SELECTED SUPREME COURT DECISIONS ON TERMINATION

G.R. 164736, 14 OCTOBER 2005
UNIVERSAL ROBINA, ET AL., VS. CATAPANG, ET AL., SECOND DIVISION, J. CALLEJO, SR.

"(W)e find that the CA, the NLRC and the Labor Arbiter correctly categorized the respondents as regular employees of the petitioner company. In *Abasolo v. National Labor Relations Commission* (G.R. No. 118475, 29 November 2000, 346 SCRA 293), the Court reiterated the test in determining whether one is a regular employee: "The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such activity exists."

"Thus, we quote with approval the following excerpt from the decision of the CA: "It is obvious that the said five-month contract of employment was used by (the Company) as a convenient subterfuge to prevent (the terminated employees) from becoming regular employees. Such contractual arrangement should be struck down or disregarded as contrary to public policy or morals. To uphold the same would, in effect, permit (the Company) to avoid hiring permanent or regular employees by simply hiring them on a temporary or casual basis, thereby violating the employees' security of tenure in their jobs." …"(The Company's) act of repeatedly and continuously hiring (the employees) in a span of … 3 to 5 years to do the same kind of work negates their contention that (the employees) were hired for a specific project or undertaking only."

G.R. No. L-63316, 31 July 1984.
ILUMINADA VER BUISER, MA. CECILIA RILLO-ACUÑA and MA. MERCEDES P. INTENGAN, petitioners, *vs*. HON. VICENTE LEOGARDO, JR., in his capacity as Deputy Minister of the Ministry of Labor & Employment, and GENERAL TELEPHONE DIRECTORY, CO., respondents.

"xxx Generally, the probationary period of employment is limited to six (6) months. The exception to this general rule is when the parties to an employment contract may agree otherwise, such as when the same is established by company policy or when the same is required by the nature of work to be performed by the employee. In the latter case, there is recognition of the exercise of managerial prerogatives in requiring a longer period of probationary employment, such as in the present case where the probationary period was set

for eighteen (18) months, i.e. from May, 1980 to October, 1981 inclusive, especially where the employee must learn a particular kind of work such as selling, or when the job requires certain qualifications, skills, experience or training." xxx

"xxx In the case at bar, it is shown that private respondent Company needs at least eighteen (18) months to determine the character and selling capabilities of the petitioners as sales representatives. The company is engaged in advertisement and publication in the Yellow Pages of the PLDT Telephone Directories. Publication of solicited ads are only made a year after the sale has been made and only then will the company be able to evaluate the efficiency, conduct, and selling ability of its sales representatives, the evaluation being based on the published ads. Moreover, an eighteen-month probationary period is recognized by the Labor Union in the private respondent company, which is Article V of the Collective Bargaining Agreement." xxx

"xxx And as indicated earlier, the very contracts of employment signed and acquiesced to by the petitioners specifically indicate that "the company hereby employs the employee as telephone sales representative on a probationary status for a period of eighteen (18) months, i.e. from May 1980 to October 1981, inclusive." This stipulation is not contrary to law, morals and public policy." xxx

"xxx We, therefore, hold and rule that the probationary employment of petitioners set to eighteen (18) months is legal and valid and that the Regional Director and the Deputy Minister of Labor and Employment committed no abuse of discretion in ruling accordingly." xxx

"xxx The practice of a company in laying off workers because they failed to make the work quota has been recognized in this jurisdiction. (Philippine American Embroideries vs. Embroidery and Garment Workers, 26 SCRA 634, 639). In the case at bar, the petitioners' failure to meet the sales quota assigned to each of them constitute a just cause of their dismissal, regardless of the permanent or probationary status of their employment. Failure to observe prescribed standards of work, or to fulfil reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest." xxx

GR No. L-53453, 22 January 1986
MANILA HOTEL CORPORATION, petitioner, *vs.* **NATIONAL LABOR RELATIONS COMMISSION and RENATO L. CRUZ,** respondents.

"xxx There is no dispute that as a probationary employee, private respondent Cruz had but a limited tenure. Although on probationary basis, however, Cruz still enjoys the constitutional protection on security of tenure. During his tenure of employment therefore or

before his contract expires, respondent Cruz cannot be removed except for cause as provided for by law." xxx

G.R. No. 85519, 15 February 1990, 182 SCRA 371, 376-377
UNIVERSITY OF STO. TOMAS, FR. MAXIMO MARINA O.P AND GILBERTO L. GAMEZ, petitioners, *vs.* **NATIONAL LABOR RELATIONS COMMISSION, HONORABLE LABOR ARBITER BIENVENIDO S. HERNANDEZ AND BASILIO E. BORJA,** respondents.

"xxx According to Policy Instructions No. 11 issued by the Department of Labor and Employment, "the probationary employment of professors, instructors and teachers shall be subject to standards established by the Department of Education and Culture." Said standards are embodied in paragraph 75 of the Manual of Regulations for Private Schools, to wit:

> 75. *Full time* teachers who have rendered three consecutive years of satisfactory service shall be considered permanent." (emphasis supplied)" xxx

"xxx The legal requisites, therefore, for acquisition by a teacher of permanent employment, or security of tenure, are as follows:

1. the teacher is a full time teacher;
2. the teacher must have rendered three (3) consecutive years of service; and
3. such service must have been satisfactory.' xxx

"xxx Now, the Manual of Regulations also states that "a full-time teacher" is "one whose total working day is devoted to the school, has not other regular remunerative employment and is paid on a regular monthly basis regardless of the number of teaching hours" (Par. 77); and that in college, "The nominal teaching load of a full-time instructor shall be *eighteen hours a week*" (par. 78)" xxx

"xxxIt follows the a part-time member of the faculty cannot acquire permanence in employment under the Manual of Regulations in relation to the Labor Code." xxx

G.R. No. 97520 February 9, 1993
LETICIA MAMANSAG, et al, petitioners, **vs. NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION), CONSUMER PULSE INC.** and **ROSARIO CHEW,** respondents.

"(The) company is a market research group that conducts public surveys about commercial consumer goods, products, merchandises and/or services of its clients. Said market researches and surveys are dependent upon the contracts it can secure from its clients consisting of corporations, organizations, government and individuals. Because of the very nature of its business, (the) company had to resort to engaging the services of contractual workers, such as (the employees), to conduct interviews on specific project basis for a

definite short period of time. Generally, said contractual employment is not continuous but intermittent, sporadic with long intervals of idle periods in between projects due to lack of work or job contracts. To require a market research and survey firm to indefinitely maintain in its payroll (the employees), despite the absence of contracted projects, would be counter-productive and lead to the bankruptcy of said firm.

