Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

KRISTINE ANGEL CABILIN HUI, *Petitioner,*	**G.R. No. 247207**
	Present:
- *versus* -	PERLAS-BERNABE, *S.A.J., Chairperson,* HERNANDO, INTING, GAERLAN, and DIMAAMPAO, *JJ.*
CGI UK. LTD., INC., SERGE GODIN, ANDRE IMBEAU, MICHAEL E. ROACH, COLIN HOLGATE, MARK ASTON, JILL DE JESUS, ALVIN ESGUERRA, and LESTER OPLE, *Respondents.*	Promulgated: OCT 06 2021

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DECISION

INTING, *J.*:

Before the Court is a Petition for *Certiorari*[1] assailing the Decision[2] dated January 22, 2019 and the Resolution[3] dated May 6, 2019 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 156831 which affirmed the Decision[4] dated March 21, 2016 and the Resolution[5] dated June 29, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000892-16/NLRC NCR Case No. 07-

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[1] Filed under Rule 45 of the Rules of Court, *rollo*, pp. 9-38.

[2] *Id.* at 40-53; penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court) with Associate Justices Romeo F. Barza and Franchito N. Diamante, concurring.

[3] *Id.* at 54-56.

[4] *Id.* at 88-98; penned by Commissioner Cecilio Alejandro C. Villanueva with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring.

[5] *Id.* at 100-101.

08429-15. The NLRC affirmed the Decision[6] dated December 29, 2015 of the Labor Arbiter (LA) and found Kristine Angel Cabilin Hui (petitioner) to have been validly dismissed by CGI UK. LTD., Inc. (CGI) on the ground of redundancy.[7]

The Antecedents

The case stemmed from a Complaint[8] for illegal/constructive dismissal with prayer for payment of salary, damages, and attorney's fees filed by petitioner against CGI and its officers, Serge Godin, Andre Imbeau, Michael E. Roach, Colin Holgate, Mark Aston, Jill De Jesus, Alvin Esguerra (Esguerra), and Lester Ople.[9]

Petitioner alleged that she was hired by CGI in 2007 as Staff Supply-Test Analyst and later on promoted as Lead Software QA Engineer/Business Analyst. Since 2009, she attended seminars, trainings, and accomplished several projects in Scotland, London, and Belgium. She invested 10% of her salary in CGI's provident fund and 3% thereof in the company shares.[10]

In May 2014, petitioner became the Lead Tester and worked with Esguerra for an Australian project. However, she was surprised and insulted when Mr. Esguerra suddenly placed her under a three-month Performance Improvement Plan[11] where she could be terminated if she failed to improve.[12]

In January 2015, petitioner learned that she was removed from the Australian project. She was placed on bench, or among the employees without a project, under a new Staff Manager, Joe Ledesma (Ledesma).

In petitioner's Performance Review for 2014, Ledesma gave her a good evaluation due to the excellent feedback, particularly the "*exceed expectations*" comment of the Australian client of CGI.[13] However,

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6 *Id.* at 385-393; penned by Labor Arbiter Rommel R. Veluz.
7 *Id.* at 392.
8 *Id.* at 129-130, 131-132.
9 *Id.* at 41-42.
10 *Id.* at 41.
11 *Id.* at 155-156.
12 *Id.* at 41.
13 *Id.*

notwithstanding the good assessment, CGI terminated her on April 6, 2015 on the ground of redundancy using as criteria her alleged inefficiency.[14]

Petitioner asserted that CGI failed to establish that there was redundancy in her employment. She contended that: (1) she was the only Software Test Analyst terminated for redundancy; (2) there were job openings at CGI; (3) she should have been given an option to work in a different department instead of being terminated for redundancy; (4) CGI did not use fair and reasonable criteria in selecting employees to be terminated; (5) she was the most valuable software test analyst in CGI based on her skills and qualifications; and (6) she was the most senior and finest software test analyst in CGI.[15]

On the other hand, CGI averred that it is part of a global group of companies providing high-end business and IT consulting systems, integration services, application development, and management to various clients in different industries.[16]

According to CGI, it hired petitioner as a Software Test Analyst, and like other testers, she only rendered work when her skills were required by the projects given by clients of CGI. Because the demand for Software Test Analyst was not consistent, those without projects were placed on bench instead of being terminated. While on bench, an employee was not required to render any work and therefore generates no income for CGI. Nevertheless, they receive full compensation, albeit being on bench. Employees placed on bench may either be assigned to a new project or placed on a redundancy list and be terminated.[17]

