Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CONTINENTAL MICRONESIA, INC., Petitioner,	**G.R. NOS. 178382-83**
	Present:
-versus-	VELASCO, JR., *J.*, *Chairperson* PERALTA, VILLARAMA, JR., PEREZ,* and JARDELEZA, ***JJ.***
JOSEPH BASSO, Respondent.	Promulgated:
	September 23, 2015

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DECISION

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated May 23, 2006 and Resolution[3] dated June 19, 2007 of the Court of Appeals in the consolidated cases CA-G.R. SP No. 83938 and CA-G.R. SP No. 84281. These assailed Decision and Resolution set aside the Decision[4] dated November 28, 2003 of the National Labor Relations Commission (NLRC) declaring Joseph Basso's (Basso) dismissal illegal, and ordering the payment of separation pay as alternative to reinstatement and full backwages until the date of the Decision.

The Facts

Petitioner Continental Micronesia, Inc. (CMI) is a foreign corporation organized and existing under the laws of and domiciled in the United States

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* Designated as Acting Member in view of the leave of absence of Hon. Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

1 *Rollo*, pp. 31-125.

2 Penned by Associate Justice Roberto A. Barrios with Associate Justices Mario L. Guariña III and Santiago Javier Ranada concurring, *id.* at 141-156.

3 *Id.* at 26-27.

4 *Id.* at 697-707.

of America (US). It is licensed to do business in the Philippines.[5] Basso, a US citizen, resided in the Philippines prior to his death.[6]

During his visit to Manila in 1990, Mr. Keith R. Braden (Mr. Braden), Managing Director-Asia of Continental Airlines, Inc. (Continental), offered Basso the position of General Manager of the Philippine Branch of Continental. Basso accepted the offer.[7]

It was not until much later that Mr. Braden, who had since returned to the US, sent Basso the employment contract[8] dated February 1, 1991, which Mr. Braden had already signed. Basso then signed the employment contract and returned it to Mr. Braden as instructed.

On November 7, 1992, CMI took over the Philippine operations of Continental, with Basso retaining his position as General Manager.[9]

On December 20, 1995, Basso received a letter from Mr. Ralph Schulz (Mr. Schulz), who was then CMI's Vice President of Marketing and Sales, informing Basso that he has agreed to work in CMI as a consultant on an "as needed basis" effective February 1, 1996 to July 31, 1996. The letter also informed Basso that: (1) he will not receive any monetary compensation but will continue being covered by the insurance provided by CMI; (2) he will enjoy travel privileges; and (3) CMI will advance Php1,140,000.00 for the payment of housing lease for 12 months.[10]

On January 11, 1996, Basso wrote a counter-proposal[11] to Mr. Schulz regarding his employment status in CMI. On March 14, 1996, Basso wrote another letter addressed to Ms. Marty Woodward (Ms. Woodward) of CMI's Human Resources Department inquiring about the status of his employment.[12] On the same day, Ms. Woodward responded that pursuant to the employment contract dated February 1, 1991, Basso could be terminated at will upon a thirty-day notice. This notice was allegedly the letter Basso received from Mr. Schulz on December 20, 1995. Ms. Woodward also reminded Basso of the telephone conversation between him, Mr. Schulz and Ms. Woodward on December 19, 1995, where they informed him of the company's decision to relieve him as General Manager. Basso, instead, was offered the position of consultant to CMI. Ms. Woodward also informed Basso that CMI rejected his counter-proposal and, thus, terminated his employment effective January 31, 1996. CMI offered Basso a severance pay, in consideration of the Php1,140,000.00 housing advance that CMI promised

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5 *Id.* at 171.
6 *Id.* at 391.
7 *Id.* at 391-392.
8 *Id.* at 266-269.
9 *Id.* at 142, 392 & 520.
10 *Id*. at 409.
11 *Id.* at 410-411.
12 *Id.* at 412.

him.[13]

Basso filed a Complaint for Illegal Dismissal with Moral and Exemplary Damages against CMI on December 19, 1996.[14] Alleging the presence of foreign elements, CMI filed a Motion to Dismiss[15] dated February 10, 1997 on the ground of lack of jurisdiction over the person of CMI and the subject matter of the controversy. In an Order[16] dated August 27, 1997, the Labor Arbiter granted the Motion to Dismiss. Applying the doctrine of *lex loci contractus*, the Labor Arbiter held that the terms and provisions of the employment contract show that the parties did not intend to apply our Labor Code (Presidential Decree No. 442). The Labor Arbiter also held that no employer-employee relationship existed between Basso and the branch office of CMI in the Philippines, but between Basso and the foreign corporation itself.

