Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NILO S. RODRIGUEZ, FRANCISCO T. ALISANGCO, BENJAMIN T. ANG, VICENTE P. ANG, SILVESTRE D. ARROYO, RUDERICO C. BAQUIRAN, WILFREDO S. CRUZ, EDMUNDO M. DELOS REYES, JR., VIRGILIO V. ECARMA, ISMAEL F. GALISIM, TITO F. GARCIA, LIBERATO D. GUTIZA, GLADYS L. JADIE, LUISITO M. JOSE, PATERNO C. LABUGA, JR. NOEL Y. LASTIMOSO, DANILO C. MATIAS, BEN T. MATURAN, VIRGILIO N. OCHARAN, GABRIEL P. PIAMONTE, JR., ARTURO A. SABADO, MANUEL P. SANCHEZ, MARGOT A. CORPUS as the surviving spouse of the deceased ARNOLD S. CORPUS, and ESTHER VICTORIA A. ALCAÑESES as the surviving spouse of the deceased EFREN S. ALCAÑESES, Petitioners, - *versus* - **PHILIPPINE AIRLINES, INC., AND NATIONAL LABOR RELATIONS COMMISSION,** Respondents.	**G.R. No. 178501**
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PHILIPPINE AIRLINES, INC., Petitioner, - *versus* - **NILO S. RODRIGUEZ, FRANCISCO T. ALISANGCO,**	**G.R. No. 178510**

BENJAMIN T. ANG, VICENTE P. ANG, SILVESTRE D. ARROYO, RUDERICO C. BAQUIRAN, ARNOLD S. CORPUS, WILFREDO S. CRUZ, EDMUNDO M. DELOS REYES, JR., VIRGILIO V. ECARMA, ISMAEL F. GALISIM, TITO F. GARCIA, LIBERATO D. GUTIZA, GLADYS L. JADIE, LUISITO M. JOSE, PATERNO C. LABUGA, JR., NOEL Y. LASTIMOSO, DANILO C. MATIAS, BEN T. MATURAN, VIRGILIO N. OCHARAN, GABRIEL M. PIAMONTE, JR., RODOLFO O. POE, JR., ARTURO A. SABADO, MANUEL P. SANCHEZ, and ESTHER VICTORIA A. ALCAÑESES, as the Sole Heir of the Deceased EFREN S. ALCAÑESES,
Respondents.

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JAN 11 2016

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court are two consolidated Petitions for Review on *Certiorari* under Rule 45 of the Revised Rules of Court assailing the Decision[1] dated November 30, 2006 and Resolution dated June 8, 2007 of the Court of Appeals in CA-G.R. SP No. 71190.

The petitioners in G.R. No. 178501 are 24 former pilots of Philippine Airlines, Inc. (PAL), namely, Nilo S. Rodriguez (Rodriguez), Francisco T. Alisangco (Alisangco), Benjamin T. Ang, Vicente P. Ang, Silvestre D. Arroyo (Arroyo), Ruderico C. Baquiran (Baquiran), Wilfredo S. Cruz, Edmundo M. Delos Reyes, Jr. (Delos Reyes), Virgilio V. Ecarma (Ecarma), Ismael F. Galisim (Galisim), Tito F. Garcia (Garcia), Liberato D. Gutiza (Gutiza), Gladys L. Jadie (Jadie), Luisito M. Jose (Jose), Paterno C. Labuga, Jr. (Labuga), Noel Y. Lastimoso (Lastimoso), Danilo C. Matias (Matias),

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* Additional member per Special Order No. 2188 dated September 16, 2015.

1 *Rollo* (G.R. No. 178501), pp. 80-110 and *rollo* (G.R. No. 178510), pp. 68-98; penned by Associate Justice Edgardo F. Sundiam with Associate Justices Rodrigo V. Cosico and Celia C. Librea-Leagogo, concurring.

Ben T. Maturan (Maturan), Virgilio N. Ocharan (Ocharan), Gabriel M. Piamonte, Jr. (Piamonte), Arturo A. Sabado (Sabado), Manuel P. Sanchez (Sanchez), Margot A. Corpus as the surviving spouse of the deceased Arnold S. Corpus (Corpus), and Esther Victoria A. Alcañeses as the surviving spouse of the deceased Efren S. Alcañeses (Alcañeses), hereinafter collectively referred to as Rodriguez, *et al.*, deemed by PAL to have lost their employment status for taking part in the illegal strike in June 1998.

The petitioner in G.R. No. 178510 is PAL, a domestic corporation organized and existing under the laws of the Republic of the Philippines, operating as a common carrier transporting passengers and cargo through aircraft. PAL named Rodriguez, *et al.* and Rodolfo O. Poe (Poe) as respondents in its Petition.

In its assailed Decision, the Court of Appeals: (1) reversed the Decision dated November 6, 2001 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 027348-01 which declared the loss of employment of Rodriguez, *et al.* (except for Jadie) to be in accordance with law; and (2) reinstated the Decision dated December 11, 2000 of the Labor Arbiter in NLRC NCR Case No. 00-06-06290-99 which held PAL liable for the illegal dismissal of Rodriguez, *et al.* but with the modifications directing PAL to pay the pilots their separation pay in lieu of reinstatement and deleting the awards for moral and exemplary damages and attorney's fees.

Rodriguez, *et al.*, pray that the Court partially reverse the judgment of the Court of Appeals by ordering their reinstatement with backwages and restoring the awards for moral and exemplary damages and attorney's fees; while PAL petitions that the same judgment be completely annulled and set aside.

The relevant facts of the case are as follows:

On December 9, 1997, the Airline Pilots Association of the Philippines (ALPAP) filed with the National Conciliation and Mediation Board (NCMB) a Notice of Strike, docketed as NCMB NCR NS 12-514-97 (Strike Case), on the grounds of unfair labor practice and union-busting by PAL.[2]

By virtue of the authority vested upon him under Article 263(g)[3] of the Labor Code of the Philippines (Labor Code), the Secretary[4] of the

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2 *Rollo* (G.R. No. 178510), p. 177.

3 Art. 263. Strikes, picketing, and lockouts. – x x x (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and

Department of Labor and Employment (DOLE) assumed jurisdiction over the Strike Case, and issued an Order[5] on December 23, 1997 prohibiting all actual and impending strikes and lockouts. On May 25, 1998, the DOLE Secretary issued another Order[6] reiterating the prohibition against strikes and lockouts.

Despite the abovementioned Orders of the DOLE Secretary, ALPAP filed a second Notice of Strike on June 5, 1998 and staged a strike on the same day at around 5:30 in the afternoon. The DOLE Secretary immediately called PAL and ALPAP for conciliation conferences on June 6 and 7, 1998 to amicably settle the dispute between them.[7] After his efforts failed, the DOLE Secretary issued an Order[8] on June 7, 1998 (Return-to-Work Order) with the following directive:

> WHEREFORE, FOEGOING PREMISES CONSIDERED, all striking officers and members of ALPAP are hereby ordered to return to work within twenty-four (24) hours from receipt of this Order and for PAL management to accept them under the same terms and conditions of employment prior to the strike.
>
> Our directive to both parties to cease and desist from committing any and all acts that will exacerbate the situation is hereby reiterated.[9]

On June 26, 1998, the members of ALPAP reported for work but PAL did not accept them on the ground that the 24-hour period for the strikers to return set by the DOLE Secretary in his Return-to-Work Order had already lapsed, resulting in the forfeiture of their employment.

Consequently, ALPAP filed with the NLRC on June 29, 1998 a Complaint[10] for illegal lockout against PAL, docketed as NLRC NCR Case No. 00-06-05253-98 (Illegal Lockout Case). ALPAP averred that after its counsel received the Return-to-Work Order on June 25, 1998, its members reported back to work on June 26, 1998 in compliance with the 24-hour period set in the said Order. ALPAP prayed that PAL be ordered to

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decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

4 Leonardo A. Quisumbing.

5 *Rollo* (G.R. No. 178510), pp. 152-154.

6 Id. at 159-160. Issued by former DOLE Secretary Cresenciano B. Trajano.

7 Id. at 178.

8 Id. at 175-176.

9 Id. at 176.

10 Id. at 209-212.

unconditionally accept its members back to work and pay the salaries and other benefits due them. On August 21, 1998, the Acting Executive Labor Arbiter ordered the consolidation of the Illegal Lockout Case with the Strike Case pending before the DOLE Secretary.[11]

The DOLE Secretary[12] issued a Resolution[13] on June 1, 1999 in the consolidated Strike and Illegal Lockout Cases, with a dispositive portion that reads:

> **WHEREFORE, PREMISES CONSIDERED**, this Office hereby:
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> x x x x
>
> b. DECLARES the strike conducted by ALPAP on June 5, 1998 and thereafter illegal for being procedurally infirm and in open defiance of the return-to-work order of June 7, 1998 and consequently, the strikers are deemed to have lost their employment status; and
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> c. DISMISSES the complaint for illegal lockout for lack of merit.[14]

ALPAP filed a Motion for Reconsideration but it was denied by the DOLE Secretary in a Resolution dated July 23, 1999.[15]

ALPAP assailed the foregoing Resolutions dated June 1, 1999 and July 23, 1999 of the DOLE Secretary in the consolidated Strike and Illegal Lockout Cases in a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court filed before the Court of Appeals and docketed as CA-G.R. SP No. 54880. The appellate court dismissed said Petition in a Decision[16] dated August 22, 2001. ALPAP elevated the case to this Court by filing a Petition for *Certiorari*, bearing the title "*Airline Pilots Association of the Philippines v. Philippine Airlines, Inc.*" docketed as G.R. No. 152306 (*1st ALPAP case*). The Court dismissed the Petition of ALPAP in a minute Resolution[17] dated April 10, 2002 for failure of ALPAP to show grave abuse of discretion on the part of the appellate court. Said Resolution dismissing the *1st ALPAP case* became final and executory on August 29, 2002.[18]

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11 Id. at 213-218. Order dated August 21, 1998. The Order was affirmed by the NLRC in a Resolution dated January 18, 1999 (id. at 219-231). ALPAP filed an Urgent Petition for Injunction to prevent the consolidation but it was denied by the NLRC in a Resolution dated August 26, 1998 (id. at 236-254). The NLRC Resolution was later affirmed by the Supreme Court in a Resolution dated September 21, 1998 (id. at 255-257).

12 Bienvenido E. Laguesma.

13 *Rollo* (G.R. No. 178510), pp. 258-264.

14 Id. at 264.

15 Id. at 265-267.

16 Id. at 269-283.

17 Id. at 285.

18 Id. at 287. Entry of Judgment.

Meanwhile, 32 ALPAP members, consisting of Rodriguez, *et al.*, Poe, Nino B. Dela Cruz (Dela Cruz), Baltazar B. Musong (Musong), Elmer F. Peña (Peña), Cesar G. Cruz, Antonio O. Noble, Jr. (Noble), Nicomen H. Versoza, Jr. (Versoza), and Ryan Jose C. Hinayon (Hinayon), hereinafter collectively referred to as complainants – with varying ranks of captain, first officer, and second officer[19] – filed with the NLRC on June 7, 1999 a Complaint[20] for illegal dismissal against PAL, docketed as NLRC-NCR Case No. 00-06-06290-99 (Illegal Dismissal Case). The Complaint stated three causes of action, to wit:

CAUSES OF ACTION

A. **ILLEGAL DISMISSAL** in that [PAL] terminated the employment of the above-named complainants on 7 June 1998 (except for complainant Liberato D. Gutiza, who was dismissed on 6 June 1998) for their alleged participation in a strike staged by ALPAP at the Philippine Airlines, Inc. commencing on 5 June 1998 when in truth and in fact:

(i) Complainants EFREN S. ALCAÑESES, VICENTE P. ANG, BENJAMIN T. ANG, SILVESTRE D. ARROYO, LIBERATO D. GUTIZA, LUISITO M. JOSE, DANILO C. MATIAS, GABRIEL M. PIAMONTE, JR., MANUEL P. SANCHEZ, and NICOMEN H. VERSOZA, JR. **actually reported for work and duly discharged all their duties and responsibilities as pilots** by flying their assigned equipment and completing their respective flights to their specified destinations, as scheduled;

(ii) Complainants GLADYS L. JADIE and BEN T. MATURAN, having been **on duly approved and scheduled medical leaves**, were authorized and permitted to absent themselves from work on 5 June 1998 up to the termination of their employment on 7 June 1998, complainant JADIE being then on maternity leave and grounded as she was already in her ninth month of pregnancy, while complainant MATURAN was recuperating from a laparotomy and similarly medically grounded until 15 June 1998;

(iii) Complainants EDMUNDO M. DELOS REYES, JR., BALTAZAR B. MUSONG, ANTONIO O.

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19 The 21 captains are: Nilo S. Rodriguez, Efren S. Alcañeses, Francisco T. Alisangco, Benjamin T. Ang, Ruderico C. Baquiran, Arnold S. Corpus, Nino B. Dela Cruz, Virgilio V. Ecarma. Ismael F. Galisim, Tito F. Garcia, Gladys L. Jadie, Paterno C. Labuga, Jr., Noel Y. Lastimoso, Danilo C. Matias, Ben T. Maturan, Baltazar B. Musong, Virgilio N. Ocharan, Elmer F. Peña, Rodolfo O. Poe, Arturo A. Sabado and Manuel P. Sanchez. The nine first officers are: Vicente P. Ang, Silvestre D. Arroyo, Cesar G. Cruz, Wilfredo S. Cruz, Edmundo M. delos Reyes, Jr., Liberato D. Gutiza, Luisito M. Jose, Antonio O. Noble, Jr. and Nicomen H. Versoza, Jr.; and the two second officers are: Ryan Jose C. Hinayon and Gabriel M. Piamonte, Jr.

20 CA *rollo*, pp. 122-133.

> NOBLE, JR., ELMER F. PEÑA, and ARTURO A. SABADO were not required to work and were legally excused from work on 5 June 1998 up to the termination of their employment on 7 June 1998 as they were on their annual vacation leaves as approved and pre-scheduled by [PAL] as early as December 1997 conformably with Company policy and practice on vacation leave scheduling;
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> (iv) Complainants NILO S. RODRIGUEZ, RUDERICO C. BAQUIRAN, ARNOLD S. CORPUS, CESAR G. CRUZ, WILFREDO S. CRUZ, NINO B. DELA CRUZ, VIRGILIO V. ECARMA, ISMAEL F. GALISIM, TITO F. GARCIA, RYAN JOSE C. HINAYON, PATERNO C. LABUGA, JR., NOEL Y. LASTIMOSO, RODOLFO O. POE and VIRGILIO N. OCHARAN were likewise not required to work and were legally excused from work on 5 June 1998 up to the termination of their employment on 7 June 1998 as they were **off duty and did not have any scheduled flights** based on the June 1998 monthly flights schedules issued to them by [PAL] in May 1998; and
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> (v) Complainant FRANCISCO T. ALISANGCO was **serving a seven-day suspension** and, thus, not required to work from 4 June 1998 to 10 June 1998 under Memorandum of Suspension, dated 5 May 1998.

negating that there was any stoppage of work or refusal to return to work on the part of the above-named complainants, as was made the basis of the termination of their employment by [PAL] on 7 June 1998 (6 June 1998 for complainant Gutiza), due solely to their union affiliation and membership.

FURTHER, [PAL] denied the above-named complainants due process in the termination of their employment in that it failed to notify them in writing of the charges against them, did not give them any opportunity to be heard and to explain their side at an administrative investigation, and to date, has not served them with any formal notice of the termination of their employment and the cause or causes therefor.

THUS, [PAL] summarily effected the dismissal of the above-named complainants without just or lawful cause.

B. **NON-PAYMENT OF SALARIES AND OTHER BENEFITS**

1. Basic or guaranteed pay
2. Productivity pay
3. Transportation allowance
4. Rice subsidy
5. Retirement Fund
6. Pilots Occupational Disability Fund

7. Vacation leave
8. Sick leave
9. Unutilized days off
10. Trip leave
11. Trip passes

C. **DAMAGES**

1. Actual Damages
2. Moral Damages
3. Exemplary Damages
4. Attorney's Fees
5. Cost of Suit.[21]

Complainants alleged that they were not participants of the June 5, 1998 strike of ALPAP and that they had no obligation to comply with the Return-to-Work Order of the DOLE Secretary. The respective allegations of the complainants are summed up below:

COMPLAINANT	ALLEGATION/S
Alcañeses	He was the scheduled instructor of the simulator sessions on June 5, 8 & 9, 1998. However, the sessions were canceled due to the breakdown of the 737 simulator. He was assigned on home reserve duty on June 6, 1998 and had a day-off on June 7, 1998.
Alisangco	He was serving a seven-day suspension from June 4 to 10, 1998.
Benjamin T. Ang	He flew Flight No. PR-722 from Manila to London and was supposed to embark on a return trip from London to Manila on June 7, 1998. However, no aircraft arrived due to the strike. He arrived in Manila on June 13, 1998.
Vicente P. Ang	He was the First Officer in Flight No. PR-105 from San Francisco, which arrived in Manila on June 6, 1998. He immediately went to his hometown in Cebu City for his scheduled days-off until June 11, 1998, and thereafter on annual vacation leave until July 2, 1998.
Arroyo	He left Manila and flew to Europe, arriving there on June 5, 1998. He was stranded in Paris since no PAL aircraft arrived. He flew back to Manila on June 13, 1998.
Baquiran	He arrived in Manila from Los Angeles on June 4, 1998, and was off-duty until June 7, 1998. His next flight assignment was on June 8, 1998. He called PAL Dispatch Office on June 7, 1998 to confirm his flight but was advised that his flight was

[21] Id. at 130-131.

	canceled and that he was already dismissed.
Corpus	He arrived in Manila from Vancouver on May 30, 1998, and was off-duty until June 10, 1998. His next assignment was on June 11, 1998.
Cesar G. Cruz	He arrived in Manila from Riyadh on June 5, 1998, and was off-duty until June 9, 1998. His next flight assignment was on June 10, 1998.
Wilfredo S. Cruz	He arrived from Honolulu on June 4, 1998, and was off-duty until June 8, 1998. He reported for his next assignment on June 9, 1998 but was unable to enter as Gate I of PAL compound was locked.
Dela Cruz	He arrived in Manila from Los Angeles on June 5, 1998, and was off-duty until June 12, 1998. His next assignment was on June 13, 1998.
Delos Reyes	He was on leave from May 26, 1998 to June 26, 1998.
Ecarma	After attending ground school at PAL Training Center on June 4, 1998, he was on scheduled off-duty until June 17, 1998. His passport was in the custody of PAL as it was scheduled for processing from June 6, 1998 to June 13, 1998. His next flight assignment was on June 18, 1998.
Galisim	He underwent training in Toulouse, France from April 1998 to May 22, 1998. He was waiting for his schedule from PAL.
Garcia	He was on leave from May 25, 1998 to June 10, 1998.
Gutiza	He was the Flight Officer of Flight No. PR-100 bound for Honolulu. Upon arriving back in Manila on June 7, 1998, he was told that he was already terminated.
Hinayon	He arrived in Manila from Bangkok on June 5, 1998, and was off-duty until June 10, 1998. His next flight assignment was on June 11, 1998.
Jadie	She was on maternity leave from June 5, 1998. She gave birth on June 24, 1998.
Jose	He flew from Honolulu and arrived in Manila on June 7, 1998. He was on scheduled day-off on June 8, 1998, and was on home reserve duty from June 9 to 12, 1998.
Labuga	He arrived in Manila from Dhadran on June 4, 1998, and was off-duty until June 10, 1998.
Lastimoso	He arrived in Manila on June 4, 1998 on Flight No. PR-298,

	and was off-duty until June 9, 1998. His next flight assignment was on June 10, 1998.
Matias	He commanded the flight from Manila to San Francisco, which arrived on June 4, 1998. He left San Francisco the following day or on June 5, 1998 and arrived in Manila on June 6, 1998. He was on scheduled days-off from June 7 to 11, 1998. His next flight assignment was on June 12, 1998.
Maturan	He was on sick leave from June 5-15, 1998 to undergo a medical operation called laparotomy.
Musong	He was on leave from May 22, 1998 to June 11, 1998.
Noble	He was on leave from May 22, 1998 to June 11, 1998.
Ocharan	He arrived in Manila from Honolulu in May 1998, and was off-duty until June 11, 1998. His next flight assignment was on June 12, 1998.
Piamonte	He arrived from Honolulu on June 6, 1998 and was on scheduled days-off until next flight on June 10, 1998. He reported on June 9, 1998 for said flight but could not enter the PAL compound.
Peña	He was on leave from June 5, 1998 to June 28, 1998.
Poe	He completed a ground course for the Airbus-320 captaincy in May 1998, and was waiting for his schedule from PAL.
Rodriguez	He arrived in Manila from San Francisco on June 2, 1998. He was on scheduled days-off and/or off-duty until June 12, 1998. His next flight assignment was on June 13, 1998.
Sabado	He was on leave from May 21, 1998 to June 11, 1998.
Sanchez	He arrived from Los Angeles in Manila on June 6, 1998, and was directed to leave the airport premises immediately. He was prevented from retrieving his car inside the employees' parking area. He had no scheduled flights until June 15, 1998.
Versoza	He was on duty on June 5, 1998 as he flew from Paris to Bangkok arriving there on June 6, 1998. He flew back to Manila on June 7, 1998 and had no scheduled flights until June 10, 1998.

PAL terminated complainants from employment together with the strikers who disobeyed the Return-to-Work Order, even though complainants had valid reasons for not reporting for work.

Complainants, except for Gutiza,[22] further asserted that PAL did not observe the twin requirements of notice and hearing in effecting their termination; that PAL refused to admit them when they reported for work on June 26, 1998; and that PAL, which long planned to reduce its fleet and manpower, took advantage of the strike by dismissing its pilots *en masse*. Complainants thus prayed for reinstatement to their former positions without loss of seniority rights; backwages and other monetary claims; and moral and exemplary damages, and attorney's fees.

In its Motion to Dismiss and/or Position Paper for Respondent,[23] PAL averred that the Complaint for illegal dismissal is an offshoot of the Strike and Illegal Lockout Cases wherein the DOLE Secretary already adjudged with finality that the striking pilots lost their employment for participating in an illegal strike and/or disobeying the Return-to-Work Order. Hence, PAL argued that the Complaint was already barred by *res judicata*.

In addition, PAL presented the following evidence to refute complainants' allegation that they were not strikers: (a) the logbook showing that complainants belatedly complied with the Return-to-Work Order on June 26, 1998; and (b) the photographs showing that some of complainants were at the strike area or picket line, particularly: Maturan, who was supposed to be on sick leave from June 1 to 15, 1998 but was seen picketing on June 9, 1998; Delos Reyes, Musong, Noble, Sabado, and Peña, who were supposed to be on vacation leave but were seen in the strike area[24] and who did not report back for work after their respective vacation leaves ended; Rodriguez, Baquiran, Corpus, Cesar G. Cruz, Wilfredo S. Cruz, De La Cruz, Ecarma, Galisim, Garcia, Hinayon, Labuga, Lastimosa, Poe, and Ocharan, who were off-duty but participated in the strike against PAL; and Alcañeses, Benjamin T. Ang, Vicente P. Ang, Arroyo, Gutiza, Jose, Matias, Piamonte, Sanchez, and Versoza who, after returning from abroad and completing their respective flights, joined the strike instead of offering their services to PAL who was in dire need of pilots at that time. As regards Jadie, PAL contended that she forfeited her employment by failing to report for work at the end of her maternity leave.

Labor Arbiter Francisco A. Robles (Robles) rendered a Decision[25] on December 11, 2000. According to Labor Arbiter Robles, the Illegal Dismissal Case may proceed independently from the Strike and Illegal Lockout Cases:

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22 Id. at 149. Gutiza, an ALPAP union officer, received a notice of termination dated June 5, 1998.
23 Id. at 197-214.
24 Except for Peña.
25 *Rollo* (G.R. No. 178501), pp. 155-208.

> On the threshold issue of jurisdiction, it is unfortunately a lost cause for [PAL] to argue that the instant case involves a dispute already assumed and decided by the Secretary of Labor in NCMB-NCR-NS-12-514-97 and its related cases. The strike case resolved by the Labor Secretary is not more and no less than that - a strike case wherein the validity of ALPAP's declared mass action on June 5, 1998 is at issue. In contrast, going by the allegations of the complaint in the instant case, the cause of action pleaded by complainants against [PAL] are for illegal dismissal, non-payment of salaries and benefits, and damages, based precisely on the pivotal fact alleged by complainants that they are not "strikers" in the eyes of the law and yet had been inexplicably slapped with termination of their employment along with the strikers. Not one of the consolidated cases NCMB-NCR-NS-12-514-97, NCMB-NCR-NS-06-236-98 NLRC-NCR-No. 00-06-05235-98 shall resolve or has already resolved the instant termination dispute.
>
> We note that this case has not been ordered consolidated with the strike case, nor has [PAL] at anytime asked for such consolidation. The June 1, 1999 Resolution of the Secretary of Labor in NCMB-NCR-NS-12-514-97, cited by [PAL] as having a binding effect on complainants do not mention the[m] at all, or purport to treat of their peculiar case of being non-strikers dismissed as strikers. We cannot therefore subscribe to the view advanced by [PAL] that this is a dispute already assumed by the Secretary of Labor and decided by him with the affirmance of the strikers' loss of employment in his June 1, 1999 Resolution in NCMB-NCR-NS-12-514-97. Complainants should be given their day in court with respect to their claims herein as there is simply no basis for assuming that the same have already been resolved in the strike case.
>
> It is well-settled that as an element of res judicata, there must be between the first and second action identity of parties, identity of subject matter and identity of causes of action. (Linzag vs. Court of Appeals, 291 SCRA 304; Nabus vs. Court of Appeals, G.R. No. 91670, February 7, 1991, 193 SCRA 732; VDA Fish Broker, et al. vs. NLRC, et al., G.R. Nos. 76142-43, December 27, 1993). The parties, subject matter and causes of action involved in this case are so vastly different from those in NCMB-NCR-NS-12-514-97 etc. that it is difficult if not virtually impossible to conceive how the resolution of such strike case can constitute res judicata in the case of complainants herein. This Office therefore cannot but exercise the jurisdiction duly invoked by complainants over this termination dispute with the filing of their complaint.[26]

Labor Arbiter Robles then proceeded to resolve the merits of the case in complainants' favor:

> Turning now to the merits of the case, [PAL] has not rebutted and even admits that complainants' status and individual circumstances at or about the time of the strike declared on June 5, 1998 are essentially as stated by them in their complaint (i.e., that complainants were working or were on leave of absence, day-off, etc.) and related in further detail in their

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[26] Id. at 168-170.

submitted individual sworn statements in the case. Since complainants were concededly working or otherwise excused from work at the time of the strike, their employment with [PAL] should not have been prejudiced or affected in any way at all by its occurrence. Yet [PAL] implemented the mass dismissal of close to 600 pilots, including complainants, without distinction as to their guilt or innocence of "striking".

A strike, by definition, is a temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute (Art. 212 (o) of the Labor Code). It is incongruous to accuse an employee who was actually working or was excused from work of "stoppage" of the work he was precisely carrying out or was not required to perform. [PAL] should have made these distinctions between the pilots who staged the strike and those peculiarly situated as complainants (working or excused from work) before taking action against its employees for the June 5, 1998 strike, instead of dismissing them in a sweepingly reckless, arbitrary, and oppressive manner.

Indeed, on the basis of [PAL]'s Return-to-Work Notice and the DOLE Return-to-Work Order, loss of employment in connection with the strike was a consequence to be faced only by "PAL pilots who joined the strike" and "all striking officers and members and officers (sic) of ALPAP", to whom the warning notices had expressly been issued. It should not have been made to apply to complainants, who were working or were not at all supposed to be working at the time of the strike, and therefore had every reason to believe that the issuances addressed to "strikers" do not refer to them. For the same reason, it does not make any sense to consider complainants as having "defied" the return-to-work mandate in failing to beat the deadline prescribed for the strikers. Precisely, complainants were <u>not</u> strikers.

[PAL] asserts that it "called" on its reserve pilots including complainants to man its flights when the strike was declared and in any case complainants should have "offered" their services at that time because it was in dire need of pilots. However, not a single piece of evidence was ever presented by [PAL] to prove that it sent out any rush dispatch messages to complainants, or even made a telephone call, to upgrade them to active duty or recall them from their leave of absences/days-off/suspension on the ground that their services were urgently needed. It being the responsibility of [PAL] under the CBA to draw up the pilots' monthly schedule and deploy them on flight assignments, it did not have to wait for complainants to volunteer manning PAL flights. [PAL] had the prerogative to change complainants' flight schedules in accordance with the CBA. It did not exercise this prerogative. It cannot now blame complainants for the consequences of its own inaction.

As for [PAL]'s contention that the photographs taken of complainants at the picket line proves their being "strikers", the pictures do not show that those who admittedly were working at the time of the strike were in fact among the picketers at the Company premises and not on the PAL flights that they claim to have crewed for. In any case, [PAL]

does not take issue with the working status of the complainants who had flights on or about June 5, 1998; only that complainants did not report for work thereafter. On the other hand, the rest of the complainants were excused from work. Their "free time" would be meaningless if they were not at liberty to man the picket line while off-duty without fear of adverse consequences from their lawful exercise of their guaranteed rights. It is to be stressed that complainants have sufficiently shown by their uncontradicted evidence that they were working or were excused from work during the material period of the strike until their dismissal. Without more, the unexplained pictures of the complainants at the picket line (most of which were taken long after June 9, 1998) cannot be said to constitute a proven case of "striking."

We further find pertinent the cited cases of Bangalisan vs. Court of Appeals (276 SCRA 619) and Dela Cruz vs. Court of Appeals (305 SCRA 303) to the effect that an alleged "striker" who was excused from work during a strike staged by his co-workers cannot be penalized with the loss of his employment as a striker in the absence of his actual participation in the strike since those who avail of their free time "to dramatize their grievances and to dialogue with the proper authorities within the bounds of the law" cannot be held liable for their participation in the mass action against their employer, this being a valid exercise of their constitutionally guaranteed rights. Picketers are not necessarily strikers. If complainants had manned the picket lines at some time during their off-duty, it was their right to do so. They cannot be accused of stoppage of work if they do.

As correctly pointed out by complainants, [PAL] certainly had the records to verify if complainants were in fact striking, working, or off-duty as of June 5, 1998. Despite this, it precipitately ousted complainants from their employment in a mass purging of about 600 pilots as strikers. Significantly, [PAL] had made no attempt to rebut complainants' evidence (consisting of sworn statements of witnesses and documentary exhibits) tending to show that:

1. Management's declared intention since 1997 was to retrench/retire about 200 pilots and drastically downscale operations because of alleged business losses, but its restructuring program gained no ground despite the passage of several months because ALPAP was staunchly opposed to it and in the meantime, [PAL] continued "bleeding';

2. A PAL management pilot, Capt. Emmanuel Generoso, disclosed to several ALPAP pilots that a strike by ALPAP would be a welcome development as it would make management's job of ridding the company pilots easier;

3. The instant ALPAP declared the strike, complainants ceased receiving their salaries, allowances, and benefits which fell due, as though [PAL] had merely been waiting for the strike to

happen and, this done, it considered the pilots' termination as effected ipso facto. Complainants were not furnished any written notice requiring them to show cause why they should not be dismissed from employment for any offense; nor were they given written notices of termination (except for complainant Liberato Gutiza who received a termination letter with the effectivity date of June 6, 1998 after being made to crew Flight No. PR-100 which arrived in Manila from Honolulu on June 7, 1998);

4. Confirming the veracity of several press statements made by [PAL] on its mass dismissal of about 600 pilots by June 7, 1998, when some of the complainants thereafter called PAL Flight Deck Crew Scheduling to check on their next scheduled flights, they were informed that they were terminated employees and no longer had any flight assignments, and would furthermore be barred from entering the Gate to [PAL] offices;

5. Complainants were given employment application forms to accomplish and submit if they were to resume their work as PAL pilots; and

6. [PAL] considered its dismissal of almost 600 pilots, including complainants, as "reaffirmed" under the DOLE Return-to-Work Order as of June 9, 1998 or upon the lapse of the 24-hour deadline fixed therein. It immediately downscaled its flight operations on the basis of a 44-man pilot complement, shutting down several stations in the process.

The foregoing facts, which stand in the record unrebutted by countervailing evidence from [PAL], all too clearly reveal management's prior decision and firm resolve to dismiss its pilots at the first opportunity, which it found in the June 5, 1998 strike. Of course, complainants' case presented an unexpected complication since they cannot be lumped together with the strikers given their circumstances at the time of the strike. [PAL] however took its chances, it dismissed them anyway and is now straining in vain to rationalize complainants' termination as "strikers". The facts present a classical case of dismissal in bad faith. Complainants never had a chance to hold on to their employment since [PAL] was hell-bent from the start on the mass dismissal of its pilots regardless of the existence of actual and valid grounds to terminate their employment. It should be made to face the consequences thereof.[27]

Ultimately, Labor Arbiter Robles adjudicated:

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27 Id. at 170-178.

IN VIEW OF THE FOREGOING, judgment is hereby rendered:

(a) Finding the dismissal of complainants to be illegal;

(b) Ordering [PAL] to reinstate complainants to their former positions without loss of seniority rights, privileges and benefits;

(c) Ordering [PAL] to pay complainants their full backwages from June 9, 1998 up to date of reinstatement, x x x.

x x x x

and in addition, (i) longevity pay at P500.00/month for every year of service based on seniority date falling after June 9, 1998; (ii) Christmas bonus for 1998 and 1999 per the CBA; (iii) complainants' proportionate share in the P5 million contribution of [PAL] to the Retirement Fund, and (iv) cash equivalent of vacation leave and sick leave which complainants earned from June 9, 1998 until reinstatement based on the CBA scheduled (sic).

(d) Ordering [PAL] to pay moral damages to complainants in the amount of ₱300,000.00 each;

(e) Ordering [PAL] to pay exemplary damages to complainants in the amount of ₱200,000.00 each;

(f) Ordering [PAL] to pay complainants on their money claims for unpaid salaries for the period June 1-8, 1998, and productivity allowance, transportation allowance, and rice subsidy for May 1998 and June 1-8, 1998; and

(g) Ordering [PAL] to pay complainants attorney's fees in an amount equivalent to ten percent (10%) of the total monetary award.[28]

PAL appealed before the NLRC, docketed as NLRC NCR CA No. 027348-01. In its Decision dated November 6, 2001, the NLRC reversed Labor Arbiter Robles' Decision.

On the jurisdictional and procedural matters, the NLRC found that: (a) The on-going receivership proceedings before the Securities and Exchange Commission (SEC) involving PAL had no effect on the jurisdiction of the Labor Arbiter or the NLRC over the Illegal Dismissal Case; (b) The Illegal Dismissal Case was not barred by *res judicata* despite the prior ruling of the DOLE Secretary in the Strike Case because the latter did not resolve the particular cause of action asserted by the complainants in the former; and (c) The issue on forum shopping was rendered moot by the finding of the NLRC on the absence of *res judicata*.

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28 Id. at 202-208.

The NLRC next addressed the substantive issue of whether or not complainants were illegally dismissed. The NLRC ruled in the negative for all the complainants except Jadie. According to the NLRC, the strike was not a one-day affair. It started on June 5, 1998 and lasted until the later part of June 1998. Complainants' assertion that they were not strikers was controverted by the photographs submitted as evidence by PAL showing that several complainants were at the strike area on June 9, 1998, some even holding a streamer saying: "WE ARE ON STRIKE." The NLRC gave weight to the finding of the DOLE Secretary, affirmed by the Court of Appeals in CA-G.R. SP No. 54880, that ALPAP was served a copy of the Return-to-Work Order on June 8, 1998, thus, the ALPAP strikers had 24 hours, or until June 9, 1998, to comply with said Order. However, based on the logbook, the complainants only reported back to work on June 26, 1998. As a result of their defiance of the DOLE Secretary's Return-to-Work Order, complainants lost their employment status as of June 9, 1998. Even if complainants were supposedly on official leave or off-duty during the strike, records revealed that their official leave or off-duty status had expired at least two weeks before June 26, 1998. The logbook establishing that complainants reported for work only on June 26, 1998 must prevail over the complainants' unsupported allegations that they called PAL offices upon the expiration of their respective leaves or days off to verify the status of their flights. The NLRC additionally pointed out that complainants, while claiming they were not strikers, reported back for work in compliance with the DOLE Secretary's Return-to-Work Order, their signatures appearing in the logbook pages under the captions: "RETURN-TO-WORK RETURNEES," "RETURN-TO-WORK COMPLIANCE," and "RETURN-TO-WORK DOLE COMPLIANCE."

In the case of Gutiza, the NLRC held that he was dismissed for being a union officer who knowingly participated in the illegal strike.[29] The NLRC also particularly noted that while other complainants belatedly reported for work on June 26, 1998 together with the other ALPAP pilots, Baquiran did not ever attempt to comply with the Return-to-Work Order, and was declared to have simply abandoned his job.[30] The NLRC only spared Jadie, there being no evidence that she participated in the illegal strike. Jadie was on leave being in her ninth month of pregnancy at the time of the strike, actually giving birth on June 24, 1998. The NLRC opined that given her circumstances, it was impossible for Jadie to comply with the Return-to-Work Order, hence, she was illegally dismissed on June 9, 1998.[31] However, Jadie could no longer be reinstated. Jadie's former position as Captain of the F-50 aircraft no longer existed as said aircraft was returned to the lessors in accordance with the Amended and Restated Rehabilitation

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29 Id. at 146.
30 Id. at 150.
31 Id. at 151.

Plan of PAL. Also, per the certification of the Air Transportation Office (ATO), Jadie's license already expired in 1998. Consequently, the NLRC directed PAL to pay Jadie backwages and separation pay, instead of reinstatement.

The dispositive portion of the NLRC Decision dated November 6, 2001 reads:

> WHEREFORE, premises considered, we hold that the following complainants lost their employment status with respondent PAL for cause and in accordance with law: Arnold S. Corpus, Cesar G. Cruz, Liberato D. Gutiza, Luisito M. Jose, Paterno C. Labuga, Jr., Baltazar B. Musong, Arturo A. Sabado, Jr., Nilo S. Rodriguez, Edmundo delos Reyes, Jr., Tito F. Garcia, Virgilio V. Ecarma, Noel Y. Lastimoso, Virgilio N. Ocharan, Rodolfo O. Poe, Efren S. Alcañeses, Benjamin T. Ang, Vicente T. Ang, Silvestre D. Arroyo, Manuel P. Sanchez, Nicomen H. Versoza, Jr., Danilo C. Matias, Francisco T. Alisangco, Antonio O. Noble, Jr., Ben T. Maturan, Wilfredo S. Cruz, Ismael F. Galisim, Gabriel M. Piamonte, Jr., Elmer F. Peña, Nino B. dela Cruz, Ruderico C. Baquiran and Ryan Jose C. Hinayon.
>
> The Labor Arbiter's decision declaring that the aforementioned complainants were illegally dismissed, and all the monetary awards granted to them, are hereby reversed and set aside for lack of merit. The Labor Arbiter's order for the reinstatement of the complainants is likewise declared to be devoid of merit, and any claim based on said order of reinstatement, such as, but not limited to, backwages pending appeal, is declared to be without any legal basis.
>
> Respondent PAL is hereby directed to pay complainant Gladys L. Jadie, the monetary award granted in the assailed decision which is P2,024,865.00 and (I) longevity pay at P500.00/month of every year of service based on seniority date falling after June 9, 1998; (II) Christmas bonus for 1998 and 1999 per the CBA; (III) [Jadie's] proportionate share in the P5 million contribution of [PAL] to the Retirement Fund, and (IV) cash equivalent of vacation leave and sick leave which [Jadie] earned from June 9, 1998 until September 11, 2000.
>
> [PAL] is also ordered to pay [Jadie] her unpaid salaries for the period June 1-8, 1998 and productivity allowance, transportation allowance, and rice subsidy for May 1998 and June 1-8, 1998.
>
> In addition, [PAL] is ordered to pay [Jadie] separation pay equivalent to one half (1/2) month for every year of service as a PAL employee.
>
> [PAL] is ordered to pay [Jadie] attorney's fees in an amount equivalent to ten percent (10%) of the total monetary award.[32]

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[32] Id. at 152-154.

Aggrieved, Rodriguez, *et al.*, Dela Cruz, and Poe filed a Petition for *Certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 71190, assailing the NLRC judgment for having been rendered with grave abuse of discretion. Dela Cruz subsequently withdrew his Petition on June 25, 2003.

The Court of Appeals promulgated its Decision on November 30, 2006 favoring Rodriguez, *et al.,* and Poe. The appellate court adjudged that: (a) PAL indiscriminately dismissed on June 7, 1998 its more than 600 pilots, including Rodriguez, *et al.* and Poe, who did not comply with its Return-to-Work Notice published in the Philippine Daily Inquirer; (b) PAL simply took advantage of the strike on June 5, 1998 to dismiss ALPAP members *en masse*, regardless of whether the members participated in the strike or not, so as to reduce its pilots complement to an acceptable level and to erase seniority; (c) since they were already terminated on June 7, 1998, any activity undertaken by Rodriguez, *et al.* and Poe on and after June 9, 1998 was already immaterial; (d) the NLRC gave undue weight to the photographs and logbook presented by PAL; (e) the photographs were not properly identified nor the circumstances under which they had been taken satisfactorily established; (f) the logbook and its entries are self-serving because the logbook was supplied by PAL itself and there was a dearth of explanation as to the implications of the pilots' signatures appearing therein and the significance of the annotations "RETURN-TO-WORK RETURNEES," "RETURN-TO-WORK COMPLIANCE," and "RETURN-TO-WORK DOLE COMPLIANCE;" and (g) as for Jadie, PAL did not satisfactorily prove that her reinstatement was an impossibility as there was no showing that her services were obsolete or could no longer be utilized.

Although the Court of Appeals essentially agreed with the findings and conclusion of Labor Arbiter Robles that Rodriguez, *et al.* and Poe were illegally dismissed, it modified Labor Arbiter Robles' Decision as follows:

> All told, We find that [NLRC] gravely abused its discretion in setting aside the Decision of the Labor Arbiter which found that [Rodriguez, et al. and Poe] had indeed been illegally dismissed. We are mindful, however, that the relief of reinstatement of [Rodriguez, *et al.* and Poe] may no longer be viable or practicable in view of several factors, i. e., the animosity between the parties ([Rodriguez, *et al.* and Poe] occupy positions of confidence) herein as engendered by this protracted and heated litigation, the fact that [Rodriguez, *et al.* and Poe) may have already secured equivalent or other employments after the significant lapse of time since the institution of their suit and, finally, the nature of [PAL's] business which require the continuous operations of its planes, and because of which, new pilots have already been hired.
>
> We, therefore, modify the Decision of the Labor Arbiter by affirming the grant of backwages to [Rodriguez, *et al.* and Poe] but, instead, order the payment of separation pay in lieu of reinstatement.

> Moreover, We delete the awards of moral and exemplary damages as well as attorney's fees. Moral and exemplary damages cannot be justified solely upon the premise that an employer dismissed his employee without cause or due process. The termination must be attended with bad faith, or fraud or in a manner oppressive to labor, which were not convincingly established herein. Where a party is not entitled to actual or moral damages, an award of exemplary damages is likewise without basis (San Miguel Corporation vs. Del Rosario, 477 SCRA 619; Tanay Recreation Center and Development Corp. vs. Fausto, 455 SCRA 457). Likewise, the policy of the law is to put no premium on the right to litigate. Hence, the award of attorney's fees should also be deleted.[33]

The Court of Appeals decreed in the end:

> **WHEREFORE**, premises considered, the petition for certiorari is hereby **GRANTED**. The Decisions of the public respondent NLRC, dated November 6, 2001 and March 25, 2002 are hereby **SET ASIDE** and the Decision of Labor Arbiter Francisco Robles, dated December 11, 2000, is **REINSTATED** subject to the **MODIFICATIONS** that in lieu of reinstatement, [PAL] is ordered to pay [Rodriguez, *et al.* and Poe] separation pay and that the awards of moral and exemplary damages and attorney's fees are hereby deleted.
>
> The Court **NOTES** the withdrawal of the petition insofar as petitioner Nino de la Cruz is concerned.[34]

Rodriguez, *et al.,* and Poe filed a Motion for Partial Reconsideration, while PAL filed a Motion for Reconsideration of the foregoing Decision, but the appellate court denied both motions in a Resolution[35] dated June 8, 2007.

Hence, Rodriguez, *et al.,* and PAL assail before this Court the Decision dated November 30, 2006 and Resolution dated June 8, 2007 of the Court of Appeals by way of separate Petitions for Review on *Certiorari,* docketed as G.R. No. 178501 and G.R. No. 178510, respectively.

In G.R. No. 178501, Rodriguez, *et al.*, assigned four errors on the part of the Court of Appeals, *viz.*:

> I. THE COURT OF APPEALS ERRED IN ORDERING THE PAYMENT OF SEPARATION PAY TO [RODRIGUEZ, *ET AL.*] IN LIEU OF REINSTATEMENT, ON THE GROUNDS THAT [RODRIGUEZ, *ET AL.*] "MAY HAVE ALREADY SECURED" OTHER EMPLOYMENT AND THAT "NEW PILOTS HAVE ALREADY BEEN HIRED", CONTRARY TO THE EXPRESS PROVISIONS OF THE LABOR CODE, THE IMPLEMENTING RULES AND REGULATIONS THEREOF, AS WELL AS

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33 Id. at 109-110.
34 Id. at 110.
35 Id. at 112-114.

EXISTING JURISPRUDENTIAL POLICY, ALL MANDATING THAT ILLEGALLY DISMISSED EMPLOYEES SHALL BE ENTITLED TO THE TWIN REMEDIES OF REINSTATEMENT AND PAYMENT OF BACKWAGES.

II. THE COURT OF APPEALS ERRED WHEN IT DENIED THE AWARD OF REINSTATEMENT ON THE SUPPOSITION THAT SAID RELIEF, WHICH IS A RIGHT AUTHORIZED UNDER THE LAW AND EXISTING JURISPRUDENCE, "MAY NO LONGER BE VIABLE OR PRACTICABLE" IN THE PRESENT CASE DUE TO ALLEGED STRAINED RELATIONS BETWEEN THE PARTIES.

III. THE COURT OF APPEALS ERRED IN DENYING THE AWARD OF MORAL AND EXEMPLARY DAMAGES, DESPITE ITS OWN FINDING THAT PRIVATE RESPONDENT HAD ENGAGED IN AN "INDISCRIMINATE DISMISSAL" AND HAD SIMPLY TAKEN ADVANTAGE OF THE 5 JUNE 1998 STRIKE TO DISMISS [RODRIGUEZ, *ET AL.*] EN MASSE, IN VIOLATION OF LAW AND JURISPRUDENTIAL PRECEDENTS.

IV. THE COURT OF APPEALS ERRED IN DENYING THE AWARD OF ATTORNEY'S FEES, DESPITE FINDING THAT PRIVATE RESPONDENT HAD ARBITRARILY AND CAPRICIOUSLY TERMINATED [RODRIGUEZ, *ET AL.*'S] EMPLOYMENT, THUS FORCING THEM TO LITIGATE AND CONSEQUENTLY INCUR EXPENSES TO PROTECT THEIR RIGHTS AND INTERESTS, CONTRARY TO SETTLED LAW AND JURISPRUDENCE.[36]

Whereas PAL based its Petition in G.R. No. 178510 on the following assignment of errors:

I. [RODRIGUEZ, *ET AL.* AND POE'S] COMPLAINT FOR ILLEGAL DISMISSAL IS BARRED BY THE FINAL AND EXECUTORY DECISION IN THE COMPLAINT FOR ILLEGAL LOCKOUT FILED BY ALPAP IN BEHALF OF ALL ITS MEMBERS, INCLUDING [RODRIGUEZ, *ET AL.* AND POE].

II. THE DECISION OF THIS HONORABLE COURT IN G.R. NO. 170069 FILED BY ONE OF [RODRIGUEZ, *ET AL.* AND POE'S] ORIGINAL CO-COMPLAINANTS (CESAR CRUZ) IS APPLICABLE AND BINDING ON [RODRIGUEZ, *ET AL.* AND POE], BEING BASED ON THE SAME FACTS AND EVIDENCE.

III. THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVIEWED AND REASSESSED THE FACTUAL FINDINGS

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36 Id. at 29-30.

OF THE NLRC AND SUPPLANTED THE SAME WITH ITS OWN FACTUAL FINDINGS AND CONCLUSIONS IN A PETITION FOR CERTIORARI WHERE THE ONLY ISSUE WAS WHETHER THE NLRC ACTED WITHOUT JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION.

IV. THE SIXTH DIVISION OF THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PAL MERELY TOOK ADVANTAGE OF THE ALPAP STRIKE TO DISMISS ITS PILOTS *EN MASSE*, CONTRARY TO THE FACTUAL FINDINGS OF THE SECRETARY OF LABOR, THE NLRC, THE COURT OF APPEALS AND THIS HONORABLE COURT IN EARLIER CASES INVOLVING THE SAME FACTS AND EVIDENCE.[37]

In the meantime, during the pendency of the instant Petitions, the Court decided on June 6, 2011 *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc,.*[38] docketed as G.R. No. 168382 (*2nd ALPAP case*). The *2nd ALPAP case* arose from events that took place following the finality on August 29, 2002 of the Resolution dated April 10, 2002 which dismissed the *1st ALPAP case*. Below is the factual background for the *2nd ALPAP case* as summarized by the Court in said Decision:

> On January 13, 2003, ALPAP filed before the Office of the DOLE Secretary a Motion in [the Strike Case], requesting the said office to conduct an appropriate legal proceeding to determine who among its officers and members should be reinstated or deemed to have lost their employment with PAL for their actual participation in the strike conducted in June 1998. **ALPAP contended that there is a need to conduct a proceeding in order to determine who actually participated in the illegal strike since not only the striking workers were dismissed by PAL but all of ALPAP's officers and members, even though some were on official leave or abroad at the time of the strike.** It also alleged that there were some who joined the strike and returned to work but were asked to sign new contracts of employment, which abrogated their earned seniority. Also, there were those who initially defied the return-to-work order but immediately complied with the same after proper receipt thereof by ALPAP's counsel. However, PAL still refused to allow them to enter its premises. **According to ALPAP, such measure, as to meet the requirements of due process, is essential because it must be first established that a union officer or member has participated in the strike or has committed illegal acts before they could be dismissed from employment**. In other words, a fair determination of who must suffer the consequences of the illegal strike is indispensable since a significant number of ALPAP members did not at all participate in the strike. The motion also made reference to the favorable recommendation rendered by the Freedom of Association Committee of the International Labour Organization (ILO) in ILO Case No. 2195 which requested the

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37 *Rollo* (G.R. No. 178510), pp. 35-36.

38 665 Phil. 679 (2011).

Philippine Government "to initiate discussions in order to consider the possible reinstatement in their previous employment of all ALPAP's workers who were dismissed following the strike staged in June 1998." A Supplemental Motion was afterwards filed by ALPAP on January 28, 2003, this time asking the DOLE Secretary to resolve all issues relating to the entitlement to employment benefits by the officers and members of ALPAP, whether terminated or not.

In its Comment to ALPAP's motions, PAL argued that the motions cannot legally prosper since the DOLE Secretary has no authority to reopen or review a final judgment of the Supreme Court relative to [the Strike Case]; that the requested proceeding is no longer necessary as the CA or this Court did not order the remand of the case to the DOLE Secretary for such determination; that the NLRC rather than the DOLE Secretary has jurisdiction over the motions as said motions partake of a complaint for illegal dismissal with monetary claims; and that all money claims are deemed suspended in view of the fact that PAL is under receivership.

On January 24, 2003, the DOLE called the parties to a hearing to discuss and clarify the issues raised in ALPAP's motions. In a letter dated July 4, 2003 addressed to ALPAP President, Capt. Ismael C. Lapus, Jr., then Acting DOLE Secretary, Imson, resolved ALPAP's motions in the following manner:

> x x x x
>
> After a careful consideration of the factual antecedents, applicable legal principles and the arguments of the parties, this Office concludes that [the Strike Case] has indeed been resolved with finality by the highest tribunal of the land, the Supreme Court. Being final and executory, this Office is bereft of authority to reopen an issue that has been passed upon by the Supreme Court.
>
> It is important to note that in pages 18 to 19 of ALPAP's Memorandum, it admitted that individual complaints for illegal dismissal have been filed by the affected pilots before the NLRC. It is therefore an implied recognition on the part of the pilots that the remedy to their present dilemma could be found in the NLRC.
>
> x x x x
>
> Thus, to avoid multiplicity of suits, splitting causes of action and forum-shopping which are all obnoxious to an orderly administration of justice, it is but proper to respect the final and executory order of the Supreme Court in this case as well as the jurisdiction of the NLRC over the illegal dismissal cases. Since ALPAP and the pilots have opted to seek relief from the NLRC, this Office should respect the authority of that Commission to resolve the dispute in the

> normal course of law. This Office will no longer entertain any further initiatives to split the jurisdiction or to shop for a forum that shall only foment multiplicity of labor disputes. Parties should not jump from one forum to another. This Office will make sure of that.
>
> By reason of the final ruling of the Honorable Supreme Court, the erring pilots have lost their employment status and second, because these pilots have filed cases to contest such loss before another forum, the Motion and Supplemental Motion of ALPAP as well as the arguments raised therein are merely **NOTED** by this Office."

ALPAP filed its motion for reconsideration arguing that the issues raised in its motions have remained unresolved hence, it is the duty of DOLE to resolve the same it having assumed jurisdiction over the labor dispute. ALPAP also denied having engaged in forum shopping as the individual complainants who filed the cases before the NLRC are separate and distinct from ALPAP and that the causes of action therein are different. According to ALPAP, there was clear abdication of duty when then Acting Secretary Imson refused to properly act on the motions. In a letter dated July 30, 2003, Secretary Sto. Tomas likewise merely noted ALPAP's motion for reconsideration, reiterating the DOLE's stand to abide by the final and executory judgment of the Supreme Court.

Proceedings before the Court of Appeals

ALPAP filed a petition for *certiorari* with the CA, insisting that the assailed letters dated July 4, 2003 and July 30, 2003, which merely noted its motions, were issued in grave abuse of discretion.

x x x x

The CA, in its Decision dated December 22, 2004, dismissed the petition. It found no grave abuse of discretion on the part of Sto. Tomas and Imson in refusing to conduct the necessary proceedings to determine issues relating to ALPAP members' employment status and entitlement to employment benefits. The CA held that both these issues were among the issues taken up and resolved in the June 1, 1999 DOLE Resolution which was affirmed by the CA in CA-G.R. SP No. 54880 and subsequently determined with finality by this Court in [the *1st ALPAP case*]. Therefore, said issues could no longer be reviewed. The CA added that Sto. Tomas and Imson merely acted in deference to the NLRC's jurisdiction over the illegal dismissal cases filed by individual ALPAP members.

ALPAP moved for reconsideration which was denied for lack of merit in CA Resolution dated May 30, 2005.[39] (Emphases supplied.)

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39 Id. at 684-688.

ALPAP once more sought remedy from this Court through a Petition for Review on *Certiorari* in the *2nd ALPAP case*. The Court therein denied the Petition of ALPAP for lack of merit, based on the ratiocination extensively quoted below:

> We deny the petition.
>
> *There was no grave abuse of discretion on the part of Sto. Tomas and Imson in merely noting ALPAP's twin motions in due deference to a final and immutable judgment rendered by the Supreme Court.*
>
> From the June 1, 1999 DOLE Resolution, which declared the strike of June 5, 1998 as illegal and pronounced all ALPAP officers and members who participated therein to have lost their employment status, an appeal was taken by ALPAP. This was dismissed by the CA in CA-G.R. SP No. 54880, which ruling was affirmed by this Court and which became final and executory on August 29, 2002.
>
> In the instant case, ALPAP seeks for a conduct of a proceeding to determine who among its members and officers actually participated in the illegal strike because, it insists, the June 1, 1999 DOLE Resolution did not make such determination. However, as correctly ruled by Sto. Tomas and Imson and affirmed by the CA, such proceeding would entail a reopening of a final judgment which could not be permitted by this Court. Settled in law is that once a decision has acquired finality, it becomes immutable and unalterable, thus can no longer be modified in any respect. Subject to certain recognized exceptions, the principle of immutability leaves the judgment undisturbed as "nothing further can be done except to execute it."
>
> True, the dispositive portion of the DOLE Resolution does not specifically enumerate the names of those who actually participated in the strike but only mentions that those strikers who failed to heed the return-to-work order are deemed to have lost their employment. This omission, however, cannot prevent an effective execution of the decision. As was held in *Reinsurance Company of the Orient, Inc. v. Court of Appeals*, any ambiguity may be clarified by reference primarily to the body of the decision or supplementary to the pleadings previously filed in the case. In any case, especially when there is an ambiguity, "a judgment shall be read in connection with the entire record and construed accordingly."
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> *There is no necessity to conduct a proceeding to determine the participants in the illegal strike or those who refused to heed the return to work order because the ambiguity can be cured by reference to the*

body of the decision and the pleadings filed.

A review of the records reveals that in [the Strike Case], the DOLE Secretary declared the ALPAP officers and members to have lost their employment status based on either of two grounds, *viz.*: their participation in the illegal strike on June 5, 1998 or their defiance of the return-to-work order of the DOLE Secretary. The records of the case unveil the names of each of these returning pilots. The logbook with the heading "Return to Work Compliance/Returnees" bears their individual signature signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE. From this crucial and vital piece of evidence, it is apparent that each of these pilots is bound by the judgment. Besides, the complaint for illegal lockout was filed on behalf of all these returnees. Thus, a finding that there was no illegal lockout would be enforceable against them. In fine, only those returning pilots, irrespective of whether they comprise the entire membership of ALPAP, are bound by the June 1, 1999 DOLE Resolution.

ALPAP harps on the inequity of PAL's termination of its officers and members considering that some of them were on leave or were abroad at the time of the strike. Some were even merely barred from returning to their work which excused them for not complying immediately with the return-to-work order. Again, a scrutiny of the records of the case discloses that these allegations were raised at a very late stage, that is, after the judgment has finally decreed that the returning pilots' termination was legal. Interestingly, these defenses were not raised and discussed when the case was still pending before the DOLE Secretary, the CA or even before this Court. We agree with the position taken by Sto. Tomas and Imson that from the time the return-to-work order was issued until this Court rendered its April 10, 2002 resolution dismissing ALPAP's petition, no ALPAP member has claimed that he was unable to comply with the return-to-work directive because he was either on leave, abroad or unable to report for some reason. **These defenses were raised in ALPAP's twin motions only after the Resolution in G.R. No. 152306 reached finality in its last ditch effort to obtain a favorable ruling. It has been held that a proceeding may not be reopened upon grounds already available to the parties during the pendency of such proceedings; otherwise, it may give way to vicious and vexatious proceedings. ALPAP was given all the opportunities to present its evidence and arguments. It cannot now complain that it was denied due process.**

Relevant to mention at this point is that when NCMB NCR NS 12-514-97 (strike/illegal lockout case) was still pending, several complaints for illegal dismissal were filed before the Labor Arbiters of the NLRC by individual members of ALPAP, questioning their termination following the strike staged in June 1998. PAL likewise manifests that there is a pending case involving a complaint for the recovery of accrued and earned benefits belonging to ALPAP

> **members. Nonetheless, the pendency of the foregoing cases should not and could not affect the character of our disposition over the instant case. Rather, these cases should be resolved in a manner consistent and in accord with our present disposition for effective enforcement and execution of a final judgment.**[40] (Emphases supplied.)

The Decision dated June 6, 2011 of the Court in the *2nd ALPAP case* became final and executory on September 9, 2011.

Bearing in mind the final and executory judgments in the *1st* and *2nd ALPAP cases*, the Court denies the Petition of Rodriguez, *et al.*, in G.R. No. 178501 and partly grants that of PAL in G.R. No. 178510.

The Court, in the *2nd ALPAP case*, acknowledged the illegal dismissal cases instituted by the individual ALPAP members before the NLRC following their termination for the strike in June 1998 (which were apart from the Strike and Illegal Lockout Cases of ALPAP before the DOLE Secretary) and affirmed the jurisdiction of the NLRC over said illegal dismissal cases. The Court, though, also expressly pronounced in the *2nd ALPAP case* that "the pendency of the foregoing cases should not and could not affect the character of our disposition over the instant case. Rather, these cases should be resolved in a manner consistent and in accord with our present disposition for effective enforcement and execution of a final judgment."

The Petitions at bar began with the Illegal Dismissal Case of Rodriguez, *et al.* and eight other former pilots of PAL before the NLRC. Among the Decisions rendered by Labor Arbiter Robles, the NLRC, and the Court of Appeals herein, it is the one by the NLRC which is consistent and in accord with the disposition for effective enforcement and execution of the final judgments in the *1st and 2nd ALPAP cases*.

The *1st and 2nd ALPAP cases* which became final and executory on August 29, 2002 and September 9, 2011, respectively, constitute *res judicata* on the issue of who participated in the illegal strike in June 1998 and whose services were validly terminated.

The Court expounded on the doctrine of *res judicata* in *Spouses Layos v. Fil-Estate Golf and Development, Inc.*[41]:

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent

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40 Id. at 689-693.

41 583 Phil. 72, 101-105 (2008).

jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

It is espoused in the Rules of Court, under paragraphs (b) and (c) of Section 47, Rule 39, which provide:

> SEC. 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The doctrine of *res judicata* lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, the first general rule above stated, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment".

The Resolution of this Court in *Calalang v. Register of Deeds of Quezon City*, provides the following enlightening discourse on conclusiveness of judgment:

The doctrine *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.

The second concept – conclusiveness of judgment – states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus vs. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. vs. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez vs. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

> The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have

> been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.

Another case, *Oropeza Marketing Corporation v. Allied Banking Corporation*, further differentiated between the two rules of *res judicata*, as follows:

> There is "**bar by prior judgment**" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, **there is identity of parties, subject matter, and causes of action**. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
>
> But where **there is identity of parties** in the first and second cases, **but no identity of causes of action**, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "**conclusiveness of judgment**". Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.
>
> In sum, conclusiveness of judgment bars the re-litigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action. (Emphases ours.)

The elements for *res judicata* in the second concept, *i.e.*, conclusiveness of judgment, are extant in these cases.

There is **identity of parties** in the *1st and 2nd ALPAP cases*, on one hand, and the Petitions at bar. While the *1st and 2nd ALPAP* cases concerned ALPAP and the present Petitions involved several individual members of

ALPAP, the union acted in the *1st and 2nd ALPAP cases* in representation of its members. In fact, in the *2nd ALPAP case*, the Court explicitly recognized that the complaint for illegal lockout was filed by ALPAP on behalf of all its members who were returning to work.[42] Also in the said case, ALPAP raised, albeit belatedly, exactly the same arguments as Rodriguez, *et al.* herein. Granting that there is no absolute identity of parties, what is required, however, for the application of the principle of *res judicata* is not absolute, but only substantial identity of parties. ALPAP and Rodriguez, *et al.* share an identity of interest from which flowed an identity of relief sought, namely, the reinstatement of the terminated ALPAP members to their former positions. Such identity of interest is sufficient to make them privy-in-law, one to the other, and meets the requisite of substantial identity of parties.[43]

There is likewise an **identity of issues** between the *1st and 2nd ALPAP cases* and these cases. Rodriguez, *et al.*, insist that they did not participate in the June 1998 strike, being on official leave or scheduled off-duty. Nonetheless, on the matter of determining the identities of the ALPAP members who lost their employment status because of their participation in the illegal strike in June 1998, the Court is now conclusively bound by its factual and legal findings in the *1st and 2nd ALPAP cases*.

In the *1st ALPAP case*, the Court upheld the DOLE Secretary's Resolution dated June 1, 1999 declaring that the strike of June 5, 1998 was illegal and all ALPAP officers and members who participated therein had lost their employment status. The Court in the *2nd ALPAP case* ruled that even though the dispositive portion of the DOLE Secretary's Resolution did not specifically enumerate the names of those who actually participated in the illegal strike, such omission cannot prevent the effective execution of the decision in the *1st ALPAP case*. The Court referred to the records of the Strike and Illegal Lockout Cases, particularly, the logbook, which it unequivocally pronounced as a "crucial and vital piece of evidence." In the words of the Court in the *2nd ALPAP case*, "[t]he logbook with the heading 'Return-To-Work Compliance/Returnees' bears their individual signature signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE. x x x In fine, only those returning pilots, irrespective of whether they comprise the entire membership of ALPAP, are bound by the June 1, 1999 DOLE Resolution."

The logbook was similarly submitted as evidence by PAL against the complainants in the Illegal Dismissal Case now on appeal. Rodriguez, *et al.*,

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42 *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc.*, supra note 38 at 691.

43 *Firestone Ceramics, Inc. v. Court of Appeals*, 372 Phil. 401, 422 (1999).

except for Jadie and Baquiran, were signatories in the logbook as returnees,[44] bound by the Resolution dated June 1, 1999 of the DOLE Secretary. The significance and weight accorded by the NLRC to the logbook can no longer be gainsaid considering the declarations of the Court in the *2nd ALPAP case*. Moreover, the logbook entries were corroborated by photographs showing Rodriguez, *et al.*, excluding Baquiran, Galisim, Jadie, Wilfredo S. Cruz, and Piamonte, actually participating in the strike. The objection that the photographs were not properly authenticated deserves scant consideration as rules of evidence are not strictly observed in proceedings before administrative bodies like the NLRC, where decisions may be reached on the basis of position papers only.[45] It is also worth noting that those caught on photographs did not categorically deny being at the strike area on the time/s and date/s the photographs were taken, but assert that they were there in lawful exercise of their right while on official leave or scheduled off-duty, or in the alternative, that they were already dismissed from service as early as June 7, 1998 and their presence at the strike area thereafter was already irrelevant. The Court further concurs in the observation of the NLRC that the official leave or scheduled off-duty of Rodriguez, *et al.* expired at least two weeks prior to June 26, 1998, yet they did not make any effort to return to work before said date. Rodriguez, *et al.* instead heeded the advice of their lawyer to report *en masse* with the other ALPAP members, only proving that they were complying not with the Return-to-Work Order of the DOLE Secretary but the orders of their union and its counsel.

There is no compelling reason for the Court to disturb the findings of the NLRC as to Baquiran and Jadie, the two pilots who did not sign the logbook.

To stress, the Return-to-Work Order was served on ALPAP on June 8, 1998, and its members had 24 hours or until June 9, 1998 to report back for work. There is no evidence that Baquiran complied, or at least, attempted to comply with said Order. Neither did Baquiran report back for work with the other ALPAP members on June 26, 1998. Baquiran, who made no attempt to report for work at all, cannot be in a better position than the other ALPAP members who belatedly reported for work on June 26, 1998 and were still deemed to have lost their employment. As the NLRC declared, Baquiran "simply abandoned his job."

Only Jadie among Rodriguez, *et al.*, was illegally dismissed by PAL. During the strike, Jadie was already on maternity leave. Jadie did not join the strike and could not be reasonably expected to report back for work by

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44 *Rollo* (G.R. No. 178501), pp. 428-440.

45 *Rabago v. National Labor Relations Commission*, G.R. Nos. 82868 and 82932, August 5, 1991, 200 SCRA 158, 165.

June 9, 1998 in compliance with the Return-to-Work Order. Indeed, Jadie gave birth on June 24, 1998. However, as both the NLRC and the Court of Appeals had held, Jadie can no longer be reinstated for the following reasons: (1) Jadie's former position as Captain of the E-50 aircraft no longer existed as said aircraft was already returned to its lessors in accordance with the Amended and Restated Rehabilitation Plan of PAL; (2) Per ATO certification, Jadie's license expired in 1998; (3) the animosity between the parties as engendered by the protracted and heated litigation; (4) the possibility that Jadie had already secured equivalent or other employment after the significant lapse of time since the institution of the Illegal Dismissal Case; and (5) the nature of the business of PAL which requires the continuous operations of its planes and, thus, the hiring of new pilots. In lieu of reinstatement, Jadie is entitled to separation pay.

Following latest jurisprudence,[46] Jadie is entitled to the following reliefs/awards for her illegal dismissal: (1) separation pay equivalent to one month salary for every year of service in lieu of reinstatement; (2) backwages from June 9, 1998; (3) longevity pay at ₱500.00/month for every year of service based on seniority date falling after June 9, 1998; (4) Christmas bonuses; (5) Jadie's proportionate share in the ₱5 Million contribution of PAL to the Retirement Fund; and (5) cash equivalent of vacation leaves and sick leaves which Jadie earned after June 9, 1998. All of the aforementioned awards shall be computed until finality of this Decision.

Jadie is further entitled to receive benefits due her even prior to her illegal dismissal on June 9, 1998, namely: (1) unpaid salaries for June 1 to 8, 1998; and (2) productivity allowance, transportation allowance, and rice subsidy for May 1998 and June 1 to 8, 1998.

All monetary awards due Jadie shall earn legal interest of 6% per annum from date of finality of this Decision until fully paid.

Finally, the Court acts upon the Motion for Leave to Reinstate Elmer F. Peña, Antonio P. Noble, Baltazar B. Musong, Nicomen H. Versoza and Ryan Jose C. Hinayon as Petitioners in G.R. No. 178501. Peña, Noble, Musong, Versoza, and Hinayon, hereinafter referred to collectively as Peña, *et al.*, were among the original complainants in the Illegal Dismissal Case before the Labor Arbiter. However, Peña, *et al.* were unable to join as petitioners in the Petition for *Certiorari* before the Court of Appeals in CA-G.R. SP No. 71190, as well as the present Petition in G.R. No. 178501, because at the time said Petitions were filed, they were already employed

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46 *Bani Rural Bank, Inc. v. De Guzman*, G.R. No.170904, November 13, 2013, 709 SCRA 330; *Lim v. HMR Philippines, Inc.*, G.R. No. 201483, August 4, 2014, 731 SCRA 576.

outside the country. The Court denies the Motion. When Peña, *et al.* failed to join the Petition in CA-G.R. SP No. 71190, the Decision dated November 6, 2001 of the NLRC in NLRC NCR CA No. 027348-01 had become final and executory as to them. Peña, *et al.* cannot simply be "reinstated" as petitioners in G.R. No. 178501 since they are not parties to and had no legal interest in the appealed Decision dated November 30, 2006 of the Court of Appeals in CA-G.R. SP No. 71190.

WHEREFORE, premises considered, judgment is hereby rendered:

(1) **DISMISSING** the Petition of Rodriguez, *et al.*, in G.R. No. 178501 and **PARTLY GRANTING** the Petition of PAL in G.R. No. 178510;

(2) **REVERSING** and **SETTING ASIDE** the Decision dated November 30, 2006 of the Court of Appeals in CA-G.R. SP No. 71190;

(3) **DECLARING** that Jadie was illegally dismissed and **ORDERING** PAL to pay her the following:

(a) As consequences of her illegal dismissal: (i) separation pay equivalent to one (1) month salary for every year of service in lieu of reinstatement; (ii) backwages from June 9, 1998; (iii) longevity pay at ₱500.00/month for every year of service based on seniority date falling after June 9, 1998; (iv) Christmas bonuses from 1998; (v) Jadie's proportionate share in the ₱5 Million contribution of PAL to the Retirement Fund; and (vi) cash equivalent of vacation leaves and sick leaves which Jadie earned after June 9, 1998, all of which shall be computed until finality of this Decision;

(b) Benefits due her prior to her illegal dismissal on June 9, 1998: (i) unpaid salaries for June 1 to 8, 1998; and (ii) productivity allowance, transportation allowance, and rice subsidy for May 1998 and June 1 to 8, 1998; and

(c) Legal interest of 6% per annum on all monetary awards due her from the date of finality of this Decision until full payment thereof;

(4) **DISMISSING** for lack of merit the Complaint for Illegal Dismissal of Rodriguez, Alisangco, Benjamin T. Ang, Vicente P. Ang, Arroyo, Baquiran, Wilfredo S. Cruz, Delos Reyes, Ecarma, Galisim, Garcia, Gutiza, Jose, Labuga, Lastimoso, Matias, Maturan, Ocharan, Piamonte, Sabado, Sanchez, Corpus, and Alcañeses; and

(5) **DENYING** the Motion for Leave to Reinstate Elmer F. Peña, Antonio P. Noble, Baltazar B. Musong, Nicomen H. Versoza and Ryan Jose C. Hinayon as Petitioners in G.R. No. 178501.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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