CGI clarified that petitioner was first placed on bench in 2012 for a period of 153 days. Later on, she was assigned to Electrabel project which lasted for a year and was again placed on bench in 2014 for 111 days.[18]

While petitioner was on bench for the second time, the New South Wales Electoral Commission (NSWEC) of Australia engaged the

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[14] See Notice of Redundancy dated April 6, 2015, *id.* at 167-168.
[15] *Id.* at 42.
[16] *Id.*
[17] *Id.*
[18] *Id.*

services of CGI Australia to enhance the software application of NSWEC in preparation for the 2015 State Government Election. For this, CGI Australia sought the collaboration of CGI. Consequently, petitioner, along with other Software Test Analysts, was taken from the bench to work on separate module. Petitioner was assigned to work on the "PRRC LC" Module.[19]

However, on December 26, 2014, petitioner was delisted from the roll of employees called back to the NSWEC project. She was again placed on bench starting December 27, 2014.[20]

CGI further averred that petitioner was not replaced by another Software Test Analyst in the NSWEC project; instead, the number of assigned employees in the project was reduced upon the request of the client. As there was no assignment available for her, petitioner was included in the redundancy program for the following reasons: (1) she was the only tester on bench when the program was submitted to the Department of Labor and Employment (DOLE); (2) she was the only tester who underwent Performance Improvement Plan because of her inefficiency; and (3) she was particular in accepting assignments.[21]

On April 6, 2015, CGI served upon petitioner Notice of Redundancy and was paid her separation pay and the proceeds of her provident fund.[22]

Ruling of the LA

In the Decision[23] dated December 29, 2015, the LA ruled in favor of CGI finding petitioner to have been validly dismissed on the ground of redundancy.

The LA held that CGI complied with the notice requirement rule and had paid petitioner's separation pay. It ratiocinated that there was no legal basis to question the decision of CGI to declare petitioner's position as redundant because: (1) petitioner was the only software test analyst on

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[19] *Id.* at 42-43.
[20] *Id.* at 43.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 385-393.

bench when the redundancy list was submitted to DOLE; (2) petitioner was the only Software Test Analyst who underwent Performance Improvement Plan; and (3) petitioner was so particular in accepting assignments.[24]

Anent petitioner's monetary claims, the LA dismissed them for not being included as a cause of action in her complaint.[25]

Aggrieved, petitioner appealed to the NLRC pointing out that her position as a Software Test Analyst was not redundant because there were several job vacancies at the time of her termination; and that she even continued to receive electronic mails (e-mail) from the Career Posting Alert of CGI after applying on the job vacancies.[26]

Ruling of the NLRC

In the Decision[27] dated March 21, 2016, the NLRC agreed with the LA and affirmed the validity of petitioner's dismissal on the ground of redundancy explaining as follows:

> From the records, it can also be culled that complainant was not the only one affected by the redundancy program implemented by respondent company as the list submitted to the DOLE contained 27 names of employees. Also, it was established by respondents-appellees that for the last 2 ½ years with the respondent company, complainant was on "bench" for an accumulated period of 374 days, receiving her remuneration for the said period even without any work assignment. This was not denied by the complainant. As quoted earlier in the preceeding page, "*The characterization of an employee's services as superfluous or no longer necessary and, therefore, properly terminable is an exercise of business judgment on the part of the employer.*"[28]

Petitioner moved for reconsideration,[29] but the NLRC denied it in the Resolution[30] dated June 29, 2016.

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[24] *Id.* at 391.
[25] *Id.* at 392.
[26] *Id.* at 47.
[27] *Id.* at 88-98.
[28] *Id.* at 96-97.
[29] See Motion for Reconsideration dated April 1, 2016, *id.* at 102-111.
[30] *Id.* at 100-101.

Petitioner filed a Petition for *Certiorari*[31] with the CA reiterating that she was the only Software Test Analyst who was terminated for redundancy and that there were still many testers working in CGI.

Ruling of the CA

In the Decision[32] dated January 22, 2019, the CA dismissed the Petition for *Certiorari* for lack of merit and upheld the NLRC. It ruled that the NLRC did not gravely abuse its discretion in affirming the ruling of the LA that petitioner was validly dismissed for redundancy, explaining as follows:

> In this case, redundancy was established by the undisputed fact that petitioner received her remuneration while placed on bench and without rendering work for substantially a long period of time.
>
> Petitioner does not deny that she was placed on bench three (3) times, 153 days in 2012, 111 days in 2014 and 110 days in 2015 prior to her termination. In total, petitioner had been on bench for about 374 days in her last two and a half years of employment in private respondent company.
>
> Surely, private respondent company would have not placed on bench any of its employees, petitioner included if there were available work assignments. To stress, placing an employee on bench entails costs on private respondent company as it has to pay the employee even if the latter does not render any work.[33]

Petitioner filed a Motion for Reconsideration,[34] but the CA denied it in the Resolution[35] dated May 6, 2019.

Hence, the instant petition.

Petitioner imputes error on the part of the CA in upholding the findings of the LA and the NLRC that she was validly terminated for redundancy arguing that her dismissal was unnecessary and was carried

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[31] *Id.* at 57-86.
[32] *Id.* at 40-53.
[33] *Id.* at 51.
[34] *Id.* at 473-493.
[35] *Id.* at 54-56.

out in bad faith to defeat her security of tenure.[36]

Ruling of the Court

The Court rules for petitioner.

It is settled that only questions of law may be raised on appeal under Rule 45 of the Rules of Court for the reason that the Court is not a trier of facts.[37] Nevertheless, the Court may review the facts where the findings of the NLRC and the CA are capricious and arbitrary, and the CA's findings that are premised on a supposed absence of evidence are in fact contradicted by the evidence on record, as obtaining in the present case.[38]

Assuming that petitioner was validly placed on bench in 2012 and 2014, there is no evidence that her placement on bench in 2015, which led to her termination, was due to redundancy.

"Redundancy is an authorized cause for termination of employment under Article 298 (formerly Article 283) of the Labor Code. It exists when 'the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise.'"[39] It can be due to "a number of factors, such as the overhiring of workers, a decrease in the volume of business, or the dropping of a particular line or service previously manufactured or undertaken by the enterprise."[40] Whether the employees' services are no longer necessary, and properly terminable for redundancy, is an exercise of business judgment. In making the decision, the management must not violate the law nor declare redundancy without sufficient basis.[41]

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[36] *Id.* at 17-18.
[37] *Aboitiz Power Renewables, Inc. v. Aboitiz Power Renewables, Inc.*, G.R. No. 237036, July 8, 2020.
[38] *Id.*, citing *Soriano, Jr. v. NLRC*, 550 Phil. 111, 125 (2007).
[39] *Id.*
[40] *Id.*
[41] *Id.*

"To ensure that the dismissal is not implemented arbitrarily, jurisprudence requires the employer to prove, among others, its good faith in abolishing the redundant positions as well as the existence of fair and reasonable criteria in the selection of employees who will be dismissed from employment due to redundancy. Such fair and reasonable criteria may include, but are not limited to: (a) less preferred status, *i.e.*, temporary employee; (b) efficiency; and (c) seniority."[42]

In terminating employees due to redundancy, it is not enough for the employer to merely declare that a position had become redundant. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.[43] Thus, it is incumbent upon CGI to provide the labor tribunals and the Court with evidence to justify the necessity of reducing the number of its software test analysts such as new staffing pattern, feasibility studies or proposals, viability of newly created positions, job descriptions, approved management restructuring, audited financial documents like balance sheets, annual income tax returns, and others.

In the Position Paper for the Respondents,[44] CGI admitted that it included petitioner in the 2015 redundancy program as she was the only software test analyst on bench at that time. CGI placed petitioner on bench due to her alleged inefficiency on account of her purported tardiness and being selective in accepting projects.[45] However, CGI did not adduce any evidence to first show that there was duplication in the services of petitioner or that her services were in excess of what was reasonably required by the project. Neither did CGI submit the affidavit of any of its officers explaining the reasons and necessities for the implementation of the redundancy program. CGI unceremoniously placed petitioner in the list of redundant employees without first demonstrating the superfluity of her position. To the Court, CGI should have initially established the existence of redundancy before determining an employee redundant on the criteria of inefficiency. There being no proof of redundancy to justify the reduction of software test analysts in CGI, there is no basis to declare petitioner a redundant employee on the criteria of her alleged inefficiency.

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[42] *Id.*, citing *Coca-cola Femsa Philippines v. Macapagal*, G.R. No. 232669, July 29, 2019. Italics in the original omitted.

[43] See *American Power Conversion Corporation, et al. v. Lim*, 823 Phil. 635, 657 (2018).

[44] *Rollo*, pp. 269-277.

[45] *Id.* at 273-274.

But even assuming that there was a necessity to reduce the services of software test analysts due to redundancy, CGI did not employ fair and reasonable criteria in selecting employees as redundant employees.

Apart from the foregoing, petitioner was the most tenured software test analyst in CGI and there was no evidence to support CGI's claim that she was inefficient as to warrant her inclusion in the redundancy list. Definitely, the Court demands unquestionable proof from employers to establish their basis in terminating employees for their employment is the very source of their livelihood, which the Court must safeguard against fabricated causes to validate illegal dismissal cases.

Set against the bare allegation of CGI that petitioner was inefficient and selective in accepting projects, petitioner adduced evidence to prove otherwise.

On February 25, 2015, the System Architect of NSWEC PRCC Project, the Australian Client of CGI, sent an e-mail[46] to CGI Staff Manager Ledesma and petitioner giving the latter excellent feedback on her work, stating as follows:

> From: Bai Li
> Sent Wednesday, February 25, 2015
> To: Hui, Kristine Angel
> Cc: Ledesma, Joe
> Subject: RE: Collaboration
>
> Hi Kristine,
>
> I am more than happy to provide feedback to your work in 2014.
>
> I worked with Kristine on NSWEC PRCC project in the second half of 2014.
>
> During the project, Kristine
>
> 1. Documented system test spec and test cases for the PRCC functionalities;
> 2. provided valuable input and feedback for the functional specification, software development and testing;

[46] *Id.* at 164.

3. helped team members to identify issues and problems;
4. communicated clearly and professionally with Australian team members and escalated issues that could potentially have impact the schedule;
5. **came to work early and often stayed late to get assigned task complete with high quality;**
6. **adopted ethical behavior at work.**

In my view, Kristine has exceeded expectations with regards to deliver high quality testing. We are happy with Kristine's work and consider her as a valuable resource for future projects.[47] (Emphasis supplied.)

Contrary to CGI's unsubstantiated allegation that petitioner was placed on the redundancy list because of her inefficiency, the Australian client of CGI itself attested that petitioner always came to work early, completed her tasks with high quality, and adopted an ethical behavior at work. Petitioner was even considered as a valuable software test analyst for future projects. Indubitably, CGI's allegation that petitioner was included in the redundancy list due to her inefficiency has no leg to stand on.

That there is no redundancy in the services of Software Test Analyst is also shown by the fact that before and after the termination of petitioner, there were several job vacancy notices for Software Test Analyst published at *Njoyn.com*, the Career Posting Alert of CGI. Among the job vacancies were as follows: (1) Test Manager Energy & Utilities; (2) Space Test Analyst – European Space Projects; (3) Intermediate Quality Assurance Testers; (4) Performance Tester; and (5) Intermediate Automation QA Tester.[48] Petitioner even continued to receive "Job Application Acknowledgment" e-mails from *Njoyn.com* on behalf of CGI after applying to said vacant positions, for instance:

From: helpdesk@njoyn.com [mailto:helpdesk@njoyn.com] On Behalf Of CGI
Sent: Tuesday, March 03, 2015 9:03 AM
To: Hui, Kristine Angel
Subject: Job Application Acknowledgment - Test Manager Energy & Utilities, J0215-1351

Dear Kristine Angel Cabilin Hui

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[47] *Id.*

[48] See electronic mails dated May 21, 2015 and May 29, 2015 sent by CGI Recruiting Services to Kristine Angela Hui, *id.* at 324-325 and 326.

> **Thank you for your interest in a career with CGI.** We are pleased to confirm the receipt of your resume in response to the job opportunity J0215-1351 – Test Manager Energy & Utilities.
>
> x x x x x x x x x
>
> Sincerely,
>
> **CGI Careers Centre**[49] (Emphasis supplied)

From the foregoing, the Court disagrees with the CA in holding that "x x x *there is scant evidence to prove that [CGI] has made any posting opportunities in Njoyn.*"[50] It is beyond dispute that *Njoyn.com* published notices of job vacancies on behalf of CGI and sent the "Job Application Acknowledgment" e-mails to petitioner. These acts of CGI in posting job vacancies and accepting software test analyst applicants are totally inconsistent with the existence of redundancy, thus, debunking CGI's contention that petitioner's services were redundant. Absent any basis to declare petitioner's services as such, her termination from employment is illegal.

Petitioner is entitled to monetary awards.

The right of employees to security of tenure, as enshrined under Section 3,[51] Article XIII of the Constitution, is further guarded by Article 294 (formerly Article 279) of the Labor Code, which states:

> Art. 294 [279]. *Security of tenure.* — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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

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[49] *Id.* at 176.

[50] *Id.* at 52.

[51] Section 3, Article XIII of the Constitution provides:

> Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure**, humane conditions of work, and a living wage. x x x (Emphasis supplied.)

> benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

From the foregoing, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.[52]

Nevertheless, separation pay may be awarded to an illegally dismissed employee in lieu of reinstatement. Over time, the following reasons have been advanced by the Court for allowing this alternative remedy: that reinstatement can no longer be effected in view of the long passage of time or because of the realities of the situation; or that it would be inimical to the employer's interest; or that reinstatement may no longer be feasible; or, that it will not serve the best interests of the parties involved; or that the company would be prejudiced by the workers' continued employment; or that it will not serve any prudent purpose as when supervening facts have transpired which make execution on that score unjust or inequitable or, to an increasing extent, due to the resultant atmosphere of antipathy and antagonism or strained relations or irretrievable estrangement between the employer and the employee.[53]

In the case, the Court deems it best to award petitioner separation pay in lieu of reinstatement because of the passage of time from her termination in 2015. The length of time that the case has dragged on definitely resulted in a strain in the relationship between CGI and petitioner.[54] Besides, the atmosphere of antipathy and antagonism between the parties is shown by the fact that CGI baselessly charged petitioner with inefficiency and unjustifiably placed her on bench resulting in her illegal termination. Indubitably, reinstatement will not serve the best interests of the parties, especially of petitioner whose credibility and competence were baselessly attacked by CGI.

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[52] *Abbott Laboratories (Phils.), Inc., et al. v. Torralba, et al.*, 820 Phil. 196, 216-217 (2017), citing *Session Delights Ice Cream and Fast Foods v. Hon. CA (6th Div.), et al.*, 625 Phil. 612, 630 (2010).

[53] *Id.* at 217.

[54] See *Symex Security Services, Inc., et al. v. Rivera, et al.*, 820 Phil. 653, 672 (2017)

"[W]hen there is an order of separation pay, in lieu of reinstatement, the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other."[55] Thus, petitioner is entitled to separation pay as well as to full backwages computed from the time CGI withheld her compensation until the finality of the decision.

"In addition, moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor or is done in a manner contrary to good morals, good customs, or public policy. Exemplary damages, on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner."[56] Here, CGI unceremoniously declared petitioner's services as redundant without even establishing the existence of redundancy or her alleged inefficiency. While declaring a position as redundant is a management prerogative, CGI, unfortunately, exercised its prerogative in a repressive and despotic manner; thus, petitioner is entitled to moral and exemplary damages in the amount of ₱100,000.00 each.

Moreover, for having been compelled to litigate, petitioner is entitled to reasonable attorney's fees at the rate of 10% of the total monetary award pursuant to Article 2208[57] of the Civil Code of the Philippines. The Court hereby imposes legal interest on the monetary awards at the rate of 6% *per annum* reckoned from the finality of this Decision until its full payment.

However, following the principle against unjust enrichment which is held applicable in labor cases, petitioner should return the separation pay she received from CGI as part of the redundancy program by deducting the amount from her present monetary awards.

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[55] *Petron Corp. v. Javier*, G.R. No. 229777 (Notice), July 6, 2020, citing *Consolidated Distillers of the Far East, Inc. v. Zaragoza*, 833 Phil. 888, 895 (2018) further citing *Bani Rural Bank, Inc., et al. v. De Guzman, et al.* 721 Phil. 84, 103 (2013).

[56] *Bayview Management Consultants, Inc. v. Pre*, G.R. No. 220170, August 19, 2020, citing *Symex Security Services, Inc., et al. v. Rivera, et al., supra* note 54 at 673-674 (2017).

[57] Article 2208 of the Civil Code provides:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> x x x x
>
> (2) When the defendants's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

WHEREFORE, the petition is **GRANTED**. The Decision dated January 22, 2019 and the Resolution dated May 6, 2019 of the Court of Appeals in CA-G.R. SP No. 156831 are **REVERSED** and **SET ASIDE**. Respondent CGI UK. LTD., Inc. is ordered to pay petitioner Kristine Angel Cabilin Hui the following:

1. full backwages and other benefits, both based on the last monthly salary of petitioner Kristine Angel Cabilin Hui, computed from the date her employment was illegally terminated until the finality of this Decision;

2. separation pay based on the last monthly salary of petitioner Kristine Angel Cabilin Hui, computed from the date she commenced employment until the finality of this Decision at the rate of one month's salary for every year of service, with a fraction of a year of at least six months being counted as one whole year;

3. moral damages and exemplary damages in the amount of ₱100,000.00 each; and

4. attorney's fees equivalent to 10% of the total award.

The total judgment award shall be subject to interest at the rate of 6% *per annum* from the finality of this Decision until its full satisfaction.

This case is **REMANDED** to the Labor Arbiter for the computation of the amounts due to petitioner Kristine Angel Cabilin Hui, deducting therefrom the amount of separation pay she received as part of the redundancy program.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

I attest 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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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