On appeal, the NLRC remanded the case to the Labor Arbiter for the determination of certain facts to settle the issue on jurisdiction. NLRC ruled that the issue on whether the principle of *lex loci contractus* or *lex loci celebrationis* should apply has to be further threshed out.[17]

Labor Arbiter's Ruling

Labor Arbiter Madjayran H. Ajan in his Decision[18] dated September 24, 1999 dismissed the case for lack of merit and jurisdiction.

The Labor Arbiter agreed with CMI that the employment contract was executed in the US "since the letter-offer was under the Texas letterhead and the acceptance of Complainant was returned there."[19] Thus, applying the doctrine of *lex loci celebrationis,* US laws apply. Also, applying *lex loci contractus*, the Labor Arbiter ruled that the parties did not intend to apply Philippine laws, thus:

> Although the contract does not state what law shall apply, it is obvious that Philippine laws were not written into it. More specifically, the Philippine law on taxes and the Labor Code were not intended by the parties to apply, otherwise Par. 7 on the payment by Complainant U.S. Federal and Home State income taxes, and Pars. 22/23 on termination by 30-day prior notice, will not be there. The contract was prepared in contemplation of Texas or U.S. laws where Par. 7 is required and Pars. 22/23 is allowed.[20]

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13 *Id.* at 413-414.
14 *Id.* at 393.
15 *Id.* at 170-174.
16 *Id.* at 180-190.
17 *Id.* at 210-217.
18 *Id.* at 516-544.
19 *Id.* at 525-526.
20 *Id.* at 526.

The Labor Arbiter also ruled that Basso was terminated for a valid cause based on the allegations of CMI that Basso committed a series of acts that constitute breach of trust and loss of confidence.[21]

The Labor Arbiter, however, found CMI to have voluntarily submitted to his office's jurisdiction. CMI participated in the proceedings, submitted evidence on the merits of the case, and sought affirmative relief through a motion to dismiss.[22]

NLRC's Ruling

On appeal, the NLRC Third Division promulgated its Decision[23] dated November 28, 2003, the decretal portion of which reads:

> WHEREFORE, the decision dated 24 September 1999 is VACATED and SET ASIDE. Respondent CMI is ordered to pay complainant the amount of US$5,416.00 for failure to comply with the due notice requirement. The other claims are dismissed.
>
> SO ORDERED.[24]

The NLRC did not agree with the pronouncement of the Labor Arbiter that his office has no jurisdiction over the controversy. It ruled that the Labor Arbiter acquired jurisdiction over the case when CMI voluntarily submitted to his office's jurisdiction by presenting evidence, advancing arguments in support of the legality of its acts, and praying for reliefs on the merits of the case.[25]

On the merits, the NLRC agreed with the Labor Arbiter that Basso was dismissed for just and valid causes on the ground of breach of trust and loss of confidence. The NLRC ruled that under the applicable rules on loss of trust and confidence of a managerial employee, such as Basso, mere existence of a basis for believing that such employee has breached the trust of his employer suffices. However, the NLRC found that CMI denied Basso the required due process notice in his dismissal.[26]

Both CMI and Basso filed their respective Motions for Reconsideration dated January 15, 2004[27] and January 8, 2004.[28] Both motions were dismissed in separate Resolutions dated March 15, 2004[29] and

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21 *Id.* at 537-538.
22 *Id.* at 527.
23 *Id.* at 697-707.
24 *Id.* at 706.
25 *Id*. at 704.
26 *Id.* at 704-706.
27 *Id.* at 669-684.
28 *Id.* at 685-695.
29 *Id.* at 709-710.

February 27, 2004,[30] respectively.

Basso filed a Petition for *Certiorari* dated April 16, 2004 with the Court of Appeals docketed as CA-G.R. SP No. 83938.[31] Basso imputed grave abuse of discretion on the part of the NLRC in ruling that he was validly dismissed. CMI filed its own Petition for *Certiorari* dated May 13, 2004 docketed as CA-G.R. SP No. 84281,[32] alleging that the NLRC gravely abused its discretion when it assumed jurisdiction over the person of CMI and the subject matter of the case.

In its Resolution dated October 7, 2004, the Court of Appeals consolidated the two cases[33] and ordered the parties to file their respective Memoranda.

