

IN RE: LETTERS OF ATTY. ESTELITO P. MENDOZA RE: G.R. NO. 178083 – FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP) V. PHILIPPINE AIRLINES, INC. (PAL), ET AL.

A.M. No. 11-10-1-SC. March 13, 2012

Ponente: BRION, J.

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BRION, J.:

Before the Court is the administrative matter that originated from the letters dated September 13, 16, 20, and 22, 2011 of Atty. Estelito P. Mendoza regarding G.R. No. 178083 – Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc., et al.

For a full background of the matter, the antecedent developments are outlined below.

1. The July 22, 2008 Decision

On July 22, 2008, the Court's Third Division ruled to grant^[1] the petition for review on certiorari filed by the Flight Attendants and Stewards Association of the Philippines (FASAP), finding Philippine Airlines, Inc. (PAL) guilty of illegal dismissal. The July 22, 2008 Decision was penned by Justice Consuelo Ynares-Santiago who was joined by the other four Members of the Third Division. The Third Division was then composed of:

1. Justice Ynares-Santiago,
2. Justice Alicia Austria-Martinez,
3. Justice Minita Chico-Nazario,
4. Justice Antonio Eduardo Nachura, and
5. Justice Teresita Leonardo-De Castro (replacing Justice Ruben Reyes who inhibited himself from the case).

Justice Leonardo-De Castro was included to replace Justice Ruben Reyes who had inhibited himself from the case because he concurred in the Court of Appeals (CA) decision assailed by FASAP before the Court.^[2] Then Associate Justice Renato Corona was originally designated to replace Justice Ruben Reyes, but he likewise inhibited himself from participation on June July 14, 2008 due to his previous efforts in settling the controversy when he was still in Malacañan. Under Administrative Circular (AC) No. 84-2007, one additional Member needed be drawn from the rest of the Court to replace the inhibiting Member.^[3] In this manner, Justice Leonardo-De Castro came to participate in the July 22, 2008 Decision.

PAL subsequently filed its motion for reconsideration (MR) of the July 22, 2008 Decision. The motion was handled by the Special Third Division composed of:

- Justice Ynares-Santiago,
- Justice Chico-Nazario,
- Justice Nachura,

- Justice Diosdado Peralta (replacing Justice Austria-Martinez who retired on April 30, 2009), and
- Justice Lucas Bersamin (replacing Justice Leonardo-De Castro who inhibited at the MR stage for personal reasons on July 28, 2009).

2. The October 2, 2009 Resolution

Justice Ynares-Santiago, as the ponente of the July 22, 2008 Decision, continued to act as the ponente of the case.[4]

The Special Third Division[5] denied the MR with finality on October 2, 2009.[6] The Court further declared that “[n]o further pleadings will be entertained.”[7] The other Members of the Special Third Division unanimously concurred with the denial of the motion.

To fully explain the movements in the membership of the division, the Special Third Division missed Justice Austria-Martinez (who was among those who signed the July 22, 2008 Decision) due to her intervening retirement on April 30, 2009. Justice Leonardo-De Castro also did not participate in resolving the 1st MR, despite having voted on the July 22, 2008 Decision, because of her own subsequent inhibition on July 28, 2009.[8]

3. PAL’s 2[nd] MR

On November 3, 2009, PAL asked for leave of court to file (a) an MR of the October 2, 2009 Resolution, and (b) a 2[nd] MR of the July 22, 2008 Decision. Both rulings were anchored on the validity of PAL’s retrenchment program.

In view of the retirement of the ponente, Justice Ynares-Santiago (who retired on October 5, 2009), the Court’s Raffle Committee[9] had to resolve the question of who would be the new ponente of the case.

Under A.M. No. 99-8-09-SC (Rules on Who Shall Resolve Motions for Reconsideration in Cases Assigned to the Divisions of the Court, effective April 1, 2000), if the ponente has retired, he/she shall be replaced by another Justice who shall be chosen by raffle from among the remaining Members of the Division:

2. If the ponente is no longer a member of the Court or is disqualified or has inhibited himself from acting on the motion, he shall be replaced by another Justice who shall be chosen by raffle from among the remaining members of the Division who participated and concurred in the rendition of the decision or resolution and who concurred therein. If only one member of the Court who participated and concurred in the rendition of the decision or resolution remains, he shall be designated as the ponente.

However, on November 11, 2009, the case was raffled, not to a Member of the Third Division that issued the July 22, 2008 Decision or to a Member of the Special Third Division that rendered the October 2, 2009 Resolution, but to Justice Presbitero Velasco, Jr. who was then a Member of the newly-constituted regular Third Division.[10]

In raffling the case to Justice Velasco, the Raffle Committee considered the above-quoted rule inapplicable because of the express excepting qualification provided under A.M. No. 99-8-09-SC that states:

[t]hese rules shall not apply to motions for reconsideration of decisions or resolutions already denied with finality. [underscoring ours]

Stated otherwise, when the original ponente of a case retires, motions filed after the case has been denied with finality may be resolved by any Member of the Court to whom the case shall be raffled, not necessarily by a Member of the same Division that decided or resolved the case. Presumably, the logic behind the rule is that no further change can be made involving the merits of the case, as judgment has reached finality and is thus irreversible, based on the Rules of Court provision that “[n]o second MR of a judgment or final resolution by the

same party shall be entertained.”[11] (The October 2, 2009 Resolution denying PAL’s 1[st] MR further stated that “[n]o further pleadings will be entertained.”) Thus, the resolution of post-decisional matters in a case already declared final may be resolved by other Members of the Court to whom the case may be raffled after the retirement of the original ponente.

Given the denial of PAL’s 1[st] MR and the declaration of finality of the Court’s July 22, 2008 Decision through the October 2, 2009 Resolution, the Raffle Committee found it unnecessary to create a special Third Division. Thus, it found nothing irregular in raffling the case to Justice Velasco (who did not take part in the deliberation of the Decision and the Resolution) of the reorganized Third Division for handling by a new regular division.

4. The acceptance of PAL’s 2[nd] MR

On January 20, 2010 (or while A.M. No. 99-8-09-SC was still in effect), the new regular Third Division, through Justice Velasco, granted PAL’s Motion for Leave to File and Admit Motion for Reconsideration of the Resolution dated 2 October 2009 and 2nd Motion for Reconsideration of Decision dated 22 July 2008. The Court’s Third Division further required the respective parties to comment on PAL’s motion and FASAP’s Urgent Appeal dated November 23, 2009. This grant, which opened both the Decision and the Resolution penned by Justice Ynares-Santiago for review, effectively opened the whole case for review on the merits.

The following were the Members of the Third Division that issued the January 20, 2010 Resolution:

- Justice Antonio Carpio (vice Justice Corona who inhibited himself as of July 14, 2008),
- Justice Velasco (ponente),
- Justice Nachura,
- Justice Peralta, and
- Justice Bersamin.

Significantly, at the time leave of court was granted (which was effectively an acceptance for review of PAL’s 2[nd] MR), the prohibition against entertaining a 2[nd] MR under Section 2, Rule 52[12] (in relation with Section 4, Rule 56[13]) of the Rules of Court applied. This prohibition, however, had been subject to various existing Court decisions that entertained 2[nd] MRs in the higher interest of justice.[14] This liberalized policy was not formalized by the Court until the effectivity of the Internal Rules of the Supreme Court (IRSC) on May 4, 2010.[15]

With the acceptance of PAL’s 2[nd] MR, the question that could have arisen (but was not asked then) was whether the general rule under A.M. No. 99-8-09-SC (which was then still in effect) should have applied so that the case should have been transferred to the remaining Members of the Division that ruled on the merits of the case. In other words, with the re-opening of the case for review on the merits, the application of the excepting qualification under A.M. No. 99-8-09-SC that the Raffle Committee cited lost its efficacy, as the rulings of the Court were no longer final for having been opened for further review.

A necessary implication is that either the Clerk of Court or the Raffle Committee should have advised Justice Velasco that his Division should refer the case back to raffle for referral of the case to the original Justices who participated in the assailed Decision and Resolution under the terms of the general rule under A.M. No. 99-8-09-SC; the Justices who participated in the assailed Decision and Resolution were the best ones to consider the motion and to review their own rulings. This was the first major error that transpired in the case and one that the Clerk of Court failed to see.

Parenthetically, when PAL's 2nd MR was filed and when it was subsequently accepted, Justices Nachura, Peralta, and Bersamin were the only remaining Members of the Special Third Division that rendered the October 2, 2009 Resolution. Of these three Justices, only Justice Nachura was a Member of the original Third Division that issued the main decision on July 22, 2008. The case should have gone to Justice Nachura or, at the very least, to the two other remaining Justices. The re-raffle of the FASAP case to Justice Nachura (or to Justices Peralta and Bersamin) would have been consistent with the constitutional rule that "[c]ases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon[.]"[16]

5. The Reorganization of the Court

In May 2010, three developments critical to the FASAP case transpired.

The first was the approval of the IRSC by the Court on May 4, 2010. The IRSC codified the procedural rules of the Court, heretofore existing under various separate and scattered resolutions. Its relevant terms took the place of A.M. No. 99-8-09-SC.

The second was the retirement of then Chief Justice Reynato Puno and the appointment as Chief Justice of then Associate Justice Corona.

The third was the reorganization of the divisions of the Court under Special Order No. 838 dated May 17, 2010. Justice Velasco was transferred from the Third Division to the First Division. Pursuant to the new IRSC, Justice Velasco brought with him the FASAP case so that the case went from the Third Division to the First Division:

RULE 2. THE OPERATING STRUCTURES

Section 9. Effect of reorganization of Divisions on assigned cases. – In the reorganization of the membership of Divisions, cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle.

Another significant development in the case came on January 17, 2011 (or under the new regime of the IRSC) when Justice Velasco, after acting on the FASAP case for almost one whole year, inhibited himself from participation "due to a close relationship to a party," despite his previous action on the case. The pertinent provisions of the IRSC on the matter of inhibition state:

RULE 2.

THE OPERATING STRUCTURES

Section 7. Resolutions of motions for reconsideration or clarification of decisions or signed resolutions and all other motions and incidents subsequently filed; creation of a Special Division. – Motions for reconsideration or clarification of a decision or of a signed resolution and all other motions and incidents subsequently filed in the case shall be acted upon by the ponente and the other Members of the Division who participated in the rendition of the decision or signed resolution.

If the ponente has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a new ponente who shall be chosen [from] among the new Members of the Division who participated in the rendition of the decision or signed resolution remains, he or she shall be designated as the new ponente.

If a Member (not the ponente) of the Division which rendered the decision or signed resolution has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a replacement Member who

shall be chosen from the other Divisions until a new Justice is appointed as replacement for the retired Justice. Upon the appointment of a new Justice, he or she shall replace the designated Justice as replacement Member of the Special Division.

Any vacancy or vacancies in the Special Division shall be filled by raffle from among the other Members of the Court to constitute a Special Division of five (5) Members.

If the ponente and all the Members of the Division that rendered the Decision or signed Resolution are no longer members of the Court, the case shall be raffled to any Member of the Court and the motion shall be acted upon by him or her with the participation of the other Members of the Division to which he or she belongs.

If there are pleadings, motions or incidents subsequent to the denial of the motion for reconsideration [or] clarification, the case shall be acted upon by the ponente on record with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court.

x x x

RULE 8.

INHIBITION AND SUBSTITUTION OF MEMBERS OF THE COURT

SEC. 3. Effects of Inhibition. – The consequences of an inhibition of a Member of the Court shall be governed by these rules:

(a) Whenever a Member-in-Charge of a case in a Division inhibits himself for a just and valid reason, the case shall be returned to the Raffle Committee for re-raffling among the Members of the other two Divisions of the Court. (IRSC, as amended by A.M. No. 10-4-20-SC dated August 3, 2010) [All emphasis supplied.]

The case was then referred to the Raffle Committee pursuant to Administrative Circular (AC) No. 84-2007, as stated in the Division Raffle Sheet. The pertinent provision of AC No. 84-2007 states:

2. Whenever the ponente, in the exercise of sound discretion, inhibits herself or himself from the case for just and valid reasons other than those mentioned in paragraph 1, a to f above, the case shall be returned to the Raffle Committee for re-raffling among the other Members of the same Division with one additional Member from the other two Divisions. [underscoring and italics ours]

Reference to AC No. 84-2007, however, was erroneous. For one, the IRSC was already in effect when Justice Velasco inhibited himself from participation, and the IRSC had already superseded AC No. 84-2007. The prevailing IRSC, though, has an almost similar rule, with the difference that the IRSC speaks of the inhibition of a Member-in-Charge or of a Member of the Division other than the Member-in-Charge in its rule on inhibition, and did not use the ponente as its reference point. This seemingly trivial point carries a lot of significance, particularly in the context of the FASAP case.

Under the rule on inhibition found in Section 3, Rule 8 of the governing IRSC (as Justice Ma. Lourdes Sereno found in her dissenting opinion), the inhibition called for the raffle to a Member of the two other divisions of the Court. Thus, Justice Sereno found the subsequent January 26, 2011 raffle of the case to Justice Brion to be legally correct. As discussed by the Division that issued the September 7, 2011 Resolution (the ruling Division), however, the application of the IRSC is not as simple as Justice Sereno views it to be. This matter is discussed at length below.

On June 21, 2011 (after the retirement of Justice Nachura on June 13, 2011), Chief Justice Corona issued Special Order No. 1025, again reorganizing the divisions of the Court. Justice Brion was transferred from the Third

Division to the Second Division. Accordingly, the Third Division – composed of Justice Velasco, Justice Peralta, Justice Bersamin, Justice Jose Mendoza, and Justice Sereno (who was included as additional Member) – referred the FASAP case to the Second Division where Justice Brion belonged, pursuant to Section 9, Rule 2 of the IRSC.[17]

Justice Carpio (the Chair of the Second Division), after voting for the January 20, 2010 Resolution granting leave to PAL to file its 2nd MR, inhibited himself from the case on August 15, 2011. As stated in the Division Raffle Sheet of August 15, 2011, Justice Carpio “recused himself from the case per advice of the office of the Member-in-Charge.” Justice Peralta became the replacement for Justice Carpio, pursuant to Rule 8, Section 3 of the IRSC.

6. The September 7, 2011 Resolution and Atty. Estelito Mendoza’s letters

On September 7, 2011, the Court – through its Second Division as then constituted – resolved to deny with finality PAL’s 2nd MR through an unsigned resolution. The Second Division, as then constituted, was composed of:

- Justice Brion (as Member-in-Charge and as Acting Chair, being the most senior Member),
- Justice Peralta (replacing Justice Carpio who inhibited),
- Justice Jose Perez,
- Justice Bersamin (replacing Justice Sereno who was on leave[18]), and
- Justice Mendoza (replacing Justice Bienvenido Reyes who was on leave[19]).

On September 13, 2011, the counsel for PAL, Atty. Mendoza, sent the first of a series of letters[20] addressed to the Clerk of Court of the Supreme Court. This letter noted that, of the Members of the Court who acted on the MR dated August 20, 2008 and who issued the Resolution of October 2, 2009, Justices Ynares-Santiago (ponente), Chico-Nazario, and Nachura had already retired from the Court, and the Third Division had issued a Resolution on the case dated January 20, 2010, acted upon by Justices Carpio, Velasco, Nachura, Peralta, and Bersamin. The letter then asked whether the Court had acted on the 2[nd] MR and, if so, which division – whether regular or special – acted and who were the chairperson and members. It asked, too, for the identity of the current ponente or justice-in-charge, and when and for what reason he or she was designated as ponente. It further asked for a copy of the Resolution rendered on the 2[nd] MR, if an action had already been taken thereon.

On September 16, 2011, Atty. Mendoza sent his second letter, again addressed to the Clerk of Court requesting that “copies of any Special Orders or similar issuances transferring the case to another division, and/or designating Members of the division which resolved” its 2[nd] MR, in case a resolution had already been rendered by the Court and in the event that “such resolution was issued by a different division.”

The Court received Atty. Mendoza’s third letter, again addressed to the Clerk of Court, on September 20, 2011.[21] Atty. Mendoza stated that he received a copy of the September 7, 2011 Resolution issued by the Second Division, notwithstanding that all prior Court Resolutions he received regarding the case had been issued by the Third Division.[22] He reiterated his request in his two earlier letters to the Court, asking for the date and time when the Resolution was deliberated upon and a vote taken thereon, as well as the names of the Members of the Court who had participated in the deliberation and voted on the September 7, 2011 Resolution.

Atty. Mendoza sent his fourth and last letter dated September 22, 2011, also addressed to the Clerk of Court, suggesting that “if some facts subject of my inquiries are not evident from the records of the case or are not within

your knowledge, that you refer the inquiries to the Members of the Court who appear to have participated in the issuance of the Resolution of September 7, 2011, namely: Hon. Arturo D. Brion, Hon. Jose P. Perez, Hon. Diosdado M. Peralta, Hon. Lucas P. Bersamin, and Hon. Jose C. Mendoza.”

On September 26, 2011, the Clerk of Court issued the Vidal-Anama[23] Memorandum to the Members of the Second Division in relation to the inquiries contained in the first and second letters of Atty. Mendoza dated September 13 and 20, 2011. Justice Brion also furnished the Members of the ruling Division a copy of the Vidal-Anama Memorandum.

The Vidal-Anama Memorandum explained the events that transpired and the actions taken, which resulted in the transfer of the case from its original ponente, Justice Ynares-Santiago, to Justice Velasco, and eventually to Justice Brion. Attached to the Memorandum were the legal and documentary bases for all the actions of the various raffle committees.[24] These included the decisions of the two raffle committees on the transfer of the ponencia from Justice Ynares-Santiago to Justice Velasco and finally to Justice Brion as a regular Second Division case.

On September 28, 2011, the Letters dated September 13 and 20, 2011 of Atty. Mendoza to Atty. Vidal (asking that his inquiry be referred to the relevant Division Members who took part on the September 7, 2011 Resolution) were “NOTED” by the regular Second Division. The Members of the ruling Division also met to consider the queries posed by Atty. Mendoza. Justice Brion met with the Members of the ruling Division (composed of Justices Brion, Peralta, Perez, Bersamin, and Mendoza), rather than with the regular Second Division (composed of Justices Carpio, Brion, Perez, and Sereno[25]), as the former were the active participants in the September 7, 2011 Resolution.

In these meetings, some of the Members of the ruling Division saw the problems pointed out above, some of which indicated that the ruling Division might have had no authority to rule on the case. Specifically, their discussions centered on the application of A.M. No. 99-8-09-SC for the incidents that transpired prior to the effectivity of the IRSC, and on the conflicting rules under the IRSC – Section 3, Rule 8 on the effects of inhibition and Section 7, Rule 2 on the resolution of MRs.

A.M. No. 99-8-09-SC indicated the general rule that the re-raffle shall be made among the other Members of the same Division who participated in rendering the decision or resolution and who concurred therein, which should now apply because the ruling on the case is no longer final after the case had been opened for review on the merits. In other words, after acceptance by the Third Division, through Justice Velasco, of the 2nd MR, there should have been a referral to raffle because the excepting qualification that the Clerk of Court cited no longer applied; what was being reviewed were the merits of the case and the review should be by the same Justices who had originally issued the original Decision and the subsequent Resolution, or by whoever of these Justices are still left in the Court, pursuant to the same A.M. No. 99-8-09-SC.

On the other hand, the raffle to Justice Brion was made by applying AC No. 84-2007 that had been superseded by Section 3, Rule 8 of the IRSC. Even the use of this IRSC provision, however, would not solve the problem, as its use still raised the question of the provision that should really apply in the resolution of the MR: should it be Section 3, Rule 8 on the inhibition of a Member-in-Charge, or Section 7, Rule 2 of the IRSC on the inhibition of the ponente when an MR of a decision and a signed resolution was filed. These two provisions are placed side-by-side in the table below for easier and clearer comparison, with emphasis on the more important words:

RULE 2

THE OPERATING STRUCTURES

RULE 8

INHIBITION AND SUBSTITUTION OF MEMBERS OF THE COURT

SEC. 7. Resolutions of motions for reconsideration or clarification of decisions or signed resolutions and all other motions and incidents subsequently filed; creation of a Special Division. - Motions for reconsideration or clarification of a decision or of a signed resolution and all other motions and incidents subsequently filed in the case shall be acted upon by the ponente and the other Members of the Division who participated in the rendition of the decision or signed resolution.

If the ponente has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a new ponente who shall be chosen among the new Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein. If only one Member of the Court who participated and concurred in the rendition of the decision or signed resolution remains, he or she shall be designated as the new ponente.

SEC. 3. Effects of inhibition. - The consequences of an inhibition of a Member of the Court shall be governed by these rules:

(a) Whenever a Member-in-Charge of a case in a Division inhibits himself for a just and valid reason, the case shall be returned to the Raffle Committee for re-raffling among the Members of the other two (2) Divisions of the Court.

x x x

A comparison of these two provisions shows the semantic sources of the seeming conflict: Section 7, Rule 2 refers to a situation where the ponente has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself from acting on the case; while Section 3, Rule 8 generally refers to the inhibition of a Member-in-Charge who does not need to be the writer of the decision or resolution under review.

Significantly, Section 7, Rule 2 expressly uses the word ponente (not Member-in-Charge) and refers to a specific situation where the ponente (or the writer of the Decision or the Resolution) is no longer with the Court or is otherwise unavailable to review the decision or resolution he or she wrote. Section 3, Rule 8, on the other hand, expressly uses the term Member-in-Charge and generally refers to his or her inhibition, without reference to the stage of the proceeding when the inhibition is made.

Under Section 7, Rule 2, the case should have been re-raffled and assigned to anyone of Justices Nachura (who did not retire until June 13, 2011), Peralta, or Bersamin, either (1) after the acceptance of the 2nd MR (because the original rulings were no longer final); or (2) after Justice Velasco's inhibition because the same condition existed, i.e., the need for a review by the same Justices who rendered the decision or resolution. As previously mentioned, Justice Nachura participated in both the original Decision and the subsequent Resolution, and all three Justices were the remaining Members who voted on the October 2, 2009 Resolution. On the other hand, if Section 3, Rule 8 were to be solely applied after Justice Velasco's inhibition, the Clerk of Court would be correct in her assessment and the raffle to Justice Brion, as a Member outside of Justice Velasco's Division, was correct.

These were the legal considerations that largely confronted the ruling Division in late September 2011 when it deliberated on what to do with Atty. Mendoza's letters.

The propriety of and grounds for the recall
of the September 7, 2011 Resolution

Most unfortunately, the above unresolved questions were even further compounded in the course of the deliberations of the Members of the ruling Division when they were informed that the parties received the ruling on September 19, 2011, and this ruling would lapse to finality after the 15th day, or after October 4, 2011.

Thus, on September 30, 2011 (a Friday), the Members went to Chief Justice Corona and recommended, as a prudent move, that the September 7, 2011 Resolution be recalled at the very latest on October 4, 2011, and that the case be referred to the Court en banc for a ruling on the questions Atty. Mendoza asked. The consequence, of course, of a failure to recall their ruling was for that Resolution to lapse to finality. After finality, any recall for lack of jurisdiction of the ruling Division might not be understood by the parties and could lead to a charge of flip-flopping against the Court. The basis for the referral is Section 3(n), Rule 2 of the IRSC, which provides:

RULE 2.
OPERATING STRUCTURES

Section 3. Court en banc matters and cases. – The Court en banc shall act on the following matters and cases:

x x x x

(n) cases that the Court en banc deems of sufficient importance to merit its attention[.]

Ruling positively, the Court en banc duly issued its disputed October 4, 2011 Resolution recalling the September 7, 2011 Resolution and ordering the re-raffle of the case to a new Member-in-Charge. Later in the day, the Court received PAL's Motion to Vacate (the September 7, 2011 ruling) dated October 3, 2011. This was followed by FASAP's MR dated October 17, 2011 addressing the Court Resolution of October 4, 2011. The FASAP MR mainly invoked the violation of its right to due process as the recall arose from the Court's ex parte consideration of mere letters from one of the counsels of the parties.

As the narration in this Resolution shows, the Court acted on its own pursuant to its power to recall its own orders and resolutions before their finality. The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. To point out the obvious, the recall was not a ruling on the merits and did not constitute the reversal of the substantive issues already decided upon by the Court in the FASAP case in its previously issued Decision (of July 22, 2008) and Resolution (of October 2, 2009). In short, the October 4, 2011 Resolution was not meant and was never intended to favor either party, but to simply remove any doubt about the validity of the ruling Division's action on the case. The case, in the ruling Division's view, could be brought to the Court en banc since it is one of "sufficient importance"; at the very least, it involves the interpretation of conflicting provisions of the IRSC with potential jurisdictional implications.

At the time the Members of the ruling Division went to the Chief Justice to recommend a recall, there was no clear indication of how they would definitively settle the unresolved legal questions among themselves. The only matter legally certain was the looming finality of the September 7, 2011 Resolution if it would not be immediately recalled by the Court en banc by October 4, 2011. No unanimity among the Members of the ruling Division could be gathered on the unresolved legal questions; thus, they concluded that the matter is best determined by the Court en banc as it potentially involved questions of jurisdiction and interpretation of conflicting provisions of the IRSC. To the extent of the recommended recall, the ruling Division was unanimous and the Members communicated this intent to the Chief Justice in clear and unequivocal terms.

Given this background, the Clerk of Court cannot and should not be faulted for her recommended position, as indeed there was a ruling in the 1st MR that declared the original ruling on the case final. Perhaps, she did not fully realize that the ruling on the 1st MR varied the terms of the original Decision of July 22, 2008; she could

not have considered, too, that a subsequent 2nd MR would be accepted for the Court's further consideration of the case on the merits.

Upon acceptance of the 2nd MR by the Third Division through Justice Velasco, the Clerk of Court and the Raffle Committee, however, should have realized that Justice Velasco was not the proper Member-in-Charge of the case and another raffle should have been held to assign the case to a Justice who participated in the original Decision of July 22, 2008 or in the Resolution of October 2, 2009. This realization, unfortunately, did not dawn on the Clerk of Court.

For practically the same reasons, the Third (or Velasco) Division, with Justice Velasco as Member-in-Charge, cannot and should not be faulted for accepting the 2nd MR; the variance introduced by the ruling on the 1st MR and the higher interest of justice (in light alone of the gigantic amount involved) appeared to justify further consideration of the case. Recall that at that time, the IRSC was not yet in existence and a specific rule under the IRSC on the handling of 2nd MRs was yet to be formulated, separately from the existing jurisprudential rulings. Justice Velasco, though, could not have held on to the case after its merits were opened for new consideration, as he was not the writer of the assailed Decision and Resolution, nor was he a Member of the Division that acted on the case. Under A.M. No. 99-8-09-SC, the rightful ponente should be a remaining Member of the Division that rendered the decision or resolution.

With Justice Velasco's subsequent inhibition, a legal reason that the involved officials and Justices should have again recognized is the rationale of the rule on replacements when an inhibition or retirement intervenes. Since the inhibiting Justice was only the Member-in-Charge and was technically merely a nominal ponente^[26] in so far as the case is concerned (because he was not the writer of the Decision and Resolution under consideration), the raffle should have been confined among the Members who actually participated in ruling on the merits of the original Decision or of the subsequent Resolution. At that point, only Justices Peralta and Bersamin were left because all the other Members of the original ruling groups had retired. Since under the IRSC^[27] and Section 4(3), Article VIII of the Constitution, the case should have been decided by the Members who actually took part in the deliberations, the ruling on the merits made by the ruling Division on September 7, 2011 was effectively void and should appropriately be recalled.

To summarize all the developments that brought about the present dispute – expressed in a format that can more readily be appreciated in terms of the Court en banc's ruling to recall the September 7, 2011 ruling – the FASAP case, as it developed, was attended by special and unusual circumstances that saw:

(a)

the confluence of the successive retirement of three Justices (in a Division of five Justices) who actually participated in the assailed Decision and Resolution;

(b)

the change in the governing rules – from the A.M.s to the IRSC regime – which transpired during the pendency of the case;

(c)

the occurrence of a series of inhibitions in the course of the case (Justices Ruben Reyes, Leonardo-De Castro, Corona, Velasco, and Carpio), and the absences of Justices Sereno and Reyes at the critical time, requiring their replacement; notably, Justices Corona, Carpio, Velasco and Leonardo-De Castro are the four most senior Members of the Court;

(d)

the three re-organizations of the divisions, which all took place during the pendency of the case, necessitating the transfer of the case from the Third Division, to the First, then to the Second Division;

(e)

the unusual timing of Atty. Mendoza's letters, made after the ruling Division had issued its Resolution of September 7, 2011, but before the parties received their copies of the said Resolution; and

(f)

finally, the time constraint that intervened, brought about by the parties' receipt on September 19, 2011 of the Special Division's Resolution of September 7, 2011, and the consequent running of the period for finality computed from this latter date; and the Resolution would have lapsed to finality after October 4, 2011, had it not been recalled by that date.

All these developments, in no small measure, contributed in their own peculiar way to the confusing situations that attended the September 7, 2011 Resolution, resulting in the recall of this Resolution by the Court en banc.

On deeper consideration, the majority now firmly holds the view that Section 7, Rule 2 of the IRSC should have prevailed in considering the raffle and assignment of cases after the 2nd MR was accepted, as advocated by some Members within the ruling Division, as against the general rule on inhibition under Section 3, Rule 8. The underlying constitutional reason, of course, is the requirement of Section 4(3), Article VIII of the Constitution already referred to above.[28]

The general rule on statutory interpretation is that apparently conflicting provisions should be reconciled and harmonized,[29] as a statute must be so construed as to harmonize and give effect to all its provisions whenever possible.[30] Only after the failure at this attempt at reconciliation should one provision be considered the applicable provision as against the other.[31]

Applying these rules by reconciling the two provisions under consideration, Section 3, Rule 8 of the IRSC should be read as the general rule applicable to the inhibition of a Member-in-Charge. This general rule should, however, yield where the inhibition occurs at the late stage of the case when a decision or signed resolution is assailed through an MR. At that point, when the situation calls for the review of the merits of the decision or the signed resolution made by a ponente (or writer of the assailed ruling), Section 3, Rule 8 no longer applies and must yield to Section 7, Rule 2 of the IRSC which contemplates a situation when the ponente is no longer available, and calls for the referral of the case for raffle among the remaining Members of the Division who acted on the decision or on the signed resolution. This latter provision should rightly apply as it gives those who intimately know the facts and merits of the case, through their previous participation and deliberations, the chance to take a look at the decision or resolution produced with their participation.

To reiterate, Section 3, Rule 8 of the IRSC is the general rule on inhibition, but it must yield to the more specific Section 7, Rule 2 of the IRSC where the obtaining situation is for the review on the merits of an already issued decision or resolution and the ponente or writer is no longer available to act on the matter. On this basis, the ponente, on the merits of the case on review, should be chosen from the remaining participating Justices, namely, Justices Peralta and Bersamin.

A final point that needs to be fully clarified at this juncture, in light of the allegations of the Dissent is the role of the Chief Justice in the recall of the September 7, 2011 Resolution. As can be seen from the above narration, the Chief Justice acted only on the recommendation of the ruling Division, since he had inhibited himself from

participation in the case long before. The confusion on this matter could have been brought about by the Chief Justice's role as the Presiding Officer of the Court en banc (particularly in its meeting of October 4, 2011), and the fact that the four most senior Justices of the Court (namely, Justices Corona, Carpio, Velasco and Leonardo-De Castro) inhibited from participating in the case. In the absence of any clear personal malicious participation, it is neither correct nor proper to hold the Chief Justice personally accountable for the collegial ruling of the Court en banc.

Another disturbing allegation in the Dissent is the implication of the alleged silence of, or lack of objection from, the Members of the ruling Division during the October 4, 2011 deliberations, citing for this purpose the internal en banc deliberations. The lack of a very active role in the arguments can only be attributable to the Members of the ruling Division's unanimous agreement to recall their ruling immediately; to their desire to have the intricate issues ventilated before the Court en banc; to the looming finality of their Division's ruling if this ruling would not be recalled; and to their firm resolve to avoid any occasion for future flip-flopping by the Court. To be sure, it was not due to any conspiracy to reverse their ruling to affirm the previous Court rulings already made in favor of FASAP; the Division's response was simply dictated by the legal uncertainties that existed and the deep division among them on the proper reaction to Atty. Mendoza's letters.

Of the above-cited reasons, a major influencing factor, of course, was the time constraint – the Members of the ruling Division met with the Chief Justice on September 30, 2011, the Friday before October 4, 2011 (the date of the closest Court en banc meeting, as well as the deadline for the finality of the September 7, 2011 Resolution). They impressed upon the Chief Justice the urgent need to recall their September 7, 2011 Resolution under the risk of being accused of a flip-flop if the Court en banc would later decide to override its ruling.

As a final word, if no detailed reference to internal Court deliberations is made in this Resolution, the omission is intentional in view of the prohibition against the public disclosure of the internal proceedings of the Court during its deliberations. The present administrative matter, despite its pendency, is being ventilated in the impeachment of Chief Justice Corona before the Senate acting as an Impeachment Court, and any disclosure in this Resolution could mean the disclosure of the Court's internal deliberations to outside parties, contrary to the clear terms of the Court en banc Resolution of February 14, 2012 on the attendance of witnesses from this Court and the production of Court records.

CONCLUSION

In sum, the recall of the September 7, 2011 Resolution of the ruling Division was a proper and legal move to make under the applicable laws and rules, and the indisputably unusual developments and circumstances of the case.

Between Section 3, Article 8 and Section 7, Rule 2, both of the IRSC, the former is the general provision on a Member-in-Charge's inhibition, but it should yield to the more specific Section 7, Rule 2 in a situation where the review of an issued decision or signed resolution is called for and the ponente or writer of these rulings is no longer available to act. Section 7, Rule 2 exactly contemplates this situation.

WHEREFORE, premises considered, we hereby confirm that the Court en banc has assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled. This case should now be raffled either to Justice Lucas P. Bersamin or Justice Diosdado M. Peralta (the remaining Members of the Special Third Division that originally ruled on the merits of the case) as Member-in-Charge in resolving the merits of these motions.

The Philippine Airlines, Inc.'s Motion to Vacate dated October 3, 2011, but received by this Court after a recall had been made, has thereby been rendered moot and academic.

The Flight Attendants and Stewards Association of the Philippines' Motion for Reconsideration of October 17, 2011 is hereby denied; the recall of the September 7, 2011 Resolution was made by the Court on its own before the ruling's finality pursuant to the Court's power of control over its orders and resolutions. Thus, no due process issue ever arose.

SO ORDERED.

Peralta, Bersamin, Abad, Perez, Mendoza, and Reyes, JJ., concur.

Corona, C.J., no part.

Carpio, J., no part, prior inhibition in Lucio Tan related cases.

Velasco, Jr., J., no part due to relationship to a party.

Leonardo-De Castro, J., no part. due to prior inhibition in G.R. No. 178083.

Del Castillo, J., no part.

Villarama, Jr., J., no part due to prior action of wife in the raffle.

Sereno, J., see dissenting opinion.

Perlas-Bernabe, J., I join the dissent of J. Sereno.

[1] The dispositive portion of the July 22, 2008 Decision reads:

WHEREFORE, the instant petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE and a new one is rendered:

- FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;
- ORDERING Philippine Air Lines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;
- ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

Costs against respondent PAL.

[2] Justice Ruben Reyes inhibited from the case as of July 14, 2008, per Division Raffle Sheet of the same date.

[3] AC No. 84-2007 states:

- A Member of a Division, who is not the ponente in the Division, shall recuse herself or himself from a case if she or he participated in the decision of the case in the lower court. The case shall be decided by the four remaining Members and one additional Member from the other two Divisions chosen by raffle.

[4] Paragraph 1 of Administrative Matter No. 99-8-09-SC states:

RULES ON WHO SHALL RESOLVE MOTIONS FOR RECONSIDERATION IN CASES ASSIGNED TO THE DIVISIONS OF THE COURT.

The following supplemental rules on who shall take part in resolving motions for reconsideration of decisions or signed resolutions promulgated by Divisions are hereby adopted:

- Motions for reconsideration of a decision or of a signed resolution shall be acted upon by the ponente and the other members of the Division, whether special or regular, who participated in the rendition of the decision or signed resolution sought to be reconsidered, irrespective of whether or not such members are already in other divisions at the time the motion for reconsideration is filed or acted upon; for this purpose, they shall be deemed constituted as a special division of the division to which the ponente belonged at the time of promulgation of the decision or the signed resolution. [Emphasis ours.]

[5] Now a “special” division because of the permanent change of membership due to the intervening retirement of Justice Austria-Martinez and the inhibition of Justice Leonardo-De Castro.

[6] The dispositive portion of the October 2, 2009 Resolution states:

WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby DENIED with FINALITY. The assailed Decision dated July 22, 2008 is AFFIRMED with MODIFICATION in that the award of attorney's fees and expenses of litigation is reduced to P2,000,000.00. The case is hereby REMANDED to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

No further pleadings will be entertained.

SO ORDERED. [Id. at 506-507.]

[7] Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., G.R. No. 178083, October 2, 2009, 602 SCRA 473, 507.

[8] Per Division Raffle Sheet of July 28, 2009.

[9] The Raffle Committee was then composed of Justice Corona, Justice Chico-Nazario, and Justice Velasco.

[10] The Third Division had a new membership because of the re-organization of the divisions that came after the retirement of Justice Ynares-Santiago. Thus, the old Third Division under Justice Ynares-Santiago had a different membership from the new Third Division, of which Justice Velasco was a Member.

The other new Third Division Members included Justices Corona, Chico-Nazario, Nachura and Peralta. Justice Corona, however, had already inhibited himself from the case on July 14, 2008 due to his previous efforts in settling the case when he was still in Malacañan and was thus replaced by Justice Carpio. (Division Raffle Sheet of November 11, 2009)

[11] Rule 52, Section 2.

[12] Section 2. Second motion for reconsideration.—No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[13] Section 4. Procedure.—The appeal shall be governed by and disposed of in accordance with the applicable provisions of the Constitution, laws, Rules 45, 48, Sections 1, 2, and 5 to 11 of Rule 51, 52 and this Rule.

[14] See Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.), G.R. No. 169712, January 20, 2009, 576

SCRA 625, 628, citing *Ortigas and Co. Ltd. Partnership v. Judge Velasco*, 324 Phil. 483, 489 (1996).

[15] Rule 15, Section 3. Second motion for reconsideration. – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration “in the higher interest of justice” when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court’s declaration.

In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court En Banc.

[16] CONSTITUTION, Article VIII, Section 4(3).

[17] Section 9. Effect of reorganization of Divisions on assigned cases. – In the reorganization of the membership of Divisions, cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle.

[18] Special Order No. 1074-A dated September 6, 2011.

[19] Special Order No. 1066 dated August 23, 2011.

[20] The four letters were dated September 13, 16, 20, and 22, 2011.

[21] Atty. Mendoza’s Letter dated September 20, 2011; rollo, vol. 2, pp. 3577-3578.

[22] Per record, the parties both received the September 7, 2011 Resolution on September 19, 2011. This started the running of the period for the finality of the Resolution, which would have ended on October 4, 2011.

[23] Referring to Atty. Enriqueta Esguerra Vidal (Clerk of Court, En Banc) and Atty. Felipa Anama (Deputy Clerk of Court, En Banc).

[24] Included in the Vidal-Anama Memorandum were the following: Raffle Report dated June 20, 2007, Raffle Report dated July 14, 2008, Raffle Report dated July 28, 2008, Raffle Report dated September 28, 2009, Raffle Report dated November 11, 2009, Raffle Report dated January 26, 2011, Raffle Report dated August 15, 2011, Resolution dated February 15, 2009 in A.M. No. 99-8-09-SC, Special Order No. 838, Special Order No. 1025, Special Order No. 1066 and Special Order No. 1074-A.

[25] Per Special Order No. 1025 dated June 21, 2011.

[26] Used merely as a convenient term for want of a better description.

[27] Specifically, Rule 2, Section 7, quoted above.

[28] *Supra*, at page 9.

[29] See *Planters Association of Southern Negros Inc. v. Hon. Ponferrada*, 375 Phil. 901 (1999).

[30] See *National Tobacco Administration v. COA*, 370 Phil. 793 (1999).

[31] See *Dreamwork Construction, Inc. v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466.

DISSENTING OPINION

SERENO, J.:

The majority Resolution has opened a Pandora's box full of future troubles for Philippine judicial decision-making. First, it opened for review a Decision[1] on the merits that had been unanimously agreed upon and affirmed by at least ten (10) justices sitting in three differently constituted Divisions of this Court for a staggering third time. Second, it has made a possible, and we emphasize, only a "possible" error in the raffling of the case to a wrong ponente a jurisdictional defect as to render invalid that ponente's decision and the concurrence thereto by four colleagues. Third, this extreme "flipping" was prompted not even by a formal motion for reconsideration by the losing party, but by four (4) letters from its counsel addressed not to the Court, but only to the Clerk of Court. Fourth, the circumstances under which this flipping was made are so curiously strange where the five (5) justices who voted to deny the second motion for reconsideration (2nd MR),[2] according to the ponente who penned the Resolution of denial,[3] themselves initiated moves to prevent their promulgated decision from ever becoming final. Fifth, for the first time in Philippine law, a ponente is being called only a "nominal" one,[4] i.e., a ponente with authority to admit a 2nd MR but who upon successfully recommending the same to his Division, immediately loses authority over that case by virtue of such favorable recommendation, to a "ruling" ponente,[5] who will then have the authority to write the decision on the merits.

Immediate Antecedents of the
04 October 2011 En Banc Session

On 04 October 2011, the Court En Banc, in its 10 a.m. session, considered item no. 147 entitled "Re: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083 – Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc. (PAL), Patria Chiong, et al." The agenda item consisted of two sub-items: (a) the 1st Indorsement dated 03 October 2011 of Atty. Enriqueta E. Vidal, Clerk of Court En Banc, referring to the En Banc four letters of Atty. Estelito P. Mendoza (the "Mendoza letters") dated September 13, 16, 20 and 22, 2011 – all addressed to her – regarding G. R. No. 178083 (the "Mendoza letters") for the inclusion thereof in the Court En Banc's Agenda; and as items (b) to (e) of the Agenda the aforesaid Mendoza letters, which were briefly described in chronological order.

The Mendoza letters are all in connection with G. R. No. 178083 (the main FASAP case),[6] a case now lodged with the Second Division of this Court. On 07 September 2011, the Second Division issued an unsigned extended Resolution (07 September 2011 Resolution) on the said case denying the Second Motion for Reconsideration (2[nd] MR) of Philippine Airlines, Inc. (PAL), the respondent therein.

The first two letters of Atty. Mendoza, counsel of PAL, inquired about any Court action on the 2nd MR; which Division of the Court (whether regular or special) had been acting on the case; who was the Justice in charge; and the reason for such Division and ponencia assignments; also requested were copies of the documents regarding those assignments. The first letter of Atty. Mendoza recalled for the Clerk of Court the participants in the original Decision on the case, as well as in the denial of the First Motion for Reconsideration (1[st] MR) of PAL. The letter further proffered the observation that the last communication received from the Court was the Third Division's admission of its 2[nd]MR.

The third letter of Atty. Mendoza acknowledged receipt by PAL of the Second Division's 07 September 2011 Resolution,[7] which reads as follows:

We resolve the second motion for reconsideration (2[nd] MR) filed by respondent Philippine Airlines (PAL) of

the Court's July 22, 2008 Decision.

PAL submits in its 2nd MR that the October 2, 2009 Resolution of the Court did not rule on the issues it raised in its first motion for reconsideration, in the oral arguments and in the memorandum. According to PAL, the resolution "left unresolved the issues raised in PAL's xxx Motion for Reconsideration of the Decision dated July 22, 2008." Since the Court did not rule on all the issues, according to PAL, the present motion must be considered as the FIRST motion for reconsideration of the Resolution of October 2, 2009.

PAL's arguments fail to convince us of their merits.

We remind PAL that the Court is only bound to discuss those issues that are relevant and are necessary to the full disposition of the case, it is not "incumbent upon the court" to discuss each and every issue in the pleadings and memoranda of the parties.

PAL likewise incorrectly asserts that the resolution "did not rule on the issues raised and argued by the respondents," and that Mme. Justice Consuelo Ynares-Santiago "modified" the Court's July 22, 2008 Decision.

First, the issues raised by PAL in its 2nd MR have already been discussed and settled by the Court in its July 22, 2008 Decision. The Flight Attendants and Stewards Association of the Phils. (FASAP) is correct in its position that the resolution "sustained the challenged decision dated 22 July 2008." To reiterate, the Court is not required to re-state its factual and legal findings in its Resolution. The Court's supposed silence cannot be construed as a repudiation of the original decision; it only implies that the Court sustained the decision in its entirety.

Second, although the subsequent Resolution did not discuss all the issues raised by the petitioner, it does not mean that the Court did not take these issues into consideration.

Finally, the Resolution did not "modify" the July 22, 2008 Decision of the Court. The Resolution clearly upheld its original ruling and unequivocally stated so when we said:

Therefore, this Court finds no reason to disturb its finding that the retrenchment of the flight attendants was illegally executed. As held in the Decision sought to be reconsidered, PAL failed to observe the procedure and requirements for a valid retrenchment. Assuming that PAL was indeed suffering financial losses, the requisite proof therefor was not presented before the NLRC which was the proper forum. More importantly, the manner of the retrenchment was not in accordance with the procedure required by law. Hence, the retrenchment of the flight attendants amounted to illegal dismissal.

Significantly, PAL appeared to have deliberately omitted the above highlighted portions of the Court's Resolution in its 2nd MR. The omission appears to us to be deliberate as we not only referred to our original finding that PAL failed to observe the proper procedures and requirements of a valid retrenchment; we also reaffirmed these findings. Thus, PAL appears to be less than honest in its claim.

To conclude, the rights and privileges that PAL unlawfully withheld from its employees have been in dispute for a decade and a half. Many of these employees have since then moved on, but the arbitrariness and illegality of PAL's actions have yet to be rectified. This case has dragged on for so long and we are now more than duty-bound to finally put an end to the illegality that took place; otherwise, the illegally retrenched employees can rightfully claim that the Court has denied them justice.

WHEREFORE, the Court resolves to deny with finality respondent PAL's second motion for reconsideration. No further pleadings shall be entertained. Costs against the respondents. Let entry of judgment be made in due course.

SO ORDERED. (Emphasis supplied; footnotes omitted).

The En Banc Resolution of 04 October 2011

The Mendoza letters, as earlier mentioned, were taken up in the En Banc session on 04 October 2011. As a result, the following Resolution (the 04 October 2011 Resolution) was issued by the Court En Banc, which recalled the 07 September 2011 Resolution of the Second Division:

RESOLUTION

Pursuant to Section 3(m) and (n), Rule II of the Internal Rules of the Supreme Court, the Court En Banc resolves to accept G.R. No. 178083 (Flight Attendants and Stewards Association of the Philippines [FASAP] v. Philippine Airlines, Inc. (PAL), Patricia Chiong, Et Al.)

The Court En Banc further resolves to recall the Resolution dated September 7, 2011 issued by the Second Division in this case.

The Court furthermore resolves to re-affle this case to a new Member-in-Charge. (Carpio, Velasco, Jr., Leonardo-de Castro and Del Castillo, JJ., no part. Brion, J., no part insofar as the re-affle is concerned.) [Footnotes omitted; emphasis supplied].

By virtue of this 04 October 2011 Resolution, the main FASAP case was re-affled and initially assigned to Justice Maria Lourdes P.A. Sereno on 10 October 2011. That assignment intended to have the new Member-in-Charge recommend a course of action for the Court En Banc on the main FASAP case, particularly on PAL's 2nd MR. Such recommendation would have necessitated this Member-in-Charge to evaluate all the records of the main FASAP case in G. R. No. 178083. The evaluation of the record would have been the fourth evaluation of the case by the Court and effectively an action on a third motion for reconsideration of the original Decision dated 22 July 2008 (the 22 July 2008 Decision). Instead, what was discovered by the assigned Member-in-Charge from a review of the records is that the 07 September 2011 Resolution of the Second Division should not even have been recalled; thus, a fourth evaluation of the record, or a resolution of what is effectively a third motion for reconsideration, is completely unwarranted. I thus circulated a draft resolution to the Court for the recall of the 04 October 2011 Resolution, which has now become this Dissenting Opinion. Sadly, the majority of this Court chose to ignore judicial precedents and compel another review of the main FASAP case, specifically by the two remaining members of the Division, who themselves twice earlier denied PAL's motions for reconsideration.

I

Assignment of Cases to the Court En Banc or in Division

As designed by the Constitution,[8] the Court acts either En Banc or through three (3) Divisions of five (5) Members each. The first arrangement involves all fifteen (15) Members of the Court, and the cases which the En Banc may take cognizance of are defined by the Constitution[9] and by the Internal Rules of the Supreme Court.[10] All other cases are assigned to one of the three Divisions.[11] A Rule 45 petition for review on certiorari of a Court of Appeals Decision involving a labor dispute, such as the main FASAP case, is cognizable by a Division.

The first step in the assignment of a case filed with the Supreme Court is the determination or classification of whether it is properly an En Banc or a Division case.[12] The case is then listed with the others filed in the same period, in the order in which they were filed for random assignment. This process is supervised by two Raffle Committees, one for En Banc cases and another for Division cases.[13] These committees have three (3) members each, chaired by the two (2) most senior associate justices, with the four other slots occupied by the next four (4) associate justices in the order of their seniority.

Membership in the three Divisions of the Court is also determined by seniority.[14] When a Member departs from the Court, the memberships in the Divisions also change as a result of the change in seniority of the remaining justices. Thus, a Member who stays in the Court for a significant period of time will periodically be re-assigned to different Divisions. The rules also provide that a case follows its ponente when he or she transfers to another Division.[15]

II

Conclusions from the Records on the main FASAP case in G.R. No. 178083 from 18 July 2007 to 04 October 2011.

On 18 July 2007, the above Petition was filed by the Flight Attendants and Stewards Association of the Philippines (FASAP).[16] It was raffled on 20 June 2007 to now retired Justice Consuelo Ynares-Santiago.

