Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

AMERICAN POWER CONVERSION CORPORATION; AMERICAN POWER CONVERSION SINGAPORE PTE. LTD.; AMERICAN POWER CONVERSION (A.P.C.), B.V.; AMERICAN POWER CONVERSION (PHILS.) B.V.; DAVID W. PLUMER, JR.; GEORGE KONG; and ALICIA HENDY,
Petitioners,

- versus -

JASON YU LIM,
Respondent.

G.R. No. 214291

Present:

SERENO, *C.J., Chairperson,*
LEONARDO-DE CASTRO,
DEL CASTILLO,
JARDELEZA, *and*
TIJAM, *JJ.*

Promulgated:
JAN 11 2018

x - x

DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the April 23, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 110142 setting aside the June 17, 2008 Decision[3] and June 10, 2009 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002807-07 and reinstating the July 27, 2007 Decision[5] of the Labor Arbiter, as well as the CA's September 11, 2014 Resolution[6] denying petitioners' Motion for Reconsideration.[7]

Factual Antecedents

On July 1, 1998, respondent Jason Yu Lim was hired to serve as the

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1 *Rollo*, Vol. I, pp. 16-59.
2 Id. at 61-78; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Amelita G. Tolentino and Ricardo R. Rosario.
3 Id. at 232-255; penned by Commissioner Nieves E. Vivar-De Castro and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel G. Panganiban-Ortiguerra.
4 Id. at 257-259.
5 Id. at 260-277; penned by Labor Arbiter Thelma M. Concepcion.
6 Id. at 105-106; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Ricardo R. Rosario.
7 Id. at 79-103.

Country Manager of American Power Conversion Philippine Sales Office, which was not registered with the Securities and Exchange Commission (SEC) but whose function then was to act as a liaison office for American Power Conversion Corporation (APCC) – an American corporation – and provide sales, marketing, and service support to the local distributor and consumers of APCC in the Philippines. APCC is engaged in designing, developing, manufacturing and marketing of power protection and management solutions for computer, communication, and electronic applications.

The only SEC-registered corporation then was American Power Conversion (Phils.), Inc. (APCPI) with manufacturing and production facilities in Cavite and Laguna.

Since American Power Conversion Philippine Sales Office was unregistered but doing business in the country, respondent was included in the list of employees and payroll of APCPI. He was also instructed to create a petty cash fund using his own personal bank account to answer for the day-to-day operations of American Power Conversion Philippine Sales Office.

In 2002, American Power Conversion (Phils.) B.V. (APCP BV) was established in the country and it acquired APCPI and continued the latter's business here.

In November, 2004, respondent was promoted as Regional Manager for APC North ASEAN, a division of APC ASEAN. As Regional Manager for APC North ASEAN, he handled sales and marketing operations for Thailand, the Philippines, Vietnam, Myanmar, Cambodia, Laos, and Guam, and reported directly to Larry Truong (Truong), Country General Manager for the entire APC ASEAN and officer of APCC. Truong was not connected in any way with APCP BV – which, per its SEC registration, is licensed to engage only in the manufacture of computer-related products.[8]

In an electronic mail (e-mail) message,[9] Truong announced respondent's appointment together with the appointment of David Shao (Shao) as Regional Manager for South ASEAN, which covered Singapore, Malaysia, Indonesia, and Brunei. Truong noted respondent's "steady and principled leadership" since he "joined APC Philippines in 1998" that "doubled x x x revenue x x x despite the fact that the country economy has improved little since the Financial Crisis."[10]

In 2005, Truong was replaced by petitioner George Kong (Kong).

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8 Id. at 315.
9 Id. at 325.
10 Id.

During their stint with Kong, respondent and Shao supposedly discovered irregularities committed by Kong, which sometime in late August, 2005 they reported to Leanne Cunnold (Cunnold), General Manager for APC-South and Kong's immediate superior. Cunnold took up the matter with petitioner Alicia Hendy (Hendy), Human Resource Director for APCP BV. Respondent and Shao also took the matter directly to David Plumer (Plumer), Vice President for Asia Pacific of APC Japan,[11] who advised them to discuss the matter directly with Kong.

Upon being apprised of the issues against him, Kong on September 8, 2005 sent three e-mail messages[12] to respondent and the other six members of the sales and marketing team indicating his displeasure and that he took the matter quite personally. In the last of his e-mail messages, he remarked – "and finally, thank you for the 7 knives in my back."[13]

On September 30, 2005, Kong and Hendy met with Shao, where the latter was asked to resign; when he refused, he was right then and there terminated from employment with immediate effect.[14] The Letter of Termination[15] handed to him did not specify any reason why he was being fired from work, and was written on the official stationery of American Power Conversion Singapore Pte. Ltd. (APCS) and signed by its Human Resource Manager, Samantha Phang (Phang).

Thereafter, Kong arrived in the country and met with respondent on October 17, 2005, where he informed the latter of a supposed company restructuring which rendered his position as Regional Manager for North ASEAN redundant. Respondent was furnished by the Human Resource Manager of APCP BV Maximo del Ponso, Jr. (del Ponso) with a Termination Letter[16] of even date, which stated among others that –

> Dear Jason:
>
> In response to the changing directions of the business, and pursuant to the need to align and streamline the APAC Sales organization, we advise that management has decided to reconfigure APAC Sales function and as a result of such, we declare the position of Regional Manager – North ASEAN is [sic] redundant. Accordingly, we regret to inform you of your last working day with us is effective close of business day 17 November, 2005. Until said date, you will no longer be required to go to work other than the period required by management for the turn-over.
>
> xxxx

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11 *Rollo*, Vol. IV, p. 2066.
12 *Rollo*, Vol. I, pp. 326-328.
13 Id. at 326.
14 Id. at 329-334.
15 Id. at 334.
16 Id. at 335.

On December 8, 2005, respondent's counsel proceeded to the Department of Labor and Employment (DOLE) to verify if petitioners gave the requisite notice of termination due to redundancy. In a Certification,[17] the DOLE through National Capital Region Assistant Regional Director Ma. Celeste M. Valderrama confirmed that there was no record on file – from September 1, 2005 up to November 30, 2005 – of a notice of termination filed by any of the petitioners.

Respondent was paid severance pay, but in a written demand,[18] he sought reinstatement, the payment of backwages and allowances/benefits, and damages for his claimed malicious and illegal termination. In a written reply[19] by APCC's counsel, petitioners refused to accede, thus:

> Dear Atty. Marigomen
> Mr. Jason Yu Lim
>
> **We write on behalf of our client American Power Conversion Corporation ('APCC')** and respond to your letter x x x.
>
> x x x Mr. Lim was lawfully terminated on the ground of redundancy. Moreover, **APCC** complied with the procedure for termination x x x and paid Mr. Lim his separation pay in accordance with law.
>
> x x x x
>
> In view of the foregoing, **APCC** is unable to accede to your demands. (Emphasis supplied)

Likewise, in a December 9, 2005 letter[20] to respondent, APCP BV through Hendy acknowledged to respondent that should he be questioned about the use by APCC of his private bank account, petitioners will "offer the fullest possible accounting of its [APCC] past actions."

Ruling of the Labor Arbiter

Respondent filed a labor case against the petitioners for illegal dismissal and recovery of money claims. In his Position Paper[21] and other pleadings, respondent claimed that he was illegally dismissed by petitioners using a fabricated and contrived restructuring/reorganization/redundancy program; that in truth, his dismissal was motivated by bad faith and malice out of Kong's desire to retaliate after he questioned Kong's irregularities; the petitioners conspired and acted together to illegally remove respondent from his position through a

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17 Id. at 336.
18 Id. at 356-359.
19 Id. at 360-361.
20 Id. at 338.
21 Id. at 283-314.

fabricated redundancy; that in effecting the purported redundancy program, petitioners did not comply with the requirements laid down by the Labor Code, particularly the giving of notice to the DOLE, which thus renders the dismissal null and void; and that by acting with malice and bad faith, petitioners are liable to respondent for moral and exemplary damages and attorney's fees. Thus, respondent prayed for reinstatement with full backwages, allowances and other benefits; or in the alternative, additional separation pay at the rate of three months salary for every year of service; damages in the amount of US$1,500,000.00 for petitioners' malice, bad faith, and for subjecting respondent to the threat of criminal and civil prosecution as a result of petitioners' illegal acts of evading taxes, non-registration with the SEC, and for using respondent as their dummy; and attorney's fees and costs of suit.

In their joint Position Paper[22] and other pleadings, petitioners claimed essentially that respondent should have impleaded only APCP BV, as it is with the latter that respondent entered into an employment contract; that the complaint against the other petitioners should thus be dismissed; that when Plumer was appointed Vice President for APC Asia Pacific operations in August, 2005, a reorganization/restructuring of the APC Asia Pacific sales organization was undertaken, in that its operations were divided into 1) Enterprise Sales – which shall be responsible for selling directly to customers, and 2) Transactional Sales – which shall be tasked to handle distributions, network, and channels accounts; that for this reason, there was a need to abolish the positions of Regional Manager – North ASEAN and Regional Manager – South ASEAN because they were no longer aligned with the new business model – and in their stead, the positions of Enterprise Sales Manager and Transactional Business Manager were created; that these two new positions required a different set of functions including job description, qualifications, and experience, which respondent did not possess; that in fact, two new employees with the requisite qualifications have been appointed to these two new positions; that in effecting the redundancy program, they complied with the requirements of law; that on October 6, 2005, APCP BV's del Ponso sent to DOLE Region IV at Calamba, Laguna a written notice[23] of the redundancy program to be implemented, but it did not contain the number and names of workers intended to be terminated from work, including that of respondent's; that respondent's dismissal was thus for cause; that respondent is not entitled to his monetary claims on account of his valid dismissal due to redundancy; that reinstatement is no longer feasible since his former position has been abolished; that respondent is not entitled to the rest of his claims; and that the individual officers named in the complaint cannot be held personally liable as they acted in their official capacity and without bad faith or malice. Thus, they prayed for the dismissal of respondent's complaint.

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22 Id. at 367-397.
23 Id. at 430.

Ruling of the Labor Arbiter

On July 27, 2007, the Labor Arbiter rendered her Decision in favor of respondent, stating thus:

> From the conflicting statement of facts and evidence adduced by [the] parties in support of their respective assertions, the issues for resolution by this Office are whether or not complainant was illegally dismissed, and whether or not he is entitled to his monetary claims.
>
> At the outset, it must be stressed that in cases of termination of an employee, it is the employer who has the burden of proving that the termination x x x is for a valid or authorized cause x x x.
>
> *Further, a rule deeply entrenched in our jurisdiction is that 'in order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes enumerated in Art. 282 of the Labor Code, and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself. x x x*
>
> As also provided *under Art. 283 of the Labor Code, as amended, redundancy, among other grounds, is an authorized cause for termination of an employment.* x x x the Supreme Court held that redundancy exists when the service capability of the work force is in excess of what is reasonably needed to meet the demands of the enterprise. A redundant position is one rendered superfluous by any number of factors, such as over hiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company, or phasing out of a service activity previously undertaken by the business. x x x
>
> x x x [T]he Supreme Court held that redundancy may be proven by a 'new staffing pattern, feasibility studies/proposal on the viability of newly created positions, job description and approval by the management of the restructuring.' In the instant case, we find respondents did not present any of the foregoing evidence to establish the supposed restructuring and/or redundancy. There was also no evidence showing the approval of the said restructuring and/or redundancy by the directors and officers of respondent APC BV. What was submitted on record were the affidavits and memoranda of the managers of respondent company on the alleged plans for restructuring which the Supreme Court held not sufficient to substantially prove the existence of a restructuring or redundancy. Moreover, in the previous reorganization of APC ASEAN in January 2005, Country Managers and Regional Managers, complainant actively participated in the formation of the new structure for the APC ASEAN. The same tedious process of reorganization was however not undertaken by respondents APCC in the supposed decision to abolish the position of the ASEAN Regional Managers, thus rendering suspect the assertion of redundancy. Also significant to consider is the point raised by complainant that up to present, respondent APCC has not yet announced any reconfiguration, reorganization, or restructuring in APC ASEAN despite the effected termination if only to validate the alleged reorganization. The statement of Mr. Tzeng Kwan Chin, the APC Country Sales Manager for Malaysia, corroborates this point of the complainant.

We also noted that after respondents terminated complainant and Mr. Shao as Regional Managers, the company hired two (2) new employees to perform basically the same functions of complainant and that of Mr. Shao, which is to market and promote APC products x x x, which factor also belies the claim of redundancy. The hiring of two (2) new employees, albeit differently titled, merely effected substitution of complainant and Mr. Shao. The same substitution suggest [sic] that vacated posts of Regional Managers is [sic] necessary in the operations of respondent APCC which necessitated the performance thereof by the newly hired employees. We are thus persuaded [that] the obtaining circumstances does [sic] not help support respondent APCC's claim of redundancy. With the abolition of the Regional Manager position, there should have been a merger of functions and not the hiring of replacements.

It is not disputed that management is vested with the power and prerogative to decide whether to undergo a reorganization to improve the business x x x. However, said power and prerogative is [sic] not absolute. The Constitution and the Labor Code safeguards [sic] the right of the employees to their job and their income. Hence, the guaranteed right to security of tenure of employees and their protection against dismissal, except for a just or authorized cause.

In the absence of a clear showing of redundancy, we are inclined to give credence to the assertion that respondents thru the initiative of respondent Kong was motivated to dismiss complainant from the company because of the latter's report on the former's violations of the APCC's Code of Ethics. Evidently, the termination of complainant was not due to redundancy but a retaliatory action in the guise of redundancy for purposes of dismissing the complainant from the service. The said action is clearly an exercise of management prerogative in bad faith. It may be true that investigation was conducted on the reported breach of the Code of Ethics by respondent Kong, the lack of transparency on the results thereof, however, prevents us from giving credence to said assertion.

Moreover, it is also noticeable that only complainant and Mr. Shao (who complained about respondent Kong's unethical conduct) were removed on account of the supposed reorganization. The five (5) other persons named in respondent Kong's angry e-mails were not dismissed in connection with said reorganization since they did not join complainant and Mr. Shao in their report on respondent Kong's unethical conduct, as against respondents' contention that no such retaliatory action was undertaken by them as shown by the fact that five others also in the e-mails were not included in the said reorganization.

It also did not escape our notice that Mr. Shao, who previously held the position of Regional Manager for South Asean, was terminated 'without cause' rather than due to redundancy. We are not persuaded by respondents' explanation that Singapore law allows dismissal without cause and hence no longer deemed necessary to indicate the same reason of redundancy/reorganization for Mr. Shao's termination. To the contrary, we are inclined to believe that having expressly stated that termination was 'without cause,' it only infers that there was actually no valid reason for the latter's termination. Granting arguendo the same is allowed under Singapore law, the said circumstances nevertheless infer that termination of Mr. Shao, as well as complainant was not due to reorganization.

Furthermore, under Article 283 of the Labor Code, it is provided that in

cases of termination for redundancy, the employer must serve a written notice to the workers and the DOLE at least one (1) month before the intended date thereof.

In the instant case, respondents failed to comply with the requirement of written notice to the DOLE as evidenced by the Certification from said Office that there is no record on its file from 01 September 2005 to 30 November 2005 reporting the termination of complainant for redundancy x x x [F]ailure to comply with the mandatory procedural requirements taints the dismissal with illegality. We also do not find the notice to DOLE adduced by respondents applicable to complainant since the latter was not specifically named therein apart from the fact that said notice as pointed out by complainant, appears to have been previously submitted to DOLE by reorganization of the human resources department of APC BV Cavite and not that of the Regional Managers of APCC.

Thus, on the basis of the foregoing findings and pursuant to Article 279 of the Labor Code, we find complainant entitled to reinstatement without loss of seniority rights, and other privileges as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement less the amount already paid to him representing separation pay and other benefits due to redundancy.

Further finding the claim of redundancy to have been merely a guise to terminate complainant, abuse of management prerogative is established against respondent APCC which entitles complainant to moral damages in the amount of ₱2,000,000.00. Also, the award is justified due to respondent APCC's failure to register APC Philippines Sales in accordance with Philippine laws including the respondents' use of the personal bank account of complainant exposing him to the threat of criminal, civil, and/or administrative liabilities x x x To serve as a lesson to similarly minded respondents x x x, we find the award of exemplary damages in the amount of ₱2,000,000.00 proper x x x.

It appearing further that respondent George Kong of APC Singapore Pte. Ltd., Alicia Hendy, and David Plumer, who are both officials of respondent APCC to have participated, directly or indirectly, in the contrived redundancy/reorganization that led to the dismissal of complainant, we find said officers to be jointly and severally liable with respondents APCC to the adjudged monetary award to the complainant.

WHEREFORE, foregoing premises considered, judgment is hereby rendered finding the termination of complainant unlawful. Accordingly, respondents American Power Conversion Corporation (APCC), American Power Conversion Singapore Pte. Ltd., American Power Conversion (APC) B.V., American Power Conversion (Phils.) Inc., George Kong, Alicia Hendy, and David Plumer are held jointly and severally liable as follows:

1. To pay complainant full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time compensation was unlawfully withheld up to the time of actual reinstatement less the amount already received by him from the respondents as separation package, to wit:

MONTHLY RATE ----------			₱ 191,666.67
Add: 1. ½ of 13th Month Pay of ₱175,694.44	- ₱14,641.20		
2. Car Maintenance Allowance	- 15,000.00		
3. Communication Allowance	- 5,000.00		
4. Medical Benefit (EENT & Dental[])	- 800.00		
5. Fuel [Subsidies]	- 4,000.00		
6. Executive Parking Benefit	- 3,500.00		
7. Broadband Internet Charges	- 3,000.00	₱	45,941.20
TOTAL MONTHLY COMPENSATION		₱	237,607.87
BACKWAGES (Partial Only) November 17, 2005 - July 17, 2007 or 20 months x ₱237,607.87			₱ 4,752,157.31
Less Amount already received			₱ 2,055,867.64
Net Backwages			₱ 2,696,289.67

2. To reimburse allowable expenses, to wit:

a. 50% car insurance for 2006	23,892.00	
b. 50% car insurance, paid in March 2007	13,244.50	
c. car registration for 2006	8,635.00	
TOTAL	₱	45,771.50

3. To reinstate complainant to his previous or similar position without loss of seniority rights.

4. To pay complainant moral damages in the amount of ₱2,000,000.00 and exemplary damages in the amount of ₱2,000,000.00.

5. To pay complainant ten (10%) percent attorney's fees of the total judgment award on [sic] the amount of ₱274,206.11.

All other claims are hereby ordered dismissed for lack of merit.

SO ORDERED.[24] (Citations omitted)

Ruling of the National Labor Relations Commission

Petitioners appealed before the NLRC. On June 17, 2008, the NLRC issued its Decision containing the following pronouncement:

> After a careful review of the evidence submitted by the parties and the laws and the rules applicable to the instant case, We decide to grant the Appeal and rule in favor of Respondents/Appellants.
>
> The Labor Arbiter failed to take into consideration that the restructuring

[24] Id. at 270-277.

implemented by APC was organizational, meaning it affected not only APC (Philippines) B.V. but also APC ASEAN and APC Asia Pacific. The Labor Arbiter failed to take into consideration the APC ASEAN organizational chart presented by respondents, which showed that APC's ASEAN organization was divided into Enterprise Sales and Transactional Sales (from the former grouping based on territorial boundaries), consistent with the organizational changes in the APC Asia Pacific sales organization (Respondents/Appellants' Position Paper, Annex "7"). Respondents/Appellants also presented the organizational chart of APC (Philippines) B.V. after August 2005, which showed that the ASEAN restructuring resulted in direct reporting lines from the Philippines to the ASEAN Enterprise Sales and ASEAN Transactional Business Managers (Respondents' Position Paper, Annex "11"). This change in reporting lines rendered Complainant/Appellee's position as Regional Manager – North ASEAN redundant.

Further, it appears from the records that the ASEAN restructuring was conceived as early as 1 August 2005 upon Respondent/Appellant Plumer's appointment as VP for Asia Pacific. As soon as Mr. Plumer assumed office, he proposed that the organizational structure of Asia Pacific be divided on the basis of customer needs: (1) Enterprise Sales, covering direct selling to customers, and (2) Transactional Sales, covering distributions, network, and channel accounts. This plan to reorganize was thus conceived even before Complainant/Appellee reported, on 29 August 2005, individual Respondent/Appellant Kong's "unexplained" use of company funds. This negates Complainant/Appellee's theory that his dismissal was a purely retaliatory act orchestrated by Respondent/Appellant Kong. Considering the complexity of the Asia Pacific and ASEAN reorganization, we are inclined to hold that it is only by pure happenstance that the restructuring was implemented at a time when Complainant/Appellee's personal troubles with individual respondent Kong began.

x x x x

In the instant case, Complainant/Appellee's dismissal may have been preceded by an unpleasant exchange between him and his superior respondent Kong, which Complainant/Appellee claims is the reason why he was illegally dismissed. As in the case of *International Harvester Macleod*, however, Complainant/Appellee's theory as to the cause of his separation merely constitutes surmise and speculation. The fact that five other persons, against whom Kong's 'angry emails' were also directed, were not dismissed from APC negates Complainant/ Appellee's theory that he is being persecuted for 'whistle-blowing.' That x x x Kong may have had a personal misunderstanding with Complainant/Appellee does not necessarily mean that it was the reason why Complainant/Appellee's position was abolished. Personal matters between the company's employees cannot, by themselves, invalidate an otherwise valid reorganization nor cause prejudice to the company's *bona fide* business interests.

In any case, the findings of the Labor Arbiter on the supposed absence of evidence to justify a declaration of redundancy in this case are contrary to the records.

First, a brief reading of the Job Description for the positions of Enterprise Sales Manager and Transactional Sales Manager x x x negate[s] the Labor Arbiter's ruling that the two employees hired by the company are mere

replacements of Complainant/Appellee. These positions involved a different set of functions than Complainant/ Appellee's position of Regional Manager – North ASEAN. Complainant/Appellee also failed to deny that he did not possess the requisite qualifications, experience and contacts for these two new positions. Hence, the hiring of individuals to occupy these two did not invalidate the redundancy implemented by APC.

The insistence of the Labor Arbiter in the Decision on appeal upon a merger of functions rather than the hiring of new persons is tantamount to a substitution of the Arbiter's judgment for the Company's judgment as regards the characterization of the necessity of Complainant/ Appellee's services. It would have been contrary to the very interests of APC if Complainant/Appellee was retained as ASEAN Enterprise Sales Manager or Transactional Business Manager, when he is clearly unqualified for either position.

x x x x

Hence, the creation by the company of the new positions of Enterprise Sales Manager and Transactional Business Manager, which rendered unnecessary Complainant/Appellee's position as North ASEAN Regional Manager must be respected.

Second, we find that contrary to the findings of the Labor Arbiter, Complainant/Appellee had knowledge of the redundancy. In the e-mail dated 16 September 2005 to then Asia Pacific South General Manager Cunnold x x x, and in Complainant/Appellee's discussion with Mr. Kong on or about 18 October 2005 x x x, it is evident that Complainant/Appellee knew for some time that changes were underway in APC's organizational structure. APC was likewise transparent about the organization to APC (Philippines) B.V.'s employees. In a meeting on 18 October 2005, individual Respondent/Appellant Kong briefed the Philippine employees about the abolition of the Regional Manager – North ASEAN and the Regional Manager – South ASEAN positions and the dismissal of Complainant/Appellee on the ground of redundancy as a result of the reorganization x x x.

We rule that the circumstances cited by the Labor Arbiter in the appealed Decision do not, under pertinent law and jurisprudence, negate the validity of the company's redundancy program. In dismissals due to redundancy, the Labor Code merely requires written notice to the affected employee and to the DOLE, and payment of separation pay thus:

x x x x

There is no law or jurisprudence that requires a showing of the 'approval of the restructuring or redundancy by the directors and officers' of a company x x x. There is likewise no law requiring that prior consultation be made with an enterprise's employees before any reorganization may be effected x x x. There is, moreover, no law requiring the making of an announcement as regards the reorganization of an enterprise x x x. The Labor Code again only categorically requires that notice be given to the affected employee/s. It does not require the giving of notice to persons not otherwise affected by the redundancy, such as, for instance, the company's other employees. As a rule, the characterization of the services of an employee who was terminated for redundancy is an exercise of the business judgment of the employer. The wisdom or soundness of such

characterization or decision is not subject to the discretionary review by the Labor Arbiter, the NLRC and the Courts thereafter x x x. To require the employer to make prior consultation, with its employees, amounts to subjecting the company's business decision to the discretionary review of its employees. This dilutes the company's prerogative as an employer, to run its business as it sees fit.

Employers cannot be unduly burdened by extra-legal requirements imposed upon them by the courts, such as those imposed in the Decision on Appeal, *i.e.* prior consultation with employees, company-wide announcement, board resolution, etc. **The basic requirements of due process demand that employers be informed definitively of what the law requires**. Otherwise, employers will forever be at the mercy of quasi-judicial tribunals. The basic requirements of due process demand that an employer's compliance with labor laws be not made dependent on a matter as fluid as judicial legislation, as in the many requirements laid down by the Labor Arbiter in the Assailed Decision.

Finally on this point, Complainant/Appellee's status as an executive officer must be considered in evaluating the exercise of the company's prerogative to declare his position redundant. Under pertinent jurisprudence, the Company retained a wider latitude of discretion in determining whether Complainant/Appellee's employment should be sustained. In *Almodiel v. NLRC*, x x x the Supreme Court ruled:

> *'Considering further that petitioner herein held a position which was definitely managerial in character, Raytheon had a broad latitude of discretion in abolishing his position. An employer has a much wider discretion in terminating employment relationship of managerial personnel compared to rank and file employees. The reason obviously is that officers in such key positions perform not only functions which by nature require the employer's full trust and confidence but also functions that spell the success or failure of an enterprise.'*

The Labor Code requires that employees separated on the ground of redundancy be given notice of their separation at least thirty (30) days before the effective date thereof. A notice of the separation must likewise be given to the DOLE, to give the latter the opportunity to determine whether economic causes exist that justify the termination of the worker's employment, x x x.

In the instant case, we find that although Respondents/Appellants gave the requisite 30-day notice to Complainant/Appellee x x x, Respondents/Appellants failed to comply with the procedural requirement of giving notice to the DOLE 30 days before the effective date of Complainant/Appellee's separation. The notice referred to by Respondents/Appellants x x x does not specifically include Complainant/Appellee's name. It thus cannot be considered as sufficient compliance with the notice requirement laid down by the Labor Code.

The prevailing rule is that a dismissal is not to be declared illegal simply because the employer failed to comply with the requirements of procedural due process. x x x

xxxx

Complainant/Appellee's claims for backwages and reinstatement must be denied in view of our finding above that Complainant/Appellee was dismissed for authorized cause. It is settled that backwages and reinstatement are merely legal consequences of a finding that the employee was indeed illegally dismissed x x x. These reliefs cannot be awarded to a separated employee absent a finding of illegal dismissal.

x x x x

We find the Labor Arbiter's award of moral and exemplary damages, and attorney's fees in favor of Complainant/Appellee unwarranted. We find merit in Respondents/Appellees' argument that the reasons cited by the Labor Arbiter in the Decision, which purport to justify an award of damages in the instant case, are speculative. x x x

x x x x

The Labor Arbiter's award of Two Million Pesos x x x by way of moral damages and another Two Million Pesos x x x by way of exemplary damages is too large an amount by any standard. x x x

x x x x

We finally find it irregular for the Labor Arbiter to award specific items and amounts in the Decision, such as Complainant/Appellee's car maintenance allowance, communication allowance, executive parking benefit, etc., when no mention of said items or their amounts was made by either party in the records of the case. This is contrary to the constitutional proscription against decisions rendered without bases in fact x x x

x x x x

There is no reason to hold individual Respondents/Appellants liable in the instant case considering that whatever acts were committed by them were done in the performance of their official functions, without malice or bad faith. x x x

Since Our jurisdiction is limited to those cases where an employment relationship exists between the parties, Respondents/Appellants APCC, APC Singapore Pte. Ltd., and APC (Phils.) Inc. cannot be held liable under the complaint. These entities, although related to Complainant/Appellee's employer APC (Philippines) B.V., maintain separate corporate personalities from the latter. They cannot be considered Complainant/Appellee's employer on the basis of [sic] alone of their affiliation with APC (Philippines) B.V. x x x:

x x x x

WHEREFORE, the Appeal is GRANTED and the Decision dated 27 July 2007 in NLRC NCR Case No. 00-05-03722-06 is REVERSED and SET ASIDE. Respondents/Appellants are, however, directed to pay Complainant/Appellee Php30,000.00 in nominal damages for failure to comply with the notice requirement under the Labor Code.

SO ORDERED.[25] (Emphasis in the original)

Respondent moved for reconsideration, but the NLRC stood its ground.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[26] before the CA, respondent questioned the above NLRC dispositions and prayed for the reinstatement of the Labor Arbiter's Decision.

On April 23, 2014, the CA rendered the assailed Decision granting the petition, decreeing thus:

> The present controversy revolves on the issue of whether or not the dismissal of the petitioner on the ground of redundancy is tenable.
>
> The petitioner mainly contends that respondents dismally failed to prove that the dismissal was valid; that contrary to the claims of respondents, there was no restructuring to effect a redundancy of his position but it is just a make-believe redundancy to cover up for the illegality of his dismissal; that his dismissal was a retaliatory act to the complaint that he filed questioning the unethical conduct of his former immediate superior, George Kong; that respondents failed to notify DOLE of his termination as required under the Labor Code.
>
> On the other hand, respondents claim that the dismissal of the petitioner due to redundancy is a management prerogative which cannot be interfered with; that contrary to the claim of the petitioner, the restructuring effected by the company is legitimate and in accordance with the needs of the company; that notices as required by law have been strictly complied with.
>
> x x x x
>
> Settled is the fact that redundancy is an authorized cause for the termination of employment, as provided by Article 283 of the Labor Code.
>
> Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A reasonably redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly established.

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[25] Id. at 240-254.
[26] Id. at 113-230.

Likewise, settled is the fact that the declaration of redundant positions is a management prerogative, an exercise of business judgment by the employer.

It is however not enough for a company to merely declare that positions have become redundant. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees. In *Panlileo v. NLRC*, the High Court said that the following evidence may be proffered to substantiate redundancy: 'the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring.' In another case, it was held that the company sufficiently established the fact of redundancy through 'affidavits executed by the officers of the respondent PLDT, explaining the reasons and necessities for the implementation of the redundancy program.'

As found out by the Labor Arbiter which we look with favor: *'In the instant case, we find (that) respondent did not present any of the foregoing evidence to establish the supposed restructuring and/or redundancy. There was also no evidence showing the approval of the said restructuring and/or redundancy by the directors and officers of respondent APC B.V. What was submitted on record were the affidavits and memoranda of the managers of respondent company on the alleged plans for restructuring which the Supreme Court held not sufficient to substantially prove the existence of a restructuring or redundancy. Moreover, in the previous reorganization of APC ASEAN in January 2005, Country Managers and Regional Managers actively participated in the formation of the new structure for the APC ASEAN. The same tedious process of reorganization was however not undertaken by respondents APCC in the supposed decision to abolish the position of the ASEAN Regional Managers, thus rendering suspect the assertion of redundancy. Also significant to consider is the point raised by complainant that up to present, respondent APCC has not announced any reconfiguration, reorganization, or restructuring in APC ASEAN despite the effected termination if only to validate the alleged reorganization.'*

A company's exercise of its management prerogatives is not absolute. It cannot exercise its prerogative in a cruel, repressive, or despotic manner. x x x. Employment to the common man is his very life and blood, which must be protected against concocted causes to legitimize an otherwise irregular termination of employment.

In the present case, it appeared from the records that the redundancy program was not in existence. Circumstances obtaining therein never [point] to the fact of a restructuring being carried out by the company. The respondents dismally failed to convince this Court that the organizational chart and self-serving affidavits presented are sufficient proof of the existence of redundancy.

It must be remembered that the employer bears the burden of proving the cause or causes for termination. Its failure to do so would necessarily lead to a judgment of illegal dismissal.

The pieces of evidence presented did not justify the reorganization that led to redundant positions as claimed by the respondent. Moreover, records also show that the written notice to the Department of Labor and Employment (DOLE), as required by Article 283 of the Labor Code, was not complied with.

The Labor Arbiter in her Decision said: *'x x x respondents failed to*

comply with the requirement of written notice to the DOLE as evidenced by the Certification from said Office that there is no record on its file from 01 September 2005 to 30 November 2005 reporting the termination of complainant for redundancy. Failure to comply with the mandatory procedural requirements taints the dismissal with illegality. We also do not find the notice to DOLE adduced by respondents applicable to complainant since the latter was not specifically named therein apart from the fact that said notice as pointed out by complainant, appears to have been previously submitted to DOLE by reorganization of the human resources [sic] department of APC BV Cavite and not that of the Regional Managers of APCC.'

Again, it bears stressing that substantial evidence is the [quantum] of evidence required to establish a fact in cases before administrative and quasi-judicial bodies. Substantial evidence, as amply explained in numerous cases, is that amount of 'relevant evidence which a reasonable mind might accept as adequate to support a conclusion.'

We find this substantial evidence wanting in the present case.

Clearly the foregoing circumstances support the illegal dismissal of the complainant, as aptly ruled by the Labor Arbiter.

In balancing the interest between labor and capital, the prudent recourse in termination cases is to safeguard the prized security of tenure of employees and to require employers to present the best evidence obtainable, especially so because in most cases, the documents or proof needed to resolve the validity of the termination, are in the possession of employers. A contrary ruling would encourage employers to utilize redundancy as a means of dismissing employees when no valid grounds for termination are shown by simply invoking a feigned or unsubstantiated redundancy program.

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. x x x. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. x x x. The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages.

On a final note, respondents have raised the issue of this Court's taking cognizance of this petition for certiorari questioning therein the grounds posed for the filing of the petition.

We find this misplaced and without merit.

The petition is mainly grounded on alleged grave abuse of discretion amounting to lack or excess of jurisdiction allegedly committed by NLRC, although some errors in judgment have surfaced as well.

The extent of judicial review by certiorari of decisions or resolutions of

the NLRC, as exercised previously by the Supreme Court and now by the Court of Appeals, is described in *Zarate, Jr. v. Olegario*, thus –

> 'The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for certiorari under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.'
>
> Was NLRC guilty of such grave abuse of discretion?
>
> We say yes.

The Court of Appeals, therefore, can grant the petition for certiorari if it finds that the NLRC in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy.

And this is amplified in AMA case where the Supreme Court held that:

> 'x x x x
>
> In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary to arrive at a just decision of the case. The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for certiorari; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC.'

Thus, pursuant to law and jurisprudence, Our taking cognizance of the present case is in order.

WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly the assailed Decision of the NLRC is **REVERSED** and **SET**

> **ASIDE** and the decision of the Labor Arbiter is hereby **REINSTATED** with the **MODIFICATION** that if reinstatement is no longer possible, petitioner should be paid full backwages reckoned from the date of his illegal dismissal up to the time that this Decision becomes final and executory, separation pay equivalent to one month's salary for every year of service less the amount already received by him from the respondent as separation package and moral and exemplary damages in the amount of Php100,000.00 each.
>
> Accordingly the case is remanded to the Labor Arbiter for the computation of the award.
>
> **SO ORDERED.**[27] (Emphasis in the original)

Petitioners filed a motion for reconsideration, but the CA denied the same *via* its September 11, 2014 Resolution. Hence, the instant Petition.

In a January 11, 2016 Resolution,[28] the Court resolved to give due course to the Petition.

Issues

Petitioners raise the following issues for resolution:

> I.
> THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LAW AND LEGAL PRECEDENTS WHEN IT EXERCISED ITS *CERTIORARI* POWER ABSENT ANY FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.
>
> A. The Court of Appeals exercised its *certiorari* jurisdiction without a finding that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction.
>
> B. The Court of Appeals erred in granting respondent's CA Petition, even when respondent failed to raise any ground which would justify the exercise of the Court of Appeals' *certiorari* jurisdiction.
>
> C. In any event, the Court of Appeals should have dismissed the CA Petition outright for being a mere rehash of respondent Lim's arguments before the NLRC.
>
> II.
> THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LEGAL PRECEDENT WHEN IT REVISITED AND REVERSED THE

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27 Id. at 70-78.

28 *Rollo*, Vol. IV, pp. 2055-2056.

FACTUAL FINDINGS OF THE NLRC SOLELY ON THE GROUND THAT THERE SUPPOSEDLY IS A DIVERGENCE OF VIEWS BETWEEN THE LABOR ARBITER AND THE NLRC.

III.
IN ANY EVENT, THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, AND THE COURT OF APPEALS' FACTUAL FINDINGS WERE UNSUPPORTED BY EVIDENCE AND ITS CONCLUSIONS CONTRARY TO LAW AND EXISTING JURISPRUDENCE.

A. The NLRC's finding that respondent Lim was validly dismissed due to redundancy is substantially supported by evidence on record.

B. The NLRC's findings on the existence of redundancy are correct. The Court of Appeals misapplied and/or misconstrued this Honorable Court's rulings in *San Miguel v. Del Rosario* and *Panlilio v. NLRC* regarding the evidence that may prove redundancy.

C. Petitioners have presented evidence sufficient to prove redundancy, even if measured against the standards set by the Court of Appeals.

(i) New staffing pattern proved redundancy.
(ii) Restructuring/reorganization resulted from a series of proposals and prior extensive feasibility studies.
(iii) Job descriptions provided adequate basis to conclude that the new positions were different from the abolished ones.
(iv) Approval by the management of the restructuring/reorganization.

D. Petitioners complied with the requirement to notify the DOLE. In any event, respondent Lim's dismissal due to redundancy cannot be rendered illegal even assuming *arguendo* that Petitioners failed to strictly comply with such requirement.[29]

Petitioners' Arguments

In their Petition and Reply[30] seeking reversal of the assailed CA dispositions and, in lieu thereof, the reinstatement of the June 17, 2008 NLRC Decision, petitioners essentially argue that the CA erred in finding that the NLRC committed grave abuse of discretion; that it failed to explain how the NLRC's findings could have amounted to grave abuse of discretion so patent and gross as to amount to an evasion of positive duty or virtual refusal to perform a duty enjoined by law; that respondent failed to raise any ground which would justify

[29] *Rollo*, Vol. I, pp. 31-33.
[30] *Rollo*, Vol. IV, pp.1968-1987.

the CA's exercise of its *certiorari* jurisdiction; that the NLRC's finding that respondent was validly dismissed for redundancy is substantially supported by the evidence adduced; that contrary to the CA's pronouncement, redundancy may be proved by evidence other than a new staffing pattern, feasibility studies/proposals on the viability of newly created positions, job descriptions, and approval of the redundancy scheme by management; that they presented sufficient evidence to prove the necessity of dismissing respondent on account of redundancy, such as a new staffing pattern/organizational chart, series of proposals/meetings/ extensive study, new job descriptions for the new positions, and approval by management of the scheme; and that the requirements of Article 283 of the Labor Code[31] were substantially complied with, although failure to comply therewith does not render the dismissal illegal or ineffectual.

Respondent's Arguments

In his Comment[32] to the Petition, respondent insists that petitioners' redundancy scheme was a sham as it was contrived with the sole aim to discharge him from employment; that petitioners did not comply with the notice requirement under the Labor Code; that he remained an employee of APCC, and was only an APCP BV employee on paper; that upon his termination, he was immediately replaced by another employee who held the same position, although his title was changed; that the documentary evidence adduced by petitioners to prove their sham redundancy scheme were fabricated; that in deciding the case the way it did, the NLRC committed grave abuse of discretion; and that the CA was correct in granting his Petition for *Certiorari*. Thus, he prays for denial of the instant Petition.

Our Ruling

The Court denies the Petition.

The CA committed no error in taking cognizance of respondent's Petition for *Certiorari*. As will be shown below, the NLRC committed an error so patent

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[31] ART. 283. *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 Department 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 (½) 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.

[32] *Rollo*, Vol. IV, pp. 1751-1816.

and gross as to amount to an evasion of its positive duty to administer justice in favor of the respondent in this case. Failing in its duty to properly appreciate the facts and evidence on record, and apply the law and decide this otherwise **simple case** in favor of the party to whom justice should be served, the NLRC arrived at a fundamentally unjust, unreasonable, and absurd pronouncement that is consequently null and void and without force and effect. An appreciation of the copious evidence on record should lead one to a single obvious inevitable legal conclusion, yet the NLRC, with its expertise and experience as a labor tribunal, failed to arrive at such a resolution.

> A void judgment or order has no legal and binding effect. It does not divest rights and no rights can be obtained under it; all proceedings founded upon a void judgment are equally worthless.
>
> Void judgments, because they are legally non-existent, are susceptible to collateral attacks. A collateral attack is an attack, made as an incident in another action, whose purpose is to obtain a different relief. In other words, a party need not file an action to purposely attack a void judgment; he may attack the void judgment as part of some other proceeding. A void judgment or order is a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head. Thus, it can never become final, and could be assailed at any time.[33]

When respondent was hired directly by APCC, an American entity that was not registered to conduct business here, to sell its products and services here, he was tossed over to another APC corporation, APCPI (now APCP BV), a Philippine-registered manufacturing corporation, where he was ostensibly included in the list of employees and the payroll. In other words, APCC sanctioned the use of APCP BV as respondent's cover, from where he conducted his sales operations for APCC. To further conceal and promote APCC's covert sales operations here, respondent was required to create a petty cash fund using his own personal bank account to answer for the daily expenses and operations of the American Power Conversion Philippine Sales Office. Thus, APCC conducted business here as an unregistered and unregulated enterprise; consequently, it did not pay taxes despite doing business here and earning income as a result. APCP BV was not engaged in sales, as it is licensed to engage only in the manufacture of computer-related products – yet, it holds respondent in its payroll. Meanwhile, respondent took orders from and came under the supervision and control of APCS and Kong from Singapore. This arrangement and manner of conducting business by petitioners is illegal. Being illegal, this should have been early on remedied by petitioners, including Plumer, Kong, and Hendy, who are presumed to know, by the very nature of their positions and business, how legitimate business is supposed to be conducted in this country, that is, by registering the business to allow regulation and taxation by the authorities. Yet they did not, and instead continued with this illegal arrangement to further their business here and avoid

[33] *Go v. Echavez*, 765 Phil. 410, 424 (2015).

their legal obligations to the public and government.

Everything seemed to go well for petitioners with their illegitimate business arrangement. For his part, respondent – who was at the losing end of the bargain given that it was his name and reputation on the line as he was working for an unregistered, unregulated, and untaxed foreign enterprise and doing business with the public – prodded APCC to formalize and declare its existence in order to free himself from the precarious position that APCC has placed him in. Thus, respondent declared in his Position Paper that –

> 16. Despite Complainant's (respondent) continued requests and suggestions, APC Corporation's international management failed and refused to formalize the registration of APC Philippines Sales as distinct and separate from APCPI, and to discontinue the use of his personal bank account for the petty cash requirements of APC Philippines Sales.[34]

When respondent joined APCC, he was merely in his early twenties, as admitted by Truong in his email message announcing respondent's appointment as Regional Manager for APC North ASEAN. He cannot be faulted for acceding to APCC's condition at the outset that he use his personal bank account for APCC's operations in the meantime; during the incipient phase of his employment, he must have been operating under the impression that since APCC's sales and marketing operations were new in the country, it needed time to formalize its operations and secure a license to do business here. And with this hope, he innocently went about doing his work. Indeed, APCC had the sole responsibility of complying with domestic laws if it wanted to continue – as it did – doing business here. It was not respondent's concern to perform administrative and compliance work that APCC, through APCP BV, was more than capable of doing; his only job was to sell APCC's products and services. Given that respondent made repeated requests for APCC to formalize and legalize its presence here, it could be that the latter may have repeatedly assured or misrepresented to the former that it would do so – which kept respondent toward the uncomplaining performance of his work. And when he was ostensibly absorbed into the APCP BV payroll, respondent must have thought that APCC had remedied the situation. Which it did not. Meanwhile, respondent continued as its employee, doing sales work for it. He remained an APCP BV employee on paper, and continued to do business unregulated and untaxed, using his personal bank account to conceal APCC's income.

APC Japan and APCS Singapore, on the other hand, maintained supervision and control over respondent, through Plumer and Kong, respectively. Still, respondent remained an employee of APCC, and not of APC Japan or APCS.

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[34] *Rollo*, Vol. I, p. 286.

We therefore have this unique situation where respondent was hired directly by APCC of the U.S.A., but was being paid his remuneration by a separate entity – APCP BV of the Philippines, and is supervised and controlled by APCS from Singapore and APC Japan – all in furtherance of APCC's objective of doing business here unfettered by government regulation.

> To determine the existence of an employer-employee relationship, four elements generally need to be considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. These elements or indicators comprise the so-called 'four-fold' test of employment relationship. x x x[35]

From the above, it would seem that all of the petitioners are for all practical purposes respondent's employers. He was selected and engaged by APCC. His salaries and benefits were paid by APCP BV. And he is under the supervision and control of APCS and APC Japan. But of course, there is no such thing in legitimate employment arrangements. This bizarre labor relation was made possible and necessary only by the petitioners' common objective: to enable APCC to skirt the law. For all legal purposes, APCC is respondent's employer. Therefore, this Court declares the subject redundancy scheme a sham, the same being an integral part of petitioners' illegitimate scheme to defraud the public – including respondent – and the State. It is null and void for being contrary to law and public policy as it is in furtherance of an illegal scheme perpetrated by APCC with the aid of its co-petitioners. *Quae ab initio non valent, ex post facto convalescere non possunt.* Things that are invalid from the beginning are not made valid by a subsequent act.

For levity's sake, let us set aside the foregoing for a while and indulge petitioners by precisely illustrating the fallacy of their position. Thus, to demonstrate, while APCC was respondent's employer, the redundancy program in issue that was used to justify respondent's dismissal from work was nonetheless implemented by Plumer and Kong – who are employees of APC Japan and APCS, as well as by Hendy and del Ponso – employees of APCP BV. As admitted by petitioners, Plumer and Kong conceived and implemented the redundancy program, and Hendy and del Ponso prepared the documents which consummated respondent's supposed dismissal. As APCP BV Human Resource Director and Manager, respectively, Hendy and del Ponso furnished the DOLE with documents relative to the redundancy scheme, including a notice of termination/redundancy. Now, since APCC is respondent's true employer, APC Japan, APCS, APCP BV, Plumer, Kong, Hendy, and del Ponso had no business coming into the picture; they are not connected with APCC whatsoever. They had no authority to devise a redundancy scheme and represent APCC in their dealings with the DOLE. Therefore, their supposed redundancy scheme, as against respondent, is ineffective; they had no power to terminate the services of

[35] *David v. Macasio*, 738 Phil. 293, 307 (2014).

respondent, in the first place; the prerogative belonged to APCC.

However, this does not prevent respondent from recovering from all the petitioners. Since they all benefited from his services – APCC was able to grow its business and conceal its sales operations and, by its misrepresentations and assurances that it would register its operations, it successfully convinced respondent to do its bidding; APCP BV enjoyed the immense goodwill of APCC for aiding the latter in its elaborate cover-up and duping respondent, government, and the public into believing that it was respondent's actual employer; and APCS utilized respondent as its workhorse even as he drew his salaries from APCP BV – and knowingly aided and abetted each other in the commission of wrong, they should all be held responsible, under the principle of quasi-contract, for respondent's money claims, including damages and attorney's fees. For all purposes beneficial to respondent, all the petitioners should be considered as his employers since they all benefited from his industry and used him in their elaborate scheme and to further their aim – evading the regulatory processes of this country. And from a labor standpoint, they are all guilty of violating the Labor Code as a result of their concerted acts of fraud and misrepresentation upon the respondent, using him and placing him in a precarious position without risk to themselves, and thus deliberately disregarding their fundamental obligation to afford protection to labor and insure the safety of their employees. For this gross violation of the fundamental policy of the Labor Code, petitioners must be held liable to pay backwages, damages, and attorney's fees.

> It is true that the 'backwages' sought by an illegally dismissed employee may be considered, by reason of its practical effect, as a 'money claim.' However, it is not the principal cause of action in an illegal dismissal case but the unlawful deprivation of one's employment committed by the employer in violation of the right of an employee. Backwages is merely one of the reliefs which an illegally dismissed employee prays the labor arbiter and the NLRC to render in his favor as a consequence of the unlawful act committed by the employer. The award thereof is not private compensation or damages but is in furtherance and effectuation of the public objectives of the Labor Code. Even though the practical effect is the enrichment of the individual, the award of backwages is not in redress of a private right, but rather, is in the nature of a command upon the employer to make public reparation for his violation of the Labor Code.[36]

Under Article 2142 of the Civil Code, "[c]ertain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."

> There is unjust enrichment 'when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.' The

[36] *Callanta v. Carnation Philippines, Inc.*, 229 Phil. 279, 287 (1986).

> principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.
>
> The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration. x x x[37]

With the view taken of the case, it cannot be said that respondent may still be reinstated to his former position, on account of strained relations. Besides, the Court shall endeavor to determine the respective accountabilities of petitioners by way of taxes and other possible liabilities proceeding from the manner that they conducted business all these years. Hendy's admission in her December 9, 2005 letter to respondent about APCC's use of the latter's private bank account with which to conduct its business and operations is certainly revealing, just as telling as the evidence on record which suggests that APCC generated substantial revenue from its Philippine operations. For this purpose, respondent's cooperation might be required by the authorities. As a potential witness to the activities of petitioners, his security and safety may not be guaranteed if he continues to work for the petitioners – not to mention that any investigation into the matter might be jeopardized by his continued association with petitioners.

Apparent from the Petition is petitioners' failure to question the monetary awards. Perhaps they found no need to question the same, thinking that it is unnecessary to do so with their full concentration devoted to defending the validity and propriety of their redundancy scheme – which they must sincerely believe will stand the test of validity. Understandably, if the scheme were upheld, respondent's monetary claims would necessarily be struck down. Nonetheless, the Court observes that the Labor Arbiter committed a patent error regarding one of the awards contained in the dispositive portion of her Decision – which escaped the attention of the CA. This pertains to the award of ₱45,771.50, covering vehicle insurance for the years 2006 and 2007, and vehicle registration for the year 2006 – which should be deleted. It has no basis in fact and in law.

WHEREFORE, the Petition is **DENIED**. The April 23, 2014 Decision and September 11, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 110142 are **AFFIRMED WITH MODIFICATION**, in that the decree to reinstate respondent to his former position and the award of ₱45,771.50 covering vehicle insurance for the years 2006 and 2007 and vehicle registration for the year 2006 are **DELETED**.

Let the Office of the Commissioner of the Bureau of Internal Revenue be furnished a copy of this Decision for appropriate action.

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[37] *Locsin II v. Mekeni Food Corporation*, 722 Phil. 886, 901 (2013), citing *Flores v. Spouses Lindo, Jr.*, 664 Phil. 210, 221 (2011).

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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