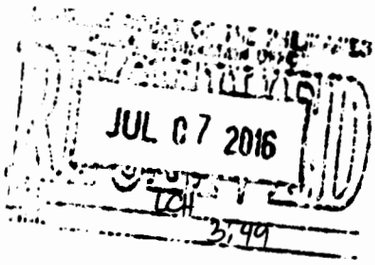
Republic of the Philippines
Supreme Court
Manila



SPECIAL FIRST DIVISION

PHILIPPINE AIRLINES, INC., Petitioner,	**G.R. No. 203932**
	Present:
- versus -	SERENO, *C.J.*,* LEONARDO-DE CASTRO,** *Acting Chairperson*, BERSAMIN, REYES, and CAGUIOA, *JJ.*
ENRIQUE LIGAN, EDUARDO MAGDARAOG, JOLITO OLIVEROS, RICHARD GONCER, EMELITO SOCO, VIRGILIO P. CAMPOS, JR., LORENZO BUTANAS, RAMEL BERNARDES, NELSON M. DULCE, CLEMENTE R. LUMAYNO, ARTHUR M. CAPIN, ALLAN BENTUZAL, and JEFFREY LLENES, Respondents.	Promulgated: JUN 08 2016

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

RESOLUTION

REYES, *J.*:

This resolves the Motion for Reconsideration[1] of the Court's Resolution[2] dated November 12, 2012 denying the petition outright for failure to show reversible error in the Decision[3] dated February 15,

---

* On leave.

** Acting Chairperson per Special Order No. 2354 dated June 2, 2016 *vice* Chief Justice Maria Lourdes P. A. Sereno.

1 *Rollo*, pp. 551-556.

2 Id. at 550.

3 Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Myra V. Garcia-Fernandez and Abraham B. Borreta concurring; id. at 22-35.

2012 and Resolution[4] dated September 27, 2012 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 00922, which dismissed the petition for review on *certiorari* of Philippine Airlines, Inc. (PAL) from the Decision[5] dated August 27, 2004 and Resolution[6] dated April 25, 2005 of the National Labor Relations Commission (NLRC), 4th Division, Cebu City in NLRC Case No. V-000112-2000.

The Facts

PAL and Synergy Services Corporation (Synergy) entered into a station services agreement and a janitorial services agreement whereby Synergy provided janitors and station attendants to PAL at Mactan airport. Enrique Ligan, Eduardo Magdaraog, Jolito Oliveros, Richard Goncer, Emelito Soco, Virgilio P. Campos, Jr., Lorenzo Butanas, Ramel Bernardes, Nelson M. Dulce, Clemente R. Lumayno, Arthur M. Capin, Allan Bentuzal, and Jeffrey Llenes (respondents) were among the personnel of Synergy posted at PAL to carry out the contracted tasks. Claiming to be performing duties directly desirable and necessary to the business of PAL, the respondents, along with 12 other co-employees, filed complaints in March 1992 against PAL and Synergy in the NLRC Region VII Office in Cebu City for regularization of their status as employees of PAL, underpayment of salaries and non-payment of premium pay for holidays, premium pay for rest days, service incentive leave pay, 13th month pay and allowances.[7]

In the Decision dated August 29, 1994, the Labor Arbiter (LA) ruled that Synergy was an independent contractor and dismissed the complaint for regularization, but granted the complainants' money claims.[8] On appeal, the NLRC, 4th Division, Cebu City on January 5, 1996 declared Synergy a labor-only contractor and ordered PAL to accept the complainants as regular employees and as such, to pay their salaries, allowances and other benefits under the Collective Bargaining Agreement subsisting during the period of their employment.[9] PAL went to this Court on *certiorari*, but pursuant to *St. Martin Funeral Home v. NLRC*,[10] the case was referred to the CA. On September 29, 2000, the CA, in CA-G.R. SP No. 52329, affirmed the NLRC *in toto*.[11]

---

4 Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Edgardo L. Delos Santos and Zenaida T. Galapate-Laguilles concurring; id. at 37-42.

5 Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Edgardo M. Enerlan and Oscar S. Uy concurring; id. at 68-73.

6 Id. at 75-77.

7 Id. at 23.

8 *Philippine Airlines, Inc. v. Ligan, et al.*, 570 Phil. 497, 502-503 (2008).

9 Id. at 503-504.

10 356 Phil. 811 (1998).

11 *Philippine Airlines, Inc. v. Ligan, et al.*, supra note 8, at 504; *rollo*, p. 24.

On petition for review, this Court, on February 29, 2008, affirmed but modified the NLRC decision,[12] as follows:

> **WHEREFORE**, the [CA] Decision of September 29, 2000 is *AFFIRMED* with MODIFICATION.
>
> [PAL] is ORDERED to:
>
> a) accept respondents ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ, BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS, JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARESUSA, JEFFREY LLENOS, ROQUE PILAPIL, ANTONIO M. PAREJA, CLEMENTE R. LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERRIE ALEGRES, EDUARDO MAGDADARAUG, NELSON M. DULCE and ALLAN BENTUZAL as its regular employees in their same or substantially equivalent positions, and pay the **wages and benefits due** them as regular employees plus **salary differential** corresponding to the difference between the wages and benefits given them and those granted to petitioner's other regular employees of the same rank; and
>
> b) pay respondent BENEDICTO AUXTERO **salary differential**; **backwages** from the time of his dismissal until the finality of this decision; and **separation pay**, in lieu of reinstatement, equivalent to one (1) month pay for every year of service until the finality of this decision.
>
> There being no data from which this Court may determine the monetary liabilities of petitioner, the case is REMANDED to the [LA] solely for that purpose.
>
> **SO ORDERED.**[13] (Emphasis, italics and underscoring in the original)

On motion for reconsideration by PAL, the Court on April 30, 2009 modified the above decision,[14] to read as follows:

> **WHEREFORE**, the [CA] Decision of September 29, 2000 is AFFIRMED with MODIFICATION.
>
> [PAL] is *ORDERED* to recognize respondents ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ, BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS,

---

12 *Philippine Airlines, Inc. v. Ligan, et al.*, 570 Phil. 497 (2008).

13 Id. at 515.

14 *Philippine Airlines, Inc. v. Ligan, et al.*, 605 Phil. 327 (2009).

> JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARISUSA, JEFFREY LLENES, ANTONIO M. PAREJA, CLEMENTE R. LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERIE ALEGRES, EDUARDO MAGDADARAUG, NELSON M. DULCE and ALLAN BENTUZAL as its regular employees in their same or substantially equivalent positions, and pay the wages and benefits due them as regular employees plus salary differential corresponding to the difference between the wages and benefits given them and those granted to petitioner's other regular employees of the same or substantially equivalent rank, up to June 30, 1998, without prejudice to the resolution of the illegal dismissal case.
>
> There being no data from which this Court may determine the monetary liabilities of petitioner, the case is *REMANDED* to the [LA] solely for that purpose.
>
> **SO ORDERED**.[15] (Emphasis, italics and underscoring in the original)

Meanwhile, while the above regularization cases were pending in the CA, PAL terminated its service agreements with Synergy effective June 30, 1998, alleging serious business losses. Consequently, Synergy also terminated its employment contracts with the respondents, who forthwith filed individual complaints[16] for **illegal dismissal** against PAL. PAL in turn filed a third-party complaint[17] against Synergy.[18]

In his Decision[19] dated July 27, 1998, Executive LA Reynoso A. Belarmino declared that Synergy was an independent contractor and the respondents were its regular employees, and therefore Synergy was solely liable for the payment of their separation pay, wage differential, and attorney's fees. In their appeal to the NLRC, docketed as NLRC Case No. V-000112-2000, the respondents cited seven previous cases wherein the NLRC also declared that Synergy was a labor-only contractor. They argued that Synergy and PAL dismissed them without just cause.[20]

In the Decision[21] dated August 27, 2004, the NLRC found that the functions performed by the respondents under Synergy's service contracts with PAL indicated that they were directly related to PAL's air transport business, that Synergy serviced PAL exclusively and had no other clients, that its activities were carried out within PAL's premises and PAL shared supervision and control over the respondents. In

---

15 Id. at 335-336.
16 *Rollo*, pp. 78-79.
17 Id. at 90-92.
18 Id. at 24.
19 Id. at 206-216.
20 Id. at 70.
21 Id. at 68-73.

declaring that the respondents were regular employees of PAL, the NLRC cited a CA case, *Philippine Airlines, Inc. v. NLRC*, CA-G.R. SP No. 50138, dated April 30, 1999, with similar factual findings which also ruled that Synergy was a labor-only contactor and a mere agent of PAL. After ruling that the respondents were dismissed without just cause and without observance of procedural due process, the NLRC ordered PAL to pay them separation pay, backwages, and wage differential. The *fallo* of NLRC decision reads:

> WHEREFORE, the Decision dated 27 July 1998 of the Executive [LA] is SET ASIDE and a new one is rendered declaring [PAL] to have illegally dismissed the complainants, and ordering [PAL] to pay to the thirteen (13) complainants the following:
>
> 1. SEPARATION PAY in lieu of reinstatement from the start of their employment until the finality of this decision, computed as described above;
> 2. BACKWAGES from the time compensation is withheld from them until the finality of this decision[; and]
> 3. Wage differentials of ₱390.00 for each complainant.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[22]

PAL moved for reconsideration arguing that as janitors, the respondents were hired under a permissible job-contracting arrangement. In its Resolution dated April 25, 2005 denying the motion for reconsideration,[23] the NLRC pointed out that in fact most of the respondents worked as station attendants or station loaders, not janitors, and that PAL could have submitted their contracts as janitors, but did not. The NLRC also noted that in all seven previous cases appealed to it involving the same parties, it invariably ruled that PAL was the employer of the respondents and Synergy was a labor-only contractor.

On petition for review on *certiorari* to the CA, docketed as CA-G.R. CEB SP No. 00922,[24] PAL's main contention was that since only this Court's decisions form part of jurisprudence, the NLRC erred in adopting the CA decision in CA-G.R. SP No. 50138 which held that Synergy was a labor-only contractor, although it was still on review in this Court.

---

22 Id. at 73.
23 Id. at 75-77.
24 Id. at 44-63.

On February 15, 2012, the CA dismissed PAL's petition,[25] and on September 27, 2012, it also denied its motion for reconsideration.[26]

Hence, the instant petition for review on *certiorari*[27] was filed by PAL, raising a sole legal issue, as follows:

> WHETHER OR NOT THE DECISION OF THE [NLRC] WHICH WAS ARRIVED AT BY SIMPLY ADOPTING THE SUPPOSED "FINDINGS AND CONCLUSION" OF THE [CA] IN A NON-EXISTENT DECISION IS A VALID AND LEGALLY BINDING DECISION.[28]

On November 12, 2012, the Court denied the petition outright for failure to show any reversible error committed by the CA.[29] On January 24, 2013, PAL moved for reconsideration of the denial,[30] to which the respondents filed their "Vehement Opposition with Motion to Sanction the Petitioner for Forum Shopping."[31]

The motion for reconsideration is denied.

A.

In the illegal dismissal cases before the LA, the issue was whether the termination of the respondents' employment by Synergy in June 1998 was without just cause and observance of due process. In the instant petition, PAL argues in the main that in reversing the LA, the NLRC (in NLRC Case No. V-000112-2000) cited for its factual and legal basis an inexistent CA decision, docketed as CA-G.R. SP No. 50138. Culling from its own "Compliance" dated April 4, 2006 in CA-G.R. CEB SP No. 00922,[32] PAL tells the Court that CA-G.R. SP No. 50138 is actually entitled "*Anita Danao, Owner of Wonder Baker v. NLRC and Eufemio Famis*," not "*Philippine Airlines, Inc. v. NLRC*" as mistakenly mentioned by the NLRC, and that it was promulgated on December 31, 1999, not April 30, 1999; that a verification with the CA docket section showed that another PAL case, CA-G.R. SP No. 50161, is actually dated April 30, 1999 and involved the issue of payment of 13th month pay to PAL employees, but had nothing to do with Synergy or its status as a labor-only contractor; and, that what

---

25 Id. at 22-35.
26 Id. at 37-42.
27 Id. at 3-17.
28 Id. at 8.
29 Id. at 550.
30 Id. at 551-556.
31 Id. at 560-564.
32 Id. at 308-310.

was actually elevated from the NLRC, 4th Division, to this Court, and then referred to the CA pursuant to *St. Martin Funeral Home*, was CA-G.R. SP No. 52329, decided on September 29, 2000, not CA-G.R. SP No. 50138.

In its assailed decision, the CA pointed out that both CA-G.R. SP No. 00922 and CA-G.R. SP No. 52329 involve the same facts and employer, PAL, and the herein respondents were among the complainants in the regularization cases. Noting that this Court in G.R. No. 146408 has ruled that the respondents were regular employees of PAL, the CA ruled that they cannot be whimsically terminated by PAL but it must show that: (1) their dismissal was for any of the causes authorized in Article 282 of the Labor Code; and (2) they were given opportunity to be heard and to defend theirselves.[33] Article 282 of the Labor Code reads:

> **ART. 282. Termination by employer.** An employer may terminate an employment for any of the following causes:
>
> a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
> b. Gross and habitual neglect by the employee of his duties;
> c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
> d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
> e. Other causes analogous to the foregoing.

According to the CA, PAL failed to show that the respondents were guilty of any of the causes above-mentioned. Neither was due process observed by PAL in dismissing them, who were merely notified of their termination through a notice sent to them by Synergy, which reads:

> PAL has terminated our contract effective June 30, 1998. In view of this contract termination by PAL, our contract with employees like you who have been contracted as Station Loader/Station Attendant, will be terminated also on 30 June 1998.
>
> Please be guided accordingly.[34]

---

33 Id. at 32.
34 Id. at 33.

Moreover, PAL cannot deny that all along it had always known of the ruling in CA-G.R. SP No. 52329, which as PAL itself also pointed out, was elevated for review to this Court in G.R. No. 146408. PAL is aware that G.R. No. 146408 was decided on February 29, 2008, and its motion for reconsideration was resolved on April 30, 2009, whereas the instant petition was filed only on November 6, 2012. As the petitioner in CA-G.R. SP No. 52329, PAL even attached in Annex "E" of this petition a copy of the decision in CA-G.R. SP No. 52329.[35] PAL has thus always known that the issue therein was whether Synergy was a labor-only contractor or a legitimate contractor; that the respondents were adjudged as regular employees of PAL entitled to all the benefits of its regular employees, that Synergy was a labor-only contractor and thus a mere agent of PAL.

As the petitioner in G.R. No. 146408, PAL certainly cannot pretend ignorance of the Court's decision therein. Moreover, on April 28, 2008, the respondents had manifested in CA-G.R. CEB SP No. 00922 that a decision had been rendered in G.R. No. 146408,[36] with a copy thereof attached; on May 26, 2008, PAL itself also manifested that it had filed a motion for reconsideration in G.R. No. 146408, which then prompted the CA to suspend the resolution of CA-G.R. CEB SP No. 00922, since the regularization cases are intimately connected to the illegal dismissal cases.

In Resolution dated April 30, 2009 in G.R. No. 146408, this Court mentioned that PAL had revealed for the first time in its Motion for Reconsideration the matter of the lay-off of the respondents on June 30, 1998 due to financial woes;[37] that the respondents likewise disclosed that they were all terminated in June 1998 in the guise of retrenchment. Except for the employees who had died, they either accepted settlement earlier, or had been declared as employee of Synergy.[38]

The Court further noted that PAL in its motion for reconsideration from the CA's decision in CA-G.R. SP No. 52329 also invoked its financial difficulties, not by way of defense to a charge of illegal dismissal but to manifest that supervening events had rendered it impossible to comply with the order to accept the respondents as regular employees.[39]

---

35 Id. at 322-333.

36 *See* CA Decision dated February 15, 2012; id. at 29.

37 *Philippine Airlines, Inc. v. Ligan, et al.*, supra note 14, at 334.

38 Id. at 331.

39 Id. at 334.

B.

In G.R. No. 146408, the Court noted that the termination of the respondents in June 1998 was in disregard of a subsisting temporary restraining order which the Court issued in 1996 to preserve the *status quo*, before the case was transferred to the CA in January 1999. The Court also held that PAL failed to establish such economic losses which rendered impossible its compliance with the order to accept the respondent as regular employees. Thus:

> Other than its bare allegations, [PAL] presented nothing to substantiate its impossibility of compliance. In fact, [PAL] waived this defense by failing to raise it in its Memorandum filed on June 14, 1999 before the [CA]. x x x.[40] (Citation omitted)

While retrenchment is a valid exercise of management prerogative, it is well settled that economic losses as a ground for dismissing an employee is factual in nature, and in order for a retrenchment scheme to be valid, **all** of the following elements under Article 283 of the Labor Code must concur or be present,[41] to wit:

> (1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;
>
> (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;
>
> (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher;
>
> (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and,
>
> (5) That the employer uses fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

---

40 *Philippine Airlines, Inc. v. Ligan, et al.*, supra note 8, at 514.

41 *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.*, 617 Phil. 687, 717 (2009).

The absence of one element renders the retrenchment scheme an irregular exercise of management prerogative. The employer's obligation to exhaust all other means to avoid further losses without retrenching its employees is a component of the first element enumerated above. To impart operational meaning to the constitutional policy of providing full protection to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means have been tried and found wanting.[42]

PAL has insisted that the NLRC erroneously relied on an inexistent CA decision, and therefore its decision is void, but the CA in its resolution of September 27, 2012 has concluded that "[a] perusal of the Decision of the NLRC shows that it is not without basis,"[43] that the NLRC "made findings of facts, analyzed the legal aspects of the case taking into consideration the evidence presented and formed conclusions after noting the relevant facts of the case."[44] But more importantly, the Court cannot lose sight of the settled rule that in illegal dismissal cases, the onus to prove that the employee was not dismissed, or if dismissed, that his dismissal was not illegal, rests on the employer, and that its failure to discharge this burden signifies that the dismissal is not justified and therefore illegal.[45] Unfortunately, in this petition, PAL has advanced no such justification whatsoever to dismiss or retrench the respondents. The Court is left with no conclusion: PAL's petition is misleading and clearly baseless and dilatory.

WHEREFORE, the motion for reconsideration is **DENIED** with finality.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

---

42 *Lopez Sugar Corporation v. Federation of Free Workers*, 267 Phil. 212, 221 (1990).
43 *Rollo*, p. 38.
44 Id. at 38-39.
45 *Great Southern Maritime Services Corporation v. Acuña*, 492 Phil. 518, 530-531 (2005).

WE CONCUR:

(On leave)
MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

LUCAS P. BERSAMIN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

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

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, Special First Division

CERTIFICATION

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

ANTONIO T. CARPIO
Acting Chief Justice