The Court of Appeal's Decision

The Court of Appeals promulgated the now assailed Decision[34] dated May 23, 2006, the relevant dispositive portion of which reads:

> **WHEREFORE**, the petition of Continental docketed as CA-G.R. SP No. 84281 is **DENIED DUE COURSE** and **DISMISSED**.
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> On the other hand the petition of Basso docketed as CA-G.R. SP No. 83938 is **GIVEN DUE COURSE** and **GRANTED**, and accordingly, the assailed Decision dated November 28, 2003 and Resolution dated February 27, 2004 of the NLRC are **SET ASIDE** and **VACATED**. Instead judgment is rendered hereby declaring the dismissal of Basso illegal and ordering Continental to pay him separation pay equivalent to one (1) month pay for every year of service as an alternative to reinstatement. Further, ordering Continental to pay Basso his full backwages from the date of his said illegal dismissal until date of this decision. The claim for moral and exemplary damages as well as attorney's fees are dismissed.[35]

The Court of Appeals ruled that the Labor Arbiter and the NLRC had jurisdiction over the subject matter of the case and over the parties. The Court of Appeals explained that jurisdiction over the subject matter of the action is determined by the allegations of the complaint and the law. Since the case filed by Basso is a termination dispute that is "undoubtedly cognizable by the labor tribunals", the Labor Arbiter and the NLRC had jurisdiction to rule on the merits of the case. On the issue of jurisdiction over the person of the parties, who are foreigners, the Court of Appeals ruled that

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30 *Id.* at 712-713.
31 *Id.* at 714-734.
32 *Id.* at 783-825.
33 *Id.* at 145.
34 *Id.* at 9-25.
35 *Id.* at 23.

jurisdiction over the person of Basso was acquired when he filed the complaint for illegal dismissal, while jurisdiction over the person of CMI was acquired through coercive process of service of summons to its agent in the Philippines. The Court of Appeals also agreed that the active participation of CMI in the case rendered moot the issue on jurisdiction.

On the merits of the case, the Court of Appeals declared that CMI illegally dismissed Basso. The Court of Appeals found that CMI's allegations of loss of trust and confidence were not established. CMI "failed to prove its claim of the incidents which were its alleged bases for loss of trust or confidence."[36] While managerial employees can be dismissed for loss of trust and confidence, there must be a basis for such loss, beyond mere whim or caprice.

After the parties filed their Motions for Reconsideration,[37] the Court of Appeals promulgated Resolution[38] dated June 19, 2007 denying CMI's motion, while partially granting Basso's as to the computation of backwages.

Hence, this petition, which raises the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REVIEWING THE FACTUAL FINDINGS OF THE NLRC INSTEAD OF LIMITING ITS INQUIRY INTO WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE LABOR ARBITER AND THE NLRC HAD JURISDICTION TO HEAR AND TRY THE ILLEGAL DISMISSAL CASE.

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT BASSO WAS NOT VALIDLY DISMISSED ON THE GROUND OF LOSS OF TRUST OR

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36 *Id.* at 20.

37 CMI's Motion for Reconsideration dated June 9, 2006, *rollo*, pp. 924-991; Basso's Motion for Reconsideration dated June 13, 2006, *rollo*, pp. 992-1005.

38 *Id.* at 26-28.

CONFIDENCE.

We begin with the second issue on the jurisdiction of the Labor Arbiter and the NLRC in the illegal dismissal case. The first and third issues will be discussed jointly.

The labor tribunals had jurisdiction over the parties and the subject matter of the case.

CMI maintains that there is a conflict-of-laws issue that must be settled to determine proper jurisdiction over the parties and the subject matter of the case. It also alleges that the existence of foreign elements calls for the application of US laws and the doctrines of *lex loci celebrationis* (the law of the place of the ceremony), *lex loci contractus* (law of the place where a contract is executed), and *lex loci intentionis* (the intention of the parties as to the law that should govern their agreement). CMI also invokes the application of the rule of *forum non conveniens* to determine the propriety of the assumption of jurisdiction by the labor tribunals.

We agree with CMI that there is a conflict-of-laws issue that needs to be resolved first. Where the facts establish the existence of foreign elements, the case presents a conflict-of-laws issue.[39] The foreign element in a case may appear in different forms, such as in this case, where one of the parties is an alien and the other is domiciled in another state.

In *Hasegawa v. Kitamura*,[40] we stated that in the judicial resolution of conflict-of-laws problems, three consecutive phases are involved: jurisdiction, choice of law, and recognition and enforcement of judgments. In resolving the conflicts problem, courts should ask the following questions:

> 1. "Under the law, do I have jurisdiction over the subject matter and the parties to this case?
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> 2. "If the answer is yes, is this a convenient forum to the parties, in light of the facts?
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> 3. "If the answer is yes, what is the conflicts rule for this particular problem?
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> 4. "If the conflicts rule points to a foreign law, has said law been properly pleaded and proved by the one invoking it?

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39 *Saudi Arabian Airlines v. Court of Appeals*, G.R. No. 122191, October 8, 1998, 297 SCRA 469, 484.

40 G.R. No. 149177, November 23, 2007, 538 SCRA 261, 272-273.

> 5. "If so, is the application or enforcement of the foreign law in the forum one of the basic exceptions to the application of foreign law? In short, is there any strong policy or vital interest of the forum that is at stake in this case and which should preclude the application of foreign law?[41]

Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases. Jurisdiction over the subject matter is conferred by the Constitution or by law and by the material allegations in the complaint, regardless of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein.[42] It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court.[43] That the employment contract of Basso was replete with references to US laws, and that it originated from and was returned to the US, do not automatically preclude our labor tribunals from exercising jurisdiction to hear and try this case.

This case stemmed from an illegal dismissal complaint. The Labor Code, under Article 217, clearly vests original and exclusive jurisdiction to hear and decide cases involving termination disputes to the Labor Arbiter. Hence, the Labor Arbiter and the NLRC have jurisdiction over the subject matter of the case.

As regards jurisdiction over the parties, we agree with the Court of Appeals that the Labor Arbiter acquired jurisdiction over the person of Basso, notwithstanding his citizenship, when he filed his complaint against CMI. On the other hand, jurisdiction over the person of CMI was acquired through the coercive process of service of summons. We note that CMI never denied that it was served with summons. CMI has, in fact, voluntarily appeared and participated in the proceedings before the courts. Though a foreign corporation, CMI is licensed to do business in the Philippines and has a local business address here. The purpose of the law in requiring that foreign corporations doing business in the country be licensed to do so, is to subject the foreign corporations to the jurisdiction of our courts.[44]

Considering that the Labor Arbiter and the NLRC have jurisdiction over the parties and the subject matter of this case, these tribunals may proceed to try the case even if the rules of conflict-of-laws or the convenience of the parties point to a foreign forum, this being an exercise of sovereign prerogative of the country where the case is filed.[45]

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41 JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW, (1995 Ed.), p. 111.

42 *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 168.

43 *Atienza v. People*, G.R. No. 188694, February 12, 2014, 716 SCRA 84, 104.

44 *Avon Insurance PLC v. Court of Appeals*, G.R. No. 97642, August 29, 1997, 278 SCRA 312, 323 citing *Marshall-Wells Co. v. Elser & Co.*, 46 Phil. 70 (1924).

45 See *Raytheon International, Inc. v. Rouzie, Jr.*, G.R. No. 162894, February 26, 2008, 546 SCRA 555, 563 citing RUBEN E. AGPALO, CONFLICT OF LAWS (PRIVATE INTERNATIONAL LAW), 2004 Ed., p. 491.

The next question is whether the local forum is the convenient forum in light of the facts of the case. CMI contends that a Philippine court is an inconvenient forum.

We disagree.

Under the doctrine of *forum non conveniens*, a Philippine court in a conflict-of-laws case may assume jurisdiction if it chooses to do so, provided, that the following requisites are met: (1) that the Philippine Court is one to which the parties may conveniently resort to; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and (3) that the Philippine Court has or is likely to have power to enforce its decision.[46] All these requisites are present here.

Basso may conveniently resort to our labor tribunals as he and CMI had physical presence in the Philippines during the duration of the trial. CMI has a Philippine branch, while Basso, before his death, was residing here. Thus, it could be reasonably expected that no extraordinary measures were needed for the parties to make arrangements in advocating their respective cases.

The labor tribunals can make an intelligent decision as to the law and facts. The incident subject of this case (*i.e.* dismissal of Basso) happened in the Philippines, the surrounding circumstances of which can be ascertained without having to leave the Philippines. The acts that allegedly led to loss of trust and confidence and Basso's eventual dismissal were committed in the Philippines. As to the law, we hold that Philippine law is the proper law of the forum, as we shall discuss shortly. Also, the labor tribunals have the power to enforce their judgments because they acquired jurisdiction over the persons of both parties.

Our labor tribunals being the convenient fora, the next question is what law should apply in resolving this case.