"(The) company, in entering into specific and limited contracts with (the employees), was only exercising its management prerogative to conduct its business in the most efficient manner thereby avoiding unnecessary expenses and maximizing profitability without, however, defeating or circumventing the rights of its employees.

"An examination of the (employees') contract of employment showed that they were hired by (the) company for a specific project and the completion or termination of said project was determined at the start of their employment. (The employees) cannot be hired for an indefinite period of time and carried on the company's payroll even without projects to work with, without (the) company incurring financial losses.

"As field interviewers of (the) company, the latter depends for its business on the contract it is able to obtain from its clients. Necessarily, the duration of the employment of its employees is not permanent but co-terminus with the projects to which they are assigned and from whose payrolls they are paid. The fact that (the employees) worked for several projects of (the) company is no basis to consider them as regular employees. By the very nature of their employer's business, they will always remain project employees regardless of the number of projects in which they have worked.

"Moreover, the fact that … Leticia Mamansag whose period of employment with (the) company was from 1979 to 1987 had only actually rendered contractual services equivalent to 31.80 months or 2.6 years, while the rest of (the employees) had actually rendered services less than one year which ranges from 3.23 months to 11.96 months, [4] clearly indicates their hiring on a contractual basis…"

G.R. No. 48494, 5 February 1990
BRENT SCHOOL, INC., and **REV. GABRIEL DIMACHE,** petitioners, *vs*. **RONALDO ZAMORA, the Presidential Assistant for Legal Affairs, Office of the President,** and **DOROTEO R. ALEGRE,** respondents.

"The question presented by the proceedings at bar [1] is whether or not the provisions of the Labor Code, [2] as amended, [3] have anathematized "fixed period employment" or employment for a term.

"The root of the controversy at bar is an employment contract in virtue of which Doroteo R. Alegre was engaged as athletic director by Brent School, Inc. at a yearly compensation of P20,000.00. The contract fixed a specific term for its existence, five (5) years, *i.e.*, from July 18, 1971, the date of execution of the agreement, to July 17, 1976. Subsequent subsidiary agreements dated March 15, 1973, August 28, 1973, and September

14, 1974 reiterated the same terms and conditions, including the expiry date, as those contained in the original contract of July 18, 1971...

"From the premise – that the duties of an employee entail "activities which are usually necessary or desirable in the usual business or trade of the employer" – the conclusion does not necessarily follow that the employer and employee should be forbidden to stipulate any period of time for the performance of those activities. There is nothing essentially contradictory between a definite period of an employment contract as being "usually necessary or desirable in the usual business or trade of the employer." The concept of the employee's duties as being "usually necessary or desirable in the usual business or trade of the employer" is not synonymous with or identical to employment with a fixed term. Logically, the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the *day certain* agreed upon by the parties for the commencement and termination of their employment relationship, a *day certain* being understood to be "that which must necessarily come, although it may not be known when." *Seasonal* employment, and employment *for a particular project* are merely instances (of) employment in which a period, where not expressly set down, (is) necessarily implied…

"On the one hand, there is the gradual and progressive elimination of references to term or fixed-period employment in the Labor Code...

"There is, on the other hand, the Civil Code, which has always recognized, and continues to recognize, the validity and propriety of contracts and obligations with a fixed or definite period, and imposes no restraints on the freedom of the parties to fix the duration of a contract, whatever its object, be it specie, goods or services, except the general admonition against stipulations contrary to law, morals, good customs, public order or public policy. Under the Civil Code, therefore, and as a general proposition, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects with pre-determined dates of completion; they also include those to which the parties by free choice have assigned a specific date of termination.

"Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance: overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment will all that it implies does not appear ever to have been applied, Article 280 of the Labor Code not withstanding; also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity, without which no reasonable rotation would be possible...

"Accordingly, and since the entire purpose behind the development legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be

construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences…"

G.R. No. 82918, 11 March 1991
LA SALETTE OF SANTIAGO, INC., petitioner *vs.* **NATIONAL LABOR RELATIONS COMMISSION** and **CLARITA JAVIER,** respondents.

"xxx The standards by which the service of the probationary teacher may be adjudged satisfactory so that he may acquire permanence in his employment or security of tenure, are set by the school. The setting of those standards, and the determination of whether or not they have been met, have been held by this Court to be the prerogative of the school, consistent with academic freedom and constitutional autonomy by which educational institutions have the right to choose who should teach." xxx

"xxx The acquisition of security of tenure by the teacher in the manner indicated signifies that he shall thenceforth have the right to remain in employment as such teacher until he reaches the compulsory retirement age in accordance with the rules of the school or the law. That tenure, once acquired, cannot be adversely affected or defeated by requiring the teacher to execute contracts stipulating the termination of his employment upon the expiration of a fixed period or term. Contracts of that sort are anathema and will be struck down as null and void." xxx

"xxx Now, a teacher may also be appointed as a department head or administrative officer of the school, e.g., as member of the school's governing council, as college dean or assistant dean, as high school principal, as college secretary. Except in the case of a clear and explicit agreement to the contrary, the acceptance by a teacher of an administrative position offered to him or to which he might have aspired, does not operate as a relinquishment or loss by him of his security of tenure as a teacher during all the time that he occupies the additional position of department head or administrative officer of the school. Indeed, the agreement between him and the school may very well include a provision for him to continue teaching even on a part-time basis." xxx

"xxx The teacher designated as administrative officer ordinarily serves for a definite term or at the pleasure of the school head or board of trustees or regents, depending on the rules of school and the agreement he may enter into with the institution. This appears to the Court to be the invariable practice in most private schools, the purpose being, as the Court *en banc* has also had occasion to point out, to accord to as many of the teaching staff as possible

the opportunity to serve as dean, or principal, or as administrative officer of one type or another." There is, to be sure, nothing whatever amiss in said practice of having teachers serve as administrative officials for a fixed term or in a non-permanent capacity. The validity of employment for a fixed period was acknowledged and affirmed by the Court *en banc* in *Brent School, Inc., et al. v. Zamora etc., et al.*, in which the following pronouncement was made:

> "xxx Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been ** to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employments as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences." xxx

"xxx This is entirely consistent with the Corporation Code according to which members of the board of directors or trustees of educational institutions, and the officers elected by them, hold office for fixed five-year terms, so arranged that the terms of one-fifth (1/5) of their members expire yearly." xxx

"xxx After the teacher's stint as department head or administrative officer of the school, he has the undoubted right to resume his original, primary position as school teacher. The expiration of his term as administrative official does not operate as termination of his tenure as faculty member." xxx

"xxx A distinction should thus be drawn between the teaching staff of private educational institutions, on the one hand -- teachers, assistant instructors, assistant professors, associate professors, full professors -- and department or administrative heads or officials, on the other -- college of department secretaries, principals, directors, assistant deans, deans. The teaching staff, the faculty members, may and should acquire tenure in accordance with the rules and regulations of the Department of Education and Culture and the school's own rules and standards. On the other hand, teachers appointed to serve as administrative officials do not normally, and should not expect to, acquire a second or additional tenure.

