

EUGENE S. ARABIT, EDGARDO C. SADSAD, LOWELL C. FUNTANOZ, GERARDO F. PUNZALAN, FREDDIE M. MENDOZA, EMILIO B. BELEN, VIOLETA C. DIUMANO AND MB FINANCE EMPLOYEES ASSOCIATION FFW CH...*G.R. No. 181719. April 21, 2014*

Ponente: BRION, J.

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We resolve in this petition for review on certiorari[1] the challenge to the March 23, 2007 decision[2] and the February 11, 2008 resolution[3] of the Court of Appeals (CA) in CA G.R. SP No. 91952. These assailed CA rulings annulled and set aside the December 1, 2004 decision[4] and the July 21, 2005 resolution[5] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 029753-01 (NLRC NCR Case No. 06-06112-99). The NLRC rulings, in turn, fully affirmed the September 29, 2000 decision[6] of Labor Arbiter (LA) Jovencio Ll. Mayor, Jr. The LA's decision ordered the petitioners Eugene S. Arabit, Edgardo C. Sadsad, Lowell C. Funtanoz, Gerardo F. Punzalan, Freddie M. Mendoza, Emilio B. Belen and Violeta C. Diumano's reinstatement to their former positions without loss of seniority rights and the payment of full backwages, computed from the time of their dismissal on May 30, 1999.

Factual Antecedents

Petitioners were former regular employees of respondent Jardine Pacific Finance, Inc. (formerly MB Finance) (Jardine). The petitioners were also officers and members of MB Finance Employees Association-FFW Chapter (the Union), a legitimate labor union and the sole exclusive bargaining agent of the employees of Jardine. The table below shows the petitioners' previously occupied positions, as well as their total length of service with Jardine before their dismissal from employment.

Petitioner

Position

Number of

Years of

Service

Eugene S. Arabit

Field Collector

20 years

Edgardo C. Sadsad

Field Collector

3 years

Lowell C. Funtanoz

Field Collector

7 years

Gerardo F. Punzalan

Field Collector

16 years

Freddie M. Mendoza

Field Collector

20 years

Emilio B. Belen

Senior Credit Investigator/Field Collector- San Pablo Branch

18 years

Violeta C. Diumano

Senior Accounting Clerk/Documentation Clerk- San Pablo Branch

19 years

On the claim of financial losses, Jardine decided to reorganize and implement a redundancy program among its employees. The petitioners were among those affected by the redundancy program. Jardine thereafter hired contractual employees to undertake the functions these employees used to perform.

The Union filed a notice of strike with the National Conciliation and Mediation Board (NCMB), questioning the termination of employment of the petitioners who were also union officers. The Union alleged unfair labor practice on the part of Jardine, as well as discrimination in the dismissal of its officers and members.

Negotiations ensued between the Union and Jardine under the auspices of the NCMB, and both parties eventually reached an amicable settlement. In the settlement, the petitioners accepted their redundancy pay without prejudice to their right to question the legality of their dismissal with the NLRC. Jardine paid the petitioners a separation package composed of their severance pay, plus their grossed up transportation allowance.[7]

On June 1, 1999, the petitioners and the Union filed a complaint against Jardine with the NLRC for illegal dismissal and unfair labor practice.

The Labor Arbitration Rulings

Before the LA, the parties decided to limit the issues to two, namely: (a) whether the separation of the petitioners was valid or not; and (b) whether Jardine committed an unfair labor practice against the Union.