The choice-of-law issue in a conflict-of-laws case seeks to answer the following important questions: (1) What legal system should control a given situation where some of the significant facts occurred in two or more states; and (2) to what extent should the chosen legal system regulate the situation.[47] These questions are entirely different from the question of jurisdiction that only seeks to answer whether the courts of a state where the case is initiated have jurisdiction to enter a judgment.[48] As such, the power to exercise jurisdiction does not automatically give a state constitutional authority to apply forum law.[49]

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46 *Bank of America, NT&SA v. Court of Appeals*, G.R. No. 120135, March 31, 2003, 400 SCRA 156, 169.

47 *Saudi Arabian Airlines v. Court of Appeals*, *supra* note 39 at 489-490.

48 *Hasegawa v. Kitamura*, *supra* note 40 at 273.

49 *Id.*

CMI insists that US law is the applicable choice-of-law under the principles of *lex loci celebrationis* and *lex loci contractus*. It argues that the contract of employment originated from and was returned to the US after Basso signed it, and hence, was perfected there. CMI further claims that the references to US law in the employment contract show the parties' intention to apply US law and not ours. These references are:

a. Foreign station allowance of forty percent (40%) using the "U.S. State Department Index, the base being Washington, D.C."
b. Tax equalization that made Basso responsible for "federal and any home state income taxes."
c. Hardship allowance of fifteen percent (15%) of base pay based upon the "U.S. Department of State Indexes of living costs abroad."
d. The employment arrangement is "one at will, terminable by either party without any further liability on thirty days prior written notice."[50]

CMI asserts that the US law on labor relations particularly, the US Railway Labor Act sanctions termination-at-will provisions in an employment contract. Thus, CMI concludes that if such laws were applied, there would have been no illegal dismissal to speak of because the termination-at-will provision in Basso's employment contract would have been perfectly valid.

We disagree.

In *Saudi Arabian Airlines v. Court of Appeals*,[51] we emphasized that an essential element of conflict rules is the indication of a "test" or "connecting factor" or "point of contact". Choice-of-law rules invariably consist of a factual relationship (such as property right, contract claim) and a connecting fact or point of contact, such as the *situs* of the *res*, the place of celebration, the place of performance, or the place of wrongdoing. Pursuant to *Saudi Arabian Airlines*, we hold that the "test factors," "points of contact" or "connecting factors" in this case are the following:

(1) The nationality, domicile or residence of Basso;
(2) The seat of CMI;
(3) The place where the employment contract has been made, the *locus actus*;
(4) The place where the act is intended to come into effect, *e.g.*, the place of performance of contractual duties;
(5) The intention of the contracting parties as to the law that should govern their agreement, the *lex loci intentionis*; and
(6) The place where judicial or administrative proceedings are

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50 *Rollo*, pp. 72-73.
51 *Supra* note 39 at 490-491.

instituted or done.[52]

Applying the foregoing in this case, we conclude that Philippine law is the applicable law. Basso, though a US citizen, was a resident here from the time he was hired by CMI until his death during the pendency of the case. CMI, while a foreign corporation, has a license to do business in the Philippines and maintains a branch here, where Basso was hired to work. The contract of employment was negotiated in the Philippines. A purely consensual contract, it was also perfected in the Philippines when Basso accepted the terms and conditions of his employment as offered by CMI. The place of performance relative to Basso's contractual duties was in the Philippines. The alleged prohibited acts of Basso that warranted his dismissal were committed in the Philippines.

Clearly, the Philippines is the state with the most significant relationship to the problem. Thus, we hold that CMI and Basso intended Philippine law to govern, notwithstanding some references made to US laws and the fact that this intention was not expressly stated in the contract. We explained in *Philippine Export and Foreign Loan Guarantee Corporation v. V. P. Eusebio Construction, Inc.*[53] that the law selected may be implied from such factors as substantial connection with the transaction, or the nationality or domicile of the parties.[54] We cautioned, however, that while Philippine courts would do well to adopt the first and most basic rule in most legal systems, namely, to allow the parties to select the law applicable to their contract, the selection is subject to the limitation that it is not against the law, morals, or public policy of the forum.[55]

Similarly, in *Bank of America, NT & SA v. American Realty Corporation*,[56] we ruled that a foreign law, judgment or contract contrary to a sound and established public policy of the forum shall not be applied. Thus:

> Moreover, foreign law should not be applied when its application would work undeniable injustice to the citizens or residents of the forum. To give justice is the most important function of law; hence, a law, or judgment or contract that is obviously unjust negates the fundamental principles of Conflict of Laws.[57]

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52 The *lex fori* – the law of the forum – is particularly important because, as we have seen earlier, matters of "procedure" not going to the substance of the claim involved are governed by it; and because the *lex fori* applies whenever the content of the otherwise applicable foreign law is excluded from application in a given case for the reason that it falls under one of the exceptions to the applications of foreign law.

53 G.R. No. 140047, July 13, 2004, 434 SCRA 202.

54 *Id.* at 215, citing EDGARDO L. PARAS, PHILIPPINE CONFLICT OF LAWS, (6th Ed., 1984), p. 414.

55 *Id*., citing JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW, (1995 Ed.), p. 356.

56 G.R. No. 133876, December 29, 1999, 321 SCRA 659, 674.

57 *Id.* at 675.

Termination-at-will is anathema to the public policies on labor protection espoused by our laws and Constitution, which dictates that no worker shall be dismissed except for just and authorized causes provided by law and after due process having been complied with.[58] Hence, the US Railway Labor Act, which sanctions termination-at-will, should not be applied in this case.

Additionally, the rule is that there is no judicial notice of any foreign law. As any other fact, it must be alleged and proved.[59] If the foreign law is not properly pleaded or proved, the presumption of identity or similarity of the foreign law to our own laws, otherwise known as *processual presumption,* applies. Here, US law may have been properly pleaded but it was not proved in the labor tribunals.

Having disposed of the issue on jurisdiction, we now rule on the first and third issues.

The Court of Appeals may review the factual findings of the NLRC in a Rule 65 petition.

CMI submits that the Court of Appeals overstepped the boundaries of the limited scope of its *certiorari* jurisdiction when instead of ruling on the existence of grave abuse of discretion, it proceeded to pass upon the legality and propriety of Basso's dismissal. Moreover, CMI asserts that it was error on the part of the Court of Appeals to re-evaluate the evidence and circumstances surrounding the dismissal of Basso.

We disagree.

The power of the Court of Appeals to review NLRC decisions via a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court was settled in our decision in *St. Martin Funeral Home v. NLRC.*[60] The general rule is that *certiorari* does not lie to review errors of judgment of the trial court, as well as that of a quasi-judicial tribunal. In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh their probative value.[61] However, this rule admits of exceptions. In *Globe Telecom, Inc. v. Florendo-Flores,*[62] we stated:

> In the review of an NLRC decision through a special civil action for certiorari, resolution is confined only to

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58 See *Archbuild Masters and Construction, Inc. v. NLRC*, G.R. No. 108142, December 26, 1995, 251 SCRA 483.

59 *Wildvalley Shipping Co., Ltd. v. Court of Appeals,* G.R. No. 119602, October 6, 2000, 342 SCRA 213, 219.

60 G.R. No. 130866, September 16, 1998, 295 SCRA 494.

61 *Garcia v. NLRC*, G.R. No. 147427, February 7, 2005, 450 SCRA 535, 547.

62 G.R. No. 150092, September 27, 2002, 390 SCRA 201.

> issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the findings of the NLRC contradict those of the Labor Arbiter.
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> 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.[63] (Citations omitted.)

Thus, the Court of Appeals may grant the petition when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the Labor Arbiter; and when necessary to arrive at a just decision of the case.[64] To make these findings, the Court of Appeals necessarily has to look at the evidence and make its own factual determination.[65]

Since the findings of the Labor Arbiter differ with that of the NLRC, we find that the Court of Appeals correctly exercised its power to review the evidence and the records of the illegal dismissal case.

Basso was illegally dismissed.

It is of no moment that Basso was a managerial employee of CMI. Managerial employees enjoy security of tenure and the right of the management to dismiss must be balanced against the managerial employee's right to security of tenure, which is not one of the guaranties he gives up.[66]

In *Apo Cement Corporation v. Baptisma,*[67] we ruled that for an employer to validly dismiss an employee on the ground of loss of trust and confidence under Article 282 (c) of the Labor Code, the employer must

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63 *Id.* at 208-209.

64 *Univac Development, Inc. v. Soriano*, G.R. No. 182072, June 19, 2013, 699 SCRA 88, 98.

65 *Pepsi-Cola Products Philippines, Inc. v. Molon*, G.R. No. 175002, February 18, 2013, 691 SCRA 113, 125.

66 *PLDT v. Tolentino,* G.R. No. 143171, September 21, 2004, 438 SCRA 555, 560.

67 G.R. No. 176671, June 20, 2012, 674 SCRA 162, 175 citing *Rubia v. NLRC, Fourth Division*, G.R. No. 178621, July 26, 2010, 625 SCRA 494 and *Sunrise Holiday Concepts, Inc. v. Arugay*, G.R. No. 189457, April 13, 2011, 648 SCRA 785.

observe the following guidelines: 1) loss of confidence should not be simulated; 2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. More importantly, it must be based on a willful breach of trust and founded on clearly established facts.

