



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

WILFREDO T. MARIANO,
Petitioner,

G.R. No. 240882

Present:

-versus-

PERALTA, *CJ.*, Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

G.V. FLORIDA TRANSPORT
and/or **VIRGILIO FLORIDA, JR.,**
Respondents.

Promulgated:

SEP 16 2020

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D E C I S I O N

LOPEZ, J.:

This resolves the Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court assailing the Decision² dated October 26, 2017 and Resolution³ dated July 12, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 146334 which affirmed the Decision⁴ dated January 28, 2016 and Resolution⁵ dated March 30, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000385-16(4) finding the dismissal of Wilfredo T. Mariano valid.

ANTECEDENTS

The controversy stemmed from a Complaint⁶ for illegal dismissal, non-payment of wages for two round trips and 13th month, refund of cash bond, damages and attorney's fees filed by Mariano and Francisco C.

¹ *Rollo*, pp. 11-24.

² *Id.* at 30-41; penned by Associate Justice Rosmari D. Carandang (now Member of this Court), with the concurrence of Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela.

³ *Id.* at 44-46.

⁴ *Id.* at 208-216; penned by Presiding Commissioner Gregorio O. Bilog, III, with the concurrence of Commissioners Erlinda T. Agus and Alan A. Ventura.

⁵ *Id.* at 229-230.

⁶ *Id.* at 73-74.

Arellano against G.V. Florida Transport and its owner, Virgilio Florida, Jr. Only Mariano filed the instant petition before this Court.

In his position paper, Mariano alleged that he was a bus driver for Florida Transport since August 5, 2005, receiving ₱3,400.00 *per* round trip plus commission, and plying the routes of Gonzaga, Cagayan to Metro Manila and *vice versa*.⁷ On May 31, 2015, Mariano was preparing to leave the main station at Sampaloc, Manila when a representative from the head office of Florida Transport instructed him to alight from his assigned bus. Mariano was not allowed to continue the supposed trip to Gonzaga, Cagayan. The next day, Mariano reported for work but he was advised not to come to work in the meantime. He was told that the company will just send him an e-mail as to when he will be given a bus assignment.

On December 11, 2015, Labor Arbiter (LA) Ma. Lourdes R. Baricaua ruled that Mariano's allegations were deemed admitted because respondents failed to file their position paper relative to him.⁸ The LA ordered respondents to pay Mariano his money claims in the total amount of ₱267,486.67, as follows:

Separation pay [P252.00 x 30 days = P7,560.00 x 20 years]	P151,200.00
Backwages [P7,560.00 x 7.63 months]	57,682.00
Proportionate 13 th month pay [P57,682.80 / 12]	4,806.90
Unpaid wages – 2 round trips [P3,400.00 x 2]	6,800.00
13 th month pay – 3 recent years [P7,560.00 x 3]	22,680.00
Attorney's fees [10% of total awards]	24,316.97 ⁹

In their appeal to the NLRC, respondents averred that they filed their position paper with respect to the claim of Mariano.¹⁰ They prepared separate position papers for Mariano and Arellano, placed the two position papers in one sealed envelope, and mailed the envelope to the Office of the LA under Registry Receipt No. 3253. It was then impossible for the LA to receive only the position paper pertaining to Arellano.

On January 28, 2016, the NLRC admitted respondents' position paper.

⁷ See *id.* at 127-128.

⁸ *Id.* at 127-133. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, **JUDGMENT** is hereby rendered declaring complainant **WILFREDO T. MARIANO** illegally dismissed while complainant **FRANCISCO C. ARELLANO** was validly dismissed. However, both are entitled to their meritorious money claims. Consequently, respondent **G.V. FLORIDA TRANSPORTATION** through **VIRGILIO FLORIDA, JR.** is hereby **ORDERED** to pay complainants the following:

1. Wilfredo T. Mariano -----P267,486.67
2. Francisco C. Arellano ----- 32,428.00

or a total sum of **TWO HUNDRED NINETY NINE THOUSAND NINE HUNDRED FOURTEEN PESOS & 67/100 (P299,914.67)**, Philippine Currency, representing separation pay, backwages, proportionate 13th month pay to complainant **Wilfredo T. Mariano** and 13th month pay, unpaid wages and attorney fees to both complainants, within ten (10) calendar days from receipt hereof.

All other claims are hereby dismissed for lack of merit and basis.

SO ORDERED. *Id.* at 132-133. (Emphasis in the original.)

⁹ *Id.* at 204.

¹⁰ *Id.* at 140-143.

The NLRC ruled that respondents adequately explained the reason for the belated submission of evidence and that the pieces of documentary evidence attached to the position paper were material to establish respondents' cause.¹¹ The NLRC found that Mariano was involved in several reckless driving incidents that constitute misconduct – a just cause for dismissal. However, for failure to prove the dates when Mariano actually reported for work, the NLRC limited the award to proportionate 13th month pay, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered:

1. REVERSING the Decision of Labor Arbiter Baric[a]ua with respect to complainant/appellee Wilfredo Mariano as this Office finds him to have been validly dismissed;

X X X X

3. ORDERING the payment of proportionate 13th month pay for Mariano in the amount of P3,150.00 x x x.

SO ORDERED.¹²

Failing to secure reconsideration,¹³ Mariano appealed to the CA.

On October 26, 2017, the CA dismissed the petition for lack of merit.¹⁴ The CA ruled that respondents amply explained the circumstances leading to the submission of the position paper and evidence on their appeal to the NLRC. There was a valid ground to dismiss Mariano and the respondents complied with the two-notice requirement under the Labor Code. Mariano sought reconsideration but was denied on July 12, 2018.¹⁵

Hence, this petition.

Mariano argues that respondents failed to justify the belated submission of their position paper with respect to him. More, he was not furnished with a copy of the position paper. Mariano insists that he was not given the first notice to explain as required by law, there was no hearing or conference to afford him an opportunity to present evidence to support his claim, and he did not receive the notice of termination. Finally, respondents failed to substantiate his alleged cumulative infractions of company rules for reckless driving that warranted his dismissal.

¹¹ *Supra* note 4.

¹² *Rollo*, pp. 215-216.

¹³ *Supra* note 5.

¹⁴ *Supra* note 2. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing consideration, the Petition is **DISMISSED** for lack of merit.

SO ORDERED. *Rollo*, p. 40. (Emphasis in the original.)

¹⁵ *Supra* note 3. The dispositive portion of the Resolution reads:

WHEREFORE, in view of the foregoing consideration, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED. *Id.* at 46. (Emphasis in the original.)

In their Comment,¹⁶ respondents counter that the NLRC, as affirmed by the CA, properly admitted their position paper. Further, the procedural and substantive requirements of due process were complied with. Meanwhile, Mariano reiterated in his Reply¹⁷ that there was no legal ground to dismiss him and he was not afforded due process.

RULING

The petition is partly meritorious.

First off, labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them.¹⁸ There is, however, a caveat to this policy. The delay in the submission of evidence should be adequately explained, the evidence adduced must be undeniably material to the cause of a party, and the subject evidence should sufficiently prove the allegations sought to be established.¹⁹

In the present case, we do not agree with the NLRC and the CA that respondents sufficiently justified the belated submission of their position paper as regards Mariano. Under Section 12,²⁰ Rule 12 of the Rules of Court, when the existence of a pleading filed by registered mail is at issue, proof of such filing consists of: (1) the registry receipt issued by the mailing office; **and** (2) an affidavit of the person mailing the pleading containing a full statement of the date, place, and manner of service. Here, respondents submitted Registry Receipt No. 3252²¹ issued on September 14, 2015 but not the affidavit of the person who mailed the pleading. The affidavit could have explained that two position papers were filed by registered mail by depositing them in one sealed envelope and mailing the same to the Office of the LA. As the party to whom the burden of proof to show that the position paper pertaining to Mariano was mailed and received by the addressee lay, respondents could have presented the affidavit of its

¹⁶ *Id.* at 275-281.

¹⁷ *Id.* at 306-312.

¹⁸ *Misamis Oriental II Electric Service Cooperative (MORESCO II) v. Cagalawan*, 694 Phil. 268, 281 (2012); *Clarion Printing House Inc. v. NLRC*, 500 Phil. 61, 76-77 (2005); *Tanjuan v. Phil. Postal Savings Bank, Inc.*, 457 Phil. 993, 1004 (2003); *Phil. Industrial Security Agency Corp. v. Dapiton*, 377 Phil. 951 (1999).

¹⁹ *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, citing *Magsaysay Maritime Corp. v. Cruz*, 786 Phil. 457 (2016); see also *Princess Talent Center Production, Inc. v. Masagca*, G.R. No. 191310, April 11, 2018, 860 SCRA 602; *Anabe v. Asian Construction*, 623 Phil. 857 (2009); and *AG & P United Rank & File Association v. National Labor Relations Commission*, 332 Phil. 937 (1996).

²⁰ RULES OF COURT (1997), Rule 12, Section 12.

Sec. 12. Proof of filing. – The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the clerk of court on a copy of the same; **if filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered.** (Emphasis supplied.)

²¹ *Rollo*, pp. 165-171.

messenger to satisfy the requirements of the Rules of Court.²² Respondents did not offer any explanation.

Additionally, respondents failed to comply with the requirements of proper proof of service under Section 13,²³ Rule 13 of the Rules of Court. Respondents only attached Registry Receipt No. 3252²⁴ without the affidavit of the person mailing. We note that Mariano consistently raised in his Motion for Reconsideration²⁵ to the NLRC and in his appeal to the CA the non-service of position paper to him thus violating his right to file a reply.²⁶ Unfortunately, the NLRC and the CA did not rule on the matter. We stress that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt, both of which must be appended to the paper being served.²⁷ Absent one or the other, or worse both, there is no proof of service.²⁸ In *Valley Golf and Country Club, Inc. v. Dr. Reyes*,²⁹ we emphasized that registry receipt *per se* does not constitute proof of receipt. Undoubtedly, Registry Receipt No. 3252 is not conclusive proof that respondents served a copy of their position paper to Mariano, nor is it conclusive proof that Mariano received its copy of the position paper. Respondents should have submitted an affidavit proving that they mailed the position paper together with the registry receipt issued by the post office. Thereafter, they should have immediately filed the registry return card. They did not.

The procedural flaws notwithstanding, especially considering that this is a labor case, the ends of substantial justice would be better served by relaxing the application of technical rules of procedure.³⁰ Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. This Court reiterates that where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed.³¹

We now proceed to discuss the merits of the case.

²² See *American Express Int'l, Inc. v. Judge Sison, et al.*, 591 Phil. 182 (2008).

²³ RULES OF COURT (1997), Rule 13, Section 13.

Section 13. Proof of service. — Proof of personal service shall consist of a written admission of the party served or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.** (Emphasis supplied.)

²⁴ *Rollo*, p. 171.

²⁵ *Id.* at 217-224.

²⁶ *Id.* at 57.

²⁷ *Lisondra v. Megacraft International Corp., et al.*, 775 Phil. 310, 317 (2015), citing *Cruz v. Court of Appeals*, 436 Phil. 641, 652 (2002).

²⁸ *Valley Golf and Country Club, Inc. v. Dr. Reyes*, 772 Phil. 458, 466 (2015).

²⁹ *Id.*, citing *Petition for Habeas Corpus of Benjamin Vergara v. Gedorio, Jr.*, 450 Phil. 623, 634 (2003).

³⁰ *Panaga v. Court of Appeals*, 534 Phil. 809, 816 (2006).

³¹ *Garcia v. PAL, Inc.*, 498 Phil. 808, 824 (2005), citing *Tres Reyes v. Maxim's Tea House*, 446 Phil. 388 (2003).

Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality of the manner of dismissal, which constitutes procedural due process.³² The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Thus, unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee.

As to the substantive aspect, respondents terminated Mariano’s employment on the ground of serious misconduct. For serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (a) the misconduct must be serious; (b) it must relate to the performance of the employee’s duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.³³

Here, respondents presented sufficient evidence to prove that Mariano committed numerous infractions of company rules and regulations since he started working with Florida Transport. The infractions can be traced as far back as 2002³⁴ up to the time he was rehired in 2008³⁵ when he admitted to hitting a concrete mixer truck in Baliuag, Bulacan. In the year 2009,³⁶ the side mirror of Mariano’s assigned bus was destroyed while he was trying to overtake another bus; and in 2013,³⁷ he had an altercation with an inspector of Florida Transport for which he was meted a penalty of suspension. The last infraction was in March 2015 when he figured in a vehicular accident that caused injuries to his passengers.³⁸ The repeated and numerous infractions committed by Mariano in driving the passenger bus assigned to him cannot be considered minor. The Court is entitled to take judicial notice of the gross negligence and the appalling disregard of the physical safety and property of others so commonly exhibited today by the drivers of passenger buses.³⁹ Taking into account the nature of Mariano’s job, the infractions are too numerous to be ignored or treated lightly and may already be subsumed as serious misconduct.⁴⁰ Accordingly, this Court holds that Mariano was validly dismissed from employment on the ground of serious misconduct.

³² *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 378 (2017), citing *NDC Tagum Foundation, Inc. v. Sumatoke*, 787 Phil. 67 (2016).

³³ *Imasen Philippine Manufacturing Corporation v. Alcon, et al.*, 746 Phil. 172, 181 (2014).

³⁴ *Rollo*, p. 156.

³⁵ *Id.* at 157-158.

³⁶ *Id.* at 159.

³⁷ *Id.* at 160.

³⁸ *Id.* at 163.

³⁹ *Kapalaran Bus Line v. Coronado*, 257 Phil. 797, 807 (1989).

⁴⁰ *Quiambao v. Manila Electric Railroad and Light Company*, 623 Phil. 416 (2009).

Be that as it may, respondents did not comply with the procedural requirements of due process as laid down in *King of Kings Transport, Inc. v. Mamac*,⁴¹ viz.:

To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing or conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.⁴² (Emphasis in the original; citations omitted.)

Respondents failed to afford Mariano the first written notice containing the specific causes or grounds for termination against him. Admittedly, Mariano submitted a lengthy explanation letter⁴³ dated June 3, 2015 explaining his side on the incident that transpired two months back. We stress, however, that the burden of proving compliance with the notice requirement falls on the employer. The notice to the employee should embody the particular acts or omissions constituting the grounds for which the dismissal is sought, and that an employee may be dismissed only if the grounds cited in the pre-dismissal notice were the ones cited for the termination of

⁴¹ 553 Phil. 108 (2007).

⁴² *Id.* at 115-116.

⁴³ *Supra* note 38.

employment.⁴⁴ Thus, it was erroneous for the CA to “safely infer” that respondents duly notified Mariano and apprised him of the particular act for which his dismissal was sought just because Mariano submitted an explanation letter.⁴⁵ In *Loadstar Shipping Co., Inc. v. Mesano*,⁴⁶ we held that the employee’s written explanation did not excuse the fact that there was a complete absence of the first notice. We sanctioned the employer for disregarding the due process requirements.

Where the dismissal is for a just cause, as in this case, the lack of statutory due process will not nullify the dismissal, or render it illegal or ineffectual.⁴⁷ The employer will not be required to pay the employee back wages. However, the employer should indemnify the employee for the violation of his statutory right in the form of nominal damages in the amount of ₱30,000.00 in accordance with prevailing jurisprudence.⁴⁸

With respect to Mariano’s claim for unpaid wages equivalent to two round trips and 13th month pay, this Court finds the claim in order. In *RTG Construction, Inc. and/or Go/Russet Construction and Dev’t. Corp. v. Facto*⁴⁹ and in *Agabon v. NLRC*,⁵⁰ we awarded the employee his money claims despite the dismissal was for a just cause.

The general rule is that the one who pleads payment has the burden of proving it. When the employee alleges non-payment, the burden rests on the employer to prove payment rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents are not in the possession of the employee but are in the custody and control of the employer.⁵¹ Here, respondents failed to disprove non-payment of wages for two round trips by presenting cash vouchers or documentary proofs that Mariano did not report for work or drive his assigned bus. Thus, Mariano is entitled to his claim for unpaid wages in the amount of ₱6,800.00 equivalent to two round trips. As regards the 13th month pay, an employee who has resigned, or whose services were terminated at any time before the payment of the 13th month pay, is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from the service.⁵² Considering that Mariano was terminated in

⁴⁴ *Sy, et al. v. Neat, Inc., et al.*, 821 Phil. 751, 776 (2017), citing *Glaxo Wellcome Phils., Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA*, 493 Phil. 410, 427 (2005).

⁴⁵ *Rollo*, p. 39.

⁴⁶ 455 Phil. 936 (2003).

⁴⁷ *Aparece v. J. Marketing Corp. and/or Aguillon*, 590 Phil. 653 (2008).

⁴⁸ See *Benitez v. Santa Fe Moving and Relocation Services, et al.*, 758 Phil. 557 (2015); *Libcap Marketing Corp., et al. v. Baquial*, 737 Phil. 349 (2014); *Unilever Philippines Inc. v. Rivera*, 710 Phil. 124 (2013); *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC, et al.*, 611 Phil. 570 (2009); *King of Kings Transport, Inc. v. Mamac*, *supra* note 41; *Agabon v. NLRC*, 485 Phil. 248 (2004).

⁴⁹ 623 Phil. 511 (2009), cited in *Villanueva v. Ganco Resort and Recreation, Inc.*, G.R. No. 227175, January 8, 2020.

⁵⁰ *Supra*.

⁵¹ *Villar v. NLRC*, 387 Phil. 706 (2000).

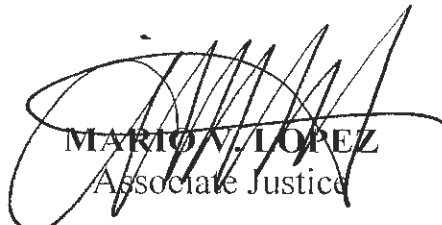
⁵² *St. Michael Academy v. NLRC*, 354 Phil. 491 (1998).

June 2015,⁵³ and there is no showing that the amount was paid, we sustain the proportionate 13th month pay awarded by the NLRC, as affirmed by the CA, in the amount of ₱3,150.00. Legal interest at the rate of 6% *per annum* is imposed on the total monetary award from the finality of this Decision until full payment.⁵⁴


Finally, as to the propriety of impleading Virgilio Florida, Jr., the owner and manager of Florida Transport, we stress that company officials cannot be held solidarily liable with the corporation for the termination of the employee's employment absent any showing that the dismissal was attended with malice or bad faith.⁵⁵ Other than his act of signing the termination letter, there is nothing in the records that show that Virgilio acted maliciously or in bad faith in dismissing Mariano.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The Decision dated October 26, 2017 and Resolution dated July 12, 2018 of the Court of Appeals in CA-G.R. SP No. 146334 are **MODIFIED**. G.V. Florida Transport is **DIRECTED** to indemnify Wilfredo T. Mariano ₱30,000.00 as nominal damages for failure to comply with the due process requirement in terminating his employment, ₱6,800.00 as unpaid wages, and ₱3,150.00 as proportionate 13th month pay. The total monetary award shall be subject to legal interest at the rate of 6% *per annum* from the finality of this decision until full payment.

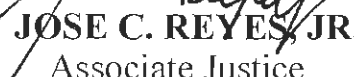
SO ORDERED.


MARION V. LOPEZ
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice
Chairperson


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


JOSE C. REYES, JR.
Associate Justice

⁵³ See *rollo*, p. 192.

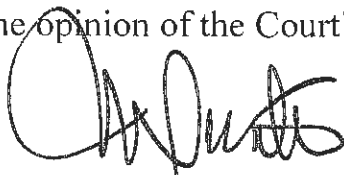
⁵⁴ *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

⁵⁵ *Coca-Cola Bottlers Phils. Inc. v. Daniel*, 499 Phil. 491, 512 (2005), citing *AHS/Phil., Inc. v. CA*, 327 Phil. 129, 142, (1996); *Santos v. NLRC*, 325 Phil. 145 (1996); *Pabalan v. National Labor Relations Commission*, 263 Phil. 434 (1990); *Bogo-Medellin Sugarcane Planters Asso., Inc. v. National Labor Relations Commission*, 357 Phil. 110 (1998).


AMY C. LAZARO-JAVIER
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.


DIOSDADO M. PERALTA
Chief Justice