reglementary period is fatal to a party's cause, "precluding the appellate court from acquiring jurisdiction over the case."

Petitioner's plea that this Court be liberal in its application of procedural rules is unavailing. A liberal construction of rules of procedure must be based on "justifiable reasons or ... at least a reasonable attempt at compliance with them,"

Evidently, no reasonable attempt has been made by petitioner to comply with the mandatory requirement of filing within the reglementary period. Atty. Tamaca's excuses of failing to monitor the date of the receipt of the Court of Appeals September 12, 2012 Resolution and his electoral activities do not deserve any consideration from this Court.

When petitioner failed to timely file its appeal by certiorari, the Court of Appeals May 11, 2012 Decision and September 12, 2012 Resolution became final and executory, pursuant to Rule 39, Section 1 of the Rules of Court

No court, not even this Court, may thereafter modify, alter, or let alone reverse a final and immutable judgment.The only exceptions are the correction of clerical errors, nunc pro tunc entries that cause no prejudice to the parties, and void judgments.Even when there are facts or circumstances that would render the execution of a final judgment unjust and inequitable, it must be shown that they arose after the finality as to warrant a court's modification or alteration. All litigation must come to an end, however unjust the result of error may appear.

Here, petitioner concedes that the Court of Appeals May 11, 2012 Decision has become final. It even prays for the issuance of a temporary restraining order or writ of preliminary injunction to enjoin the Labor Arbiter from executing the Court of Appeals ruling. However, it has not pointed to, much less alleged, the presence of any exceptions to the doctrine of immutability of judgments.

D. Bureau of Labor Relations

E. National Conciliation and Mediation Board

F. DOLE Regional Directors

G. DOLE Secretary

H. Grievance machinery

I. Voluntary arbitration

GUAGUA NATIONAL COLLEGES, ***Petitioner***, ***v.*** **COURT OF APPEALS, GNC FACULTY AND LABOR UNION AND GNC NON-TEACHING MAINTENANCE LABOR UNION**, ***Respondents***.
G.R. No. 188492, EN BANC, August 28, 2018, BERSAMIN, *J.*

The 10-day period stated in Article 276 should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing the petition for review under Rule 43 of the Rules of Court within 15 days from notice pursuant to Section 4 of Rule 43.

FACTS:

Under Section 5(2) of Republic Act No. 6728 (*Government Assistance To Students and Teachers In Private Education Act*), 70% of the increase in tuition fees shall go to the payment of salaries, wages, allowances and other benefits of the teaching and non-teaching personnel. Pursuant to this provision, the petitioner imposed a 7% increase of its tuition fees for school year 2006-2007.

Shortly thereafter, and in order to save the depleting funds of the petitioner's Retirement Plan, its Board of Trustees approved the funding of the retirement program out of the 70% net incremental proceeds arising from the tuition fee increases. Respondents GNC-Faculty Labor Union and GNC Non-Teaching Maintenance Labor Union challenged the petitioner's unilateral decision by claiming that the increase violated Section 5(2) of R.A. No. 6728.

The parties referred the matter to voluntary arbitration after failing to settle the controversy by themselves. The Voluntary arbitrator rendered decision holding that retirement benefits fell within the category of "*other benefits*" that could be charged against the 70% net incremental proceeds pursuant to Section 5(2) of R.A. No. 6728. Subsequently, the petitioner filed its *Motion to Dismiss*, asserting that the decision of the Voluntary Arbitrator had already become final and executory pursuant to Article 276 of the *Labor Code* and in accordance with the ruling in *Coca-Cola Bottlers Philippines, Inc. Sales Force Union PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc*. The CA denied the Motion to dismiss.The petitioner sought reconsideration,but the CA denied the motion for reconsideration.Hence, the petitioner instituted its petition for *certiorari*.

ISSUE:
Whether or not the CA gravely abuse its discretion in denying the petitioner's *Motion to Dismiss* despite the finality of the decision of the Voluntary Arbitrator pursuant to Article 276 of the *Labor Code*. (NO)

RULING:

A voluntary arbitrator by the nature of her functions acts in a quasi-judicial capacity. There is no reason why her decisions involving interpretation of law should be beyond this Court's review. Administrative officials are presumed to act in accordance with law and yet we do not hesitate to pass upon their work where a question of law is involved or where a showing of abuse of authority or discretion in their official acts is properly raised in petitions for *certiorari*.

Accordingly, the decisions and awards of Voluntary Arbitrators, albeit immediately final and executory, remained subject to judicial review in appropriate cases through petitions for *certiorari*.
In *Volkschel Labor Union, et al. v. NLRC, et al*., on the settled premise that the judgments of courts and awards of [quasi-judicial] agencies must become final at some definite time, this Court ruled that the awards of voluntary arbitrators determine the rights of parties; hence, their decisions have the same legal effect as judgments of a court. In *Oceanic Bic Division (FFW), et al. v. Romero, et al.,* this Court ruled that "a voluntary arbitrator by the nature of her functions acts in a quasi-judicial capacity." Under these rulings, it follows that the voluntary arbitrator, whether acting solely or in a panel, enjoys in law the status of a *quasi-judicial agency* but independent of, and apart from, the NLRC since his decisions are not appealable to the latter.

In other words, the remedy of appeal by petition for review under Rule 43 of the *Rules of Court* became available to the parties aggrieved by the decisions or awards of the Voluntary Arbitrators or Panels of Arbitrators.

In the 2004 ruling in *Sevilla Trading Company v. Semana*, the Court ruled that the decision of the Voluntary Arbitrator became final and executory after the expiration of the 15-day reglementary period within which to file the petition for review under Rule 43. *Manila Midtown Hotel v.*

*Borromeo*also ruled so. The 15-day period was likewise adverted to in the ruling in *Nippon Paint Employees Union-Olalia v. Court of Appeals*, promulgated in November 2004.
In 2005, the Court promulgated the decision in *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc*.,wherein it made reference for the first time to the 10-day period for the filing of the petition for review vis-a-vis decisions or awards of the Voluntary Arbitrator provided in Article 262-A (now Article 276). Within the same year, *Philex Gold Philippines, Inc. v. Philex Bulawan Supervisors Union*applied the period of 10 days in declaring the appeal to have been timely filed.

Thereafter, the Court has variantly applied either the 15-day or the 10- day period as the time within which to appeal the decisions or awards of the Voluntary Arbitrators or Panels of Arbitrators.

The Court opined in *Philippine Electric Corporation (PHILEC) v. Court of Appeals* that despite the period provided in Rule 43, the 10-day period should apply in determining the timeliness of appealing the decision or award of the Voluntary Arbitrator or Panel of Arbitrators.
We ruled that Article 262-A of the Labor Code allows the appeal of decisions rendered by Voluntary Arbitrators. Statute provides that the Voluntary Arbitrator's decision "shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties." Being provided in the statute, this 10-day period must be complied with; otherwise, no appellate court will have jurisdiction over the appeal. This absurd situation occurs when the decision is appealed on the 11th to 15th day from receipt as allowed under the Rules, but which decision, under the law, has already become final and executory.

By allowing a 10-day period, the obvious intent of Congress in amending Article 263 to Article 262-A is to provide an opportunity for the party adversely affected by the VA's decision to seek recourse via a motion for reconsideration or a petition for review under Rule 43 of the Rules of Court filed with the CA. Indeed, a motion for reconsideration is the more appropriate remedy in line with the doctrine of exhaustion. of administrative remedies. For this reason, an appeal from administrative agencies to the CA via Rule 43 of the Rules of Court requires exhaustion of available remedies as a condition precedent to a petition under that Rule.
Hence, the 10-day period stated in Article 276 should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing the petition for review under Rule 43 of the *Rules of Court* within 15 days from notice pursuant to Section 4 of Rule 43.

J. Prescription of actions

1. Money claims

2. Illegal dismissal

3. Unfair labor practice

4. Offenses under the Labor Code

5. Illegal recruitment