We agree with the Court of Appeals that the dismissal of Basso was not founded on clearly established facts and evidence sufficient to warrant dismissal from employment. While proof beyond reasonable doubt is not required to establish loss of trust and confidence, substantial evidence is required and on the employer rests the burden to establish it.[68] There must be some basis for the loss of trust, or that the employer has reasonable ground to believe that the employee is responsible for misconduct, which renders him unworthy of the trust and confidence demanded by his position.[69]

CMI alleges that Basso committed the following:

(1) Basso delegated too much responsibility to the General Sales Agent and relied heavily on its judgments.[70]

(2) Basso excessively issued promotional tickets to his friends who had no direct business with CMI.[71]

(3) The advertising agency that CMI contracted had to deal directly with Guam because Basso was hardly available.[72] Mr. Schulz discovered that Basso exceeded the advertising budget by $76,000.00 in 1994 and by $20,000.00 in 1995.[73]

(4) Basso spent more time and attention to his personal businesses and was reputed to own nightclubs in the Philippines.[74]

(5) Basso used free tickets and advertising money to promote his personal business,[75] such as a brochure that jointly advertised one of Basso's nightclubs with CMI.

We find that CMI failed to discharge its burden to prove the above acts. CMI merely submitted affidavits of its officers, without any other corroborating evidence. Basso, on the other hand, had adequately explained his side. On the advertising agency and budget issues raised by CMI, he

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68 *Midas Touch Food Corporation v. NLRC*, G.R. No. 111639, July 29, 1996, 259 SCRA 652, 660.
69 *Del Val v. NLRC*, G.R. No. 121806, September 25, 1998, 296 SCRA 283, 289.
70 *Rollo*, p. 220.
71 *Id.* at 98.
72 *Id.* at 220.
73 *Id.* at 92, 220 & 273.
74 *Id.* at 94.
75 *Id.* at 96.

explained that these were blatant lies as the advertising needs of CMI were centralized in its Guam office and the Philippine office was not authorized to deal with CMI's advertising agency, except on minor issues.[76] Basso further stated that under CMI's existing policy, ninety percent (90%) of the advertising decisions were delegated to the advertising firm of McCann-Ericsson in Japan and only ten percent (10%) were left to the Philippine office.[77] Basso also denied the allegations of owning nightclubs and promoting his personal businesses and explained that it was illegal for foreigners in the Philippines to engage in retail trade in the first place.

Apart from these accusations, CMI likewise presented the findings of the audit team headed by Mr. Stephen D. Goepfert, showing that "for the period of 1995 and 1996, personal passes for Continental and other airline employees were noted (*sic*) to be issued for which no service charge was collected."[78] The audit cited the trip pass log of a total of 10 months. The trip log does not show, however, that Basso caused all the ticket issuances. More, half of the trips in the log occurred from March to July of 1996,[79] a period beyond the tenure of Basso. Basso was terminated effectively on January 31, 1996 as indicated in the letter of Ms. Woodward.[80]

CMI also accused Basso of making "questionable overseas phone calls". Basso, however, adequately explained in his *Reply*[81] that the phone calls to Italy and Portland, USA were made for the purpose of looking for a technical maintenance personnel with US Federal Aviation Authority qualifications, which CMI needed at that time. The calls to the US were also made in connection with his functions as General Manager, such as inquiries on his tax returns filed in Nevada. Basso also explained that the phone lines[82] were open direct lines that all personnel were free to use to make direct long distance calls.[83]

Finally, CMI alleged that Basso approved the disbursement of Php80,000.00 to cover the transfer fee of the *Manila Polo Club* share from Mr. Kenneth Glover, the previous General Manager, to him. CMI claimed that "nowhere in the said contract was it likewise indicated that the *Manila Polo Club* share was part of the compensation package given by CMI to Basso."[84] CMI's claims are not credible. Basso explained that the *Manila Polo Club* share was offered to him as a bonus to entice him to leave his then employer, United Airlines. A letter from Mr. Paul J. Casey, former president of Continental, supports Basso.[85] In the letter, Mr. Casey explained:

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76 *Id.* at 425.
77 *Id.*
78 *Id.* at 298.
79 *Id.* at 386-390.
80 *Id.* at 413-414.
81 *Id.* at 430-432.
82 Telephone numbers 816-0443, 819-5738 and 810-8644, *id.* at 431.
83 *Id.*
84 *Id.* at 100-101.
85 *Id.* at 459-460.

