Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

E. GANZON, INC. (EGI) and EULALIO GANZON, Petitioners,	**G.R. No. 214183**
	Present:
- *versus* -	CARPIO, *J.*, *Chairperson*, PERALTA, MENDOZA, LEONEN, and JARDELEZA , *JJ.*
	Promulgated:
FORTUNATO B. ANDO, JR., Respondent.	20 FEB 2017

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DECISION

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure *(Rules)* seeks to reverse the February 28, 2014 Decision[1] and September 4, 2014 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 126624, which annulled the Resolutions dated May 25, 2012[3] and July 17, 2012[4] of the National Labor Relations Commission (*NLRC*) which affirmed *in toto* the December 29, 2011 Decision[5] of the Labor Arbiter.

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1 Penned by Associate Justice Romeo F. Barza, with Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz concurring; *rollo*, pp. 24-34.

2 *Rollo*, pp. 36-37.

3 *Id.* at 77-84, 203-210; CA *rollo*, pp. 122-129.

4 *Id.* at 224; *id.* at 144-145.

5 *Id.* at 51-60, 167-176.

On May 16, 2011, respondent Fortunato B. Ando, Jr. *(Ando)* filed a complaint[6] against petitioner E. Ganzon, Inc. *(EGI)* and its President, Eulalio Ganzon, for illegal dismissal and money claims for: underpayment of salary, overtime pay, and 13th month pay; non-payment of holiday pay and service incentive leave; illegal deduction; and attorneys fees. He alleged that he was a regular employee working as a finishing carpenter in the construction business of EGI; he was repeatedly hired from January 21, 2010 until April 30, 2011 when he was terminated without prior notice and hearing; his daily salary of ₱292.00 was below the amount required by law; and wage deductions were made without his consent, such as rent for the barracks located in the job site and payment for insurance premium.

EGI countered that, as proven by the three (3) project employment contract, Ando was engaged as a project worker (Formworker-2) in Bahay Pamulinawen Project in Laoag, Ilocos Norte from June 1, 2010 to September 30, 2010[7] and from January 3, 2011 to February 28, 2011[8] as well as in EGI-West Insula Project in Quezon City, Metro Manila from February 22, 2011 to March 31, 2011;[9] he was paid the correct salary based on the Wage Order applicable in the region; he already received the13th month pay for 2010 but the claim for 2011 was not yet processed at the time the complaint was filed; and he voluntarily agreed to pay ₱500.00 monthly for the cost of the barracks, beds, water, electricity, and other expenses of his stay at the job site.

The Labor Arbiter declared Ando a project employee of EGI but granted some of his money claims. The dispositive portion of the Decision reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered Dismissing the complaint for illegal dismissal for lack of merit.
>
> However, respondents are ordered to pay jointly and severally complainant Fortunato Ando, Jr.
>
> a.) underpayment of salary:
> From 2/22/11 – 4/30/11
>
> b.) Holiday pay:
> From 1/21/10 – 4/30/11
>
> c.) Service incentive leave pay:
> From 1/21/10 – 4/30/11

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6 *Id.* at 97-98.
7 *Id.* at 145.
8 *Id.* at 146.
9 *Id.* at 125.

d.) Proportionate 13th month pay
From 1/1/11 – 4/30/11

The computation of the Computation and Examination Unit of this Office is made part of this Decision.

SO ORDERED.[10]

Both parties elevated the case to the NLRC,[11] which dismissed the appeals filed and affirmed *in toto* the Decision of the Labor Arbiter. Ando filed a motion for reconsideration,[12] but it was denied. Still aggrieved, he filed a Rule 65 petition before the CA,[13] which granted the same. The *fallo* of the Decision ordered:

> **WHEREFORE,** finding the petition to be impressed with merit, the same is hereby **GRANTED**. The assailed NLRC resolutions dated May 25, 2012 and July 17, 2012, are hereby **ANNULLED** insofar as the matter of illegal dismissal is concerned and a new judgment is hereby **ENTERED** declaring petitioner Fortunato Ando, Jr. illegally dismissed from work. Private respondent E. Ganzon, Inc. (EGI) is hereby **ORDERED** to pay petitioner Ando, Jr. his full backwages inclusive of his allowances and other benefits computed from April 30, 2011 (the date of his dismissal) until finality of this decision. EGI is further ordered to pay petitioner Ando, Jr. separation pay equivalent to one month salary.
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> The award of petitioner Ando, Jr.'s money claims granted by the Labor Arbiter and affirmed by the NLRC is **SUSTAINED**.
>
> **SO ORDERED.**[14]

EGI's motion for reconsideration[15] was denied; hence, this case.

The petition is meritorious.

In labor cases, Our power of review is limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion on the part of the NLRC. The Court explained this in *Montoya v. Transmed Manila Corporation*:[16]

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10 *Id.* at 59, 175.
11 *Id.* at 62-75, 177-190, 192-200.
12 *Id.* at 211-223.
13 *Id.* at 85-94.
14 *Id.* at 33. (Emphasis in the original)
15 *Id.* at 238-250.
16 613 Phil. 696 (2009).

> x x x In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[17]

Errors of judgment are not within the province of a special civil action for *certiorari* under Rule 65, which is merely confined to issues of jurisdiction or grave abuse of discretion.[18] Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction.[19] To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[20] In labor disputes, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions reached are not supported by substantial evidence or are in total disregard of evidence material to or even decisive of the controversy; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[21]

In the case at bar, We hold that the CA erred in ruling that the NLRC gravely abused its discretion when it sustained the Labor Arbiter's finding that Ando is not a regular employee but a project employee of EGI.

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17 *Montoya v. Transmed Manila Corporation, supra*, at 707. (Citations omitted; emphasis supplied). See also *Holy Child Catholic School v. Sto. Tomas*, G.R. No. 179146, July 23, 2013; *Niña Jewelry Manufacturing of Metal Arts, Inc. v. Montecillo*, 677 Phil. 447, 464 (2011); *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, 676 Phil. 262, 273-274 (2011); *Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA)*, 642 Phil. 275, 288 (2010); and *Mercado v. AMA Computer College-Parañaque City, Inc.*, 632 Phil. 228, 248 (2010).

18 *Cocomangas Hotel Beach Resort and/or Munro v. Visca, et al.*, 585 Phil. 696, 704 (2008).

19 *Quebral v. Angbus Construction, Inc.*, G.R. No. 221897, November 7, 2016; *Dacles v. Millenium Erectors Corp.*, G.R. No. 209822, July 8, 2015; and *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014, 734 SCRA 270, 277.

20 *Quebral v. Angbus Construction, Inc.*, G.R. No. 221897, November 7, 2016; *Dacles v. Millenium Erectors Corp.*, G.R. No. 209822, July 8, 2015; and *Omni Hauling Services, Inc. v. Bon, supra.*

21 See *Quebral v. Angbus Construction, Inc.*, G.R. No. 221897, November 7, 2016; *Dacles v. Millenium Erectors Corp.*, G.R. No. 209822, July 8, 2015; *Omni Hauling Services, Inc. v. Bon, supra*; and *Cocomangas Hotel Beach Resort and/or Munro v. Visca, et al.*, 585 Phil. 696, 705-706 (2008).

The terms **regular**, **project**, **seasonal** and **casual** employment are taken from Article 280[22] of the Labor Code, as amended. In addition, *Brent School, Inc. v. Zamora*[23] ruled that **fixed-term** employment contract is not *per se* illegal or against public policy.[24] Under Art. 280, project employment is one which "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." To be considered as project-based, the employer has the burden of proof to show that: *(a)* the employee was assigned to carry out a specific project or undertaking and *(b)* the duration and scope of which were specified at the time the employee was engaged for such project or undertaking.[25] It must be proved that the particular work/service to be performed as well as its duration are defined in the employment agreement and made clear to the employee who was informed thereof at the time of hiring.[26]

The activities of project employees **may or may not** be usually necessary or desirable in the usual business or trade of the employer. In *ALU-TUCP v. National Labor Relations Commission*,[27] two (2) categories of project employees were distinguished:

> In the realm of business and industry, we note that "project" could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. x x x. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment,

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22 ARTICLE 280. *Regular and casual employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and 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 actually exist.

23 260 Phil. 747 (1990).

24 *GMA Network, Inc. v. Pabriga, et al.*, 722 Phil. 161, 170 (2013) and *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-Energy Dev't Corp*, 662 Phil. 225, 233 (2011).

25 *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI) and/or Tamayo*, G.R. No. 218009, September 21, 2016; *Dacles v. Millenium Erectors Corp.*, G.R. No. 209822, July 8, 2015; *Omni Hauling Services, Inc. v. Bon, supra* note 19, at 279; *Alcatel Phils., Inc., et al. v. Relos*, 609 Phil. 307, 314 (2009); and *Abesco Construction and Dev't Corp. v. Ramirez*, 521 Phil. 160, 165 (2006).

26 See *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate*, 560 Phil. 615, 620 (2007) and *Abesco Construction and Dev't Corp. v. Ramirez*, 521 Phil. 160, 165 (2006).

27 G.R. No. 109902, August 2, 1994, 234 SCRA 678.

> are properly treated as "project employees," and their services may be lawfully terminated at completion of the project.
>
> The term "project" could also refer to, secondly, a particular job or undertaking that is *not* within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times. x x x[28]

As the assigned project or phase **begins and ends at determined or determinable times**, the services of the project employee may be lawfully terminated at its completion.[29]

In this case, the three project employment contracts signed by Ando explicitly stipulated the agreement "to engage [his] services as a Project Worker"[30] and that:

> 5. [His] services with the Project will end upon completion of the phase of work for which [he was] hired for and is tentatively set on (written date). However, this could be extended or shortened depending on the work phasing.[31]

The CA opined that Ando's contracts do not bear the essential element of a project employment because while his contracts stated the period by which he was engaged, his tenure remained indefinite. The appellate court ruled that the stipulation that his services "could be extended or shortened depending on the work phasing" runs counter to the very essence of project employment since the certainty of the completion or termination of the projects is in question. It was noted that, based on Ando's payslips, his services were still engaged by EGI even after his contracts expired. These extensions as well as his repeated rehiring manifested that the work he rendered are necessary and desirable to EGI's construction business, thereby removing him from the scope of project employment contemplated under Article 280.

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[28] *ALU-TUCP v. National Labor Relations Commission, supra,* at 685-686. See also *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI) and/or Tamayo,* G.R. No. 218009, September 21, 2016; *Omni Hauling Services, Inc. v. Bon, supra* note 19, at 279; *GMA Network, Inc. v. Pabriga, et al., supra* note 24, at 171-172; *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-Energy Dev't Corp,* 662 Phil. 225, 237 (2011); and *Villa v. NLRC,* 348 Phil. 116, 143 (1998).

[29] See *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI) and/or Tamayo,* G.R. No. 218009, September 21, 2016; *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015; *Omni Hauling Services, Inc. v. Bon, supra* note 19, at 278-279; *Alcatel Phils., Inc., et al. v. Relos,* 609 Phil. 307, 314 (2009); and *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 620.

[30] *Rollo*, pp. 125, 145-146.

[31] *Id.*

We do not agree.

Records show that Ando's contracts for Bahay Pamulinawen Project were extended until December 31, 2010[32] (from the original stated date of September 30, 2010) and shortened to February 15, 2011[33] (from the original stated date of February 28, 2011) while his services in West Insula Project was extended until April 30, 2011[34] (from the original stated date of March 31, 2011). These notwithstanding, he is still considered as a project, not regular, employee of EGI.

A project employment contract is valid under the law.

> x x x By entering into such a contract, an employee is deemed to understand that his employment is coterminous with the project. He may not expect to be employed continuously beyond the completion of the project. It is of judicial notice that project employees engaged for manual services or those for special skills like those of carpenters or masons, are, as a rule, unschooled. However, this fact alone is not a valid reason for bestowing special treatment on them or for invalidating a contract of employment. Project employment contracts are not lopsided agreements in favor of only one party thereto. The employer's interest is equally important as that of the employee's for theirs is the interest that propels economic activity. While it may be true that it is the employer who drafts project employment contracts with its business interest as overriding consideration, such contracts do not, of necessity, prejudice the employee. Neither is the employee left helpless by a prejudicial employment contract. After all, under the law, the interest of the worker is paramount.[35]

The Court has upheld the validity of a project-based contract of employment provided that the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter; and it is apparent from the circumstances that the period was not imposed to preclude the acquisition of tenurial security by the employee.[36] Otherwise, such

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32 *Id.* at 106-108, 111.

33 *Id.* at 43, 46, 110, 137, 140, 230-231, 242, 245-246, 248-249.

34 *Id.* at 44, 109, 111, 138, 231, 242, 245, 249.

35 *Villa v. NLRC, supra* note 28, at 141, as cited in *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 622 and *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-Energy Dev't Corp, supra* note 28, at 234.

36 See *Salinas, Jr. v. NLRC,* 377 Phil. 55, 63-64 (1999), citing *Caramol v. National Labor Relations Commission,* G.R. No. 102973, August 24, 1993, 225 SCRA 582, 586. See also *Hanjin Heavy Industries and Construction Co. Ltd., et al. v. Ibañez, et al.,* 578 Phil. 497, 511 (2008).

contract should be struck down as contrary to public policy, morals, good custom or public order.[37]

Here, Ando was adequately notified of his employment status at the time his services were engaged by EGI for the Bahay Pamulinawen and the West Insula Projects. The contracts he signed consistently stipulated that his services as a project worker were being sought. There was an informed consent to be engaged as such. His consent was not vitiated. As a matter of fact, Ando did not even allege that force, duress or improper pressure were used against him in order to agree. His being a carpenter does not suffice.

There was no attempt to frustrate Ando's security of tenure. His employment was for a specific project or undertaking because the nature of EGI's business is one which will not allow it to employ workers for an indefinite period. As a corporation engaged in construction and residential projects, EGI depends for its business on the contracts it is able to obtain. Since work depends on the availability of such contracts, necessarily the duration of the employment of its work force is not permanent but coterminous with the projects to which they are assigned and from whose payrolls they are paid. [38] It would be extremely burdensome for EGI as an employer if it would have to carry them as permanent employees and pay them wages even if there are no projects for them to work on.[39]

Project employment should not be confused and interchanged with *fixed-term* employment:

> x x x While the former requires a *project* as restrictively defined above, 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.[40]

The decisive determinant in project employment is the activity that the employee is called upon to perform and not the day certain agreed upon by the parties for the commencement and termination of the employment relationship. Indeed, in *Filsystems, Inc. v. Puente,*[41] We even ruled that an

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[37] See *Salinas, Jr. v. NLRC, supra,* citing *Caramol v. National Labor Relations Commission, supra,* at 586.

[38] See *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 622-623 and *Cartagenas v. Romago Electric Co., Inc.,* 258 Phil. 445, 449-450 (1989).

[39] See *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 622-623 and *Cartagenas v. Romago Electric Co., Inc., supra,* at 449-450.

[40] *GMA Network, Inc. v. Pabriga, et al., supra* note 24, at 177-178. (Citations omitted).

[41] 493 Phil. 923 (2005).

employment contract that does not mention particular dates that establish the specific duration of the project does not preclude one's classification as a project employee.

In this case, the duration of the specific/identified undertaking for which Ando was engaged was reasonably determinable. Although the employment contract provided that the stated date may be "extended or shortened depending on the work phasing," it specified the termination of the parties' employment relationship on a "day certain," which is "upon completion of the phase of work for which [he was] hired for."[42]

> A "day" x x x is understood to be that which must necessarily come, although is may not be known exactly when. This means that where the final completion of a project or phase thereof is in fact determinable and the expected completion is made known to the employee, such project employee may not be considered regular, notwithstanding the one-year duration of employment in the project or phase thereof or the one-year duration of two or more employments in the same project or phase of the project.
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> The completion of the project or any phase thereof is determined on the date originally agreed upon or the date indicated in the contract, or if the same is extended, the date of termination of project extension.[43]

Ando's tenure as a project employee remained definite because there was certainty of completion or termination of the Bahay Pamulinawen and the West Insula Projects. The project employment contracts sufficiently apprised him that his security of tenure with EGI would only last as long as the specific projects he was assigned to were subsisting. When the projects were completed, he was validly terminated from employment since his engagement was coterminous thereto.

The fact that Ando was required to render services necessary or desirable in the operation of EGI's business for more than a year does not in any way impair the validity of his project employment contracts. Time and again, We have held that the length of service through repeated and successive rehiring is not the controlling determinant of the employment tenure of a project employee.[44] The rehiring of construction workers on a project-to-project basis does not confer upon them regular employment status as it is only dictated by the practical consideration that experienced

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42 *Rollo*, pp. 125, 145-146.

43 Section 3.3 (a) of DOLE Department Order No. 19, Series of 1993 (*Guidelines Governing the Employment of Workers in the Construction Industry*).

44 See *Dacles v. Millenium Erectors Corp.*, G.R. No. 209822, July 8, 2015; *Alcatel Phils., Inc., et al. v. Relos, supra* note 25, at 314; *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 622-623; *Abesco Construction and Dev't Corp. v. Ramirez*, 521 Phil. 160, 164 (2006); and *Cioco, Jr. v. C.E. Construction Corp.*, 481 Phil. 270, 276 (2004).

construction workers are more preferred.[45] In Ando's case, he was rehired precisely because of his previous experience working with the other phases of the project. EGI took into account similarity of working environment. Moreover –

> x x x It is widely known that in the construction industry, a project employee's work depends on the availability of projects, necessarily the duration of his employment. It is not permanent but coterminous with the work to which he is assigned. It would be extremely burdensome for the employer, who depends on the availability of projects, to carry him as a permanent employee and pay him wages even if there are no projects for him to work on. The rationale behind this is that once the project is completed it would be unjust to require the employer to maintain these employees in their payroll. To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management.[46]

Finally, the second paragraph of Article 280, stating that an employee who has rendered service for at least one (1) year shall be considered a regular employee, is applicable only to a casual employee and not to a project or a regular employee referred to in paragraph one thereof.[47]

The foregoing considered, EGI did not violate any requirement of procedural due process by failing to give Ando advance notice of his termination. Prior notice of termination is not part of procedural due process if the termination is brought about by the completion of the contract or phase thereof for which the project employee was engaged.[48] Such completion automatically terminates the employment and the employer is, under the law, only required to render a report to the Department of Labor and Employment *(DOLE)* on the termination of employment.[49] In this case, it is undisputed that EGI submitted the required Establishment Employment Reports to DOLE-NCR Makati/Pasay Field Office regarding Ando's

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45 See *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI) and/or Tamayo,* G.R. No. 218009, September 21, 2016; *Filsystems, Inc. v. Puente, supra* note 41, at 934; and *Cioco, Jr. v. C.E. Construction Corp., supra.*

46 *Malicdem v. Marulas Industrial Corporation,* G.R. No. 204406, February 26, 2014, 717 SCRA 563, 574-575 (Citations omitted). See also *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015.

47 *Mercado, Sr. v. NLRC, 3rd Div.*, 278 Phil. 345, 357 (1991), as cited in *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-Energy Dev't Corp, supra* note 28, at 238; *Fabela v. San Miguel Corp.,* 544 Phil. 223, 231 (2007); *Benares v. Pancho,* 497 Phil. 181, 190 (2005); *Phil. Fruit & Vegetable Industries, Inc. v. NLRC,* 369 Phil. 929, 938 (1999); *Palomares v. NLRC,* 343 Phil. 213, 224 (1997); *Raycor Aircontrol Systems, Inc. v. NLRC,* 330 Phil. 306, 326-327 (1996); *Cosmos Bottling Corporation v. NLRC,* 325 Phil. 663, 672 (1996); *ALU-TUCP v. National Labor Relations Commission, supra* note 27, at 688; and *Fernandez v. National Labor Relations Commission,* G.R. No. 106090, February 28, 1994, 230 SCRA 460, 466.

48 *D.M. Consunji, Inc. v. Gorres, et al.,* 641 Phil. 267, 280 (2010).

49 *Id.* at 279, citing *Cioco, Jr. v. C.E. Construction Corp., supra* note 44, at 277-278.

"temporary lay-off" effective February 16, 2011 and "permanent termination" effective May 2, 2011.[50]

WHEREFORE, premises considered, the petition is **GRANTED**. The February 28, 2014 Decision and September 4, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 126624, which annulled the Resolutions dated May 25, 2012 and July 17, 2012 of the National Labor Relations Commission which affirmed *in toto* the December 29, 2011 Decision of the Labor Arbiter, are **REVERSED AND SET ASIDE**. The Decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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50 *Rollo*, pp. 147-151.

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