PTD

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

INNODATA KNOWLEDGE SERVICES, INC., Petitioner,	**G.R. No. 211892**
- *versus* -	**Present:**
SOCORRO D'MARIE T. INTING, ISMAEL R. GARAYGAY, EDSON S. SOLIS, MICHAEL A. REBATO, JAMES HORACE BALONDA, STEPHEN C. OLINGAY, DENNIS C. RIZON, JUNETH A. RENTUMA, HERNAN ED NOEL I. DE LEON, JR., JESS VINCENT A. DELA PEÑA, RONAN V. ALAMILLO, ENNOH CHENTIS R. FERNANDEZ, FRITZ J. SEMBRINO, DAX MATTHEW M. QUIJANO, RODOLFO M. VASQUEZ, MA. NAZELLE B. MIRALLES, MICHAEL RAY B. MOLDE, WENDELL B. QUIBAN, ALDRIN O. TORRENTIRA, and CARL HERMES CARSKIT, Respondents.	CARPIO, *J.*, *Chairperson,* PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
	Promulgated: 06 DEC 2017

x----------x

D E C I S I O N

PERALTA, *J.*:

This is a petition for review seeking the reversal of the Decision[1] of the Court of Appeals (*CA*), Cebu, Twentieth (20th) Division, dated August

[1] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla; concurring; *rollo*, Vol. 1, pp. 53-71.

30, 2013 and its Resolution[2] dated March 12, 2014 in CA-G.R. CEB-SP No. 06443 which reversed and set aside Decision[3] of the National Labor Relations Commission (*NLRC*) on May 31, 2011.

The factual and procedural antecedents, as evidenced by the records of the case, are the following:

Petitioner Innodata Knowledge Services, Inc. (*IKSI*) is a company engaged in data processing, encoding, indexing, abstracting, typesetting, imaging, and other processes in the capture, conversion, and storage of data and information. At one time, Applied Computer Technologies (*ACT*), a company based in the United States of America, hired IKSI to review various litigation documents. Due to the nature of the job, ACT required IKSI to hire lawyers, or at least, law graduates, to review various litigation documents, classify said documents into the prescribed categories, and ensure that outputs are delivered on time. For this purpose, IKSI engaged the services of respondents Socorro D'Marie Inting, Ismael R. Garaygay, Edson S. Solis, Michael A. Rebato, James Horace Balonda, Stephen C. Olingay, Dennis C. Rizon, Juneth A. Rentuma, Hernan Ed Noel I. de Leon, Jr., Jess Vincent A. dela Peña, Ronan V. Alamillo, Ennoh Chentis R. Fernandez, Wendell B. Quiban, Aldrin O. Torrentira, Michael Ray B. Molde, Fritz J. Sembrino, Dax Matthew M. Quijano, Rodolfo M. Vasquez, Ma. Nazelle B. Miralles and Carl Hermes Carskit as senior and junior reviewers with a contract duration of five (5) years.

On January 7, 2010, however, respondents received a Notice of Forced Leave from IKSI informing them that they shall be placed on indefinite forced leave effective that same day due to changes in business conditions, client requirements, and specifications. Hence, respondents filed a complaint for illegal dismissal, reinstatement or payment of separation pay, backwages, and damages against IKSI.

Subsequently, IKSI sent respondents separate notices dated May 27, 2010 informing them that due to the unavailability of new work related to the product stream and uncertainties pertaining to the arrival of new workloads, their project employment contracts would have to be terminated.

On November 10, 2010, the Labor Arbiter (*LA*), in the consolidated cases of NLRC RAB VII Case No. 01-0159-10, NLRC RAB VII Case No. 01-0182-10, and NLRC RAB VII Case No. 02-0301-10, declared that there was no illegal dismissal, thus:

---

2 *Id.* at 74-76.

3 Penned by Commissioner Aurelio D. Menzon, with Commissioners Julie C. Rendoque and Violeta Ortiz-Bantug, concurring; *rollo*, Vol. II, pp. 412-424.

> WHEREFORE, in view of the foregoing, a decision is hereby rendered declaring that complainants were not constructively dismissed but were placed on forced leave as a cost-saving measure. Consequently, herein respondents are directed to recall complainants back to work as soon as work becomes available. Complainants are likewise directed to report back to work within ten (10) days from receipt of the order of respondents to report back to work, otherwise, their failure to do so would be construed as an abandonment. In the event that reinstatement is no longer feasible, in lieu thereof, separation pay is granted equivalent to one (1) month salary for every year of service, a fraction of six (6) months is considered as one (1) whole year, sans backwages.
>
> The claim for moral and exemplary damages as well as attorney's fees are DISMISSED for lack of merit.
>
> SO ORDERED.[4]

The NLRC, on May 31, 2011, affirmed the LA Ruling with modification, to wit:

> WHEREFORE, the Decision of the Labor Arbiter is hereby AFFIRMED WITH MODIFICATION, in that in lieu of reinstatement, to pay the twelve (12) complainants-appellants namely: Michael A. Rebato, Hernan Ed Noel L. de Leon, Jr., Wendell B. Quiban, Fritz Sembrino, Ismael R. Garaygay III, Edson S. Solis, Stephen Olingay, Ronan Alamillo, Jess Vincent A. dela Peña, Dax Matthew M. Quijano, Juneth A. Rentuma and Socorro D'Marie T. Inting, the total amount of Php563,500.00.
>
> SO ORDERED.[5]

Undaunted, the employees elevated the matter to the CA Cebu, alleging grave abuse of discretion on the NLRC's part. On August 30, 2013, the CA granted their petition and reversed the assailed NLRC ruling, thus:

> **WHEREFORE**, premises considered, this petition is **GRANTED**. The assailed *Decision* dated May 31, 2011 and *Resolution* dated August 26, 2011 of public respondent in NLRC Case No. VAC-01-000042-2011 are **REVERSED and SET ASIDE.** Petitioners Socorro D'Marie Inting, Ismael R. Garaygay, Edson S. Solis, Michael A. Rebato, James Horace Balonda, Stephen C. Olingay, Dennis C. Rizon, Juneth A. Rentuma, Hernan Ed Noel I. de Leon, Jr., Jess Vincent A. dela Peña, Ronan V. Alamillo, Ennoh Chentis R. Fernandez, Wendell B. Quiban, Aldrin O. Torrentira, Michael Ray B. Molde, Fritz J. Sembrino, Dax Matthew M. Quijano, Rodolfo M. Vasquez, Ma. Nazelle B. Miralles and Carl Hermes Carskit are declared to have been illegally dismissed by Innodata and hence, each of them is entitled to the payment of the following:
>
> a) Backwages reckoned from the start of their employment up to the finality of this Decision with

---

4 *Rollo*, Vol. I, p. 269.
5 *Rollo*, Vol. II, p. 423.

interest as six percent (6%) per annum, and 12% legal interest thereafter until fully paid;

(b) Separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of their employment up to the finality of this decision;

(c) Moral damages of Php50,000 and exemplary damages of Php25,000; and

(d) Attorney's fees equivalent to 10 percent (10%) of the total award.

The case is hereby ordered **REMANDED** to the labor arbiter for the computation of the amounts due each petitioner.

Costs on private respondent Innodata.

SO ORDERED.[6]

IKSI then filed a Motion for Reconsideration, but the same was denied in a Resolution dated March 12, 2014. Hence, the instant petition.

The main issue in this case is whether or not the CA committed an error when it reversed the NLRC, which declared that respondent employees, as mere project employees, were validly placed on floating status and, therefore, were not illegally dismissed.

The Court rules in the negative.

Substantive Issues

Nature of respondents' employment contracts

It is true that factual findings of administrative or quasi-judicial bodies which are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded, not only respect, but even finality, and bind the Court when supported by substantial evidence. However, the Court may take cognizance of factual issues when the findings of fact and conclusions of law of the LA and/or the NLRC are inconsistent with those of the CA,[7] as in the case at bar.

---

6 *Rollo*, Vol. I, p. 70. (Emphasis in the original)

7 *Dacles v. Millenium Erectors Corporation*, 763 Phil. 550 (2015).

Here, the NLRC ruled that respondents were project employees. It ratiocinated that their contracts specifically indicated that they were to hold their positions for the duration of the project which was expected to be completed after a maximum of five (5) years, or on or before July 2, 2013.[8] But the CA found that respondents' employment contracts are fixed-term, which are contrary to the Constitution and labor laws. It then cited several cases[9] that supposedly involved IKSI itself and would reveal that its fixed-term employment contracts have been consistently held as a form of circumvention to prevent employees from acquiring tenurial rights and benefits.

The employment status of a person is defined and prescribed by law and not by what the parties say it should be. Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good. Thus, provisions of applicable statutes are deemed written into the contract, and the parties are never at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply entering into contracts with each other.[10]

Article 295[11] of the Labor Code provides the distinction between a regular and a project employment:

> Art. 295. *Regular and casual employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

---

8 *Rollo*, Vol. II, p. 20.

9 *Villanueva v. NLRC and Innodata*, 356 Phil. 638 (1998); *Servidad v. NLRC*, 364 Phil. 518 (1999); *Innodata Philippines, Inc. v. Quejada-Lopez*, 535 Phil. 263 (2006); and *Price v. Innodata Phils., Inc.*, 588 Phil. 568 (2008).

10 *Price v. Innodata Phils., Inc.*, *supra*, at 580.

11 Formerly Article 280, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

The aforecited provision contemplates four (4) kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee; (3) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (4) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence later added a fifth (5th) kind, the fixed-term employee. Based on Article 295, the law determines the nature of the employment, regardless of any agreement expressing otherwise. The supremacy of the law over the nomenclature of the contract and its pacts and conditions is to bring life to the policy enshrined in the Constitution to afford full protection to labor. Thus, labor contracts are placed on a higher plane than ordinary contracts since these are imbued with public interest and, therefore, subject to the police power of the State.[12]

Project employment contracts, which fix the employment for a specific project or undertaking, are valid under the law. By entering into such a contract, an employee is deemed to understand that his employment is coterminous with the project. He may no longer be employed after the completion of the project for which he was hired. But project employment contracts are not lopsided agreements in favor of only one party. The employer's interest is equally important as that of the employees'. While it may be true that it is the employer who drafts project employment contracts with its business interest as overriding consideration, such contracts must not prejudice the employee.[13]

As stated in IKSI's petition itself, the following are the basic provisions of the employment contracts which respondents signed with the company:

(a) the contracts are entitled "**Project-Based Employment Contracts**";

(b) the first Whereas clause states "the Company [IKSI] desires the services of a Project Employee for the **Content Supply Chain** Project";

(c) Clause 1 on *Term of Employment* provides:

> **The Employee shall hold the position of [Junior/Senior] Reviewer and shall perform the duties and responsibilities of such for the duration of the Project,**

---

12 *Leyte Geothermal Power Progressive Employees-Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corp.*, 662 Phil. 225, 234 (2011).

13 *Id.*

which is expected to be completed after a maximum of five (5) years, or on or before _____, (the "Term").

...Further, the Employee is granted one Saturday-off per month on a scheduled basis for the duration of this **PROJECT-BASED EMPLOYMENT CONTRACT**...