> As a signing bonus, and a perk to attract Mr. Basso to join Continental Airlines, he was given the Manila Polo Club share and authorized to have the share re-issued in his name. In addition to giving Mr. Basso the Manila Polo Club share, Continental agreed to pay the dues for a period of three years and this was embodied in his contract with Continental. This was all done with my knowledge and approval.[86]

Clause 14 of the employment contract also states:

> Club Memberships: The Company will locally pay annual dues for membership in a club in Manila that your immediate supervisor and I agree is of at least that value to Continental through you in your role as our General Manager for the Philippines.[87]

Taken together, the above pieces of evidence suggest that the *Manila Polo Club* share was part of Basso's compensation package and thus he validly used company funds to pay for the transfer fees. If doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[88]

Finally, CMI violated procedural due process in terminating Basso. In *King of Kings Transport, Inc. v. Mamac*[89] we detailed the procedural due process steps in termination of employment:

> 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

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86 *Id.* at 460.

87 *Id.* at 162.

88 *Lepanto Consolidated Mining Company v. Dumapis*, G.R. No. 163210, August 13, 2008, 562 SCRA 103, 120.

89 G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126.

> 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. (Emphasis in original.)

Here, Mr. Schulz's and Ms. Woodward's letters dated December 19, 1995 and March 14, 1996, respectively, are not one of the valid twin notices. Neither identified the alleged acts that CMI now claims as bases for Basso's termination. Ms. Woodward's letter even stressed that the original plan was to remove Basso as General Manager but with an offer to make him consultant. It was inconsistent of CMI to declare Basso as unworthy of its trust and confidence and, in the same breath, offer him the position of consultant. As the Court of Appeals pointed out:

> But mark well that Basso was clearly notified that the sole ground for his dismissal was the exercise of the termination at will clause in the employment contract. The alleged loss of trust and confidence claimed by Continental appears to be a mere afterthought belatedly trotted out to save the day.[90]

Basso is entitled to separation pay and full backwages.

Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to **reinstatement without loss of seniority rights and other privileges, and to his full backwages**, inclusive of allowances and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement.

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[90] *Rollo*, p. 19.

Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[91] In the case of Basso, reinstatement is no longer possible since he has already passed away. Thus, Basso's separation pay with full backwages shall be paid to his heirs.

As to the computation of backwages, we agree with CMI that Basso was entitled to backwages only up to the time he reached 65 years old, the compulsory retirement age under the law.[92] This is our consistent ruling.[93] When Basso was illegally dismissed on January 31, 1996, he was already 58 years old.[94] He turned 65 years old on October 2, 2002. Since backwages are granted on grounds of equity for earnings lost by an employee due to his illegal dismissal,[95] Basso was entitled to backwages only for the period he could have worked had he not been illegally dismissed, *i.e.* from January 31, 1996 to October 2, 2002.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated May 23, 2006 and Resolution dated June 19, 2007 in the consolidated cases CA-G.R. SP No. 83938 and CA-G.R. SP No. 84281 are **AFFIRMED,** with **MODIFICATION** as to the award of backwages. Petitioner Continental Micronesia, Inc. is hereby ordered to pay Respondent Joseph Basso's heirs: 1) separation pay equivalent to one (1) month pay for every year of service, and 2) full backwages from January 31, 1996, the date of his illegal dismissal, to October 2, 2002, the date of his compulsory retirement age.

SO ORDERED.

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91 *Golden Ace Builders v. Talde*, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 288-289 citing *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500.

92 Art. 287 of the Labor Code, as amended by Republic Act No. 7641 provides:

> Art. 287. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> xxx xxx xxx
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

93 See *The New Philippine Skylanders, Inc. v. Dakila*, G.R. No. 199547, September 24, 2012, 681 SCRA 658; *Jaculbe v. Silliman University*, G.R. No. 156934, March 16, 2007, 518 SCRA 445; *Intercontinental Broadcasting Corporation v. Benedicto*, G.R. No. 152843, July 20, 2006, 495 SCRA 561.

94 Based on Joseph Basso's Special Resident Retiree's Visa, issued July 11, 1989, he was born on October 2, 1937, *rollo*, pp. 602-603.

95 *Espejo v. NLRC*, G.R. No. 112678, March 29, 1996, 255 SCRA 430 citing *Torillo v. Leogardo Jr.*, G.R. No. 77205, May 27, 1991, 197 SCRA 471.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

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

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice