Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

OCEAN EAST AGENCY, CORPORATION, ENGR. ARTURO D. CARMEN, and CAPT. NICOLAS SKINITIS, Petitioners,	**G.R. No. 194410**
	Present:
	VELASCO, JR., *J.*, *Chairperson,* PERALTA, VILLARAMA, JR., MENDOZA,* and JARDELEZA, *JJ.*
- versus -	
	Promulgated:
ALLAN I. LOPEZ, Respondent.	October 14, 2015

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D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (*CA*) Decision[1] dated January 26, 2010 and its Amended Decision[2] dated November 8, 2010 in CA-G.R. SP No. 83487.

The facts are as follows.

Petitioner Ocean East Agency Corporation (*Ocean East*) is a manning agency engaged in recruitment and deployment of Filipino seamen for

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* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 (Revised) dated June 29, 2015.

1 Penned by Associate Justice Franchito N. Diamante, with Associate Justices Mario L. Guariña III and Sesinando E. Villon, concurring; *rollo,* pp. 43-54.

2 Penned by Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Sesinando E. Villon, concurring; *id.* at 111-116.

overseas principals. Petitioner Arturo D. Carmen is the President and General Manager of Ocean East, while petitioner Capt. Nicolas Skinitis is a representative of one of its foreign principals, European Navigation Greece.

On March 7, 1988, respondent Allan I. Lopez was employed as Documentation Officer assigned to Ocean East's Operations Department. Prior to his employment, Ocean East had already engaged the services of one Grace Reynolds as Documentation Clerk. Sometime in 1996, it hired one Ma. Corazon P. Hing also as Documentation Clerk.

The Documentation Clerks and Officer were tasked to perform the following functions: prepare the line-up of request crew by various principals in close coordination with the Port Captain; assist in attending to various operational expenses and disbursements; coordinate closely with deserving former crew members for pooling and/or immediate employment, if so required; and supervise the preparation of the crew documents, such as travel documents and clearances.

In a letter dated February 5, 2001, Ocean East served notice to Lopez that effective thirty (30) days later, or on March 6, 2001, his services will be terminated on the ground of redundancy, as his position as Documentation Officer is but a duplication of those occupied by its two (2) other personnel who were also exercising similar duties and functions.

On February 7, 2001, Lopez received his separation pay of ₱202,282.00 and was issued a Certificate of Service.

On May 23, 2001, Lopez filed an Amended Complaint for illegal dismissal, damages and attorney's fees against petitioners Ocean East, Carmen and Skinitis. Lopez alleged that Skinitis falsely accused him of making money from the crew to be deployed abroad, maligned his physical handicap as a polio victim, and ordered his removal from his job.

Despite conciliation efforts, the parties failed to agree to an amicable settlement, so they were required by the Labor Arbiter to submit their respective Position Papers and other pleadings.

On January 25, 2002, the Labor Arbiter rendered a Decision[3] dismissing the illegal dismissal complaint for lack of merit. Citing the employer's management prerogative to abolish a position which it deems no longer necessary, the Labor Arbiter held that it would be unfair to compel

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3 *Rollo*, pp. 118-127.

Ocean East to retain Lopez' position whose duties and functions are likewise being performed by its 2 other employees. It also ruled that apart from the lack of evidence to support the acts of discrimination and oppression that he imputed against petitioners, there is also no showing that the streamlining of Ocean East's workforce was attended by malice and ill-will.

Dissatisfied, Lopez appealed to the National Labor Relations Commission (*NLRC*).

On August 30, 2002, the NLRC issued a Resolution[4] dismissing Lopez' appeal for lack of merit. It stressed that much leeway is granted to the employer in the implementation of business decisions, such as streamlining of workforce resulting in displacement of certain personnel. It found that no malice or ill-will was shown to have been committed by Ocean East in the exercise of its management prerogatives, which included whom to separate and what positions to abolish. It noted that Lopez' being a polio victim is merely incidental, as the fact remains that there was a duplication in the functions of a Documentation Officer. It also pointed out that what took place was a reduction of personnel due to redundancy, not retrenchment; hence, there was no need to prove business losses on the part of Ocean East.

On January 30, 2004, the NLRC denied Lopez' motion for reconsideration upon finding no averments therein that the Resolution dated August 30, 2002 contained palpable or patent errors.

Aggrieved, Lopez filed a petition for *certiorari* before the Court of Appeals (*CA*).

On January 26, 2010, the CA granted Lopez' petition and ruled that he was illegally dismissed. It noted, however, that since he was dismissed on the ground of redundancy, reinstatement would no longer serve any prudent purpose. It added that since he was already paid a separation pay at the time of his dismissal, he was entitled only to payment of backwages. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, premises considered, the instant Petition is hereby **GRANTED**. The assailed **Resolution and Order, dated August 30, 2002 and January 30, 2004**, respectively, both issued by public respondent NLRC are hereby **REVERSED AND SET ASIDE. Private Respondent OCEAN EAST AGENCY CORP. is ordered to pay Petitioner Allan I. Lopez his backwages from the time of his dismissal on March 6, 2001, until the finality of this decision**.
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> **SO ORDERED**.[5]

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4 *Id.* at 128-132.

5 *Id.* at 53. (Emphasis in the original)

The CA found that Ocean East failed to discharge the burden of proving the validity of Lopez' dismissal due to redundancy, thus:

> x x x Oceaneast's main argument that Lopez' dismissal was only resorted to after a study that was conducted to keep its organization more cost efficient is not only insufficient but also baseless and self-serving. There is nothing in the records that shows that indeed a study was conducted which led to the termination of Lopez' services on the ground that his position has become redundant. Neither was there any proof that Oceaneast had a concrete redundancy program that is reflective of any financial loss or possible and obtainable substantial profits in case the program is implemented nor were there any named factors considered by Oceaneast in undertaking the reduction program. Going over the records of this case, it seems that Lopez was the only one who was affected by Oceaneast's "reduction program." And the choice of Lopez as the one to be terminated was based only on the fact that a certain Grace Reynolds, a documentation clerk, is senior in appointment than he. In its attempt to justify Lopez' termination, Oceaneast attached copies of the company's Quality Procedures Manual detailing the duties and responsibilities of the Chief Documentation Officer and the Chief Documentation Clerk. It likewise attached the resignation letters of two other members of the staff if only to show that indeed the company is in dire financial state. Succinctly put, We find Oceaneast's evidence too flimsy to sustain its claim that Lopez was lawfully terminated.
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> x x x x
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> Moreover, Oceaneast committed a fatal error when it failed to give written notice to the Department of Labor and Employment (DOLE) as required under Article 283 of the Labor Code. Both the Labor Arbiter and the NLRC found the absence of written notice of termination to the DOLE but opined that there was substantial compliance on the notice requirement as Lopez himself was duly informed and consented to his termination by receiving his separation pay. But such lack of notice is frowned upon by law. When the law requires that there must be a written notice of termination one month prior to the date of the termination itself, it specifically stated such notice must be given to both the employee concerned and the DOLE. The purpose of the written notice to the DOLE is to give it the opportunity to ascertain the verity of the alleged authorized cause of termination. Thus, Oceaneast's failure to show an authorized cause for Lopez' termination is sufficient to declare his dismissal illegal.
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> As to the claim that Lopez consented to his termination when he accepted the separation pay that the company offered [, the same] deserves scant consideration. Lopez is a family man and with mouths to feed, he has no choice but to accept the separation pay that was offered him. Oceaneast's letter made it clear that Lopez is being terminated from his job as his position had been determined to be already redundant.[6]

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6 *Id.* at 51-52. (Citations omitted.)

On November 8, 2010, acting on petitioners' Motion for Reconsideration and Lopez' Motion for Clarification and/or Partial Reconsideration of its January 26, 2010 Decision, the CA rendered an Amended Decision, the dispositive portion of which states:

> WHEREFORE, private respondents' [herein petitioners] motion for reconsideration is hereby DENIED. On the other hand, petitioner's [herein respondent] motion for reconsideration is hereby PARTIALLY GRANTED and the dispositive portion of the Decision dated January 26, 2010 is amended to read as follows:
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> > WHEREFORE, premises considered, the instant Petition is hereby GRANTED. The assailed Resolution and Order, dated August 30, 2002 and January 30, 2004, respectively, both issued by public respondent NLRC are hereby REVERSED AND SET ASIDE. Private Respondent OCEANEAST AGENCY CORP. is ordered to pay Petitioner Allan I. Lopez his backwages from the time of his dismissal on March 6, 2001, until the finality of this decision, subject to a 12% interest *per annum* on the outstanding balance on the monetary award to be computed from the time of the finality of the decision up to the full satisfaction thereof. Likewise, private respondent OCEANEAST AGENCY CORP. is directed to pay attorney's fees equivalent to 10% of the total award.
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> > SO ORDERED.
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> SO ORDERED.[7]

Undaunted, petitioners filed this petition for review on *certiorari*, raising these two issues:

> I
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> THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FINDING RESPONDENT TO HAVE BEEN ILLEGALLY DISMISSED.
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> II
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> THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AWARDING BACKWAGES AND ATTORNEY'S FEES.[8]

Petitioners claim to have clearly established that the functions of Lopez as a Documentation Officer is virtually a duplication of the duties and responsibilities performed by Ocean East's two (2) other Documentation Clerks. They call attention to the job descriptions presented by both parties and the letter sent to Lopez which both confirm that his position is but a

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7 *Id.* at 115-116. (Underscoring in the original.)

8 *Id.* at 20-21.

duplication, as its duties and functions were exercised similarly by such clerks in the company's operations department.

Petitioners also assert that they have complied with the four (4) requisites for the valid implementation of a redundancy program. As to the first and second requisites, petitioners state that Ocean East duly served a written notice to Lopez thirty (30) days prior to the intended date of termination, and paid his separation pay equivalent to one (1) month pay for every year of service. To justify their failure to serve a similar notice to the DOLE, petitioners cite the cases of *International Hardware, Inc. v. NLRC (Third Division)*,[9] and *Dole Philippines, Inc. v. National Labor Relations Commission*[10] where it was held that the required previous notice to the DOLE is not necessary when the employee acknowledged the existence of a valid cause for termination of his employment. Citing *Talam v. NLRC 4th Division, Cebu City, et al.*,[11] they further claim that Lopez' acceptance of a considerable sum as separation pay and his certificate of service without protest, clearly indicates consent to his dismissal, which effectively released them from their obligations. Thus, they contend that notice to the DOLE may already be dispensed with since there was no more useful purpose for it, and he was compensated already as required by law.

With respect to the third requisite, petitioners submit that having been actuated by the exigencies of service and requirements of its business, Ocean East acted in good faith in abolishing the redundant position of Lopez. They point out that Ocean East was constrained to downsize its personnel due to financial difficulties as shown in its Balance Sheets as of 31st December 2000 and 1999 and the related Statement of Income and Retained Earnings (Deficit) and Cash Flows for the years then ended.[12]

Anent the fourth requisite, petitioners aver that fair and reasonable criteria, *i.e.*, seniority and efficiency, were used by Ocean East in ascertaining what positions were to be declared redundant. Invoking the employer's management prerogative, they assert that it would be more efficient in Ocean East's business operations if it would abolish the position of Documentation Officer, and retain Reynolds who was more senior than Lopez. Faulting the CA for adding a stringent requisite to an otherwise clear rule on fair and reasonable criteria in ascertaining redundancy, they posit that there is no requirement of a detailed study or a concrete redundancy program that is reflective of any financial loss or possible and obtainable profits before such program is implemented.

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9 257 Phil. 261 (1989).
10 417 Phil. 428 (2001).
11 631 Phil. 405 (2010).
12 *Rollo*, pp. 67-72.

Having purportedly established the requisites for a valid dismissal due to redundancy, petitioners assert that Lopez is not entitled to the award of backwages or attorney's fees.

The petition lacks merit.

In resolving the core issue of whether or not Ocean East was able to establish that Lopez was validly terminated on the ground of redundancy, the Court is called upon to re-examine the facts and evidence on record. It is well settled that the Court is not a trier of facts, and the scope of its authority under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact, which are for labor tribunals to resolve.[13] However, one of the recognized exceptions to the rule is when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the CA.[14] When there is a variance in the factual findings, as in this case, it is incumbent upon the Court to re-examine the facts.[15]

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the enterprise.[16] A redundant position is one rendered superfluous by any number of factors, such as over hiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company, or phasing-out of a service activity previously undertaken by the business.[17] Under these factors, the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.[18] 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.[19]

As an authorized cause for termination of employment, redundancy may be implemented subject only to strict requirements spelled out in Article 283 of the Labor Code, to wit:

> Article 283. *Closure of establishment and reduction of personnel.* – The employer may also terminate the employment of any employee due to the installment of labor-saving devices, redundancy, retrenchment to

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13 *Alberto J. Raza v. Daikoku Electronic Phils., Inc. and Mamoru Oro*, G.R. No. 188464, July 29, 2015.

14 *Philippine Long Distance Telephone Company and/or Ernani Tumimbang v. Henry Estranero*, G.R. No. 192518, October 15, 2014.

15 *General Milling Corporation v. Viajar*, G.R. No. 181738, January 30, 2013, 689 SCRA 598, 606-607.

16 *AMA Computer College, Inc. v. Garcia, et al.*, 574 Phil. 409, 422 (2008).

17 *Coats Manila Bay, Inc. v. Ortega, et al.*, 598 Phil. 768, 775-776 (2009).

18 *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira*, 639 Phil. 1, 13 (2010).

19 *Arabit v. Jardine Pacific Finance, Inc. (formerly MB Finance)*, G.R. No. 181719, April 21, 2014, 722 SCRA 44, 61, citing *Golden Thread Knitting Industries, Inc. v. NLRC*, 364 Phil. 215 (1999).

> prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, **by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher**. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.[20]

For the implementation of a redundancy program to be valid, the employer must comply with these requisites: (1) written notice served on both the employee 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.[21]

The Court finds that petitioners failed to establish compliance with the first, third and fourth requisites for a valid implementation of a redundancy program, thereby making Ocean East liable for illegal dismissal.

It is undisputed that Ocean East failed to comply with the first requisite of service of a written notice of termination to the DOLE. To justify such omission, petitioners invoke *International Hardware, Inc. v. NLRC (Third Division)*,[22] and *Dole Philippines, Inc. v. NLRC*[23] where it was stated that:

> By the same token, if an employee consented to his retrenchment or voluntarily applied for retrenchment with the employer due to the installation of labor-saving devices, redundancy, closure or cessation of operation or to prevent financial losses to the business of the employer, the required previous notice to the DOLE is not necessary as the employee thereby acknowledged the existence of a valid cause for termination of his employment.[24]

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20 Emphasis supplied.

21 *Arabit v. Jardine Pacific Finance, Inc. (formerly MB Finance), supra* note 19, at 62, citing *Asian Alcohol Corporation v. NLRC*, 364 Phil. 912 (1999); *Morales v. Metropolitan Bank and Trust Company*, G.R. No. 182475, November 21, 2012, 686 SCRA 132.

22 *Supra* note 9.

23 *Supra* note 10.

24 *International Hardware, Inc. v. NLRC (Third Division)*, *supra* note 9, at 265.

Petitioners' reliance on the afore-cited cases is misplaced.

The above-quoted statement in *International Hardware, Inc.* – which was reiterated in *Dole Philippines, Inc.* – is a mere *obiter dictum* which cannot be invoked as a doctrinal declaration of the Court. *Land Bank of the Philippines v. Suntay*[25] explains the concept and effect of an *obiter dictum* as follows:

> An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is *not necessary* in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause *by the way*, that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.[26]

It bears emphasis that the sole issue in *International Hardware, Inc.* is "whether or not an employee who had been retrenched or otherwise separated from the service of an employer who, in turn, suffered financial losses and revenues, is entitled to separation pay."[27] In resolving such issue in the affirmative, the Court ruled:

> In this case, it is admitted that private respondent had not been terminated or retrenched by petitioner but that due to financial crisis[,] the number of working days of private respondent was reduced to just two days a week. Petitioner could not have been expected to notify DOLE of the retrenchment of private respondent under the circumstances for there was no intention to do so on the part of petitioner.
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> By the same token, if an employee consented to his retrenchment or voluntarily applied for retrenchment with the employer due to the installation of labor-saving devices, redundancy, closure or cessation of operation or to prevent financial losses to the business of the employer, the required previous notice to the DOLE is not necessary as the employee thereby acknowledged the existence of a valid cause for termination of his employment.
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> Nevertheless, considering that private respondent had been rotated by petitioner for over six (6) months due to the serious losses in the business so that private respondent had been effectively deprived a gainful occupation thereby, and considering further that the business of petitioner

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25 678 Phil. 879 (2011).

26 *Land Bank of the Philippines v. Suntay, supra,* at 913-914. (Citations omitted)

27 *International Hardware, Inc. v. NLRC (Third Division), supra* note 9, at 263.

> was ultimately closed and sold off, the Court finds, and so holds that the NLRC correctly ruled that private respondent was thereby constructively dismissed or retrenched from employment. x x x [28]

Notably, *International Hardware, Inc.* neither involves an employee who consented to or voluntarily applied for his retrenchment due to authorized causes for termination. Nor does it contain a discussion on the lack of termination notice to the DOLE and the dispensability of such notice when an employee acknowledged the validity of the cause for his termination. The Court, therefore, considers as a mere *obiter dictum* the statement in the said case to the effect that the notice to the DOLE is unnecessary when the employee acknowledged the existence of a valid cause for termination of his employment.

Petitioners cannot also rely on *Dole Philippines, Inc.* because its factual milieu is different from this case.

In *Dole Philippines, Inc.*, the private respondent employees filled up application forms for the redundancy program and thus acknowledged that the existence of their services were redundant. They also executed two releases in favor of the company, and there is neither a showing that they were unsuspecting or gullible persons nor that the terms of the settlement were unconscionable. In contrast, in the case at bar, Lopez neither filled up an application form for redundancy program, nor executed a valid release and quitclaim in favor of Ocean East.

Likewise, petitioners' reliance on *Talam v. NLRC 4th Division, Cebu City, et al.*[29] is misplaced. Citing Lopez' acceptance of a considerable sum as separation pay and his certificate of service without protest as clearly indicative of consent to his dismissal, which effectively released them from their obligations, petitioners argue that the notice to the DOLE may already be dispensed with since there was no more useful purpose for it, and he was already compensated as required by law. Petitioners' argument is untenable. Suffice it to say that unlike in *Talam,* there is no indication that Lopez executed a waiver and quitclaim which estops him from questioning the validity of his dismissal. Besides, the CA is correct in pointing out that Lopez had no choice but to accept the separation pay because he was a family man with five (5) children to support[30] and Ocean East's letter clearly stated that he was being terminated due to redundancy.[31]

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28 *Id.* at 265.
29 *Supra* note 11.
30 *Rollo*, p. 120.
31 *Id.* at 52.

Above all, there is no merit in petitioners' contention that notice to the DOLE may already be dispensed with since there was no more useful purpose for it, and he was already adequately compensated as required by law. Indeed, to dispense with such notice would not only disregard a clear labor law provision that affords protection to an employee, but also defeats its very purpose which is to give the DOLE the opportunity to ascertain the veracity of the alleged authorized cause of termination.[32] In fact, the Court has considered as a fatal error the employer's failure to give a written notice to the DOLE as required under Article 283 of the Labor Code.[33]

With regard to petitioners' failure to establish the third and fourth requisites for a valid implementation of a redundancy program, the Court stresses the importance of having fair and reasonable criteria, such as but not limited to (a) less preferred status, *e.g.,* temporary employee; (b) efficiency; and (c) seniority.[34] The presence of such 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.[35] Conversely, the absence of criteria in the selection of an employee to be dismissed and the erroneous implementation of the criterion selected, both render invalid the redundancy because both have the ultimate effect of illegally dismissing an employee.[36]

While it is true that the characterization of an employee's services as superfluous or no longer necessary and, therefore, properly terminable, is an exercise of business judgment on the part of the employer, the exercise of such judgment must not violate the law, and must not be arbitrary or malicious.[37] An employer cannot simply declare that it has become over-manned and dismiss its employees without adequate proof to sustain its claim of redundancy.[38] To dispel any suspicion of bad faith on the part of the employer, it must present adequate proof of the redundancy, as well as the criteria in the selection of the employees affected. The following evidence may be proffered to substantiate redundancy, to wit: the new staffing pattern, feasibility studies/proposal on the viability of the newly-created positions, job description and the approval by the management of the restructuring.[39]

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32 *Shimizu Phils. Contractors, Inc. v. Callanta*, 646 Phil. 147, 160 (2010); *Mobilia Products, Inc. v. Demecillo, et al.*, 597 Phil. 621, 631 (2009).

33 *Caltex (Phils.), Inc. (now Chevron Phils, Inc.) v. NLRC*, 562 Phil. 167, 184 (2007).

34 *Panlilio v. NLRC*, 346 Phil. 30, 35 (1997).

35 *Arabit v. Jardine Pacific Finance, Inc. (formerly MB Finance)*, *supra* note 19.

36 *San Miguel Corporation v. Del Rosario*, 513 Phil. 740, 757 (2005).

37 *General Milling Corporation v. Viajar*, *supra* note 15, at 610.

38 *Culili v. Eastern Telecommunications Philippines, Inc., et al.*, 657 Phil. 342, 362-363 (2011).

39 *San Miguel Corporation v. Del Rosario*, 513 Phil. 740 (2005), citing *Panlilio v. NLRC*, *supra* note 34, at 34.

In this case, petitioners were able to establish through Ocean East's Quality Procedures Manual that Lopez' position as a Documentation Officer was redundant because its duties and functions were similar to those of the Documentation Clerks in its operations department. However, they failed to prove by substantial evidence their observance of the fair and reasonable criteria of seniority and efficiency in ascertaining the redundancy of the position of Documentation Officer, as well as good faith on their part in abolishing such position. Petitioners were unable to justify why it was more efficient to terminate Lopez rather than its two other Documentation Clerks, Reynolds and Hing. Also, while Reynolds was supposedly retained for being more senior than Lopez, petitioners were silent on why they chose to retain Hing who was hired in 1996, instead of Lopez who was hired about eight (8) years earlier in 1988.

Even as the ground of redundancy does not require the exhibition of proof of losses or imminent losses,[40] petitioners went on to claim that Ocean East was constrained to downsize its personnel due to financial difficulties as shown in its Balance Sheets as of 31st December 2000 and 1999 and the related Statement of Income and Retained Earnings (Deficit) and Cash Flows for the years then ended.[41] As they have the burden of proving the existence of an authorized cause, petitioners should have presented the company's audited financial statements before the Labor Arbiter who is in the position to evaluate evidence.[42] That they failed to do so and only presented these documents to the CA on a motion for reconsideration[43] of its Decision dated January 26, 2010, is lamentable, considering that the admission of evidence is outside the sphere of the appellate court's *certiorari* jurisdiction.[44]

Anent petitioners' claims that Ocean East continued to suffer losses despite the implementation of its right-sizing plan, and that it was unable to replace its two other employees who resigned after Lopez' termination, the Court agrees with the CA in rejecting the documentary evidence submitted to support such claims, *i.e.*, the resignation letters of Hing, a Documentation Clerk, and one Emma Jaballos, a bookkeeper. Clearly, the said resignation letters cannot be considered as relevant evidence that a reasonable mind might accept as adequate to support a conclusion as to Ocean East's claimed losses and inability to replace its employees.

For petitioners' failure to prove that Ocean East served the DOLE a written notice of termination as required under Article 283 of the Labor

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40 *Coats Manila Bay, Inc. v. Ortega, et al.*, *supra* note 17.
41 *Rollo*, pp. 67-72.
42 *Danzas Intercontinental, Inc. v. Daguman*, 496 Phil. 279, 290 (2005).
43 *Rollo*, pp. 55-72.
44 *Danzas Intercontinental v. Daguman*, *supra* note 42.

Code, and to show that it was in good faith in implementing a redundancy program, and that it adopted a fair and reasonable criteria in ascertaining what positions are to be declared redundant, the CA correctly found the company liable for illegal dismissal.

Settled is the rule that an employee who was illegally dismissed from work is entitled to reinstatement without loss of seniority rights, and other privileges, as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[45] Since reinstatement is no longer feasible as Lopez' former position no longer exists,[46] his backwages shall be computed from the time of illegal dismissal up to the finality of the decision.[47] Backwages include the whole amount of salaries plus all other benefits and bonuses and general increases to which he would have been normally entitled had he not been illegally dismissed,[48] such as the legally mandated Emergency Cost of Living Allowance (ECOLA) and thirteenth (13^{th}) month pay, and the meal and transportation allowances prayed for by Lopez.[49]

Meanwhile, Lopez' claim for overtime pay must be denied for lack of competent proof to show his entitlement thereto.[50] While it is settled in jurisprudence that in cases involving money claims of employees, the employer has the burden of proving that they received their wages and benefits and that the same were paid in accordance with law,[51] this does not hold true as to claims for overtime pay which require proof of actual work rendered beyond the normal working hours and work days.[52] Entitlement to such pay must be established by proof that said overtime work was actually performed, before an employee may avail of said benefit.[53]

Finally, the Court sustains the CA in holding Lopez entitled to attorney's fees in the amount of ten percent (10%) of the total monetary award pursuant to Article 111[54] of the Labor Code. Where an employee was

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45 Article 279 of the Labor Code, as amended; *Dacuital, et al. v. L.M. Camus Engineering Corp.* 644 Phil. 158, 173 (2010).

46 *Rollo*, p. 192.

47 *Philippine Journalists, Inc. v. Mosqueda*, G.R. No. 141430, May 7, 2004.

48 *Tangga-an v. Philippine Transmarine Carriers, Inc.*, G.R. No.180636, March 13, 2013, 693 SCRA 340, 354.

49 *Rollo*, pp. 158-159.

50 *Labadan v. Forest Hills Academy/Cabaluna, et al.*, 595 Phil. 859, 867 (2008)

51 *Grandteq Industrial Steel Products, Inc., et al.* v. Margallo, 611 Phil. 612, 629 (2009), citing *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, G.R. No. 170734, May 14, 2008, 554 SCRA 110, 120.

52 *Lagatic v. NLRC*, 349 Phil. 172, 185 (1998).

53 *Id.* at 185-186.

54 Art. 111. Attorney's fees.

a. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

forced to litigate and incur expenses to protect his rights and interest, the award of such fees is legally and morally justifiable.[55] Consistent with the prevailing jurisprudence,[56] however, the legal interest imposed on the monetary awards at the rate of twelve percent (12%) *per annum* (*p.a.*) should be reduced to six percent (6%) p.a., computed from the finality of this Decision until full payment.

WHEREFORE, the petition is **DENIED**. The Court of Appeals Amended Decision dated November 8, 2010 in CA-G.R. SP No. 83487 is **AFFIRMED** with **MODIFICATION** that the legal interest rate should be reduced to six percent (6%) *per annum* from finality of this Decision until full payment. For the prompt execution hereof, this case is hereby **REMANDED** to the Labor Arbiter for the computation of the exact amount of award to respondent Allan I. Lopez.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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b. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[55] *Cheryll Santos Leus v. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*, G.R. No. 187226, January 28, 2015.

[56] *Secretary of the Department of Public Works and Highways, et al., v. Spouses Heracleo and Ramona Tecson*, G.R. No. 179334, April 21, 2015; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice