**ISABELA-I ELECTRIC COOP., INC. 1. VICENTE B. DEL ROSARIO, JR. G.R. No. 226369, 17 July 2019, 2ND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

In Philippine Industrial Security Agency Corporation vs. Percival Aguinaldo, the Court held that the "Court is fully aware of the right of management to transfer its employees as part of management prerogative. But like all rights, the same cannot be exercised with unbridled discretion. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play."

Demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary. This was exactly what happened to Del Rosario.

Furthermore, In Tinio v. Court of Appeals, the Court sustained the management's decision to transfer Tinio to another position and area of assignment because the transfer could actually be considered a promotion. For Tinio's transfer from the Cebu office to the Makati office entailed greater responsibilities because it would involve corporate accounts of top establishments in Makati which are significantly greater in value than the individual accounts in Visayas and Mindanao. The Court held that the transfer was even beneficial and advantageous since Tinio was being assigned the corporate accounts of the choice clients of SMART. More, the position was of the same level as Senior Manager since the skills and competencies required involved handling the accounts of top corporate clients being among the largest corporations in the country.

The situation in Tinio is not the case here. A thoroughlu discussed by the NLRC and the CA, Del Rosario's new position entailed less responsibilities endless qualification than those pertaining to his former position. In essence, the totality of the circumstances actually obtaining here leads to know other conclusion than that Del Rosario was in fact demoted.

**FACTS**

Isabela-I Electric Coop., Inc. (Isabela) hired Vicente Del Rosario, Jr. (Del Rosario) as a financial assistant who eventually got promoted as the Management Internal Auditor. Isabela then approved a reorganization plan declaring all positions in the company vacant. Consequently, Del Rosario and the other employees opposed the reorganization. Still, Isabela proceeded to implement the reorganization. Del Rosario was then made to fill out a prescribed application form. Eventually, Del Rosario was appointed as a probationary Area Operations Manager. Months later, Del Rosario voiced out his concern addressed to the management that his appointment was a demotion. Thus, he requested to be reinstated to his former position. However, Isabela did not act on this letter.

Del Rosario then filed the complaint for illegal dismissal and damages. The Labor Arbiter (LA) dismissed the complaint, holding that she found no concrete evidence showing that Isabela undertook reorganization for purposes other than saving cost and maxunizing productivity.

Aggrieved, Del Rosario filed an appeal before the National Labor Relations Commission (NLRC). The NLRC reversed the ruling of the LA, holding that Isabela did not present any justifiable reason for not reappointing Del Rosario to his former position. The Court of Appeals (CA) affirmed the ruling of the NLRC.

**ISSUE**

Was Del Rosario constructively dismissed by Isabela?

**RULING**

YES. In Philippine Industrial Security Agency Corporation vs. Percival Aguinaldo, the Court held that the "Court is fully aware of the right of management to transfer its employees as part of management prerogative. But like all rights, the same cannot be exercised with unbridled discretion. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play." The Court then emphasized:

While it is true that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, layoff of workers and the discipline, dismissal and recall of workers (San Miguel Brery Sales vs. Ople, G.R. No. 53515, February 8, 1989), and this right to transfer employees forms part of management prerogatives, the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank or diminution of his salaries, benefits and other privileges, as to constitute constructive dismissal.

Demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary. This was exactly what happened to Del Rosario.

Contrary to Isabela's claim, although Del Rosario's present position bears the appellation "manager," the responsibilities he used to discharge as manager in his former position had been significantly reduced. The Court cite with concurrence the CA's relevant findings, viz:

x x x x Indeed, as correctly pointed out by the NLRC, the position of Management Auditor encompasses a more vast expanse in the Cooperative than the position of Area Manager/Head. Thus, the former position entails more responsibilities and requires a certain qualification that must be complied with as compared to the latter position. Based on the position description attached as "Annex C-1" to private Del Rosario's position paper with the Labor Arbiter, an Internal Audit Manager must be a Certified Public Accountant (CPA) with at least 5 years experience in auditing procedures and a holder of a master's degree in Management or Business Administration. On the other hand, such requirements are not mentioned in the position of Area Manager as seen in private Del Rosario's appointment. Thus, a non-CPA or a non-holder of a master's degree can hold the position of Area Manager. Moreover, the Management A uditor covers the different financial aspects of the Cooperative while the Area Manager position given to private Del Rosario is limited to collection and operation. There is a palpable diminution of responsibilities.

More, Isabela has consistently admitted that Del Rosario is the only-licensed CPA among its employees. In addition, Del Rosario holds a Master's Degree in Business Administration. Isabela also concedes that Del Rosario has been working for the company as auditor continuously for fifteen (15) years before the reorganization. Del Rosario has all the qualifications to continue holding the position of Management Internal Auditor, which after the reorganization, was not abolished. For no apparent reason, Isabela opted to appoint, even in an acting capacity, a non-CPA as Management Internal Auditor. In fine, Isabela arbitrarily, sans any rhyme or reason peremptorily removed Del Rosario from his post as Management Internal Auditor in the guise of a supposed reorganization and exercise of management prerogative.

Furthermore, In Tinio v. Court of Appeals, the Court sustained the management's decision to transfer Tinio to another position and area of assignment because the transfer could actually be considered a promotion. For Tinio's transfer from the Cebu office to the Makati office entailed greater responsibilities because it would involve corporate accounts of top establishments in Makati which are significantly greater in value than the individual accounts in Visayas and Mindanao. The Court held that the transfer was even beneficial and advantageous since Tinio was being assigned the corporate accounts of the choice clients of SMART. More, the position was of the same level as Senior Manager since the skills and competencies required involved handling the accounts of top corporate clients being among the largest corporations in the country.

The situation in Tinio is not the case here. As thoroughly discussed by the NLRC and the CA, Del Rosario's new position entailed less responsibilities and less qualifications than those pertaining to his former position. In essence, the totality of the circumstances actually obtaining here leads to no other conclusion than that Del Rosario was in fact demoted.

**FRANCIVEL DERAMA SESTOSO V. UNITED PHILIPPINE LINES, INC., et al.**

G.R. No. 237063, 23 July 2019, SECOND DIVISION, (Lazaro-Javier, J.)

**DOCTRINE OF THE CASE**

Notably, during the 120-day period within which the company-designated physician is expected to arrive at a definitive disability assessment, the seafarer shall be deemed on temporary total disability and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company-designated physician to be permanent, either partially or totally, as defined under the 2010 POEA-SEC and by applicable Philippine laws. However, if the 120-day 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. But before the employer may avail of the allowable 240-day extended treatment period, the company-designated physician must perform some significant act to justify the extension of the original 120-day period. Otherwise, the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance. If this significant act is performed and an extension was duty made, the obligation of the company-designated physician to issue a final assessment is nevertheless retained, albeit in this instance may be discharged within the extended period of not exceeding 240 days reckoned from the seafarer's repatriation. The consequence for non-compliance within the extended period of the required assessment is likewise the ipso jure grant to the seafarer of permanent and total disability benefits, regardless of any justification.

Here, the records are bereft of any showing that the company-designated physician gave Sestoso a final and definite disability rating within the 120/240 days prescribed. Sestoso was repatriated on February 13, 2015. He was referred to the company-designated physician who gave him medical attention and treatment up to June 26, 2015 or for more than 120 days from bis repatriation. Since Sestoso in fact required further treatment and medical attention beyond the 120-day period, his total and temporary disability was deemed extended. The company-designated physician then had until two hundred forty (240) days from repatriation within which to issue his final assessment of disability on Sestoso. As it was, the company-designated to do so. physician failed to

The letter issued by the company-designated physician on July 28, 2015 is hardly the final assessment required by law. It merely stated that Sestoso underwent thorough treatment from February 27, 2015 to June 4, 2015 due to his Osteoarthritis. The same holds true for his Medical Report dated June 25, 2015, merely noting Dr. Chuasuan's "comments" on Sestoso's medical condition, sans ary definite, nay final disability rating. None of the letters and reports issued by the company-designated physician and by Dr. Chuasuan can be treated as definite and conclusive because Sestoso remains incapacitated beyond the 240-day period. He still feels recurrent pain in his knee which renders him incapable to perform bis usual task as team head waiter in any vessel. Too, there is no showing that he had been re-employed by UPLI or in any vessel for that matter. Indeed, Sestoso's continued unemployment until this very day clearly indicate his total and permanent disability.

Verily, by operation of law, Sestoso's disability became total and permanent for which he is entitled to the corresponding benefits.

**FACTS**

The United Philippine Lines, Inc. (UPLI), on behalf of Carnival Cruise Lines (CCL) hired Francivel Derama Sestoso (Sestoso) as a Team Headwaiter on board M/V Carnival Inspiration for six months. On 2014, as he did his usual work, Sestoso, when he knelt to clean the dining table, felt a sharp pain radiated down his right knee. When the vessel docketed at Los Angeles, California, Sestoso underwent an MRI where it was showed that he had a complex tear of the medial meniscus and degenerative joint changes. The MRI also showed that he had a knee surgery earlier in the year, but nevertheless continued working while on pain relievers until he was repatriated on 2015.

After arriving in the Philippines, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon), the company-designated physician, after a series of examination, referred Sestoso to orthopedic surgeon Dr. William Chuasuan (Dr. Chuasuan). On June 25, 2015, the latter recommeded Sestoso for surgery. Furthermore, Dr. Chuasan opined that Sestoso already reached the maxium medical improvement level. Acting on the suggestion of Dr. Chuasuan, on July 28, 2015 Dr. Cruz-Balbon issued a certification and letter bearing her final diagnosis on him as Ostheoarthritis, Medial Meniscal Tear, Right Knee.

Subsequently, Dr. Cruz-Balbon stopped giving Sestoso medical treatment, since June 25, 2015, despite his further need for further treatment. Neither did the two physicians gave Sestoso a final and definite disability rating within the 120/240-day window. Thus, Sestoso consulted another orthopedic, Dr. Victor Gerardo E. Pundavela (Dr. Pundavela) who diagnosed him with Severe Degenerative Osteoarthritis. After that, Sestoso sued UPLI, CCL and UPLI's owner Fernandino T. Lising (Lising) for total disability benefits.

The Labor Arbiter (LA) awarded Grade 10 disability benefits to Sestoso. According to the LA, alhough Sestoso's illness was found to be pre-existing, he is still entitled to the Grade 10 disability. Before the National Labor Relations Commission (NLRC), Sestoso was awarded permanent and total disability benefits. NLRC stated that Dr. Cruz-Balbon's grading was a mere suggestion, hence, it was not a valid and final disability assessment. Furthermore, Dr. Cruz-Balbon's failure to issue a definite and final disability assessment within 240 days rendered Sestooso disability permanent and total.

However, on appeal before the Court of Appeals (CA), the NLRC's decision was reversed. The appellate court stated that Sestoso's disability was not compensable for it was a pre-existing illness, and that the latter failed to allege and prove that his illness was aggravated by his working conditions. Hence, the 120/240 window should not be applied. Hence, the present petition before the Supreme Court.

**ISSUE**

Is Sestoso entitled to disability benefits?

**RULING**

YES. In Pastor v. Bibby Shipping Philippines, Inc. it was held that during the 120-day period within which the company-designated physician is expected to arrive at a definitive disability assessment, the seafarer shall be deemed on temporary total disability and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company-designated physician to be permanent, either partially or totally, as defined under the 2010 POEA-SEC and by applicable Philippine laws. However, if the 120-day 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. But before the employer may avail of the allowable 240-day extended treatment period, the company-designated physician must perform some significant act to justify the extension of the original 120-day period. Otherwise, the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance. If this significant act is performed and an extension was duly made, the obligation of the company-designated physician to issue a final assessment is nevertheless retained, albeit in this instance may be discharged within the extended period of not exceeding 240 days reckoned from the seafarer's repatriation. The consequence for non-compliance within the extended period of the required assessment is likewise the ipso jure grant to the seafarer of permanent and total disability benefits, regardless of any justification.

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The letter issued by the company-designated physician on July 28, 2015 is hardly the final assessment required by law. It merely stated that Sestoso underwent thorough treatment from February 27, 2015 to June 4, 2015 due to his Osteoarthritis. The same holds true for his Medical Report dated June 25, 2015, merely noting Dr. Chuasuan's "comments" on Sestoso's medical condition, sans any definite, nay final disability rating. None of the letters and reports issued by the company-designated physician and by Dr. Chuasuan can be treated as definite and conclusive because Sestoso remains incapacitated beyond the 240-day period. He still feels recurrent pain in his knee which renders him incapable to perform his usual task as team head waiter in any vessel. Too, there is no showing that he had been re-employed by UPLI or in any vessel for that matter. Indeed, Sestoso's continued unemployment until t continued unemployment until this very day clearly indicate his total and permanent disability.

Verily, by operation of law, Sestoso's disability became total and permanent for which he is entitled to the corresponding benefits.

**THE PENINSULA MANILA AND SONJA VODUSEK 1. EDWIN A. JARA G.R. No. 225586, 29 July 2019, 2ND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Subsection (c) of Article 297 of the Labor Code provides that:

Art. 297. Termination by employer. An employee may terminate an employment for any of the following causes: XXX

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

XXX

For dismissal due to cause under subsection (c), certain requirements must be complied with, viz: (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, record bears significant details pointing to the willfulness of Jara's action showing the breach of the trust reposed in him by Peninsula. That due to the irreconcilable cash count and transaction receipts, Jara deliberately made it appear that the same tallied and even misrepresented such fact to his supervisor. To be able to do this, Jara tampered with the transaction and sales receipts to come up with a balanced cash sales record at the end of his shift. This is pure dishonesty and clearly a violation of the trust reposed in him by his employer.

The Court is mindful of the fact that loss of confidence as a ground for dismissal is prone to abuse because of its subjective nature. It is necessary that the loss of confidence must be founded on clearly established facts sufficient to warrant the employee's separation from work. Hence, when the breach of trust or reason for the loss of confidence is clearly borne by the records, as in this case, the right of the employer to dismiss an employee based on this ground must be upheld.

**FACTS**

Edwin Jara (Jara) worked at the Peninsula Manila (Peninsula) as the captain waiter. Assigned at the closing shift of the Peninsula's buffet restaurant Escolta, Jara was asked to tally the actual cash count with the cash transaction receipts and match it with the data in the computer system. Jara discovered a discrepancy between the actual cash on hand and cash transaction receipts. Thus, Jara reported the same to his supervisor, Jimmy Tabamo (Tabamo), who then made an incident report. However, Jara was then unable to reconcile the excess cash on hand. Eventually, Jara was terminated from employment after the service of a memorandum to explain and the conduct of an administrative hearing.

Jara then filed a complaint for illegal dismissal. The Labor Arbiter (LA) found that Jara was illegally dismissed. On appeal, the National Labor Relations Commission reversed. It held that the dismissal was valid resulting from Jara's dishonesty and misrepresentation. The Court of Appeals (CA) then reversed the ruling of the NLRC. Hence the petition before the Court.

**ISSUE**

Was Jara illegally dismissed?

**RULING**

NO. Article 297 (formerly Article 282) of the Labor Code enumerates the just causes for termination of employment, viz:

Art. 297. Termination by employer. - An employee may terminate an employment for any of the following causes:

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

(b) Gross and habitual neglect by the employee of his duties;

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

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

For dismissal due to cause under subsection (c), certain requirements must be complied with, viz:

(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.

As correctly pointed out by the CA, there are two (2) classes of positions of trust. The first class consists of managerial employees, or those vested with the powers or prerogatives to lay down management policies and to hire, transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. While the second class consists of cashiers, auditors, property custodians, etc. or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. As for the first requirement, Jara indisputably comes within the second class of employees as he is tasked to handle significant amounts of money from sales in Peninsulas' restaurant Escolta. Jara cannot claim otherwise for he would not be entrusted with the duty to balance the sales transactions and actual cash on hand from restaurant sales if he did not have the trust of the management.

Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary. Here, record bears significant details pointing to the willfulness of Jara's action showing the breach of the trust reposed in him by Peninsula. That due to the irreconcilable cash count and transaction receipts, Jara deliberately made it appear that the same tallied and even misrepresented such fact to his supervisor. To be able to do this, Jara tampered with the transaction and sales receipts to come up with a balanced cash sales record at the end of his shift. This is pure dishonesty and clearly a violation of the trust reposed in him by his employer.

By willful, it is meant that the action was voluntary and intentional. To be sure, Jara never claimed that he was forced to do what he did. He committed the dishonest act of his own free will and despite knowledge that he may face liability therefor, even the extreme penalty of losing his job. He maintains that he kept the money in his office locker because in a previous similar incident involving a hotel employee, the employee was excused for keeping the money and turning it over only afterwards.

More, Jara did not immediately report the overage which he kept in his custody. He waited for two days before finally informing Jara's internal auditor about the incident. This casts doubt on Jara's real intention and compromised his alleged good faith. Notably, he was in the hotel the day after the incident in question for he dined at the Escolta to celebrate his birthday. And on the following day was his scheduled day off from work He, thus, had, enough time to report to his supervisor about the unreconciled cash sales record. He did not. He cannot bank on his length of service and supposed pristine track record with the company to save the day for him. On the contrary, as a senior employee, Jara should have been an example to the hotel's younger staff members for honesty and integrity. Jara failed in this respect.

The Court is mindful of the fact that loss of confidence as a ground for dismissal is prone to abuse because of its subjective nature. It is necessary that the loss of confidence must be founded on clearly established facts sufficient to warrant the employee's separation from work. Hence, when the breach of trust or reason for the loss of confidence is clearly borne by the records, as in this case, the right of the employer to dismiss an employee based on this ground must be upheld.

**CARISSA E. SANTO v. UNIVERSITY OF CEBU**

**G.R. No. 232522, 28 August 2019, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

In Elegir v. Philippine Airlines, Inc., the Court decreed that the determining factor in choosing which retirement scheme to apply is superiority in terms of benefits provided. Thus, the Court ruled that even if the employer has an existing retirement scheme but the same does not provide for retirement benefits equal or superior to that which is provided under Article 287 of the Labor Code, the latter will apply. In this manner, the employee can be assured of a reasonable amount of retirement pay for his or her sustenance.

The retirement benefits under Article 287 of the Labor Code, therefore, should be applied in the computation of Santo's retirement pay. It is more advantageous to Santo and it is what the law commands.

**FACTS**

In May 1997, University of Cebu hired Carissa E. Santo (Santo) as a full-time instructor. During her employment, she studied law and passed the 2009 Bar Examinations. She continued working for University of Cebu (UC) until she got qualified for optional retirement under UC's Faculty Manual, wiz

A permanent employee may, upon reaching his fifty-fifth (55th) birthday or after having completed at least fifteen (15) years of service, opt for an early retirement (which is a resignation with separation pay) considering that separation before reaching 15 years of full-time service does not entitle an employee to any separation pay, except that which is contributed by the University to PAG-IBIG), and shall be entitled to the retirement pay equivalent to a total of fifteen (15) days for every year of service based on the average monthly salary to the employee computed for the past three years.

In April 2013, she applied for optional retirement; she was then only forty-two (42) years old but had already completed sixteen (16) years of service with University of Cebu. The latter approved her application and computed her optional retirement pay at fifteen (15) days for every year of service per provisions of the Faculty Manual. She asserted, though, that her retirement pay should be equivalent to 22.5 days per year of service in accordance with Article 287 of the Labor Code (Art. 287 of the Labor Code). University of Cebu refused to accept her computation. Thus, Santo initiated a complaint for payment of retirement benefits under Art. 287 of the Labor Code. For its part, University of Cebu argued that Santo was not covered by the Retirement Pay Law being less than sixty (60) years old at the time of her retirement.

The Labor Artbiter (LA) found that the University of Cebus' retirement package was less than what Art. 287 of the Labor Code prescribed, i.e., 22.5 days for every year of service. However, the National Labor Relations Commission (NLRC), reversed the ruling of the LA. It ruled that Art. 287 of the Labor Code was not intended to benefit Santo who voluntarily resigned not to rest in the twilight years of her life but to actively engage in the practice of the legal profession. Thus, Santo was bound to accept whatever optional retirement benefits were provided under University of Cebus' Faculty Manual as it was not intended to benefit Santo who voluntarily resigned.

When the decision of the NLRC was brought to the Court of Appeals (CA), it affirmed the findings of the NLRC. The CA found that University of Cebu's Faculty Manual referred to the optional retirement benefit as "resignation with separation pay." It was a form of gratuity which University of Cebu granted to its employees who wished to voluntarily terminate their services upon reaching the age of fifty-five (55) or after rendering at least fifteen (15) years of service. As such, the CA ruled that it was different from the retirement benefits granted under Art. 287 of the Labor Code which were intended to help the employee enjoy the remaining years of his or her life after he or she had completely stopped working.

**ISSUE**

Does the retirement scheme of Art. 287 of the Labor Code apply to Santo?

**RULING**

YES. In Article 287 of the Labor Code, as amended by RA 7641, the provision bears two (2) types of retirements: 1) optional at age sixty (60); and 2) compulsory at age sixty-five (65). The law does not make a distinction as to the retirement benefits granted in either case

In the absence of a retirement plan or agreement plan 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 as 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.

Similarly, University of Cebus' Faculty Manual provides for two (2) types of retirements: 1) Optional Retirement; and 2) Compulsory Retirement. To be entitled to optional retirement benefits, an employee must have rendered service for at least fifteen (15) years or must have reached fifty-five (55) years of age. To be entitled to compulsory retirement benefits, an employee must have rendered at least twenty (20) years of service or must have reached sixty (60) years of age, whichever comes first.

Now, comparing the optional retirement benefits under the two (2) retirement schemes, it is apparent that fifteen (15) days' worth of salary for every year of service provided under UC's Faculty Manual is much less than 22.5 days' worth of salary for every year of service provided under Article 287 of the Labor Code. Obviously, it is more beneficial for Santo if Article 287's retirement plan will be applied in the computation of her retirement benefits.

In Elegir v. Philippine Airlines, Inc., the Court decreed that the determining factor in choosing which retirement scheme to apply is superiority in terms of benefits provided. Thus, the Court ruled that even if the employer has an existing retirement scheme but the same does not provide for retirement benefits equal or superior to that which is provided under Article 287 of the Labor Code, the latter will apply. In this manner, the employee can be assured of a reasonable amount of retirement pay for his or her sustenance. The retirement benefits under Article 287 of the Labor Code, therefore, should be applied in the computation of Santo's retirement pay. It is more advantageous to Santo and it is what the law commands.

**JERRY BERING TALAUGON 1. BSM CREW SERVICE CENTRE PHILS., INC., et al. G.R. No. 227934, 04 September 2019, SECOND DIVISION (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Section 20(B) of POEA-SEC provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite. A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

Here, the subject medical report is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician. This is because there was nothing on record showing that the company-designated physician explained in detail the progress of Talaugon's treatment and the approximate period needed for him to fully recover.

**FACTS**

Jerry Bering Talaugon (Talaugon) sued BSM Crew Service Centre Phils., Inc., Bernard Schulte Shipmanagement Ltd., and Danilo Mendoza (BSM Crew Service, et al.) for full disability benefits, damages, and attorney's fees.

Upon Talaugon's repatriation in January 2014, company designated Dr. Robert Lim found him suffering from Hyposthetics (nerve damage). Talaugon, then, underwent an MRI which showed a tumor in his spine, among others, which was excised. Thereafter, another company physician, Dr. William Chuasuan, Jr. found that Talaugon was suffering from a grade 11 disability for slight rigidity or 1/3 loss of motion or lifting power.

The Labor Arbiter awarded Talaugon permanent total disability compensation due to the company-designated physicians failed to make a final assessment of Talaugon's condition within 120/240 window period.

On the other hand, the National Labor Relations Commission (NLRC) modified the award to partial permanent disability for the reason that Dr. Chuasuan, Jr.'s assessment of Talaugon's condition equivalent to grade 11 disability was made within the 120-day period from the latter's repatriation on January 17, 2014. This was affirmed by the Court of Appeals (CA).

**ISSUE**

Is Talaugon entitled to permanent total disability benefits?

**RULING**

YES. Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr. sets the guidelines to determine a seafarer's disability. Based thereon, two requisites must concur for a determination of a seafarer's condition: (a) an assessment must be issued within the 120/240 window, and (b) the assessment must be final and definitive.

Here, the Supreme Court agrees with the CA that the company-designated physician made an assessment on Talaugon's illness within the 120-day period. Records show that Dr. Chuasuan, Jr. declared Talaugon's disability rating as Grade 11 on May 15, 2014, or the 117th day since he was evaluated and had been undergoing continuous medical treatment.

Further, Section 20(B) of POEA-SEC provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite. A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

Here, the medical report is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician. This is because there was nothing on record showing that the company-designated physician explained in detail the progress of Talaugon's treatment and the approximate period needed for him to fully recover.

Lastly, in disability compensation, it is not the injury which is is compensated, but rather it is the incapacity to work resulting in the impairment of one's ear one's earning capacity. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.

Here, given Talaugan's persistent back pain, it is highly improbable for him to perform his usual tasks as oiler in any vessel, thus, resulting in his loss of earning capacity.

**GUIDO B. PULONG D. SUPER MANUFACTURING INC., ENGR. EDUARDO DY AND ERMILO PICO**

**G.R. No. 247819, 14 October 2019, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

By its express language, the law permits employers and employees to fix the employee's retirement age. Absent such an agreement, the law fixes the age for compulsory retirement at sixty-five (65) years, while the minimum age for optional retirement is set at sixty (60) years. Thus, retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of sixty-five (65) years are not per se repugnant to the constitutional guaranty of security of tenure, provided that the retirement benefits are not lower than those prescribed by law and they have the employee's consent. It is axiomatic, therefore, that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process.

In the recent case of Laya, Jr. v. Philippine Veterans Bank, we emphasized the character of the employee's consent to the employer's early retirement policy: it must be explicit, voluntary, free, and uncompelled.

Unfortunately, this is not the case here. In fact, Pulong was not at all shown to have voluntarily acquiesced to SMI's compulsory retirement age of sixty (60).

**FACTS**

Guido B. Pulong (Pulong) filed a complaint for illegal dismissal, non-payment of wages, 13th month pay, damages, and attorney's fees against Super Manufacturing Inc., (SMI). Guido alleged that SMI hired him as a spot welder in its production plant in Quezon City. In May 1998, he and other workers were granted their separation pay following the transfer of SMI's production plant to Calamba City, Laguna. On 1 August 1998, SMI re-employed him as a Senior Die Setter. He had since continued working for SMI.

On 2014, however, Guido was denied entry into SMI's production plant. SMI's Personnel Manager Ermilo Pico showed him a document stating he was compulsory retired since he had already turned sixty (60) years old. Guido refused to sign the retirement papers because he still wanted to work until sixty-five (65) years old. SMI, nevertheless, prevented him from returning work.

Meanwhile, SMI countered that Pulong was not illegally dismissed. SMI stated that Pulong signed a Memorandum of Agreement (MOA) between SMI and its workers, purportedly represented by Safety/Liaison Officer Eduardo K. Abad (Abad), Painter II Glenn B. Bionat (Bionat), and Rewinder I Julio D. Cruz (Cruz). However, Pulong argued that the MOA did not bind him for he was not a signatory therein. Abad, Bionat, and Cruz signed the MOA without authority to represent SMI's workers. As proof, Pulong submitted an Affidavit signed by thirteen (13) workers of SMI declaring they did not authorize Abad, Bionat, and Cruz to sign any contract in their behalf and they were not aware of the MOA; much less, the 60-year threshold for SMI workers.

However, SMI maintained that the MOA was validly entered into by SMI and the workers' representatives. Further, it was argued that Pulong was estopped from claiming that the MOA did not bind him considering he had already availed of the benefits enumerated therein.

Labor Arbiter Danna M. Castillon (LA) ruled that Guido was illegally dismissed, for the reason that SMI failed to prove that the MOA was executed upon consultation with SMI's workers, and that Abad, Bionat, and Cruz were the authorized bargaining agents of its workers.

The National Labor Relations Commission (NLRC) initially affirmed the LA's decision. However, the NLRC reversed its decision, holding that Pulong and his co-workers' acceptance of benefits under the MOA estopped them from assailing its validity, as well as the authority of Abad, Bionat, and Cruz to sign it. This prompted Guido to appeal before the Court of Appeals (CA), which upheld the latest NLRC decision.

Aggrieved, Guido brought the matter to the Supreme Court.

**ISSUES**

(1) Did the CA err in upholding Pulong's compulsory retirement at the age of sixty (60) years under the MOA?

(2) Did Pulong give his consent to the MOA?

(3) Was Pulong estopped from assailing the validity of the MOA?

RULING

(1) YES. Article 287 of the Labor Code, as amended by Republic Act 7641 (R.A. No. 7641) otherwise known as the "New Retirement Pay Law" governs the retirement of employees in the private sector, viz:

Art. 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract. 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 under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement plan 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 as 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. xxx

By its express language, the law permits employers and employees to fix the employee's retirement age. Absent such an agreement, the law fixes the age for compulsory retirement at sixty-five (65) years, while the minimum age for optional retirement is set at sixty (60) years. Thus, retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of sixty-five (65) years are not per se repugnant to the constitutional guaranty of security of tenure, provided that the retirement benefits are not lower than those prescribed by law and they have the employee's consent. It is axiomatic, therefore, that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process.

In the recent case of Laya, Jr. v. Philippine Veterans Bank, the Court emphasized the character of the employee's consent to the employer's early retirement policy: it must be explicit, voluntary, free, and uncompelled.

Unfortunately, this is not the case here. In fact, Pulong was not at all shown to have voluntarily acquiesced to SMI's compulsory retirement age of sixty (60).

(2) NO. SMI has not shown any proof that Abad, Bionat, and Cruz were authorized to represent SMI's workers to sign the January 1, 2013 MOA in their behalf.

It did not even disclose under what capacity or authority they could have represented SMI's workers, including herein Pulong. In fact, the NLRC found that SMI failed to submit any evidence showing that Abad, Bionat, and Cruz were either appointed or elected by their co-workers to represent them in negotiations with SMI. Evidently, the 1 January 2013 MOA is not the "covenant" between SMI and its workers. For Abad, Bionat, and Cruz were not proven to have been chosen by SMI's workers as their true collective bargaining representative. The MOA dated 1 January 2013, therefore, does not govern the employment terms and conditions of SMI's workers, let alone, Pulong's "retirement".

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. In Cercado v. Uniprom, Inc., the Court held that an early retirement plan must be voluntarily assented to by the employees, thus:

Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.

As stated, the MOA here was not assented to by Pulong and his co-workers. It was not executed after consultations and negotiations with the employees' authorized bargaining representative. The MOA, therefore, does not bind Pulong, much less, its provisions on compulsory retirement at age sixty (60). For it was not a result of any bilateral act, instead, it was a unilateral imposition of SMI upon.

(3) NO. The benefits which Pulong received under the 1 January 2013 MOA are the usual gratuities granted to the employees as a matter of company practice.

Pulong's acceptance of these benefits does not equate to his assent to SMI's retirement plan. For Pulong was a mere passive recipient of whatever benefits were given him. Nothing more may be implied therefrom. At any rate, the acquiescence by the employee to an early retirement plan cannot be lightly inferred from his acceptance of employment, or in this case, employment benefits. The acceptance must be unequivocal such that his consent specifically referred to the retirement plan. In early retirement programs, the offer of benefits must be certain while the acceptance to be retired should be absolute.

**VICTORINO G. RANOA v. ANGLO-EASTERN CREW MANAGEMENT PHILS., INC., et al.**

**G.R. No. 225756, 28 November 2019, 1ST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

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 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. More, to speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception.

One. Although the company-designated doctors stated that Ranoa supposedly admitted to them that he was diagnosed with and treated for hypertension and coronary artery disease in 2010, Ranoa had invariably denied it. Notably, AECMP and AECMA themselves had not adduced evidence to prove that indeed, Ranoa was already suffering from hypertension and coronary artery disease as far back as 2010. Thus, without anything to substantiate Ranoa's so-called previous diagnosis, there was nothing he could have concealed from AECMP and AECMA.

Two. Ranoa passed the PEME prior to his boarding. He was declared fit to work by the company-designated doctors. Had Ranoa been already suffering from hypertension and coronary artery disease, this would have been reflected in his physical examination.

Three. Assuming that Ranoa was indeed previously diagnosed with hypertension and coronary artery disease, he still could not be guilty of material concealment. There was no proof that Ranoa "deliberately concealed" his illness for a malicious purpose. It was not shown that Ranoa had the "intent to deceive" and to "profit from that deception." Consequently, Ranoa cannot be considered guilty of concealment as to disqualify him from claiming disability benefits.

**FACTS**

Anglo-Eastern Crew Management Phils., Inc., (AECMP) for, and behalf of its principal, Anglo-Eastern Crew Management Asia Ltd (AECMA)., hired Victorino Ranoa (Ranoa) as Master of its vessel "Genco Bay" for six (6) months with a monthly salary of USD1,943.00.

Ranoa underwent routinary Pre-Employment Medical Examination (PEME) prior to his deployment. Ranoa was asked whether he was aware of, diagnosed with or treated for hypertension and heart disease, among others, to which Ranoa answered in the negative. Thus, based on the results of his PEME, Ranoa was declared fit for sea duty and got subsequently deployed.

Barely two (2) months on board, Ranoa suffered dizziness, vomiting, chest pain, shortness of breath, and cold sweat. Afterwards, Ranoa was brought to a doctor in London who noted his elevated blood pressure. As a result thereof, Ranoa got repatriated. As soon as he was repatriated, he was referred to the company-designated doctors Karen Frances Hao-Quan (Dr. Hao-Quan) and Marianne Sy (Dr. Sy). The two doctors found that Ranoa may be suffering from Dysrhythmia. Dissatisfied, Ranoa sought the opinion of Dr. Antonio Pascual (Dr. Pascual), who found that the former was suffering from Stage 2 hypertension and coronary artery disease and advised him to continue with his medication and treatment. Dr. Pascual further opined that Ranoa was unfit for sea duties.

Notwithstanding the findings of Dr. Pascual, AECMP and AECMA refused to award him total and permanent disability benefits. Hence, Ranoa filed a complaint for permanent total disability benefits before the Labor Arbiter.

The Labor Arbiter (LA) granted Ranoa's claim for total and permanent disability benefits. The LA found that there was no concealment of material fact. Furthermore, the LA held that the company-designated doctors should have required Ranoa to present his previous diagnoses to ascertain all available information surrounding his illness.

Aggrieved, AECMP and AECMA filed an appeal before the National Labor Relations Commission (NLRC). It affirmed the ruling of the LA.

Dissatisfied, AECMP and AECMA filed a petition for certiorari before the Court of Appeals (CA). The CA reversed the decision of the NLRC, holding that while Ranoa was indeed diagnosed, he failed to prove the existence of the circumstances to make the disease compensable under the POEA-SEC. Hence, the recourse of Ranoa before the Supreme Court.

Ranoa argued that he is not guilty of material concealment. Aside from the company-designated doctors' self-serving allegations that he supposedly mentioned to them that he was previously diagnosed with hypertension and underwent coronary angiogram in 2010, there is nothing on record to support the same. Dr. Sy even mentioned that he purportedly showed him and the other doctor a copy of the result of his angiogram. If this were true, Dr. Sy should have then obtained a copy of the same when his treatment was ongoing.

AECMP and AECMA assert that Ranoa's arguments are a mere rehash of the matters already resolved by the Court of Appeals. Ranoa willfully concealed the fact of his previous illness. When he was asked during his PEME whether he got hospitalized due to or whether he was aware of any medical problems like hypertension and heart disease, Ranoa answered in the negative despite knowing full well that he had been diagnosed with this illness and had in fact undergone coronary angiogram. For this, he was even prescribed with certain medications which he took for one (1) year. It was only when he got medically repatriated on May 26, 2013 that he essentially admitted to the company-designated doctors his past diagnoses. Being a pre-existing condition, therefore, Ranoa's illness is non- compensable.

**ISSUES**

(1) Is Ranoa guilty of material concealment of a previous medical condition?

(2) Is referral to a third doctor mandatory?

(3) Is Ranoa entitled to total and permanent disability benefits?

**RULING**

(1) NO. 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 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. More, to speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception.

One. Although the company-designated doctors stated that Ranoa supposedly admitted to them that he was diagnosed with and treated for hypertension and coronary artery disease in 2010, Ranoa had invariably denied it. Notably, AECMP and AECMA themselves had not adduced evidence to prove that indeed, Ranoa was already suffering from hypertension and coronary artery disease as far back as 2010. Thus, without anything to substantiate Ranoa's so-called previous diagnosis, there was nothing he could have concealed from AECMP and AECMA.

Two. Ranoa passed the PEME prior to his boarding. He was declared fit to work by the company-designated doctors. Had Ranoa been already suffering from hypertension and coronary artery disease, this would have been reflected in his physical examination. On this score, Philsynergy Maritime, Inc., et al. v. Columbano Pagunsan Gallano, Jr. is apropos:

At 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, ie., blood pressure test, electrocardiogram, chest x-ray, and/or blood chemistry. However, respondent's PEME showed normal blood pressure with no heart problem, which led the company-designated physician to declare him fit for s sea duty.

Thus, Ranoa cannot be said to have had any pre-existing illness prior to boarding.

Three. Assuming that Ranoa was indeed previously diagnosed with hypertension and coronary artery disease, he still could not be guilty of material concealment. There was no proof that Ranoa "deliberately concealed" his illness for a malicious purpose. It was not shown that Ranoa had the "intent to deceive" and to "profit from that deception." Consequently, Ranoa cannot be considered guilty of concealment as to disqualify him from claiming disability benefits.

(2) YES. The POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time Ranoa was employed in 2013, sets the procedure for disability claims, to wit:

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SECTION 20. COMPENSATION AND BENEFITS.

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:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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.

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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 (e)mployer and the seafarer. The third doctor's decision shall be final and binding on both parties.

As stated, the company-designated doctors here gave Ranoa a Grade 12 disability rating, while Ranoa's chosen physician, Dr. Pascual, opined that Ranoa was suffering from Stage 2 Hypertension and Coronary Heart Disease and concluded that he is "unfit to work as a seaman." Here, there was nothing on record showing that Ranoa had furnished Ranoa with a copy of Dr. Pascual's findings and conclusions. Nor was there anything to show that he informed them of such contrary medical conclusion. Clearly, Ranoa did not "fully disclose the contrary assessment" to AECMP and AECMA as mandated under the POEA-SEC and jurisprudence. For another, in Generato M. Hernandez v. Magsaysay Maritime Corporation, et al., the Court clarified that the initiative for referral to a third doctor should come from the employee, Le., Ranoa himself. He must actively or expressly request for it.

(3) NO. This case is similar to Generato M. Hernandez v. Magsaysay Maritime Corporation, et al., In that case, the NLRC, the Court of Appeals, and the Court invariably found that Hernandez was not guilty of material and fraudulent misrepresentation. But the Court only sustained the Grade 11 rating given him by the company-designated doctor, thus:

The rulings of the labor authorities are seriously flawed because they were rendered in total disregard of the POEA-SEC provision, which are deemed written in the contract of employment, on the prescribed procedure in the resolution of conflicting disability assessments of the company-designated physician and the seafarer's doctor. There is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law between the parties.

It bears to stress that there is no issue as to the compensability of petitioner's health condition since the parties do not dispute that it is work-related. What remains to be resolved is whether he is entitled to the payment of permanent total disability benefits or to that which corresponds to Disability Grade 11 of the POEA-SEC.

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 a 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.

Another, it was the company-designated doctors who examined, treated, and monitored Ranoa from the time he got repatriated. Dr. Pascual, on the other hand, only saw Ranoa once, on April 1, 2014. He did not elaborate on how he came up with the conclusion that Ranoa was unfit for sea duties. He did not even mention the specific physical examinations, if any, which were made on Ranoa, how the latter responded thereto, and what Ranoa's condition was before and after the supposed treatment. A reading of Dr. Pascual's report shows that he based his conclusion on the results of the examinations that the company- designated physicians conducted on Ranoa upon his repatriation.

In fine, as between the company-designated physicians who have all the medical records of Ranoa for the duration of his treatment and as against the latter's chosen physician who merely examined him for a day as an outpatient, the former's finding must prevail.

**RAMON R. MAGADIA v. ELBURG SHIPMANAGEMENT PHILIPPINES, INC. AND ENTERPRISES SHIPPING AGENCY SRL**

**G.R. No. 246497, 5 December 2019, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Two (2) requisites must concur for a determination of a seafarer's medical condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive.

Here, Magadia was repatriated on 23 May 2014. After undergoing medical treatment, the company-designated physician issued an interim Grade 11 disability on 24 September 2014. Magadia's back pain persisted which required him to continue with his medical treatment. Per Medical Report dated 3 October 2014, the company-designated physician issued Magadia a final disability grading of 11, 133 days since he got evaluated. Indeed, the diagnosis was laid down within the extended period of 240 days. But the case does not stop here. The rules also require that the company-designated physician's assessment on a seafarer's illness be final and definitive.

There was nothing on record showing that the company-designated physician explained in detail the progress of Magadia's treatment and the approximate period needed for him to fully recover. Instead, the medical report merely stated that Magadia suffered a disability grading of 11 and that he had reached maximum medical care. Clearly, this is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician because Magadia, in fact, returned to the company-designated physician and underwent further therapy which lasted for almost more than three (3) months or until 6 January 2015.

**FACTS**

Elburg Shipmanagement Philippines, Inc. (Elburg) and Enterprises Shipping Agency SRL (ESA-SRL) hired Ramon Magadia (Magadia) as messman to work on board MV FD Honorable for a period of nine (9) months. On 19 May 2014, he was carrying a garbage bag to the ship's upper deck when he fell from the stairway. Magadia's shoulder hit the steel railings and his body rammed against the floor. He was immediately administered first aid and brought to a hospital in Rio de Janeiro, Brazil. He had an x-ray on his spine and pelvis and got diagnosed with "Herniated Nucleus Pulposus, Lumbosacral Vertebrae."

Magadia got repatriated to Manila on 23 May 2014 and was diagnosed with "L4-L5 and L5-S1 Disc Desiccation; Left Forearm Contusion" by the company-designated physician Dr. William Chuasuan, Jr. (Dr. Chuasuan), based on the results of Magadia's magnetic resonance imaging test.

On 24 September 2014, Dr. Chuasuan issued Magadia an initial disability grading of 11 after he found that Magadia's trunk was within functional range. After further medical treatment, Dr. Chuasuan issued a medical report which opined that Magadia has already reached maximum medical treatment, and he has a final disability grading of 11.

Magadia continued with his treatment and therapy. On 6 January 2015, Dr. Chuasuan assessed Magadia's condition as resolved and stopped his treatment. His back pain, however, persisted. Thus, the next day, he sought the opinion of another physician, Dr. Misael Jonathan A. Ticman (Dr. Ticman), which opined that Magadia is permanently disabled to work and that he is unfit to work as a seaman in any capacity.

Thereafter, Magadia demanded from Elburg and ESA-SRL payment of full disability benefits, but to no avail, prompting him to file a complaint for permanent and total disability benefits and other monetary claims.

The Labor Arbiter (LA) granted Magadia's claim for permanent and total disability benefits amounting to US$60,000.00 representing Magadia's permanent total disability compensation and attorney's fees equivalent to ten percent (10%) of the total monetary award. However, the National Labor Relations Commission (NLRC) on appeal modified the decision. It held that Magadia was only entitled to partial disability benefits.

Magadia brought the matter to the Court of Appeals (CA) which affirmed the decision of the NLRC. It found that the company-designated physician issued a final assessment of Magadia's condition on 3 October 2014 or 133 days since he got repatriated and found his illness equivalent to a disability grading of 11. Since there was a final assessment of Magadia's condition within the 120/240-day period, the company-designated physician's finding was controlling

**ISSUE**

Is Magadia entitled to permanent total disability benefits?

**RULING**

YES. Orient Hope Agencies, Inc. v. Jara set out the following guidelines to determine a seafarer's disability, viz.

(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.

Based thereon, two (2) requisites must concur for a determination of a seafarer's medical condition:

1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive.

Here, Magadia was repatriated on 23 May 2014. After undergoing medical treatment, the company-designated physician issued an interim Grade 11 disability on 24 September 2014. Magadia's back pain persisted which required him to continue with his medical treatment. Per Medical Report dated 3 October 2014, the company-designated physician issued Magadia a final disability grading of 11, 133 days since he got evaluated. Indeed, the diagnosis was laid down within the extended period of 240 days. But the case does not stop here. The rules also require that the company-designated physician's assessment seafarer's illness be final and definitive.

There was nothing on record showing that the company-designated physician explained in detail the progress of Magadia's treatment and the approximate period needed for him to fully recover. Instead, the medical report merely stated that Magadia suffered a disability grading of 11 and that he had reached maximum medical care. Clearly, this is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician because Magadia, in fact, returned to the company-designated physician and underwent further therapy which lasted for almost more than three (3) months or until 6 January 2015.

Magadia's disability is deemed permanent and total by operation of law in the absence of a final and definitive assessment from the company designated physician. Considering Magadia's persistent back pain, it is highly improbable for him to perform his usual tasks as messman in any vessel which effectively disabled him from earning wages in the same kind of work or similar nature for which he was trained. Magadia's disability resulted in his loss of earning capacity and, therefore, entitles him to permanent and total disability benefits.

**PACIFIC METALS CO., LTD., v. EDGAR ALLAN TAMAYO, ERAMEN MINERAL, INC. AND ENRIQUE FERNANDEZ**

**G.R. No. 226920, 5 December 2019, FIRST DIVISIOM, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The principal test to determine if someone is a project employee is whether they were hired for a specific project or undertaking with a duration and scope specified at the time of engagement, as outlined in Article of the Labor Code. Accordingly, it distinguishes between project and regular employees, stating that employment is considered regular if it involves activities necessary or desirable in the usual business of the employer unless it is for a specific project or is seasonal.

Given that Tamayo’s duties as a geologist were essential to PAMCO’s nickel ore importation business, his work was necessary and desirable for the company. Thus, the Court concluded that Tamayo was a regular employee, not a project employee, because his tasks were vital to PAMCO’s operations, and he was continuously re-hired for the same work.

**FACTS**

Pacific Metals Co., Ltd. (PAMCO), a Japanese company importing nickel ore, established a representative office in the Philippine, led by Chitaru Okamura. PAMCO aimed to secure high-quality nickel ore and, in pursuit of this, entered into negotiations with Eramen Minerals, Inc. (ERAMEN), which held a Mineral Production and Sharing Agreement (MPSA) in Sta. Cruz and Candelaria, Zambales. This agreement was intended to facilitate the exploration and potential mining of saprolite ore, a key material for producing stainless steel.

To assist in this venture. PAMCO hired Edgar Allan Tamayo (Tamayo), a licensed geologist, in a two-month contract starting in September 2010, which was extended until January 2011. Tamayo’s role was to manage the exploration activities, including designing drilling programs, assessing data, and managing budgets. In January 2011, PAMCO and ERAMEN formalized their collaboration through and Exploration Agreement, allowing PAMCO to provide financial and technical support, with Tamayo appointed as the exploration manager.

As exploration manager, Tamayo was responsible for project reports, updates, and budget approvals. However, his employment ended on December 31, 2011, as notified by ERAMEN. Feeling aggrieved, Tamayo alleged that his termination was unjust and filed a complaint for illegal dismissal against both PAMCO and ERAMEN. He claimed he was a regular employee rather than a project-based consultant, arguing that his work integral to the companies’ operations and should entitle him to security of tenure and corresponding benefits.

PAMCO countered that Tamayo was hired as a consultant under a fixed-term contract, which concluded as agreed. They emphasized that Tamayo’s contract was clear about his role as a consultant and not a regular employee. ERAMEN supported his stance, stating that Tamayo’s role was a project-based, and his termination followed the project’s completion. They contended that due process was followed, including providing advance notice of termination, and denied any wrongful conduct or bad faith.

**ISSUE**

Was Tamayo a regular employee?

**RULING**

YES. The principal test to determine if someone is a project employee is whether they were hired for a specific project or undertaking with a duration and scope specified at the time of engagement, as outlined in Article 280 of the Labor Code. Accordingly, it distinguishes between project and regular employees, stating that employment is considered regular if it involves activities necessary or desirable in the usual business of the employer unless it is for a specific project or is seasonal.

In this case, PAMCO, asserted that Tamayo was a project employee with a pre-determined contract duration of two months. However, the issue revolves around Tamayo’s subsequent re-hiring as an exploration manager for a project not covered by an employment status, as the nature of one’s work and its relevance to the business are more determinative.

Tamayo worked from January to December 2011, and his termination coincided suspiciously with the completion of his first year, suggesting as attempt to prevent him from becoming a regular employee. According to Article 295 of the Labor Code, an employee becomes regular if they have worked for at least one year or if their tasks are necessary and desirable to the employer’s business.

Given that Tamayo’s duties as a geologist were essential to PAMCO’s nickel ore importation business, his work was necessary and desirable for the company. Thus, the Court concluded that Tamayo was a regular employee, not a project employee, because his tasks were vital to PAMCO’s operations, and he was continuously re-hired for the same work.

**NOLI D. APARICIO and RENAN CLARITO v. MANILA BROADCASTING COMPANAY**

**G.R. No. 220647, 10 December 2019, FIRST DIVISION (Lazaro-Javier,J.)**

**DOCTRINE OF THE CASE**

A valid redundancy program requires the following:

1. written note served on both the employees and DOLE at least 1 month prior the intended date of termination of employment;
2. payment pf separation pay equivalent to at least 1 month pay for every year of service;
3. good faith in abolishing redundant position, and
4. fair and reasonable criteria ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as preferred status, efficiency and seniority among others.

Here Aparicio and Clarito were duly served notices of retrenchment which took effect thirty (30) days later. MBC also submitted its Establishment Termination Report to the DOLE containing the reasons for its adoption and implementation of the redundancy program. Aparicio and Clarito were likewise promptly given their separation pay.

**FACTS**

Noli Aparicio & Renan Clarito (Aparicio & Clarito) worked as radio technicians with Manila Broadcasting Company (MBC). They were both assigned at the transmitter site of DYEZ (local AM Radio) and DZRH (a relaying station and a nationwide AM Radio). They were stationed in Bacolod. On February 28, 2002, they were surprised to receive a Notice from MBC President Roberto Nicdao, Jr., terminating their employment with separation pay effective 30 days from notice.

MBC holds, however, that upon review of the operations of all MBC stations, it revealed several losing stations were subsidized by the more profitable Manila stations. Pursuant to this, then Chairman Elizalde implemented “Hating Kapatid” policy wherein each station was considered independent of the Head Office and will no longer be subsidized. As a result, each station had to review its own manpower. Being one of the losing stations, FFES Bacolod was shut down, and the employees therein were retrenched.

As such, Aparicio & Clarito filed separate complaints for illegal dismissal, reinstatement, backwages, moral damages, exemplary damages, and attorney’s fees against MBC. They alleged that their dismissal was without just or authorized cause. Furthermore, the alleged that their dismissal was without just or authorized cause. Furthermore, the alleged ground of redundancy or retrenchment were not proven.

The Labor Arbiter (LA) ruled that Aparicio & Claritos were illegally dismissed, since there was no evidence that MBC suffered from serious business losses and financial reverses. There was no showing either that is used fair and reasonable criteria in choosing the position to be retrenched. The mechanics of the Hating Kapatid policy was not even explained to itss employees.

On appeal to the National Labor Relations Commission (NLRC), it reversed the decision of the LA, it acknowledged that reorganization is a jurisprudentially acknowledge cost-saving measure. An employer is not precluded from adopting a new policy conducive to a more economical and effective management. The law does not require that financial losses be suffered by the company before it can terminate the services of an employee on the ground of redundancy.

On appeal to the Court of Appeals (CA), it reversed and sent aside the ruling of NLRC with respect to other claimants, for failure of MBC to account for seniority and efficiency when it retrenched the employees. But as for Clarito and Aparicio the decision is upheld.

**ISSUE**

Are Aparicio & Clarito validly dismissed on ground of redundancy?

**RULING**

YES. Aparico & Clarito were validly dismissed on ground of redundancy, as one of the authorized causes for termination of employment under Article 298 of the Labor Code, viz:

Article 298. Closure of Establishment and Reduction of Personnel. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the losing or cessation of operation of the establishment or undertaking unless the closing for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses an in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses of financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Redundancy exists when an employee’s services are in excess of what is reasonably demanded by the actual requirements of the enterprise. While a declaration of redundancy is ultimately a management decision, and the employer is not obligated to keep in its payroll more employees than are needed for its day-to-day operations management must not violate the law nor declare redundancy without sufficient basis.

A valid redundancy program requires the following:

1. written note served on both the employees and DOLE at least 1 month prior the intended date of termination of employment;
2. payment pf separation pay equivalent to at least 1 month pay for every year of service;
3. good faith in abolishing redundant position, and
4. fair and reasonable criteria ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as preferred status, efficiency and seniority among others.

Here, Aparicio and Clarito were duly served notices of retrenchment which took effect thirty (30) days later. MBC also submitted its Establishment Termination Report to the DOLE containing the reasons for its adoption and implementation of the redundancy program. Aparcio and Clarito were likewise promptly given their separation pay.

FFES Bacolod was shut down as relay station of DZRH. Its continued operation was deemed unnecessary because DZRH anyway could be heard in Bacolod through FFES Iloilo. Consequently, Aparicio and Clarito who were both assigned at FFES Bacolod had to go, as well. Courts will not interfere unless management is shown to have acted arbitrarily or maliciously. For it is the management which is clothed with exclusive prerogative to determine the qualification and fitness of an employee for hiring or firing, promotion or reassignment. Indeed, an employer has no legal obligation to keep more employees than are necessary for its business operation.

**CASILDA D. TAN AND/OR C&L LENDING INVESTOR v. LUZVILLA B. DAGPIN**

**G.R. No. 2121111, 15 January 2020, 1ST DIVISION, (Lazaro-Javier,J.)**

**DOCTRIINE OF THE CASE**

Where a party appears by attorney in an action or proceeding in a court of record, all notices must be served on the attorney of record. Service of the court’s order on any person other that the counsel on record is not legally effective, nay, binding on the party; nor may it start the corresponding reglementary period for the subsequent procedural steps which may be taken by the attorney. This rule is founded on considerations of fair play. A party engages a counsel precisely because he or she does not feel competent to deal with the intricacies of law and procedure. When the notice/order is directly served on the party, he or she would have to communicate with his or her attorney and turn over the notice/order to the latter, thereby shortening the remaining period for taking the proper steps to protect the party’s interest.

Here, Dagpin’s counsel of record, Atty. Carin merely instructed Dagpin to refer the case to Atty. Rosal at the tail end of the proceedings before the labor arbiter since he could not then continue practicing law because he failed to comply with the MCLE requirements and he was then attending an IBP Convention in Bacalod City. There is no showing though that he filed a notice of withdrawal or that Dagpin herself declared that she was terminating Atty, Carin’s services. Notices, decisions, and resolutions should have, therefore, been sent to Atty. Carin as Dagpin’s counsel of record. But even assuming that Atty. Carin had indeed withdrawn his representation, notices, decision and resolutions should have at least been served on Atty. Rosal for the latter had also entered his appearance as Dagpin’s counsel. The face that copy of ELA Order dated February 19, 2009 was addressed to “L/ Dagpin c/o Atty. Kenneth P. Rosal” clearly indicated that the NLRC acknowledged Atty. Rosal as Dagpin’s new counsel.

As it was, however, copy of the ELA Order dated February 19, 2009 was served not on Atty. Rosal but directly on Dagpin herself who received it on March 19, 2009. This is not the proper service contemplated by law. Consequently, the reglementary period for appeal was not deemed to have commenced from Dagpin’s receipt of the ELA Order.

**FACTS**

The Labor Arbiter (LA) held Casilda Tan and/or C&L Lending Investor (Tan) liable for illegal dismissal of Luzvilla Dagpin (Dagpin). Aggrieved, Tan filed an appeal before the National Labor Relations Commission (NLRC). The NLRC dismissed the appeal. Persistent, Tan filed a petition for certiorari before the Court of Appeals (CA). The CA then issued a temporary restraining order (TRO) against the enforcement of the LA's decision.

After an entry of judgement was issued, Dagpin filed with the Executive Labor Arbiter (ELA) a motion to admit computation and issuance of writ of execution. Subsequently, the TRO issued by the CA expired. Consequently, the ELA ordered the release of the cash bond filed by Tan in partial fulfillment of the judgment. The CA likewise denied the petition filed by Tan. Thus, Tan filed another motion for approval of computation and issuance of wint of execution. The ELA then denied the motion.

Accordingly, Dagpin filed an appeal memorandum before the NLRC. However, the NLRC dismissed it for having been filed out of time. As a result thereof, Dagpin filed a petition for review before the CA. Accordingly, the CA reversed the ruling of the NLRC, holding that the appeal was timely filed.

Hence, the recourse before the Court.

**ISSUE**

(1) Was the appeal to the NLRC timely filed?

(2) Was the recomputation and an increase in the monetary award after the execution proper?

**RULING**

(1) **YES**. Where a party appears by attorney in an action or proceeding in a court of record, all notices must be served on the attorney of record. Service of the court's order on any person other than the counsel of record is not legally effective, nay, binding on the party; nor may it start the corresponding reglementary period for the subsequent procedural steps which may be taken by the attorney. This rule is founded on considerations of fair play. A party engages a counsel precisely because he or she does not feel competent to deal with the intricacies of law and procedure. When the notice/order is directly served on the party, he or she would have to communicate with his or her attorney and turn over the notice/order to the latter, thereby shortening the remaining period for taking the proper steps to protect the party's interest

In the absence of a notice of withdrawal or substitution of counsel, the court will rightly assume that the counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementaty period

Here, Dagpin's counsel of record, Atty. Carin merely instructed Dagpin to refer the case to Atty. Rosal at the tail end of the proceedings before the labor arbiter since he could not then continue practicing law because he failed to comply with the MCLE requirements and he was then attending an IBP Convention in Bacolod City. There is no showing though that he filed a notice of withdrawal or that Dagpin herself declared that she was terminating Atty. Carin's services. Notices, decisions, and resolutions should have, therefore, been serit to Atty. Carin as Dagpin's counsel of record. But even assuming that Atty. Carin had indeed withdrawn his representation, notices, decisions, and resolutions should have at least been served on Atty. Rosal for the latter had also entered his appearance as Dagpin's counsel. The fact that copy of the ELA Order dated February 19, 2009 was addressed to "L/ Dagpin c/o Atty. Kenneth P. Rosal" clearly indicates that the NLRC acknowledged Atty. Rosal as Dagpun's new counsel.

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(2) **NO**. Execution is the final stage of litigation, the end of the suit Our labor laws dictate that backwages must be computed from the time the employce was unjustly domissed until his or her actual reinstatement or upon payment of his or her separation pay if reinstatement is no longer feasible. Hence, insofar as accrued backwages and other benefits are concerned, the employer's obligation to the employee continues to accumulate until he actually implements the reinstatement aspect of the final judgment35 or fully satisfies the monetary award in case reinstatement is no longer possible.

It is undisputed here that the NLRC Resolution dated July 29, 2004 which affirmed the fact of Dagpin's illegal dismissal and monetary award became final and executory on January 10, 2005. As soon as an entry of judgment thereon was issued on January 17, 2005, the corresponding writ of execution got implemented and satisfied in full.

But this notwithstanding, Tan still opted to fight it out before the Court of Appeals and later, before the Court. As it was, Tan also lost in both fora. The Court's Resolution dated June 23, 2008 dismissing the petition in G.R. No. 182268 became final and executory on August 21, 2008. Notably, there was no modification of the NLRC Resolution dated July 29, 2004 which had been earlier executed and satisfied in Dagpin's favor.

Although Tan formally opposed Dagpin's claims all the way up to this Court, they, nonetheless, yielded to the execution of judgment sought by Dagpin way back in 2005 at the ELA's level. Inasmuch as Tan had already satisfied the final monetary benefits awarded to Dagpin, the latter may not ask for another round of execution, lest, it violates the principle against unjust enrichment.

To emphasize, there is no additional increment which accrued to Dagpin by reason of the Court's Resolution dated June 23, 2008 which did not modify, let alone, alter the long executed judgment of the NLRC.

**COMSCENTRE PHILS., INC. AND PATRICK BOE 1. CAMILLE B. ROCIO G.R. No. 222212, 22 January 2020, FIRST DIVISION (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Article 224 of the Labor Code clothes the labor tribunals with original and exclusive jurisdiction over claims for damages arising from employer-employee relationship. The provision includes claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations.

Here, the controversy was rooted in Rocio's resignation from the company. It is clear that Comscentre Phils., Inc. and Boe's claim for payment is inseparably intertwined with the parties' employer-employee relationship. For it was Rocio's act of prematurely severing her employment with the company which gave rise to the latter's cause of action for payment of "employment bond." Verily, Comscentre Phils., Inc. and Boe's claim falls within the original and exclusive jurisdiction of the labor tribunals.

**FACTS**

In April 2011, Camille B. Rocio (Rocio) was hired by Comscentre Phils., Inc. and its Country Manager Patrick Boe (Comscentre Phils., Inc. and Boe). Eventually, in August 2011, Rocio informed Comscentre Phils., Inc. and Boe of her intention to resign effective September 2011.

Prior to the effectivity of her resignation, Rocio was reminded that she had to pay an "employment bond" of Eighty Thousand Pesos for resigning within twenty-four months from the time she got employed as provided in her employment contract. Thereafter, clarified the provision on the "employment bond" with the Comscentre's Australian Human Resource Manager Lianne Glass (Glass).

Due to this, Rocio was asked to explain on why she should not be subjected to disciplinary action for raising her concerns directly to Glass and for loitering on work hours. This show-cause letter, however, indicated that Rocio was already placed on preventive suspension. Hence, Rocio sued Comscentre Phils., Inc. and Boe for unfair labor practice, illegal suspension, illegal deduction, among others.

The Labor Arbiter (LA) found Rocio's preventive suspension unjustified.

The National Labor Relations Commission (NLRC) affirmed with modification. The NLRC adjusted the computation of Rocio's money claims and deleted the award of damages and attorney's fees. On the other hand, the NLRC ordered the deduction of the "employment bond" claimed by Comscentre Phils., Inc. and Boe from Rocio's total monetary award.

However, the Court of Appeals (CA) nullified the NLRC's directive to deduct the "employment bond" from the total monetary award due to Rocio. It ruled that Comscentre Phils., Inc. and Boe's claim for payment of "employment bond" is within the exclusive jurisdiction of regular courts.

**ISSUE**

Did the CA err when it ruled that Comscentre Phils., Inc. and Boe's claim for payment of "employment bond" fell within the jurisdiction of regular courts?

**RULING**

**YES**. Article 224 of the Labor Code clothes the labor tribunals with original and exclusive jurisdiction over claims for damages arising from employer-employee relationship. The provision includes claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations.

In Bañez v. Valdevilla, the Court elucidated that the jurisdiction of labor tribunals is comprehensive enough to include claims for all forms of damages "arising from the employer-employee relations." Thus, the Court decreed therein that labor tribunals have jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code.

Meanwhile, Supra Multi-Services, Inc. v. Labitigan, thus, held that the "reasonable causal connection with the employer-employee relationship" is a requirement not only in employees' money claims against the employer but is, likewise, a condition when the claimant is the employer.

Here, the controversy was rooted in Rocio's resignation from the company. It is clear that Comscentre Phils., Inc. and Boe's claim for payment is inseparably intertwined with the parties' employer-employee relationship. For it was Rocio's act of prematurely severing her employment with the company which gave rise to the latter's cause of action for payment of "employment bond." Verily, Comscentre Phils., Inc. and Boe's claim falls within the original and exclusive jurisdiction of the labor tribunals.

On this score, the Court further sustain the NLRC's finding that Rocio is liable for payment of "employment bond" pursuant to her undertaking in the employment contract. As such, while Comscentre Phils., Inc. and Boe are liable to Rocio for her illegal suspension and unpaid money claims, Rocio, too, is liable to Comscentre Phils., Inc. and Boe for payment of the "employment bond." Consequently, the NLRC correctly ordered the offsetting of their respective money claims against each other.

**MICHAEL ANGELO T. LEMONCITO D. BSM CREW SERVICE CENTRE PHILIPPINES, INC./BERNARD SCHULTE SHIPMANAGEMENT (ISLE OF MAN LTD.)**

**G.R. No. 247409, 03 February 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

As case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.

Here, there was no categorical statement that Lemoncito is fit or unfit to resume his work as a seaman. By operation of law, therefore, Lemoncito is already totally and permanently disabled.

**FACTS**

BSM Crew Service Centre Philippines, Inc. (BSM), on behalf of its principal Bernard Schulte Shipmanagement (BSS), hired Michael Angelo Lemoncito (Lemoncito) as a motor man for a duration of nine months. After being declared fit to work, Lemoncito boarded MV British Ruby.

While on board, Lemoncito complained of fever and cough productive of whitish phlegm and throat discomfort. His blood pressure reached 173/111, for which he was given medication. Eventually, he was medically repatriated. On February 26, 2016, he was referred to the Marine Medical Services under the care of company-designated doctors Percival Pangilinan and Dennis Jose Sulit. After a series of tests, he was diagnosed with lower respiratory tract infection and hypertension. He was given an interim disability assessment of Grade 12 - "slight, residual or disorder." The company-designated doctors opined that Lemoncito's hypertension was not work-related and caused by other factors.

On July 1, 2016, the company-designated doctors issued their 16th and final report, noting that Lemoncito's lower respiratory tract infection had been previously cleared and his hypertension was responding to medication.

However, Lemoncito consulted another doctor in the name of Dr. Antonio Pascual (Dr. Pascual) who declared the latter as "unfit to work". On such basis, Lemoncito lodge a complaint for total permanent disability benefits. In support, he alleged that he was tasked to take care of all the motors and mechanical equipment on board. He further alleged that despite the treatment given by the company-designated doctors, he never recovered from his illness, making his condition as work-related and compensable.

BSM countered that Lemoncito did not adduce substantial evidence to prove that the nature of his work contributed to his hypertension.

The Panel of Voluntary Arbitrators (PVA) found Lemoncito to be totally and permanently disabled and his hypertension was presumed to be work-related. It also ruled that the company-designated doctors failed to make a fitness assessment within the required 120-day period.

However, the Court of Appeals (CA) reversed the PVA's findings, ruling that the findings of the company-designated doctors were more credible and Lemoncito failed to prove by substantial evidence that he was totally and permanently disabled.

**ISSUE**

Is there a conclusive assessment of the company-designated doctors which attest that Lemoncito is totally and permanently disabled by reason of his hypertension?

**RULING**

NO. There was no valid and definitive assessment of the company-designated doctors.

In Ampo-on v. Reinier Pacific International Shipping, Inc, the Court ruled that:

The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. To be conclusive and to give proper disability benefits to the seafarer, this assessment must be complete and definite; otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored. As case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.

In their final Medical Report dated July 1, 1, 2016, the company-designated doctors stated: "He was previously cleared by the Pulmonologist with regards to his Lower Respiratory Tract Infection. He was seen by the Cardiologist who noted his blood pressure to be adequately controlled with medications. The specialist opines that patient is now cleared cardiac wise effective as of July 1, 2016"

On its face, there was no categorical statement that Lemoncito is fit or unfit to resume his work as a seaman. It simply stated: a) Lemoncito was previously cleared of his lower respiratory tract infection; b) Lemoncito's blood pressure is adequately controlled with medications; and c) Lemoncito was cleared cardiac wise as of July 1, 2016. In other words, this assessment is incomplete, nay, inconclusive.

For instance, the phrase "petitioner's blood pressure is adequately controlled with medications" is too generic and equivocal. It does not give a clear picture of the state of Lemoncito's health nor does it give a thorough insight into Lemoncito's fitness or unfitness to resume his duties as a seafarer. Likewise, the phrase "patient is now cleared cardiac wise" does not provide much information. Does it mean that since he is cleared of any cardiac disease, he is already fit to work as a seafarer? Or does it mean that though he is cleared of any cardiac disease as of July 1, 2016, he still needs further monitoring? Does being cleared of any cardiac disease automatically mean Lemoncito has a clean bill of health? The report does not say.

To repeat, without a valid final and definitive assessment from the company-designated doctors within the 120/240-day period, as in this case, the law already steps in to consider a seafarer's disability as total and permanent. By operation of law, therefore, Lemoncito is already totally and permanently disabled.

**JS UNITRADE MERCHANDISE, INC. v. RUPERTO S. SAMSON, JR.**

**G.R. No. 200405, 26 February 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal.

The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.

In this case, Samson's insistence that he was constructively dismissed, albeit it was disputed, and his act of immediately filing a case for constructive dismissal below, negate JS Unitrade's charge of abandonment.

**FACTS**

Ruperto Samson, Jr. (Samson) filed a complaint for constructive dismissal against JS Unitrade Merchandise, Inc. (JS Unitrade) and its officers, namely, Samuel Po (President), Edwin Bargan (Sales Director) and Luisito Morales (HR Manager).

It was alleged that Samuel Po hired Samson as Key Account Manager and guaranteed bonuses. Samson became a regular employee which he later got promoted to Senior Key Account Manager with an increased salary due to his performance. In view of his excellent performance, Samuel Po and Edwin Bargan directed Samson to further develop the business in the Key Accounts within South Luzon. For this assignment, he was promoted to Associate Area Sales Manager for South Luzon starting February 1, 2007.

However, come mid-2007, Edwin Bargan started to single him out by not appraising his performance from January to June 2007. He was one of the two (2) Key Managers who did not enjoy the performance appraisal bonus. Samson got faulted for alleged gaps and executional flaws in the selling areas though the same were not his fault. Samson was offered the option of being demoted to Senior Key Account Manager or receiving remuneration upon his exit from the company.

Samson, later got replaced by a certain Joy Lim and then, he was assigned to office work without field and personnel supervisory functions and merely performed clerical work.

By September 2007, Samson stopped reporting for work and filed a complaint before the National Labor and Relations Commission (NLRC). Later, the company issued a show cause memo pertaining to the company vehicle and abandonment of his office. Samson claims he was constructively dismissed because he was illegally eased out from his employment by demoting him in an oppressive and malicious manner.

JS Unitrade and its officers averred however that Starting May 2007, Samson's performance started to decline as the inventory for his area was frequently out of stock and coupled with low stock weight. There was also poor execution of promotional activities in Southern Luzon. Samson's low level of performance continued for three (3) months.

The Labor Arbiter (LA) found that Samson's transfer to the head office did not amount to constructive dismissal. Samson impliedly admitted that there were indeed issues with his performance but there was no evidence that he was singled out or discriminated against. Moreover, Samson did not abandon his employment because he in fact immediately filed a complaint for illegal dismissal and reinstatement.

When the case was appealed to the NLRC it reversed the decision of the LA and held that Samson was validly transferred from field work to office work. The company validly exercised its management prerogative in effecting such transfer. The NLRC further held that Samson abandoned his employment. Samson was absent for a month, despite having received three (3) notices to return to work and explain his absence.

Samson then appealed to the Court of Appeals (CA) which reinstated the decision of the LA but deleted the award of backwages. It held that Samson was not constructively dismissed, nor did he abandon his employment.

**ISSUES**

(1) Was Samson illegally dismissed?

(2) Did the CA err when it found that Samson did not abandon his employment?

(3) Is Samson entitled to separation pay?

**RULING**

(1) NO. The issue on constructive dismissal has already been settled with finality by the CA in its assailed Decision dated October 26, 2011 and Resolution dated January 27, 2012. Samson, in fact, no longer questioned the issuances before this Court.

(2) NO. Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under the Labor Code. To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning.

In this regard, two elements must concur:

(1) failure to report for work or absence without valid or justifiable reason, and

(2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.

Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.

Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. In this case, Samson's insistence that he was constructively dismissed, albeit it was disputed, and his act of immediately filing a case for constructive dismissal below, negate JS Unitrade's charge of abandonment.

(3) YES. Since there is no illegal dismissal nor abandonment to speak of here, the logical step would have been to allow Samson to resume his position as Associate Area Sales Manager for South Luzon. As it was, Samson's reinstatement is no longer feasible because of the parties' strained relation.

Indeed, in case the reinstatement is no longer feasible, as in this case, an award of separation pay, in lieu of reinstatement, is justified. The Court has ruled that reinstatement is no longer feasible:

(a) when the former position of the illegally dismissed employee no longer exists; or

(b) when the employer's business has closed down; or

(c) when the employer-employee relationship has already been strained as to render the reinstatement impossible.

The Court likewise considered reinstatement to be non-feasible because a "considerable time" has lapsed between the dismissal and the resolution of the case. Here, the LA and the CA were correct in awarding separation pay in lieu of reinstatement because of the strained relation between JS Unitrade and Samson.

**RICHIE P. CHAND. MAGSAYSAY MARITIME CORPORATION et al.**

**G.R. No. 239055, 11 March 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The Court summarized the rules governing a seafarer's claim for total and permanent disability benefits by a seafarer.

(a) 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;

(b) 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;

(c) 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

(d) 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, while Magsaysay Maritime Corporation et al.'s medical report dated October 29, 2013 claims that Chan reached maximum care and that he was assessed by company doctors to be suffering from a disability Grade 10, there is no concrete proof that said final assessment was actually relayed to Chan within the 240-day period.

**FACTS**

Richie P. Chan (Chan) sued Magsaysay Maritime Corporation (Magsaysay Maritime), CSCS International N/V and/or Ms. Dorns Ho (Magsaysay Maritime Corporation et al) for permanent total disability benefits.

On November 19, 2012, Magsaysay Maritime engaged the services as fireman on board Costa Voyager-D/E. On November 25, 2012, Chan boarded the vessel. On April 2013, he felt a severe pain after he slipped and hit his right knee on the deck during a regular boat drill. He was initially treated at the ship's hospital. His right knee got swollen and he could hardly walk and sleep. He was then brought to a hospital in Turkey and given pain medications. As he could no longer work, Chan was repatriated on May 13, 2013.

Upon Chan's return to the country, he reported to Magsaysay Maritime Corporation et al.'s office and was referred to the company-designated physician at the Marine Medical Center. He was diagnosed with gouty arthritis with meniscal tear and advised to undergo surgery. But since he refused surgery, he was further advised to take medication and rehabilitation instead. On June 24, 2013, he requested more time to decide whether to go through surgery.

On August 16, 2013, the company-designated physician issued Disability Grade 10. Meantime, he was provided further therapy and medication. On August 17, 2013, Chan manifested his decision to undergo surgery. He was admitted to surgery three (3) months after repatriation. His condition did not improve. On October 29, 2013, the company-designated physician noted Chan attained maximum medical cure with Grade 10 disability.

Chan consulted an independent medical expert who declared him unfit for sea duty due to persistent pain on the new. Chan asked Magsaysay Maritime Corporation et al for total permanent disability to no avail.

The Labor Arbiter (LA) ruled in Chan's favor. The LA found that Chan was not informed of the company-designated physician's final assessment after the lapse of 240 days from medical repatriation. The National Labor Relations Commission (NLRC) affirmed the decision. The Court of Appeals (CA) reduced the award to Grade 10.

**ISSUES**

(1) Is the October 29, 2013, medical assessment of the company-designated physician complete, final, and definite?

(2) Is referral to a third doctor mandatory?

(3) Is Chan entitled to total and permanent disability benefits?

**RULING**

(1) NO. The October 29, 2013, medical assessment is not complete, final, nor definite. True, the company-designated physician issued his medical assessment on Chan's disability twice. First, on August 16, 2013, prior to his surgery, and second, on October 29, 2013, after his surgery. But the latter medical assessment fell short of the parameters laid down by jurisprudence as a final medical assessment.

Under the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (POEA-SEC), the company-designated doctor is primarily vested with the responsibility to determine the disability grading or fitness to work of seafarers. To be conclusive, however, the medical assessment or report of the company-designated physician must be complete and definite for the purpose of ascertaining the degree of the seafarer's disability benefits.

In Orient Hope Agencies, Inc. and/or Zeo Marine Corporation v. Michael E. Jara, the Court emphasized the importance of a final and definite disability assessment. It is necessary in order to truly reflect the extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

Here, the medical assessment issued by the company-designated physician cannot be considered complete, final, and definite as it did not show how the disability assessment was arrived at. If at all, the assessment merely stated that Chan had attained maximum medical treatment and declared Chan's disability at Grade 10. A declaration of disability in the medical assessment, without more, cannot be considered complete, final and definitive.

Further, the October 29, 2013 medical assessment was not timely filed nor properly issued.

In Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr., the Court further summarized the rules governing a seafarer's claim for total and permanent disability benefits by a seafarer, viz.:

(e) 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;

(f) 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;

(g) 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

(h) 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, while Magsaysay Maritime Corporation et al 's medical report dated October 29, 2013 claims that Chan reached maximum care and that he was assessed by company doctors to be suffering from a disability Grade 10, there is no concrete proof that said final assessment was actually relayed to Chan within the 240-day period.

In Pastor v. Bibby Shipping Philippines, Inc., the Court ruled that the company-designated physician failed to timely issue a medical assessment of petitioner's disability within the two hundred forty (240)-day extended treatment period, thus, there is no valid assessment to be contested and the law steps in to transform the latter's temporary total disability into one of total and permanent.

(2) NO. 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 one hundred twenty (120)-day or two hundred forty (240)-day period.

Here, there is no occasion for the mandatory third-doctor referral precisely because a complete, final, and definite medical assessment from the company-designated physician is absent, aside from the fact that the so-called October 29, 2013 medical assessment, if at all it exists, was not actually relayed to Chan. To repeat, it is the issuance and the corresponding conveyance to the employee of the final medical assessment by the company-designated physician that triggers the application of Section 20 (A) (3) of the 2010 POEA-SÉC.

(3) YES. In disability compensation cases, it is not the injury which is compensated, but rather, the incapacity to work resulting in the impairment of one's earning capacity. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than one hundred twenty (120) days, or two hundred forty (240) days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether he loses the use of any part of his body.

Here, Chan is rightfully entitled to total and permanent disability benefits.

**ANTHONEL M. MIÑANO STO. TOMAS GENERAL HOSPITAL AND DR. NEMESIAROXAS-PLATON**

**G.R. No. 226338, 17 June 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and manifested by some overt acts. Abandonment as a just ground for dismissal requires the deliberate, unjustified refusal of the employee to perform his employment responsibilities. Mere, absence or failure to work, or even after notice to return, is not tantamount to abandonment

Here, the second element of abandonment is lacking. Aside from Miñano's alleged failure to report for work, STGH and Dr. Roxas-Platon failed to prove that the former had the intention of abandoning his job.

**FACTS**

Anthonel Miñano (Miñano) was hired as a nurse at the Sto. Tomas General Hospital (STGH) owned by Dr. Nemesia Roxas-Platon (Dr. Roxas-Platon). During the holy week, Miñano went on a three-day leave due to some urgent family matters. However, upon returning to work, he received an unwelcome treatment from Dr. Roxas-Platon, and that the latter wanted him to resign.

When Miñano returned to work, his name was still not on the list of duty nurses. Upon inquiring for an explanation, the nursing department told him that Dr. Roxas-Platon did not like him anymore and that he was already dismissed from work. Subsequently, Miñano received a Memorandum of Suspension based on the grounds that he was habitually late in coming to work and for not attending the meeting and sleeping while on duty. However, despite such events, Miñano continued to report to the hospital to inquire about his hospital schedule. After several follow-ups, the Chief Nurse told Miñano that he was dismissed from work. From the foregoing, Miñano filed a case against STGH and Dr. Roxas-Platon for illegal dismissal. More so, after the complaint was filed, STGH sent him a letter requiring him to explain why no disciplinary action should be taken against him, to which Miñano did not comply. Subsequently, a letter was also served to Miñano requiring him to appear before STGH's disciplinary committee, but the former did not show up. Hence, from the foregoing, STGH terminated Miñano's employment on the ground of abandonment.

The Labor Arbiter (LA) ruled in favor of Miñano. On appeal before the National Labor Relations Commission (NLRC), the LA's decision was affirmed. According to the NLRC, Miñano was illegally dismissed since STGH already adjuged him guilty of the alleged infractions, albeit he was not yet informed of the same before the conduct of an investigation. As for the grounds of dismissal, the NLRC stated that STGH failed to prove abandonment as a valid ground since Miñano's immediate filing of the illegal dismissal complaint negated the STGH claim.

However, before the Court of Appeals (CA), the NLRC's decision was reversed on the ground that Miñano failed to prove he was dismissed from employment. Hence, the present petition before the Supreme Court.

**ISSUE**

Was Miñano validly dismissed on the ground of abandonment?

**RULING**

NO. To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and manifested by some overt acts. Abandonment as a just ground for dismissal requires the deliberate, unjustified refusal of the employee to perform his employment responsibilities. Mere, absence or failure to work, or even after notice to return, is not tantamount to abandonment.

Here, the second element of abandonment is lacking. Aside from Miñano's alleged failure to report for work, STGH and Dr. Roxas-Platon failed to prove that the former had the intention of abandoning his job. They failed to establish that Miñano exhibited a deliberate and justified refusal to resume his employment. His mere absence, was not accompanied by any overt act unerringly, pointing to the fact that he simply does not want to work anymore.

The Supreme Court, citing Demex Rattancraft, Inc. v. Leron, stated that an employee's absences and non-compliance with return-to-work notices do not convincingly show a clear and unquivocal intention to sever one's employment. For strained relations caused by being legitimately disappointed after being unfairly treated could explain the employee's hesitation to report back immediately. If any, his actuations only explain that he has grievance, not that he wanted to abandon his work entirely.

Too, Miñano's immediate filing of the complaint after his superior Chief Nurse told him that he was already terminated is a clear indication that had the desire to continue with his employment.

**DOMINGO P. GIMALAY D. COURT OF APPEALS, et al.**

**G.R. No. 240123 & G.R. No. 240125, 17 June 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

In Distribution Control Products, Inc. v. Santos, the Court reiterated that in termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause. Failure to do so necessarily means that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.

Here, the CA erred when it ruled that the charges against Gimalay for violation of company safety procedures were substantiated by concrete and substantial evidence. As for procedural due process, all three (3) tribunals below were unanimous in declaring that Granite Services did not comply with the twin-notice rule. Granite Services did not send a written notice to Gimalay informing him of his alleged infractions, nor was there an investigation where Gimalay could have been given the chance to explain his side. All told, the absence of both substantive and procedural due process in effecting Gimalay's dismissal renders it illegal.

**FACTS**

Domingo P. Gimalay (Gimalay) was employed as a mechanical technician/rigger by Granite Services International, Inc. (Granite Services) on 2004, for project-based employment. He became a regular member of the company's work pool on 2007. His contract required him to work on various projects locally and abroad, with a monthly retainer fee of P18,000.00 when not on assignment.

Gimalay contested his dismissal, leading to a decision by Labor Arbiter (LA) declaring the dismissal illegal due to lack of substantial evidence and due process. The National Labor Relations Commission (NLRC) affirmed this decision with modifications, awarding Gimalay backwages and separation pay based on his monthly salary in Ghana. However, this was reversed by the Court of Appeals (CA) declaring the dismissal valid but awarding nominal damages for procedural lapses.

**ISSUE**

Did the CA err in holding that Gimalay was dismissed for a valid cause?

**RULING**

YES. In Distribution & Control Products, Inc. v. Santos, the Court reiterated that in termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause. Failure to do so necessarily means that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.

Here, the CA erred when it ruled that the charges against Gimalay for violation of company safety procedures were substantiated by concrete and substantial evidence. As for procedural due process, all three (3) tribunals below were unanimous in declaring that Granite services did not comply with the twin-notice rule. Granite Services did not send a written notice to Gimalay informing him of his alleged infractions, nor was there an investigation where Gimalay could have been given the chance to explain his side. All told, the absence of both substantive and procedural due process in effecting Gimalay's dismissal renders it illegal.

An illegally dismissed employee is ordinarily entitled to: (a) reinstatement without loss of seniority rights and other privileges, or in lieu thereof, separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of the employee's illegal dismissal up to the finality of the judgment; and (b) full backwages inclusive of allowances and other benefits or their monetary equivalent computed from the time compensation was not paid to the time of his actual reinstatement.

As for reinstatement, Gimalay has not sought the same way back in the proceedings before the labor arbiter and up until here. On this score, the Court reckons with the pronouncement of the labor arbiter:

x x x this Labor Arbitration Court finds that reinstatement is no longer feasible because of the existence of strained relation between the parties and the respondent's lack of intention to reinstate the complainant by their offer, by way of amicable settlement, of separation pay during the mandatory conference. Notably, the settlement through payment of separation pay failed to materialize because of the parties' disagreement as to the rate of pay to be used. Consequently, petitioner is entitled to backwages of one (1) month for every year of service from the time of his illegal dismissal up to finality of this Decision. As regard the amount of petitioner's backwages, the Court agrees with the labor arbiter that petitioner's monthly retainer/waiting fee of P18,000.00 and not his monthly salary in Ghana (USD900.00 per month) should be used in the computation.

On the award of damages, Leus v. St. Scholastica's College Westgrove, bears the ground rules:

x x x A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner. Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud. It must be noted that the burden of proving bad faith rests on the one alleging it since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. Allegations of bad faith and fraud must be proved by clear and convincing evidence. The records of this case are bereft of any clear and convincing evidence showing that the respondents acted in bad faith or in a wanton or fraudulent manner in dismissing the petitioner. That the petitioner was illegally dismissed is insufficient to prove bad faith. A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without cause.

However, petitioner is entitled to attorney's fees in the amount of 10% of the total monetary award pursuant to Article 111 of the Labor Code. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. x x x

As in Leus, Gimalay failed to show the requisite elements for the award of damages here. He failed to substantiate that Granite Services acted in bad faith, or that his dismissal constitutes an act oppressive to labor, or that his dismissal was done in a manner contrary to good morals, good customs or public policy, or that his dismissal was done in wanton, oppressive, or malevolent manner.

Following both statutory and case law, Gimalay should be paid attorney's fees equivalent to ten percent (10%) of the total monetary award. This is because he was forced to litigate and incur expenses to protect his rights and interest.

**LEONIDES P. RILLERA v. UNITED PHILIPPINE LINES, INC. and/or BELSHIPS MANAGEMENT (SINGAPORE) PTE., LTD.**

**G.R. No. 235336, 23 June 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Section 20 (E) of the POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time Rillera was employed in 2012, provides:

A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified for any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.

Thus, 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 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.

As the CA correctly found, records show that Rillera had already been diagnosed with hypertension during his previous 2009 PEME with another employer. He had been maintained on metoprolol to treat his hypertension. He also got diagnosed with diabetes in 2010 and was treated at Seaman's Hospital and prescribed with metformin as maintenance medicine. But despite personal knowledge of his medical history, Rillera lied about it during his January 2012 PEME. There, he was asked whether he bad suffered from or had been diagnosed with hypertension, heart trouble, rheumatic fever, and/or diabetes mellitus. To this question, he indicated "no" in the form he was made to answer. This is clear from the form that he filled out.

**FACTS**

United Philippine Lines, Inc. (United), on behalf of its principal Belships Management (Singapore) Pte., Ltd. (Belships), hired Leonides Rillera (Rillera) as 3rd Mate on board the vessel Carribean Frontier for nine (9) months.

Prior to his deployment, Rillera underwent routinary Pre-employment Medical Examination (PEME). In the process, he was asked whether he was aware of any illnesses or diseases he is suffering from to which he answered in the negative. Based on the results of his examination, he was declared fit for sea duty and later got deployed

On 2012, Rillera complained of chest pain, shortness of breath, and difficulty in breathing whenever he climbed stairs. He was declared unfit to work and was later medically repatriated. Upon repatriation, Rillera was referred to the company designated doctor at the Marine Medical Services of the Metropolitan Medical Center (MMC).

Afterwards, MMC Assistant Medical Coordinator Dr. Esther Go (Dr. Go) opined that Rillera hypertension and diabetes were hereditary, not work-related. Rillera had a series of check-ups with the company-designated doctors but despite treatments, he was not restored to good health.

On 2013, Dr. Go informed United that the specialists gave the following report on Rillera condition which the specialists opined that Rillera was already cleared for work. Rillera, however, did not accept this finding and informed United that he would be seeking the opinion of other doctors. Upon speaking to other doctors, they declared Rillera to be permanently unfit to resume sea duties.

Based on these findings, Rillera sought total and permanent disability benefits from United but the latter refused to pay on ground that the company-designated doctor had earlier declared Rillera fit to work. Hence, Rillera filed a complaint before the National Conciliation and Mediation Board (NCMB) for permanent and total disability benefits.

The NCMB granted Rillera claim for total and permanent disability benefits and when United appealed to the Court of Appeals (CA), the CA reversed the decision of the lower court stating that that Rillera was disqualified from receiving compensation benefits for knowingly concealing his previous diagnosis with hypertensive cardiovascular disease and diabetes. The fact that Rillera passed his PEME cannot excuse his willful concealment of his illnesses. PEMEs are not exploratory and do not allow the employer to discover any and all pre-existing medical conditions of the seafarer.

**ISSUES**

(1) Is Rillera guilty of material concealment of a previous medical condition?

(2) Did Rillera comply with the conditions prescribed under the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) to entitle him to total and permanent disability benefits?

**RULING**

(1) **YES**. Section 20 (E) of the POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time Rillera was employed in 2012, provides:

A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified for any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.

Thus, 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 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.

More, to speak of fraudulent misrepresentation does not only mean that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception.

Here, the Court agrees with the CA that Rillera fraudulently concealed his hypertension and diabetes.

As the CA correctly found, records show that Rillera had already been diagnosed with hypertension during his previous 2009 PEME with another employer. He had been maintained on metoprolol to treat his hypertension. He also got diagnosed with diabetes in 2010 and was treated at Seaman's Hospital and prescribed with metformin as maintenance medicine. But despite personal knowledge of his medical history, Rillera lied about it during his January 2012 PEME. There, he was asked whether he had suffered from or had been diagnosed with hypertension, heart trouble, rheumatic fever, and/or diabetes mellitus. To this question, he indicated "no" in the form he was made to answer. This is clear from the form that he filled out.

For not disclosing his previous diagnoses and treatment for hypertension and diabetes, Rillera is guilty of material concealment and is disqualified for any compensation and benefits.

(2) NO. The 2010 POEA-SEC states:

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.

It further provides for the conditions before a cardiovascular disease may be deemed compensable, *viz.:*

11. Cardio-vascular events to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:

XXX

d. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A), paragraph 5.

As stated, Rillera knew he was previously diagnosed with and treated for hypertension and diabetes.

His case therefore falls under paragraph (d) above. Rillera, however, failed to show his compliance with the prescribed maintenance medications and doctor-recommended lifestyle changes.

Going now to the contrasting findings of the company designated doctor on one hand, and those of Dr. Vicaldo on the other, the Court reckon with the fact that it was the company designated doctor who examined, treated, and monitored Rillera from the time he got repatriated until he was cleared for work.

In contrast, Dr. Vicaldo only saw Rillera once on April 14, 2013. He did not elaborate on how he came up with the conclusion that Rillera was unfit for sea duties. He did not even mention the tests which Rillera supposedly went through, if any, how the latter responded thereto, and what Rillera's exact condition was before and after these examinations and supposed treatment. Per Dr. Vicaldo's report, he based his conclusion on the results of the same tests that the company-designated doctor did on Rillera.

On this score, Montierro v. Rickmers Marine Agency Phils., Inc. ordained:

Having extensive personal knowledge of the seafarer's actual medical condition, and having closely, meticulously and regularly monitored and treated his injury for an extended period, the company-designated physician is certainly in a better position to give a more accurate valuation of Montierro's health condition. The disability grading given by him should therefore be given more weight than the assessment of Montierro's physician of choice.

In fine, as between the company-designated doctors, who have the complete medical records of Rillera for the entire duration of his treatment and who all opined that Rillera illnesses had been resolved, on one hand, and Rillera's physicians of choice who merely examined him for a day as an outpatient, on the other, the findings of the company-designated physicians must prevail.

All told, the CA did not err when it dismissed Rillera's claim for total and permanent disability benefits.

**ALLAN M. ADOR. JAMILA AND COMPANY SECURITY SERVICES, INC., SERGIO JAMILA III and EDDIMAR O. ARCENA**

**G.R. No. 245422, 07 July 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

In Tatel v. JLFP Investigation Security Agency, Inc., the Court expounded on the nature of "floating status" in security agency parlance, viz: temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. During such time, the security guard does not receive any salary or any financial assistance provided by law. When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.

Here, records show that Ador's security agency only offered him to return to work and renew his documents after being on "floating status" for more than six (6) months already. Jamila Security et al. themselves admitted that they required Ador to renew his documents on December 17, 2012 or seven (7) months reckoned from May 12, 2012 when he was put on "floating status." Further, the three (3) notices to return to work, issued by Jamila Securitys were dated June 29, 2013, July 31, 2013, and August 31, 2013, respectively. These notices were sent to Ador via registered mail after more than one (1) year had elapsed from May 12, 2012. Clearly, Ador's "floating status" extended beyond the maximum six-month period allowed by law. Ador's "floating status" beyond six (6) months sans any valid justification amounted to constructive dismissal. He had already been constructively dismissed long before the security agency served him a notice of termination under Memorandum dated September 31, 2013.

**FACTS**

Allan Ador (Ador) sued Jamila and Company Security Services, Inc. (Jamila Security), its President Sergio Jamila III (Jamila), and HR Manager Eddimar O. Arcena (Arcena) (Jamila Security et al.) for illegal dismissal, underpayment of salary, overtime pay, holiday pay, rest day pay, service incentive leave pay, 13th month pay, ECOLA, night shirt differential, separation pay, unpaid paternity leave benefits, and damages.

Jamila Security hired Ador as a security guard. He worked from Monday to Sunday for 12 hours daily on a shifting basis. After he got involved in a brawling incident against a co-employee, the security agency stopped giving him posting assignments.

Ador talked to Arcena and requested for a new assignment. Arcena instructed him to first renew his security guard license. Ador was surprised when he received three (3) notices bearing Jamila Security et al's plan to terminate him. He gave a letter to the security agency stating that he cannot renew the documents because he did not have money. He was terminated for insubordination.

The Labor Arbiter (LA) found Ador to have been illegally dismissed. The National Labor Relations Commission (NLRC) set aside such decision. The Court of Appeals (CA) ruled that Ador was neither illegally nor constructively dismissed but was on floating status.

**ISSUE**

Did the CA err in ruling that Ador was neither illegally nor constructively dismissed?

**RULING**

YES. In Tatel v. JLFP Investigation Security Agency, Inc., the Court expounded on the nature of "floating status" in security agency parlance, wiz.: temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. During such time, the security guard does not receive any salary or any financial assistance provided by law. When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.

Here, records show that Ador's security agency only offered him to return to work and renew his documents after being on "floating status" for more than six (6) months already. Jamila Security et al. themselves admitted that they required Ador to renew his documents on December 17, 2012 or seven (7) months reckoned from May 12, 2012 when he was put on "floating status." Further, the three (3) notices to return to work issued by Jamila Securitys were dated June 29, 2013, July 31, 2013, and August 31, 2013, respectively. These notices were sent to Ador via registered mail after more than one (1) year had elapsed from May 12, 2012. Clearly, Ador's "floating status" extended beyond the maximum six-month period allowed by law.

Ador's "floating status" beyond six (6) months sans any valid justification amounted to constructive dismissal. He had already been constructively dismissed long before the security agency served him a notice of termination under Memorandum dated September 31, 2013.

Further, Ador was not guilty of insubordination. Willful disobedience or insubordination requires the concurrence of two (2) requisites: (1) the employee's assailed conduct must have been willful which is characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

First, Ador was not able to immediately reply because the notices were only sent to him on August 23, 2013, September 6, 2013, and October 4, 2013, as shown in the stamps of the registered mails. Further, Ador explained in writing that he cannot afford to renew his documents for lack of money. At that time, he was not anymore receiving any salary as security guard.

Second, the three (3) notices to report for work sent to Ador were merely general return-to-work orders which did not specify the required details of his posting assignment. They merely directed Ador to report to the security agency's office and explain why he failed to comply with the orders, nothing more.

Notices to report for work allegedly violated by Ador could hardly qualify as specific, reasonable, and sufficiently known to him. The allegation of insubordination here was an obvious attempt on the security agency's part to justify Ador's dismissal from employment. Not every case of insubordination or willful disobedience of an employee of a work-related order is penalized with dismissal. There must be "reasonable proportionality" between the willful disobedience and the penalty imposed therefor.

**INTERCONTINENTAL BROADCASTING, CORPORATION v. ANGELINO B. GUERRERO**

**G.R. No. 229013, 15 July 2020, FIRST DIVISION, (Lazaro-Javier,J.)**

**DOCTRINE OF THE CASE**

Article 297 of the Labor Code outlines the acceptable grounds for termination, including serious misconduct, gross neglect of duties, fraud, criminal acts, and similar causes. For dismissal to be justified, neglect must be both gross and habitual, and misconduct must involve wrongful intent.

The Court also noted that IBC 13’s delay in addressing Guerrero’s alleged issues undermined the claim of serious misconduct. Guerrero’s late reporting in November 2012 was due to a lack of notification about a change in his work schedule, and the single instance of late reporting in November 2012 was insufficient to establish gross misconduct. Additionally, Guerrero’s action regarding his DTR did not amount to tampering or falsification, and the claim of loss of confidence was not substantiated.

**FACTS**

In September 1986, Intercontinental Broadcasting Corporation (IBC 13) employed Angelino B. Guerrero (Guerrero) as a Technical in its Technical Operation Center (TOC). His duties included monitoring equipment, sending signals to the transmittal, and reporting malfunctions. In 2009, IBC 13 assigned the additional task of logo superimposition to TOC personnel, including Guerrero, despite it being outside their primary responsibilities. Conflicts between regular duties and additional tasks were to prioritize regular duties.

In July 2012, Guerrero was issued a memorandum for negligence due to lapses such as failing to superimpose logos during commercial breaks and sleeping on duty. He responded by invoking his right to remain silent. Guerrero later faced formal charges for gross negligence, misconduct, insubordination, tampering with his Daily Time Record (DTR), and reporting late. He denied the allegations, claiming insufficient resources and lack of prior notice for schedule changes.

IBC 13's Administrative Committee (ADCOM) recommended Guerrero's termination based on the charges, which included gross negligence, misconduct, and tampering with records. IBC 13 approved the recommendation, leading Guerrero to sue for illegal dismissal, unpaid wages, damages, and attorney's fees, arguing that his dismissal was unjust and lacked sufficient evidence.

**ISSUE**

Was Guerrero illegally dismissed?

**RULING**

**YES**. In termination cases, the employer bears the burden of proving that the dismissal is for a just and valid cause supported by substantial evidence. Substantial evidence is defined as that which a reasonable mind might accept as adequate to justify a conclusion. In this case, the Court of Appeals found that IBC 13 failed to present substantial evidence to justify the dismissal of Guerrero.

Article 297 of the Labor Code outlines the acceptable grounds for termination, including serious misconduct, gross neglect of duties, fraud, criminal acts, and similar causes. IBC 13 terminated Guerrero on the grounds of gross negligence, gross misconduct, breach of confidence, and tampering with records. For dismissal to be justified, neglect must be both gross and habitual, and misconduct must involve wrongful intent. The Court determined that Guerrero's lapses did not amount to gross negligence since they occurred in the context of temporary, additional tasks outside his primary duties, and there was no evidence of wrongful intent.

The Court also noted that IBC 13's delay in addressing Guerrero's alleged issues undermined the claim of serious misconduct. Guerrero's late reporting in November 2012 was due to a lack of notification about a change in his work schedule, and the single instance of late reporting in November 2012 was insufficient to establish gross misconduct. Additionally, Guerrero's actions regarding his DTR did not amount to tampering or falsification, and the claim of loss of confidence was not substantiated.

The Court ruled that Guerrero's dismissal was illegal, entitling him to reinstatement with full back wages, less a six-month suspension. Guerrero was also awarded attorney's fees and legal interest on the monetary awards. However, damages were not granted due to the lack of evidence of bad faith by IBC 13.

**ARIEL ESPINA, et al. v. HIGHLANDS CAMP/RAWLINGS FOUNDATION, INC. and JAYVELYN PASCAL**

**G.R. No. 220935, 28 July 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**EDWIN ADONA, et al. v. HIGHLANDS CAMP/RAWLINGS FOUNDATION, INC. and JAYVELYN PASCAL**

**G.R. No. 219868, 28 July 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Seasonal employees are those whose work or engagement is seasonal in nature and their employment is only for the duration of the season. Seasonal employment operates much in the same way as project employment, albeit it involves work or service that is seasonal in nature or lasting for the duration of the season. As with project employment, although the seasonal employment arrangement involves work that is seasonal or periodic in nature, the employment itself is not automatically considered seasonal so as to prevent the employee from attaining regular status. To be classified as seasonal employees, two (2) elements therefore, must concur: (1) they must be performing work or services that are seasonal in nature; and (2) they have been employed for the duration of the season.

Here, records show that Highlands' business is not seasonal. Highlands may have high or low market encounters within a year, or by its own terms, "peak and lean seasons" but its camping site does not close at any given time or season. Moreover, Espina et al. and Adona et al. did not perform work or services that are seasonal in nature; not for just a specific period. They served as cooks, cook helpers, utility workers, and service crew in Highlands' camping site regardless if it was the peak or lean season for campers. From 2000 to 2010, they regularly reported for work from January to June. They were on call from July to September. For the entire month of October, they reported for work on a daily basis. The very nature of Highlands' business operations demonstrate that Espina et al. and Adona et al.'s employment was not limited to a specific season only. Lastly, records are bereft of any evidence showing that Espina et al. and Adona et al. freely entered into an agreement with Highlands to perform services for a specific period or season only.

**FACTS**

Two (2) groups of employees filed separate complaints for illegal dismissal, non-payment of overtime pay, holiday pay, and 13th month pay against Highlands Camp/Rawlings Foundation, Inc. (Highlands) and Jayvelyn Pascal.

Espina et al. and Adona et al. averred that Highlands hired them as cooks, cook helpers, utility workers, and service crew in its camping site in Zambales. For ten (10) years, they regularly reported for work from January to June. They were on call from July to September. Every start of the year, Highlands required them to submit their biodata, medical clearances, medical health card, and Social Security number. In 2011, after submission of rehiring requirements, Highlands informed them that they will be called once the campers arrive. But Highlands never did. Later, they discovered that new employees got hired instead of them. Highlands contended that Espina et al and Adona et al. are seasonal employees whose work was only for a specific season.

The Labor Arbiter (LA) ruled that Espina et al. and Adona et al. were regular employees, not mere seasonal workers. The National Labor Relations Commission (NLRC) affirmed with modification, awarding Espina et al. and Adona et al. holiday pay and directing the LA to recompute the total award due to Espina et al. and Adona et al. The NLRC ruled that Highlands failed to present Espina et al. and Adona et al's employment contracts which raised a serious question whether they were properly informed of their employment status and the duration of their employment. It emphasized that per Highlands' summary of reservation/bookings from 2000- 2011, its business operated not for a particular season but for the whole year. The Court of Appeals (CA) reversed such decision and ruled that Espina et al. and Adona et al. were seasonal employees.

**ISSUE**

(1) Were Espina et al and Adona et al. seasonal employees?

(2) Was their dismissal valid?

**RULING**

(1) **NO**. Under the law, regular employees are those engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer. 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. Also, if the employee has been performing the job for at least one (1) 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.

On the other hand, seasonal employees are those whose work or engagement is seasonal in nature and their employment is only for the duration of the season. Seasonal employment operates much in the same way as project employment, albeit it involves work or service that is seasonal in nature or lasting for the duration of the season. As with project employment, although the seasonal employment arrangement involves work that is seasonal or periodic in nature, the employment itself is not automatically considered seasonal so as to prevent the employee from attaining regular status. To be classified as seasonal employees, two (2) elements therefore, must concur: (1) they must be performing work or services that are seasonal in nature; and (2) they have been employed for the duration of the season.

Here, Espina et al. and Adona et al. are not seasonal employees as Highlands failed to show that the elements of season employment are present.

First, records show that Highlands' business is not seasonal. Highlands may have high or low market encounters within a year, or by its own terms, "peak and lean seasons" but its camping site does not close at any given time or season. In fact, Highlands operate and regularly offers its camping facilities to interested clients throughout the year. In Philippine Fruit & Vegetable Industries, Inc. v. National Labor Relations Commission, the Court emphasized that an employer's continuous operation throughout the year negates the claim that its business is seasonal in nature.

Second, Espina et al. and Adona et al. did not perform work or services that are seasonal in nature; not for just a specific period. They served as cooks, cook helpers, utility workers, and service crew in Highlands' camping site regardless if it was the peak or lean season for campers. From 2000 to 2010, they regularly reported for work from January to June. They were on call from July to September. For the entire month of October, they reported for work on a daily basis. In November or December, they were again on call depending on the number of campers. As it was, Espina et al. and Adona et al.'s services as cooks, cook helpers, utility workers, service crew, etc. could hardly be considered "seasonal." The very nature of Highlands' business operations demonstrate that Espina et al. and Adona et al.'s employment was not limited to a specific season only.

Lastly, records are bereft of any evidence showing that Espina et al. and Adona et al. freely entered into an agreement with Highlands to perform services for a specific period or season only.

Espina et al and Adona et al. are regular employees. Employment status depends on the activities performed by the employee and in some cases, the length of time of the performance and its continued existence. The fact that Highlands required Espina et al. and Adona et al. to apply for reemployment every year does not bar them from being regularized. Further, even if it were true that Espina et al. and Adona et al. worked for three (3) months only in a given year, their repeated hiring for the same services for the past ten (10) years confers upon them the status of regular employment.

(2) **NO**. As regular employees, Espina et al. and Adona et al. cannot be terminated from employment without any just and/or authorized cause. Surely, Highlands' unilateral refusal to "rehire" them, sans any valid reason amounted to illegal dismissal.

**LEONARDA JAMAGO SALABE 1. SOCIAL SECURITY COMMISSION AND MARINO TALICTIC, IN HIS CAPACITY AS OFFICER-IN-CHARGE AND BRANCH HEAD, SSS-TAGBILARAN CITY BRANCH**

**G.R. No. 223018, 27 August 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Retirement laws, in particular, are liberally construed in favor of the retiree because their objective is to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood. Indeed, retirement laws are liberally construed and administered in favor of the persons intended to be benefited, and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose.

Here, it is undisputed that Leonarda Jamago Salabe is entitled to the retirement benefits from the SSS. Salabe was able to establish the following: (a) she is a covered employee, (b) paid at least 120 contributions prior to the semester of her retirement, (c) has reached the age of 60, and (d) is not receiving monthly compensation of at least P300.00. Consequently, she is eligible for retirement benefits.

**FACTS**

Leonarda Jamago Salabe (Salabe) worked as a helper in the carinderia of one Ana Macas. By virtue of this employment, Ana registered her for social security purposes. Thus, Salabe became a bona fide member of the Social Security System (SSS).

After Salabe's employment with Ana, she continued her membership with SSS as a voluntary paying member and diligently paid her monthly premiums for a total of one hundred thirty-seven (137) contributions. When she reached the age of sixty (60), she filed an application for retirement benefits with the SSS which got approved. That same year, she started receiving a monthly pension of P1,362.75.

Sometime in 2001, however, the SSS suddenly and unilaterally terminated her monthly pension. She was informed by a Marino B. Talictic (Talictic) that her membership was cancelled for there was purportedly no employer-employee relationship between her and Ana. As argued by the SSS, it was incumbent upon Salabe to prove the fact of her employment with Ana Macas by clear and convincing evidence. As it was, however, she only offered self-serving affidavits uncorroborated by documentary proof. Thus, Salabe's retirement pension was cancelled.

On the other hand, Salabe averred that the testimonial evidence of the claimant and her witnesses constitute positive and credible evidence of the existence of an employer-employee relationship, relying on Social Security System vs. Court of Appeals.

The Social Security Commission (SSC) found that Salabe failed to prove her employment with Ana Macas. The SSC concluded that most of Ana's supposed employees, including Salabe, were not legitimate employees at all. Rather, their employments were mere accommodations for purposes of qualifying them as members of the SSS. In the absence of an employer-employee relationship, Salabe could not be deemed a bona fide member of the SSS. Consequently, she could not have paid contributions either as a covered employee or as a voluntary member.

The Court of Appeals (CA) affirmed the factual findings of the SSC and ruled in favor of the SSS on the ground that Salabe was not a legitimate employee of Ana.

**ISSUE**

Is Salabe entitled to retirement benefits from the SSS?

**RULING**

**YES**. In GSIS vs. Montesclaros, the Court pronounced that where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause. No law can deprive such person of his pension rights without due process of law, that is, without notice and opportunity to be heard.

Here, the SSS violated Salabe's constitutional right to due process of law first, when it unilaterally canceled her membership and retirement pension without affording her an opportunity to be heard, second, when it implemented the cancelation of her membership and retirement pension despite the absence of a final ruling to that effect, and third, when it failed to notify Salabe of the cause of the cancelation until seven (7) years later.

Salabe's pension benefits were unilaterally cancelled by the SSS based on its investigation against Ana who allegedly failed to prove that she actually had employees in her carinderia. It bears stress, however, that Salabe was never a party to the investigation against Ana. Thus, Salabe could not have possibly been bound by the results thereof. Indeed, a decision rendered in a proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a proceeding in which he or she is not a party. The exception to this rule- successors in interest, is inapplicable here since Ana's interest as the purported employer is surely different from the interest of her purported employee Salabe. Hence, the cancelation of Salabe's SSS membership had no factual or legal basis.

Moreover, when the SSS approved her application despite knowledge of Ana's supposed fraudulent scheme, Salabe obtained a vested right to her pension benefits. Consequently, though not estopped, the SSS could not have deprived her of these benefit without due process.

Further, the Court ruled that the deprivation of her right to due process notwithstanding, Salabe was nevertheless able to prove that she was an employee at Ana's carinderia. At any rate, the Court does not only take these documents and testimonies at face value, but also considers Salabe's circumstances, including the lapse of thirty (30) years since her separation from her employment with Ana. Also, Ana had already passed away, making any record or papers in her possession even more difficult, if not impossible, to procure. Thus, it would be contrary to the dictates of fair play and justice to demand Salabe to submit pay slips, time sheets, or any other paper documentation of her employment.

Indeed, the Court has consistently ruled that there is no hard and fast rule designed to establish the elements of an employer-employee relationship. Some forms evidence that have accepted to establish the elements include, but are not limited to, identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payroll, organization charts, and personnel lists, among others. Too, the Court has also accepted witnesses' testimonial evidence to sufficiently establish employer-employee relationship, as here.

Even applying the more stringent standards of the four-fold test, Salabe satisfied its requisites in establishing her employment. To be sure, the elements 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. Salabe and her witnesses proved: first, Ana personally hired Salabe as helper; second, Ana paid Salabe a daily wage of P30.00, albeit on a weekly or monthly basis; third, corollary to the power to hire, Ana could have fired Salabe; fourth and most importantly, Ana as owner directly supervised Salabe in her work as helper or dishwasher.

Even with the testimonies and affidavits offered by Salabe, the SSC essentially found it unbelievable that a carinderia with a maximum of six (6) tables employed twenty (20) workers to operate. With these "doubtful" figures, it had the "obvious conclusion" that the hiring of majority, if not all, of these purported employees was done for accommodation. To this, the Court does not agree with the SSC.

First, the SSC had no actual basis for its conclusion that Ana had fake employees. Second, assuming arguendo that most of Ana's workers were indeed merely accommodated to be registered under the system, the SSC did not establish with substantial evidence that Salabe was one of them. Finally, Ana's failure to comply with reportorial requirements merely called for the application of Section 24 of R.A. No. 1161. The provision does not mandate the automatic cancellation of the membership of the covered employee.

Weighed against SSC's bare assertion, the Court found Salabe's position to be more tenable. The SSC should not have made a sweeping cancellation of the membership of all of Ana's employees in view of the SSC's own findings that at least some of them were legitimate. These legitimate employees, including Salabe, should not be prejudiced by the SSC's over-arching allegation of fraud.

Suffice it to state that in cases involving social legislation, doubts should be liberally construed in favor of the intended beneficiary of the law. To be sure, even if both parties have presented substantial evidence to support their allegations, the equipoise rule dictates that the scales of justice must be titled in favor of labor, as here.

Lastly, even if the Court rules that Salabe was never an employee of Ana, this would not necessarily entail the invalidity of all her contributions. Rather, this would call for the application of liberality wherein Salabe could be considered as a self-employed or voluntary paying member as of January 1, 1980 when PD 1636 took effect, expanding the scope of R.A. No. 1161 to include the self-employed.

Here, it is undisputed that Salabe made a total of 137 contributions to the SSS. Even if the Court were to deduct the seventeen (17) contributions made prior to the effectivity of PD 1636, Salabe would still have made one hundred twenty (120) valid contributions before she turned sixty (60), the minimum required to qualify for retirement benefits. Consequently, Salabe has satisfied the qualifications to receive her pension.

**SALVADOR AWA INOCENTES, JR., et al., v. R. SYJUCO CONSTRUCTION, INC. (RSCI) AND ARCH. RYAN I. SYJUCO**

**G.R. No. 240549, 27 August 2020, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

A project employee is assigned to a project that starts and ends at a determined or determinable time. The Court elucidated therein that the principal test to determine if an employee is a project employee is whether he or she is assigned to carry out a particular project or undertaking, which duration or scope was specified at the time of engagement.

In this case, to ascertain whether Inocentes et al. were project employees, as claimed by RSCI, it is primordial to determine whether notice was given them that they were being engaged just for a specific project, which notice must be made at the time of hiring. However, no such prior notice was given by RSCI.

**FACTS**

R. Syjuco Construction, Inc. (RSCI) is a construction company engaged in short-term projects such as renovation or construction of bank branches, stores in malls and similar projects with short duration. For its projects, RSCI hired construction workers like masons, carpenters, whose contracts of engagement were indicated to be co-terminous with the projects to which they were assigned.

RSCI hired Salvador Inocentes Jr., King Marvin Inocentes, and Dennis Catangui as carpenters, and Agapito Inocentes (Inocentes et al.) as masons. The durations of their respective engagements depended on the scope and period of the projects. Between 2013 and 2015, Inocentes et al. were assigned to different and multiple projects.

In 2016, the RSCI's foreman twice directed Inocentes, et al. to report for work for another short-term project, but the latter failed to do so. but the later

Inocentes et al. filed a request for assistance and complaint under the single entry approach. They sued for illegal dismissal among others. They asserted that they were regular employees and that the signed quitclaims supported their claim of termination from employment.

RSCI denied that Inocentes et al were illegally dismissed. As they were project employees, their employment was validity terminated after end of each construction project.

The Labor Arbiter (LA) dismissed the complaint and ruled that Inocentes et al. were project employees who belonged to RSCI's work pool. Their engagements were intermittent, depending on the availability of projects. However, the National Labor Relations Commission (NLRC) ruled that Inocentes et al. were regular employees. Their co-terminous status ceased when they were repeatedly hired for more than five (5) years as carpenters and masons since their services were necessary and desirable to RSCFs construction business. Notably, RSCI itself failed to submit the reportorial requirement under DOLE Department Order No. 19, series of 1993 every time Inocentes et al. assigned projects got terminated.

The Court of Appeals (CA) affirmed the NLRC decision. However, on RSCI's motion for reconsideration, CA reversed its decision and found Inocentes et al. as project employees, and not regular employees.

**ISSUE**

Are Inocentes et al. project-based employees?

**RULING**

NO. In Dacuital vs. LM. Camus Engineering Corp., the Court stressed that a project employee is assigned to a project that starts and ends at a determined or determinable time. The Court elucidated therein that the principal test to determine if an employee is a project employee is whether he or she is assigned to carry out a particular project or undertaking, which duration or scope was specified at the time of engagement.

In this case, to ascertain whether Inocentes et al. were project employees, as claimed by RSCI, it is primordial to determine whether notice was given them that they were being engaged just for a specific project, which notice must be made at the time of hiring. However, no such prior notice was given by RSCI.

However, the Court notes that the summary of project assignments relied by the CA cannot be considered as the needed notice because it only listed down the projects from where Inocentes et al. were previously assigned but nowhere did it indicate that they were informed or were aware that they were hired for a project or undertaking only.

Stated differently, the summary only listed the projects after Inocentes et al. were assigned to them but it did not reflect that they were informed at the time of engagement that their work was only for the duration of a project. Notably, it was only in their Rejoinder (filed with the LA) that RSCI stated that at the time of their engagement, Inocentes, et. al were briefed as to the nature of their work but RSCI did not fully substantiate this claim.

Moreover, the summary of project assignments even worked against RSCI as it established the necessity and desirability of Inocentes et al.'s tasks on the usual business of it. It is worth noting that RSCI themselves admitted to such essentiality of the work because in their reply, RSCI confirmed that days or a few months after a repair or renovation project, they would inform Inocentes et al. that they would be called upon when a new project commences. This matter only shows that Inocentes et al's work for RSCI did not end by the supposed completion of a project because the latter coordinated with and notified Inocentes et al. that their services would still be necessary for RSCI.

Also, the fact that RSCI did not submit a report with the DOLE (anent the termination of Inocentes et. al employment due to alleged project completion) further bolsters that Inocentes, et al. were not project employees. In Freyssinet Filipinas Corp. vs. Lapuz, the Court explained that the failure on the part of the employer to file with the DOLE a termination report every time a project or its phase is completed is an indication that the workers are not project employees but regular ones.

To reiterate, RSCI did not prove that they informed Inocentes, et al. at the time of engagement, that they were being engaged as project employees. The duration and scope of their work was without prior notice to Inocentes et al. While the lack of a written contract does not necessarily make one a regular employee, a written contract serves as proof that employees were informed of the duration and scope of their work and their status as project employee at the commencement of their engagement. There being none that was adduced here, the presumption that the employees are regular employees prevails.

Notably, considering that RSCI failed to discharge their burden to prove that Inocentes et al. were project employees, the NLRC properly found them to be regular employees, not project employees.

**MORENO DUMAPIS et al. v. LEPANTO CONSOLIDATED MINING COMPANY**

**G.R. No. 204060, 15 September 2020, EN BANC, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The Court keenly notes that there is no provision in the Labor Code which mandates the exclusion of salary increases and benefits accruing to the dismissed employee. Article 279 (now Art. 292) in fact grants illegally dismissed employees the right to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld up to the time of their actual reinstatement, thus:

Art. 279. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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.

It is simply unjust and contrary to the overarching purpose of making illegally dismissed employees whole again to deduct from their accrued backwages the increases in the compensation that they would have received if not for their illegal dismissal.

Verify, the Court now ordains the uniform rule that the award of backwages and/ or separation pay due to illegally dismissed employees shall include all salary increases and benefits granted under the law and other government issuances, Collective Bargaining Agreements, employment contracts, established company policies and practices, and analogous sources which the employees would have been entitled to had they not been illegally dismissed. On the other hand, salary increases and other benefits which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status shall not be included in the award.

**FACTS**

Moreno Dumapis, Francisco Liagao, and Elmo Tundagui (Complainants) were illegally dismissed from their employment as lead miners with the Lepanto Consolidated Mining Company (Lepanto) for the acts of highgrading, which is tantamount to the violation of the code of conduct. The finding of illegal dismissal was held by the Court in an earlier ruling.

Following the finality of the decision, the Complainants sought for the recomputation of the monetary award, which the Labor Arbiter (LA) granted. Moreso, another motion for recomputation was filed by the Complainants. The Complainants argued that the computation should likewise increase the salary increases granted them per the Collective Bargaining Agreement (CBA) between Lepanto and the employees. This was again granted by the LA. However, the LA only recomputed the award only until the date when the Court of Appeals (CA) issued its decision in the earlier case filed.

The Complainants then filed an appeal before the National Labor Relations Commission (NLRC). The NLRC directed the LA to compute the backwages and separation pay from the date they were illegally dismissed up to the finality of the Court's decision in the earlier ruling. Aggrieved, Lepanto filed another petition for review before the Court of Appeals (CA). The CA reversed the ruling of the NLRC.

**ISSUES**

(1) Should the computation of the monetary awards be reckoned from the date they were illegally dismissed up to the finality of the Supreme Court's decision in labor cases?

(2) Should the computation of the monetary awards include the salary increases granted the Complainants per the CBA?

**RULING**

(1) **YES**. In CICM Mission Seminaries, et al. v. Perez citing Bani Rural Bank, Inc. v. De Guzman, the Court through the Second Division laid down the rule that the award of separation pay and backwages for illegally dismissed employees should be computed from the time they got illegally dismissed until the finality of the decision ordering payment of their separation pay, in lieu of reinstatement, thus:

The reason for this was explained in Bani Rural Bank, Inc. v. De Guzman. When 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. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay because the employee is no longer entitled to any compensation from the employer by reason of the severance of his employment.

In this case, respondent remained an employee of the petitioners pending her partial appeal. Her employment was only severed when this Court, in G.R. No. 200490, affirmed with finality the rulings of the CA and the labor tribunals declaring her right to separation pay instead of actual reinstatement. Accordingly, she is entitled to have her backwages and separation pay computed until October 4, 2012, the date when the judgment of this Court became final and executory, as certified by the Clerk of Court, per the Entry of Judgment in G.R. No. 200490.

In accordance with CICM Mission Seminaries, the Complainant's backwages and separation pay here should, therefore, be computed from September 22, 2000 when they got illegally dismissed until November 25, 2008, when this Court's Decision dated August 13, 2008 became final and executory.

(2) **YES**. Article 294 of the Labor Code provides: "x x x 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."

Given the Court's repetitive self-contradictions in the award of backwages or separation pay owing to illegally dismissed employees and the consequent instability they have caused to our labor law jurisprudence, the time has come to settle these contradictions, once and for all.

The Court keenly notes that there is no provision in the Labor Code which mandates the exclusion of salary increases and benefits accruing to the dismissed employee. Article 279 (now Art. 292) in fact grants illegally dismissed employees the right to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld up to the time of their actual reinstatement, thus:

Art. 279. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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.

When the law does not distinguish, we should not distinguish.

As in Tangga-an v. Philippine Transmarine Carriers, Inc., Ocean East Agency, Corporation v. Lopez and Fernandez v. Meralco, salary increases and benefits here are either fixed or granted under the collective bargaining agreement. These increases are guaranteed to be given to the employees concerned had they not been illegally dismissed. They should be distinguished from those whose grant depends on contingency or variables, such as an employee's merit increase based on performance or longevity or the company's financial status.

As aptly pointed out in the Concurring Opinion of Justice Caguioa, merit increases which are dependent on one's performance or management prerogative are excluded for they necessarily require the actual performance to gauge whether the employee accomplished the standard required prior to grant of such increases. Thus, the Court in Paguio denied the claim of 16% salary increase which the employee claimed to have been consistently receiving on account of his above average or outstanding performance to be speculative. The same conclusion was reached in Equitable. When the basis of salary increase is past excellent performance, the same cannot be an assured benefit since the grant of merit increase is dependent on the level and quality of performance which may differ in the next evaluation period.

In Equitable Banking Corporation v. Sadac, the Court's First Division categorically declared that salary increases were not allowances or benefits within the definition of Article 279 of the Labor Code, as amended by Republic Act No. 6715 (RA 6715), thus:

ART. 279. Security of Tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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.

Article 279 mandates that an employee's full backwages shall be inclusive of allowances and other benefits or their monetary equivalent. Contrary to the ruling of the Court of Appeals, we do not see that a salary increase can be interpreted as either an allowance or a benefit. Salary increases are not akin to allowances or benefits, and cannot be confused with either. The term "allowances" is sometimes used synonymously with "emoluments," as indirect or contingent remuneration, which may or may not be earned, but which is sometimes in the nature of compensation, and sometimes in the nature of reimbursement. Allowances and benefits are granted to the employee apart or separate from, and in addition to the wage or salary. In contrast, salary increases are amounts which are added to the employee's salary as an increment thereto for varied reasons deemed appropriate by the employer. Salary increases are not separate grants by themselves but once granted, they are deemed part of the employee's salary. To extend the coverage of an allowance or a benefit to include salary increases would be to strain both the imagination of the Court and the language of law. As aptly observed by the NLRC, "to otherwise give the meaning other than what the law speaks for by itself, will open the floodgates to various interpretations." Indeed, if the intent were to include salary increases as basis in the computation of backwages, the same should have been explicitly stated in the same manner that the law used clear and unambiguous terms in expressly providing for the inclusion of allowances and other benefits.

The constricted interpretation of the Court in Equitable that a salary increase cannot be interpreted as either an allowance or a benefit because it is a mere increment to salary is devoid of any legal basis. Amounts given over and above the base pay are either allowances or benefits, which necessarily include salary increases the grant of which may be fixed or conditional. We are not saying though that all salary increases should be included in the award of backwages; but only those guaranteed or assured which the employees would have been entitled to had they not been illegally dismissed.

Still in Paguio v. PLDT, the Court's Second Division explained the ratio for the award of backwages:

In several cases, the Court had the opportunity to elucidate on the reason for the grant of backwages, Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.

The Court recalls that the overarching purpose of the relief granted by law to illegally dismissed employees is to make the latter whole again. Surely, the Court is united in ensuring that illegally dismissed employees are whole again by awarding them the benefits of a collective bargaining agreement to which they would have been entitled if not for the illegal termination of their employment. The ruling that the employees' illegal dismissal literally allowed time to stand still for them because of their loss of employment and the resulting uncertainties from such an unfortunate event, does not sanction additionally punishing them for an act they have not been responsible for. They in fact must be accorded justice and relief.

It is simply unjust and contrary to the overarching purpose of making illegally dismissed employees whole again to deduct from their accrued backwages the increases in the compensation that they would have received if not for their illegal dismissal.

Verily, the Court now ordains the uniform rule that the award of backwages and/or separation pay due to illegally dismissed employees shall include all salary increases and benefits granted under the law and other government issuances, Collective Bargaining Agreements, employment contracts, established company policies and practices, and analogous sources which the employees would have been entitled to had they not been illegally dismissed. On the other hand, salary increases and other benefits which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status shall not be included in the award.

**RODEL F. BANTOGON V. PVC MASTER MFG. CORP**

**G.R. No. 239433, 16 September 2020, 1ST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The State is bound under the Constitution to afford full protection to labor. When conflicting interests of labor and capital are to be weighed on the scales of social justice, the heavier influence of the latter should be counterbalanced with the sympathy and compassion the law accords the less privileged workingman.

To consider PVC as a separate and distinct entity from Boatwin would be a clear disregard of Bantogon's constitutional right to security of tenure. The Court will not allow PVC to circumvent the basic principles of labor laws which were meticulously crafted to ensure full protection to laborers.

**FACTS**

Rodel F. Bantogon claimed that he was employed by Boatwin International Corporation (Boatwin) as a helper and was later promoted to a machine operator.

When Boatwin changed its trade name to PVC Master Mfg. Corp (PVC), Bantogon was prevented from reporting for work due to his involvement in his brother's illegal dismissal case against PVC.

On one hand, Bantogon argued that PVC failed to observe due process in dismissing him and was guilty of illegal dismissal. On the other hand, PVC denied that Bantogon was ever its employee and presented documents to prove that it is a separate and distinct entity from Boatwin.

The Labor Arbiter (LA) ruled that Bantogon was illegally dismissed. This was affirmed by the National Labor Commissions Relations (NLRC). This was reversed by the Court of Appeals (CA). The CA ruled that Bantogon was not an employee of PVC.

**ISSUE**

Was Bantogon illigellay dismissed?

**RULING**

**YES**. In Zuellig Freight and Cargo Systems v. National Labor Relations Commission, the Court held that the mere change in the corporate name is not considered under the law as the creation of a new corporation. Hence, the renamed corporation remains liable for the illegal dismissal of us employee separated under that guise.

Significantly, aside from a change of corporate name from Boatwin to PVC, there were no other changes in PVC's circumstances indicating that the supposed assets sale took place, much less, that it truly had a corporate existence distinct from that of Boatwin. To repeat, the so-called assets sale was never established.

The State is bound under the Constitution to afford full protection to labor. When conflicting interests of labor and capital are to be weighed on the scales of social justice, the heavier influence of the latter should be counterbalanced with the sympathy and compassion the law accords the less privileged workingman.

To consider PVC as a separate and distinct entity from Boatwin would be a clear disregard of Bantogon's constitutional right to security of tenure. The Court will not allow PVC to circumvent the basic principles of labor laws which were meticulously crafted to ensure full protection to laborers.

**3M PHILIPPINES, INC. v. LAURO D. YUSECO**

**G.R. No. 248941, 09 November 2020, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

A valid redundancy program must comply with the following requisites: (a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (b) payment of separation pay equivalent to at least one (1) month pay for every year of service; (c) good faith in abolishing the redundant positions; and (d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (i) preferred status; (ii) efficiency; and (iii) seniority, among others.

Chiongbian's Affidavit bore 3M's innovative thrust to enhance its marketing and sales capability by aligning its business model with some of the 3M subsidiaries in South East Asian Region. Toward this end, 3M ought to merge its Industrial Business Group and the Safety & Graphics Business Group to maximize the capabilities and efficiency of the workforce and remove their overlapping of functions. The redundancy program had thus become an essential tool for this purpose.

Records also show that the company called Yuseco to a meeting p to inform him of this development, specifically the merger of the Industrial Business Group with the Safety & Graphics Business Groups, one of which be used to be the department head. In sum, 3M sufficiently proved by substantial evidence that redundancy truly existed, and its adoption and implementation conformed with the requirements of the law.

**FACTS**

Lauro D. Yuseco (Yuseco) started working with 3M Philippines, Inc. (3M) in 1997. He was the company's Country Business Leader when he got terminated in 2015. He had a flexible work schedule but often rendered more than eight (8) hours of work a day.

Yuseco was called for a meeting by 3M's managing director, Anthony J. Bolzan (Bolzan) for an undisclosed agenda. Human Resource Manager Maria Theresa Chiongbian (Chiongbian) was also there. He got surprised when he was asked to conform to an agreement in which the company was supposedly accepting his so called request to avail of a separation package. Yuseco refused; hence, Bolzan instructed him not to report for work anymore. The next day, Yuseco was shocked to learn that Bolzan announced through electronic mail to all the employees of the company that he would already be pursuing other opportunities outside 3M. These untruthful and malicious announcements got him embarrassed and humiliated before his co-workers, friends, clients, and relatives.

Yuseco received a letter from 3M demanding the return of company properties in his possession and was no longer allowed to enter 3M's premises.

The Labor Arbiter (LA) declared 3M guilty of illegal dismissal. The LA held that 3M's redundancy program was arbitrary, and its implementation tainted with bad faith. The National Labor Relations Commission (NLRC) reversed said decision. It held that Yuseco's separation was due to redundancy which was carried out only after a serious study. The Court of Appeals (CA) set aside the decision of the NLRC.

**ISSUE**

Was Yuseco legally dismissed on ground of redundancy?

**RULING**

**YES**. Redundancy is one of the authorized causes for the termination of employment provided for in Article 298 of the Labor Code.

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A position is redundant where it had become superfluous. Superfluity of a position or positions may be the outcome of a number of factors such as over-hiring of workers, decrease in volume of business, or dropping a particular product line or service activity previously manufactured or undertaken by the enterprise.

A valid redundancy program must comply with the following requisites:

a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment;

b) payment of separation pay equivalent to at least one (1) month pay for every year of service;

c) good faith in abolishing the redundant positions; and

d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (i) preferred status; (ii) efficiency; and (iii) seniority, among others.

The CA held that the third (3rd) requisites - good faith - was lacking. The Court does not agree. Chiongbian's Affidavit bore 3M's innovative thrust to enhance its marketing and sales capability by aligning its business model with some of the 3M subsidiaries in South East Asian Region. Toward this end, 3M ought to merge its Industrial Business Group and the Safety & Graphics Business Group to maximize the capabilities and efficiency of the workforce and remove their overlapping of functions. The redundancy program had thus become an essential tool for this purpose.

Records also show that the company called Yuseco to a meeting precisely to inform him of this development, specifically the merger of the Industrial Business Group with the Safety & Graphics Business Groups, one of which he used to be the department head. In sum, 3M sufficiently proved by substantial evidence that redundancy truly existed and its adoption and implementation conformed with the requirements of the law

The Court held that Yuseco's employment was validly terminated on ground of redundancy. Time and again, it has been ruled that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.

In fact, even if a business is doing well, an employer can still validly dismiss an employee from the service due to redundancy if that employee's position has already become in excess of what the employer's enterprise requires.

**ST. BENEDICT CHILDHOOD EDUCATION CENTRE, INC. AND FR. ERNESTO O. JAVIER V. JOY SAN JOSE**

**G.R. No. 225991, 13 January 2021, 2ND DIVISION, (Lazaro-Javier, J**.)

**DOCTRINE OF THE CASE**

Article 282 of the Labor Code, as amended, states that Serious Misconduct is one of the grounds for termination o employment, thus:

ARTICLE 297. [282] Termination by Employer. - An employer may terminate an employment fo any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.

x x x x

Misconduct is defined as an improper and wrongful conduct. It is the transgression of established and definite rule of action, a forbidden act, a dereliction of duty, and implies wrongful intent and not mere error of judgment. In order to justify an employee's termination of services, the misconduct should be (1) serious and not merely trivial or unimportant; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.

The Court noted the findings of the St. Benedict Ad-hoc Committee during the investigation that, apart from the case of AAA, there were similar complaints in the past brought to fore against San Jose by other parents. Many of these parents though just opted to pull out their children and move them to another school, instead of letting their children continuously suffer San Jose's cruelty. Notably, as against the categorical and positive testimonies of AAA and his parents, as well as the personal accounts of the staff of St. Benedict, San Jose only had bare denials, sans any countervailing evidence.

In fine, San Jose's cruel or inhuman treatment of AAA is not just trivial or meaningless. Her misconduct is grave, affecting not only the interest of the school but ultimately the morality and self-worth of an innocent five-year-old child. By committing such grave offense, she forfeits the right to continue working as a preschool teacher.

**FACTS**

AAA was five years old at the time who goes to St. Benedict Childhood Education Centre (St. Benedict). Joy San Jose (San Jose) was his teacher at the time. On several occasions, AAA asked permission from San Jose to relieve himself in the comfort room. However, San Jose refused. Thus, this prompted AAA to escape the classroom and seek assistance from the school's utility worker to relieve himself. On the second incident AAA was not able to escape to go to the comfort room. Consequently, he wet his pants during class.

After being informed of the incident, the parents talked to San Jose. San Jose retorted that she has been in the institution for 20 years, thus she knows what she was doing. After AAA's parent's had left, San Jose went on to publicly humiliate the former in front of his class, calling him a liar. The child was so embarrassed he pleaded his parents not to send him to school anymore. Subsequently, St. Benedict dismissed San Jose due to the complaint filed by AAA's parents. The ad-hoc committee tasked to investigate the incidents recommended San Jose's dismissal after due proceedings.

Aggrieved, San Jose filed a complaint for illegal dismissal before the Labor Arbiter (LA). The LA dismissed the complaint.

San Jose filed an appeal before the National Labor Relations Commission (NLRC). The NLRC likewise affirmed the ruling of the LA. The Court of Appeals (CA) however, reversed the ruling of the labor tribunals. Hence, the petition before the Court.

**ISSUE**

Is the dismissal of San Jose illegal?

**RULING**

**YES**. Article 282 of the Labor Code, as amended, states that Serious Misconduct is one of the grounds for termination of employment, thus:

ARTICLE 297. [282] Termination by Employer. -  An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.

x x x x

Misconduct is defined as an improper and wrongful conduct. It is the transgression of established and definite rule of action, a forbidden act, a dereliction of duty, and implies wrongful intent and not mere error of judgment. In order to justify an employee's termination of services, the misconduct should be (1) serious and not merely trivial or unimportant; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.

Meanwhile, Section 16 of Batas Pambansa Blg. 232 (BP 232) or the Education Act of 198256 enumerates the obligations of a teacher, thus:

SECTION 16. Teacher's Obligations. - Every teacher shall:

1. Perform his duties to the school by discharging his responsibilities in accordance with the philosophy, goals, and objectives of the school.

x x x x

4. Assume the responsibility to maintain and sustain his professional growth and advancement and maintain professionalism in his behavior at all times.

More, Section 2 and 3, Article XI of the Code of Ethics of Professional Teacher (Code of Ethics) emphasize that a teacher shall always maintain self-discipline and dignified personality, viz.:

Section 2. A teacher is shall place premium upon self-disias the primary principles of personal in all relationships with other and in all situations.

Section 3. A teacher shall maintain at all times a dignified personality which could serve as a model worthy of emulation by learners, peers and all others.

In Pat-og, Sr. v. Civil Service Commission, the Court held that teachers are duly licensed professionals who must not only be competent in the practice of their noble profession. They must also possess dignity and a reputation of high moral values. They must strictly adhere to, observe, and practice the ethical rules laid down in the Code of Ethics which apply to all educators in schools whether employed in a public or private learning institution. A blatant violation of the established rules under the Code of Ethics is tantamount to grave misconduct.

As for the rights of a child, Article 3, paragraph 8 of PD 603 states that a child has the right to be protected against circumstances prejudicial to his or her physical, mental, emotional, social, and moral well-being. Article 8 thereof enunciates that a child's welfare shall be the paramount consideration in his or her education, thus:

Article 3. Rights of the Child. - All All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

x x x x

(8) Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.

x x x x

Article 8. Child's Welfare Paramount. In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration.

One. Sections 25 and 9, Article VIII of the Code of Ethics specifically provide that a teacher's primary duty is to prioritize the interest and welfare of his or her students and provide adequate assistance to their needs. Thus, a preschool teacher, in particular, should be mindful that a child under her care should be protected against any circumstances detrimental to his or her physical, mental, emotional, social, and moral development pursuant to Article 361 of PD 603.

Here, San Jose disregarded Sections 2 and 9, Article VIII of the Code of Ethics in relation to the right of a child under Article 3 of PD 603 when she abandoned her foremost duty to provide proper care and assistance as a second parent to AAA.

On two (2) separate occasions, San Jose did not allow AAA to go to the comfort room despite the fact that the child had properly asked permission. As a teacher who ought to stand in loco parentis to her students, San Jose was duty bound to ensure that the children under her care are protected from all forms of harm and distress. 62 But twice, San Jose unjustifiably refused to allow AAA to go to the toilet despite the urgency of the situation. She simply opted to ignore AAA's well-being.

Two. Sections 1 and 3, Article IX of the Code of Ethics require a teacher to be cordial to the parents of his or her students and shall hear their complaints with sympathy and understanding. This is in accordance with a teacher's obligation to maintain self-discipline and professionalism as mandated under Section 165 BP 232.

San Jose, however, had seriously breached these provisions when she displayed a disrespectful and unsympathetic attitude toward AAA's parents when they came to see her in class. When they talked to her about their son's ordeal, she arrogantly quipped "I have been here for more than 20 years, I know what I am doing!" She adamantly refused to own up to her mistakes and instead flaunted her long years of service as a preschool teacher. Indeed, she had shown unprofessional behavior, hostility, if not a serious breach of her responsibility to accord primacy to the students' best interest and respect to the institution where she teaches. San Jose did not only violate the trust and confidence reposed on her by AAA's parents but by the school itself.

Three. Instead of offering her apologies to AAA or the latter's parents, San Jose easily shifted the blame to the five-year-old AAA, telling his parents that their child was restless and inattentive. This kind of victim or child shaming underscores even more San Jose's utter lack of empathy and care for the child as his supposed substitute parent in school. She totally deviated from her basic duty to protect the well-being of the five-year-old AAA, her pupil, in the latter's formative years in terms of adequate attention, patience, care, and understanding.

Four. Right after AAA's parents had left the classroom of San Jose, the latter wasted no time berating the child in front of the class, screaming, "you are a liar." At least two (2) staffers of the school came forward to disclose how they witnessed it up close. This humiliating moment in the fragile life of the five-year-old AAA made him the subject of bullying from his classmates who readily mocked him, "hala ka, you are a liar!"

Philippine Long Distance Co. v. NLRC further elucidates that in cases where an employee's misconduct amounted to a crime, his dismissal remains valid notwithstanding that he had not been criminally prosecuted or even thereafter acquitted by the Court.

Five. The Court noted the findings of the St. Benedict Ad-hoc Committee during the investigation that, apart from the case of AAA, there were similar complaints in the past brought to fore against San Jose by other parents. Many of these parents though just opted to pull out their children and move them to another school, instead of letting their children continuously suffer San Jose's cruelty. Notably, as against the categorical and positive testimonies of AAA and his parents, as well as the personal accounts of the staff of St. Benedict, San Jose only had bare denials, sans any countervailing evidence.

In fine, San Jose's cruel or inhuman treatment of AAA is not just trivial or meaningless. Her misconduct is grave, affecting not only the interest of the school but ultimately the morality and self-worth of an innocent five-year-old child. By committing such grave offense, she forfeits the right to continue working as a preschool teacher.

**RAYMOND D. JACOB et al., v. VILLASERAN MAINTENANCE CORP. AND MARIA ANTONIA V. MERCADO**

**G.R. No. 243951, 20 January 2021, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Resignation is the voluntary act of an employee who is in a situation where he or she believes that personal reasons cannot be sacrificed in favor of the exigency of the service and has no other choice or is otherwise compelled to dissociate himself or herself from employment. It is a formal pronouncement or relinquishment of an office and must be made with the intention of relinquishing the office, accompanied by the act of relinquishment or abandonment. A resignation must be unconditional and with the intent to operate as such. To determine whether the employee indeed intended to relinquish his or her employment, the act of the employee before and after the alleged resignation must be considered. More, the rule is when an employer raises the defense of resignation, the burden to establish the voluntariness of such resignation rests on the employer.

Here, Jacob et al. assert that while they wrote and signed the supposed resignation letters and Release and Quitclaim forms, before they could receive their last pay and benefits from MCUH they did not freely, intelligently, and voluntarily do so. Villaseran and Mercado merely tricked them into signing the same as they were made to believe that their signatures on these documents were required so they could receive their final pay from MCUH. Since the due execution of these documents was raised as an issue, Villaseran and Mercado bore the burden of proving otherwise, albeit it utterly failed to do so.

**FACTS**

Villaseran Maintenance Corp. (Villaseran) hired Raymond D. Jacob, Joery L. Sitjar, Ayan Gabriel, Gregorio B. Balaton, Lawrence Albert N. Insigne, and Dennis L. Talamante (Jacob et al.) as janitors and electricians at the Manila Central University Hospital (MCUH).

However, on 2016, MCU terminated their services, but assured them of new assignments with a new principal. In the same year, Maria Antonia V. Mercado (Mercado), general manager of Villaseran made Jacob et al. draft a resignation letter as a requirement for their reassignment and to sign identical Release and Quitclaim Forms, before they could receive their last pary and benefits from MCUH. However, two months later, Jacob et al received no word from Villaseran or Mercado regarding the reassignment. Hence, these led Jacob et al. to sue the latter for illegal dismissal based on the ground that the resignation letters were of deceitful nature conducted by Villaseran and Mercado which constituted false promises of new work assignments.

In their defense, Villaseran and Mercado stated that Jacob et al. were not illegally dismissed. Instead, they voluntarily resigned. In their Reply, Jacob et al. argued that they resigned from MCUH, and not from Villaseran since they were expecting to be reassigned to another post. Thus, on their part, there was no real intention of abandoning their work.

The Labor Arbiter (LA), ruled in favor of Jacob et al. According to the LA, Jacob et al.'s resignation was conditional, as it was predicated on the promise to be reassigned after they were given their last pay for their work at MCUH. Thus, it was clear that they did not simply intend to just leave their jobs. More so, the LA also stated that Jacob et al, as lowly employees, may have not understood the consequences of affixing their signatures to the resignation letters and Release and Quitclaims they had signed.

However, on appeal before the National Labor Relations Commission (NLRC), the LA's decision was replaced. It stated that Jacob et al admitted to having execited the resignation letters in compliance with the alleged condition offered by Villaseran. It, however, found such condition to be unbelievable and lacking of rational connection to the intended assignment. Hence, resignation was not required for Jacob et al. to be assigned to a new principal, as Villaseran and Mercado was still duty-bound to look for new assignment for them.

Before the Court of Appeals (CA), the decision of the NLRC was affirmed. The appellate court stated that Jacob et al. offered no proof to substantiate their claim that Villaseran and Mercado misled them into resigning from their jobs. On the contrary, Jacob et al.'s resignation was voluntary as supported by their handwritten letters and duly signed Release and Quitclaims. Also, the CA points out that Jacob et al. failed to prove that the documents they signed were conditions for Villaseran's supposed promise of reassignment and release of their final pay.

Hence, the present petition before the Supreme Court. Jacob et al. asserts that they did not voluntarily resign and were in fact illegally dismissed. They claim that their resignation letters should not be taken on their face value and as conclusive proof that they were executed voluntarily.

**ISSUE**

Did Jacob et al. voluntarily resign from Villaseran?

**RULING**

**NO**. Resignation is the voluntary act of an employee who is in a situation where he or she believes that personal reasons cannot be sacrificed in favor of the exigency of the service and has no other choice or is otherwise compelled to dissociate himself or herself from employment. It is a formal pronouncement or relinquishment of an office and must be made with the intention of relinquishing the office, accompanied by the act of relinquishment or abandonment. A resignation must be unconditional and with the intent to operate as such.

To determine whether the employee indeed intended to relinquish his or her employment, the act of the employee before and after the alleged resignation must be considered. More, the rule is when an employer raises the defense of resignation, the burden to establish the voluntariness of such resignation rests on the employer.

Here, Jacob et al. assert that while they wrote and signed the supposed resignation letters and Release and Quitclaim forms, before they could receive their last pay and benefits from MCUH they did not freely, intelligently, and voluntarily do so. Villaseran and Mercado merely tricked them into signing the same as they were made to believe that their signatures on these documents were required so they could receive their final pay from MCUH. Since the due execution of these documents was raised as an issue, Villaseran and Mercado bore the burden of proving otherwise, albeit it utterly failed to do so.

For one, resignation letters with quitclaims, waivers, or releases are generally looked upon with disfavor and commonly frowned upon. They are usually contrary to public policy, ineffective, and are meant to bar claims to a worker's legal rights.

Carolina's Lace Shoppe v. Maquilan elucidates that 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 are giving up in consideration of the fixed compromise amount;

3. A statement that the employer has clearly 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.

These requirements are absent here.

First. As the Labor Arbiter aptly noted, the amounts stated in Jacob et al.'s respective Release and Quitclaims pertained to their salary adjustments which they were entitled to receive without any need for them to terminate their employment with Villaseran. Thus, it cannot be said that these amounts constituted reasonable consideration for Jacob et al.'s resignations.

Second. There was no trade off of benefit and compromise amount. For as stated, what were actually paid to Jacob et al. in exchange for their resignation were merely their salary differentials.

Third. The Release and Quitclaims did not contain any statement that Villaseran and Mercado clearly explained the repercussions and effects of signing the form to Jacob et al. who appeared to have blindly signed the same as a condition imposed on them in exchange for the release of the amounts legally belonging to them in the first place. Worse, Villaseran and Meracdo did not even ensure that Jacob et al. fully understood the documents they were signing and the consequences thereof. Jacob et al. were mere janitors and electricians who badly needed to be apprised of the implications of their actions in view of their low educational attainment.

Finally. The handwritten letters or the Release and Quitclaims do not bear any statement that Jacob et al. signed and executed the documents voluntarily and fully understood the contents thereof and that their consent was freely given.

Absent the requirements for a valid release and quitclaim, the Court is compelled to rule that Release and Quitclaims forms which Villaseran and Mercado made Jacob et al. sign are invalid.

For another, the six (6) resignation letters handwritten by Jacob et al. here were almost identical in form and substance, as if copied from a template or dictated on them. These similarly-worded resignation letters and the pre drafted release and quitclaims render the voluntariness of their execution highly suspect.

**VINCENT MICHAEL BANTA MOLL v. CONVERGYS PHILIPPINES, INC., et al. G.R. No. 253715, 28 April 2021, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

In illegal termination cases, the employee must establish the fact of dismissal through the positive and overt acts of an employer before the burden is shifted to the latter to prove that the dismissal was legal. If there is no dismissal, then there can be no question as to the legality or illegality thereof.

Here, Moll sufficiently established the fact of his dismissal. The Court takes judicial notice of the call center agents' varying work hours, that they do not have fixed work schedules. In a specific work week, a call center agent could be working from sunrise to sunset, but on other days, he or she could be working what they call the graveyard shift. Moll cannot be faulted for assuming that he was summarily dismissed. He attempted to raise the issue concerning the lack of assignment before the HRD but to no avail. As it was, he was denied entry to its office. Days, weeks, passed but he was never given any new tour of duty. Valiant Machinery and Metal Corp, v. NLRC is instructive. There, the Court categorically held that the employer therein was guilty of illegal dismissal for barring respondents from entering the company premises.

**FACTS**

Convergys Philippines, Inc. (Convergys) hired Vincent Michael Moll (Moll) in 2015 as Sales Associate I assigned in the Eton Centris Office of Convergys. But beginning March 25, 2018, he no longer received any work schedule. He attempted to report the matter to the Human Resources Department (HRD) for clarification but he was refused entry to its office. Moss filed a Single Entry Approach (SEnA) before the National Labor Relations Commission (NLRC), and during the mediation proceedings, Convergys ordered Moll to report back to work. This order, however, was clearly a mere afterthought, made only after the case had already been filed. Because of the parties' failure to settle amicably, the case was referred to NLRC arbitration.

Convergys claimed that in 2018 it decided to transfer excess manpower from the Eton Centris Office, including Moll, to the U-Verse Program at its Glorietta Office. Moll initially acceded to the transfer and even attended the first day of the training. Thereafter, however, he no longer reported for work. Moll allegedly asked his team leader if he could just resign because the new office was too far from his residence. Moll also allegedly failed to respond to his team leader's calls and messages, for which Convergys issues two (2) Return to Work Orders (RTWO). Moll received both RTWO, however, he did not comply with them and instead filed an illegal dismissal case against Convergys. Convergys argued that they merely exercised their management prerogative to transfer employees as they may deem necessary and beneficial to the company's interest.

The Labor Arbiter (LA) declared Moll to have been illegal dismissed and ruled that Convergys abused its discretion when it transferred Moll without justifying the necessity of such transfer. Notably, there was considerable distance between Moll's residence and its proximity to the Eton Centris Office compared to the Glorietta Office. Convergys appealed said ruling claiming that the its HRD identified the agents residing near the Glorietta Office for lateral transfer, including Moll, a resident of Manila. Moreover, Moll's failure to finish his training under the U-Verse Account amounted to insubordination or willful disobedience.

The NLRC reversed the LA ruling. It gave credence to Convergys' exercise of its management prerogative, stating that there was no malice or discrimination in Moll's transfer. The NLRC further ruled that since Moll neither abandoned his employment nor was illegal dismissed, he should be reinstated without backwages and benefits.

The Court of Appeals (CA) upheld the NLRC finding that Moll failed to clearly establish the fact of his dismissal by failing to attach a copy of his employment contract and Convergy's policy on assignment or schedule of activity. Moll also failed to prove that he was refused entry to the HRD. He also failed to report during the SEnA proceedings. On the other hand, the CA found that tenable Convergys' transfer of manpower between its offices.

**ISSUE**

Was Moll illegally dismissed?

**RULING**

**YES.** In illegal termination cases, the employee must establish the fact of dismissal through the positive and overt acts of an employer before the burden is shifted to the latter to prove that the dismissal was legal. If there is no dismissal, then there can be no question as to the legality or illegality thereof.

Here, Moll sufficiently established the fact of his dismissal. The Court takes judicial notice of the call center agents' varying work hours, that they do not have fixed work schedules. In a specific work week, a call center agent could be working from sunrise to sunset, but on other days, he or she could be working what they call the graveyard shift.

Moll cannot be faulted for assuming that he was summarily dismissed. He attempted to raise the issue concerning the lack of assignment before the HRD but to no avail. As it was, he was denied entry to its office. Days, weeks, passed but he was never given any new tour of duty. Valiant Machinery and Metal Corp. v. NLRC is instructive. There, the Court categorically held that the employer therein was guilty of illegal dismissal for barring respondents from entering the company premises.

Moreover, the Court is not convinced that there was an actual transfer of Moll to the Glorietta Office. Convergys failed to adduce documents pertaining to Moll's transfer. The attendance sheet for the supposed orientation program for transferees was not attached. Neither was it proved that Moll's name was in the payroll account of U-Verse Program in the Glorietta Office. If Moll in fact remained in Convergys' employ, it could have easily offered in evidence its roll of agents and the payroll account noting Moll's continued absence from workstation.

In addition, Convergys' belated issuance of RTWOs actually bolsters Moll's allegation of illegal dismissal. To be clear, the RTWOs were issued on May 30, 2018 and June 4, 2018 only, more than two (2) months from his last day of reporting on March 24, 2018, and during the pendency of the present case. Curiously, Convergys never bothered looking for Moll in the interim. Had it really considered Moll's continued absence as insubordination or defiance, then it should have initiated disciplinary proceedings against him sooner. As it was, however, its months of inaction lends credence to Moll's claim that said RTWOs were mere afterthought to negate the fact of his dismissal.

**CELSO B. CARAAN 1. GRIEG PHILIPPINES, INC. et al.**

**G.R. No. 252199, 5 May 2021, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The absence of a medical assessment issued by the company physician within three days from the arrival of Caraan would result only in the forfeiture of his sickness allowance and nothing more. In fact, the law that requires the three-day mandatory period recognizes the right of the seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice. Therefore, the provision should not be construed that it is only the company-designated physician who could assess the condition and declare the disability of seaman. The provision does not serve as a limitation but rather a guarantee of protection to overseas workers.

Here, the Supreme Court finds that the attendant circumstances in the present case are similar to established jurisprudence. When Caraan arrived in the Philippines, he was already ill and no longer in good physical condition to go back to Manila for treatment. Immediately, Caraan was subjected to a series of laboratory tests to properly diagnose his ailment. Hence, as similar in another established jurisprudence, Caraan's primary concern was his health either than physically strain himself just to report to Grieg PH.

**FACTS**

Celso B. Caraan (Caraan) was working with Grieg Philippines (Grieg PH) under various employment contracts. In one instance, he was certified fit to work and departed from the Philippines on board MV Star Loen. As motorman of the said ship, Caraan was involved in strenuous physical activities, wherein he was also exposed to all kinds of noxious gases, harmful fumes and excessive noise while inside the engine room. More so, his dietary provision includes food which consisted mainly of high fat, high cholesterol and low fiber.

In one instance, during his work, he experienced pain while urinating and discharged blood in his urine. Upon reaching the port of Japan, he requested and was given medical attention to. Initially, he was diagnosed with urinary tract infection (UTI) and chronic prostatitis. Subsequently, he was declared unfit to work and got medically repatriated. While in the Philippines, Caraan, he used the company-issued health card and went to see Dr. A.D. Medina who requested for kidney-urinary-bladder ultrasound and urinalysis at a hospital in Bataan. During that time, Caraan's wife informed Grieg PH that he could not personally report to the office due to his medical condition.

After examination, it was revealed that Caraan had a mass in his left kidney. Consequently, he was transferred to the National Kidney and Transplant Institute (NKTI) where his left kidney was surgically removed. Biopsy later confirmed that he had renal cell carcinoma. Six months after his surgery, he was declared unfit to work by Dr. Rommel Galvez (Dr. Galvez). Later on, he sought the medical opinion of Dr. Efren Vicaldo (Dr. Vicaldo) who too declared him unfit to work as a seaman in any capacity due to his hypertension.

**FACTS**

Celso B. Caraan (Caraan) was working with Grieg Philippines (Grieg PH) under various employment contracts. In one instance, he was certified fit to work and departed from the Philippines on board MV Star Loen. As motorman of the said ship, Caraan was involved in strenuous physical activities, wherein he was also exposed to all kinds of noxious gases, harmful fumes and excessive noise while inside the engine room. More so, his dietary provision includes food which consisted mainly of high fat, high cholesterol and low fiber.

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As a result, Caraan filed a Complaint for total disability benefits before the National Conciliation and Mediation Board (NCMB) against Grieg PH. The latter, in turn, countered that Caraan was not medically repatriated but was sent home due to finished contract and that he forfeited his disability claim for failure to report to the company-designated physician within three days from repatriation.

The Panel of Voluntary Arbitrators (PVA) ruled in favor of Caraan. In its decision, the PVA held that Caraan substantially complained with the three-day reportorial requirement under Section 20 (A) (3) of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) when his wife called Grieg PH to report that the was incapacitated to physically report due to his hospitalization right after his repatriation; that while there was no post-employment medical examination by the company-designated physician, Caraan had undergone an equivalent post-employment medical examination by the doctor of his choice who diagnosed him with renal cell carcinoma; that Caraan's illness is compensable under Section 32 (a) of POEA-SEC; and lastly, Caraan was not gainfully employed for more than two hundred forty days due to lifelong medication as certified by his physician of choice.

However, on appeal before the Court of Appeals (CA), the complaint was dismissed on the ground that Caraan was not entitled to disability benefits due to his failure to report and submit to a post-employment medical examination by the company-designated physician within three working days upon his arrival in appeal. More so, according to the CA, the assessments of Caraan's chosen physician were not sufficient to establish his work-related illness.

Hence, the present petition before the Supreme Court. Caraan argues that he was excused from physically reporting to a company-designated physician for post-employment medical examination. For the master of the vessel knew that he was seriously ill which was the reason for his repatriation. Even Grieg PH was informed of his medical condition when his called the latter regarding his physical inability to personally report to the company-designated doctor. On the other hand, Grieg PH contends that same arguments he made before the PVA.

**RULING**

**YES.** Citing Magat v. Interorient Maritime Enterprises, Inc., the Supreme Court stated that the absence of a medical assessment issued by the company physician within three days from the arrival of would result only in the forfeiture of his sickness allowance and nothing more. In fact, the law that requires the three-day mandatory period recognizes the right of the seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice. Therefore, the provision should not be construed that it is only the company-designated physician who could assess the condition and declare the disability of seaman. The provision does not serve as a limitation but rather a guarantee of protection to overseas workers.

Here, the Supreme Court finds that the attendant circumstances in the present case are similar to established jurisprudence. When Caraan arrived in the Philippines, he was already ill and no longer in good physical condition to go back to Manila for treatment. Immediately, Caraan was subjected to a series of laboratory tests to properly diagnose his ailment. Hence, as similar in another established jurisprudence, Caraan's primary concern was his health either than physically strain himself just to report to Grieg PH.

More so, Section 20 (A) (4) of the POEA-SEC creates a disputable presumption that illnesses not listed as an occupational disease in Section 32 are work-related. However, this disputable presumption does not signify an automatic grant of compensation and/or benefits claim. Claimants for disability benefits must first discharge the burden of proving, with substantial evidence, that their ailment was acquired during the term of their contract. They must show that they experienced health problems while at sea, the circumstances under which they developed the illness, as well as symptoms associated with it.

Caraan's medical condition before and after repatriation did not change. The continued medical treatment in Bataan, then later at the NKTI finally confirmed that Caraan has kidney ailment. The blood in the urine was a common symptom of UTI, Chronic Prostatitis and renal cell carcinoma which Caraan was persistently complaining to his doctors in Japan and in Bataan. From this symptom, his doctors conducted series of tests to rule out other ailments until they finally discovered the mass in his kidney which was already malignant and was later immediately surgically removed. Hence, the purpose of the company designated physician's examination to determine whether the illness was acquired during the term of Caraan's contract was also achieved by the accredited doctors of Grieg PH's issued health card.

**KENNEDY R. QUINES v. UNITED PHILIPPINE LINES INC. AND/OR SHELL INTERNATIONAL TRADING AND SHIPPING CO.**

**G.R. No. 248774, 12 May 2021, 2ND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

In More Maritime Agencies, Inc. v. NLRC, the Court held that compensability of an illness or injury does not depend on whether the injury or disease was pre-existing at the time of employment but rather on whether the injury or illness is "work-related" or "has aggravated the seafarer's condition."

Here, it cannot be denied that Quines' illness was work-related or work-aggravated and, therefore, compensable. For it is undisputed that Quines had continuously worked for UPLI for a total of thirteen (13) years since 2002 until his last assignment in 2015. As it turned out though, while discharging his duties on board during his last engagement, Quines suffered chest pains, shivering legs and arms, dizziness, beadaches, and difficulty in breathing. These all happened during the first week of March 2016 or three (3) months after he went on board Silver Ebuna. Thus, he was medically repatriated for urgent treatment.

**FACTS**

Kennedy R. Quines (Quines) was employed as a seafarer by United Philippine Lines, Inc. (UPLI) since 2002.

On March 18, 2015, he signed again an employment contract with UPLI for Shell International Trading and Shipping Co. (Shell Shipping Co.). His duties as an Able Seaman included rigging, crane operation, lifting heavy loads, and mooring operations.

On July 22, 2015, he experienced severe symptoms such as headache, nausea, and muscle cramps while on duty. Diagnosed with hypertension, neuropathy, and nausea at Corpus Cristi Medical Center in Texas, USA, he was medically repatriated the same day. Upon returning to the Philippines, he was declared fit to work by the company-designated physician and advised to prepare for another deployment.

On December 10, 2015, he signed another contract with UPLI for a six-month period under a collective bargaining agreement (CBA) between Shell Shipping Co. and Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP). He disclosed his hypertension and was declared fit for sea duties after a pre-employment medical examination (PEME). He was just required to required to execute a Crew Medication Declaration stating that he brought with him on board his maintenance medicines for hypertension.

In March 2016, he experienced chest pains, dizziness, and other symptoms, leading to his medical repatriation on April 1, 2016. Despite treatment, his condition did not improve, and he was diagnosed with Ischemic Heart Disease and Hypertension Stage 2 by an independent doctor. The company-designated doctors did not provide a final medical assessment within the prescribed period.

Quines sought total and permanent disability benefits before the Panel of Voluntary Arbitrators (PVA).

As defense, UPLI argued that after his medical repatriation in 2016, he was then examined by the company-designated cardiologist at Marine Medical Services. On November 18, 2016, the company-designated doctors separately issued two (2) medical reports stating that Quines was cleared from both cardiac and neurologic standpoint. His blood pressure was well-controlled and there was no absolute cardiovascular contraindication against resuming his work. As for his dizziness and chest pain, they were only due to hyperventilation syndrome and anxiety which he experienced on board. In fine, the company-designated doctors declared Quines as "not permanently unfit for sea duties."

The PVA ruled in favor of Quines, but the Court of Appeals (CA) reversed this decision. The CA ruled that there was neither a definitive nor final diagnosis showing Quines was suffering from any Coronary Heart Disease or Ischemic Heart Disease. While it was clear that Quines had hypertension, being merely hypertensive though did not signify that he was already permanently unfit to resume his seafaring duties.

**ISSUE**

Is Quines entitled to total and permanent disability benefits?

**RULING**

**YES.** In More Maritime Agencies, Inc. v. NLRC, the Court held that compensability of an illness or injury does not depend on whether the injury or disease was pre-existing at the time of employment but rather on whether the injury or illness is "work-related" or "has aggravated the seafarer's condition."

Here, it cannot be denied that Quines' illness was work-related or work-aggravated and, therefore, compensable. For it is undisputed that Quines had continuously worked for UPLI for a total of thirteen (13) years since 2002 until his last assignment in 2015. As it turned out though, while discharging his duties on board during his last engagement, Quines suffered chest pains, shivering legs and arms, dizziness, headaches, and difficulty in breathing. These all happened during the first week of March 2016 or three (3) months after he went on board Silver Ebuna. Thus, he was medically repatriated for urgent treatment.

After a series of tests and medications, on November 18, 2016, the company-designated doctors issued two (2) separate medical reports.

Indeed, there was no categorical statement whether Quines is fit or unfit to resume his work as a seafarer. Too, no final and definite disability rating was issued on him. The first medical report indicated that: a) there is no absolute cardiovascular indication to Quines resumption of seafaring duties; b) Quines still has episodes of dizziness and chest pain; and c) Quines was recommended for psychiatric evaluation and management as well as the evaluation of possible disability grading for his current symptoms. On the other hand, the second medical report merely stated Quines was not permanently unfit for sea duties because it may improve over time and provided that he overcome his anxiety symptoms. Clearly, these assessments are hardly the final assessments required by law. They are incomplete, nay, inconclusive.

What is definitive though was that Quines remains incapacitated beyond the 240-day period. Despite the four (4) new maintenance medications Dr. Sia prescribed on November 15, 2016 for Quines' hypertension, ie., Amlodipine, Pantoprazole, Alprazolam, and Polynerve E with Lecithin, Quines still experienced chest pains, dizziness, and nausea. But since his medical treatment was cut-off by UPLI, Quines was constrained to consult another cardiologist, Dr. Pascual, on December 7, 2016. Dr. Pascual then prescribed him five (5) maintenance medicines also for hypertension, i.e., Amlodipine, Losartan, Keltican, Arcoxia, and Myonal.

Surely, the fact that Quines is taking five (5) maintenance medications for his hypertension alone, already permanently incapacitates him from securing gainful employment as a seafarer.

Further, without a valid final and definitive assessments from the company-designated doctors within the 120/240-day period, as in this case, the law already steps in to consider a seafarer's disability as total and permanent. By operation by law, therefore, Quines is already deemed to be totally and permanently disabled.

**RESTY S. CAAMPUED 1. NEXT WAVE MARITIME MANAGEMENT, INC., MTM SHIP MANAGEMENT PTE. LTD., & ARNOLD MARQUEZ**

**G.R. No. 253756, 12 May 2021, SECOND DIVISION (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time Caampued was employed in 2016, sets the procedure for disability claims, viz.:

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.

Here, prior to assuming his duties as Engine Fitter aboard Next Waves' vessel, Caampued was declared fit to work after PEME with the company-designated physician. Caampued showed no signs of any spinat injuries before he boarded the vessel. His back pain and limited lumbar movement started only after he forcefully pulled the piston lining of the ship's generator. Considering that Caampued was asymptomatic prior to boarding and that his symptoms began to manifest only after that particular incident on board and persisted way beyond his medical repatriation, it is reasonable to claim a causal relationship between 's illness and his work as Engine Fitter of Next Waves' vessel.

**FACTS**

In 2016, Next Wave Next Wave Maritime Management, Inc., (Next Wave) on behalf of its principal, MTM Ship Management Pte. Ltd., hired Resty S. Caampued (Caampued) as Engine Fitter of its vessel "MV Red Cedar" for ten (10) months. Caampued underwent routinary Pre-employment Medical Examination (PEME) and was declared fit for sea duties with prescribed medication for hypertension. Caampued's responsibilities included strenuous physical activities such as: (a) fabrication and shaping of materials; (b) lifting of metals and materials for fabrication; (c) daily maintenance and repair of the ship; other all around strenuous duties as instructed by the supervisor.

When Caampued was only two (2) months on board, he was tasked to assist in the repair of the ship's generator. While in a squatting position, he forcefully pulled the piston lining upward. Suddenly, he heard a clicking sound and felt something snap on his back. He suffered pain in his lower back, which persisted for days. He was given pain reliever and ordered to continue working. Thereafter, the chief engineer gave him some more pain reliever and advised him to take a rest until they arrived in Africa. In Africa, Caampued was diagnosed with lower back muscle spasm and Thoracolumbar spondylodiscitis. His repatriation was recommended.

Thus, Caampued got medically repatriated. Company-designated physician Dr. Natalia Alegre (Dr. Alegre) of St. Luke's Medical Center evaluated him. The x-ray showed the following findings: Degenerative disk, Mild Compression Deformity, Hypertrophic Osseous Changes Grade One Anterolisthesis, with Spondylosis. On the other hand, the MRI revealed the following impressions: Left paravertebral soft tissue mass, L3-L4 with epidural extension, marrow infiltration and severe canal stenosis. It was concluded that Caampued had chronic granulomatous inflammation with necrosis or spinal tuberculosis. According to Dr. Alegre, spinal tuberculosis is a disease which originates from primary complex or tuberculosis that had been acquired from childhood, which develops over time. Thus, spinal tuberculosis is not work-related

Caampued underwent treatment at the Philippine General Hospital and personally shouldered all expenses. Consequently, he was forced to consult another orthopedic specialist, Dr. Renato A. Runas (Dr. Runas). After physical examination and review of his medical records, Dr. Runas opined that Caampued's back pain is most likely caused by the displacement of the L4 vertebra over the L5. Lifting heavy objects and prolonged sitting and standing may worsen the discomfort. As a result, Caampued would no longer be able to carry out his standard duties as seaman.

Caampued consequently sued Next Waves for total and permanent disability benefits. The parties failed to amicably settle during the conciliation and mediation conferences. The Labor Arbiter (LA) granted Caampued's claim for total and permanent disability benefits, Labor Arbiter Que, Jr. noted the undisputed fact that prior to embarking Next Waves' vessel, Caampued did not show any signs of spinal tuberculosis. He only showed signs after he pulled the piston lining. His PEME even showed that he had no limitations or restrictions on fitness or any back injury.

The National Labor Relations Commission (NLRC) reversed the Decision of the LA for lack of merit. The Court of Appeals (CA) affirmed. It held that Caampued failed to prove a reasonable connection between his work as an engine fitter and his spinal tuberculosis. Aside from his bare allegations, no competent and independent evidence was proffered to corroborate his claim.

**ISSUE**

Is Caampued entitled to total and permanent disability benefits?

**RULING**

**YES.** Caampued is entitled to total and permanent disability benefits.

The POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time Caampued was employed in 2016, sets the procedure for disability claims, viz.:

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.

Prior to assuming his duties as Engine Fitter aboard Next Waves' vessel, Caampued was declared fit to work after PEME with the company-designated physician. Caampued showed no signs of any spinal injuries before he boarded the vessel. His back pain and limited lumbar movement started only after he forcefully pulled the piston lining of the ship's generator. Considering that Caampued was asymptomatic prior to boarding and that his symptoms began to manifest only after that particular incident on board and persisted way beyond his medical repatriation, it is reasonable to claim a causal relationship between Caampued's illness and his work as Engine Fitter of Next Waves' vessel. In Magat v. Interorient Maritime Enterprises, Inc. the Court held that Magat was entitled to permanent disability benefits when after passing his PEME, he developed heart ailment.

Caampued suffered from at least three (3) spinal conditions, ie., degenerative disc, spondylolisthesis, and spinal tuberculosis. As to the degenerative disc and spondylolisthesis, despite the findings that Caampued has the said ailments, Next Waves only treated and based their findings of non-compensability on Caampued's spinal tuberculosis. Notably, Caampued repeatedly asked that Next Waves likewise get him treated and medically assessed for his degenerative disc and spondylolisthesis. But Next Waves simply ignored his pleas.

As to the spinal tuberculosis, even assuming that Caampued's condition was pre-existing, this does not negate the declaration of such illness as work-related. The Court, in Corcoro, Jr. v. Magsaysay Mo/ Marine, Inc. explained that when it is shown that the seafarer's work may have contributed to or aggravated any pre-existing disease, the illness shall be compensable.

In Gere v. Anglo-Eastern Crew Management Phils., Inc. the Court decreed that the company-designated physician must not only "issue" a final medical assessment of the seafarer's medical condition. He must also - and the Court cannot emphasize this enough - "give" his assessment to the seafarer concerned. That is to say that the seafarer must be fully and properly informed of his medical condition. The results of his/her medical examinations, the treatments extended to the seafarer, the diagnosis and prognosis, if needed, and, of course, the seafarer's disability grading must be fully explained to him/her by no less than the company-designated physician.

Here, Dr. Alegre only issued a medical report addressed to Crew Operations Manager Captain Arnold Marquez. As in Gere, this medical report cannot be regarded as anything more than an internal communication between the company-designated physician and Next Wave Next Wave. Further Caampued was not even furnished a copy of said medical report. Next Waves did not deny this. They simply posited that the assessment was explained to Caampued.

In other words, no final and definitive assessment was issued regarding any of Caampued's illnesses. Again, without a valid final and definitive assessment from the company-designated physician, Caampued's temporary and total disability, by operation of law, became permanent and total.

**CHRISTOPHER C. CALERA v. HOEGH FLEET SERVICES PHILIPPINES, INCORPORATED**

**G.R. No. 250584, 14 June 2021, SECOND DIVISION (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The Court nevertheless finds that Calera suffered compensable injury under Section 20(A) of the POEA-SEC. For an injury or disability to be compensable under this provision, two (2) 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. For a disability claim to prosper, a seafarer only needs to show that his work and contracted illness have a reasonable linkage that must lead a rational mind to conclude that his occupation may have contributed or aggravated the disease.

For the first element, the POEA-SEC defines work-related injury as one "arising out of and in the course of employment." Here, it is undisputed that before actual boarding of the vessel, Calera slipped in the bathroom suffered injury. This, by itself, is not compensable. But Calera's circumstances show that the injury Calera suffered at Holiday Inn which would have otherwise been not compensable was aggravated by his work on board the vessel. As for the second requisite of a compensable injury, suffice it to state that Calera's condition was aggravated by his work during the term of his employment contract.

**FACTS**

Christopher Calera (Calera) was hired by Hoegh Fleet Services Philippines, Inc. (Hoegh Fleet) as ordinary seaman in 2014. In September 2016 he was declared fit for sea duties. On December 5, 2016, he left the country for Cartagena, Colombia where he would board Hoegh Grace. Upon his arrival, Hoegh Fleet billeted him at the Holiday Inn Hotel while awaiting embarkation.

Unfortunately, on the day of his embarkation, Calera slipped while taking a shower at Holiday Inn and fell on his buttocks. He felt excruciating pain and recurring numbness in his lower back and extremity. Upon embarkation, he reported the accident to the Bosun (ship's officer) and requested for pain reliever. The latter relayed the incident to the chief mate. Instead of compassionately acting on his request, he was ordered to immediately go to work. He was made to carry heavy baggage and cans of grease the whole day.

Due to the strenuous work on the first day and lack of medical attention, Calera's back pain worsened and he had difficulty getting out of bed the next-day. Thus, he was sent to a hospital in Cartagena, Colombia where he was diagnosed with mechanical lumbago by the company-designated physician. Because of his persistent back pain, he returned for a follow up check-up on December 13, 2016 where he was diagnosed, this time, with perianal abscess.

Upon his repatriation, Shiphealth advised him to undergo medication and physical therapy. On April 15, 2017, Hoegh Fleet discontinued Calera's physical therapy despite lack of any improvement on his condition. Later, he was verbally assessed to be fit for work. Hoegh Fleet tried to force him to sign a certificate of fitness to work but he refused. He patiently waited for a copy of the medical assessment instead, but to no avail.

As he could no longer tolerate his back pain, he consulted orthopedic specialist Dr. Renato P. Runas. Dr. Runas assessed him to be suffering from total and permanent disability and declared him unfit for sea duty in whatever capacity. He requested a conference with Hoegh Fleet to discuss his entitlement to disability benefits under the CBA. Hoegh Fleet, however, did not bother taking action, prompting him to file the Notice to Arbitrate before the RCMB.

The Panel of Arbitrators ruled in favor of Calera, holding that the POEA approved contract between Calera and Hoegh Fleet was already effective when the former slipped in the bathroom of the Holiday Inn. The Court of Appeals (CA) reversed the Panel's ruling. It held that Calera's condition was neither accidental nor work-related.

**ISSUES**

(1) Is Calera entitled to total and permanent disability benefits?

(2) Is Calera's disability total and permanent?

**RULING**

**(1) YES**. The seafarers' employment is governed by the contracts they signed at the time of engagement. As long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties. Nonetheless, 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 in every seafarer's contract.

Here, the Supreme Court found that the Holiday Inn incident was not a compensable accident. Black's Law Dictionary defines "accident" as an unintended and unforeseen injurious occurrence; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect, or misconduct. Slipping in the bathroom floor is not an unforeseen injurious occurrence that could not be reasonably anticipated. For once a person enters the bathroom, he knows for a fact that the floor could get slippery and cause him bodily injuries. There is no showing of any measures Calera adopted to at least lessen the injury caused by a slippery floor.

Nonetheless, the Court ruled that the injury suffered by Calera was work-aggravated. The Court finds that Calera suffered compensable injury under Section 20(A) of the POEA-SEC. For an injury or disability to be compensable under this provision, 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. For a disability claim to prosper, a seafarer only needs to show that his work and contracted illness have a reasonable linkage that must lead a rational mind to conclude that his occupation may have contributed or aggravated the disease.

For the first element, the POEA-SEC defines work-related injury as one "arising out of and in the course of employment." Jurisprudence further teaches that compensable illness or injury cannot be confined to the strict interpretation of the POEA-SEC as pre-existing conditions may be compensable if aggravated by the seafarer's work. Here, it is undisputed that before actual boarding of the vessel, Calera slipped in the bathroom suffered injury. This, by itself, is not compensable. But when Calera boarded his assigned vessel, he immediately reported the incident as well as the excruciating pain and recurring numbness. Apparently, he was already suffering from mechanical lumbago and perianal abscess at this point. He requested for pain reliever but was not given any. Instead, his superiors ordered him to immediately get to work, making him carry heavy baggage and cans of grease. These circumstances show that the injury Calera suffered at Holiday Inn which would have otherwise been not compensable was aggravated by his work on board the vessel.

As for the second requisite of a compensable injury, suffice it to state that Calera's condition was aggravated by his work during the term of his employment contract.

(2)  Under the 2010 POEA-SEC, the company-designated physician is primarily vested with responsibility to determine the seafarer's disability grading or fitness to work. Verily, two requisites must concur: 1) an assessment must be issued within the 120/240-day window, and 2) the assessment must be final and definitive.

Here, the assessment was timely issued but the company-designated physicians failed to issue a final and definitive assessment of Calera's condition.

Before the disability ratings from the company-designated physician may be considered, they should first be properly established and contained in a valid and timely medical report. Guided by jurisprudence, the following are the characteristics of a final and complete medical report: complete and definite.

In the present case, the medical report was far from final. For one, the company-designated physicians made no mention of any disability rating nor any declaration as to Calera's fitness or unfitness for further sea duty. For another, the alleged finality of the medical report was negated by the fact that Calera needed further medical treatment. Sans a valid final and definite assessment from the company-designated physicians within the 120/240-day period, the law already steps in to consider Calera's disability as total and permanent.

**RONALD O. MARTINEZ, et al. v. MAGNOLIA POULTRY PROCESSING PLANT (MPPP), now named SAN MIGUEL FOODS, INC. (SMFI)-MPPP**

**G.R. No. 231579, 16 June 2021, SECOND DIVISION (Lazaro-Javier, J.)**

**SAN MIGUEL FOODS, INC. v. RONALD O. MARTINEZ, et al.**

**G.R. No. 231636, 16 June 2021, SECOND DIVISION (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

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 substantial capital, investment, tools, and the like. As a regulated industry, the law requires registration of labor contractors with the DOLE. Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

Here, there is no dispute that Romac held the Certificate of Registration as a legitimate and independent labor contractor. As the primary agency tasked to regulate job contracting, DOLE is presumed to have regularly performed its official duty when it declared that Romac had complied with the requirements, and based thereon, conferred upon it the corresponding certificate of registration as a legitimate and independent labor contractor.

**FACTS**

In August 2010, Ronald O. Martinez, et al. (Martinez, et al.) led a complaint for illegal dismissal with other monetary claims against SMFI-MPPP and Romac Services and Trading Co., Inc. (Romac).

Martinez, et al, alleged that they were hired by Romac as daily paid rank and file employees assigned at the production department of SMFI-MPPP in Pampanga. Romac though did not have a business distinct and separate from that of SMFI-MPPP. They regularly reported for work until January 2010, when most of them were no longer allowed inside the premises of SMFI-MPPP because it had ceased operations preparatory to its intended outsourcing of services.

SMFI-MPPP, on the other hand, countered that as early as 2007, it already contemplated on the closure of its Pampanga Plant in anticipation of its plan to cede the same to a third party. Further, the fact that SMFI-MPPP required Martinez, et al. to attend seminars did not prove the existence of an employer-employee relationship between them.

For its part, Romac acknowledged that it had a contractual (fixed period) employer-employee relationship with Martinez, et al. Romac entered into two service contracts with SMFI-MPPP. There, Martinez, et al. worked under the direct control and supervision of Licerio Araza, supervisory personnel of Romac. Hence, as fixed period employees, Martinez, et al., should not be accorded regular or permanent status either by Romac or SMFI-MPPP.

The Labor Arbiter (LA) declared that Martinez, et al were illegally dismissed. Thereafter, the National Labor Relations Commission (NLRC) reversed the decision of the LA. Meanwhile, the Court of Appeals (CA) nullified the dispositions of the NLRC and reinstated the ruling of the LA.

Hence, in the present petitions, Martinez, et al assert anew that they are entitled to backwages and differential benefits pursuant to the CBA of the regular rank-and-file employees of SMFI-MPPP for three years prior to their illegal dismissal, plus damages. On the other hand, SMFI-MPPP maintains that the contracts of service it entered into with Romac were valid and that the latter is a legitimate job contractor with substantial capitalization and investment. SMFI-MPPP, therefore, could not have illegally dismissed Martinez, et al., who are, in fact, employees of Romac, nor could be made liable for the reinstatement of these employees and payment of their money claims.

**ISSUE**

Is Romac a legitimate labor contractor or a labor-only contractor?

**RULING**

**YES.** Article 106 of the Labor Code proscribes the practice of labor-only contracting, viz.:

ARTICLE 106. Contractor or Subcontractor - Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code. xxx

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 substantial capital, investment, tools, and the like. As a regulated industry, the law requires registration of labor contractors with the DOLE. Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

Here, there is no dispute that Romac held the Certificate of Registration as a legitimate and independent labor contractor. As the primary agency tasked to regulate job contracting, DOLE is presumed to have regularly performed its official duty when it declared that Romac had complied with the requirements, and based thereon, conferred upon it the corresponding certificate of registration as a legitimate and independent labor contractor.

The Court though recognizes that the presumption of legitimacy arising from one's registration as an independent and legitimate labor contractor may be defeated whenever it is shown that: (a) 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 (b) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

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." As to how much or what constitutes substantial capital, DO 18-A, series of 2011 dated November 14, 2011 defines substantial capital as paid-up capital stocks/shares of at least P3,000,000.00 in the case of corporations.

Here, Romac already had on record a capital stock of P20,000,000.00 and ownership of multiple properties in relation to its business. Verily, Romac had sufficient capital to carry on its independent on-going business as a legitimate contractor or provider of services to its various clients.

As for the element of control, the Court utilized the four-fold test: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control. Among the four-fold test, control is the most important. Under the control test, an employer-employee relationship exists if the "employer" has reserved the right to control the "employee" not only as to the result of the work done but also as to the means and methods by which the same is to be accomplished. Otherwise, no such relationship exists.

First, on different dates, Romac engaged Martinez, et al, as evidenced by the latter's respective Personnel Appointments/Employment Contracts printed on Romac's own letterhead. Second, in both the subject contracts which Romac entered into with SMFI-MPPP, Romac unconditionally assumed the obligation to pay the salaries and other statutory benefits of Martinez. Third, the power of Romac to hire included its inherent power to discipline Martinez, et al which was exercised by Romac in multiple scenarios. Fourth, records show that it was Romac which exercised control over Martinez, et al such as payment of the wages and other labor standard benefits of these employees, among others.

In Manila Electric Co. s. Quisumbing, the Court recognized that contracting out of services is an exercise of business judgment or management prerogative. Further, it was clarified in BPI Employees Union-Davao City-FUBU. Bank of the Philippine Ishands that at is within the prerogative of management to farm out any of its activities, regardless whether such activity is activity is peripheral or or core in nature. What is primordially important is that the service agreement does not violate the employee's right to security of tenure and payment of benefits to which he or she is entitled under the law. So long as the outsourcing does not fall squarely as labor-only contracting, the arrangement does not ripen into an employer-employee relationship between the principal and the employees of the legitimate labor contractor.

All told, the Court finds and holds that Romac is a legitimate labor contractor and truly the employer of Martinez, et al Romac could not be said to have dismissed Martinez, et al., just because of its service contracts with SMFI-MPPP had expired.

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION v. NATIONAL LABOR RELATIONS COMMISSION**

**G.R. No. 248401, 23 June 2021, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The Court ruled that while GOCCs without original charters are covered by the Labor Code, employees of GOCCs are bereft of any right to negotiate the economic terms of their employment, i.e., salaries, emoluments, incentives and other benefits, with their employers since these matters are covered by compensation and position standards issued by the Department of Budget and Management and applicable laws. GSIS clarified that RA 10149 applies to both chartered and non-chartered GOCCs.

Consequently, therefore, PNCC did not violate the non-diminution rule when it desisted from granting mid-year bonus to its employees starting 2013. True, between 1992 and 2011, PNCC invariably granted this benefit to its employees and never before revoked this grant in strict adherence to the non-diminution rule under Article 100 of the Labor Code. Nonetheless, with the subsequent enactment of RA 10149 in 2011, PNCC may no longer grant this benefit without first securing the requisite authority from the President. As borne by the records, PNCC failed to obtain this authority in view of the position taken by the GCG not to forward the request to the President. GCG cited as reasons the infirmity of the grant and the extraneous application of the non-diminution rule thereto.

**FACTS**

Philippine National Construction Corporation (PNCC) was founded in 1966 under the name Construction Development Corporation of the Philippines (CDCP), in accordance with the Corporation Code of the Philippines (CDCP).

CDCP got loans from several Government Financing Institutions (GFIs) over the course of its activities. President Ferdinand E. Marcos issued Letter of Instruction (LOI) No. 1295, instructing the GFIs to convert all CDCP's unpaid debts to them into stock shares. As a result of the LOI's execution, the GFIs became the main investors of PNCC. CDCP's Articles of Incorporation and By-Laws were later changed to reflect the scope of the Government's ownership interest in the firm as a result of the debt-to-equity conversion of CDCP loans.

Later, then President Gloria Macapagal-Arroyo signed Executive Order No. 331, which transferred PNCC to the Department of Trade and Industry (DTT). At some point, PNCC began providing mid-year incentives to its employees as part of a Collective Bargaining Agreement (CBA) with its then-employee union. However, even after the CBA ended, the staff continued to receive mid-year bonuses until 2012.

Meanwhile, on April 30, 2013, Atty. Luis F. Sison (Atty. Sison), then-PNCC President and Chief Executive Officer, requested the advice of PNCC's statutory counsel, the Office of the Government Corporate Counsel (OGCC), on the disbursement of the mid-year bonus for 2013 pursuant to Presidential Decree No. 1597.

The OGCC urged PNCC to get clearance from the Governance Commission for Government Owned or Controlled Corporations (GCG). As a result, PNCC requested GCG's approval for the payment of a mid-year bonus to its staff. The GCG informed them that it would not transmit the request for approval to then-President Benigno Aquino III since the grant was legally infirm and abrogation would not violate the non-diminution rule.

In accordance with that, Atty. Sison sent a note to all PNCC workers notifying them that the 2013 Mid-Year Bonus will not be paid. In response, PNCC employees filed a complaint with the National Labor Relations Commission (NLRC) Arbitration Branch for non-payment of a mid-year bonus as well as salary and benefit reductions.

The Labor Arbitrator (LA) determined that the practice of awarding mid-year bonuses to PNCC employees since 1992 had matured into a benefit or supplement that could not be reduced, diminished, discontinued, or eliminated in compliance with Labor Code Article 100 on non-diminution of benefits. The NLRC upheld the labor arbitrator's ruling. It ruled that PNCC is not a GOCC because it was established under the Philippine Corporation Code. PNCC, too, is a private firm despite the fact that the government owns the majority of its shares.

When appealed to the Court of Appeals (CA), the CA rejected the petition because PNCC neglected to file a motion for reconsideration of the NLRG judgment at issue. It confirmed PNCC's status as a private business. It further said that, even though PNCC is a GOGC, PD 1597 and Republic Act no.10149 (RA no. 10149) are inapplicable to GOCCs with with no original charter, such as PNCC. 9

The CA determined that PNCC is an acquired asset corporation rather than a GOCC, citing PNCC Pabion and Cuenca r. Hon. Altas. Despite the fact that the government has a majority stake in PNCC, the latter is a private business subject to the Labor Code rather than the Civil Service Law. Furthermore, the Court of Appeals determined that PNCC's reluctance to distribute the employees 2013 mid-year bonus violated Article 100 of the Labor Code's non-diminution provision.

**ISSUES**

(1) Are PNCC employees covered by the provisions of the Labor Code?

(2) Is PNCC governed by RA 10149?

**RULING**

**(1) YES.** Under Section 2, paragraph 1, Article IX-B of the 1987 Constitution, only GOCCs with original charters are covered by civil service laws, viz.:

SECTION 2. (1) The civil service embraces all branches subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. Since PNCC is a non-chartered GOCC, incorporated under the Corporation Code, it is governed by the Labor Code, not by the Civil Service Law. In Paloma. Philippine Airlines, Inc., the Court pronounced that prior to the privatization of the Philippine Airlines, Inc. (PAL), it was a non- chartered GOCC in the sense that the GSIS owned majority of its stockholdings. Consequently, PAL personnel were covered by the Labor Code, not by the Civil Service Law. The same rule applies to PNCC employees.

(2) **YES**. Although governed by the Labor Code, as a GOCC, PNCC is not exempt from the coverage of the National Position Classification and Compensation Plan approved by the President. This principle can be found under Sections 1 and 4 of RA 10149. Further, Section 9 of the same law ordains that no GOCC shall be exempt from the coverage of the Compensation and Position Classification System. Notably, Section 32 of RA 10149 expressly repeals all decrees and issuances inconsistent with its provisions.

In GSIS Family Bank Employees Union v. Villanueva, the Court had the occasion to illustrate the interplay between the provisions of the Labor Code and the provisions of RA 10149 on the life of a non-chartered GOCC.

The Court ruled that while GOCCs without original charters are covered by the Labor Code, employees of GOCCs are bereft of any right to negotiate the economic terms of their employment, ie., salaries, emoluments, incentives and other benefits, with their employers since these matters are covered by compensation and position standards issued by the Department of Budget and Management and applicable laws. GSIS clarified that RA 10149 applies to both chartered and non-chartered GOCCs.

Consequently, therefore, PNCC did not violate the non-diminution rule when it desisted from granting mid-year bonus to its employees starting 2013. True, between 1992 and 2011, PNCC invariably granted this benefit to its employees and never before revoked this grant in strict adherence to the non-diminution rule under Article 100 of the Labor Code. Nonetheless, with the subsequent enactment of RA 10149 in 2011, PNCC may no longer grant this benefit without first securing the requisite authority from the President. As borne by the records, PNCC failed to obtain this authority in view of the position taken by the GCG not to forward the request to the President. GCG cited as reasons the infirmity of the grant and the extraneous application of the non-diminution rule thereto.

All told, the LA, the NLRC, and the CA each gravely erred when they peremptorily compelled PNCC to release the questioned mid-year bonus to the employees.

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION DR. NATIONAL LABOR RELATIONS COMMISSION**

**G.R. No. 248401, 23 June 2021, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The Court ruled that while GOCCs without original charters are covered by the Labor Code, employees of GOCCs are bereft of any right to negotiate the economic terms of their employment, i.e., salaries, emoluments, incentives and other benefits, with their employers since these matters are covered by compensation and position standards issued by the Department of Budget and Management and applicable laws. GSIS clarified that RA 10149 applies to both chartered and non-chartered GOCCs.

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CDCP got loans from several Government Financing Institutions (GFIs) over the course of its activities. President Ferdinand E. Marcos issued Letter of Instruction (LOI) No. 1295, instructing the GFIS to convert all CDCP's unpaid debts to them into stock shares. As a result of the LOI's execution, the GFIs became the main investors of PNCC. CDCP's Articles of Incorporation and By-Laws were later changed to reflect the scope of the Government's ownership interest in the firm as a result of the debt-to-equity conversion of CDCP loans.

Later, then President Gloria Macapagal-Arroyo signed Executive Order No. 331, which transferred PNCC to the Department of Trade and Industry (DTI). At some point, PNCC began providing mid-year incentives to its employees as part of a Collective Bargaining Agreement (CBA) with its then-employee union. However, even after the CBA ended, the staff continued to receive mid-year bonuses until 2012.

Meanwhile, on April 30, 2013, Atty. Luis F. Sison (Atty. Sison), then-PNCC President and Chief Executive Officer, requested the advice of PNCC's statutory counsel, the Office of the Government Corporate Counsel (OGCC), on the disbursement of the mid-year bonus for 2013 pursuant to Presidential Decree No. 1597.

The OGCC urged PNCC to get clearance from the Governance Commission for Government Owned or Controlled Corporations (GCG). As a result, PNCC requested GCG's approval for the payment of a mid-year bonus to its staff. The GCG informed them that it would not transmit the request for approval to then-President Benigno Aquino III since the grant was legally infirm and abrogation would not violate the non-diminution rule.

In accordance with that, Atty. Sison sent a note to all PNCC workers notifying them that the 2013 Mid-Year Bonus will not be paid. In response, PNCC employees filed a complaint with the National Labor Relations Commission (NLRC) Arbitration Branch for non-payment of a mid-year bonus as well as salary and benefit reductions.

The Labor Arbitrator (LA) determined that the practice of awarding mid-year bonuses to PNCC employees since 1992 had matured into a benefit or supplement that could not be reduced, diminished, discontinued, or eliminated in compliance with Labor Code Article 100 on non-diminution of benefits. The NLRC upheld the labor arbitrator's ruling. It ruled that PNCC is not a GOCC because it was established under the Philippine Corporation Code. PNCC, too, is a private firm despite the fact that the government owns the majority of its shares.

When appealed to the Court of Appeals (CA), the CA rejected the petition because PNCC neglected to file a motion for reconsideration of the NLRC judgment at issue. It confirmed PNCC's status as a private business. It further said that, even though PNCC is a GOCC, PD 1597 and Republic Act no.10149 (RA no. 10149) are inapplicable to GOCCs with no original charter, such as PNCC.

The CA determined that PNCC is an I that PNCC is an acquired asset corporation rather than a GOCC, citing PNCC v. Pabion and Cuenca v. Hon. Altas. Despite the fact that the government has a majority stake in PNCC, the latter is a private business subject to the Labor Code rather than the Civil Service Law. Furthermore, the Court of Appeals determined that PNCC's reluctance to distribute the employees 2013 mid-year bonus violated Article 100 of the Labor Code's non-diminution provision.

**ISSUES**

(1) Are PNCC employees covered by the provisions of the Labor Code?

(2) Is PNCC governed by RA 10149?

**RULING**

(1) **YES**. Under Section 2, paragraph 1, Article IX-B of the 1987 Constitution, only GOCCs with original charters are covered by civil service laws, viz.:

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(2) YES. Although governed by the Labor Code, as a GOCC, PNCC is not exempt from the coverage of the National Position Classification and Compensation Plan approved by the President. This principle can be found under Sections 1 and 4 of RA 10149. Further, Section 9 of the same law ordains that no GOCC shall be exempt from the coverage of the Compensation and Position Classification System. Notably, Section 32 of RA 10149 expressly repeals all decrees and issuances inconsistent with its provisions.

In GSIS Family Bank Employees Union v. Villanueva, the Court had the occasion to illustrate the interplay between the provisions of the Labor Code and the provisions of RA 10149 on the life of a non-chartered GOCC.

The Court ruled that while GOCCs without original charters are covered by the Labor Code, employees of GOCCs are bereft of any right to negotiate the economic terms of their employment, i.e., salaries, emoluments, incentives and other benefits, with their employers since these matters are covered by compensation and position standards issued by the Department of Budget and Management and applicable laws. GSIS clarified that RA 10149 applies to both chartered and non-chartered GOCCs.

Consequently, therefore, PNCC did not violate the non-diminution rule when it desisted from granting mid-year bonus to its employees starting 2013. True, between 1992 and 2011, PNCC invariably granted this benefit to its employees and never before revoked this grant in strict adherence to the non-diminution rule under Article 100 of the Labor Code. Nonetheless, with the subsequent enactment of RA 10149 in 2011, PNCC may no longer grant this benefit without first securing the requisite authority from the President. As borne by the records, PNCC failed to obtain this authority in view of the position taken by the GCG not to forward the request to the President. GCG cited as reasons the infirmity of the grant and the extraneous application of the non-diminution rule thereto.

All told, the LA, the NLRC, and the CA each gravely erred when they peremptorily compelled PNCC to release the questioned mid-year bonus to the employees.

**JOLLY R. CARANDAN 1. DOHLE SEAFRONT CREWING MANILA, INC., DOHLE (IOM) LIMITED, and PRINCES DULATRE**

**G.R. No. 252195, 30 June 2021, SECOND DIVISION (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Pursuant to the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (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 given for such continuing illness or condition; or

(b) the seafarer had been diagnosed and bas knowledge of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during t the PEME.

Moreover, to speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception. None of these conditions obtains here.

Although the company-designated doctor, Dr. Go, stated that Carandan supposedly admitted to her that he got treated for hypertension in 2010 and had been experiencing chest pains since the year 2000, Carandan had invariably denied it. At any rate, the statement of Dr. Go regarding what Carandan supposedly told her is hearsay, thus, devoid of any probative weight. In addition, Carandan passed the PEME prior to his boarding. He was declared fit to works by the company-designated doctors. Had Carandan been already suffering from hypertension and coronary artery disease, this would have been reflected in bis physical examination.

**FACTS**

In December 2015, prior to his deployment, Jolly Carandan (Carandan) underwent routinary Pre-Employment Medical Examination (PEME). In the process, Carandan was asked whether he was aware of, diagnosed with, or treated for hypertension and heart disease, among others. Carandan answered in the negative. Based on the results of his examination, Carandan was declared fit for sea duty and got deployed on January 17, 2016.

On April 23, 2016, barely three (3) months on board and while performing his routinary tasks, Carandan suffered a cardiac arrest, lost consciousness and passed out. He was later brought to a doctor in Germany where he was diagnosed with coronary artery disease and myocardial infarct. He underwent treatment and was later discharged. Consequently, he got repatriated on May 3, 2016.

Upon his repatriation, Carandan was diagnosed with myocardial infarction. The company-designated doctors, in its Report dated May 6, 2016, opined that Carandan illness is not work related. Thus, Dohle Seafront Crewing Manila, Inc. (Dohle), stopped paying for Carandan's treatment and refused his claim for total and permanent disability benefits. Dr. Vicaldo, Carandan's chosen doctor nonetheless found him "unfit to resume work as a seaman in any capacity" and that he is "not expected to land gainful employment given his medical background."

Carandan subsequently demanded that Dohle pay his disability benefits, but Dohle denied Carandan's claim for total and permanent disability benefits because he supposedly concealed from them that prior to his employment with them, he had already been diagnosed with pre-existing hypertension and chest pains with nocturnal dyspnea.

The Panel of Voluntary Arbitrators (PVA) granted Carandan's claim for total and permanent disability benefits. On Dohle's petition for review, the Court of Appeals (CA) reversed the Decision of the PVA. Carandan now seeks affirmative relief from the Court and prays that the dispositions of the CA be reversed and set aside.

**ISSUES**:

1. Is Carandan guilty of material concealment of a previous medical condition?

2. Is Carandan entitled to total and permanent disability benefits?

**RULING**

**(1) NO.** Pursuant to the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (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 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.

Moreover, to speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception. None of these conditions obtains here.

Although the company-designated doctor, Dr. Go, stated that Carandan supposedly admitted to her that he got treated for hypertension in 2010 and had been experiencing chest pains since the year 2000, Carandan had invariably denied it. At any rate, the statement of Dr. Go regarding what Carandan supposedly told her is hearsay, thus, devoid of any probative weight. In addition, Carandan passed the PEME prior to his boarding. He was declared fit to work by the company-designated doctors. Had Carandan been already suffering from hypertension and coronary artery disease, this would have been reflected in his physical examination.

Assuming that Carandan was indeed previously diagnosed with hypertension or any cardiovascular disease, he still could not be deemed guilty of material concealment. There was absolutely no proof that he "deliberately concealed" his illness for a malicious purpose; or had "intent to deceive" and to "profit from that deception." Consequently, he cannot be disqualified from claiming disability benefits on the ground of material concealment.

(2) **YES.** The 2010 POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time Carandan got employed in 2013, sets the procedure for disability claims. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. In such a condition, a cardiovascular disease may be deemed compensable.

Prior to assuming Carandan's duties as Able Seaman aboard Dohle's "MV Favourisation" on January 17, 2016, Carandan was declared fit to work per the PEME he had with the company-designated doctors. Thus, he did not show any symptoms of any illness before he went on board and before he got subjected to strain at work. He only began to show symptoms of heart ailment while already performing his work on board on April 23, 2016, during which he experienced shortness of breath, cold sweat, and fainting spell. These symptoms persisted way beyond the time he was medically repatriated. Considering that Carandan was asymptomatic prior to boarding and that his symptoms persisted, it is reasonable to claim a causal relationship between Carandan's illness and his work as Able Seaman who was constantly exposed to strenuous work.

In addition, Dohle here did not give a definitive and final assessment of Carandan's disability within the mandatory period of 120 or 240 days from Carandan's repatriation based on the mistaken belief that his illness was not work related. However, under the jurisprudence, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permaner or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.

Thus, without a valid final and definitive assessment from the company-designated doctors within the mandatory 120/240-day period, as in this case, the law already steps in to consider a seafarer's disability as total and permanent. By operation of law, therefore, Carandan is already totally and permanently disabled.

**RODRIGO A. UPOD v. ONON TRUCKING AND MARKETING CORPORATION and AIMARDO V. INTERIOR**

**G.R. No. 248299, 14 July 2021, 2ND DIVISION (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The court ascertain whether the employee was able to discharge his burden by taking into account the determinative factors of employment under the 4 fold test: (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. The elements are all present in this case.

First, the Onon Trucking hired Upon as hauler/driver. Except for the interruption in Upod's service from 2009 until 2014, he had been with Onon Trucking since 2004 until 2017 or for about 8 years. Second, Onon Trucking paid Upod 16% of gross revenues per trip. The fact that Upod was paid on per trip basis does not negate the existence of an employer-employee relationship; for the same is simply a method of computing compensation. Third, Onon Trucking's power to hire included its inherent power to discipline Upod. And lastly, Onon exercised the power of control over Upod's performance for his task.

Furthermore, Upod attained regular status of employment with Onon Trucking, albeit he was later on illegally dismissed. A regular employee is one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; or (2) a casual employee who has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he or she is employed.

Since Onon trucking is engaged in the wholesale and retail or various products, it must necessarily engaged the services of delivery drivers, such as therein Upod, for the purpose of getting its products delivered to its clients. Thus, Upod had performed acts necessary and desirable to Onon Trucking's business and trade for more than a year and his status had already ripened to a regular employment.

**FACTS**

Onon Trucking hired Rodrigo A. Upod (Upod) in 2004 as hauler/driver. His tasks considered of travelling to the manufacturing plant of San Miguel Brewery, Inc. in San Fernando to withdraw stocks of piling and distribution to different grocery stores. Upod was paid on a "per trip" basis. However, Upod was suspended on the ground of alleged abandonment in 2009 but was rehired in 2014. Since then, Upod continuously reported for work. Until February 2017 when he was no longer given any delivery assignment. Upod nonetheless continued maintaining the hauling trucks for a few days. Thereafter, he decided to leave and file the present suit because he realized that his continuous employment was no longer possible. He also claimed that he was not given the benefits due a regular employee.

On the other hand, Onon Trucking claimed that there was no employer-employee relationship with Upod and asserted that there could be no illegal dismissal to speak of since Upod was never its employee. According to the company, it hired independent freelance drivers like Upod to transport supplies to its clients. It paid the drivers on per delivery basis which in Upod's case was 16% of the gross revenue per trip. Upod's engagement ended without further notice, upon delivery of the supplies or upon return to the warehouse whichever came first.

The Labor Arbiter (LA) held that all the elements of employer-employee relationship are present in the case and thus granted Upod his separation pay, 13th months pay, and attorney's fees. However, the LA denied his claim for non-membership with the SSS, Philhealth, and Pag-Ibig.

The National Labor Relations Commission (NLRC) reversed the ruling of the LA. It held that Upod did not adduce evidence to prove his supposed employment with Onon Trucking. On the contrary, the terms of the per trip contract were clear - the engagement ended upon completion of Upod's delivery of the goods and his return to the warehouse whichever came earlier. The limited engagement of Upod's services 2-3 times per week also weighed heavily against Upod's claim of employment with Onon Trucking. Absent any employer-employee relationship between Upod and Onon Trucking, there could be no illegal dismissal to speak of.

The case was brought before the Court of Appeals (CA) which held that the Upod, as a fixed-term employee of Onon Trucking, was validly dismissed. Upod voluntarily signed the per trip contract such that the engagement upon his delivery of the goods o his return to the warehouse whichever came first, without need of further notice.

**ISSUE**

Did Onon Trucking's failure to comply with both substantive and procedural due process render Upod's dismissal illegal?

**RULING**

**YES**. Before the Court could rule on illegal dismissal cases, the employee must first establish his or her employment relationship with the employer. The court ascertain whether the employee was able to discharge his burden by taking into account the determinative factors of employment under the 4-fold test: (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. The elements are all present in this case.

First, the Onon Trucking hired Upon as hauler/driver. Except for the interruption in Upod's service from 2009 until 2014, he had been with Onon Trucking since 2004 until 2017 or for about 8 years. Second, Onon Trucking paid Upod 16% of gross revenues per trip. The fact that Upod was paid on per trip basis does not negate the existence of an employer-employee relationship; for the same is simply a method of computing compensation. Third, Onon Trucking's power to hire included its inherent power to discipline Upod. And lastly, Onon exercised the power of control over Upod's performance for his task.

The Court cited the case if Chavez v. NLRC, where in Chavez was declared a regular employee despite having been engaged and paid on a per trip basis. The same can be said to this case.

Furthermore, Upod attained regular status of employment with Onon Trucking, albeit he was later on illegally dismissed. A regular employee is one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; or (2) a casual employee who has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he or she is employed. Since Onon trucking is engaged in the wholesale and retail or various products, it must necessarily engaged the services of delivery drivers, such as therein Upod, for the purpose of getting its products delivered to its clients. Thus, Upod had performed acts necessary and desirable to Onon Trucking's business and trade for more than a year and his status had already ripened to a regular employment.

The Court also cited the case of Cielo v. NLRC, where it was ruled that Cielo is a regular employee of the private respondent which was engaged in the trucking business as hauler of cattle, crops, and other cargo for the Philippine Packing Corporation. In the case at bar, Upod had already been in the service of Onon Trucking continuously for 8 years before he got dismissed. Thus, in order for Upod's dismissal to be just, it should have been for authorized causes and only upon compliance with procedural due process. However, Onon Trucking did not comply with either of the conditions in effecting Upod's dismissal. It just abruptly stopped giving delivery assignment to Upod. Upod did not even prove the fact that his dismissal in view of Onon Trucking's admission that it stopped giving assignment to Upod because allegedly, his contract already expired.

Article 279 of the Labor Code mandates that an illegally dismissed employee is entitled to reinstatement without loss of seniority and other privileges, full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement. Where reinstatement is no longer viable as an option, or when the dismissed employee opted not to be reinstated, as in here, separation pay equivalent to 1 month salary for every year of service should be awarded as an alternative. Payment of separation pay is in addition to payment of backwages. Verily, Upod is entitled to backwages reckoned from February 2017 until finality of this Decision. The monetary awards shall earn 6% legal interest per annum from finality of this decision until fully paid. Trucking should be solely liable for the monetary awards.

**NEW WORLD INTERNATIONAL DEVELOPMENT (Phil.), INC., STEPHAN STOSS and GEUEL F. AUSTE 1. NEW WORLD RENAISSANCE HOTEL LABOR UNION**

**G.R. No. 197889, 28 July 2021, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

A case becomes moot when it ceases to present a justiciable controversy such that its adjudication would not yield any practical value or use. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value. Without any legal relief that may be granted, courts generally decline to resolve moot cases, lest the ruling result in a mere advisory opinion. Indeed, the power of the Court to adjudicate is limited to actual ongoing controversies. Thus, and as a general rule, the Court will not decide moot questions, or abstract propositions, or declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.

Here, the dissolution of the Union by its own members is a supervening event which rendered the case moot. Such dissolution deprives these courts of judicial authority to resolve the case, there being no longer any actual case or controversy since one of the parties, a real party in interest, has ceased to be.

**FACTS**

Following a certification election, New World Renaissance Hotel Labor Union (Union) was certified as the sole and exclusive bargaining agent of all rank and file employees of New World International Development (Phil.), Inc., (hotel).

The Union submitted its proposal for a collective bargaining agreement (CBA) to the hotel management but failed to get a response from the latter. For this reason, and considering the incidents of harassment against its officers and members, the Union resorted to preventive mediation proceeding before the National Conciliation and Mediation Board.

The hotel's counsel replied that since a petition for cancellation of the Union's certification as bargaining agent was then pending before the Department of Labor and Employment-National Capital Region (DOLE-NCR), it was more prudent to await the outcome of the said petition. Later, the DOLE-NCR dismissed the petition for cancellation. On appeal, the Bureau of Labor Relations affirmed the dismissal.

The Union filed a complaint for unfair labor practice, which the labor arbiter (LA) dismissed for prematurity. The LA held that the Union's cause of action would accrue only after the Court of Appeals (CA) affirms with finality the dismissal of the petition for cancellation.

In the meantime, the hotel allegedly started discriminating against the Union officers by demoting them, although without diminution of benefits. Hence, the Union revived its earlier complaint for unfair labor practice.

The LA found the hotel, its owner Stephan Stoss (Stoss), and human resources director Geuel Auste (Auste) not liable for unfair labor practice. The LA ruled that the hotel, Stoss, and Auste had a valid reason not to negotiate with the Union in light of the petition for cancellation of the Union's certification, and was only observing judicial courtesy. The National Labor Relations Commission (NLRC) affirmed the decision of the LA.

The CA reversed the decision of the NLRC. It ruled that the pendency of cancellation proceedings against a Union is not a bar to set in motion the mechanics of collective bargaining, and that the hotel's refusal to negotiate, despite the final and executory dismissal of the petition for cancellation demonstrated the hotel's utter lack of interest in bargaining with the Union, amounting to bad faith and unfair labor practice.

On reconsideration, the hotel, Stoss, and Auste sought to dismiss the case on ground of mootness, citing that through resolutions, rank-and-file employees-Union members-decreed the dissolution of the Union.

The Union alleged that the members were forced or coerced to dissolve the Union. The CA eventually denied the motion for reconsideration as it was raised for the first time on appeal.

**ISSUE**

Has the case become moot?

**RULING**

**YES.** A case becomes moot when it it ceases ceases to to to pres present present a a justiciable controversy such that its adjudication would not yield any practical value or use. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value. Without any legal relief that may be granted, courts generally decline to resolve moot cases, lest the ruling result in a mere advisory opinion. Indeed, the power of the Court to adjudicate is limited to actual ongoing controversies. Thus, and as a general rule, the Court will not decide moot questions, or abstract propositions, or declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.

Here, the dissolution of Union by its own members is a supervening event which rendered the case moot. As explained in Abrigo v. Flores, a supervening event "consists of facts that transpire after the judgment became final and executory, or of new circumstances that develop after the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time."

Verily, the dissolution of the Union, a supervening event, is a matter which appellate courts can take judicial notice of even though the same is raised for the first time on appeal. For such dissolution deprives these courts of judicial authority to resolve the case, there being no longer any actual case or controversy since one of the parties, a real party in interest, has ceased to be.

Any decision rendered for or against a person who is not a real party in interest in the case cannot be executed. Here, it would be pointless to adjudicate the case because there is no way the Union can still benefit from the judgment being prayed for precisely because it had long ceased to be. A bare accusation that the members were allegedly forced or coerced to dissolve the Union does not negate the fact of dissolution which the members themselves promptly relayed to the concerned labor agencies.

**RELIABLE INDUSTRIAL AND COMMERCIAL SECURITY AGENCY, INC. and/or RONALD P. MUSTARD 1. THE HONORABLE COURT OF APPEALS, ANTONIO C. CAÑETE, AND MARGARITO AUGUIS**

**G.R. No. 190924, 14 September 2021, FIRST DIVISION (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances. Further, management prerogative is the right of an employer to regulate all aspects of employment. However, the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him.

Here, RICSA unfairly wielded its prerogative when it transferred Cañete and Auguis. Though said transfers did not result in the reduction of Cañete and Auguis' salaries, duties, or responsibilities, the other circumstances surrounding the transfers reveal that the same were implemented as a form of punishment. To the Court's mind, the only reason the status quo had shifted was because Cañete and Auguis had earlier sued RICSA for money claims. As such, the Court held that Cañete and Auguis were constructively dismissed.

**FACTS**

In March and April 2006, Antonio Caññete and Margarito Auguis (Cañete and Auguis) filed separate complaints against Reliable Industrial Commercial Security Agency, Inc. (RICSA) and its President, Ronald P. Mustard (Mustard), for nonpayment of minimum wage, overtime, holiday, and rest day pays. A few days after the cases were submitted for resolution, RICSA reassigned Cañete and Auguis to other posts. RICSA then barred Cañete and Auguis from reporting to Pier 12. Hence, Cañete and Auguis filed another complaint against RICSA for constructive dismissal.

Meantime, the complaints for money claims eventually got dismissed on ground of prescription. The National Labor Relations Commission (NLRC) affirmed this decision.

The Labor Arbiter dismissed the complaint for constructive dismissal. The NLRC affirmed this decision.

However, the Court of Appeals (CA) reversed the decision. At the outset, it noted that RICSA's petition for certiorari suffered from procedural infirmities. On the substantive issues, it found that Cañete and Auguis were constructively dismissed.

**ISSUES**

(1) Did RICSA avail of the proper remedy in assailing the dispositions of the CA?

(2) Were Cañete and Auguis constructively dismissed?

(3) Is Mustard liable to Cañete and Auguis?

**RULINGS**

**(1) YES.** The writ of certiorari is a remedy to keep lower courts and tribunals within the bounds of their jurisdiction. It is not issued to correct every error that may have been committed by lower courts and tribunals but only to prevent the latter from acting in grave abuse of discretion.

The requirements for invoking the Court's power of certiorari are embodied in Rule 65 of the Rules of Court (ROC). Verily, the writ requires that there be no appeal or other plain, speedy, and adequate remedy available to correct the error. Thus, certiorari may not be issued if the error can be the subject of an ordinary appeal.

Here, RICSA resorted to certiorari by alleging that the CA acted in grave abuse of discretion when it rendered the rulings against them. However, a plain, speedy, and adequate remedy was still available to RICSA, specifically a petition for review on certiorari under Rule 45 of the ROC. On this score, the Court is convinced that RICSA availed of a certiorari petition precisely to cloak its lost remedy.

Notably, the present petition was filed on February 2, 2010 or fifty-seven days after RICSA received the resolution denying their motion for reconsideration on December 7, 2009. But the Court has long settled that certiorari is not a substitute for a lapsed or lost appeal. Besides, an improper remedy would not prevent an adverse ruling from attaining finality. Once a ruling has lapsed into finality, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law.

However, the Court must keep stock of the principle that in labor cases, rules of procedure should not be applied in a very rigid and technical sense; they are mere tools designed to facilitate the attainment of justice. All told, the Court resolves to accord RICSA the same leniency that the CA extended to Cañete and Auguis and thus proceeds to resolve the case on the merits.

(2) **YES.** Gan v. Galderma Philippines, Inc. provides the definition of constructive dismissal as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely, when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment x x x The test of constructive dismissal is whether a reasonable person in in the employee's position would have felt compelled to give up his employment/position under the circumstances.

Further, management prerogative is the right of an employer to regulate all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. This also includes the prerogative to transfer an employee from one office to another within the business establishment.

However, Philippine Industrial Security Agency Corporation v. Aguinaldo elucidates that "while it is true that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment. . . the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank, or diminution of his salaries, benefits, and other privileges, as to constitute constructive dismissal."

Rural Bank of Cantilan v. Juhe also provides the following jurisprudential guidelines with regard to the transfer of employees: (a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an employee for legitimate business purposes; (c) a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of punishment or is a demotion without sufficient cause; (d) the employer must be able to show that the transfer is not unreasonable inconvenient or prejudicial to the employee.

Here, the exception applies. RICSA unfairly wielded its prerogative when it transferred Cañete and Auguis. Though said transfers did not result in the reduction of Cañete and Auguis' salaries, duties, or responsibilities, the other circumstances surrounding the transfers reveal that the same were implemented as a form of punishment.

To the Court's mind, the only reason the status quo had shifted was because Cañete and Auguis had earlier sued RICSA for money claims. In any event, RICSA failed to adduce any evidence to prove the existence their standard procedure or even the details regarding the number of days, months, or years each guard may stay in one location before Cañete and Auguis must be transferred. Too, there is a dearth of evidence showing that RICSA's other security guards have been periodically reshuffled from one location to another pursuant to this alleged policy.

With regard to monetary awards, the Court held that in cases of unlawful termination, the employee who was unjustly dismissed from work is entitled to reinstatement and full backwages. But jurisprudence allows payment of separation pay if reinstatement is no longer feasible. The most common reason for payment of separation pay is when the relation between the employer and employee has already been strained. Separation pay is also available when reinstatement is no longer practical or in the best interest of the parties.

Here, the CA noted that Cañete and Auguis no longer desired to be reinstated. With the strained relation between the parties rendering reinstatement unlikely or impractical, separation pay was properly awarded to Cañete and Auguis. The monetary award of backwages and separation pay shall earn six percent interest per annum from finality of this decision until fully paid.

(3) **NO**. As a general rule, corporate officers are not solidarily liable with the corporation for its obligations because the corporation is vested with a personality separate and distinct from those of the persons composing it. To hold a director or officer personally liable for corporate obligations, however, two requisites must concur: (a) the director or officer assented to the patently unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (b) there must be proof that the director or officer acted in bad faith.

Here, although the allegation of constructive dismissal was duly substantiated, Mustard's participation in the transfer w 0as not specifically alleged nor proven. Cañete and Auguis merely impleaded Mustard and made a general allegation of bad faith on his part. Again, bad faith is never presumed and must be proved by clear and convincing evidence which is absent here. Hence, only RISCA is liable to Cañete and Auguis.

**STEELWELD CONSTRUCTION/JOVEN STA. ANA AND JOSEPHINE STA. ANA v. SERAFIN H. ECHANO, RENATO L. SALAZAR, AND ROBERTO E. COPILLO G.R. No. 200986, 29 September 2021, FIRST DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

A project employee is hired for a specific project with a predetermined start and end date. The key factor in determining project employment is whether the employee was engaged to complete a particular project or task, with its duration or scope specified at the time of hire. According to Article 295 of the Labor Code, regular employees are those engaged in activities that are essential to the employer's regular business or trade. In contrast, project employees are hired for specific projects or undertakings with clear endpoints. Casual employees who do not fit the criteria for regular or project employment become regular employees after one year of service in the same activity.

The evidence presented did not substantiate that Echano, Salazar, and Copillo were informed at the time of hiring that they were engaged for specific projects with defined durations and scopes, as required for project employees. The employment contracts provided by the Steelweld lacked signatures and were deemed inadmissible. Additionally, the absence of formal termination reports to the Department of Labor and Employment (DOLE) suggested that Echano, Salazar, and Copillo were not project employees but regular employees. The continuous employment of them, who had worked with Steelveld for several years without interruption, further indicated that their roles were integral to the company's business.

**FACTS**

In February 2010, Serafin H. Echano (Echano), Renato L. Salazar (Salazar), and Roberto E. Copillo (Copillo) filed a lawsuit against Steelweld Construction (Steelweld) and its executives for illegal dismissal and claims of underpayment and non-payment of wages and benefits, including separation pay, holiday pay, 13th month pay, and overtime pay.

Echano was hired as a carpenter in 2006 and later assigned additional duties. He worked extensive hours and reported during holidays. After being diagnosed with tuberculosis, he took two separate sick leaves. Upon returning to work in November 2009, he was not reinstated. Salazar was employed as a painter in 2005 with a schedule of 8 AM to 5 PM, Mondays to Saturdays. He worked during holidays without holiday pay and did not receive the 13th month's pay. He was terminated in December 2009 following a complaint to management and the completion of his project. Copillo was also hired as a painter in 2001, working similar hours and conditions as Salazar. He was also terminated in December 2009 after being issued a Notice to Explain for alleged poor performance and a mistake involving incorrect paint.

Steelweld argued that the terminations were valid as the projects were completed or the employees were terminated for specific causes. They presented unsigned employment contracts to support their claim that the employees were project workers, not regular employees. They also claimed that compensation and benefits were paid in accordance with the law, despite the loss of payroll records due to a typhoon.

The Labor Arbiter (LA) dismissed the complaints, finding the terminations justified and the claims for additional pay and benefits unsubstantiated. The NLRC, on appeal, ruled that the employees were regular employees and had been illegally dismissed. It ordered reinstatement and payment of back wages and 13th month pay. Echano, Salazar, and Copillo, who did not file a motion for reconsideration with the NLRC, directly petitioned the Court of Appeals (CA), citing negligence by their former lawyer. The CA dismissed the petition for failure to exhaust administrative remedies and denied the motion for reconsideration.

**ISSUE**

(1) Were Echano, Salazar, and Copillo regular employees of Steelweld?

(2) Were Echano, Salazar, and Copillo illegally dismissed?

**RULING**

(1) **YES.** A project employee is hired for a specific project with a predetermined start and end date. The key factor in determining project employment is whether the employee was engaged to complete a particular project or task, with its duration or scope specified at the time of hire. According to Article 295 of the Labor Code, regular employees are those engaged in activities that are essential to the employer's regular business or trade. In contrast, project employees are hired for specific projects or undertakings with clear endpoints. Casual employees who do not fit the criteria for regular or project employment become regular employees after one year of service in the same activity.

The evidence presented did not substantiate that Echano, Salazar, and Copillo were informed at the time of hiring that they were engaged for specific projects with defined durations and scopes, as required for project employees. The employment contracts provided by the Steelweld lacked signatures and were deemed inadmissible. Additionally, the absence of formal termination reports to the Department of Labor and Employment (DOLE) suggested that Echano, Salazar, and Copillo were not project employees but regular employees. The continuous employment of them, who had worked with Steelweld for several years without interruption, further indicated that their roles were integral to the company's business. Under Article 295 of the Labor Code, employees who perform tasks essential to the employer's business or who have been employed for over a year are considered regular employees.

(2) **YES**. The petitioners claimed that Echano abandoned his job after his six-month sick leave ended. However, abandonment requires both a deliberate refusal to work and a clear intention to sever the employer-employee relationship, which was not established in this case. Echano had sought permission to return and presented a medical certificate, but the company simply told him not to return. Moreover, the company did not follow proper procedures for termination, such as issuing the required notices. The fact that Echano filed a complaint for illegal dismissal also counters the claim of abandonment. For Salazar, Steelweld claimed his employment ended because the project was near completion. However, they provided insufficient evidence to support this claim, leading to the conclusion that Salazar was also terminated without just cause. Regarding Copillo, Steelweld argued that his dismissal was due to negligence and other complaints. Yet, the alleged negligence (using the wrong paint color) was a one-time, honest mistake, not gross or habitual negligence. Additionally, there was no evidence that he was formally warned or confronted about other performance issues.

The NLRC correctly found that Echano, Salazar, and Copillo were illegally dismissed. Since reinstatement is no longer practical after eleven years, the Court ordered the payment of separation pay and backwages instead. Echano, Salazar, and Copillo are also awarded 13th month pay for the period from February 2007 to their respective dates of dismissal.

**BERNILO M. AGUILERA D. COCA-COLA FEMSA PHILIPPINES, INC. G.R. No. 238941, 29 September 2021, FIRST DIVISION (LAZARO-JAVIER, J.)**

**DOCTRINE OF THE CASE**

For a redundancy program to be valid, the following requisites must concur: (a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (b) payment of separation pay equivalent to at least one (1) month pay for every year of service; (c) good faith in abolishing the redundant positions; and (d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (i) preferred status; (ii) efficiency; and (iii) seniority, among others.

Here, the Supreme Court ruled in favor of Aguilera and held that CCFPI did not follow any set of criteria in determining the positions to be abolished and the employees to be dismissed. Adequate proof of redundancy and criteria in the selection of the employees to be affected must be presented to dispel any suspicion of bad faith on the part of the employer.

Further, there are three instances where a waiver cannot preclude a dismissed employee from questioning the validity of his or her dismissal: (1) if the employer used fraud or deceit in obtaining the waivers; (2) if the consideration the employer paid is incredible and unreasonable; or (3) if the terms of the waiver are contrary to law, public order, public policy, morals, or good customs or prejudicial to a third person with a right recognized by law.

Here, as early as one month before the effectivity of his dismissal, Aguilera already got informed by CCFPI of his separation; however, despite the enticing package, Aguilera signified of his interest to continue working with the company even in a different capacity or for another position.

**FACTS**

Bernilo M. Aguilera (Aguilera) filed a complaint for illegal dismissal and money claims against COCA-COLA FEMSA, PHILS., INC. (CCFPI). Aguilera was hired by CCFPI and was eventually promoted wherein he was tasked to supervise the maintenance work of third-party service providers on the electric coolers of the company installed in the stores of its customers.

In 2013, a new management group took over the company's operations. Thereafter, Aguilera was informed by the Human Resource (HR) Manager Del Rosario, informed Aguilera that he failed the assessment, albeit the results were not disclosed to him. On even date, Aguilera received a notice of termination due to redundancy. Aguilera was further forced to accept the separation package offer and execute a Deed of Receipt, Waiver and Quitclaim for his dismissal.

The Labor Arbiter (LA) ruled in favor of Aguilera, noting that CCFPI did not show good faith in abolishing Aguilera's position.

The National Labor Relations Commission (NLRC) affirmed with modification. However, the Court of Appeals (CA) reversed the decision and found that CCFPI did comply with all the requisites for a valid redundancy program.

**ISSUE**

(1) Was Aguilera validly dismissed on the ground of redundancy?

(2) Is Aguilera's quitclaim void?

**RULING**

(1) **NO.** Redundancy is one of the authorized causes for termination of employment under Article 298 of the Labor Code. It exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business. enterprise. A position is redundant where it had become superfluous. The characterization of an employee's services as redundant, and therefore, properly terminable, is an exercise of management prerogative, considering that an employer has no legal obligation to keep more employees than are necessary for the operation of its business. But the exercise of such prerogative "must not be in violation of the law, and must not be arbitrary or malicious."

For a redundancy program to be valid, the following requisites must concur: (a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (b) payment of separation pay equivalent to at least one (1) month pay for every year of service; (c) good faith in abolishing the redundant positions; and (d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (i) preferred status; (ii) efficiency; and (iii) seniority, among others.

Here, the Supreme Court ruled in favor of Aguilera and held that CCFPI did not follow any set of criteria in determining the positions to be abolished and the employees to be dismissed. Adequate proof of redundancy and criteria in the selection of the employees to be affected must be presented to dispel any suspicion of bad faith on the part of the employer.

Applying Feati University v. Pangan and Yulo v. Concentrix Daksh Services Philippines, Inc., the bare declaration of CCFPI's HR Manager, without more, does not comply with the requirements of good faith and necessity. Further, Abbott Laboratories (Philippines), Inc. v. Torralba ordained that an employer's subsequent creation of new positions or the hiring of additional employees is inconsistent with the termination on the ground of redundancy; it exhibits the employer's intent to circumvent the employee's right to security of tenure. Hence, it was held that Aguilera was ruled to be illegally dismissed.

(2) **NO.** Quitclaims and waivers are usually frowned upon and are considered as ineffective in barring recovery for the full measure of the worker's rights and that acceptance of the benefits therefrom does not amount to estoppel. But 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 change of mind.

There are three instances, however, where a waiver cannot preclude a dismissed employee from questioning the validity of his or her dismissal: (1) if the employer used fraud or deceit in obtaining the waivers; (2) if the consideration the employer paid is incredible and unreasonable; or (3) if the terms of the waiver are contrary to law, public order, public policy, morals, or good customs or prejudicial to a third person with a right recognized by law.

Here, as early as one month before the effectivity of his dismissal, Aguilera already got informed by CCFPI of his separation package following the abolition of his position due to its redundancy. But despite the enticing package, Aguilera signified of his interest to continue working with the company even in a different capacity or for another position.

**NELSON M. CELESTINO D. BELCHEM PHILIPPINES, INC., BELCHEM SINGAPORE PTE., and/or JASMIN D. SALVADOR G.R. No. 246929, 02 March 2022, THIRD DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

The POEA-SEC provides that if the employee is suffering from any of the occupational diseases or illnesses listed under its Section 32(A), such disease is deemed to be work-related, provided the conditions set therein are satisfied. Section 20(B)(4) of the POEA-SEC, on the other hand, states that if the illness, such as "Diabetes Mellitus," is not listed as an occupational disease under Section 32(A), there is still a disputable presumption that the ailment is work-related. This means that there is a legal presumption in favor of the seafarer that their illness is work-related, and the employer has the burden of presenting evidence to overcome such presumption.

A Here, Celestino, too, passed his PEME prior to embarking on his duties and thereafter developed "Diabetes Mellitus" complicated with "Ureterolithiasis." This clearly creates the legal presumption that Celestino's illnesses are work-related. Belchem PH, however, were unable to overcome such presumption in favor of Celestino, thus, his illnesses are deemed work-related and compensable.

**FACTS**

Belchem Singapore Pte. Ltd., through its local agent, Belchem Philippines, Inc. (Belchem PH), hired Nelson M. Celestino (Celestino) as third officer for a period of nine months. Prior to his deployment, Celestino underwent routinary preemployment medical examination (PEME). When asked whether he had or had been told he had suffered from any disease or illness, Celestino answered in the negative and was deployed soon after.

However, while on board, he experienced high fever, chills, and convulsions. He was diagnosed as a "Diabetic de Novo," or someone in the early stages of diabetes. After confinement and medication, he was repatriated back to the Philippines. After he arrived in the country, he had continuous monitoring and various check-ups from the company-designated physicians, it was found out that he was suffering from "Diabetes Mellitus" with incidental finding of "Ureterolithiasis". Celestino filed a complaint for total and permanent disability benefits, damages, and attorney's fees against Belchem PM.

After filing the complaint, Celestino decided to consult his own physician, Dr. Tan, who issued a medical certificate diagnosing him with permanent disability. Celestino alleged that his illnesses were work-related, having been acquired in the performance of his strenuous duties. Notably, his PEME initially declared him "fit to work," but he is now unable to carry out his job as seafarer for more than 120 days from repatriation. Therefore, he should be deemed to have suffered total and permanent disability.

The Labor Arbiter (LA) ruled that Celestino was entitled to total and permanent disability benefits but dismissed his other claims and charges but the National Labor Relations Commission (NLRC) reversed the decision. The NLRC ruled that Celestino is not entitled to total and permanent disability benefits. It added that Celestino prematurely filed his complaint for total and permanent disability benefits because he was then still under treatment at that time and had not yet procured the medical opinion of his physician of choice. Too, the Court had previously ruled that "diabetes mellitus" is not work related. "It is a metabolic and familial disease to which one is predisposed by reason of heredity, obesity, or old age."

When brough to the Court of Appeals (CA), it affirmed the NLRC decision. It held that when Celestino filed his complaint for disability benefits on July 1, 2013, he was still on his 199th day of treatment since he was referred to the company-designated physician upon his repatriation on December 14, 2012. In fact, Celestino himself admitted that he was still undergoing treatment when he filed his complaint and that his treatment ended on August 31, 2013. Thus, Celestino was still under total and temporary disability inasmuch as the extension of the 240-day period provided under the POEA-SEC had not yet lapsed. There being no final assessment, Celestino's condition could not be considered as a total and permanent disability.

**ISSUES**

(1) Was the complaint prematurely filed?

(2) Is Celestino entitled to total and permanent disability benefits?

**RULING**

(1) **NO.** In Orient Hope Agencies v. Jara set out the guidelines to determine a seafarer's disability, viz.:

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 them;

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

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

Here, Celestino got repatriated and referred to one of the company designated physicians on December 14, 2012. He was told to return regularly during the succeeding months, which he heeded conscientiously. Thus, Celestino went and consulted with at least three company-designated physicians on the same days set by the latter for that purpose. Thereafter, he was eventually told that his "ongoing treatment" shall last until August 31, 2013. Notably, however, the 240-day maximum period for assessment of Celestino's disability grading started on December 14, 2012, and already ended on August 11, 2013. The advice therefore of the company-designated physicians for Celestino to undergo further treatment to last until August 31, 2013, or 20 days beyond the 240-day period, was an effective declaration that his "Diabetes Mellitus and Ureterolithiasis" are permanent, and his disability, total.

Celestino cannot be faulted for filing his complaint on the 199th day of his ongoing treatment even before the lapse of the 240-day period, nor can he be faulted for acquiring a second opinion from his own physician only after he had already initiated his complaint. For even prior to such date, he was already deemed to be suffering from total and permanent disability when the company-designated physicians assessed that his treatment shall last well beyond the 240-day maximum period.

(2) **YES**. The Philippine Overseas Employment Association (POEA) Rules and Regulations require that the POEA Standard Employment Contract (POEA-SEC) be integrated in every seafarer's contract, therefore, it is also integrated into the provisions of Celestino's employment contract with Belchem PH.

The POEA-SEC provides that if the employee is suffering from any of the occupational diseases or illnesses listed under its Section 32(A), such disease is deemed to be work-related, provided the conditions set therein are satisfied. Section 20(B)(4) of the POEA-SEC, on the other hand, states that if the illness, such as "Diabetes Mellitus," is not listed as an occupational disease under Section 32(A), there is still a disputable presumption that the ailment is work-related. This means that there is a legal presumption in favor of the seafarer that their illness is work-related, and the employer has the burden of presenting evidence to overcome such presumption.

As third officer for Belchem PH, Celestino performed duties that exposed him to various hazards and stresses. He was constantly placed in harsh conditions and exposed to perils of the sea. His work consisted of physically strenuous tasks that lasted anywhere from eight to sixteen hours a day. He was constrained to eat only food from the vessel that regularly consisted of preserved meats high in fats and cholesterol.

Notably, prior to assuming his duties as third officer, he was declared "fit to work" in his PEME. It was only during his work therein that he was diagnosed with "Diabetes Mellitus" and "Ureterolithiasis". While these illnesses are not listed as occupational diseases under Section 3 2(A) of the POEA-SEC, said ailments are still presumed to be work-related under Section 20(B)(4) of the contract. Belchem PH have the burden of overcoming such presumption.

As held in Flores v. Workmen's Compensation Commission, "Diabetes Mellitus" is generally not compensable. It is, however, compensable in instances when it is complicated with other illnesses. Here, Celestino was diagnosed by the company-designated physicians with "Diabetes Mellitus" complicated with "Ureterolithiasis", another illness previously deemed as compensable in GSJS v. Court of Appeals and Lilia S. Arreola.

Here, Celestino, too, passed his PEME prior to embarking on his duties and thereafter developed "Diabetes Mellitus" complicated with "Ureterolithiasis." This clearly creates the legal presumption that Celestino's illnesses are work-related. Belchem PH, however, were unable to overcome such presumption in favor of Celestino, thus, his illnesses are deemed work related and compensable.

**MARLON BUTIAL AGAPITO v. AEROPLUS MULTI-SERVICES, INC. AND MITZI THERESE P. DE GUZMAN**

**G.R. No. 248304, 20 April 2022, THIRD DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

In labor cases, strict adherence to the technical rules of procedure is not required. Labor officials should use all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, in the interest of due process. In illegal dismissal cases, before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Obviously, if there is no dismissal, then there can be no question as to its legality or illegality.

In this case, the words spoken by Aeroplus OIC-Personnel Mendoza to Agapito -   Wala na tiwala sayo ang Management kaya tanggal ka na!" and "Basta tanggal ka na!," immediately followed by an unequivocal order for Agapito to get out of the office, speak for themselves. It was an outright termination of employment without just cause and due process.

**FACTS**

Aeroplus Multiservices, Inc. (Aeroplus) is engaged in janitorial and manpower services. It hired Marlon Butial Agapito (Agapito) in February 2004 as a housekeeper with a daily wage of P466.00 less P200.00 a month as cash bond. Aeroplus conducted a meeting with its employees. During the open forum, Agapito asked his immediate supervisor George Constantino (Constantino), "Bakit po naman unfair ang treatment niyo sa amin. Bakit yung iba hindi niyo pinagagawa ng explanation gayong kapag kami ang na late kahit 30 mins, pinagagawa niyo pa." Constantino retorted "Naninilip ka ba ng kasamahan mo? Ikaw nga eh hindi mo inaayos ang trabaho mo! Masyado kang ma-reklamo, kung ayaw niyo ang patakaran ko lumayas ka dito!" Agapito explained that he was merely raising a valid concern.

On January 5, 2015, Agapito reported the incident to Aeroplus' personnel office. Constantino, however, found out about it and gave him a letter memorandum for insubordination. On February 13, 2015, Aeroplus suspended him until March 3, 2015. Thereafter, on March 3, 2015, Agapito reported for work, only to be told by Aeroplus' OIC-Personnel Darrel Mendoza (Mendoza), "Wala na tiwala sayo ang Management kaya tanggal ka na!" When asked to explain, Mendoza merely responded, "Basta tanggal ka na!" and ordered him to get out of the office. Consequently, Agapito filed with the National Labor Relations Commission (NLRC) a complaint for illegal dismissal, illegal suspension, and money claims.

The Labor Arbiter (LA) found Aeroplus liable for illegal dismissal and total monetary obligation. The NLRC reversed the decision on the grounds that other than Agapitos allegations, he failed to present any substantial evidence to support his claim of illegal dismissal. The NLRC further pronounced that the rules of evidence in courts of law and equity are not controlling in labor cases. Consequently, the Court of Appeals (CA) affirmed the decision of the NLRC.

**ISSUE**

Did Aeroplus illegally dismiss Agapito without just cause?

**RULING**

**YES**. In illegal dismissal cases, before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Obviously, if there is no dismissal, then there can be no question as to its legality or illegality. words spoken by Aeroplus OIC-Personnel Mendoza to Agapito - "Wala na tiwala sayo ang Management The kaya tanggal ka na!" and "Basta tanggal ka na!" immediately followed by an unequivocal order for Agapito to get out of the office, speak for themselves. It was an outright termination of employment without just cause and due process.

Furthermore, Aeroplus is also liable for Agapito's money claims and moral and exemplary damages. Thus, an illegally dismissed employee is ordinarily entitled to: (a) reinstatement without loss of seniority rights and other privileges, or in lieu thereof, separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of the employee's illegal dismissal up to the finality of the judgment; and (b) full backwages inclusive of allowances and other benefits or their monetary equivalent computed from the time compensation was not paid to the time of his or her actual reinstatement. Here, Aeroplus is liable for Agapito's full backwages from March 4, 2015, up to the finality of this Decision. It is also liable for Agapito's service incentive leave pay and 13th month pay reckoned three (3) years back from March 3, 2015, as it failed to prove that it already paid these benefits to Agapito.

**PEOPLE OF THE PHILIPPINES v. IRENE MARZAN and FELY DULAY G.R. No. 227093, 21 September 2022, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

To sustain a conviction for illegal recruitment in large scale, the following elements must concur:

(a) the offender has no valid license or authority to enable him or her to lawfully engage in recruitment and placement of workers;

(b) he or she undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code or any prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of R.A. No. 8042); and

(c) he or she commits the same against three or more persons, individually or as a group. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

These prohibited practices were committed against three (3) or more persons. Specifically, there were more or less 30 complainants altogether, albeit only 22 of them testified. Irene is therefore guilty of Illegal Recruitment in Large Scale under Section 6, R.A. No. 8042 in Crim. Case Nos. T-4200 and T-4273.

In Crim. Case Nos. T-4373 and T-4401, however, Irene is only guilty of Simple Illegal Recruitment. While all the elements of Illegal Recruitment under Section 6 of R.A. No. 8042 are present in these cases, the offense was committed only against one complainant, Aristotle; and against two complainants, Remo and Evita.

**FACTS**

Spouses Irene and Bal Marzan (Spouses Marzan), together with Fely Dulay, Apolonio Dulay, Marlon Agoncillo, and Alejandro Navarro, Jr., offered employment in South Korea to several individuals.

One of the complainants, Cholin Pinto, paid a placement fee of P75,000 for employment in South Korea. She initially paid P30,000 to Irene and paid another P45,000. Pinto patiently waited for her deployment abroad but it never came into fruition. Upon verification with the Department of Labor and Employment (DOLE), Pinto discovered that Spouses Marzan, Navarro, and Agoncillo were not authorized to conduct any recruitment activity for overseas employment.

Another complainant, Armando Hidalgo, initially paid P10,000 and another P20,000 to Irene as his recruiter. Agoncillo issued the receipts. Hidalgo paid another placement fee to Irene in the presence of Bal, Agoncillo, and their boss Navarro. He requested for a receipt, but he was ignored. On the day of Hidalgo's supposed departure, his flight was postponed due to unavailability of tickets. As a result, Hidalgo never left for South Korea.

Aristotle De Vera also claimed to have paid the total amount of P74,850 for his supposed employment in South Korea. He testified that Spouses Marzan, together with Fely, offered him employment. However, De Vera was not deployed for overseas work as promised.

On the other hand, Remo Pontanos declared that he gave Spouses Marzan and Agoncillo a total of P70,000 as placement fee. On the day of his supposed departure, Pontanos found his companions crying because they were unable to go abroad because Irene and her cohorts did not show up.

Only Spouses Fely and Apolonio Dulay and Spouses Marzan were arrested, while Agoncillo and Navarro remain at-large.

**ISSUE**

Is Irene Marzan guilty of illegal recruitment?

**RULING**

**YES.** Illegal recruitment, when undertaken by a non-licensee or non-holder of authority as contemplated under Article 13 (f) (now Article 38) of the Labor Code (Renumbered), shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers, and including referring, contract services, promising, or advertising for employment abroad, whether for profit or not.

Illegal Recruitment in Large Scale, on the other hand, is defined under Section 6 of Republic Act (R.A. No. 8042), thus:

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

To sustain a conviction for illegal recruitment in large scale, the following elements must concur:

(a) the offender has no valid license or authority to enable him or her to lawfully engage in recruitment and placement of workers;

(b) he or she undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code or any prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of R.A. No. 8042); and

(c) he or she commits the same against three or more persons, individually or as a group. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

As uniformly ruled by the trial court and the appellate court, these elements are all present in this case.

First, per DOLE Certification dated August 25, 2006, Irene was not authorized nor licensed to conduct recruitment activities for overseas employment.

Second, despite lack of authority or license, Irene and Fely conducted recruitment and placement activities. They offered and promised to deploy complainants in South Korea for employment. In exchange, they collected placement, training fees, and other fees despite not being authorized to do so. Indubitably, these are prohibited activities within the purview of Article 13 (b) (now Article 38) of the Labor Code (Renumbered) and Section 6 of R.A. No. 8042.

Irene, nonetheless, insists she and her husband Bal were merely implicated in these cases upon the suggestion of an NBI agent. She manifested that Marlon was a regular customer in her carinderia. Apart from using her carinderia as a meet-up place for Marlon and the applicants, she only took favors from complainants who lived in far areas to hand over the fees to Marlon. She issued receipts, as complainants requested, but she never had a hand in the recruitment process.

The Court is not convinced.

Evidently, these four accused were impelled by one common objective to milk out money from innocent applicants by foisting lies to them regarding their supposed ability and authority to deploy them for overseas employment in South Korea in exchange for payment of certain amounts of money. In conspiracy, the act of one is the act of all. The precise extent or modality of participation of each of them becomes secondary since all the conspirators are principals.

Third. These prohibited practices were committed against three (3) or more persons. Specifically, there were more or less 30 complainants altogether, albeit only 22 of them testified. Irene is therefore guilty of Illegal Recruitment in Large Scale under Section 6, R.A. No. 8042 in Crim. Case Nos. T-4200 and T-4273.

In Crim. Case Nos. T-4373 and T-4401, however, Irene is only guilty of Simple Illegal Recruitment. While all the elements of Illegal Recruitment under Section 6 of R.A. No. 8042 are present in these cases, the offense was committed only against one complainant, Aristotle; and against two complainants, Remo and Evita.

**JOEL A. TAPIA v. GA2 PHARMACEUTICAL, INC. G.R. No. 235725, 28 September 2022, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

In illegal dismissal cases, the employee must first establish by substantial evidence the fact of his or her dismissal from service before the employer bears the burden of proving that the dismissal was legal. The evidence to prove the fact of dismissal must be clear, positive and convincing.

Here, Tapia was able to sufficiently establish the circumstances attendant to his dismissal. He recalled in detail that on June 11, 2015, he was not feeling well and he could not deliver the merchandise of GA2 because the vehicle assigned to him was covered by the number coding scheme. Saldanha then ordered Zuniega to prepare a resignation letter for Tapia. When the latter refused to sign the resignation letter, Saldanha "shouted and abased him in a very loud voice" and "ordered him to go home and never come back."

**FACTS**

Joel A. Tapia (Tapia) averred that sometime in in July 2013, he got employed as a pharmacist at GA2 Pharmaceutical, Inc. (GA2). As proof of his employment, he submitted copies of his pay slips for July and August 2013 and GA2's license to operate bearing his name as the assigned pharmacist of its Mandaluyong branch.

He was later assigned as roving pharmacist to monitor, inspect, and supervise the operations of the drugstore branches in the National Capital Region, Cavite, and Bulacan. He was likewise charged with product delivery and sales collection, on top of his supervisory functions.

One day, he asked to be excused from his delivery task for the day because he was not feeling well and the company car was covered by the number coding scheme. But Lancy Vijay Saldanha (Saldanha), General Manager of GA2, scolded him and ordered their Personnel Officer Evelyn Zuniega (Zuniega) to draft his resignation letter. When he refused to sign it, Saldanha allegedly ordered him to go home and never come back.

Consequently, Tapia filed a complaint for illegal dismissal through the Single-Entry Approach (SEnA). Because settlement was not forthcoming, he filed a formal complaint for constructive dismissal and money claims. He later amended his complaint from constructive dismissal to illegal dismissal.

The Labor Arbiter (LA) dismissed the complaint for lack of merit. The NLRC reversed and declared Tapia to have been illegally dismissed. Meanwhile, the Court of Appeals (CA) ruled that Tapia failed to prove that he was dismissed from work.

**ISSUE**

Was Tapia illegally dismissed?

**RULING**

**YES**. In illegal dismissal cases, the employee must first establish by substantial evidence the fact of his or her dismissal from service before the employer bears the burden of proving that the dismissal was legal. The evidence to prove the fact of dismissal must be clear, positive and convincing.

Here, Tapia was able to sufficiently establish the circumstances attendant to his dismissal. He recalled in detail that on June 11, 2015, he was not feeling well and he could not deliver the merchandise of GA2 because the vehicle assigned to him was covered by the number coding scheme. Saldanha then ordered Zuniega to prepare a resignation letter for Tapia. When the latter refused to sign the resignation letter, Saldanha "shouted and abased him in a very loud voice" and "ordered him to go home and never come back."

In Reyes v. Global Beer Below Zero, Inc., the Court ordained that when a verbal command not to report for work is uttered by a person who has the capacity and authority to terminate an employee, the same could be construed as an overt act of dismissal.

Being his immediate superior and GA2's general manager, Tapia believed that Saldanha had terminated his employment right upon the latter's command that he (Tapia) should go home and should no longer come back. Consequently, Tapia immediately filed the illegal dismissal case below. Tapia's factual version of the incident inspires belief and his immediate remedial action confirms its credence. That no one among his co-employees came forward to support his complaint is quite understandable. It is understandable, too, that Tapia's co-employees executed the Affidavit dated December 9, 2015 (Affidavit) which contravened Tapia's account and supported the claims of GA2, their employer.

Tapia's co-employees were naturally beholden to GA2 because their employment depended on the company. They would have done anything asked of them just so they could keep their employment. They certainly would have incurred the ire of GA2 had they disagreed with its version of events. Thus, the Affidavit is, at best, self-serving. More important, the Affidavit did not even categorically refute Tapia's main cause of action the fact of his summary dismissal on June 11, 2015.

On the issue of abandonment, the Court quotes with concurrence the disquisition of the Court of Appeals.

The Court has consistently ruled that there is no hard and fast rule designed to establish the elements of an employer-employee relationship. Some forms of evidence that have been accepted to establish the elements include, but are not limited to, identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payroll, organization charts, and personnel lists, among others.

Here, Tapia's documentary evidence, i.e., July and August 2013 payroll slips and the FDA license showing he was the resident pharmacist at GA2's Mandaluyong branch in August 2013, corroborated by his testimonial evidence, sufficiently establish his claim that his employment began in July 2013.

The probationary employment contract, though in writing, does not prevail over Tapia's evidence. The NLRC, as affirmed by the Court of Appeals, discarded the probationary contract being a mere afterthought. GA2 belatedly presented the contract despite Tapia's earlier assertion that he was hired in July 2013. Indeed, he was never a probationary employee. Too, the fact that Bolsico submitted an affidavit that Tapia was her part-time pharmacist does not contradict Tapia's claim that his employment with GA2 began in July 2013. Again, GA2 submitted its evidence too late in the day and only when it filed its motion for reconsideration of the NLRC's ruling.

All told, the NLRC correctly ruled that Tapia was illegally dismissed and that he is entitled to backwages, separation pay (in lieu of reinstatement), and attorney's fees.

**RICO B. ESCAURIAGA, CRISTINE DELA CRUZ, RENE B. SEVERINO, RALPH ERROL MERCADO, AND GERALDINE GUEVARRA v. FITNESS FIRST, PHIL., INC., AND LIBERTY CRUZ**

**G.R. No. 266552, 22 January 2024, SECOND DIVISION, (Lazaro-Javier, J.)**

**DOCTRINE OF THE CASE**

Under the four-fold test, to establish an employer-employee relationship, four factors must be proven:

(a) the employer's selection and engagement of the employee;

(b) the payment of wages;

(c) the power to dismiss; and

(d) the power to control the employee's conduct. The power of control is the most significant factor in the four-fold test.

Here, contrary to Fitness First's claim, Escauriaga et al. did not perform their tasks at their own pleasure and in the manner they saw fit. First, as personal trainers, Escauriaga et al. performed tasks necessary and desirable to Fitness First's principal business of providing health programs/ packages to conduct physical training to the latter's clients. Second, to ensure the quality of services that Fitness First provides, Escauriaga et al. were required to attend all educational training sessions and other such events pertaining to Fitness First Department. In fact, Fitness First kept track of Escauriaga et al. performance such that some of them were even lauded for their exemplary performance.

**FACTS**

Fitness First Phil., Inc. (Fitness First) engaged Rico B. Escauriaga (Escauriaga), Cristine Dela Cruz (Dela Cruz), Rene B. Severino (Severino), Ralph Errol Mercado (Mercado), and Geraldine Guevarra (Guevarra), (Escauriaga et al.), as fitness trainers. As such, they sold and marketed Fitness First's physical health training programs and packages. With Fitness First's equipment, they also conducted actual training sessions for their clients and were paid fixed monthly salaries, 13th month pay, and commissions.

On different dates, however, Escauriaga et al. were reclassified as freelance trainers. As such, they were paid their salaries but the other labor benefits, i.e. 13th month pay, overtime pay, holiday pay, and rest day pay were discontinued. They were allowed to work at their own choice of time so long as they trained clients for a minimum of 90 hours per month and a PHP 80,000.00 worth of physical training program or package. Failure to meet quota translated to salary deduction, or worse, disciplinary action such that repeated failure to meet the quota may subject them to warning, suspension, and even termination of employment.

On the other hand, Fitness First claimed that Escauriaga et al. were initially hired as instructors and were later on promoted as freelance personal trainers. As such, they were independent contractors who were not required to observe fixed hours of work. They were required, however, to guarantee a minimum fixed monthly sale and conduct 90 hours of training, and to observe relevant house rules in dealing with their clients.

Subsequently, Fitness First required Escauriaga et al. to register their alleged freelance business as required by Bureau of Internal Revenue (BIR) Regulation No. 4-2014. They were assured a 3% increase in their commission upon compliance. Noncompliance, on the other hand, was penalized with 20% deduction in their commission and termination or non-renewal of their freelance agreement. Believing they were regular employees, Excauriaga et al. did not comply.

Hence, Escauriaga et al. sued Fitness First and its Senior Human Resource Manager Liberty Cruz (Cruz) for illegal dismissal, regularization, and other monetary claims.

The Labor Arbiter (LA) declared Escauriaga et al. as independent contractors, and there is no basis for their claim of constructive dismissal. The National Labor Relations Commission (NLRC) affirmed the LA. No employer-employee relationship between the parties as shown by the freelance agreement. Also, Escauriaga failed to show that Fitness First reserved not only the right to control the end to be achieved but also the means used in the performance of their work. Likewise, the Court of Appeals held that there was no employer-employee relationship between the parties and that there could be no trilateral relationship because there were only two parties to the freelance agreement.

**ISSUE**

Were Fitness First and Cruz able to sufficiently prove that Exauriaga et al. were independent contractors?

**RULING**

**NO.** Escauriaga et al. are considered regular employees of Fitness First applying the two-tiered test: the four-fold test and the economic dependence test.

Under the four-fold test, to establish an employer-employee relationship, four factors must be proven:

(a) the employer's selection and engagement of the employee;

(b) the payment of wages;

(c) the power to dismiss; and

(d) the power to control the employee's conduct. The power of control is the most significant factor in the four-fold test.

On the power of hiring, Fitness First's assertion that Escauriaga et al. were engaged based on their talents and skills does not necessarily prevent a regular employment status. This is so when read in consonance with Escauriaga et al.'s repeated engagement as an independent contractor on a fixed one-year term which the Court construes as an effort to circumvent security of tenure. In Dumpit-Murillo v. Court of Appeals, while the Court recognized the validity of fixed-term employment contracts in a number of cases, it emphasized that when the circumstances of a case show that the periods were imposed to block the acquisition of security of tenure, they should be struck down for being contrary to law, morals, good customs, public order, or public policy.

On the payment of wages, the Freelance Personal Trainer Agreement specifically mentioned that Escauriaga et al. were paid on commission basis. Be that as it may, the Labor Code specifically mentions commission basis as one of the forms of paying wages, or anything paid as remuneration of earnings to employees covered by the Labor Code. The amount paid to Escauriaga et al. also indicates the nature of the relationship of the parties.

On the power to dismiss, although the subject Agreement here mentioned that the parties may voluntarily terminate the same with or without cause, the power to dismiss rests with Fitness First. For one, Fitness First held the power to dismiss the freelance personal trainer if it became manifest that the latter was unqualified or unfit to discharge his or her duties. For another, Escauriaga et al.'s failure to comply with the monthly Minimum Performance Standards is a ground for termination.

Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end.

Here, contrary to Fitness First's claim, Escauriaga et al. did not perform their tasks at their own pleasure and in the manner they saw fit. First, as personal trainers, Escauriaga et al. performed tasks necessary and desirable to Fitness First's principal business of providing health programs/packages-to conduct physical training to the latter's clients. Second, to ensure the quality of services that Fitness First provides, Escauriaga et al. were required to attend all educational training sessions and other such events pertaining to Fitness First Department. In fact, Fitness First kept track of Escauriaga et al's performance such that some of them were even lauded for their exemplary performance.

The succeeding paragraphs in the Agreement negate the alleged absence of control on the part of Fitness First. One, upon engagement, Escauriaga et al. were bound to abide by the following Minimum Performance Standards. Two, Escauriaga et al. were required to guarantee monthly sales and conduct physical training programs/packages as follows: That they were required to conduct physical training for a number of hours is contrary to the nature of independent contractors who is not supposed to be subjected to definite hours or conditions of work. Three, Fitness First reserved the right to unilaterally revise the Minimum Performance Standards even without notice. Surely, Fitness First's right to assign Escauriaga et al. to any of its managed health clubs as it may deem necessary and right to impose rules and regulations, particularly the procedure to be followed are manifestations of its exercise of control, if not management prerogative. Too, the Court cannot turn a blind eye to Fitness First's conduct of educational training sessions which are badges of its right to control the means and methods of providing physical health training packages.

Even applying the economic dependence test, the conclusion would be the same. Francisco v. National Labor Relations Commission laid down the circumstances of the whole economic activity to consider in the determination of the relationship between employer and employee such as:

(1) the extent to which the services performed are an integral part or the employer's business;

(2) the extent of the worker's investment in equipment and facilities;

(3) the nature and degree of control exercised by the employer;

(4) the worker's opportunity for profit and loss;

(5) the amount of initiative, skill, judgment, or foresight required for the success of the claimed independent enterprise;

(6) the permanency and duration of the relationship between the worker and the employer; and

(7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.

Here, in the performance of their tasks, Escauriaga et al. as trainers were guided by the packages offered by Fitness First and purchased by its clients. The performance of these nets is integral to Fitness First's business of offering various physical health training programs/packages. Too, Escauriaga et al. were wholly dependent upon Fitness First for their continued employment in this line of business. Per the Freelance Personal Trainer Agreement, they were required to sell only the company products per its price schedule and were prohibited from providing training outside of the club.