The petitioners alleged before the LA that their dismissal was illegal and was tainted with bad faith as their positions were not superfluous. They argued that if their positions had really been redundant, then Jardine should have not hired contractual workers to replace them.[8]

The petitioners also argued that Jardine was guilty of unfair labor practice for contracting out services that the

petitioners previously held. Unfair labor practice took place under Article 248 of the Labor Code as the petitioners were union officers.[9]

The petitioners likewise claimed that Jardine's act of hiring contractual employees as replacements was a restraint on the Union's right to self-organization. The petitioners also pointed out that they were Union officers and panel members in the scheduled collective bargaining agreement (CBA) negotiations between Jardine and the Union. The petitioners particularly found the company action objectionable as their employment was terminated when their CBA negotiations were about to commence.[10]

Jardine argued in its defense that the company had been incurring substantial business losses from 1996 to 1998. According to Jardine, its audited financial statements reflect that for 1996, it suffered a net loss of P5,538,960.00; for 1997,[11] a net loss in the amount of P57,274,018.00;[12] and a net loss of P95,529,527.00 for 1998.[13]

Because of these serious business losses, Jardine asserted that it had to lay-off some of its employees and reorganize its ranks to eliminate positions that were in excess of what its business required.[14]

Jardine, however, admitted that it hired contractual employees to replace petitioners in their previous posts. Jardine reasoned out that no bad faith took place since the hiring of contractual employees was a valid exercise of its management prerogative.[15] Jardine argued that the distinction between redundancy and retrenchment is not material; an employer resorts to retrenchment or redundancy for the same reason, namely the economics of business.[16] Since Jardine successfully established that it incurred serious business losses, then termination of employment of the petitioners was valid for all intents and purposes.[17]

In reply to the petitioners' allegation of unfair labor practice, Jardine argued that had it intended to commit union busting, then it should not have merely dismissed the seven petitioners; it should have also dismissed other employees who were union officers and members.[18] According to Jardine, the termination of the petitioners' services did not interfere with the Union and its remaining members' right to self-organization since Jardine continuously dealt with the Union and recognized it as the sole and exclusive bargaining representative of its rank-and-file employees.[19]

The LA ruled in the petitioners' favor. In its decision[20] dated September 29, 2000, the LA held that the hiring of contractual employees to replace the petitioners directly contradicts the concept of redundancy which involves the trimming down of the workforce because a task is being carried out by too many people.[21] The LA explained that the company's action was a circumvention of the right of the petitioners to security of tenure.[22]

The LA further held that it was not enough for Jardine to simply focus on its losses. According to the LA, it was error for Jardine to simply lump together the seven petitioners as employees whose positions have become redundant without explaining why their respective positions became superfluous in relation to the other positions and employees of the company.[23]

On the petitioners' allegation of unfair labor practice, the LA held that not enough evidence was presented to prove the claim against Jardine.

Both parties appealed the LA's decision to the NLRC. In its decision[24] dated December 1, 2004, the NLRC dismissed the appeals and affirmed the LA's decision in its entirety.[25]

Jardine moved for the reconsideration of the NLRC's decision, which motion the NLRC also denied in its resolution[26] of July 21, 2005. Jardine thereafter sought recourse with the CA via a petition for certiorari under Rule 65.[27]

The CA's Ruling

In its decision[28] dated March 23, 2007, the CA reversed the LA's and the NLRC's rulings, and granted Jardine's petition for certiorari.

The CA found that Jardine's act of hiring contractual employees in replacement of the petitioners does not run counter to the argument that their positions are already superfluous.[29] According to the CA, the hiring of contractual employees is a management prerogative that Jardine has the right to exercise.[30] In the absence of any showing of malice or arbitrariness on the part of Jardine in implementing its redundancy program, the courts must not interfere with the company's exercise of a bona fide management decision.[31] The CA cited for this purpose the case of *De Ocampo v. National Labor Relations Commission*[32] which explains:

The reduction of the number of workers in a company made necessary by the introduction of the services of Gemac Machineries in the maintenance and repair of its industrial machinery is justified. There can be no question as to the right of the company to contract the services of Gemac Machineries to replace the services rendered by the terminated mechanics with a view to effecting more economic and efficient methods of production.

In the same case, We ruled that "(t)he characterization of (petitioners') services as no longer necessary or sustainable, and therefore properly terminable, was an exercise of business judgment on the part of (private respondent) company. The wisdom or soundness of such characterization or decision was not subject to discretionary review on the part of the Labor Arbiter nor of the NLRC so long, of course, as violation of law or merely arbitrary and malicious action is not shown" (ibid, p. 673).

In contracting the services of Gemac Machineries, as part of the company's cost-saving program, the services rendered by the mechanics became redundant and superfluous, and therefore properly terminable. The company merely exercised its business judgment or management prerogative. And in the absence of any proof that the management abused its discretion or acted in a malicious or arbitrary manner, the court will not interfere with the exercise of such prerogative.[33]

The CA further held that Jardine successfully established that for the years 1996 to 1998, the company incurred serious losses.[34] The appellate court also observed that the reduction in the number of workers, made necessary by the introduction of the services of an independent contractor, is justified when undertaken to implement more economic and efficient methods of production.[35]

These justifications led to the CA's ruling which annulled and set aside the December 1, 2004 decision and the July 21, 2005 resolution of the NLRC and to its own ruling that the petitioners had not been illegally dismissed.

The CA denied the petitioners' subsequent motion for reconsideration. The petitioners are now before this Court on a petition for review on certiorari under Rule 45 of the Rules of Court.

The Petition

In their petition, the petitioners maintain that the CA gravely abused its discretion and that its ruling is not in conformity with the law and jurisprudence.

The petitioners argue that there is a difference between financial loss and decline of earnings. They posit that what Jardine actually experienced was a decline in capital and not substantial financial losses for the years 1996 to 1998.[36]

The petitioners also assert that Jardine did not take any remedial measure before it implemented its redundancy program. It simply hastily terminated the petitioners from the service.[37] In support of this argument, the petitioners cited the case of *Golden Thread Knitting Industries, Inc. v. NLRC*[38] where the Court laid down guidelines to be considered in selecting employees who would be dismissed from the service in case of redundancy.[39] The petitioners contend that the records show that Jardine did not lay down any basis or criteria

in choosing the petitioners for inclusion in the program.[40]

According to the petitioners, they are all regular employees whose years of service range from three (3) to twenty (20) years. Since Jardine immediately terminated their services without evaluating their performance in relation with those of the other employees and without considering other relevant factors, then Jardine's decision was arbitrary and in disregard of the guidelines set by this Court in *Golden Thread*.^[41]

Finally, the petitioners also reiterate the findings of the LA and of the NLRC that Jardine's act of hiring contractual employees as their replacements is contrary to Jardine's claim that there was redundancy.^[42] They also contend that the hiring of new employees negates Jardine's argument that it was suffering from substantial losses.^[43] Based on these premises, the petitioners posit that the CA erred in annulling and setting aside the NLRC's decision, and pray instead for its reinstatement.

The Court's Ruling

We resolve to GRANT the petition.

Procedural consideration: the nature
of a Rule 45 petition

We emphasize at the outset that the current petition was brought under Rule 45 of the Rules of Court. As a rule, only questions of law may be raised on appeal under this remedy.^[44] This is in contrast with a petition for certiorari brought under Rule 65 where the review centers on the jurisdictional errors the lower court or tribunal may have committed.^[45]

We thus limit our review to errors of law which the CA might have committed. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.^[46]

"In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?"^[47]

In this context, the primary question we confront is: did the CA correctly rule that the NLRC committed grave abuse of discretion when it found that Jardine validly terminated the petitioners' employment because of redundancy?

Redundancy in contrast with
retrenchment

Jardine, in its petition for certiorari with the CA, posited that the distinction between redundancy and retrenchment is not material.^[48] It contended that employers resort to these causes of dismissal for purely economic considerations.^[49] Jardine further argued that the immateriality of the distinction between these two just causes for dismissal is shown by the fact that redundancy and retrenchment are found and lumped together in just one single provision of the Labor Code (Article 283 thereof).

