Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

VINCENT MICHAEL BANTA MOLL,
Petitioner,

-versus-

CONVERGYS PHILIPPINES, INC., ANDREA J. AYERS, ANDRE S. VALENTINE, JARROD PONTIUS, CORMAC TWOMEY, ABIGAIL GONZALES, IRENE SANGCAL, and MARK ANTHONY CABUGAO,
Respondents.

G.R. No. 253715

Members:

PERLAS-BERNABE, *SAJ,*
Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
ROSARIO, *and*
LOPEZ, J.,* *JJ.*

Promulgated:
APR 28 2021

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DECISION

LAZARO-JAVIER, *J.*:

The Case

Petitioner Vincent Michael Banta Moll assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 161534, entitled "*Vincent Michael Banta Moll v. Convergys Philippines, Inc., et al., and National Labor Relations Commission, Second Division:*"

1) **Decision**[1] dated February 11, 2020 holding that petitioner failed to establish that he was dismissed from employment; and

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* Designated as additional member per Special Order No. 2822 dated April 7, 2021.

[1] Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Elihu A. Ybañez and Tita Marilyn B. Payoyo-Villordon, *rollo,* pp. 49-66.

2) **Resolution**[2] dated September 24, 2020 denying petitioner's motion for reconsideration.

Antecedents

By Complaint dated April 19, 2018, petitioner sued respondents Convergys Philippines, Inc. (Convergys), Andrea J. Ayers (Ayers), Andre S. Valentine (Valentine), Jarrod Pontius (Pontius), Cormac Twomey (Twomey), Abigail Gonzales (Gonzales), Irene Sangcal (Sangcal), and Mark Anthony Cabugao (Cabugao) for illegal dismissal with other monetary claims.[3] He essentially alleged:[4]

On May 4, 2015, respondents hired him as Sales Associate I assigned at Three Cyberpod Eton Centris, EDSA corner Quezon Avenue, Quezon City (Eton Centris Office). Prior to his dismissal on March 25, 2018, he handled the Direct TV (DTV) account and was receiving a monthly salary of ₱24,362.88.

Per company policy and procedure, respondents regularly assigned accounts to the company's sales associates, providing them their respective schedules of activity and responsibilities. But beginning March 25, 2018, he no longer received any schedule from respondents. He went to the Eton Centris Office and confirmed that indeed, he was no longer given any new assignment. He attempted to report the matter to the Human Resources Department (HRD) for clarification but he was refused entry to its office.

Aggrieved, he filed a Single Entry Approach (SEnA) before the National Labor Relations Commission (NLRC). During the mediation proceedings, respondents ordered him to report back to work. This order, however, was clearly a mere afterthought, made only after the case had already been filed. For the parties' failure to reach an amicable settlement, the case was referred to the NLRC arbitration branch.

Respondent Convergys riposted that it was a company engaged in various Business Process Outsourcing (BPO). It had offices at Eton Centris and Glorietta 5, Makati City (Glorietta Office). Ayers was its President, Valentine its Chief Finance Officer, and Twomey as its Chief Legal Counsel. Gonzales, Sangcal, and Cabugao, on the other hand, were its Team Leader, Operations Manager, and HR Site Manager, respectively.

On March 24, 2018, respondents decided to transfer excess manpower from the Eton Centris Office, including petitioner, to the U-verse Program at the Glorietta Office. Said transfer did not require a different set of skills nor a diminution of salary. Petitioner initially acceded to the transfer and, in fact,

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[2] *Id.* at 67-73.

[3] Backwages, separation pay in lieu of reinstatement, unpaid salary, pro-rated 13th month pay, and attorney's fees.

[4] *Rollo*, pp. 126-137.

attended the first day of the training on March 26, 2018. But thereafter, he no longer reported for work. Petitioner instead asked his team leader Gonzales if he could just resign because the new office was too far from his residence.

For petitioner's failure to respond to his team leader's calls and messages, they issued two (2) Return to Work Orders (RTWO) dated May 29, 2018 and June 2, 2018 which were duly received by petitioner on May 30, 2018 and June 4, 2018, respectively. Instead of complying with the RTWOs, however, petitioner hastily filed this case.

Contrary to petitioner's claim of illegal dismissal, respondents argued that they merely exercised their management prerogative to transfer employees as they may deem necessary and beneficial to the company's interest as provided for in the employment contract.[5]

The Labor Arbiter's Ruling

By Decision[6] dated September 12, 2018, Labor Arbiter Marcial Galahad T. Makasiar (Labor Arbiter Makasiar) declared petitioner to have been illegally dismissed, *viz.*:

> ACCORDINGLY, respondent Convergys, also known as Convergys Philippines, Inc., is adjudged to have illegally dismissed complainant. It is ordered to pay complainant:
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> a) BACKWAGES of ₱137,163.01;
> b) SEPARATION PAY of ₱73,088.64;
> c) UNPAID SALARY of ₱24[,]362.88;
> d) PRO-RATED 13TH MONTH PAY for 2018 of ₱5,684.67; and
> e) ATTORNEY'S FEES of ₱24,029.92.
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> The foregoing awards aggregate to ₱264[,]329.13. Only the awards for backwages, unpaid salary and pro-rated 13th month pay for 2018 shall be subject to 5% withholding tax upon payment or execution whichever occurs first.
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> All other claims are DENIED for lack of merit.
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> Respondents Andrea J. Ayers, Andre S. Valentine, Jarrod Pontius, Cormac Twomey, Abigail Gonzales, Irene Sangcal[,] and Mark Cabugao are EXONERATED from all liabilities.
>
> SO ORDERED.[7]

According to the labor arbiter, Convergys abused its discretion when it transferred petitioner without justifying the necessity of such transfer. Notably, there was considerable distance between petitioner's residence and its proximity to the Eton Centris Office compared to the Glorietta Office.

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[5] *Id.* at 144.
[6] *Id.* at 156-161.
[7] *Id.* at 160-161.

The labor arbiter granted petitioner's prayer for separation pay, backwages, and unpaid salary for March 2018, but denied his claim for non-payment of allowances for lack of basis. Meanwhile, petitioner's 13th month pay was limited to the year 2018.

Ayers, Valentine, Pontius, Twomey, Gonzales, Sangcal, and Cabugao were exonerated from all liabilities for lack of any showing that they acted with malice or bad faith in dealing and handling petitioner's case.

On appeal,[8] Convergys faulted the labor arbiter for holding petitioner illegally dismissed. It submitted Senior Operations Manager Cabugao's affidavit[9] where he attested that sometime in February to March 2018, the DTV Account in Eton Centris Office exceeded the required number of personnel while the U-verse Account in Glorietta Office was in need of agents. Thus, the HRD identified the agents residing near the Glorietta Office for lateral transfer to the U-verse Account. Among these agents was petitioner, a resident of Manila.

On March 16, 2018, the operations team from the Glorietta Office conducted a Realistic Job Preview (RJP) intended to gauge the selected agents' ability to handle the U-verse Account and their willingness to transfer. Despite his initial agreement to the transfer, petitioner did not finish his training under the U-verse Account. Petitioner, too, failed to heed the RTWOs. Petitioner's defiance amounted to insubordination or willful disobedience.

In his Comment,[10] petitioner defended the labor arbiter's disposition. He added that Cabugao's affidavit was belatedly attached, intended as it was to justify Convergys' lopsided defense.

The NLRC's Ruling

Under Decision[11] dated January 25, 2019, the NLRC reversed for petitioner's failure to prove that he was in fact dismissed, *viz.*:

> **WHEREFORE,** premises considered, the appeal of respondents is **GRANTED.** The complaint for illegal dismissal and attorney's fees is hereby **DISMISSED** for lack of merit. Complainant Vincent Michael Banta Moll is ordered to **RETURN TO WORK** without backwages and respondent Convergys Philippines, Inc. is directed to **ACCEPT** complainant upon his return. Respondent Convergys Philippines, Inc. is further directed to submit a **REPORT OF COMPLIANCE** within ten (10) calendar days from receipt of the Decision.

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[8] *Id.* at 162-174.
[9] *Id.* at 176-177.
[10] *Id.* at 199-209.
[11] *Id.* at 98-116.

The award of complainant's unpaid salary/wages for March 2018 and pro-rated 13th month pay for 2018 are **AFFIRMED.**

SO ORDERED.

It gave credence to Convergys' claim that it transferred some of its excess agents from the DTV Account in Eton Centris Office to the U-verse Account in Glorietta Office in the exercise of its management prerogative, taking into account the proximity of the agents' respective residences to the Glorietta Office. There was no showing that petitioner's transfer was attended by malice or discrimination. Since petitioner neither abandoned his employment nor was illegally dismissed, it ordered his reinstatement without backwages and benefits.

Petitioner moved for reconsideration which was denied per Resolution[12] dated March 29, 2019.

The Proceedings before the Court of Appeals

On *certiorari,*[13] petitioner essentially reiterated his submissions before the lower tribunals. He insisted that his transfer to the Glorietta Office was bereft of basis as records do not bear evidence of actual transfer. Convergys should have issued a show cause order for insubordination if indeed petitioner refused to be reassigned. Meanwhile, the RTWOs were mere afterthought to cure the defect of non-compliance with due process.

In its Comment,[14] Convergys supported the NLRC's dispositions. There was no dismissal because petitioner's lateral transfer was done in the exercise of its management prerogative and did not involve demotion and diminution in pay. It clarified that an order of transfer, reassignment, and/or change of duties need not be in writing. Petitioner was not singled out as in fact, there were other five (5) employees transferred to the Glorietta Office. He initially expressed his willingness to transfer and even participated in the RJP.

It cannot be said that it unreasonably acted when it ordered the transfer simply because Glorietta 5 was not within the immediate vicinity of petitioner's residence. Its Eton Centris and Glorietta Offices were both located within Metro Manila, and Makati was not significantly far from petitioner's residence. If it were mandated to consider and follow each and every employee's locational preference and residence, then it would have to build sites at every corner of Metro Manila.

It reiterated its position that petitioner's defiance to the RTWOs amounted to insubordination or willful disobedience.

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[12] *Id.* at 118-125.
[13] *Id.* at 74-95.
[14] *Id.* at 244-269.

The Court of Appeals' Ruling

Through its assailed Decision[15] dated February 11, 2020, the Court of Appeals affirmed. It upheld the NLRC's finding that petitioner failed to clearly establish the fact of his dismissal. In the proceedings before the lower tribunals, petitioner even failed to attach a copy of his employment contract, job description, or Convergys' policy regarding the assignment or schedule of activity. Too, petitioner failed to prove he was refused entry to the HRD. That he was ordered to report during the proceedings at the SEnA all the more bolstered the fact that he was not dismissed.

Granting that petitioner was able to prove the fact of his dismissal, Convergys was able to discharge its burden of proof that petitioner was merely transferred for the purpose of supplying the much needed manpower for the U-verse Program at the Glorietta Office.

Petitioner's motion for reconsideration was denied per Resolution[16] dated September 24, 2020.

The Present Petition

Petitioner[17] now seeks affirmative relief from the Court. He faults the Court of Appeals for holding that he failed to prove the fact of his dismissal. **For one.** There was no actual transfer to the Glorietta Office. Aside from its bare allegations, Convergys did not adduce any evidence of actual transfer. There was no written document, notice, or memorandum effecting his transfer to another account and location. **For another**. There was no mention of the alleged transfer in the RTWOs, albeit petitioner surmises that the RTWOs were mere afterthought to make it appear that he was not illegally dismissed. Convergys even erroneously argued that his transfer need not be in writing.

In its Comment,[18] Convergys defends the dispositions of the Court of Appeals. It countered that petitioner was not able to provide clear, positive, and convincing evidence to support the alleged fact of his dismissal, much less, his alleged constructive dismissal. It maintains that petitioner was not dismissed but merely transferred.

Issue

Was petitioner illegally dismissed?

The Court's Ruling

The petition is meritorious.

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[15] *Id.* at 49-66.
[16] *Id.* at 67-73.
[17] *Id.* at 3-43.
[18] *Id.* at 349-371.

Preliminarily, the Court notes that the issue presented for resolution here is factual in nature. Generally, the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced before the lower tribunals. This rule, however, allows for exceptions, *e.g.*, when the concerned quasi-judicial agencies' findings of fact are conflicting or contradictory with those of the Court of Appeals. When there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again,[19] as here.

We now proceed to the merits.

Petitioner sufficiently established the fact of his dismissal.

In illegal termination cases, the employee must establish the fact of dismissal through the positive and overt acts of an employer before the burden is shifted to the latter to prove that the dismissal was legal.[20] If there is no dismissal, then there can be no question as to the legality or illegality thereof.[21]

Here, petitioner sufficiently established the fact of his dismissal.

According to petitioner, he peacefully reported for work for three (3) years until March 24, 2018 – when he was suddenly not given any work schedule anymore. The Court takes judicial notice of the call center agents' varying work hours, that they do not have fixed work schedules. In a specific work week, a call center agent could be working from sunrise to sunset, but on other days, he or she could be working what they call the *graveyard shift*.

This is not the first time the Court took judicial notice of the plight of a call center agent. In ***ICT Marketing Services, Inc. v. Sales***,[22] the Court sympathized:

> Respondent's work as a CSR – which is essentially that of a call center agent – is not easy. For one, she was made to work the graveyard shift – that is, from late at night or midnight until dawn or early morning. This certainly takes a toll on anyone's physical health. Indeed, call center agents are subjected to conditions that adversely affect their physical, mental and emotional health; exposed to extreme stress and pressure at work by having to address the customers' needs and insure their satisfaction, while simultaneously being conscious of the need to insure efficiency at work by improving productivity and a high level of service; subjected to excessive control and strict surveillance by management; exposed to verbal abuse from customers; suffer social alienation precisely because they work the graveyard shift – while family and friends are at rest, they are working, and when they are at rest, family and friends are up and about; and they work at a quick-paced environment and under difficult circumstances owing to progressive demands and ambitious quotas/targets set by management.

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[19] See *Minsola v. New City Builders, Inc.*, 824 Phil. 864, 874 (2018).
[20] See *Mehitabel, Inc. v. Alcuizar*, 822 Phil. 863, 873 (2017).
[21] *Symex Security Services, Inc. v. Rivera, Jr.*, 820 Phil. 653, 667 (2017).
[22] 769 Phil. 498, 518 (2015).

> To top it all, they are not exactly well-paid for the work they have to do and the conditions they have to endure.
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> x x x x

Here, petitioner attempted to raise the issue concerning the lack of assignment before the HRD but to no avail. As it was, he was denied entry to its office. Days, weeks, passed but petitioner was never given any new tour of duty. Under these circumstances, can we fault petitioner for assuming that he was summarily dismissed?

Surely, we cannot.

Valiant Machinery and Metal Corp. v. NLRC[23] is instructive. There, the Court categorically held that the employer therein was guilty of illegal dismissal for barring respondents from entering the company premises.

The Court reached the same conclusion in ***Casa Cebuana Incorporada v. Leuterio***[24] where the Court found petitioners guilty of illegal dismissal for lack of any showing that respondent voluntarily resigned from work coupled with petitioners' act of barring respondent from entering the company premises on April 3, 2003.

Meanwhile, in ***Ala Mode Garments, Inc. v. NLRC***,[25] petitioner was found guilty of constructive dismissal when it did not allow all its employees to return to work after a boycott. Private respondents were barred from entering the work premises while the other line leaders supposedly part of the boycott were allowed to return to work. The failure of petitioner to accept private respondents back after their absences, according to the Court, constituted constructive discharge or dismissal.

Lastly, the Court rejected petitioners' defense of abandonment on the part of the employees in ***Kingsize Manufacturing Corp. v. NLRC***.[26] There, we held that petitioners were guilty of illegal dismissal taking into consideration the following: (1) the unrebutted allegation that petitioners' representative, Edward Co, barred private respondents from entering the premises of the company when they reported for work; (2) the equally uncontested claim of private respondents that they were earning more from petitioners' factory; and (3) the fact that private respondents had already attained security of tenure in petitioners' company compared to their probationary status at the FGMC.

In light of the foregoing considerations, it was therefore error on the part of the NLRC and the Court of Appeals to have held that petitioner failed to prove the fact of his dismissal.

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[23] 322 Phil. 407 (1996).
[24] 614 Phil. 533, 543 (2009).
[25] 335 Phil. 971, 978 (1997).
[26] 308 Phil. 367, 375 (1994).

There was no actual transfer of petitioner to the Glorietta Office.

Convergys nevertheless insists that there was no dismissal to speak of, but a mere transfer of petitioner from its Eton Centris Office to its Glorietta Office. Petitioner even allegedly attended the first day of orientation but did not bother completing it. Subsequently, petitioner twice failed to return to work despite lawful order from the company. This repeated act of insubordination, nay, defiance is sufficient ground for petitioner's termination.

We are not convinced.

For one, Convergys failed to adduce any office document, be it in the form of a memorandum, notice, letter, email, or any form of communication pertaining to petitioner's supposed transfer to the Glorietta Office. Even the attendance sheet during the supposed orientation program for transferees was not attached to the records of this case. It also failed to prove the inclusion of petitioner's name in the payroll account of U-verse Program in Glorietta Office if indeed there was transfer as Convergys would have this Court believe.

In ***Symex Security Services, Inc. v. Rivera, Jr., (Symex)***,[27] the Court did not give credence to petitioners' claim that respondents were not illegally dismissed but only given new assignments which the latter allegedly refused. The Court noted that petitioners offered no evidence at all to prove these allegations. Though petitioners alleged that respondents remained in ***Symex's*** roll of security guards, petitioners failed to even present the same to prove this assertion.

Similarly, if petitioner in fact remained in Convergys' employ, it could have easily offered in evidence its roll of agents and the payroll account noting petitioner's continued absence from workstation. But just like in ***Symex***, they did not.

To reiterate, we have scoured the records of the case but did not find any evidence to prove actual transfer. What did the supposed transfer entail? Would petitioner be receiving the same salary? Retain the same position? If there truly was a transfer, petitioner was left groping in the dark as to what awaits him at the Glorietta Office.

The best Convergys could offer was Cabugao's affidavit, stating that petitioner was transferred to the Glorietta Office allegedly because the U-verse Program there lacked manpower. Even then, said affidavit was sorely lacking in detail. It did not specify the actual number of employees under the DTV Account at Eton Centris Office compared to the demand under the said account. There was also no mention of how many employees an account needs

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[27] 820 Phil. 653, 668-669 (2017).

to meet the client's demand for service, or how many employees were there in excess of what was demanded. All it contained were general statements which, if taken on their face, would be too convenient a prelude for getting rid of employees whom Convergys may deem undesirable.

At any rate, Cabugao is not competent to testify as to the state of affairs at the Glorietta Office as he was assigned at the Eton Centris Office only. It should be the operations manager at the Glorietta Office who should have testified as to their supposed lack of manpower. An operations manager in one branch could not very well testify as to the actual needs and operations in an area not under his jurisdiction.

For another, Convergys' belated issuance of RTWOs actually bolsters petitioner's allegation of illegal dismissal. To be clear, the RTWOs were issued on May 30, 2018 and June 4, 2018 only, more than two (2) months from petitioner's last day of reporting on March 24, 2018, and during the pendency of the present case. Curiously, it never bothered looking for petitioner in the interim. Had it really considered petitioner's continued absence as insubordination or defiance, then it should have initiated disciplinary proceedings against him sooner. As it was, however, its months of inaction lends credence to petitioner's claim that said RTWOs were mere afterthought to negate the fact of petitioner's dismissal.

In sum, we do not believe that petitioner acted in defiance of a legitimate business order for there was no transfer order to accept, refuse, or defy in the first place. Petitioner simply woke up one day wondering if he was still affiliated with Convergys. Convergys, who did not look for petitioner's whereabouts for two (2) months cannot claim insubordination on the part of the latter who, based on the surrounding circumstances, honestly believed he was already summarily dismissed.

Considering that petitioner sufficiently established the fact of his dismissal, the burden shifted to Convergys to prove that such dismissal was for just or authorized cause. As it was, however, Convergys never offered any justification therefor. The Court, therefore, finds Convergys guilty of illegal dismissal for summarily dismissing petitioner, *sans* just or authorized cause, and for lack of due process.

Monetary Awards

The consequences of a finding of illegal dismissal are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. 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.[28]

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[28] See *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 101 (2013).

Petitioner, therefore, is entitled to backwages from March 25, 2018 until finality of this Decision and separation pay of one (1) month salary for every year of service as he opted for the award thereof in *lieu* of reinstatement. Separation pay may avail in *lieu* of reinstatement if reinstatement is no longer practical or in the best interest of the parties, as in this case where there are already apparent strained relations between them. Separation pay in *lieu* of reinstatement may likewise be awarded if the employee decides not to be reinstated.[29]

Meanwhile, the labor arbiter properly awarded petitioner his unpaid salary for March 2018 for lack of proof of payment thereof and correctly denied his claim for non-payment of allowances for want of basis. Petitioner's entitlement for 13th month pay, too, was properly limited to the year 2018.

The Court deems it proper to award ten percent (10%) attorney's fees because petitioner was forced to litigate to protect his right and interest.[30] The monetary awards shall earn six percent (6%) legal interest *per annum* from date of finality of this Decision until full payment.[31]

Lastly, we find that Convergys shall be solely liable to the above monetary awards. A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, as a general rule, an officer may not be held liable for the corporation's labor obligations unless he or she acted with evident malice and/or bad faith in dismissing an employee.[32]

Labor Arbiter Makasiar properly exonerated respondents Ayers, Valentine, Pontius, Twomey, Gonzales, Sangcal, and Cabugao from all liabilities for lack of showing that they acted with malice or bad faith nor assented to petitioner's illegal dismissal. In fact, as early as the proceedings before the NLRC, they should have already been dropped as respondents in this case as petitioner did not assail their exoneration from liability by the labor arbiter. As to them, the labor arbiter's decision had already lapsed into finality.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated February 11, 2020 and Resolution dated September 24, 2020 of the Court of Appeals in CA-G.R. SP No. 161534 are **REVERSED** and **SET ASIDE**. Respondent Convergys Philippines, Inc. is hereby **ORDERED** to **PAY** petitioner Vincent Michael Banta Moll the following:

1) **BACKWAGES** reckoned from March 25, 2018 until finality of this Decision;

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[29] See *Golden Ace Builders v. Talde,* 634 Phil. 364, 370 (2010).
[30] See *Gopio v. Bautista,* G.R. No. 205953, June 6, 2018, 864 SCRA 463.
[31] See *Nacar v. Gallery Frames,* 716 Phil. 267, 283 (2013).
[32] See *Symex Security Services, Inc. v. Rivera, Jr.,* 820 Phil. 653, 675 (2017).

2) **SEPARATION PAY** of one (1) month salary for every year of service;

3) **PRO-RATED 13th MONTH PAY** for the year 2018;

4) **UNPAID SALARY** for March 2018; and

5) **ATTORNEY'S FEES** of ten percent (10%) of the total monetary award.

These monetary awards shall earn six percent (6%) interest *per annum* from finality of this Decision until fully paid.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusion 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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

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.

ALEXANDER G. GESMUNDO
Chief Justice