On 22 July 2008, Justice Ynares-Santiago penned the Decision of the Third Division on the case. The Division ruled in favor of petitioner FASAP and found PAL guilty of illegal dismissal.[17] The ponencia was unanimously concurred in by Justices Ma. Alicia Austria-Martinez, Minita Chico-Nazario, Antonio Eduardo Nachura and Teresita Leonardo-de Castro.[18] The counsel of record to whom the Notice of Judgment was sent was the SyCip Salazar Hernandez and Gatmaitan law firm (SyCip law firm).[19]

On 20 August 2008, PAL, through the SyCip law firm, filed the 1st MR of even date and prayed for the reversal of the 22 July 2008 Decision of the Third Division.[20]

On 10 February 2009, PAL, through the SyCip law firm and now in collaboration with Atty. Estelito P. Mendoza, also filed a Motion to Set the Case for Oral Argument.[21] This Motion was granted and notices were sent to the counsel of the parties, including Atty. Mendoza.[22] In the oral argument on the case held on 18 March 2009,[23] Atty. Lozano Tan of the SyCip law firm and Atty. Mendoza appeared as counsel for PAL.[24]

On 02 October 2009, the Special Third Division of the Court denied with finality PAL's 1st MR through a signed Resolution (the 02 October 2009 Resolution) penned by Justice Ynares-Santiago and concurred in by Justices Chico-Nazario, Nachura, Diosdado M. Peralta (vice Justice Austria-Martinez who had retired) and Lucas P. Bersamin (vice Justice Leonardo-de Castro, who had earlier inhibited for personal reasons).[25] It was a unanimous Decision. Justice Ynares-Santiago retired three days later, on 05 October 2009. Notice of Judgment was sent to PAL through the SyCip law firm; as well as to Attys. Estelito P. Mendoza and Claudette A. de la Cerna, who were denominated in the Notice of Judgment also as counsel for PAL.[26] The claim publicly made by FASAP – that Atty. Mendoza was not a counsel of record – was therefore refuted by the Division Clerk of Court's action of describing him in a Notice as "counsel for respondent."

The dispositive portion of the 02 October 2009 Resolution reads:

WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby DENIED with FINALITY. The assailed Decision dated July 22, 2008 is AFFIRMED with MODIFICATION in that the award of attorney's fees and expenses of litigation is reduced to P2,000,000.00. The case is hereby REMANDED to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

No further pleadings will be entertained.

SO ORDERED.[27]

On 03 November 2009, respondent PAL, through both the SyCip law firm and law office of Atty. Mendoza (Estelito P. Mendoza & Associates), asked for leave[28] to file a motion for reconsideration of the 02 October

2009 Resolution and a second motion for reconsideration of the 22 July 2008 Decision and attached thereto were the twin motions (the 2nd MR).[29] At the time this 2nd MR was filed, Justice Ynares-Santiago, who penned both the 22 July 2008 Decision and 02 October 2009 Resolution, had already retired.

On 11 November 2009, per Special Order No. 792, the Raffle Committee – composed of then Associate Justices Renato C. Corona, Chico-Nazario and Presbitero J. Velasco, Jr. – had to respond to the queries of the Raffle Committee Secretariat on who the new ponente of the case would be in view of the retirement of Justice Ynares-Santiago.[30] Ordinarily, a second motion for reconsideration, considering that it is prohibited,[31] is not entertained by the Court.[32] Thus, ordinarily, had Justice Ynares-Santiago not yet retired, the 2nd MR would just have been ordered “expunged from the record” for being an unauthorized pleading.[33]

It must be emphasized that even in *Tirazona v. Philippine EDS Techno-Service, Inc., (PET, Inc.)*,[34] a case cited by the majority Resolution, the Court found that unless there is an extraordinarily persuasive reason to entertain a second motion for reconsideration, it must be denied outright for lack of merit:

Section 2, Rule 52 of the Rules of Court explicitly decrees that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Accordingly, a second motion for reconsideration is a prohibited pleading, which shall not be allowed, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained. In this case, we fail to find any such extraordinarily persuasive reason to allow Tirazona’s Second Motion for Reconsideration.

... ..

WHEREFORE, the Motion for Leave to File [a] Second Motion for Reconsideration is hereby DENIED for lack of merit and the Second Motion for Reconsideration incorporated therein is NOTED WITHOUT ACTION in view of the denial of the former. (Emphasis supplied)

The Minutes of the Raffle Committee meeting of 11 November 2009, which included the queries of its Secretariat reflected the Committee’s response as follows:

The case was decided by the Third Division on July 22, 2008. The motion for reconsideration was denied with finality on October 2, 2009. Both the decision and resolution on the MR were penned by retired Justice Ynares-Santiago.

In cases where the regular Division which rendered the [Decision] is no longer complete as when one of them has retired, a special division is created under A.M. No. 99-8-09-SC. However, A.M. No. 99-8-09-SC specifically states that it does not apply where the motion has been denied with finality.

QUERY: May this case be acted upon by the regular Third Division and raffled among its Members? Note: Justice Corona already inhibited from this case; thus, an additional Member must be designated from the other two Divisions to replace Justice Corona.

(Answer in handwritten note): Yes, PV

additional member – AC

OR

Should this case be inherited by Justice Villarama who succeeded Justice Ynares-Santiago? NOTE: The case will be transferred to the First Division.

(Answer in handwritten note): No

In line with the above answers to the queries, the Raffle Committee raffled the case among the regular members

of the Third Division, then composed of then Associate Justices Corona, Chico-Nazario, Velasco, Nachura and Peralta. The case was raffled to Justice Velasco. Since Justice Corona, a regular member of the Third Division, had inhibited himself from the main FASAP case, Justice Carpio was designated to replace him as an additional member during the same day's raffle.[35] According to the Report dated 14 July 2008 of the Division Raffle Committee, Justice Corona inhibited "due to his previous efforts in settling the controversy when he was still in Malacañang." [36]

A.M. No. 99-8-09-SC, which was the justification for the decision of the Raffle Committee, provided for the rules on who among the Members of this Court shall be assigned to resolve motions for reconsiderations in cases assigned to the Divisions. It took effect by its express provision on 01 April 2000[37] and was the prevailing rule at the time of the raffle on 11 November 2009. Its relevant provision reads:

RULES ON WHO SHALL RESOLVE MOTIONS FOR RECONSIDERATION IN CASES ASSIGNED TO THE DIVISIONS OF THE COURT

2. If the ponente is no longer a Member of the Court or is disqualified or has inhibited himself from acting on the motion, he shall be replaced by another Justice who shall be chosen by raffle from among the remaining members of the Division who participated in the rendition of the decision or resolution and who concurred therein. If only one member of the Court who participated and concurred in the rendition of the decision or resolution remains, he shall be designated as the ponente.

... ..

These rules shall not apply to motions for reconsideration of decisions or resolutions already denied with finality. (Emphasis supplied.)

This interpretation by the Raffle Committee makes perfect sense, since a contrary interpretation would prevent a decision from ever being considered as having been "denied with finality" by the mere filing of a motion to admit a second motion for reconsideration. The Raffle Committee has the right to presume that a final decision is indeed final, since a second motion for reconsideration is expressly prohibited by the Rules of Court[38] and the Internal Rules of the Supreme Court.[39] The admission of a second motion for reconsideration is highly contingent on the demonstration of an exceptional circumstance that would warrant the allowance of a second motion for reconsideration.

It is important to note that a contrary opinion – that the case should have been raffled to a Member of the Division who participated in the deliberation on the Decision or the Resolution denying the first Motion for Reconsideration – did not seem to be held by Justice Chico-Nazario, a member of the Raffle Committee. Having concurred in both the original 22 July 2008 Decision as well as in the 02 October 2009 Resolution that denied the 1st MR, Justice Chico-Nazario, as concurring Member of the Third Division in both Decisions, could have opined that the case was not really denied with finality as that is understood in A.M. No. 99-8-09-SC. Thus, she could have asserted that the case be raffled among Justices Nachura, Peralta, Bersamin, and herself, but she did not. Instead, she appeared to have held the view that the raffling of the case falls under the exception that "[these] rules shall not apply to motions for reconsideration of decisions or resolutions already denied with finality."

The only conclusion from Justice Chico-Nazario's action as a Member of the Raffle Committee is that she interpreted the denial with finality as a genuine "denial with finality," which would not require the case to be raffled among the remaining Members of the Division that decided and resolved the case. Rather, the alternative rule requiring that the case be raffled among the regular Members of the Third Division – whether or not they took part in the Decision – would apply.

The Clerk of Court, Atty. Enriqueta E. Vidal, through Atty. Felipa B. Anama, the Deputy Clerk of Court,

explained in a Memorandum dated 26 September 2011 (the Vidal-Anama Memorandum) the actions of the Raffle Committee for Division Cases with respect to the main FASAP case in this way:

The case was referred to the Raffle Committee in November 2009 in view of the filing of the Motion for Leave to File and Admit Motion for Reconsideration of the Resolution dated October 2, 2009 and Second Motion for Reconsideration of the Decision dated July 22, 2008 mentioned on page 3 of the Letter dated September 13, 2011 of Atty. Mendoza. At that time, Justice Ynares-Santiago had already retired. Moreover, the standing rules with respect to motions for reconsideration in cases assigned to the Divisions of the Court were provided in A. M. No. 99-8-09-SC.

A. M. No. 99-8-09-SC mandated the creation of a special division to act on motions for reconsideration of decisions or signed resolutions of the Divisions of the Court. However, it specifically stated that it did not apply to cases where the motion for reconsideration was already denied with finality.

Thus, on November 11, 2009, the Raffle Committee resolved that a special division need not be created to act on the aforesaid pending second motion for reconsideration and proceeded to raffle the case among the regular Members of the Third Division. As the raffle agenda would show, the case was raffled to Justice Presbitero J. Velasco, Jr.

On 20 January 2010, with Justice Velasco as the new ponente, the regular Third Division,[40] acting on PAL's motion for leave to file the twin motions and the attached 2nd MR itself, resolved: (1) to grant the two motions and (2) to require the parties to comment on PAL's twin Motions for Reconsideration and FASAP's Urgent Appeal to the Supreme Court Justices dated 23 November 2009 (the 20 January 2010 Resolution).[41] Then Associate Justice Corona, according to the Resolution, took no part therein. The names of Justices Carpio, Velasco (chairperson), Nachura, Peralta, and Bersamin appeared in the Resolution.

Notably, in taking part in the 20 January 2010 Resolution, Justices Nachura, Peralta, and Bersamin – all of whom took part in the denial of the 1st MR in the 02 October 2009 Resolution – could have objected to either: (a) the assignment of the case to Justice Velasco, a member of the regular Third Division who did not participate in either action; or (b) the non-constitution of a Special Third Division. However, none of them did. Justice Nachura, it must be additionally noted, had concurred in both the original 22 July 2008 Decision and the 02 October 2009 Resolution.

On 17 May 2010, Chief Justice Renato Corona, who had then been appointed Chief Justice, issued Special Order No. 838 reorganizing the three Divisions of the Court in view of his vacating his former position as Associate Justice.[42] As a result, Justice Velasco, Jr. was transferred to the First Division. Under the applicable rule on the effect of reorganization, the main FASAP case, which was assigned to Justice Velasco, was correspondingly transferred to the First Division. Parenthetically, Justice Arturo D. Brion was assigned to the Third Division under the same Special Order.

On 17 January 2011, Justice Velasco inhibited himself “due to a close relationship to a party.” The First Division, to which he was transferred, thus referred the matter to the Raffle Committee “for designation of additional members,” the intention being to seek a replacement ponente for Justice Velasco.

On 26 January 2011, the Raffle Committee for Division Cases (composed of Justices Conchita Carpio Morales, Nachura and Arturo D. Brion) resolved, in its Minutes, as follows:

The case is presently assigned to Justice Velasco, Jr. who inhibited from the case due to close relation to one of the parties.

Following the pertinent provision of Administrative Circular No. 84-2007, the case must be raffled among the Members of the Second and Third Division.

*Justice De Castro also recused from the case.[43]

(NB: The handwritten note in the minutes designated the new ponente as a result of the raffle by his acronym - "AB" - referring to Justice Brion).

As a result of the 26 January 2011 raffle, the case fell on the lap of Justice Brion, who was then a member of the Third Division.

Administrative Circular No. 84-2007, cited in the Report of the Raffle Committee, provided the various rules on the inhibition, leaves and vacancies of the ponente or other members of the Division in pending cases and their proper substitution. The old rule was that when the ponente inhibits from the case, the case shall be returned to the Raffle Committee for re-raffling among the other Members of the same Division with one additional Member from the other two Divisions:

2. Whenever the ponente, in the exercise of sound discretion, inhibits herself or himself from the case for just and valid reasons other than those mentioned in paragraph 1, a to f above, the case shall be returned to the Raffle Committee for re-raffling among the other Members of the same Division with one additional Member from the other two Divisions. (Emphasis supplied)

These Rules have been twice amended; first, on 04 May 2010; second, on 03 August 2010. At the time that the case was assigned to Justice Brion as the new ponente by the 26 January 2011 raffle, the pertinent rule was that provided in the 03 August 2010 amendment. The Resolution dated 03 August 2010 in A.M. No. 10-4-20-SC amended Rule 8, Sections 2 and 3(a) of the Internal Rules of the Supreme Court. The amended rule reads as follows:

Motion to inhibit a Division or a Member of the Court. – A motion for inhibition must be in writing and under oath and shall state the grounds therefor.

No motion for inhibition of a Division or a Member of the Court shall be granted after a decision on the merits or substance of the case has been rendered or issued by any Division, except for a valid or just reason such as an allegation of a graft and corrupt practice or a ground not earlier apparent. (Rule 8, Sec. 2, Internal Rules of the Supreme Court)

Effects of Inhibition. — The consequences of an inhibition of a Member of the Court shall be governed by these rules:

(a) Whenever a Member-in-Charge of a case in a Division inhibits himself for a just and valid reason, the case shall be returned to the Raffle Committee for re-raffling among the Members of the other two Divisions of the Court. ... (Rule 8, Sec. 3 [a] of the Internal Rules of the Supreme Court; emphasis supplied.)

Unlike in the old rule where the case remains with the Division of the inhibiting Justice, the amended rule now uniformly provides for the effect of inhibition of the ponente on the assignment of a case – the case will be taken out of the Division to which the inhibiting Member of this Court belongs and raffled among the members of the two other Divisions.

Following the new rule, the inhibition from the main FASAP case by Justice Velasco – a member of the First Division – resulted in the need to re-raffle the case to members of the Second and the Third Divisions. When the case was re-raffled, Justice Brion to whom the case was assigned, was then a member of the Third Division. The case was thus properly assigned to him as a regular member of that Division.

On 21 June 2011, the Chief Justice issued Special Order No. 1025 reorganizing the Divisions of the Court, in view of the retirement of Justices Carpio-Morales and Nachura. Justice Brion was then transferred from the Third Division to the Second Division.[44]

On 27 June 2011, as required by the new reorganization, the new Third Division had to order the transfer of all of Justice Brion's cases in the former Third Division to the new Second Division. The new Third Division, composed of its regular members – Justices Velasco, Peralta, Bersamin and Jose C. Mendoza, together with Justice Sereno as additional member – issued an internal Resolution “to transfer the case to the Second Division, the same being assigned to a member thereof.”[45]

This procedure follows the aforecited Rule 2, Section 9 of the Internal Rules of the Supreme Court stating that if a case is a regular Division case, it follows the ponente to his or her new Division under the reorganization. It is also consistent with Rule 2, Section 7, paragraph 6 of the Internal Rules of the Supreme Court stating that “(i)f there are pleadings, motions or incidents subsequent to the denial of the motion for reconsideration or clarification, the case shall be acted upon by the ponente on record with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court.” The main FASAP case was thus appropriately transferred from the Third Division to the Second Division when Justice Brion was reassigned to the latter.

On 24 August 2011, the Court issued a Resolution that would give notice to the parties that the main FASAP case had been transferred to the Second Division.[46] In the said Resolution, the Second Division “NOTED” the pleadings filed by FASAP and PAL, parties to the case.[47] The parties received the notice under the document heading of the Second Division and under the name of the Clerk of Court of the same Division. The notice of the Resolution was sent to PAL through its principal counsel, the SyCip law firm.

Hence, it is wrong for any of the co-counsel for PAL to assert that their receipt of the 07 September 2011 Resolution of the Second Division was the first time that the parties were apprised of the transfer of the case to another Division.[48] Under the Rules of Court, service upon the principal counsel of PAL is service to all the co-counsel:

Filing and service, defined. — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (Rule 13, Sec. 2, of the Rules of Court; emphasis supplied)

It is also important to emphasize that parties cannot complain about lack of receipt of formal notices that their cases are being transferred from one Division to another, since that is a matter of reorganization entirely internal to the Court.

On 07 September 2011, a Second Division session was held. The Agenda, Supplemental Agenda and Minutes of the Second Division session for that day reveal the dispositions of the agenda items as discussed by the Members of the Division. One hundred forty-eight (148) agenda items were calendared that day, broken down as follows: 96 judicial matters, 21 administrative matters and 31 administrative cases. This is not an unusual volume for a Division case load for a day. The main FASAP case in G. R. No. 178083 was one of the judicial matters tackled during the said Session of the Second Division.

Two non-regular Members of the Division had earlier been designated by raffle as replacements for the two regular Members who were on leave: (1) Justice Bersamin (vice Justice Sereno), and (2) Justice Mendoza (vice Justice Bienvenido L. Reyes). Most of the cases for the day were acted upon by unsigned Resolutions, but five signed Decisions/dispositive Resolutions were also promulgated. Among the unsigned Resolutions that were promulgated was the denial of PAL's 2[nd] MR in the main FASAP case in G. R. No. 178083.

Justice Carpio (who had earlier inhibited, the reason given being “per advice of the office of the Member-in-Charge”) was replaced by Justice Peralta.[49] Note that Justices Peralta and Bersamin became Members of the Second Division for the purpose of resolving the main FASAP case – not because they took part in the denial of the 1st MR, but because they were replacements for a regular Member of the Second Division who had inhibited from the case and for another who was on leave.

Justice Brion, as the next most senior Justice in the Second Division, was acting chairperson and, at the same time, the Member-in-Charge. Thus, the Members of the Second Division during the 07 September 2011 Session for the main FASAP case were composed of Justices (1) Brion (Chairperson), (2) Peralta, (3) Bersamin, (4) Jose P. Perez, and (5) Mendoza. This Second Division promulgated the unsigned 07 September 2011 Resolution penned by Justice Brion, denying with finality respondent PAL’s 2nd MR.[50] Of these five, two – Justices Peralta and Bersamin – had earlier concurred in the 02 October 2009 Resolution that denied PAL’s 1st MR. The Notice of this 07 September 2011 Resolution was sent not only to the SyCip law firm, but also to Atty. Mendoza.[51]

On 13 September 2011, Atty. Estelito P. Mendoza, counsel for PAL in the main FASAP case, addressed his first letter to the Clerk of Court of the Supreme Court, which contained the following matters:

1. Noting that (a) of the members of the Court who acted on the Motion for Reconsideration dated 20 August 2008 (the 1st MR), Justices Ynares-Santiago (ponente), Chico-Nazario and Nachura had retired from the Court; and (b) the Third Division had issued a Resolution on the case dated 20 January 2010, acted upon by Justices Carpio, Velasco, Nachura, Peralta, and Bersamin;
2. Seeking advice on (a) whether the Court had acted on the 2nd MR and, if so, which Division – whether regular or special – and the identities of the chairperson and the members thereof; and (b) the identity of the current ponente or Justice-in-charge of the case, and when and for what reason he or she was designated as ponente; and
3. Requesting a copy of the Resolution rendered on the 2nd MR, if an action had already been taken thereon.

On 16 September 2011, Atty. Mendoza sent a second letter addressed to the Clerk of Court requesting “copies of any Special Orders or similar issuances transferring the case to another division, and/or designating members of the division which resolved” its 2nd MR, in case a resolution had already been rendered by the Court and in the event that “such resolution was issued by a different division.”

A third letter from Atty. Mendoza addressed to the Clerk of Court was received by the Court on 20 September 2011.[52] Atty. Mendoza stated that he received a copy of the 07 September 2011 Resolution issued by the Second Division, notwithstanding that all prior Court Resolutions he received regarding the case had been issued by the Third Division. He reiterated his request in two earlier letters to the Court, asking for the date and time when the said Resolution was deliberated upon and a vote taken thereon, as well as the names of the Members of the Court who had participated in the deliberation and voted on the 07 September 2011 Resolution.

Atty. Mendoza sent a fourth letter dated 22 September 2011 addressed to the Clerk of Court, suggesting that “if some facts subject of my inquiries are not evident from the records of the case or are not within your knowledge, that you refer the inquiries to the members of the Court who appear to have participated in the issuance of the Resolution of September 7, 2011, namely: Hon. Arturo D. Brion, Hon. Jose P. Perez, Hon. Diosdado M. Peralta, Hon. Lucas P. Bersamin, and Hon. Jose C. Mendoza.”

On 26 September 2011, upon request by Justice Brion, the Clerk of Court issued the Vidal-Anama Memorandum for the members of the Second Division regarding the inquiries contained in Atty. Mendoza’s first and second letters dated 13 and 20 September 2011, respectively. According to Justice Brion, as the acting Chairperson of the

Second Division that rendered the 07 September 2011 Resolution, he decided to send a copy of the Vidal-Anama Memorandum only to those who had participated in the issuance of the Resolution.[53] Neither Senior Associate Justice Carpio, the regular Chairperson of the Second Division, nor Justices Sereno and Reyes, its other regular Members, received a copy of this Memorandum at that time.

In the said Memorandum, which was signed by Atty. Felipa Anama on behalf of Atty. Enriqueta Vidal, the legal and documentary bases for all the actions of the various Raffle Committees were attached and discussed.[54] These included the decisions of the two raffle committees that oversaw the transfer of the ponencia, as a regular Second Division case, from Justice Ynares-Santiago to Justice Velasco and finally to Justice Brion. A reading of the Vidal-Anama Memorandum would lead to the conclusion that the two transfers of ponencia were compliant with the applicable rules.

One parenthetical note. In the above Vidal-Anama Memorandum, the Raffle Committee is quoted as having relied on Administrative Order No. 84-2007 as basis for raffling out the case from the Third Division to the First and the Second Divisions.[55] Apparently, the Vidal-Anama Memorandum refers to Administrative Order No. 84-2007, as amended, i.e., by the Resolution dated 03 August 2010 in A.M. No. 10-4-20-SC. The implication of the latter Resolution on the assignment of the case to Justice Brion has been discussed here earlier.

On 28 September 2011, the regular Second Division “NOTED” the Letters dated 13 and 20 September 2011 of Atty. Mendoza to Atty. Vidal, asking that his inquiry be referred to the relevant Division members who took part in the 07 September 2011 Resolution. In response to an earlier suggestion to just simply direct the Division Clerk of Court to answer the letters of Atty. Mendoza, Justice Brion – the ponente – informed those present that he needed to consult Chief Justice Corona on this matter. There was no suggestion from anyone, much less any agreement among the Justices present, to refer the matter to the En Banc. Indeed, Justices Sereno and Reyes, who were then present, were not fully informed of the contents of those letters.

As related by Justice Brion to the En Banc, a meeting was held on 28 September 2011 among the Justices who participated in the deliberations of the 07 September 2011 Resolution – namely, Justices Brion, Peralta, Bersamin, Perez and Mendoza – to inform them of the four letters of Atty. Mendoza and to ask for their inputs. According to him, a couple more meetings were held to this effect, but there was no unanimity on how to specifically respond to these letters.

According also to Justice Brion, on 30 September 2011, a meeting held between Chief Justice Corona and Justices Brion, Peralta, Bersamin, Perez and Mendoza yielded the recommendation to refer the matter to the En Banc and to vacate the 07 September 2011 Resolution in the meantime. Chief Justice Corona, who presided over the meeting, was also furnished a copy of the Vidal-Anama Memorandum.

On 04 October 2011, the following happened in the En Banc session:

1. In the Agenda distributed, the Clerk of Court endorsed item no. 147 for inclusion therein, referring the letters of Atty. Mendoza with respect to the main FASAP case to the Court En Banc. Instead of being given its regular judicial docket number, G.R. No. 178083, it was given a separate administrative matter number, A.M. No. 11-10-1-SC.
2. This separate administrative matter in the En Banc’s agenda, apparently raffled to Justice Mariano del Castillo on 03 October 2011,[56] merited his recommendation to “refer to ponente,” meaning, to Justice Brion, to whom the main FASAP case in G.R. No. 178083 was assigned.
3. Without waiting for Justice Brion to respond to the recommendation of referral, the Chief Justice, who was presiding, informed the Court that the 07 September 2011 Resolution of the Second Division must be recalled, because it had a lot of serious problems. Justice Brion, the ponente of the said Resolution, kept quiet.

4. Despite the fact that the matter was characterized by the Chief Justice as a very sensitive matter and that the Resolution had a lot of serious problems, copies of the four letters of Atty. Mendoza were not furnished the rest of the Court.

5. Neither did the Chief Justice inform the rest of the Court that the Clerk of Court, through her Deputy Felipa B. Anama, had issued her narration of facts via the Vidal-Anama Memorandum, which detailed the raffle process undertaken with respect to the main FASAP case, and which tended to prove the regularity of the assignment of the case from Justice Velasco to Justice Brion, with its citation of the legal bases for the actions of the various Raffle Committees.

6. The rest of the Court assented, through their silence, to the recall of the 07 September 2011 Resolution of the Second Division.

7. There was no formal referral of the case by way of written resolution from the Second Division to the En Banc, but only an assumption and cognizance of the Mendoza letters by the En Banc.

The Court En Banc thus issued the above-quoted 04 October 2011 Resolution in the separate administrative matter docketed as A.M. No. 11-10-1-SC (Re: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083 – Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc., Patria Chiong, et al.) accepting and taking cognizance of the above-cited case; recalling the 07 September 2011 Resolution of the Second Division on the main FASAP case; and ordering the re-raffle of the same case to a new Member-in-Charge. At this point, four Members inhibited themselves from the main FASAP case:[57] Justices Carpio, Velasco, Leonardo-De Castro, and Del Castillo.[58] As earlier stated, the main FASAP case was re-raffled to Justice Sereno, as new Member-in-Charge.[59]

Under the Internal Rules of the Supreme Court, as amended, the Court En Banc cannot just take cognizance of a case assigned to a Division. The initiative of transferring the case from a Division to the En Banc must always come from the Division itself. Rules 2 and 15 of the Internal Rules of the Supreme Court provide:

Division cases. – All cases and matters under the jurisdiction of the Court not otherwise provided for by law, by the Rules of Court or by these Internal Rules to be cognizable by the Court en banc shall be cognizable by the Divisions. (Rule 2, Section 4, Internal Rules of the Supreme Court)

Actions on Cases Referred to the Court En Banc. — The referral of a Division case to the Court en banc shall be subject to the following rules:

(a) the resolution of a Division denying a motion for referral to the Court en banc shall be final and shall not be appealable to the Court en banc;

(b) the Court en banc may, in the absence of sufficiently important reasons, decline to take cognizance of a case referred to it and return the case to the Division; and

(c) No motion for reconsideration of a resolution of the Court en banc declining cognizance of a referral by a Division shall be entertained. (Rule 2, Section 11, Internal Rules of the Supreme Court)

Second Motion for Reconsideration. – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. ... In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court en banc. (Rule 15, Section 3, Internal Rules of the Supreme Court)

While it is true that none of the Second Division Members – whether regular or their substitutes – objected to the discussion, several important observations must be made here:

1. When the matter of the Mendoza letters was calendared for agenda in the En Banc, not all Members of the

Court – including certain regular members of the Second Division, such as Justices Carpio, Sereno and Reyes – were sufficiently alerted to the significance of their contents.

2. Except for Chief Justice Corona and those who took part in the 07 September 2011 Resolution, neither the Members of the Second Division, nor any of the remaining Members of the Court were furnished a copy of the Vidal-Anama Memorandum before or during the En Banc Session, which would have clearly shown the regularity of the assignment of the case to Justice Brion as a regular Second Division matter.

3. The impression given to the majority of the Court was that something deeply irregular had transpired, something akin to not vesting Justice Brion with authority to act on the main FASAP case – such that, to protect the Court, the 07 September 2011 Resolution must be recalled and the case taken cognizance of as an En Banc matter.

Given that the factual bases for the impressions of the majority of the Court do not exist, and that the resulting conclusion that allowed them to accede to the 04 October 2011 Resolution on the instant administrative matter can no longer be sustained, I submit that no such irregularity in the application of the rules occurred. Therefore, the main FASAP case in G.R. No. 178083 should be returned to the Second Division as a regular case, and the recalled 07 September 2011 Resolution be reinstated and duly executed under the existing laws and rules.

While it is true that the Supreme Court has the power to suspend its rules “(i)n the interest of sound and efficient administration of justice,” under Rule 1, Section 4 of its Internal Rules, the interest of justice in this case requires that the rules be appropriately followed. The 04 October 2011 Resolution to transfer the case from the Second Division to the En Banc was apparently pursuant to the desire to observe the rules, not suspend them. The transfer of the case to the Second Division having been proven to be regularly made, there was no need for the suspension of any rule.

The following are therefore very clear:

First, the assignment of the case to Justice Brion as ponente and its transfer to the regular Second Division to which he belongs complies with all the applicable rules.

Second, there was no proper referral of the main FASAP case from the Second Division to the Court En Banc; hence, the latter did not act properly in taking cognizance of the case under the 04 October 2011 Resolution.

No Division of the Court is a body inferior to the Court En Banc; and each Division sits veritably as the Court En Banc itself.[60] The Court En Banc is not an appellate Court to which decisions or resolutions of a Division may be appealed.[61] Before a judgment or resolution on a case becomes final and executory, the Court En Banc may accept a referral by the Division for sufficiently important reasons.[62] Otherwise, the case would be returned to the Division for decision or resolution.[63] The proposal to refer the case to the Court En Banc must first be agreed upon and made by the Division and formal notice thereof should then be sent to the Clerk of Court. The Clerk of Court would then calendar the referral in the Agenda for consideration of the Court En Banc. In this case, no such formal notice of a referral was made by the regular Second Division or sent to the Clerk of Court En Banc to elevate the main FASAP case for the consideration of the Court En Banc.

In fact, the Internal Rules of the Supreme Court are explicit on referring cases to the Court En Banc in instances in which the matter to be considered is a case that has already been decided by the Division and is already the subject of a second motion for reconsideration, similar to the circumstance in the case of PAL. In a Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court En Banc.[64]

Applying this rule to PAL’s 2[nd] MR in the main FASAP case, no decision or vote by at least three Members of the regular Second Division was ever made to refer the case to the Court En Banc. Those who informally met

with the Chief Justice and decided to raise the main FASAP case to the Court En Banc without any formal written notice thereof committed a serious lapse. The determination of sufficiently important reasons to refer the case, which was already the subject of a 2nd motion for reconsideration, was within the purview of the regular Members of the Second Division, and not by those who merely substituted for them in the 07 September 2011 Resolution. Regardless of the validity of that Resolution, the referral to the Court En Banc was a separate and distinct matter that should have been decided by the regular Members of the Second Division. Hence, Justices Sereno and Reyes, as regular members of the Second Division who – during their absence in the 07 September 2011 Session of the Second Division were substituted by Justices Bersamin and Mendoza, respectively – should have been included in the discussion on the referral of the matter to the Court En Banc.

For the Court to take cognizance of the Mendoza letters as a separate administrative matter independent from the judicial case in G.R. No. 178083 in order to justify the recall of the Second Division's 07 September 2011 Resolution is unacceptable because it is plainly a circumvention of the above-discussed rules on the proper referral of a case from a Division to the En Banc. Rather than formally filing a motion for the referral of their case to the En Banc, any party-litigant may now, under the majority's ruling, subscribe to Atty. Mendoza's course of action and simply write a separate letter to the Clerk of Court or any of the justices, which can now be treated as an independent administrative matter so that the Court En Banc may unilaterally appropriate or take away a case from the Division. This new rule being egregiously created in this case by the majority will open the floodgates for all disgruntled litigants or their counsel to appeal unfavorable final judgments of the Court's three Divisions to the En Banc.

Absent a formal referral by the regular Members of the Second Division and an articulation of sufficiently important reasons, the Court En Banc cannot properly take cognizance of the main FASAP case; nor can it oust, on its own, the authority of the Second Division over that case.

Thus, I maintain that the Court En Banc should recall its 04 October 2011 Resolution and return this case to the Second Division for reinstatement and finality of the 07 September 2011 Resolution.

It must be further noted that the decisions of the two raffle committees headed by Chief Justice Corona and by retired Justice Carpio-Morales, which led to the assignment of this case from Justice Ynares-Santiago to Justice Velasco and eventually to Justice Brion, were concurred in by retired Justices Chico-Nazario and Nachura and by incumbent Justices Velasco and Brion.

Significantly also, all three main dispositions of this case in favor of FASAP – the 22 July 2008 Decision, the 02 October 2009 Resolution denying PAL's 1st MR, and the 07 September 2011 Resolution denying PAL's 2nd MR – were uniformly unanimous, and concurred in by a total of ten (10) justices, retired and incumbent:

22 July 2008
Decision

02 October 2009
Resolution

07 September 2011
Resolution

1. Ynares-Santiago (ponente)
2. Austria-Martinez
3. Chico-Nazario
4. Nachura

5. Leonardo-de Castro

1. Ynares-Santiago (ponente)
2. Chico-Nazario
3. Nachura
4. Peralta
5. Bersamin

1. Brion (ponente)
2. Peralta
3. Bersamin
4. Perez
5. Mendoza

III

Pleadings Submitted After Atty. Mendoza's Letters to the Clerk of Court

After the four Mendoza letters were received by the Court, the parties to the main FASAP case filed three significant pleadings: (a) PAL's Motion to Vacate dated 03 October 2011; (b) FASAP's Motion for Reconsideration dated 17 October 2011; and (c) PAL's Comment on the said Motion for Reconsideration.

A. PAL's Motion to Vacate dated 03 October 2011

It appears that a day before the issuance of the Court En Banc's 04 October 2011 Resolution recalling the Second Division's 07 September 2011 Resolution, or at 11:31 a.m. of 03 October 2011, the Court received a copy of PAL's Motion to Vacate (Resolution dated September 7, 2011) [the Motion to Vacate]. However, the Motion to Vacate was received only on 04 October 2011 at 3:00 p.m., by the Court's Judicial Records Office, Judgment Division.

In the Motion to Vacate, PAL argued that the 07 September 2011 Resolution of the Second Division denying its 2nd MR should be vacated on the following grounds:

A.1. The 07 September 2011 Resolution was issued in violation of Sections 4 and 13, Article VIII of the Constitution.

A.2. It was issued in violation of the Internal Rules of the Supreme Court.

A.1. PAL's First Ground in the Motion to Vacate

Quoting portions of the Records of the Constitutional Commission dated 14 July 1986, PAL argued that the intention of the Constitution is for cases or matters heard by the division to be decided/resolved with the concurrence of "a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon ..." and that the conclusion shall be reached "in consultation before the case is assigned to a Member for the writing of the opinion of the Court," with the phrase "in consultation" having a settled meaning as "after due deliberation."

PAL concluded that the constitutional requirement may not have been met because those who participated in the issuance of the 07 September 2011 Resolution – Justices Brion, Mendoza, and Perez – had never taken part in the resolution of any matter in connection with the instant case, while Justice Bersamin was designated on 06 September 2011, or only one day before the 07 September 2011 Resolution was voted upon.

Effectively, although PAL was not articulating this thought explicitly, it was arguing that, under the Constitution, only Justices Peralta and Bersamin could have taken part in any deliberation on its 2nd MR. It was also effectively claiming that a one-day notice to Justice Bersamin of his designation as a replacement Member of the Second Division was not enough notice for him to take part in the deliberation on the 2nd MR, even though he had earlier voted to deny the 1[st] MR in the 02 October 2009 Resolution.

A.2. PAL's Second Ground in the Motion to Vacate.

PAL insisted that its motion should have been resolved by a Special Third Division, based on A. M. No. 99-8-09-SC dated 17 November 2009 (Amended Rules on who shall resolve motions for reconsideration of decisions or signed resolutions in cases assigned to the division of the court). It argued that although another Court issuance, A.M. No. 99-8-09-SC, as amended (Rules on who shall Resolve Motions for Reconsideration in Cases Assigned to the Divisions of the Court, 15 February 2000), provides that a special division need not be constituted to resolve motions for reconsideration of decisions or resolutions that have already been denied with finality, this latter rule would not apply to its case. PAL contended that when its 2[nd] MR was allowed by the Third Division in the 20 January 2010 Resolution, the Court's 02 October 2009 Resolution denying the 1[st] MR "with finality" was thereby suspended.

Although PAL was not explicitly saying so, it was in effect arguing that when it filed a 2nd MR on 03 November 2009 after the denial of its 1st MR by the 02 October 2009 Resolution, the rules required that (1) a Special Third Division consisting of Justices Chico-Nazario, Nachura, Peralta and Bersamin, with an additional fifth Member, should have been constituted to take cognizance of the case; and (2) the ponencia should have been raffled only to these first four Members who had actually taken part in the deliberation on the 1st MR. Thus, its Motion for Reconsideration should not have been raffled off to Justice Velasco.

PAL was anchoring its argument on the eventual admission of its 2[nd] MR, an action initiated by Justice Velasco after the case was raffled to him on 11 November 2009. It was saying that, by admitting the 2[nd] MR, the Court did not consider the said motion for reconsideration is to have been denied with finality, hence, the assignment of the case to Justice Velasco was erroneous, because he was not among the remaining four Justices who had concurred in the Decision or Resolution of the main FASAP case. But how could PAL argue that the assignment of the case to Justice Velasco was wrong and at the same time claim benefit from his action as Member-in-Charge?

At the time when the Raffle Committee met on 11 November 2009 for the purpose, among others, of making a decision on how to dispose of PAL's 2[nd] MR, the legal status of the main FASAP case was unambiguous – its 1[st] MR had been "denied with finality." There was no room to read into the case any other legal status. The Raffle Committee could have taken cognizance of only that status; it was bereft of any authority to dwell on any other future possibility, including the admission of PAL's 2[nd] MR admitted a year later when Justice Velasco was designated as Member-in-Charge.

A.3. PAL's Prayer in Its Motion to Vacate

PAL additionally contended that parties should be made aware of who among the Members of this Court were deliberating on its case, so that they may be allowed to move for their inhibition. We note at this point that this argument was being raised, bereft of any basis to claim a right of prior information on who would ultimately constitute the membership in a Division.[65]

PAL prays that the Court: (1) direct the Clerk of Court to respond to all its inquiries as contained in its letters; (2) vacate the 07 September 2011 Resolution and thereafter refer its 2[nd] MR to a Special Third Division constituted

in accordance with A. M. No. 99-8-09-SC dated 17 November 2009 and Section 7, Rule 2 of the Internal Rules of the Supreme Court; and, (3) considering the issues involved, refer its Motion to Vacate to the Court En Banc for resolution.

B. FASAP's Motion for Reconsideration dated 17 October 2011

In its Motion for Reconsideration dated 17 October 2011, FASAP argued that the 04 October 2011 Resolution of the Court En Banc – taking cognizance of the main FASAP case, recalling the Second Division's 07 September 2011 Resolution denying PAL's 2[nd] MR, and re-raffling the case to a new Member-in-Charge – was wrong, since the 07 September 2011 Resolution of the Second Division was already final, executory and immutable. FASAP also claimed that the recall by the Court En Banc was violative of due process because the latter did not provide the reason therefor, and the recall arose from an ex parte consideration of mere letters from PAL's counsel, Atty. Mendoza. Finally, the recall was already not a valid exercise of the functions of the Court En Banc, whether administrative or judicial.

C. PAL's Comment on FASAP's Motion for Reconsideration dated 17 October 2011

In its Comment on FASAP's Motion for Reconsideration, PAL argued that the recall made by the Court En Banc was proper and in keeping with due process, because the 07 September 2011 Resolution of the Second Division violated the Constitution and the Internal Rules of the Supreme Court.

PAL also contended that the Court had the power to recall its own orders and resolutions and to take cognizance, *motu proprio*, of cases being heard by any of its Divisions, as it had done in the past. It cited several instances in which the Court En Banc had re-submitted and re-deliberated on cases and pointed to Rule 135, Section 5 of the Rules of Court on the inherent powers of the court, including "(g) [t]o amend and control its process and orders so as to make them more conformable to law and justice."

Finally, PAL claimed that the four Mendoza letters were not ex parte third motions for reconsiderations, because neither the merits of the main FASAP case in G.R. No. 178083 nor any prayer for reconsideration of the 07 September 2011 Resolution was discussed therein.

PAL prayed that: (1) FASAP's Motion for Reconsideration dated 17 October 2011 be denied; and (2) that the Court En Banc proceed with the disposition of the main FASAP case in G.R. No. 178083.

IV

Main Disposition of the Case

A. The Sufficiency of the Factual Findings in the Case

Considering that the assignment of the main FASAP case in G. R. No. 178083 was perfectly regular, the 04 October 2011 Resolution of the Court En Banc recalling the 07 September 2011 Resolution of the Second Division has been found to be without of any legal basis. Hence, this should have been sufficient for the Court to vacate the 04 October 2011 Resolution and to return the main FASAP case to the Second Division for proper action.

I vote to simply NOTE the four Mendoza letters that have become the subject of the instant administrative matter (A.M. No. 11-10-1-SC). Atty. Mendoza, counsel for PAL, should be guided by the findings in this Opinion in order to find some of the answers to the questions raised in his letters to the Clerk of Court. His various requests to the Clerk of Court for (a) copies of Special Orders regarding the reorganization of the various Divisions relative to the main FASAP case; (b) information on and copies of the official assignments of the ponentes as well as additional Members to the various Divisions to which the said case was assigned; and (c) information on dates

and times when deliberations took place, should be denied. Although Atty. Mendoza, as counsel for PAL is entitled to the results of the raffle of the main FASAP case under the rules,[66] this is not a carte blanche authority to demand the smallest minutiae of the Court's processes in relation thereto, especially since this case has already been decided with finality. If as the majority in the Decision seek to imply that such detailed requests should be entertained in all cases by this Court, an unduly oppressive burden will be imposed that would prevent this Court from discharging its constitutional duty to resolve with reasonable dispatch the many other cases pending before it.

It is important to note that any of the five Members of the Second Division who voted for the 07 September 2011 Resolution – namely, Justices Brion, Peralta, Bersamin, Perez and Mendoza – could have easily dissented therefrom, in keeping with the practice observed in this Court, but none of them dissented.[67] Deliberations took place not only on the main FASAP case in G.R. No. 178083, but also on many other cases calendared for the day. Justices Brion, Peralta, Bersamin, Perez and Mendoza, as regular or additional Members of the Second Division, in fact signed several other Decisions and Resolutions of the Second Division of this Court promulgated on 07 September 2011, as listed below.[68] If any of them felt that they could not participate in the deliberations in the main FASAP case in the manner that the Constitution required them to, they could have easily done so by either requesting deferment of the discussion to give them time to reflect on the draft resolution, or by writing their own Dissent from the unsigned 07 September 2011 Resolution. None of them did and, thus, the said Resolution remains on record as a unanimous Decision of the Second Division.

In assailing the composition of the Second Division during its 07 September 2011 Session, which acted on the main FASAP case, Atty. Mendoza was effectively placing serious doubts on the effectivity of all actions of the Second Division on the 147 other items on that day's Agenda, including the signed Decisions and Resolution above-cited. Giving in to his assertions would wreak havoc on the Court's procedures and allow litigants to incessantly question the validity of orders based on mere suspicions about the propriety of the composition of a Division of the Court.

The 07 September 2011 Resolution was far from transgressing the constitutional requirements for the valid adoption of a decision. Indeed, while the Constitution requires a Division action to have the concurrence of at least three Justices thereof, the Decision to uphold FASAP's position has been consistently and unanimously concurred in by all the justices who acted on the case. The 22 July 2008 Decision of the Third Division in favor of FASAP, penned by Justice Ynares-Santiago, was unanimously concurred in by Justices Austria-Martinez, Chico-Nazario, Nachura and Leonardo-De Castro. PAL's 1st MR of the Decision was denied with finality in the signed 02 October 2009 Resolution by the Special Third Division, penned once again by Justice Ynares-Santiago and unanimously concurred in by Justices Chico-Nazario, Nachura, Peralta and Bersamin. Thereafter, the 07 September 2011 Resolution of the Second Division denying PAL's 2[nd] MR, penned by Justice Brion, was concurred in by Justices Peralta, Perez, Bersamin and Mendoza. In sum, the position expressed in the 07 September 2011 Resolution of the Court has been shared by ten (10) Justices of this Court throughout the years.

B. The Validity of the Raffle of the main FASAP Case

In the Decision, the majority, led by Justice Brion as ponente, explained the consequences of the 20 January 2010 Resolution, which accepted the review prayed for by PAL in its 2[nd] MR. To my respected colleagues, the said Resolution, which opened the main FASAP case entirely anew for review on the merits, should have been raffled off to the remaining Members of the Division, who participated in the deliberations and previous rulings, specifically Justices Peralta or Bersamin. However, I must register my dissent to this position since it glosses over factual circumstances attendant in this case and makes hairline distinctions in the rules to come up with a strained conclusion to justify the recall of the 07 September 2011 Resolution, penned by no less than Justice Brion,

himself. The raffle of the case to Justice Velasco, then to Justice Brion and his subsequent ruling in 07 September 2011 Resolution are reasonable and consistent with our rules.

First, the Court was tasked to resolve the 2nd MR filed by PAL, which was undoubtedly a prohibited pleading and was already in contravention of the Court's express ruling against entertaining any further pleadings in the main FASAP case.^[69] Hence, when the 2nd MR was filed on 03 November 2009, the status of the case was one where a 1st MR had already been filed and subsequently denied with finality. Since Justice Ynares Santiago had already retired and the then prevailing rules on resolving motions for reconsideration had no application for motions for reconsiderations of decisions or resolutions which were already denied with finality,^[70] the Raffle Committee correctly treated the 2nd MR as an ordinary matter to be raffled to the now regular members of the Third Division, which was the Division that issued the 22 July 2008 Decision and 02 October 2009 Resolution. The Raffle Committee found no need to forward the matter to Justice Martin S. Villarama, Jr., who succeeded Justice Ynares Santiago and inherited her caseload,^[71] since the main FASAP case was already denied with finality.^[72]

There can be no arguing with the majority, when it found no fault in the position taken by the Clerk of Court, as explained in the Vidal-Anama Memorandum.^[73] It would indeed be unreasonable for the Court to require the Clerk to divine or speculate on a future and favorable resolution of PAL's 2nd MR and consequently, proceed to raffle the case to the original Members of the Division who participated and concurred in the Decision or denial of the 1st MR. Hence, as the majority found, there was nothing erroneous with respect to the raffle of the case after the 2nd MR was filed and that the assignment to Justice Velasco was still proper.

I must however make a marked divergence with the majority with respect to the actions of the Clerk of Court and the Raffle Committee after the issuance of the 20 January 2010 Resolution, penned by Justice Velasco, to grant the motion for leave to file the 2nd MR and thus, give new life to the main FASAP case. As the majority explained, throwing the case wide open for another review warrants its removal from Justice Velasco's caseload and the conduct of another raffle to either Justices Peralta or Bersamin, who are the remaining members of the Court that decided the 02 October 2009 Resolution denying PAL's 1st MR. However, the majority's proposition is not only riddled with operational inefficiency, but likewise opens all final decisions of any Division to second-guessing by Members of the two other Divisions.

It is incongruent, if not burdensome, for a Member of this Court, acting in a Division, to revive a case that has been denied with finality on a 2nd MR and then, to throw that same motion back to the other Justices for them to review anew the substantial merits of the case, which they have already decided. As the new Member-in-Charge of the 2nd MR of the main FASAP case, Justice Velasco together with the Members of the then reorganized Third Division found some cause for review of the main FASAP case, when it issued the 20 January 2010 Resolution. Presumably, they reviewed the two unanimously supported ponencias of Justice Ynares-Santiago and found issues in the case worth looking anew. Having resolved to re-open the case for a third review, the burden should have been on Justice Velasco, as Member-in-Charge, and the other Members of the reorganized Third Division to hear the parties on the 2nd MR and resolve the matter on a final decision.

For the Court to recognize the action of the Third Division to re-open a final decision and suddenly throw back the responsibility of deciding the 2nd MR to the original Members who decided the main FASAP case is to second-guess decisions of the various Divisions of this Court and to allow a peculiar circumvention of our rule on immutability of judgments. The unacceptable contradiction lies in the fact that based on the ponencia of Justice Brion, a Member of this Court who does not "intimately know the facts and merits of the case," can be given authority to re-open a final decision on 2nd MR and yet be precluded from holding on to the case to decide its substantial merits. Worse, those Members, who had in fact participated in the deliberations of the Decision and

Resolution of the 1[st] MR, will now be compelled to review their own findings based on the recommendation of Member, who instigated the reopening, but will not participate in the same review.

The original Members of Third Division, which issued the 22 July 2008 Decision and 02 October 2009 Resolution, including Justices Peralta and Bersamin, and the five other Justices,[74] have already made known their unanimous stand on the main FASAP case by their votes thereon. PAL cannot be allowed, by merely the retirement of Justice Ynares Santiago, to question the unfavorable rulings of a Court's Division on a 2[nd] MR. The principle of immutability of final judgment is better protected and upheld by disallowing review of a final decision by a Division on a prohibited second motion for reconsideration based solely on the retirement of the ponente or a change in the composition of the Division.

Furthermore, the introduction by the majority of the concept of a nominal ponente, to decide whether to open a third review of a decided case on a 2[nd] MR, finds no support in any existing rule or jurisprudence. Justice Velasco, to whom the case was properly raffled, and the members of the reorganized Third Division, at the time the 2nd MR was filed, had full authority to decide the motion in two respects: (1) whether to accept the 2[nd] MR despite the finality of the decision; and (2) if accepted, subsequently rule on the substantial merits of the main FASAP case based on the arguments in the 2[nd] MR. Justice Velasco was in no sense a nominal ponente, who will make a first determination of the propriety of accepting the 2nd MR and thereafter forward the second determination of the merits of the case to the "ruling ponente" – the existing Members who were part of the Division which originally deliberated and decided the main FASAP case. Contrary to the majority's conclusions, Justice Velasco is the proper ponente to whom the case was raffled to, with the dual responsibilities (1) to decide on accepting the 2[nd] MR and (2) if accepted, to resolve the substantial merits thereof.

Second, the subsequent inhibition of Justice Velasco was not cause to resort to the rule on resolving motions for reconsideration. What was called for was the regular application of the ordinary rules on inhibition and substitution of Members of the Court.

Under the Internal Rules of the Supreme Court, the general rule on resolving motions for reconsideration, as relied on by the majority itself, is expressed in its entirety as follows:

Resolutions of Motions for Reconsideration or Clarification of Decisions or Signed Resolutions and All Other Motions and Incidents Subsequently Filed; Creation of a Special Division. — Motions for reconsideration or clarification of a decision or of a signed resolution and all other motions and incidents subsequently filed in the case shall be acted upon by the ponente and the other Members of the Division who participated in the rendition of the decision or signed resolution.

If the ponente has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a new ponente who shall be chosen among the new Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein. If only one Member of the Court who participated and concurred in the rendition of the decision or signed resolution remains, he or she shall be designated as the new ponente.

If a Member (not the ponente) of the Division which rendered the decision or signed resolution has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a replacement Member who shall be chosen from the other Divisions until a new Justice is appointed as replacement for the retired Justice. Upon the appointment of a new Justice, he or she shall replace the designated Justice as replacement Member of the Special Division.

Any vacancy or vacancies in the Special Division shall be filled by raffle from among the other Members of

the Court to constitute a Special Division of five (5) Members.

If the ponente and all the Members of the Division that rendered the Decision or signed Resolution are no longer Members of the Court, the case shall be raffled to any Member of the Court and the motion shall be acted upon by him or her with the participation of the other Members of the Division to which he or she belongs.

If there are pleadings, motions or incidents subsequent to the denial of the motion for reconsideration or clarification, the case shall be acted upon by the ponente on record with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court.[75] (Emphasis supplied.)

Briefly stated, the general rule is that the ponente of the case and the other Members of the Division who participated in the rendition of the decision or signed resolution shall act upon motions for reconsideration or clarification. If the ponente had already retired, is no longer a member, is disqualified or has inhibited himself or herself, he or she will be replaced by the Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein. This rule is specific only to a first motion for reconsideration, which is permitted under the Rules of Court.

However, a different rule obtains for pleadings, motions or incidents subsequent to the denial of the motion for reconsideration or clarification, including in this case, a 2[nd] MR, which is already a prohibited pleading. The ponente on record shall still continue to act on these motions, pleadings or incidents after the denial of the motion for reconsideration, but with the participation of the Division to which he or she belongs at the time the said pleading, motion or incident is taken up by the Court, and not by the members of the original Division who participated and concurred in the rendition of the decision or signed resolution. The principle therefore is that after the resolution of the 1[st] MR, all incidents subsequent thereto shall stay with the ponente, and if he or she retires, with the Division that decided the case and resolved the 1[st] MR.

Hence, the general rule relied by the majority cannot be applied in the instant case because what is being resolved is not a 1[st] MR (which was in fact already denied with finality) but a 2[nd] MR. Being a 2[nd] MR subsequent to the denial of the 1[st] motion for reconsideration, the case was correctly raffled to Justice Velasco, as a regular Member of the Third Division, at the time the 2[nd] MR was filed and taken up.

Neither can the inhibition of Justice Velasco result in the return of the resolution of the 2[nd] MR to those Members of the Court who participated and concurred in the rendition of the decision or signed resolution in the main FASAP case. After Justice Velasco resolved to accept the 2[nd] MR and then inhibited himself due “to close personal relationship,” the Raffle Committee applied the regular rules on inhibition and substitutions of members of a Division.[76] Hence, there was nothing irregular or out of the ordinary when the case was subsequently raffled from Justice Velasco, who had by then moved to the First Division, to Justice Brion, as a member of the other two Divisions (namely the Third Division, and subsequently the Second Division, after the re-organization):

The case is presently assigned to Justice Velasco, Jr. who inhibited from the case due to close relation to one of the parties.

Following the pertinent provisions of Administrative Circular No. 84-2007, the case must be re-raffled among the Members of the Second and Third Divisions.[77]

The distinctions in applying the rules on resolving 1[st] motions for reconsideration and the rules on inhibition between a nominal ponente and a Member-in-Charge are illusory in this case. After Justice Velasco, as Member-in-Charge, recommended that PAL’s 2[nd] MR be given due course, nothing changed the fact that the 2nd MR continues to be a motion subsequent to the denial of the 1[st] MR. Under our Internal Rules, all motions,

pleadings or incidents subsequent to the denial of the first motion for reconsideration or clarification shall be acted upon by the ponente on record.[78] However, since Justice Ynares Santiago had already retired, these subsequent motions, pleadings or incidents in the main FASAP case will remain with the Third Division which resolved the 1[st] MR, but will now be raffled off as an ordinary case among that Division's present Members, in this instance to Justice Velasco. When Justice Velasco recused himself afterwards on 17 January 2011, the 2[nd] MR nevertheless continues to be treated as a motion subsequent to the denial of a 1[st] MR. Much like any ordinary case, the Court's regular rules arising from a valid inhibition of a Justice now govern, and the special rules for resolution of a 1[st] MR in case of the retirement of the ponente still do not apply.[79] Hence, following the regular rules for inhibition and substitution,[80] the 2[nd] MR was properly re-raffled out of the hands of Justice Velasco to the Members of the two other Divisions, in this case to Justice Brion of the Third Division, and eventually to the Second Division, after the re-organization. This is not a simplistic view of the rules of this Court to the main FASAP case but a direct, proper and appropriate application thereof.

Finally, the supposed exigencies, which compelled the recall of the 07 September 2011 Resolution, penned by Justice Brion himself, are infinitesimally and overwhelmingly insufficient to retract a substantial ruling by the Second Division on PAL's 2[nd] MR.

That the 07 September 2011 Resolution would lapse into finality after the 15[th] day, or on 04 October 2011, was not a compelling reason to recall it. At that point, the main FASAP case had already been decided with finality by the 02 October 2009 Resolution which denied the 1[st] MR and PAL did not have any realistic expectation that its 2[nd] MR would be given any more judicial consideration. In fact, the recalled 07 September 2011 reiterated the substantial findings of Third Division, as penned by Justice Ynares Santiago, and ultimately denied the 2[nd] MR. In hindsight, the much underscored time constraint was not as shocking to the judicial sense as to warrant a *motu proprio* recall by the En Banc of the 07 September 2011 Resolution of the Second Division, because the case had already been decided with finality since 02 October 2009 and was on its third review.

In any case, the concerns raised by the majority regarding the proper raffling of the main FASAP case (albeit properly executed by the Raffle Committee) could have been raised by the party concerned and was in fact questioned in the third and fourth letters of Atty. Mendoza as well as in the Motion to Vacate filed by PAL. There was no need for the Court En Banc to act with haste prior to the lapse of the 15-day period to move for reconsideration because the case was already denied with finality twice over (by 02 October 2009 and 07 September 2011 Resolutions). The recall of the 07 September 2011 Resolution by the Second Division was unduly precipitous and done without proper disclosure to all Members of the Court of the factual circumstances surrounding the issues.

The majority's emphasis on the fear that the Court would be accused of "flip-flopping" if the 07 September 2011 Resolution be recalled on the ground of lack of jurisdiction of the Second Division after the lapse of the period is baseless. This concern erroneously assumes that a ruling made by one of the Divisions can be questioned based on the ground that another Division of this Court has purportedly better jurisdiction over deciding the case. Each Division sits veritably as the Court En Banc itself.[81] The Divisions of the Court are not inferior bodies to the Court En Banc; neither are they independent tribunals, whose decisions can be appealed on a 2[nd] MR to the other two divisions.

It is axiomatic that "jurisdiction once acquired is not lost but continues until the case is finally terminated." [82] The jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached.[83] In *Mercado v. CA*, [84] the Court even went so far as to say that errors

committed by the court in the exercise of its jurisdiction will not deprive it of the same:

Now, jurisdiction, once acquired, is not lost by any error in the exercise thereof that might subsequently be committed by the court. Where there is jurisdiction over the person and the subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. And when a court exercises its jurisdiction, an error committed while engaged in that exercise does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of jurisdiction and every erroneous judgment would be a void judgment. This, of course, can not be allowed. The administration of justice would not survive such a rule. ... (Emphasis supplied.)

Applying the foregoing principles to the factual circumstances of the instant case, this Court through its Second Division was not ousted of its jurisdiction when the case was assigned to Justice Brion and he, together with the other members of the Second Division, voted to deny PAL's 2nd MR in the recalled 07 September 2011 Resolution. Even assuming *arguendo* that some errors attended the assignment of the case from Justice Velasco to Justice Brion by the Raffle Committee (albeit, no such mistake occurred in this instance, as it was done in accordance with our existing rules), this Court through its Second Division cannot be considered by the majority as having lost jurisdiction by that purported lapse and thus, enable a fourth review by either Justices Peralta or Bersamin.

Neither can a claim of violation of substantive or procedural due process rights of PAL by this alleged mistake in the internal operations of the Court be sustained because it cannot be denied that PAL was afforded all the opportunity to ventilate its legal claims before the Court. In fact, when the Second Division, speaking through Justice Brion, voted to deny the 2nd MR, the main FASAP case had already been decided with finality in favor of FASAP and was on its third review by this Court. Thus, the parties, especially PAL, had been given more than adequate opportunities to argue the cause before this Court. In sum, the purported mistake in the raffle of the case pointed to by the majority is not so grave and deplorable to our sense of justice as to warrant the retraction of the substantive decision of the members of this Court's Second Division that voted without any dissent to deny the 2nd MR and finally lay to rest this case. The aim here is not just to give definitive resolution to the controversy between the parties in this case but to ensure that final decisions of this Court are indeed final.

Indeed, the recall of the 07 September 2011 Resolution produced the very effect or perception that Justice Brion, speaking for the majority, wanted to avoid – flip-flopping on cases decided with finality on account of a prohibited 2nd MR and personal correspondences by a party's counsel. There can be no surer indication of flip-flopping than the subsequent and sudden denial of the petition in the main FASAP case on a 2nd MR, despite the grant of the petition in three rulings by at least ten justices (22 July 2008 Decision, 02 October 2009 Resolution and the recalled 07 September 2011 Resolution).

The view of the majority that the recall of the 07 September 2011 Resolution did not constitute a reversal of the substantial issues is a false view of the effects of such an action. This argument ignores the fact that the substantial merits of the case is yet again opened for review and the case reverts back to its status after the 20 January 2010 Resolution penned by Justice Velasco, which is the grant of the motion for leave to file the 2nd MR. Yet, even Justice Brion in the recalled 07 September 2011 Resolution asserted that "the issues raised by PAL in the 2nd MR have already been discussed and settled by the Court in the July 22, 2008 Decision."^[85] It is so odd that this Court would open the main FASAP case for a fourth review by either Justices Peralta or Bersamin, when no new or earth-shattering argument has been offered that has not been taken up in the past that would warrant a reversal of the undisputed and repeatedly reiterated finding of this Court that PAL was guilty of illegal dismissal.

Finally, the unfounded allegations by PAL of the mishandling of the raffle of the case (albeit erroneous) which

supported a review of the substantial merits of the main FASAP case clearly compelled discussion of the administrative matters and operations of this Court. Contrary to the insinuation that this possibly violates the 14 February 2011 Resolution of this Court on its internal deliberations, these matters are decidedly outside the province of judicial privilege, since it treats of issues not with respect to internal deliberations of the merits of the case, but on the procedural and administrative proceedings in raffling and designating the Members of the Court to handle cases.

Rather than write finis to the controversy hounding PAL and its employees, the Court has opened the flood gates anew for a fourth review of the main FASAP case, which had already achieved finality but has been resurrected by the mere expedience of supposed confusion in the raffling of the case. If this Court is to adhere to its character as a court of last resort, it must stop giving never-ending refuge to parties who obstinately seek to resist execution of our final decisions on the sole ground of their counsel's creativity in re-labelling a prohibited second motion for reconsideration, or the changing composition of the three Divisions of this Court. Otherwise, the Court might as well lay to rest in the sepulcher the founding judicial principles of immutability of judgments and res judicata. I am duty-bound to register my dissent from the position taken by the majority in this case. Nothing has been established in the letters or pleadings to merit the Court's extraordinary or special treatment in reopening for a third time, a unanimously-agreed upon Decision and to assign as new ponente, either of the two Justices who had twice agreed with that Decision. Nothing can be more unconstitutionally deprivatory of the winning party's right to enforcement of a final judgment.

IN VIEW OF THE FOREGOING, I vote to (a) RECALL the Court's En Banc 04 October 2011 Resolution in A.M. No. 11-10-1-SC; and (b) RETURN the main case in G.R. No. 178083 to the regular Second Division for implementation of the reinstated 07 September 2011 Resolution. I also vote to GRANT the Motion for Reconsideration dated 17 October 2011 of the Flight Attendants and Stewards Association of the Philippines (FASAP) in A.M. No. 11-10-1-SC.

I also find that the claim of violation by the Court of the Constitution and the Internal Rules of the Supreme Court argued by Philippine Airlines, Inc., in its Motion to Vacate dated 03 October 2011 and in its Comment dated 03 November 2011 to be WITHOUT ANY MERIT. Hence, the said Motion to Vacate filed by Philippine Airlines, Inc., (PAL) in G. R. No. 178083 should be DENIED.

The letters of Atty. Estelito P. Mendoza, counsel for PAL, to the Clerk of Court dated 13, 16, 20 and 22, all of September 2011 should simply be NOTED. Hence, I submit that the Court should DENY the requests of Atty. Mendoza in the aforesaid letters for further information, as stated therein, from the Clerk of Court.

[1] Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc. (PAL), Patria Chiong and Court of Appeals, G.R. No. 178083, Decision dated 22 July 2008 (559 SCRA 252), Resolution dated 02 October 2009 (602 SCRA 473) and Resolution dated 07 September 2011.

[2] PAL's Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2009. (Rollo [G. R. No. 178083], Vol. 2, pp. 2239-2296)

[3] SC Resolution dated 07 September 2011.

[4] Justice Presbitero J. Velasco, Jr., was denominated by the majority Resolution as purported "nominal ponente."

[5] The majority Resolution had designated that either Justices Diosdado M. Peralta or Lucas P. Bersamin be the ruling ponente, who will be assigned to decide the substantial merits of the 2nd MR.

[6] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, G. R. No. 178083, 22 July 2008, 559 SCRA 252.

[7] *Rollo* (G. R. No. 178083), Vol. 2, pp.3568-3570.

[8] “The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or, in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.” (Constitution, Article VIII, Sec. 4 [1])

[9] “All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.” (Constitution, Article VIII, Sec. 4 [2])

[10] Internal Rules of the Supreme Court (A. M. No. 10-4-20-SC, as amended), Rule 2, Sec. 3.

[11] “All cases and matters under the jurisdiction of the Court not otherwise provided by law, by the Rules of Court or by these Internal Rules to be cognizable by the Court en banc shall be cognizable by the Divisions.” (Internal Rules of the Supreme Court, Rule 2, Sec. 4)

[12] “A court attorney in the Docket Division shall preliminarily classify the petitions and appeals filed as en banc or as Division Cases in accordance with law.” (Internal Rules of the Supreme Court, Rule 6, Sec. 6) “The initiatory pleadings duly docketed by the Judicial Records Office shall be classified into en banc and Division cases for purposes of the raffle. The Clerk of Court shall forthwith make a report on the classified cases to the Chief Justice.” (Id., Sec. 4)

[13] “Two Raffle Committees – one for the en banc and the other for Division cases, each to be composed of a Chairperson and two members – shall be designated by the Chief Justice from among the Members of the Court on the basis of seniority.” (Internal Rules of the Supreme Court, Rule 7, Sec. 2)

[14] The composition of each Division shall be based on seniority. The Chief Justice may, however, consider factors other than seniority in Division assignments. The appointment of a new Member of the Court shall necessitate the reorganization of Divisions at the call of the Chief Justice. (Internal Rules of the Supreme Court, Rule 2, Sec. 8)

[15] “Effect of reorganization of Division on assigned cases. – In the reorganization of Membership of Divisions, cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle.” (Internal Rules of the Supreme Court, Rule 2, Sec. 9)

[16] A Motion for Extension of Time (To File Petition for Review on Certiorari) dated 15 June 2007 was earlier filed. (*Rollo*, Vol. I, pp. 3-7)

[17] “WHEREFORE, the instant petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE and a new one is rendered:

1. FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;

2. ORDERING Philippine Air Lines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;

3. ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

Costs against respondent PAL.” (Decision dated 22 July 2008, pp. 30-31; rollo [G. R. No. 178083], Vol. 1, pp. 1546-1547)

[18] Justice Leonardo-de Castro was designated in lieu of Justice Ruben Reyes, who had inhibited himself for having penned the assailed Court of Appeals Decision dated 23 August 2006 (Rollo [G. R. No. 178083], Vol. 1, pp. 58-83) and Resolution dated 29 May 2007 (Rollo [G. R. No. 178083], Vol. 1, pp. 84-86).

[19] Notice of Judgment dated 22 July 2008. (Rollo [G. R. No. 178083], Vol. 1, p. 1516)

[20] PAL's Motion for Reconsideration dated 20 August 2008. (Rollo [G. R. No. 178083], Vol. 1, pp. 1549-1587)

[21] PAL's Motion to Set Case for Oral Arguments dated 09 February 2009. (Rollo [G. R. No. 178083], Vol. 2, pp. 1805-1809)

[22] SC Resolution dated 04 March 2009. (Rollo [G. R. No. 178083], Vol. 2, p. 1812)

[23] SC Resolution dated 18 March 2009. (Rollo [G. R. No. 178083], Vol. 2, pp. 1816-1817)

[24] “Atty. Estelito P. Mendoza and Atty. Lozano A. Tan argued for respondent PAL while Atty. Daniel C. Gutierrez and Atty. Joaquin N. Gan III argued for petitioner FASAP.” (Id.)

[25] SC Resolution dated 02 October 2009. (Rollo [G. R. No. 178083], Vol. 2, pp. 2044-2074) See *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*, 602 SCRA 473 (2009).

[26] Notice of Judgment dated 06 October 2009. (Rollo [G. R. No. 178083], Vol. 2, p. 2042)

[27] Rollo (G. R. No. 178083), Vol. 2, pp. 2072-2073.

[28] PAL's Motion for Leave to File, and to Admit Attached “Motion for Reconsideration of the Resolution dated October 2, 2009” and “Second Motion for Reconsideration of the Decision dated 22 July 2008” dated 03 November 2009. (Rollo [G. R. No. 178083], Vol. 2, pp. 2220-2238)

[29] PAL's Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2009. (Rollo [G. R. No. 178083], Vol. 2, pp. 2239-2296)

[30] Report dated 11 November 2009 of the Division Raffle. (See attachment of Memorandum dated 26 September 2011 signed by Atty. Felipa B. Anama, Deputy Clerk of Court En Banc)

[31] “Accordingly, a second motion for reconsideration is a prohibited pleading, which shall not be allowed, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained.”

(Tirazona v. Philippine Eds Techno-Service, Inc., (PET, Inc.), G. R. No. 169712, 20 January 2009, 576 SCRA 625, citing Ortigas and Co., Limited Partnership v. Velasco, 324 Phil. 483, 489 [1996])

[32] “No second motion for reconsideration of a judgment or final resolution by the same party shall not be entertained.” (Rules of Court, Rule 52, Sec. 2) “The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership.” (Internal Rules of the Supreme Court, Rule 15, Sec. 3)

[33] “We have stated, at the outset, that petitioner’s second motion for reconsideration could have been correctly rejected outright. But, as further noted, petitioner has distressingly adopted the lamentable technique contrived by losing litigants of resorting to ascriptions of supposed irregularities in the courts of justice as the cause for their defeat. Here, petitioner speaks of pressure having been employed by respondents against the trial court. It then proceeds to insinuate anomalous haste on the part of respondent court in reversing the trial court, pointing to the supposed short period of time it took the former to come out with its decision. It never even bothered to mention that the issues are actually very simple, that the evidence is basically documentary, and that the questions raised are easily answered by applying settled doctrines of this Court.

... ..

WHEREFORE, petitioner’s second motion for reconsideration is hereby DENIED for lack of merit and EXPUNGED as an unauthorized pleading. This resolution is immediately final and executory, and no further pleadings or motions will be entertained.”(Komatsu Industries [Phils.], Inc., v. Court of Appeals, G. R. No. 127682, 24 April 1998, 352 Phil. 440)

[34] G. R. No. 169712, 20 January 2009, 576 SCRA 625, 628.

[35] “PV” in the above handwritten notation refers to Justice Presbitero J. Velasco, Jr., and “AC” to Justice Antonio T. Carpio.

[36] “NOTE: The case is presently assigned to Justice YNARES-SANTIAGO of the Third Division. Justice Reyes inhibited himself from the case for having concurred in the assailed decision and resolution of the Court of Appeals. During the division raffle held on February 26, 2008, Justice Corona was drawn as the additional member to take the place of Justice Reyes. Justice Corona also inhibited himself from the case due to his previous efforts in settling the controversy when he was still in Malacañang.

Following the pertinent provisions of Administrative Circular No. 84-2007, one (1) additional member shall be drawn from the rest of the Court to replace Justice Corona.” (See attachment of Memorandum dated 26 September 2011 signed by Atty. Felipa B. Anama, Deputy Clerk of Court En Banc)

[37] “This Resolution shall take effect on the 1st day of April 2000 and shall be published in two (2) newspapers of general circulation in the Philippines not later than 29 February 2000.” (A.M. No. 99-8-09-SC)

[38] “No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.” (Rule 52, Sec. 2, in relation to Rule 56, Sec. 2 of the Rules of Court)

[39] “The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. ...” (Internal Rules of the Supreme Court, Rule 15, Sec. 3)

[40] SC Resolution dated 20 January 2010, as witnessed by Justices Antonio T. Carpio, Presbitero J. Velasco, Jr., Antonio Eduardo B. Nachura, Diosdado Peralta and Lucas P. Bersamin. (Rollo, Vol. 2, pp. 2435-2436)

[41] “The Court resolves to GRANT respondents’ motion for leave to file and to admit motion for reconsideration of the Resolution dated 02 October 2009 and second motion for reconsideration of the Decision dated 22 July 2008.

The Court further resolves to require the respective parties to COMMENT within ten (10) days from notice hereof on:

(1) respondent’s Motion for Reconsideration of the Resolution dated 02 October 2009 and Second Motion for Reconsideration of the Decision dated 22 July 2008; and

(2) petitioners’ An Urgent Appeal to the Supreme Court Justices dated 23 November 2009.” (Id.)

[42] Special Order No. 838 dated 17 May 2010; Annexed to the Vidal-Anama Memorandum.

[43] Report dated 26 January 2011 of the Division Raffle. (See attachment of Memorandum dated 26 September 2011 signed by Atty. Felipa B. Anama, Deputy Clerk of Court En Banc)

[44] Special Order No. 1025 dated 21 June 2011; Annexed to the Vidal-Anama Memorandum.

[45] SC Internal Resolution dated 27 June 2011. (Rollo, Vol. 2, p. 3489)

[46] SC Resolution dated 24 August 2011. (Rollo, Vol. 2, pp. 3566-3567)

[47] “The Court NOTES the copies furnished the Court of: (1) the comment /opposition (to petitioners’ denial of application for TRO] dated 14 April 2011) filed by petitioner Flight Attendants and Stewards Association of the Philippines before the Court of Appeals dated 23 June 2011; and (2) motion to resolve (re: memorandum of appeal with application for a temporary restraining order and a writ of preliminary injunction) dated 30 June 2011 filed by Philippine Airlines, Inc. and Patria Chiong before the National Labor Relations Commission, NCR, Quezon City. Sereno, J. on leave; Abad, J. designated additional member per S.O. No. 1067-B. Reyes, J., on official leave; Mendoza, J., designated additional member per S. O. No. 1066” (Id.)

[48] “We received yesterday a copy of the ‘Resolution’ of the Supreme Court (Second Division) in the above-entitled case dated September 7, 2011. We recall that all Resolutions of the Court on the above-entitled case, which we received prior to this Resolution, were issued by the Third Division of the Supreme Court. We also note that unlike most minute resolutions of Division resolutions we have received from the Supreme Court, there is no concluding clause stating the name of those who participated in the promulgation of the Resolution.

“With your indulgence, therefore, and further to the requests we made by our letters dated September 13, 2011 and September 16, 2011, we respectfully request, in regard the Resolution of September 7, 2011, the date and time when the Resolution was deliberated upon, and a vote thereon, and the names of the members of the Court who participated in the deliberation and voted on the afore-mentioned Resolution.” (Letter of Atty. Estelito P. Mendoza dated 20 September 2011)

[49] Justice Peralta was designated as acting Member of the Second Division vice Justice Carpio as per Raffle dated 15 August 2011.

[50] SC Resolution dated 07 September 2011. (Rollo, Vol. 2, pp. 3568-3571)

[51] Rollo, Vol. 2, p. 3570.

[52] Atty. Estelito Mendoza’s Letter dated 20 September 2011. (Rollo, Vol. 2, pp. 3577-3578)

[53] Namely, Justices Perez, Peralta, Bersamin, and Mendoza.

[54] Included in the Vidal-Anama Memorandum were the following: Raffle Report dated 20 June 2007, Raffle Report dated 14 July 2008, Raffle Report dated 28 July 2008, Raffle Report dated 28 September 200, Raffle Report dated 11 November 2009, Raffle Report dated 26 January 2011, Raffle Report dated 15 August 2011, Resolution dated 15 February 2009 in A. M. No. 99-8-09-SC, Special Order No. 838, Special Order No. 1025, Special Order No. 1066 and Special Order No. 1074-A.

[55] Raffle Report dated 26 January 2011.

[56] En Banc Raffle Committee Report dated 03 October 2011.

[57] “In its resolution dated October 4, 2011, the Court En Banc resolved to have the case re-raffled to a new Member-in-Charge. [NOTE: Justices Carpio (2), Velasco, Jr. (3), Leonardo-De Castro (4) and Del Castillo (8) have inhibited from the case. Justice Brion (5) is taking no part in the re-raffle.]” (En Banc Raffle Committee Report dated 10 October 2011)

[58] The record does not reveal the reason for Justice Del Castillo’s inhibition.

[59] En Banc Raffle Committee Report dated 10 October 2011.

[60] Olympic Mines and Development Corp., v. Platinum Group Metals Corp., G. R. Nos. 178188, 180674, 181141 & 183527, 15 August 2009, 596 SCRA 314, citing Apo Fruits Corporation v. CA, 553 SCRA 237 (2008), J.G. Summit Holdings, Inc. v. CA, 450 SCRA 169 (2005), and Firestone Ceramics v. CA, 334 SCRA 465 (2000).

[61] Supreme Court Circular No. 2-89 dated 07 February 1989.

[62] “4. At any time after a Division takes cognizance of a case and before a judgment or resolution therein rendered becomes final and executory, the Division may refer the case en consulta to the Court en banc which, after consideration of the reasons of the Division for such referral may return to the case to the Division or accept the case for decision or resolution.” (Supreme Court Circular No. 2-89 dated 07 February 1989)

[63] “6. When a decision or resolution is referred by a Division to the Court en banc, the latter may, in the absence of sufficiently important reasons, decline to take cognizance of the same, in which case, the decision or resolution shall be returned to the referring Division.” (Supreme Court Circular No. 2-89 dated 07 February 1989)

[64] Internal Rules of the Supreme Court, Rule 15, Sec. 3, par. 2.

[65] “Confidentiality of identity of Member-in-charge or ponente and of Court actions – Personnel assigned to the Rollo Room and all other Court personnel handling documents relating to the raffling of cases are bound by strict confidentiality on the identity of the Member-in-Charge or ponente and on the actions taken on the case. ...” (Internal Rules of the Supreme Court, Rule 9, Sec. 4)

[66] “The Clerk of Court shall make the result of the raffle available to the parties and their counsels or to their duly authorized representatives, except the raffle of (a) bar matters; (b) administrative cases; and (c) criminal cases where the penalty imposed by the lower court is life imprisonment, and which shall be treated with strict confidentiality.” (Internal Rules of the Supreme Court, Rule 7, Sec. 3)

[67] All decisions and resolutions as well as separate, concurring, or dissenting opinions are submitted to the Office of the Chief Justice. (Internal Rules of the Supreme Court, Rule 13, Sec. 9) In the ordinary course of proceedings, these decisions or resolutions as well as all concurring or dissenting opinions are simultaneously sent by the Office of the Chief Justice to the Clerk of Court for promulgation. However, there were instances in recent history when the decision or resolution of the Court was immediately promulgated without awaiting the separate opinions. These separate opinions are submitted and released after the main decision or resolution has already

been promulgated and made public. Some examples of this recent phenomenon in which Separate Opinions were belatedly promulgated include the following: (1) Resolution dated 08 February 2011 in In matter of the charges of plagiarism, etc. against Associate Justice Mariano C. Del Castillo, A. M. No. 10-7-17-SC; (2) Decision dated 15 February 2011 in Gutierrez v. House of Representatives, G. R. No. 193459; and (3) Resolution dated 15 November 2011 in Gloria Macapagal-Arroyo v. Hon. Leila de Lima, G. R. Nos. 199034 and 199046.

[68] (1) Edna Lopez Delicano, Eduardo Alberto Lopez, Mario Diez Cruz, Howard E. Meneses, And Corazon E. Meneses v. Pechaten Corporation, G. R. No. 191251; (2) Atilano O. Nollora, Jr. v. People of the Philippines, G. R. No. 191425; (3) Antonio Francisco, Substituted By His Heirs: Nelia E.S. Francisco, Emilia F. Bertiz, Rebecca E.S. Francisco, Antonio E.S. Francisco, Jr., Socorro F. Fontanilla, and Jovito E.S. Francisco v. Chemical Bulk Carriers, Inc., G. R. No. 193577; (4) Leave Division, Office Of Administrative Services, Office of the Court Administrator v. Romeo L. De Lemos, Clerk of Court VI, Dominador C. Masangkay, Sheriff Iv, Adelaida D. Tolentino, Cash Clerk II, Ma. Fatima M. Yumena, Demo II Ma. Fe E. Yumol, Court Aide II, And Ronald M. Taguinod, Process Server, All of the Office of the Clerk of Court, Regional Trial Court, Balanga City, Bataan, A. M. No. P-11-2953; and (5) National Housing Authority v. First United Constructors Corp., G. R. No. 176535.

[69] “WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby DENIED with FINALITY. The assailed Decision dated July 22, 2008 is AFFIRMED with MODIFICATION in that the award of attorney’s fees and expenses of litigation is reduced to P2,000,000.00. The case is hereby REMANDED to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

No further pleadings will be entertained.” (SC Resolution dated 02 October 2009; rollo [G. R. No. 178083], Vol. 2, pp. 2044-2074; See Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., 602 SCRA 473 [2009])

[70] “These rules shall not apply to motion for reconsideration of decisions or resolutions already denied with finality.” (A.M. No. 99-8-09-SC dated 15 February 2000)

[71] The practice in the Supreme Court is that the newly appointed Member of the Court shall inherit the caseload of the Member being replaced, which is now codified. (Internal Rules of the Supreme Court, Rule 2, Sec. 10 [b])

[72] “Should this case be inherited by Justice Villarama, Jr., who succeeded Justice Ynares-Santiago? NOTE: The case will be transferred to the First Division. No. [Handwritten Note]” (Division Raffle Report dated 11 November 2009, attached to the Vidal-Anama Memorandum)

[73] “Given this background the Clerk of Court cannot and should not be faulted for her recommended position, as indeed there was a ruling in the 1[st] MR that declared the original ruling on the case final. ... she could not have considered, too, that a subsequent 2[nd] MR would be accepted for the Court’s further consideration of the case on the merits.” (Dissenting Opinion, Justice Brion, p. 18)

[74] Namely, Justices (1) Ynares-Santiago, (2) Austria-Martinez, (3) Chico-Nazario, (4) Nachura, (5) Leonardo-De Castro. Justices Ynares-Santiago, Chico-Nazario and Nachura all voted in favor of both the 22 July 2008 Decision and the 02 October 2009 Resolution in the main FASAP case.

[75] Internal Rules of the Supreme Court, Rule 2, Sec. 7.

[76] “Whenever a Member-in-Charge of a case in a Division inhibits himself for a just and valid reason, the case shall be returned to the Raffle Committee for re-raffling among the Members of the other two (2) Divisions of the Court.” (Internal Rules of the Supreme Court, Rule 8, Sec. 3 [a])

[77] Division Raffle Committee Report dated 26 January 2011, as attached the Vidal-Anama Memorandum.

[78] “If there are pleadings, motions or incidents subsequent to the denial of the motion for reconsideration or clarification, the case shall be acted upon by the ponente on record with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court.” (Internal Rules of the Supreme Court, Rule 2, Sec. 7, last paragraph)

[79] “If the ponente has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a new ponente who shall be chosen among the new Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein. If only one Member of the Court who participated and concurred in the rendition of the decision or signed resolution remains, he or she shall be designated as the new ponente.” (Internal Rules of the Supreme Court, Rule 2, Sec. 7, 2nd paragraph)

[80] “Whenever a Member-in-Charge of a case in a Division inhibits himself for a just and valid reason, the case shall be returned to the Raffle Committee for re-raffling among the Members of the other two Divisions of the Court.” (Internal Rules of the Supreme Court, Rule 8, Sec. 3 [a])

[81] *Olympic Mines and Development Corp., v. Platinum Group Metals Corp.*, G. R. Nos. 178188, 180674, 181141 & 183527, 15 August 2009, 596 SCRA 314, citing *Apo Fruits Corporation v. CA*, 553 SCRA 237 (2008), *J.G. Summit Holdings, Inc. v. CA*, 450 SCRA 169 (2005), and *Firestone Ceramics v. CA*, 334 SCRA 465 (2000).

[82] *Rizal Surety & Insurance Company, v. Manila Railroad Company, et al.*, G.R. No. L-20875, 30 April 1966.

[83] *Dioquino v. Cruz, Jr.*, G.R. Nos. L-38579 & L-39951, 09 September 1982, 202 Phil. 35, citing *Tinitigan v. Tinitigan, Sr.*, 100 SCRA 619, 634 (1980).

[84] G.R. No. L-44001, 10 June 1988, 162 SCRA 75.

[85] Resolution dated 07 September 2011, p. 1.

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