We cannot accept Jardine's shallow understanding of the concepts of redundancy and retrenchment in determining the validity of the severance of an employer-employee relationship. The fact that they are found together in just one provision does not necessarily give rise to the conclusion that the difference between them is immaterial. This Court has already ruled before that retrenchment and redundancy are two different concepts; they are not synonymous; thus, they should not be used interchangeably.[50] The clear distinction between these two concepts was discussed in *Andrada, et al., v. NLRC*, [51] citing the case of *Sebuguero v. NLRC*, [52] where this Court clarified:

Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as over hiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.

Retrenchment, on the other hand, is used interchangeably with the term "lay-off." It is the termination of employment initiated by the employer through no fault of the employee's and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.

These rulings appropriately clarify that redundancy does not need to be always triggered by a decline in the business. Primarily, employers resort to redundancy when the functions of an employee have already become superfluous or in excess of what the business requires. Thus, even if a business is doing well, an employer can still validly dismiss an employee from the service due to redundancy if that employee's position has already become in excess of what the employer's enterprise requires.

From this perspective, it is illogical for Jardine to terminate the petitioners' employment and replace them with contractual employees. The replacement effectively belies Jardine's claim that the petitioners' positions were abolished due to superfluity. Redundancy could have been justified if the functions of the petitioners were transferred to other existing employees of the company.

To dismiss the petitioners and hire new contractual employees as replacements necessarily give rise to the sound conclusion that the petitioners' services have not really become in excess of what Jardine's business requires. To replace the petitioners who were all regular employees with contractual ones would amount to a violation of their right to security of tenure. For this, we affirm the NLRC's ruling, citing the LA's decision, when it ruled:

In the case at bench, respondents did not dispute that after laying-off complainants herein, they engaged the services of an agency to perform the tasks use (sic) to be done by complainants. This is [in direct] contradiction to the concept of redundancy which precisely requires the trimming down of the [workforce] because a task is being carried out by just too many people. The subsequent contracting out to an agency the functions or duties that used to be the domain of individual complainants herein is a circumvention of their constitutional rights to security of tenure, and therefore illegal.[53]

Guidelines in implementing redundancy

We recognize that management has the prerogative to characterize an employee's services as no longer necessary or sustainable, and therefore properly terminable.[54]

The CA also correctly cited *De Ocampo, et al., v. NLRC*[55] when it discussed that Jardine's decision to hire contractual employees as replacements is a management prerogative which the company has the right to undertake to implement a more economic and efficient operation of its business.[56]

In *De Ocampo*, this Court held that, in the absence of proof that the management abused its discretion or acted in a malicious or arbitrary manner in replacing dismissed employees with contractual ones, judicial intervention should not be made in the company's exercise of its management prerogative.[57]

The employer's exercise of its management prerogative, however, is not an unbridled right that cannot be subjected to this Court's scrutiny. The exercise of management prerogative is subject to the caveat that it should not be performed in violation of any law and that it is not tainted by any arbitrary or malicious motive on the part of the employer.[58]

This Court, in several cases, sufficiently explained that the employer must follow certain guidelines to dismiss employees due to redundancy. These guidelines aim to ensure that the dismissal is not implemented arbitrarily and is not tainted with bad faith against the dismissed employees.

In *Golden Thread Knitting Industries, Inc. v. NLRC*,[59] this Court laid down the principle that the employer must use fair and reasonable criteria in the selection of employees who will be dismissed from employment due to redundancy. Such fair and reasonable criteria may include the following, but are not limited to: (a) less preferred status (e.g. temporary employee); (b) efficiency; and (c) seniority. The presence of these criteria used by the employer shows good faith on its part and is evidence that the implementation of redundancy was painstakingly done by the employer in order to properly justify the termination from the service of its employees.[60]

As the petitioners pointed out, the records are bereft of indications that Jardine employed clear criteria when it decided who among its employees, who held similar positions as the petitioners, should be removed from their posts because of redundancy. Jardine never bothered to explain how and why the petitioners were the ones dismissed. Jardine's acts became more suspect given that the petitioners were all union officers and some of them were panel members in the scheduled CBA negotiations between Jardine and the Union.

Aside from the guidelines for the selection of employees who will be terminated, the Court, in *Asian Alcohol Corp. v. NLRC*,[61] also laid down guidelines for redundancy to be characterized as validly undertaken by the employer. The Court ruled:

For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[62]

Admittedly, Jardine complied with guidelines 1 and 2 of the guidelines in *Asian Alcohol*. Jardine informed the Department of Labor and Employment of the petitioners' separation from the service due to redundancy on April 30, 1999, one month before their termination's effectivity. Also, the petitioners were given their individual separation packages, composed of their severance pay, plus their grossed up transportation allowance.

Guidelines 3 and 4 of *Asian Alcohol*, however, are different matters. These last two guidelines are interrelated to ensure good faith in abolishing redundant positions; the employer must clearly show that it used fair and reasonable criteria in ascertaining what positions are to be declared redundant.

In this cited case, the employer took pains to discuss and elaborate on the reasons why the position of the private

respondent was the one chosen by the employer to be abolished. We quote the Court's ruling:

In 1992, the lease contract, which also provided for a right of way leading to the site of the wells, was terminated. Also, the water from the wells had become salty due to extensive prawn farming nearby and could no longer be used by Asian Alcohol for its purpose. The wells had to be closed and needless to say, the services of Carias, Martinez and Sendon had to be terminated on the twin grounds of redundancy and retrenchment.

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Private respondent Amacio was among the ten (10) mechanics who manned the machine shop at the plant site. At their current production level, the new management found that it was more cost efficient to maintain only nine (9) mechanics. In choosing whom to separate among the ten (10) mechanics, the management examined employment records and reports to determine the least efficient among them. It was private respondent Amacio who appeared the least efficient because of his poor health condition.[63]

Jardine never undertook what the employer in Asian Alcohol did. Jardine was never able to explain in any of its pleadings why the petitioners' positions were redundant. It never even attempted to discuss the attendant facts and circumstances that led to the conclusion that the petitioners' positions had become superfluous and unnecessary to Jardine's business requirements. Thus, we can only speculate on what actually happened.

As the LA correctly found, Jardine lumped together the seven petitioners into one group whose positions had become redundant. This move was despite the fact that not all of them occupied the same positions and performed the same functions.[64] Under the circumstances of the case, Jardine's move was thus illegal. We affirm the LA's ruling that fair play and good faith require that where one employee will be chosen over the others, the employer must be able to clearly explain the merit of the choice it has taken.[65]

To sum up, based on the guidelines set by the Court in the cases of Golden Thread and Asian Alcohol, we find that at two levels, Jardine failed to set the required fair and reasonable criteria in the termination of the petitioners' employment, leading to the conclusion that the termination from the service was arbitrary and in bad faith.

The first level, based on Asian Alcohol, is broader as the case recognized distinctions on a per position basis. At this level, Jardine failed to explain why among all of the existing positions in its organization, Jardine chose the petitioners' posts as the ones which have already become redundant and terminable.

The second level, derived from Golden Thread, is more specific. Here the distinction narrows down to the particular employees occupying the same positions which were already declared to be redundant. At this level, Jardine's lapse is shown by its failure to explain why among all of its employees whose positions were determined to be redundant, the petitioners were the ones selected to be dismissed from the service.

Notably, the LA and the NLRC also arrived at the same conclusion that the redundancy program was not valid because Jardine hired contractual employees as replacements, thus, contradicting underlying reasons of redundancy. The CA significantly chose to disregard these coherent labor findings without fully justifying its move. At the very least, this was an indicator that something was wrong somewhere in these dismissals. It was clear legal error for the CA to recognize grave abuse of discretion when none occurred.

WHEREFORE, we hereby GRANT the petition. We REVERSE the decision dated March 23, 2007 and the resolution dated February 11, 2008 of the Court of Appeals in CA G.R. SP No. 91952, and uphold the decision dated December 1, 2004 and the resolution dated July 21, 2005 of the National Labor Relations Commission which affirmed in its entirety the September 29, 2000 decision of the Labor Arbiter.

SO ORDERED.

Carpio, (Chairperson), Bersamin,[*] Perez, and Perlas-Bernabe, JJ., concur.

[*] In lieu of Associate Justice Mariano C. del Castillo per Raffle dated October 1, 2012.

[1] Rollo, pp. 3-28.

[2] Penned by Associate Justice Lucenito N. Tagle, and concurred in by Presiding Justice Ruben T. Reyes (now a retired member of this Court) and Associate Justice Amelita G. Tolentino; id. at 30-42.

[3] Id. at 45.

[4] Id. at 70-80.

[5] Id. at 97-99.

[6] Id. at 300-322.

[7] Id. at 74.

[8] Id. at 181.

[9] Article 248. Unfair labor practices of employers. It shall be unlawful for an employer to commit any of the following unfair labor practice:

1. To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

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3. To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;

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5. To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. [emphases ours]

[10] Rollo, p. 183.

[11] Id. at 103.

[12] Ibid.

[13] Id. at 110.

[14] Id. at 119.

[15] Id. at 59.

[16] Id. at 120.

[17] Id. at 121.

[18] Id. at 122.

[19] Id. at 123.

- [20] Supra note 6.
- [21] Rollo, p. 316.
- [22] Id. at 317.
- [23] Id. at 318-319.
- [24] Supra note 4.
- [25] Rollo, p. 79.
- [26] Supra note 5.
- [27] Rollo, pp. 46-A-67.
- [28] Supra note 2.
- [29] Rollo, p. 38.
- [30] Ibid.
- [31] Id. at 39.
- [32] G.R. No. 101539, September 4, 1992, 213 SCRA 652, 662; emphases ours, italics supplied.
- [33] Rollo, p. 39.
- [34] Id. at 40.
- [35] Id. at 41.
- [36] Id. at 13.
- [37] Id. at 15.
- [38] 364 Phil. 215 (1999).
- [39] Id. at 228.
- [40] Rollo, p. 16.
- [41] Id. at 16-17.
- [42] Id. at 17-19.
- [43] Id. at 19.
- [44] Career Philippines Shipmanagement, Inc. v. Serna, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 683.
- [45] Id. at 684.
- [46] Tongonan Holdings and Development Corporation v. Escaño, Jr., G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314.
- [47] Montoya v. Transmed Manila Corporation, supra note 46, 343; citation omitted, italics supplied.
- [48] Rollo, p. 61.

[49] Id. at 60.

[50] *Andrada v. National Labor Relations Commission*, G.R. No. 173231, December 28, 2007, 565 SCRA 821, 842.

[51] Id. at 842-843; emphases ours.

[52] G.R. No. 115394, September 27, 1995, 248 SCRA 532, 542.

[53] *Rollo*, p. 74; emphasis ours.

[54] *Golden Thread Knitting Industries, Inc. v. NLRC*, *supra* note 38, at 228.

[55] *Supra* note 32.

[56] *Rollo*, p. 39.

[57] *De Ocampo v. National Labor Relations Commission*, *supra* note 32, at 662.

[58] *Golden Thread Knitting Industries, Inc. v. NLRC*, *supra* note 38, at 228.

[59] *Ibid*.

[60] *Ibid*.

[61] 364 Phil. 912 (1999).

[62] Id. at 930; citations omitted, emphasis ours.

[63] Id. at 931; emphases ours.

[64] *Rollo*, p. 318.

[65] Id. at 319.

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