(d) The second paragraph of Clause 2 on *Work Description* provides:

The Employee shall render work in accordance with the schedule and/or program to which he/she may be assigned or reassigned from time to time, **in accordance with the operational requirements for the completion of the Project. In addition, the Employee shall perform such other duties, functions, and services related or incidental to the Project** which, for purposes of expediency, convenience, economy, customer interest, may be assigned by the Company.

(e) Clause 5 on *Termination of Employment* provides:

At any time during the Term of this Contract, or any extension thereof, the Company may terminate this Contract, upon thirty (30) days' prior notice to the Employee...in the following instances:

a. the **services contracted for by the Company under the Project** is completed prior to the agreed upon completion date; or
b. the **specific phase of the Project** requiring the Employee's services is sooner completed; or
c. **substantial decrease in the volume of work for the Project**; or
d. the **contract for the Project is cancelled, indefinitely suspended or terminated**;

(e) the first paragraph of Clause 6 on *Compensation and Benefits* provides:

The Employee shall receive a gross salary of ... In addition to his/her basic pay, Management may grant an additional incentive pay should the Employee exceed the **Project quota**.[14]

IKSI argued that based on the contract, it is undeniable that respondents' employment was fixed for a specific project or undertaking, with its completion or termination clearly determined at the time of the employee's engagement. Indeed, records would disclose that respondents signed employment contracts specifically indicating the Content Supply Chain Project,[15] also known as the ACT Project, as the project for which they were being hired, which was expected to be completed after a

---

14 *Rollo*, Vol. I, pp. 20-21. (Emphasis ours)
15 *Id.* at 332-335.

maximum of five (5) years. However, sometime in November 2008, IKSI required respondents to work on another project called "Bloomberg," which was not included in the original contracts that they signed and without entering into a new project employment contracts. Such fact was never refuted by IKSI. During that time, respondents were required to read and review decided cases in the United States of America and they were no longer called Senior or Junior Reviewers, but referred to as Case Classifiers. Respondents initially opposed working on said project but eventually agreed, in fear of losing their employment altogether. Months later, they were again required to work on the ACT Project and reverted to their previous designation as Document Reviewers.[16]

In the case of *ALU-TUCP v. NLRC*,[17] the Court made a pronouncement on the two (2) categories of project employees. The project for which project employees are hired would ordinarily have some relationship to the usual business of the employer. There should be no difficulty in distinguishing the employees for a certain project from ordinary or regular employees, as long as the duration and scope of the project were determined or specified at the time of engagement of said project employees.[18]

In order to safeguard the rights of workers against the arbitrary use of the word "project" which prevents them from attaining regular status, employers claiming that their workers are project employees have the burden of showing that: (a) the duration and scope of the employment was specified at the time they were engaged; and (b) there was indeed a project.[19] Therefore, as evident in Article 295, the litmus test for determining whether particular employees are properly characterized as project employees, as distinguished from regular employees, is whether or not the employees were assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employees were engaged for that project.[20]

Here, while IKSI was able to show the presence of a specific project, the ACT Project, in the contract and the alleged duration of the same, it failed to prove, however, that respondents were in reality made to work only for that specific project indicated in their employment documents and that it adequately informed them of the duration and scope of said project at the time their services were engaged. It is well settled that a party alleging a critical fact must support his allegation with substantial evidence, as allegation is not evidence. The fact is IKSI actually hired respondents to work, not only on the ACT Project, but on other similar projects such as the

---

16 *Id.* at 264.
17 304 Phil. 844, 850 (1994).
18 *Dacles v. Millenium Erectors Corporation, supra* note 7, at 560-561.
19 *Id.* at 558-559.
20 *Id.* at 560.

Bloomberg. When respondents were required to work on the Bloomberg project, without signing a new contract for that purpose, it was already outside of the scope of the particular undertaking for which they were hired; it was beyond the scope of their employment contracts. The fact that the same happened only once is inconsequential. What matters is that IKSI required respondents to work on a project which was separate and distinct from the one they had signed up for. This act by IKSI indubitably brought respondents outside the realm of the project employees category.

IKSI likewise fell short in proving that the duration of the project was reasonably determinable at the time respondents were hired. As earlier mentioned, the employment contracts provided for "the duration of the Project, which is expected to be completed after a maximum of five (5) years, or on or before _____." The NLRC upheld the same, finding that the contracts clearly provided for the duration of the project which was expected to end after a maximum of five (5) years, or on or before July 2, 2013. It is interesting to note, however, that the five (5)-year period is not actually the duration of the project but merely that of the employment contract. Naturally, therefore, not all of respondents' employment would end on July 2, 2013, as the completion of the five (5)-year period would depend on when each employee was employed, thus:[21]

	Hiring Date	**Completion Date**
Carl Hermes R. Carskit	Nov. 1, '07	May 31, '12
Ismael R. Garaygay III	Mar. 5, '08	Mar. 4, '13
Socorro D' Marie T. Inting	Apr. 7, '08	Apr. 6, '13
James Horace A. Balonda	May 12, '08	May 11, '13
Wendell B. Quiban	May 12, '08	May 11, '13
Fritz J. Sembrino	May 12, '08	May 11, '13
Edson S. Solis	May 12, '08	May 11, '13
Rodolfo M. Vasquez, Jr.	May 12, '08	May 11, '13
Stephen C. Olingay	May 16, '08	May 15, '13
Michael A. Rebato	May 19, '08	May 18, '13
Ma. Nazelle B. Miralles	May 21, '08	May 20, '13
Dennis C. Rizon	July 3, '08	July 2, '13
Ronan V. Alamillo	July 10, '08	July 9, '13
Juneth A. Rentuma	July 17, '08	July 16, '13
Jess Vincent A. Dela Peña	Aug. 12, '08	Aug. 11, '13
Dax Matthew M. Quijano	Nov. 17, '08	Nov. 16, '13
Michael Ray B. Molde	May 18, '09	May 17, '14
Aldrin O. Torrentira	May 25, '09	May 24, '14
Ennoh Chentis R. Fernandez	May 28, '09	May 27, '14
Hernan Ed Noel L. De Leon, Jr.	June 3, '09	June 2, '14

[21] *Rollo*, Vol. II, pp. 468-470; *rollo*, Vol. III, pp. 1338-1530.

This is precisely the reason why IKSI originally left a blank for the termination date because it varied for each employee. If respondents were truly project employees, as IKSI claims and as found by the NLRC, then the termination date would have been uniform for all of them.

Thus, while the CA erred in simply relying on the Court's rulings on previous cases involving Innodata Phils., Inc. since there is no substantial proof that Innodata Phils., Inc. and herein petitioner, IKSI, are one and the same entity, it would appear, however, that respondents indeed entered into fixed-term employment contracts with IKSI, contracts with a fixed period of five (5) years. But project employment and fixed-term employment are not the same. While the former requires a particular project, the duration of a fixed-term employment agreed upon by the parties may be any day certain, which is understood to be "that which must necessarily come although it may not be known when." The decisive determinant in fixed-term employment is not the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of the employment relationship.[22]

The Court has previously recognized the validity of fixed-term employment contracts, but it has consistently held that this is more of an exception rather than the general rule. Aware of the possibility of abuse in the utilization of fixed-term employment contracts, the Court has declared that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals.[23]

It is evident that IKSI's contracts of employment are suspect for being highly ambiguous. In effect, it sought to alternatively avail of project employment and employment for a fixed term so as to preclude the regularization of respondents' status. The fact that respondents were lawyers or law graduates who freely and with full knowledge entered into an agreement with the company is inconsequential. The utter disregard of public policy by the subject contracts negates any argument that the agreement is the law between the parties[24] and that the fixed period was knowingly and voluntarily agreed upon by the parties. In the interpretation of contracts, obscure words and provisions shall not favor the party that caused the obscurity. Consequently, the terms of the present contract should be construed strictly against the employer, for being the party who prepared it.[25] Verily, the private agreement of the parties can never prevail over Article 1700 of the Civil Code, which states:

---

22 *GMA Network, Inc. v. Pabriga, et al.*, 722 Phil. 161, 178 (2013).

23 *Brent School, Inc. v. Zamora*, 260 Phil. 747, 761 (1990).

24 *Servidad v. NLRC*, *supra* note 9, at 527.

25 *Innodata Philippines, Inc. v. Quejada-Lopez*, *supra* note 9, at 272.

> Art. 1700. The relation between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to special laws on labor unions, collective bargaining, strikes and lockouts, closed shops, wages, working conditions, hours of labor and similar subjects.

Thus, there were no valid fixed-term or project contracts and respondents were IKSI's regular employees who could not be dismissed except for just or authorized causes. Any ambiguity in said contracts must be resolved against the company, especially because under Article 1702 of the Civil Code, in case of doubt, all labor contracts shall be construed in favor of the worker. The Court cannot simply allow IKSI to construe otherwise what appears to be clear from the wordings of the contract itself. The interpretation which IKSI seeks to conjure is wholly unacceptable, as it would result in the violation of respondents' right to security of tenure guaranteed in Section 3 of Article XIII of the Constitution and in Article 294[26] of the Labor Code.[27]

Presence of Just or Authorized Causes for Termination of Employment

Here, IKSI placed respondents on forced leave, temporary lay-off, or floating status in January 2010 for the alleged decline in the volume of work in the product stream where they were assigned. When respondents filed a complaint for illegal dismissal, the LA dismissed the same for having been filed prematurely, since placing employees on forced leave or floating status is a valid exercise of management prerogative and IKSI never really had an intention to terminate their employment. It relied on the memoranda[28] which IKSI issued to respondents, the tenor of which would show the intention to recall the affected employees back to work once the company's condition improves. The NLRC affirmed the LA's ruling and declared that the fact of dismissal, whether legal or illegal, is absent in this case.

---

[26] Formerly Article 279, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

[27] *Villanueva v. NLRC and Innodata*, *supra* note 9, at 646.

[28] *Rollo*, Vol. I, p. 145; IKSI's notice of the forced leave reads:

Please be informed that due to changes in business conditions, client requirements and specifications, we regret to inform you that you shall be placed on forced leave effective end of business day of January 7, 2010 until further notice. We shall be calling upon you once the Company's condition relative to work requirements stabilizes, which may necessitate your services anew.

x x x

Among the authorized causes for termination under Article 298[29] of the Labor Code is retrenchment, or what is sometimes referred to as a lay-off, thus:

> Art. 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 closing or cessation of operation of the establishment or undertaking unless the closing is 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 and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or 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.

Retrenchment is the severance of employment, through no fault of and without prejudice to the employee, which management resorts to during the periods of business recession, industrial depression, or seasonal fluctuations, or during lulls caused by lack of orders, shortage of materials, conversion of the plant to a new production program or the introduction of new methods or more efficient machinery, or of automation. In other words, lay-off is an act of the employer of dismissing employees because of losses in the operation, lack of work, and considerable reduction on the volume of its business. However, a lay-off would amount to dismissal only if it is permanent. When it is only temporary, the employment status of the employee is not deemed terminated, but merely suspended.[30]

Article 298, however, speaks of permanent retrenchment as opposed to temporary lay-off, as in the present case. There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a specific period or duration.[31] Notably, in both permanent and temporary lay-offs, the employer must act in good faith - that is, one which is intended for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under the law or under valid agreements.[32]

---

29 Formerly Article 283, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

30 *Lopez v. Irvine Construction Corp.*, 741 Phil. 728, 740 (2014).

31 *Id.*, citing *PT&T v. NLRC*, 496 Phil. 164, 177 (2005).

32 *Lopez v. Irvine Construction, Corp.*, *supra* note 30, at 741.

Certainly, the employees cannot forever be temporarily laid-off. Hence, in order to remedy this situation or fill the hiatus, Article 301[33] may be applied to set a specific period wherein employees may remain temporarily laid-off or in floating status.[34] Article 301 states:

> Art. 301. When Employment not Deemed Terminated. The *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

The law set six (6) months as the period where the operation of a business or undertaking may be suspended, thereby also suspending the employment of the employees concerned. The resulting temporary lay-off, wherein the employees likewise cease to work, should also not last longer than six (6) months. After the period of six (6) months, the employees should either then be recalled to work or permanently retrenched following the requirements of the law. Failure to comply with this requirement would be tantamount to dismissing the employees, making the employer responsible for such dismissal.[35] Elsewise stated, an employer may validly put its employees on forced leave or floating status upon *bona fide* suspension of the operation of its business for a period not exceeding six (6) months. In such a case, there is no termination of the employment of the employees, but only a temporary displacement. When the suspension of the business operations, however, exceeds six (6) months, then the employment of the employees would be deemed terminated,[36] and the employer would be held liable for the same.

Indeed, closure or suspension of operations for economic reasons is recognized as a valid exercise of management prerogative. But the burden of proving, with sufficient and convincing evidence, that said closure or suspension is *bona fide* falls upon the employer. In the instant case, IKSI claims that its act of placing respondents on forced leave after a decrease in work volume, subject to recall upon availability of work, was a valid exercise of its right to lay-off, as an essential component of its management prerogatives. The Court agrees with the LA's pronouncement that requiring employees on forced leave is one of the cost-saving measures adopted by the management in order to prevent further losses. However, IKSI failed to

---

33 Formerly Article 286, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

34 *PT&T v. NLRC*, *supra* note 31.

35 *Id.*

36 *Nasipit Lumber Company v. NOWM*, 486 Phil. 348, 362 (2004).

discharge the burden of proof vested upon it. Having the right should not be confused with the manner in which that right is exercised; the employer cannot use it as a subterfuge to run afoul of the employees' guaranteed right to security of tenure. The records are bereft of any evidence of actual suspension of IKSI's business operations or even of the ACT Project alone. In fact, while IKSI cited Article 301 to support the temporary lay-off of its employees, it never alleged that it had actually suspended the subject undertaking to justify such lay-off. It merely indicated changes in business conditions and client requirements and specifications as its basis for the implemented forced leave/lay-off.[37]

In light of the well-entrenched rule that the burden to prove the validity and legality of the termination of employment falls on the employer, IKSI should have established the *bona fide* suspension of its business operations or undertaking that could legitimately lead to the temporary lay-off of its employees for a period not exceeding six (6) months, in accordance with Article 301.[38] The LA severely erred when it sustained respondents' temporary retrenchment simply because the volume of their work would sometimes decline, thus, several employees at the ACT Project stream experienced unproductive time.[39] Considering the grave consequences occasioned by retrenchment, whether permanent or temporary, on the livelihood of the employees to be dismissed, and the avowed policy of the State to afford full protection to labor and to assure the employee's right to enjoy security of tenure, the Court stresses that not every loss incurred or expected to be incurred by a company will justify retrenchment. The losses must be substantial and the retrenchment must be reasonably necessary to avert such losses. The employer bears the burden of proving this allegation of the existence or imminence of substantial losses, which by its nature is an affirmative defense. It is the employer's duty to prove with clear and satisfactory evidence that legitimate business reasons exist in actuality to justify any retrenchment. Failure to do so would inevitably result in a finding that the dismissal is unjustified. Otherwise, such ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures to dispose of their employees.[40]

Here, IKSI never offered any evidence that would indicate the presence of a *bona fide* suspension of its business operations or undertaking. IKSI's paramount consideration should be the dire exigency of its business

---

37 *Supra* note 28:

Please be informed that due to changes in business conditions, client requirements and specifications, we regret to inform you that you shall be placed on forced leave effective end of business day of January 7, 2010 until further notice. We shall be calling upon you once the Company's condition relative to work requirements stabilizes, which may necessitate your services anew.

x x x

38 *Lopez v. Irvine Construction Corp., supra* note 30, at 743.

39 *Rollo*, Vol. I, p. 268.

40 *Lopez v. Irvine Construction Corp., supra* note 30, at 605; *Nasipit Lumber Company v. NOWM, supra* note 36, at 364; *Somerville Stainless Steel Corporation v. NLRC*, 359 Phil. 859, 869 (1998).

that compelled it to put some of its employees temporarily out of work. This means that it should be able to prove that it faced a clear and compelling economic reason which reasonably constrained it to temporarily shut down its business operations or that of the ACT Project, incidentally resulting in the temporary lay-off of its employees assigned to said particular undertaking. Due to the grim economic repercussions to the employees, IKSI must likewise bear the burden of proving that there were no other available posts to which the employees temporarily put out of work could be possibly assigned.[41] Unfortunately, IKSI was not able to fulfill any of the aforementioned duties. IKSI cannot simply rely solely on the alleged decline in the volume of work for the ACT Project to support the temporary retrenchment of respondents. Businesses, by their very nature, exist and thrive depending on the continued patronage of their clients. Thus, to some degree, they are subject to the whims of clients who may suddenly decide to discontinue patronizing their services for a variety of reasons. Being inherent in any enterprise, employers should not be allowed to take advantage of this entrepreneurial risk and use it in a scheme to circumvent labor laws. Otherwise, no worker could ever attain regular employment status.[42] In fact, IKSI still continued its operations and retained several employees who were also working on the ACT Project even after the implementation of the January 2010 forced leave. Much worse, it continued to hire new employees, with the same qualifications as some of respondents, through paid advertisements and placements in *Sunstar Cebu*,[43] a local newspaper, dated February 24, 2010 and March 7, 2010. The placing of an employee on floating status presupposes, among others, that there is less work than there are employees. But if IKSI continued to hire new employees then it can reasonably be assumed that there was a surplus of work available for its existing employees. Hence, placing respondents on floating status was unnecessary. If any, respondents – with their experience, knowledge, and familiarity with the workings of the company – should be preferred to be given new projects and not new hires who have little or no experience working for IKSI.[44]

There being no valid suspension of business operations, IKSI's act amounted to constructive dismissal of respondents since it could not validly put the latter on forced leave or floating status pursuant to Article 301. And even assuming, without admitting, that there was indeed suspension of operations, IKSI did not recall the employees back to work or place them on valid permanent retrenchment after the period of six (6) months, as required of them by law. IKSI could not even use the completion of the duration of the alleged project as an excuse for causing the termination of respondents' employment. It must be pointed out that the termination was made in 2010 and the expected completion of the project in respondents' contracts was still in 2012 to 2014. Also, if the Court would rely on IKSI's own Notice of

41 *Lopez v. Irvine Construction Corp. supra* note 30, at 744.
42 *Innodata Phils., Inc. v. Quejada-Lopez, supra* note 25.
43 *Rollo*, Vol. I, pp. 370-371.
44 *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 523 (2015).

Partial Appeal and Memorandum on Partial Appeal[45] before the NLRC dated December 10, 2010, respondents might even had been put on floating status for a period exceeding the required maximum of six (6) months. Evidence reveal that the assailed forced leave took effect on January 7, 2010 and IKSI eventually sent its termination letters four (4) months after, or on May 27, 2010, with the effectivity of said termination being on July 7, 2010. But as of December 10, 2010, IKSI was still insisting that respondents were never dismissed and were merely placed on forced leave. It was only in its Comment on Complainants' Motion for Reconsideration dated August 3, 2011 did IKSI admit the fact of dismissal when it appended its own termination letters dated May 27, 2010.

But even on May 27, 2010, there was still no basis for IKSI to finally make the retrenchment permanent. While it acknowledged the fact that respondents could not be placed on an indefinite floating status, it still failed to present any proof of a *bona fide* closing or cessation of operations or undertaking to warrant the termination of respondents' employment. The termination letter[46] reads:

> As you are probably already been aware by now, our Product Stream ACTDR of Project CSP, have been experiencing a considerably downward trend in terms of workload. The Company has undertaken every effort to obtain new commitments from its clients abroad in order to proceed with the expected volume of work under the same product stream.
>
> Unfortunately, however, it has become evident that despite said efforts being exerted by the Company, the prospect of new work related to the product stream coming in, remains uncertain at this point. Management has already utilized all available options, which include placing its project employees on forced leave. This, however, cannot go on indefinitely.
>
> It is therefore, with deep regret, that we inform you that **in view of the unavailability of work of the aforementioned product stream as well as the uncertainties pertaining to the arrival of new workloads thereof**, we are constrained to **terminate** your Project Employment Contract **in accordance with the terms and conditions stated under the Termination of Employment** of your Project Employment Contract, effective **7/7/2010**.
>
> x x x

It bears to point out that said termination letter did not even state any of the following valid grounds under the law as anchor for the dismissal:

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

---

45 *Rollo*, Vol. II, pp. 398-399.

46 *Id.* at 503. (Emphasis ours)

> (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.[47]

> Art. 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 closing or cessation of operation of the establishment or undertaking unless the closing is 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 and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or 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.

The NLRC likewise committed a grave error when it held that there was no basis for respondents' reliance on the case of *Bontia v. NLRC*[48] on the sole ground that, in the present case, the employees were neither actually nor constructively dismissed. The Court affirms respondents' contention that when IKSI feigned suspension of operations and placed respondents on forced leave, the same had already amounted to constructive dismissal. And when IKSI sent letters informing them that they would be terminated effective July 7, 2010, respondents then had been actually dismissed. In *Bontia*, the manner by which the employer severed its relationship with its employees was remarkably similar to the one in the case at bar, which was held to be an underhanded circumvention of the law. Consolidated Plywood Industries summarily required its employees to sign applications for forced leave deliberately crafted to be without an expiration date, like in this case. This consequently created an uncertain situation which necessarily discouraged, if not altogether prevented, the employees from reporting, or

---

[47] Formerly Article 282, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

[48] 325 Phil. 443 (1996).

determining when or whether to report for work. The Court further ruled that even assuming that the company had a valid reason to suspend operations and had filed the necessary notice with the Department of Labor and Employment (*DOLE*), it still would not be a legitimate excuse to cursorily dismiss employees without properly informing them of their rights and status or paying their separation pay in case they were eventually laid off. Under the Labor Code, separation pay is payable to an employee whose services are validly terminated as a result of retrenchment, suspension, closure of business or disease. Thus, the Court held that Consolidated Plywood's employees should, at the very least, have been given separation pay and properly informed of their status so as not to leave them in a quandary as to how they would properly respond to such a situation.[49] Similarly, respondents never received any separation pay when they were terminated in July of 2010 since IKSI had been denying the existence of a dismissal, whether actual or constructive.

Withal, in both permanent and temporary lay-offs, jurisprudence dictates that the one (1)-month notice rule to both the DOLE and the employee under Article 298 is mandatory.[50] Here, both the DOLE and respondents did not receive any prior notice of the temporary lay-off. The DOLE Region VII Office was only informed on January 11, 2010[51] or four (4) days after the forced leave had already taken effect. On the other hand, respondents received the notice[52] of forced leave on January 7, 2010, after the business day of which the same forced leave was to take effect. Respondents also pointed out that when they received said notice, they were told to no longer report starting the next day, made to completely vacate their workstations and surrender their company identification cards, and were not even allowed to use their remaining unused leave credits, which gave them the impression that they would never be returning to the company ever again.

Since dismissal is the ultimate penalty that can be meted to an employee, the requisites for a valid dismissal from employment must always be met, namely: (1) it must be for a just or authorized cause; and (2) the employee must be afforded due process,[53] meaning, he is notified of the cause of his dismissal and given an adequate opportunity to be heard and to defend himself. Our rules require that the employer be able to prove that said requisites for a valid dismissal have been duly complied with. Indubitably, IKSI's intent was not merely to put respondents' employment on hold pending the existence of the unfavorable business conditions and call them back once the same improves, but really to sever the employer-employee relationship with respondents right from the very start. The Court

---

49 *Id.*

50 *Lopez v. Irvine Construction Corp., supra* note 30, at 741.

51 *Rollo*, Vol. I, p. 186.

52 *Supra* note 28.

53 *Visayan Electric Company Employees Union-ALU-TUCP v. VECO*, 764 Phil. 608, 621 (2015).

cannot just turn a blind eye to IKSI's manifest bad faith in terminating respondents under the guise of placing them on a simple floating status. It is positively aware of the unpleasant practice of some employers of violating the employees' right to security of tenure under the pretense of a seemingly valid employment contract and/or valid termination. We must abate the culture of employers bestowing security of tenure to employees, not on the basis of the latter's performance on the job, but on their ability to toe the line.[54] Unfortunately for IKSI, they chanced upon respondents who, unlike the ordinary workingman who always plays an easy prey to these perfidious companies, are fully aware of their rights under the law and simply refuse to ignore and endure in silence the flagrant irruption of their rights, zealously safeguarded by the Constitution and our labor laws.

Procedural Issues

Tested against the above-discussed considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition before it, since the NLRC gravely abused its discretion in ruling that respondents were merely IKSI's project employees and that they were validly put on floating status as part of management prerogative, when they had satisfactorily established by substantial evidence that they had become regular employees and had been constructively dismissed.[55] Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction.[56] In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions, as in the case at bar, are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[57]

In the NLRC's Decision, only the following petitioners were included: Michael A. Rebato, Hernan Ed Noel L. de Leon, Jr., Wendell B. Quiban, Fritz Sembrino, Ismael R. Garaygay III, Edson S. Solis, Stephen Olingay, Ronan Alamillo, Jess Vincent A. dela Peña, Dax Matthew M. Quijano, Juneth A. Rentuma and Socorro D'Marie T. Inting. On the other hand, James Horace Balonda, Dennis C. Rizon, Ennoh Chentis R. Fernandez, Aldrin O. Torrentira, Michael Ray B. Molde, Rodolfo M. Vasquez, Ma. Nazelle B. Miralles, and Carl Hermes Carskit were excluded. IKSI argued that those eight (8) who were excluded did not sign the required Verification and Certification of Non-Forum Shopping of the Appeal Memorandum before the NLRC, and some of them also failed to execute the Verification in the Petition for *Certiorari* before the CA.

---

54 *ICT Marketing Services, Inc. v. Sales, supra* note 44.

55 *Dacles v. Millenium Erectors Corporation, supra* note 7, at 561.

56 *Id.* at 557.

57 *Id.*

The Court has previously set the guidelines pertaining to non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:[58]

> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping;
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction, or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served;
>
> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct;
>
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of substantial compliance or the presence of special circumstances or compelling reasons;
>
> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule; and
>
> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

In the case at hand, only twelve (12) of respondents were able to sign the Verification and Certification Against Forum Shopping since they were only given ten (10) days from the receipt of the LA's decision to perfect an appeal. Some of them were even no longer based in Cebu City. But it does not mean that those who failed to sign were no longer interested in pursuing their case.

In view of the circumstances of this case and the substantive issues raised by respondents, the Court finds justification to liberally apply the

---

[58] *Spouses Salise, et al. v. DARAB*, G.R. No. 202830, June 20, 2016, citing *Altres, et al. v. Empleo, et al.*, 594 Phil. 246, 261-262 (2008).

rules of procedure to the present case. Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice; their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[59]

In a similar case, the Court found that the signing of the Verification by only 11 out of the 59 petitioners already sufficiently assured the Court that the allegations in the pleading were true and correct and not the product of the imagination or a matter of speculation; that the pleading was filed in good faith; and that the signatories were unquestionably real parties-in-interest who undoubtedly had sufficient knowledge and belief to swear to the truth of the allegations in the petition.[60] In the same vein, the twelve (12) respondents who signed the Verification in the instant case had adequate knowledge to swear to the truth of the allegations in their pleadings, attesting that the matters alleged therein have been made in good faith or are true and correct. With respect to the failure of some of respondents to sign the Certification Against Forum Shopping, IKSI cited the case of *Altres, et al. v. Empleo*[61] which ruled that the non-signing petitioners were dropped as parties to the case. However, the reason of the Court for removing said petitioners from the case was not because of the failure to sign *per se*, but actually because of the fact that they could no longer be contacted or were indeed no longer interested in pursuing the case.[62] Here, as mentioned earlier, those who failed to sign the certification against forum shopping will not be dropped as parties to the case since reasonable or justifiable circumstances are extant, as all respondents share a common interest and invoke a common cause of action or defense; the signatures of some or even only one of them substantially complies with the Rule.

The Court previously held that the signature of only one of the petitioners substantially complied with the Rules if all the petitioners share a common interest and invoke a common cause of action or defense. In cases, therefore, where it is highly impractical to require all the plaintiffs to sign the certificate of non-forum shopping, it is sufficient, in order not to defeat the ends of justice, for one of the plaintiffs, acting as representative, to sign the certificate, provided that the plaintiffs share a common interest in the subject matter of the case or filed the case as a "collective" raising only one common cause of action or defense.[63] Thus, when respondents appealed their case to the NLRC and the CA, they pursued the same as a collective body, raising only one argument in support of their rights against the illegal dismissal allegedly committed by IKSI. There was sufficient basis, therefore, for the twelve (12) respondents to speak and file the Appeal

---

59 *Spouses Salise, et al. v. DARAB, supra.*

60 *Altres, et al. v. Empleo, et al., supra* note 58, at 260.

61 *Id.*

62 *Id.*

63 *Pacquing v. Coca-Cola Philippines, Inc.*, 567 Phil. 323, 333 (2008).

Memorandum before the NLRC and the petition in the CA for and in behalf of their co-respondents.

Clearly, verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional.[64] Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective.[65] It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, as in this case, the court may simply order the correction of the unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served.[66] Moreover, no less than the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities, while Section 10, Rule VII of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice. Labor cases must be decided according to justice and equity and the substantial merits of the controversy. After all, the policy of our judicial system is to encourage full adjudication of the merits of an appeal. Procedural niceties should be avoided in labor cases in which the provisions of the Rules of Court are applied only in suppletory manner. Indeed, rules of procedure may be relaxed to relieve a part of an injustice not commensurate with the degree of non-compliance with the process required. For this reason, the Court cannot indulge IKSI in its tendency to nitpick on trivial technicalities to boost its self-serving arguments.[67]

The CA, however, erred when it still considered Atty. Ennoh Chentis Fernandez as one of the petitioners before it and included him in the dispositive portion of its decision. It must be noted that Fernandez was one of those who filed the Motion for Execution of Decision[68] dated May 28, 2012, which prayed for the issuance of a writ of execution of the LA and NLRC's rulings. The movants likewise admitted therein that while some of them elevated the case to the NLRC, they, however, did not. Corollarily, Fernandez should have been dropped as one of the parties to the case before the CA since the rulings of the labor tribunals had already attained finality with respect to him.

---

64 *Heirs of Mesina v. Heirs of Fian*, 708 Phil. 327, 336 (2013).
65 *Pacquing v. Coca-Cola Philippines, Inc., supra* note 63, at 335.
66 *Heirs of Mesina v. Heirs of Fian, supra* note 64.
67 *Pacquing v. Coca-Cola Philippines, Inc., supra* note 63.
68 *Rollo*, Vol. IV, pp. 1882-1884.

Award of Damages

Inasmuch as IKSI failed to adduce clear and convincing evidence to support the legality of respondents' dismissal, the latter is entitled to reinstatement without loss of seniority rights and backwages computed from the time compensation was withheld up to the date of actual reinstatement, as a necessary consequence. However, reinstatement is no longer feasible in this case because of the palpable strained relations between the parties and the possibility that the positions previously held by respondents are already being occupied by new hires. Thus, separation pay equivalent to one (1) month salary for every year of service should be awarded in lieu of reinstatement.[69]

The Court sustains the CA's award of moral and exemplary damages. Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harassed and arbitrarily terminated by the employer. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation occasioned by the unreasonable dismissal. The Court has consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith, where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based, not on the Labor Code, but on Article 2220 of the Civil Code. In line with recent jurisprudence, the Court finds the amount of ₱50,000.00 for each of moral and exemplary damages adequate.[70]

The award of attorney's fees is likewise due and appropriate since respondents incurred legal expenses after they were forced to file an action to protect their rights.[71] The rate of interest, however, has been changed to 6% starting July 1, 2013, pursuant to the Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.[72]

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **DISMISSES** the petition, and **AFFIRMS** with **MODIFICATIONS** the Decision of the Court of Appeals Cebu, Twentieth (20th) Division, dated August 30, 2013 and Resolution dated March 12, 2014 in CA-G.R. CEB-SP No. 06443. Respondents Socorro D'Marie Inting, Ismael R. Garaygay, Edson S. Solis, Michael A. Rebato, James Horace Balonda, Stephen C. Olingay, Dennis C. Rizon, Juneth A. Rentuma, Hernan Ed Noel I. de Leon, Jr., Jess Vincent A. dela Peña, Ronan V. Alamillo, Wendell B. Quiban, Aldrin O. Torrentira, Michael Ray B. Molde, Fritz J. Sembrino, Dax Matthew M. Quijano, Rodolfo M. Vasquez, Ma. Nazelle B. Miralles and Carl Hermes Carskit are declared to have been illegally dismissed by

---

69 *ICT Marketing Services, Inc. v. Sales, supra* note 44.

70 *SPI Technologies, Inc. v. Mapua*, 731 Phil. 480, 500 (2014).

71 *Tangga-an v. Philippine Transmarine Carriers, Inc., et al.*, 706 Phil. 339, 354 (2013).

72 *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

petitioner Innodata Knowledge Services, Inc. and hence, the latter is hereby **ORDERED to PAY** each of them the following:

a) Backwages and all other benefits from the time compensation was withheld on January 8, 2010 until finality of this Decision;

b) Separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of their employment up to the finality of this Decision;

c) Moral and exemplary damages, each in the amount of ₱50,000.00;

d) Attorney's fees equivalent to ten percent (10%) of the total awards; and

e) Legal interest of twelve percent (12%) *per annum* of the total monetary awards computed from January 8, 2010 up to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.

The case is hereby ordered **REMANDED** to the labor arbiter for the computation of the amounts due each respondent.

Costs on petitioner Innodata Knowledge Services, Inc.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice