

## **WUERTH PHILIPPINES, INC., PETITIONER, VS. RODANTE YNSON, RESPONDENT.**

*G.R. No. 175932. February 15, 2012*

Ponente: PERALTA, J.

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### **PERALTA, J.:**

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to set aside the Decision[1] dated July 13, 2006 and the Resolution[2] dated December 6, 2006 of the Court of Appeals (CA), in CA-G.R. SP No. 00845, which affirmed with modification the Resolutions of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City, in NLRC CA NO. M-008246-2004 (RAB 11-09-00949-03), dated July 29, 2005 and November 24, 2005.

The factual antecedents are as follows:

On August 15, 2001, petitioner Wuerth Philippines, Inc., a subsidiary of Wuerth Germany, hired respondent Rodante Ynson, as its National Sales Manager (NSM) for Automotive. As NSM, respondent was required to travel to different parts of the country so as to supervise the sales activities of the company's sales managers, make a schedule of activities geared towards increasing the sales of petitioner's products, and submit said schedule to Marlon Ricanor, Chief Executive Officer of petitioner company.

In an electronic mail (e-mail)[3] dated January 4, 2003 sent to Ricanor, respondent furnished the former with a copy of his sales targets for the year 2003 and coverage plan for the month of January 2003, and indicated that he intends to be on leave from January 23 to 24, 2003. However, respondent was not able to follow the said coverage plan starting January 26, 2003, as he failed to report to work since then. It turned out that on January 24, 2003, he suffered a stroke, and on the succeeding days, he was confined at the Davao Doctor's Hospital. He immediately informed petitioner about his ailment.

On March 27, 2003, Dr. Daniel de la Paz, a Neurologist-Electroencephalographer in Davao City, issued a Certification[4] stating that respondent has been under his care since January 24, 2003 and was confined in the hospital from January 24 to February 3, 2003 due to sudden weakness on the left side of his body. In another Medical Certificate[5] dated June 4, 2003, Dr. De la Paz certified that respondent may return to work, but advised him to continue with his rehabilitation regimen for another month and a half.

Dr. Bernard S. Chiew, a specialist on Adult Cardiology, also issued an undated Medical Certificate[6] stating that he examined respondent who was diagnosed with primary hypertension, diabetes mellitus II, S/P stroke on June 4, 2003, and recommended that the latter should continue with his physical rehabilitation until July 2003.

On June 9, 2003, respondent sent an e-mail[7] to Hans Sigit of Wuerth Germany, informing the latter that he can return to work on June 19, 2003, but in view of the recommendation of doctors that he should continue with his rehabilitation until July, he requested that administrative work be given to him while in Davao City, until completion of his therapy. On June 10, 2003, Alexandra Knapp, Secretary of the Management Board of Wuerth

Germany, forwarded the e-mail[8] to Ricanor.

Thereafter, Ricanor sent a letter[9] dated June 12, 2003 to respondent, directing him to appear before the former's office in Manila, on July 1, 2003 at 9:00 a.m., for an investigation, relative to the following violations which carry the penalty of suspension and/or dismissal, based on the following alleged violations: (1) absences without leave since January 24, 2003 to date, and (2) abandonment of work. In a letter[10] dated June 26, 2003, respondent replied that his attending physician advised him to refrain from traveling, in order not to disrupt his daily schedule for therapy and medication.

On June 18, 2003, Knapp sent an e-mail[11] to respondent, informing him that his request for detail in Davao was disapproved, as petitioner did not have any branch in Davao and there was no available administrative work for him. Meanwhile, petitioner company bewailed that its sales suffered, as nobody was performing the duties of the NSM and the office space reserved for respondent remained vacant.

Later, Ricanor sent two letters,[12] dated July 4, 2003 and July 31, 2003, to respondent, resetting the investigation to July 25, 2003, at 9:00 a.m., and August 18, 2003, respectively. Both letters reiterated the contents of his first letter to respondent dated June 12, 2003, but included gross inefficiency as an additional ground for possible suspension or dismissal.

In his letters[13] dated July 21, 2003 and August 12, 2003, respondent reiterated the reasons for his inability to attend the investigation proceedings in Manila and, instead, suggested that Ricanor come to Davao and conduct the investigation there.

Finally, in a letter[14] dated August 27, 2003, Ricanor informed respondent of the decision of petitioner's management to terminate his employment, effective upon date of receipt, on the ground of continued absences without filing a leave of absence.

Respondent's salary at the time of the termination of his employment was P175,000.00 per month.

On September 5, 2003, respondent filed a Complaint against petitioner and Ricanor, in his capacity as petitioner company's Chief Executive Officer, for illegal dismissal and non-payment of allowances, with claim for moral and exemplary damages and attorney's fees, in the NLRC, Regional Arbitration Branch No. XI in Davao City.

The parties submitted their respective Position Papers. Thereafter, Labor Arbiter Amado M. Solamo rendered a Decision[15] dated July 15, 2004, the dispositive portion thereof reads:

WHEREFORE, judgment is hereby rendered:

1. Finding respondents guilty of illegal dismissal;
2. Ordering respondents to reinstate complainant to his former position without loss of seniority rights and privileges immediately upon receipt hereof. In case of appeal, respondents are hereby ordered to reinstate complainant in the payroll;
3. Ordering respondents to pay complainant, the following:
  - a) Full backwages  
(Aug. 29, 2003 to July 15, 2004)  
(11 months x P175,000.00) ..... P1,925,000.00
  - b) Medical benefits..... 300,000.00
  - c) 13th month pay Y2003..... 175,000.00

d) Moral and Exemplary Damages ..... 3,000,000.00

e) 10% of the total award as attorney's fees..... 540,000.00

TOTAL AMOUNT: P5,940,000.00

SO ORDERED.[16]

Petitioner and Ricanor appealed to the NLRC (Cagayan de Oro City), which affirmed with modification the Decision of the Labor Arbiter in a Resolution[17] dated July 29, 2005, reducing the total awards of moral and exemplary damages from P3,000,000.00 to P600,000.00 and P300,000.00, respectively, and the attorney's fees adjusted in an amount equivalent to ten (10%) percent of the total monetary award.

On August 26, 2005, petitioner and Ricanor filed their Motion for Reconsideration.[18]

In a Resolution[19] dated November 24, 2005, the NLRC modified its Decision, further reducing the awards of moral damages from P600,000.00 to P150,000.00, and exemplary damages from P300,000.00 to P50,000.00, respectively.

Aggrieved, petitioner and Ricanor filed before the CA a Petition for Certiorari with Application for the Issuance of a Temporary Restraining Order and Preliminary Injunction.

On July 13, 2006, the CA rendered a Decision,[20] finding the petition partly meritorious. It found that petitioner had the right to terminate the employment of respondent, and that it had observed due process in terminating his employment. While the CA deleted the awards of backwages and moral and exemplary damages, it nonetheless ordered petitioner to pay respondent the following amounts: P1,225,000.00 (representing his salary from February 2003 to August 29, 2003), medical expenses of P94,100.00, temperate damages of P100,000.00, 13th month pay of P175,000.00, and attorney's fees of 10% of the total monetary award.

Petitioner filed a Motion for Reconsideration, which the CA denied in a Resolution[21] dated December 6, 2006.

Petitioner filed this present Petition for Review on Certiorari, raising the following assignment of errors:

I.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED P1,225,000.00 REPRESENTING THE PRIVATE RESPONDENT'S MONTHLY SALARY OF P175,000.00 FROM FEBRUARY 2003 TO AUGUST 29, 2003.

II.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED MEDICAL EXPENSES OF P94,100.00 TO THE PRIVATE RESPONDENT.

III.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED TEMPERATE DAMAGES OF P100,000.00 IN FAVOR OF THE PRIVATE RESPONDENT.

IV.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED 13TH MONTH PAY OF P175,000.00 IN FAVOR OF THE PRIVATE RESPONDENT.

V.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED ATTORNEY'S

## FEES IN FAVOR OF THE PRIVATE RESPONDENT.[22]

Petitioner insists that the ground for the dismissal of the respondent was his gross dereliction of duties as NSM.

The CA ruled that pursuant to Article 284 of the Labor Code, respondent's illness is considered an authorized cause to justify his termination from employment. The CA ruled that although petitioner did not comply with the medical certificate requirement before respondent's dismissal was effected, this was offset by respondent's absence for more than the six (6)-month period that the law allows an employee to be on leave in order to recover from an ailment.

We agree. With regard to disease as a ground for termination, Article 284 of the Labor Code provides that an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health, as well as to the health of his co-employees.

In order to validly terminate employment on this ground, Section 8, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code requires that:

Section 8. Disease as a ground for dismissal. — Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.

In *Triple Eight Integrated Services, Inc. v. NLRC*,<sup>[23]</sup> the Court held that the requirement for a medical certificate under Article 284 of the Labor Code cannot be dispensed with; otherwise, it would sanction the unilateral and arbitrary determination by the employer of the gravity or extent of the employee's illness and, thus, defeat the public policy on the protection of labor. In the present case, there was no showing that prior to terminating respondent's employment, petitioner secured the required certification from a competent public health authority that the disease he suffered was of such nature or at such a stage that it cannot be cured within six months despite proper medical treatment, pursuant to Section 8, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code.

The medical certificate, dated June 4, 2003, issued by the attending physician of respondent, shows the following:

DATE HOSPITALIZED and/or TREATED: January 24, 2003 to present.

DIAGNOSIS: Hypertension, Diabetes Mellitus (adult onset), Hypercholesterolemia, Status Post Stroke, Ischemic-RMCA

RECOMMENDATION: Though the patient is allowed to resume work, in view of his recovery with rehabilitation, he has been advised to continue with his present regimen for at least another month and a half.<sup>[24]</sup>

Thus, as of June 4, 2003, respondent would have been capable of returning to work. However, despite notices sent by the petitioner, i.e., letter<sup>[25]</sup> dated June 12, 2003, requiring respondent to attend an investigation set on July 14, 2003; letter<sup>[26]</sup> dated July 4, 2003, requiring respondent to appear on July 25, 2003 for investigation; and letter<sup>[27]</sup> dated July 31, 2003, requiring respondent to appear for the hearing and investigation on August 18, 2003, respondent refused to report to his office, either to resume work or attend the investigations set by the petitioner. Even considering the directive of respondent's doctor to continue with his present regimen for at least

another month and a half, it could be safely deduced that, counted from June 4, 2003, respondent's rehabilitation regimen ended on July 19, 2003. Despite the completion of his treatment, respondent failed to attend the investigations set on July 25, 2003 and August 18, 2003. Thus, his unexplained absence in the proceedings should be construed as waiver of his right to be present therein in order to adduce evidence that would have justified his continued absence from work.

In an undated Certification, Dr. Melanie Theresa P. Herrera of the East Asia Orthopaedic and Rehabilitation Institute in Davao City stated that respondent had been undergoing physical rehabilitation, and recommended that he may resume work, but the nature of his work had to be modified so as to give time for his strengthening and maintenance program. Thus,

This is to certify that Mr. Rodante N. Ynson is under my care and is currently undergoing physical rehabilitation.

Diagnosis: S/P CVA, Acute Ischemic Infarction (L) Temporal Lobe (R) Frontal Lobe Reflex Sympathetic Dystrophy Hypertension Stage I LUE.

Recommendation:

- 1) Continue physical rehabilitation at San Pedro Hospital.
- 2) He may resume work but has to modify it to give time for strengthening program – home program and maintenance program at the center in SPH, Davao City.[28]

Respondent alleged in his letters[29] dated July 21, 2003 and August 12, 2003 that he is not capable of returning to work, because he is still undergoing medications and therapy. However, apart from the clearance of respondent's doctors allowing him to return to work, he has failed to provide competent proof that he was actually undergoing therapy and medications. It is puzzling why despite respondent's submission that he was still undergoing treatment in July and August 2003, he failed to submit official receipts showing the medical expenses incurred and physician's professional fees paid by reason of such treatment. This casts serious doubt on the true condition of the respondent during the prolonged period he was absent from work and investigations, and as to whether he is still suffering from any form of illness from July to August 2003.

Being the NSM, respondent should have reported back to work or attended the investigations conducted by petitioner immediately upon being permitted to work by his doctors, knowing that his position remained vacant for a considerable length of time. During his absence, nobody was performing the duties of NSM, which included, among others, supervising and monitoring of respondent's sales area which is vital to the company's orderly operation and viability. He did not even show any sincere effort to return to work.

Clearly, since there is no more hindrance for him to return to work and attend the investigations set by petitioner, respondent's failure to do so was without any valid or justifiable reason. Respondent's conduct shows his indifference and utter disregard of his work and his employer's interest, and displays his clear, deliberate, and gross dereliction of duties.

It bears stressing that respondent was not an ordinary rank-and-file employee. With the nature of his position, he was reposed with managerial duties to oversee petitioner's business in his assigned area. As a managerial employee, respondent was tasked to perform important and crucial functions and, thus, bound by more exacting work ethic. He should have realized that such sensitive position required the full trust and confidence of his employer in every exercise of managerial discretion insofar as the conduct of the latter's business is concerned.[30] The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The law, in protecting the rights of the laborers, authorizes neither

oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause.[31] As a general rule, employers are allowed wide latitude of discretion in terminating the employment of managerial personnel. The mere existence of a basis for believing that such employee has breached the trust and confidence of his employer would suffice for his dismissal.[32] Needless to say, an irresponsible employee like respondent does not deserve a place in the workplace, and it is petitioner's management prerogative to terminate his employment. To be sure, an employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interest.[33]

To condone such conduct will certainly erode the discipline that an employer should uniformly apply so that it can expect compliance with the same rules and regulations by its other employees. Otherwise, the rules necessary and proper for the operation of its business would be gradually rendered ineffectual, ignored, and eventually become meaningless.[34] As applied to the present case, it would be the height of unfairness and injustice if the employer would be left hanging in the dark as to when respondent could report to work or be available for the scheduled hearings, which becomes detrimental to the orderly daily operations of petitioner's business.

As regards the monetary awards, the CA ordered the petitioner to pay respondent the amount of P1,225,000.00, representing his salary from February 2003 to August 29, 2003, medical expenses of P94,100.00, temperate damages of P100,000.00, 13th month pay of P175,000.00, and attorney's fees of 10% of the total monetary award, but deleted the award of backwages and moral and exemplary damages.

We modify. In *Leonardo v. National Labor Relations Commission*,[35] We held that where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.[36] In the same manner, respondent's inability to work from January 24 to June 4, 2003, was neither due to petitioner's fault nor due to his willful conduct, but because he suffered a stroke on January 24, 2003. Hence, each must bear the loss accordingly.

Beginning June 5, 2003, respondent should have reported back to work, but he failed to do so. Consequently, he can only be entitled to compensation for the actual number of work days. It would be unfair to allow respondent to recover something he has not earned and count not have earned, since he could not discharge his work as NSM. Petitioner should be exempted from the burden of paying backwages. The age-old rule governing the relation between labor and capital, or management and employee, of "a fair day's wage for a fair day's labor" remains as the basic factor in determining employee's wages. If there is no work performed by the employee, there can be no wage or pay – unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed, or otherwise illegally prevented from working, a situation which is not prevailing in the present case.[37]

Petitioner claims that assuming that respondent may be considered on sick leave for the duration that he did not report to work, the period should cover only up to June 2003.

We agree. Being entitled to sick leave pay during the time that respondent was incapable of working, the Court deems it best that the reckoning date should be from January 24, 2003[38] to June 4, 2003[39] (not from February 2003 to August 29, 2003 as ruled by the CA), he may be entitled to salary, chargeable against his accrued sick leave benefits and other similar leave benefits, if any, as may be provided by existing company policy of petitioner.

Petitioner next assails the CA's award of medical expenses to respondent in the amount of P94,100.00, merely on the basis of the Certification[40] dated March 27, 2003 of Dr. De la Paz, which states that respondent spent approximately P350.00 daily on medicines and that his continued rehabilitation would cost P250.00 per day. It

contends that the bare statements made by Dr. De la Paz, without actual proof of receipts, cannot suffice to warrant the payment of medical expenses.

In order to justify a grant of actual or compensatory damages, it is necessary to prove, with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss. One is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has adequately proved. Damages, to be recoverable, must not only be capable of proof, but must be actually proved with a reasonable degree of certainty.[41] The Court cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages.[42] Actual proof of expenses incurred for the purchase of medicines and other medical supplies necessary for his treatment and rehabilitation should have been presented by respondent, in the form of official receipts, to show the exact cost of his medication, and to prove that, indeed, he went through medication and rehabilitation. Aside from the letter of Dr. De la Paz, respondent miserably failed to produce even a single receipt showing his alleged medical and rehabilitation expenses. By reason thereof, petitioner should not be held liable for the P94,000.00 medical expenses of respondent as actual or compensatory damages, for lack of basis. Verily, in the absence of official receipts or other competent evidence to prove the actual expenses incurred, the CA's award of medical expenses in favor of respondent should be negated.

Under Article 2224 of the Civil Code, temperate or moderate damages are more than nominal but less than compensatory, and may be recovered when the court finds that some pecuniary loss has been suffered, but the amount cannot, from the nature of the case, be proved with certainty. The CA found that respondent paid for the doctor's professional fees and incurred other hospital expenses; however, the records failed to show that he presented proof of the actual amount of expenses therein, which served as the basis for the CA to award temperate damages in the amount of P100,000.00.

However, We reduce the amount of temperate damages awarded by the CA, from P100,000.00 to P50,000.00, considering that the stroke suffered by respondent was not debilitating in nature and the records showed that his health condition remained stable. Moreover, there were no instances of subsequent or recurring ailment that necessitates prolonged medical attention.

Anent the CA's ruling that respondent should be entitled to 13th month pay, We clarify that the 13[th] Month Pay Law, which provides the rules on the entitlement and computation of the 13[th] month pay, cannot be applied to him because he is a managerial employee, and the law applies only to rank- and-file employees.[43] Be that as it may, although he is not covered by the said law, records showed that he is entitled to this benefit.[44] However, the Court cannot make a proper determination as to the exact amount – either full or pro-rated amount – of the 13[th] month pay, if any, that he would be entitled to. Thus, reference should be made in consonance with the existing company policy on the payment of the 13[th] month pay vis-à-vis the number of days that he actually worked.

On the matter of attorney's fees, We have ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith, and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer.[45] In view of Our findings that respondent was validly dismissed for unauthorized absences, amounting to gross dereliction of duties under Article 282 (e) of the Labor Code, reckoned from June 5, 2003 (i.e., the day after he was declared fit to return to work, but failed to do so), and lack of evidence that his dismissal was tainted with bad faith, the grant of 10% of the total monetary award as attorney's fees cannot be sustained.

WHEREFORE, the petition is PARTLY GRANTED. The dispositions in the Decision dated July 13, 2006 and the Resolution dated December 6, 2006 of the Court of Appeals, in CA-G.R. SP No. 00845, which affirmed with

modification the Resolutions of the National Labor Relations Commission, Fifth Division, Cagayan de Oro City, in NLRC CA NO. M-008246-2004 (RAB 11-09-00949-03), are MODIFIED as follows:

- a. The award of salary of respondent Rodante Ynson from February 2003 to August 29, 2003, amounting to P1,225,000.00, is deleted; however, he is entitled to the payment of his salary, chargeable against his accrued sick leave benefits and other similar leave benefits, if any, from January 24 to June 4, 2003, as may be provided by existing company policy of petitioner Wuerth Philippines, Inc.;
- b. The award of temperate damages, in the amount of P100,000.00, is reduced to P50,000.00;
- c. While the award of 13th month pay, in the amount of P175,000.00 is deleted; however, respondent may still be entitled to the 13th month pay, either full or pro-rated amount, in consonance with existing company policy of petitioner; and
- d. The award of medical expenses amounting to P94,100.00 and attorney's fees of 10% of the total monetary award are deleted.

The case is REMANDED to the National Labor Relations Commission, Fifth Division, Cagayan de Oro City, for proper computation of the awards that respondent may be entitled to, in accordance with this Decision, and shall report compliance thereon within thirty (30) days from notice of this Decision.

**SO ORDERED.**

Carpio,[\*] Abad, Perez,\*\*] and Mendoza, JJ., concur.

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[\*] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[\*\*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1192 dated February 10, 2012.

[1] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo. Lim, Jr. and Sixto C. Marella, Jr., concurring; rollo, pp. 31-46.

[2] Id. at 48-49.

[3] Records, Vol. I, pp. 88-90.

[4] Rollo, p. 95.

[5] Id. at 96.

[6] Records, Vol. I, p. 93.

[7] Id. at 94.

[8] Id.

[9] Id. at 65.

[10] Id. at 62.

[11] Id. at 95.

[12] Id. at 66, 67.

[13] Id. at 69, 70.

[14] The pertinent portion of the letter reads:

This is to inform you that the management of Wuerth Philippines, Inc. has decided to terminate your employment effective upon the date of your receipt of this letter. This decision is based on your continued absences from work since 24 January 2003 without having filed a leave of absence. This has caused serious, grave, and irreparable damage to the company considering that your position, national sales manager, carries with it enormous responsibilities vital to the company's profitability and viability.

The records show that you have been absent without leave since 24 January 2003. This constitutes a gross dereliction of your duties as an officer of the Company.

Your demeanor also constitutes abandonment of your duties and responsibilities to the grave prejudice of the Company.

x x x x

Your continuous absence from work since 24 January 2003, without having filed a leave of absence, has resulted in your failure to attain work goals and amounts to gross dereliction of duty. You have not only been inefficient. You have, in fact, neglected your duties for such a long time. In the meantime, your position is left vacant to the detriment of the Company.

It is in this light that the Company has deemed it proper to terminate your employment effective upon the date of your receipt of this letter for the aforementioned just causes. You are directed to return forthwith to the Company any of its properties or documents that may be in your possession. (Rollo, p. 103.)

[15] Rollo, pp. 131-140.

[16] Id. at 140.

[17] Per Presiding Commissioner Salic D. Dumarpa, with Commissioners Proculo T. Sarmen and Jovito C. Cagaan, concurring; id. at 163-167.

[18] Rollo, pp. 168-181.

[19] Id. at 183-184.

[20] Id. at 31-46.

[21] Id. at 48-49.

[22] Id. at 18-19.

[23] G.R. No. 129584, December 3, 1998, 299 SCRA 608, cited in *Sy v. CA*, G.R. No. 142293, February 27, 2003, 398 SCRA 301, 311.

[24] Rollo, p. 96.

[25] Id. at 123.

[26] Id. at 124.

[27] Id. at 125.

[28] Id. at 104.

[29] Supra note 13.

[30] *Alcazaren v. Univet Agricultural Products, Inc.*, 512 Phil. 281, 299 (2005).

[31] *Ancheta v. Destiny Financial Plans, Inc.*, G.R. No. 179702, February 16, 2010, 612 SCRA 648, 663.

[32] *Molina v. Pacific Plans, Inc.*, G.R. No. 165476, March 10, 2006, 484 SCRA 498, 519-520.

[33] *Ancheta v. Destiny Financial Plans, Inc.*, supra note 31.

[34] *Soco v. Mercantile Corporation of Davao*, G.R. Nos. L-53364-65, March 16, 1987, 148 SCRA 526, 532.

[35] 389 Phil. 118 (2000), cited in *Exodus International Construction Corporation and Antonio P. Javalera, v. Guillermo Biscocho, et al.*, G.R. No. 166109, February 23, 2011.

[36] *Id.* at 128.

[37] *Navarro v. P.V. Pajarillo Liner, Inc.*, G.R. No. 164681, April 24, 2009, 586 SCRA 489, 498.

[38] Per Certification dated March 27, 2003, Dr. Daniel de la Paz stated that respondent has been under his care since January 24, 2003 and that he was confined from January 24 to February 3, 2003 due to sudden weakness on the left side of his body. Supra note 4.

[39] Per Medical Certificate dated June 4, 2003, Dr. De la Paz stated that respondent may return to work, but advised him to continue with his rehabilitation regimen for another month and a half. Supra note 5.

[40] Supra note 4.

[41] *Coca Cola Bottlers, Phils., Inc. v. Roque*, G.R. No. 118985, June 14, 1999, 308 SCRA 215, 222- 223.

[42] *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 22.

[43] Memorandum Order No. 28, as implemented by the Revised Guidelines on the Implementation of the 13th Month Pay Law dated November 16, 1987, provides:

Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank and file employees a 13th month pay not later than December 24 of every year.

[44] Records, Vol. I, pp. 83-84.

[45] *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 610.

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