The acquisition of such an additional tenure is not normal, is the exception rather than the rule, and should therefore be clearly and specifically provided by law or contract." xxx

"xxx Unlike teachers (assistant instructors, instructors, assistant professors, associate professors, full professors) who aspire for and expect to acquire permanency, or security of tenure, in their employment, as faculty members, teachers who are appointed as department heads or administrative officials (e.g., college or department secretaries, principals, directors, assistant deans, deans) do not normally, and should not expect to, acquire a second status of permanency, or an additional or second security of tenure, to repeat, is not consistent with normal practice, constitute the exception rather than the rule, and may take place only where categorically and explicitly provided by law or agreement of the parties." xxx

"xxx It thus appears to the Court that the practice and policy in the La Salette School System -- that administrative positions are held by faculty members, only on a temporary or non-permanent basis, either for a fixed term or at the pleasure of the School Head or Board of Regents -- must be upheld, being entirely in accord with prevailing usage and rule in private schools and corporations, and with case law." xxx

G.R. No. 131108, 25 March 1999
ASIAN ALCOHOL CORPORATION, petitioner, *vs.* **NATIONAL LABOR RELATONS COMMISSION, FOURTH DIVISION, CEBU CITY** and **ERNESTO A. CARIAS, ROBERTO C. MARTINEZ, RAFAEL H. SENDON, CARLOS A. AMACIO,LEANDRO O. VERAYO** and **ERNEO S. TORMO,** respondents.

"xxx The requirements for valid retrenchment which must be proved by clear and convincing evidence are: (1) that the retrenchment is reasonably necessary and likely to prevent business losses, which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) that the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intend date of retrenchment. (3) that the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher; (4) that the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and (5) that the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers." xxx

"xxx The condition of business losses is normally shown by audited documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. It is our ruling that financial statements must be prepared and signed by independent auditors. Unless duly audited, they can be assailed as self-serving documents. But it is not enough that only the financial statements for the year during which retrenchment was undertaken, are,

presented in evidence. For it may happen that while the company has indeed been losing, its losses may be on downward trend, indicating that business is picking up and retrenchment, being a drastic move, should no longer be resorted to. Thus, the failure of the employer to show its income or loss for the immediately preceding year or to prove that is expected no abatement of such losses in the coming years, may be speak the weakness of its cause. It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improved in the near future." xxx

"xxx We do not agree. It should e observed that Article 283 of the Labor Code uses the phrase "retrenchment to prevent losses". In its ordinary connotation, this phrase means that retrenchment must be undertaken by the employer before losses are actually sustained. We have, however, interpreted the law to mean that the employer need not keep all his employees until after his losses shall have materialized. Otherwise, the law could be vulnerable of attach as undue taking of property for the benefit of another." xxx

"xxx Redundancy exists when the service capability of the work force is in excess of what is reasonably needed to meet the demands on the enterprise. A redundant position is one rendered superfluous by any number of factors, such as overhiring or workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service activity priorly undertaken by the business. Under these conditions, the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business." xxx

"xxx 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; (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished." xxx

"xxx No one at the private respondents refuted the foregoing facts. They only content that the new management should have followed the policy of "first in, last out" in choosing which positions to declare as redundant or whom to retrench to prevent further business losses. No law mandates such a policy. And the reason is simple enough. A host of relevant factors come into play in determining cost efficient measures and in choosing the employees who will be retained or separated to save the company from closing shop. In determining these issues, management has to enjoy a pre-eminent role. The characterization of positions as redundant is an exercise of business judgment on the part of the employers. It will be upheld as long as it passes the test of arbitrariness." xxx

"xxx In the event, we have held that an employer's good faith in implementing a redundancy program is not necessarily destroyed by availment of the services of an independent contractor to replace the services of the terminated employees. We have previously ruled that the reduction of the number of workers in a company made necessary by the introduction of an independent contractor is justified when the latter is undertaken in

order to effectuate more economic and efficient methods of production. In the case at bar, private respondents failed to proffer any proof that the management acted in a malicious or arbitrary manner in engaging the services of an independent contractor to operate the Laura wells. Absent such proof, the Court has no basis to interfere with the *bona fide* decision of management to effect more economic and efficient methods of production." xxx

G.R. No. 101539, 04 September 1992, 213 SCRA 652, 662
CECILE DE OCAMPO, WILFREDO SAN PEDRO, REYNALDO DOVICAR, BIEN MEDINA, CESAR ABRIOL, ARTEMIO CASTRO, LARRY ALCANTARA, MICHAEL NOCUM, JESUS DEO JR., PUBLEO DARAG, EDUARDO BINO, EDUARDO VELES, ERVIN DAVID, PROTACIO PEREZ, NOEL VICTOR, ELENO DACATIMBAN, ANTONIO BERNARDO, CARLITO VITORIA, TIMOTEO MIJARES, ALEX RAMOS, REYNALDO CRUZ, MODESTO MAMESIA, DOMINGO SILARDE, RENATO PUENTAS, RENE VILLANUEVA, MARCELO DELA CRUZ and **HERNANDO LEGASPI,** petitioners, *vs*. **NATIONAL LABOR RELATIONS COMMISSION** and **BALIWAG MAHOGANY CORPORATION,** respondents.

"xxx We believe that redundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirement of the enterprise. Succinctly put, a position is re dundant where it is superfluous, and superfluity or a position or positions may e the outcome of an number of factors, such as over hiring or workers, decreased volume of business, or dropping of a particular product line or a service activity previously manufactured or undertaken by the enterprise. The employer had no legal obligation to keep in its payroll more employees, than are necessary for the operation of its business. (Wiltshire File Co., Inc. v. National Labor Relations Commission, G.R. No. 82249, February 7, 1991; 193 SCRA 665,672)." xxx

"xxx 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 industry machinery is justified. There can be no questions 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." xxx

"xxx 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*, 0. 673)." xxx

"xxx 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." xxx

G.R. No. 82249, 7 February 1991
WILTSHIRE FILE CO., INC. petitioner, *vs.* **THE NATIONAL LABOR RELATIONS COMMISSION** and **VICENTE T. ONG,** respondents.

"xxx We do no believe that redundancy in an employer's personnel force necessarily or even ordinarily refers to duplication of work. That no other person was holding the same position that private respondent held prior to the termination of his services, does not show that his position had not become redundant. Indeed, in any well-organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. We believe that redundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, 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 overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business." xxx

"xxx In the third place, in the case at bar, petitioner Wiltshire, in view of the contracting of its volume of sales and in order to cut down its operating expenses, effected some changes in its organization by abolishing some positions and thereby effecting a reduction of its personnel. Thus, the position of Sales Manager was abolished and the duties previously discharged by the Sales Manager simply added to the duties of the General Manager, to whom the Sales Manager used to report." xxx

"xxx It is of no legal moment that the financial troubles of the company were not of private respondent's making. Private respondent cannot insist on the retention of his position upon the ground that he had not contributed to the financial problems of Wiltshire. The characterization of private respondent's services as no longer necessary or sustainable, and therefore properly terminable, was an exercise of business judgment on the part of petitioner 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. It should also be noted that the position held by private respondent, Sales Manager, was clearly managerial in character." xxx

G.R. No. L-52325, 15 November 1982
CANLUBANG SUGAR ESTATE, petitioner, *vs.* **NATIONAL LABOR RELATIONS COMMISSION** and **TRANQUILINO O. NICDAO,** respondents.

"xxx We hold that the company's decision, arrived at in good faith and in the ordinary course of business, to sell the *Golden Eagle*, the Cessna plane specifically assigned to Nicdao, after it had been grounded for more than five months, during which time Nicdao was idle, is analogous to the closure or cessation of a business enterprise. It was a sufficient justification for terminating Nicdao's employment which was not for a definite period." xxx

"xxx The employer could not be forced to continue operating the plane just to accommodate Nicdao or to maintain him in his job as pilot. Nicdao must have known that his job depended on the continued operation of the plane. It there was no more plane, no pilot would be needed and his job would become *ipso facto* nonexsistent." xxx

G.R. No. 111211, 24 July 1997
ABS-CBN EMPLOYEES UNION and JOSE ENTRADICHO, petitioners, *vs.* **NATIONAL LABOR RELATIONS COMMISSION** and **ABS-CBN BROADCASTING CORPORATION,** respondents.

"xxx The NLRC correctly declared that by rendering his services to a business rival, petitioner was not only guilty of acts of disloyalty but also of serious misconduct and wilful breach of trust which under the Labor Code, as amended, are valid and just grounds for the termination of an employment." xxx

G.R. No. 106341, 2 September 1994
DELFIN G. VILLARAMA, petitioner, *vs.* **NATIONAL LABOR RELATIONS COMMISSION AND GOLDEN DONUTS, INC.,** respondents.

"xxx Sexual harassment abounds in all sick societies. It is reprehensible enough but more so when inflicted by those with moral ascendancy over their victims. We rule that it is a valid cause for separation from service." xxx

G.R. No. L-101438, 13 October 1992
CATHEDRAL SCHOOL OF TECHNOLOGY and **SR. APOLINARIA TAMBIEN, RVM,** petitioners, *vs.* **NATIONAL LABOR RELATIONS COMMISSION** and **TERESITA VALLEJERA,** respondents.

"xxx An evaluative review of the records of this case nonetheless supports a finding of a just cause for termination. The reason for which private respondent's services were terminated, namely, her unreasonable behaviour and unpleasant deportment in dealing with the people she closely works with in the course of her employment, is analogous to the other "just causes" enumerated under the Labor Code, as amended." xxx

G.R. No. L-20143, 27 January 1969, 26 SCRA 634, 639

PHILIPPINE AMERICAN EMBROIDERIES, INC., ALBERT NASSER and **JACK NASSER,** petitioners, *vs.* **EMBROIDERY & GARMENT WORKERS UNION,** respondent.

"xxx It is clear from the above testimony that the practice of the company in laying-off workers started in 1956, and indeed, the reasons therefor were justified for, as admitted by Mrs. Ros, only those who were not industrious and unable to fulfill their quotas were laid-off. Such practice was not motivated by the union activities and/or affiliations of said workers." xxx

G.R. No. 103215, 6 November 1992
MARANAW HOTELS AND RESORTS CORPORATION (CENTURY PARK SHERATON MANILA), petitioner, *vs.* **COURT OF APPEALS, HON. SANTIAGO O. TAÑADA (Voluntary Arbitrator)** and **GREGORIO GALE,** respondents.

"xxx On 13 December 1989, after hearing and the submission of the evidence, position papers and memoranda of the parties, Voluntary Arbitrator Tañada rendered a decision pertinent portions of which read □" xxx

> "xxx after going over the evidence adduced by the parties, the Arbitrator finds no evidence that there was fighting, nor challenging to a fight, no assaulting nor intimidation of co-employees or supervisors within the hotel premises. What was established as per evidence on record was more of discourtesy, and use of disrespectful and impolite language uttered by complainant which falls under Section 2, Rule VI of the Rules of the Hotel and carries the penalty of 7 days suspension for first offense. The evidence shows it was a first offense." xxx

> "xxx IN VIEW OF THE FOREGOING, the Arbitrator finds and so holds that complainant Gregorio Gale has violated Section 2, Rule VI of the Rules of the Hotel and orders his suspension for a period of seven (7) days. However, as per admission of the parties, Mr. Gale has already been dismissed. In case complainant Mr. Gale has been out of his job as roomboy of the Hotel for more than that period of 7 days, his immediate reinstatement is hereby ordered with right to collect his share in the service charge." Xxx

"xxx Its motion for reconsideration having been denied by the Voluntary Arbitrator, petitioner filed before this Court a motion for extension of time to file a petition for *certiorari*, which We referred to the Court of Appeals for resolution. On 24 October 1991, after taking cognizance of the case and thereafter receiving the parties' respective memoranda, the appellate curt dismissed the petition for lack of merit, and on 4 December 1991 denied petitioner's motion for reconsideration. Hence, this petition for review alleging that respondent appellate court erred in not imposing the penalty of dismissal upon private

respondent considering that he was found guilty of gross misconduct, and in allowing him to collect his share in the service charge." xxx

"xxx The petition should have been dismissed outright for We see no reason to reverse the appellate court in its finding that there was no grave abuse of discretion on the part of the Voluntary Arbitrator." xxx

"xxx Indeed, the discharge of an employee who uttered unfelicitous remarks against his supervisors, in general, for strictly enforcing company rules against union members, but who thereafter apologized, is too harsh. We have held time and again that it is cruel to unjust to mete out the drastic penalty of dismissal if it is not proximate to the gravity of misdeed." xxx

Footnote: "*Buaka ng ina nila, lahat sila pasipsipan*."

G.R. No. L-51182, 5 July 1983, 123 SCRA 296
HELMUT DOSCH, petitioner, *vs*. **NATIONAL LABOR RELATIONS COMMISSION** and **NORTHWEST AIRLINES, INC.** respondents.

"We must, however, rightly treat the Jenkins letter as directing the promotion of the petitioner from his position as Philippine manager to Director of International Sales in Minneapolis, U.S.A.. It is not merely a transfer order alone but as the Solicitor General correctly observes, "it is more in the nature of a promotion that a transfer, the latter being merely incidental to such promotion." The inter-office communication of Vice President Jenkins is captioned "Transfer" but it is basically and essentially a promotion for the nature of an instrument is characterized not by the title given to it but by its body and contents, (Cf. Shell Co. vs. Firemen's Insurance Co. of Newark, 100 Phil. 757; Borromeo vs. Court of Appeals, L-22962, Sept. 28, 1972; American Rubber Co. vs. Collector of Internal Revenue, L-25965, June 29, 1975). The communication informed the petitioner that effective August 18, 1975, he was to be *promoted* to the position of Director of Internal Sales, and his *compensation would be upgraded and the payroll accordingly adjusted*. Petitioner was, therefore, advanced to a higher position and rank and his salary was increased and that is a promotion. (People ex. rel. Campbell vs. Partridge, 85 N.Y.S. 833, 899 App. Div. 497; State ex. rel. Wolcott vs. Celebrezze, 49, N.E. 2d 948, 141 Ohio ST. 627, Vol. 34 Words and Phrases, pp. 564, 565). It has been held that promotion denotes a scalar ascent of an officer or an employee to another position, higher either in rank or salary. (Millares vs. Subido, 20 SCRA 954)." xxx

"xxx There is no law that compels an employee to accept a promotion, as a promotion is in the nature of a gift or a reward, which a person has a right to refuse. When petitioner refused to accept his promotion to Director of International Sales, he was exercising a right and he cannot be punished for it as *qui jure suo utitur neminem laedit*. He who uses his own legal right injures no one." xxx

"xxx Assuming for the sake of argument that the communication or letter of Mr. Jenkins was basically a transfer, under the particular and peculiar facts obtaining in the case at bar, petitioner's inability or his refusal to be transferred was not a valid cause for dismissal." xxx

"xxx While it may be true that the right to transfer or reassign an employer's exclusive right and the prerogative of management, such right is not absolute. The right of an employer to freely select or discharge his employee is limited by the paramount police power (Phil. Airlines, Inc. vs. Phil. Airlines Employees Association, L-24626, June 28, 1974, 57 SCRA 489) for the relations between capital and labor are not merely contractual but impressed with public interest (Article 1700, New Civil Code). And neither capital nor labor shall act oppressively against each other (Article 1701, New Civil Code)." xxx

"xxx There can be no dispute that the constitutional guarantee of security of tenure mandated under Section 9, Article 2, 1973 Constitution applies to all employees and laborers, whether in the government service or in the private sector. The fact that petitioner is a managerial employee does not by itself exclude him from the protection of the constitutional guarantee of security of tenure. Even a manager in a private concern has the right to be secure in his position, to decline a promotion where, although the promotion carries an increase in his salary and rank but results in his transfer to a new place of assignment or station and away from his family. Such an order constitutes removal without just cause and is illegal. Nor can the removal be justified on the ground of loss of confidence as now claimed by private respondent Northwest, insisting as it does that by petitioner's alleged contumacious refusal to obey the transfer order, said petitioner was guilty of insubordination." xxx

G.R. No. 73721, 30 March 1987
AHS/PHILIPPINES EMPLOYEES UNION [FFW], B.A. AGANON, D.T. GUILLES, E.G. SULIT and **E.C. RODRIGUEZ,** petitioners, *vs.* **THE NATIONAL LABOR RELATIONS COMMISSION** and **AHS/PHILIPPINES, INC.,** respondents.

"xxx Under the New Labor Code, however, even if the dismissal is based on a just cause under Art. 284, the one-month written notice to both the affected employee and the Minister of Labor is required, on top of the separation pay. Hence, unlike in the old termination pay laws, payment of a month's salary cannot be considered substantial compliance with the provisions of employees of the Pharmaceutical Division of respondents company was effected in violation of the above-cited provision, the same is illegal." xxx

G.R. No. 166208, June 29, 2007
KING OF KINGS TRANSPORT, INC., CLAIRE DELA FUENTE, and MELISSA LIM, Petitioners, - versus - **SANTIAGO O. MAMAC,** Respondent.

"Due process under the Labor Code involves two aspects: **first**, substantive—the valid and authorized causes of termination of employment under the Labor Code; and

second, procedural—the manner of dismissal. In the present case, the CA affirmed the findings of the labor arbiter and the NLRC that the termination of employment of respondent was based on a "just cause." This ruling is not at issue in this case. The question to be determined is whether the procedural requirements were complied with.

"Art. 277 of the Labor Code provides the manner of termination of employment, thus:

> Art. 277. Miscellaneous Provisions.—x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

"Accordingly, the implementing rule of the aforesaid provision states:

> SEC. 2. Standards of due process; requirements of notice.—In all cases of termination of employment, the following standards of due process shall be substantially observed:
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
> (c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.
> In case of termination, the foregoing notices shall be served on the employee's last known address.

"To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment."

G.R. No. 103209, 28 July 1997
APOLINARIO BONDOC and **GENUINE LABOR ORGANIZATION OF WORKERS in HOTEL, RESTAURANT AND ALLIED INDUSTRIES (GLOWHRAIN) Silahis International Chapter,** petitioners, *vs.* **NATIONAL LABOR RELATIONS COMMISSION** and **SILAHIS INTERNATIONAL HOTEL, INC.,** respondents**.**

"xxx Contrary to SILAHIS' claim, its September 3, 1990 memorandum which reads:" xxx

"xxx SILAHIS INTERNATIONAL HOTEL
Memorandum

TO: MR. APOLONIO BONDOC

F&B Casino – A/Headwaiter

FROM: Personnel Manager

DATE: September 3, 1990

RE: *POLICE REPORT*

On the attached written report of the W.P.D. Police Station No. 7, please explain within 24 hours after receipt of this memorandum, why no disciplinary action should be taken against you for having violated Rule No. V "Disturbing Peace & Order", Section 2, page 41 of our Employee's Handbook RE: "Threat or Inflicting Bodily Harm" □ Threatening or intimidating another with bodily harm or does something illegal or immoral to another employee or his family in connection with his job, or against guest/s.

Grave Threats (4 counts) and slander to co-employee with infliction upon the employee's honor is a violation of Company Rules and Regulations.

Please submit your written explanation, failure on your part to comply with (*sic*) is giving up your right to be heard, and Management has the right to take necessary legal action.

For your strict compliance.

(Sgd.) (Sgd.)
TEDDY M. JIMENEZ REYNALDO DE LOS REYES
Personnel Manager Casino Service Manager" xxx

"xxx Is not substantial compliance with the first kind of notice. The memorandum does not state with particularly the acts and omission for which petitioner is being charged. The statement therein directing petitioner Bondoc to explain "why no disciplinary action should be taken against you for having violated Rule No. V 'Disturbing Peace and Order', Section 2" of the employee's Handbook is couched in too-general terms, without any narration whatsoever as to how petitioner Bondoc committed said infractions. It thus cannot be said that petitioner Bondoc was informed with particularity of the acts and omissions for which he is being charged:" xxx

"xxx Neither can SILAHIS' October 4, 1990 memorandum be considered compliance with the second required notice. That memorandum, reading:

TO: MR. APOLONIO BONDOC
F&b Casino Headwaiter

FROM: MANAGEMENT

DATE: October 4, 1990

RE: TERMINATION

Your case has been deliberated thoroughly by the Management regarding your grave threat to Ms. Vina Valenzuela, F&B Checker on different occasions, August 19, 20, 21 and 23, 1990, inside the hotel premises, and after reviewing all supporting documents at hand, sworn statements of witnesses, Police Crime Report dated 29 August 1990, and *your explanation letter on August 1990, addressed to Mr. Ren de los Reyes, Casino Service Manager*, the Management concluded that you are guilty of having violated:

Rule IV □ Threat, Coercion

Sec. 2 □ Threatening or intimidating another with bodily harm or does something illegal or immoral to the other employee or his family in connection with his job or against guests.

For this reason, your employment service with the Company is being terminated effective October 06, 1990.

For your information and strict compliance.

(Sgd.) TEDDY M. JIMENEZ(Sgd.) JOEL TADURAN

Approved by:

(Sgd.) MICHAEL WILSON (Emphasis supplied)" xxx

"xxx does not "clearly" cite the reason for the dismissal, contrary to the requirements set by: Section 6, Rule XIV, Book V of the Omnibus Rules, which provide:

Sec. 6. Decision to dismiss. The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefore.

The conclusion that petitioner Bondoc was guilty of having violated Rule IV, Section 2 of the Company Rules is , as in in the September 3, 1990 memorandum, lacking in specification." xxx

G.R. Nos. 142732-33, December 4, 2007
MARILOU S. GENUINO, petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION, CITIBANK, N.A., WILLIAM FERGUSON, and AZIZ RAJKOTWALA, respondents.

*"*Anent the directive of the NLRC in its September 3, 1994 Decision ordering Citibank "to pay the salaries due to the complainant from the date it reinstated complainant in

the payroll (computed at P60,000.00 a month, as found by the Labor Arbiter) up to and until the date of this decision," the Court hereby cancels said award in view of its finding that the dismissal of Genuino is for a legal and valid ground. Ordinarily, the employer is required to reinstate the employee during the pendency of the appeal pursuant to Art. 223, paragraph 3 of the Labor Code, which states:

> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

"If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.

"Considering that Genuino was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the fallo of the September 3, 1994 NLRC Decision."

G.R. No. 125028, 9 February 1998
REYNALDO VALDEZ, petitioner, *vs*. **NATIONAL LABOR RELATIONS COMMISSION** and **NELBUSO, INC.,** respondents**.**

"xxx The so called 'floating status" of an employee should last only for a legally prescribed period of time. When that "floating status" of an employee lasts for six months, he may be considered to have been illegally dismissed from the service. Thus, he is entitled to the corresponding benefits for his separation, and this would apply to the two types of work suspension heretofore noted, that is, either of the entire business or of a specific component thereof." xxx

G.R. No. 112546, 13 March 1996
NORTH DAVAO MINING CORPORATION and **ASSET PRIVATIZATION TRUST,** petitioners, *vs*. **NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ANTONIO M. VILLANUEVA** and **WILFREDO GUILLEMA,** respondents.

"xxx The underscored portion of Art. 283 governs the grant of separation benefits "in case of closures or cessation of operation" of business establishments "NOT due to serious business losses or financial reverses…". Where, however, the closure was due to business losses – as in the instant case, in which the aggregate losses amounted to over P20 billion – the Labor Code does not impose any obligation upon the employer to pay separation benefits, for obvious reasons. There is no need to belabour this point. Even the public respondents, in their Comment 10 filed by the Solicitor General, impliedly concede this point." xxx

G.R. No. 80609, 23 August 1988
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, petitioner, *vs*. **THE NATIONAL LABOR RELATIONS COMMISSION** and **MARILYN ABUCAY,** respondents.

"xxx There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. For example, a subordinate who has irreconcilable policy or personal differences with his employer may be validly dismissed for demonstrated loss of confidence, which is an allowable ground. A working mother who has to be frequently absent because she has also to take care of her child may also be removed because of her poor attendance, this being another authorized ground. It is not the employee's fault if he does not have the necessary aptitude for his work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee or separation pay would be sustainable under the social justice policy even if the separation is for cause." xxx

"xxx But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified." xxx

"xxx We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice." xxx

"xxx A contrary rule would, as the petitioner correctly argues, have the effect or rewarding rather than punishing the erring employee for his offense." xxx

"xxx The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be the refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character." xxx

"xxx Applying the above considerations, we hold that the grant of separation pay in the case at bar is unjustified. The private respondent has been dismissed for dishonesty, as found by the labor arbiter and affirmed by the NLRC and as she herself has impliedly admitted. The fact that she has worked with the PLDT for more than decade, if it is to be considered at all, should be taken against her as it reflects a regrettable lack of loyalty that she should have strengthened instead of betraying during all of her 10 years of service with the company. If rewarded as a justification for moderating the penalty of dismissal, it will actually become a prize for disloyalty, perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables." xxx

G.R. No. L-23357, 30 April 1974, 56 SCRA 694, 709
MERCURY DRUG CO., INC. and **MARIANO QUE,** petitioners, *vs*. **COURT OF INDUSTRIAL RELATIONS** and **NARDO DAYAO,** respondents.

"xxx The remaining question is how much back wages shall be allowed private respondent Dayao." xxx

"xxx While this case was submitted for decision on March 29, 1965, the delay in its resolution is not due to the parties. However, it should be noted that private respondent Dayao filed his ULP charge with reinstatement and back wages abut two years and fifteen days after his separation on April 10, 1961. As aforestated, the shortest prescriptive period for the filing of all other actions for which the statute of limitations does not fix a period, is four years. The Period of delay in instituting this ULP charge with claim for reinstatement and back wages, although within the prescriptive period, should be deducted from the liability of the employer to him for back wages. In order that the employee however should be relieved from proving his income during the period he was out of the service and the employer from submitting counter-proofs, which may delay the execution of the decision, the employer in the case at bar should be directed to pay private respondent Dayao back wages equivalent to one year, eleven months, and fifteen days without further disqualifications." Xxx

Teehankee, J., concurring and dissenting:

"xxx I particularly endorse the new formula reached by the Court in ordering that respondent be paid a fixed amount of back wages (equivalent to 1 years, 11 months and 15 days in the case at bar) "without further qualifications." That is to say, without having to determine and deduct earnings from the general award of back wages from date of unlawful dismissal until actual reinstatement heretofore customarily made in such unfair labor practice and reinstatement cases. Such general awards, as noted in the main opinion, generally led to long delays in the execution of the decision for back wages and reinstatement, due to protracted hearings and unavoidable delays and difficulties encountered in determining the earnings of the laid-off employees during the pendency of the case." xxx

"xxx As observed by the Court in another case such general award for back wages tended to breed idleness on the part of a discharged employee who would "with folded arms, remain inactive in the expectation that a windfall would come to him" and therefore directed that "in mitigation of the damages that the dismissed respondents (employees) are entitled to, account should be taken of whether in the exercise of due diligence respondents might have obtained income from suitable remunerative employment." xxx

"xxx On the other hand, it is to be noted that unscrupulous employers have with unrelenting attrition against their unwanted employees who successfully obtained judgments for reinstatement with back wages seized upon the further proceedings in the industrial court (to determine the actual earnings of their wrongfully dismissed employees for purposes of deduction from the back wages award) to hold unduly protracted and extended hearings for each and every employee found entitled to back wages and thereby practically render nugatory such judgments and force the employees to agree to unconscionable settlements of their judgment award." xxx

"xxx This new principle formally adopted by the Court now in fixing the amount of back wages at a reasonable level without *qualification and deduction* so as to relieve the employees from proving their earnings during their lay-offs and the employer from submitting counter-proofs, and thus obviate the twin evils of idleness on the part of the employees and attrition and undue delay in satisfying the award on the part of the employer is thus to be hailed as a realistic, reasonable and mutually beneficial solution." xxx

"xxx I believe that some grounds rules should be laid down in implementing the new formula now adopted of granting a fixed back wages award without further qualification and deduction of earnings during the lay-off so as to expedite the immediate execution of judgment in satisfaction of the award and for reinstatement of the wrongfully dismissed employee(s) (whose reinstatement, as stressed in East *Asiatic Co., supra*, should be immediately effected upon finality of the judgment without waiting for the computation and determination of the back wages). Normally, the trial of the case and resolution of the appeal should be given preference and terminated within a period of three years (one year for trial and decision in the industrial court and two years for briefs, etc., and decision in this Court)." xxx

"xxx Hence, an award of back wages equivalent to three years (where the case is not terminated sooner) should serve as the base figure for such awards without deduction, subject to deduction where there are mitigating circumstances in favour of the employer but subject to increase by way of exemplary damages where there are aggravating circumstances (e.g. oppression or dilatory appeals) on the employer's part. Here, where resolution of the case on appeal was delayed without fault of the parties but the facts and circumstances clearly show the lack of merit in the appeal taken by the employer-petitioner and its stubborn insistence on depriving respondent and his co-employees of the extra-compensation for Sunday and holiday work justly due them, I submit that the minimum award to which respondent is entitled should be at the very least the equivalent of the proposed base figure of three years. Employers should be put on notice as a deterrent that if they pursue manifestly dilatory and unmeritorious appeals and thus delay satisfaction of the judgment justly due their employee(s), they run the risk of exemplary and punitive damages being assessed against them by way of an increased award of back wages to the wrongfully discharged employee(s) commensurate to the delay caused by the appeal process." xxx

G.R. No. 111651, 28 November 1996
OSMALIK S. BUSTAMANTE, PAULINO A. BANTAYAN, FERNANDO L. BUSTAMANTE, MARIO D. SUMONOD AND SABU J. LAMARAN, petitioner, *vs.* **NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION AND EVERGREEN FARMS, INC**., respondents.

"xxx The Court deems it appropriate, however, to reconsider such earlier ruling on the computation of backwages as enunciated in said *Pines City Educational Center* case, by now holding that comformably with the evident legislative intent as expressed in Rep. Act No. 6715, abovequoted, backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality [illegality] of his dismissal, must still earn a living to support himself and family, while full back wages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the *Mercury Drug* rule or the "deduction of earnings elsewhere" rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to "full backwages" as meaning exactly that, *i.e.* without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for "backwages" to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation. *Index animi sermo est.* "

"Therefore, in accordance with R.A. No. 6715, petitioners are entitled to their full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld from them up to the time of their actual reinstatement."

G.R. No. 120969, 22 January 1998
ALEJANDRO MARAGUINOT, JR. and PAULINO ENERO, petitioners, *vs*. **NATINAL LABOR RELATIONS COMMISSION (SECOND DIVISION) composed of Presiding Commissioner RAUL TO. AQUINO, Commissioner ROGELIO I. RAYALA and Commissioner VICTORIANO R. CALAYCAY (Ponente), VIC DEL ROSARIO and VIVA FILMS,** respondents.

"xxx Nevertheless, following the principles of "suspension of work" and "no pay" between the end of one project and the start of a new one, in computing petitioners' back wages, the amounts corresponding to what could have been earned during the periods from the date petitioners were dismissed until their reinstatement when petitioners' respective Shooting Units were not undertaking any movie projects, should be deducted." xxx

"xxx Petitioners were dismissed on 20 July 1992, at a time when Republic Act No. 6715 was already in effect. Pursuant to Section 34 thereof which amended Section 279 of the Labor Code of the Philippines and *Bustamanate v. NLRC*, petitioners are entitled to receive full back wages from the date of their dismissal up to the time of their reinstatement, without deducting whatever earnings derived elsewhere during the period of illegal dismissal, subject however, to the above observations." xxx

G.R. No. 80587, 8 February 1989
WENPHIL CORPORATION, petitioner, *vs*. **NATIONAL LABOR RELATIONS COMMISSION AND ROBERTO MALLARE,** respondents.

"xxx Thus in the present case, where the private respondent who appears to be of violent temper, caused trouble during office hours and even defied his superiors as they tried to pacify him, should be rewarded with re-employment and back wages. It may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe. Under the circumstances, the dismissal of the private respondent for just cause should be maintained. He has no right to return to his former employment." xxx

"xxx However, the petitioner must nevertheless be held to account for failure to extend to private respondents his right to an investigation before causing his dismissal. The rule is explicit as above discussed. The dismissal of an employee must be for just or authorized cause and after due process. Petitioner committed an infraction of the second requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from employment. Considering the circumstances of this case petitioner must indemnify the private respondent the amount of P1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer." xxx

G.R. No. 158693, 17 November 2004

JENNY M. AGABON and **VIRGILIO C. AGABON,** petitioners, *vs*. **NATIONAL LABOR RELATIONS COMMISSION (NLRC) RIVIERA HOME IMPROVEMENTS, INC.** and **VICENTE ANGELES,** respondents.

"xxx Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation." xxx

"xxx The rule thus evolved: where the employer had a valid reason to dismiss an employee but did not follow the due process requirement, the dismissal may be upheld but the employer will be penalized to pay an indemnity to the employee. This became known as the *Wenphil* or Belated Due Process Rule." xxx

"xxx On January 27, 2000, in *Serrano,* the rule on the extent of the sanction was changed. We held that the violation by the employer of the notice requirement in termination for just or authorized causes was not a denial of due process that will nullify the termination. However, the dismissal is ineffectual and the employer must pay full backwages from the time of termination until it is judicially declared that he dismissal was for a just or authorized cause." xxx

"xxx After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the *Serrano* doctrine and to follow *Wenphil* by holding that the dismissal was for just cause but imposing sanctions on the employer." Such sanctions, however, must be stiffer than that imposed in *Wenphil*. By Doing so, this Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well." xxx

"xxx Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer." Xxx

"The violation of the (employees') right to statutory due process by the (employer) warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances.[40] **Considering the prevailing circumstances in the case at bar, we deem**

it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules."

G.R. No. 151378, 28 March 2005
JAKA FOOD PROCESSING CORPORATION, petitioner, vs. **DARWIN PACOT, ROBERT PAROHINOG, DAVID BISNAR, MARLON DOMINGO, RHOEL LESCANO** and **JONATHAN CAGABCAB**, respondents.

"In the very recent case of Agabon vs. NLRC, we had the opportunity to resolve a similar question. Therein, we found that the employees committed a grave offense, *i.e.*, abandonment, which is a form of a neglect of duty which, in turn, is one of the just causes enumerated under Article 282 of the Labor Code. In said case, we upheld the validity of the dismissal despite non-compliance with the notice requirement of the Labor Code. However, we required the employer to pay the dismissed employees the amount of P30,000.00, representing nominal damages for non-compliance with statutory due process…

"The difference between Agabon and the instant case is that in the former, the dismissal was based on a just cause under Article 282 of the Labor Code while in the present case, respondents were dismissed due to retrenchment, which is one of the authorized causes under Article 283 of the same Code.

"At this point, we note that there are divergent implications of a dismissal for just cause under Article 282, on one hand, and a dismissal for authorized cause under Article 283, on the other.

"A dismissal for just cause under Article 282 implies that the employee concerned has committed, or is guilty of, some violation against the employer, *i.e.* the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in *Agabon*, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.

"On another breath, a dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, *i.e.* when the employer opts to install labor saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.

"The clear-cut distinction between a dismissal for just cause under Article 282 and a dismissal for authorized cause under Article 283 is further reinforced by the fact that in the first, payment of separation pay, as a rule, is not required, while in the second, the law requires payment of separation pay.

"For these reasons, there ought to be a difference in treatment when the ground for dismissal is one of the just causes under Article 282, and when based on one of the authorized causes under Article 283.

"Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be *tempered* because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be *stiffer* because the dismissal process was initiated by the employer's exercise of his management prerogative…

"Considering the factual circumstances in the instant case and the above ratiocination, we, therefore, deem it proper to fix the indemnity at P50,000.00."

G.R. No. 110861, 14 November 1994
ORO ENTERPRISES, INC., petitioner, *vs*. **NATIONAL LABOR RELATIONS COMMISSION and LORETO L. CECILIO,** respondents.

"xxx RA 7641 is undoubtedly a social legislation. The law has been enacted as a labor protection measure and as a curative statute that – absent a retirement plan devised by, an agreement with, or voluntary grant from, an employer – can respond, in part at least, to the financial well-being of workers during their twilight years soon following their life of labor. There should be little doubt about the fact that the law can apply to labor contracts still existing at the time the statute has taken effect, and that its benefits can be reckoned not only from the date of the law's enactment but retroactively to the time said employment contracts have started." xxx