Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 19 2016

THIRD DIVISION

YELLOW BUS LINE EMPLOYEES UNION (YBLEU), Petitioner,	**G.R. No. 190876**
	Present:
-versus-	VELASCO, JR., *J.*, *Chairperson*, PERALTA, PEREZ, REYES, and JARDELEZA,* *JJ.*
YELLOW BUS LINE, INC. (YBLI), Respondent.	Promulgated: **June 15, 2016**

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DECISION

PEREZ, *J.*:

The primary issue for resolution pivots on the validity of the dismissal of two drivers working for petitioner Yellow Bus Line, Inc. (YBL).

This petition for review seeks to reverse the Decision[1] dated 31 July 2009 of the Court of Appeals in CA-G.R. SP No. 00284, which set aside the decision of the Panel of Voluntary Arbitrators declaring the dismissal of Jimmy Gardonia (Gardonia) and Francisco Querol (Querol) illegal.

The facts, as culled from the records, are as follow:

Gardonia and Querol were hired by YBL as drivers on 17 December 1993 and 14 February 1995, respectively.

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* On Official Leave.

1 *Rollo*, pp. 53-70; Penned by Associate Justice Elihu A. Ybañez with Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson concurring.

In October 2002, Gardonia was driving along the National Highway in Polomolok, South Cotabato when his bus bumped into a motorcycle while trying to overtake it. The collision resulted in the death of the motorcycle driver and his passenger. YBL shouldered the hospitalization bills amounting to ₱290,426.91 and paid ₱135,000.00 as settlement of the claim of the heirs of the motorcycle riders.

Three (3) months later, the bus that Querol was driving suffered a mechanical breakdown. A mechanic and a towing truck arrived to pick up Querol. He was ordered by the mechanic to drive the bus while the towing truck would trail behind. Querol was apparently driving too fast and he rammed the bus into a sugar plantation in Barangay Talus, Malungon, South Cotabato.

YBL conducted separate hearings on the two incidents. Thereafter, Gardonia and Querol were found to be negligent. Termination letters were sent to them on 16 December 2002 and 16 January 2003, respectively.

Yellow Bus Line Employees Union (Union), representing its members Gardonia and Querol, filed a complaint for illegal dismissal against YBL through the grievance machinery, as stipulated in their Collective Bargaining Agreement. The Union and YBL failed to resolve their dispute, thus the case was elevated to the National Conciliation and Mediation Board (NCMB) Satellite Regional Office in Koronadal City, South Cotabato.

During the initial conference, YBL's representative Norlan Yap allegedly agreed to reinstate Gardonia and Querol. The management of YBL however refused to abide by the said agreement. Thus, another conference was conducted in order for the parties to resolve their dispute but no agreement was reached.

On 25 August 2004, the Panel of Accredited Voluntary Arbitrators[2] (Panel) found that Gardonia and Querol were illegally dismissed and ordered their reinstatement. The dispositive portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, Judgment is hereby rendered in favor of the Complainants/employees against the respondents/employer and order is hereby issued:
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> 1. Declaring the termination of services of the two (2) drivers illegal;

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2 Atty. Jose T. Albano, Atty. Midpantao Adil and Atty. George C. Jabido

> 2. Ordering the respondents to reinstate complainants and pay backwages computed at the time of their separation from the service, which is December 20, 2002 for Jimmy Gardonia and January 19, 2003 for Francisco Querol, until actual reinstatement in the payroll.[3]

The Panel also ruled that the parties already arrived at a compromise agreement during the initial conference with respect to the reinstatement of the drivers. Thus, this agreement is final and binding on the parties pursuant to Article 227 of the Labor Code, which provides that "any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be final and binding upon the parties."

YBL filed a motion for reconsideration but it was informed by the Panel that its decision is not subject to reconsideration in accordance with the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings.[4]

YBL's petition for *certiorari* questioning the decision of the Panel was given due course by the Court of Appeals which eventually ruled in favor of YBL. First, the Court of Appeals held that Article 227 of the Labor Code is not applicable in this case. Instead, the case falls under Articles 260, 261, 262-A and 262-B because it involves the grievance machinery and voluntary arbitration. Second, the Court of Appeals found that no compromise settlement was actually reached because a second round of conference had to be conducted in the NCMB office. Third, Norlan Yap, the representative of YBL, had no authority to enter into a compromise. Fourth, the Court of Appeals reversed the findings of the Panel with respect to the cause of the drivers' dismissal. The Court of Appeals found that the accidents were not caused by *force majeure*, rather they were brought about by the negligence of the drivers.

The Union filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution[5] dated 24 November 2009.

In support of its petition for review on *certiorari*, the Union assigned the following alleged errors committed by the Court of Appeals, to wit:

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3 *Rollo*, p. 124.
4 CA *rollo*, p. 51.
5 *Rollo*, pp. 71-72.

> The Honorable Court of Appeals erred in granting the petition filed by the respondent YBL considering that the technical infirmities and procedural lapses would render nugatory the public welfare and policy favoring labor and in effect, violate the very substantial justice it supposedly upholds in relaxing the rules of procedure in favor of respondent company.[6]
>
> The Court of Appeals erred in disagreeing with the findings of fact of the Panel of Voluntary Arbitrators, there being no showing that the decision was arbitrary or in utter disregard to the evidence on record, and as such, findings of facts of quasi-judicial agencies are accorded not only with respect, but with finality.[7]

The Union essentially argues that the Court of Appeals should have dismissed the petition for certiorari outright on the ground of the failure of YBL's counsel to file the correct mode of appeal, *i.e.* petition for review under Rule 43 of the Rules of Court. The Union asserts that the Court of Appeals failed to provide a justifiable reason to exempt YBL from strictly complying with the rules. The Union adds that in this case, no broader interest of justice requires a liberal interpretation of the rules.

The Union maintains there was no showing that the findings of the Panel of Voluntary Arbitrators are arbitrary constitutive of grave abuse of discretion. The Union points out that the decision of the Panel is not merely based on the premise of a compromise agreement but that the Panel found that there was no just cause to terminate the two drivers considering that the incidents they were involved in are mere accidents. The Union insists the case was settled at the level of conciliation-mediation proceedings when the parties entered into an amicable settlement. The Union contends that the amount of indemnity granted by the Court of Appeals, assuming *arguendo* that there is just cause for termination, should be ₱50,000.00 and not ₱30,000.00 in accordance with jurisprudence.

In its Comment,[8] YBL defends the Court of Appeals in its decision to entertain the petition. YBL stresses that for the broader interest of justice, the appellate court took cognizance of the case and reversed the holding of the Panel of Arbitrators which anchored its decision on an alleged compromise agreement. YBL claims that the two drivers were found to be negligent.

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6 Id. at 27.
7 Id at 37.
8 Id. at 211-224.

YBL also emphasizes that the statement of the conciliator-mediator that "the case is settled into amicable settlement and the same is considered closed" is merely a remark regarding the development of the matter before him. YBL avers that this should not in any way be deemed final because it can be inferred from the Submission Agreement, the parties expressly agreed to submit the matter of the drivers' dismissal for adjudication before the Panel of Voluntary Arbitrators. Lastly, YBL maintains that the drivers were dismissed for just cause on the ground of gross negligence.

Preliminarily, we note that YBL filed a special civil action for *certiorari* before the Court of Appeals. The general rule is that the correct remedy to reverse or modify a Voluntary Arbitrator's or a panel of Voluntary Arbitrators' decision or award is to appeal the award or decision before the Court of Appeals via Rule 43 of the Rules of Court, thus:

> Section 1. *Scope*.
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> This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

In *Philippine Electric Corporation v. Court of Appeals, et al.*,[9] we discussed at length the nature of a special civil action for certiorari and the instances where we allowed such a petition to be filed in lieu of appeal, thus:

> A petition for certiorari is a special civil action "adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction." An extraordinary remedy, a petition for certiorari may be filed only if appeal is not available. If appeal is available, an appeal must be taken even if the ground relied upon is grave abuse of discretion.

[9] G.R. No. 168612, 10 December 2014.

> As an exception to the rule, this court has allowed petitions for certiorari to be filed in lieu of an appeal "(a) when the public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority."
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> In Unicraft Industries International Corporation, et al. v. The Hon. Court of Appeals, petitioners filed a petition for certiorari against the Voluntary Arbitrator's decision. Finding that the Voluntary Arbitrator rendered an award without giving petitioners an opportunity to present evidence, this court allowed petitioners' petition for certiorari despite being the wrong remedy. The Voluntary Arbitrator's award, this court said, was null and void for violation of petitioners' right to due process. This court decided the case on the merits.
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> In Leyte IV Electric Cooperative, Inc. v. LEYECO IV Employees Union-ALU, petitioner likewise filed a petition for certiorari against the Voluntary Arbitrator's decision, alleging that the decision lacked basis in fact and in law. Ruling that the petition for certiorari was filed within the reglementary period for filing an appeal, this court allowed petitioner's petition for certiorari in the broader interests of justice.
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> In Mora v. Avesco Marketing Corporation, this court held that petitioner Noel E. Mora erred in filing a petition for certiorari against the Voluntary Arbitrator's decision. Nevertheless, this court decided the case on the merits "in the interest of substantial justice to arrive at the proper conclusion that is conformable to the evidentiary facts."

In this case where the evidentiary facts do not jive with the conclusion of the Panel, it is valid reasoning that it is in the interest of justice that the Court of Appeals gave cognizance to a *certiorari* petition.

We now go to the merits.

The ruling of the Panel delves into two issues: the validity of the alleged compromise agreement and the validity of the drivers' dismissal.

We shall discuss the issues successively.

The Union claims that a settlement at the conciliation level has already been forged with YBL, while YBL claims otherwise.

The pertinent portion of the Conciliation Report is reproduced below:

> During the conference, both parties appeared where[in] two of the complainants in the names of Mr. Quero S. Francisco and Jimmy C. Gardonia manifested that they want [to] be returned back to their posts in the company and Management representative Mr. Norlan A. Yap, the Personnel Manager of the Company, accepted the appeal of the above complainants.
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> x x x x
>
> So, this case is settled into Amicable settlement and the same hereby considered closed.[10]

We cannot consider this Conciliation Report as the complete settlement between the parties. As reasoned by the Court of Appeals, and we agree, that:

> x x x The Conciliation Report . . . did not write *finis* the issues between the parties as manifested by a second round of conference in the NCMB office and the subsequent submission of the dispute to the Panel. If indeed, a compromise had been reached, there should have been no need for further negotiations and the case would not have reached the Panel. Clearly, the Panel viewed the grievance machinery and voluntary arbitration underwent [sic] by the parties in piecemeal instead of looking at it as one process which culminated in the decision of the Panel now assailed by Yellow Bus.
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> The facts of the case reveal that private respondents moved for the execution of what was embodied in the *Conciliation Report* before the NCMB. This simply cannot be done. The handwritten report of Conciliator-Mediator Nagarano M. Mascara al Haj could not, by any stretch of imagination, be considered as a final arbitration award nor a decision of a voluntary arbitrator within the purview of Article 262-A of the Labor Code which is a proper subject of execution. In fact, the initial conference before the Conciliator-Mediator is not more than what it implies – that it is the initial stage of negotiation between the parties prior to the submission of the dispute to the Panel.
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> [E]ven granting *arguendo* that a compromise agreement had indeed been reached between private respondents and Norlan Yap, yet the same could not bind Yellow Bus in the absence of any authorization or special power of attorney bestowed upon Norlan Yap by Yellow Bus to enter into a compromise agreement. For sure, Norlan Yap's authority was limited only to represent and appear in behalf of Yellow Bus during the initial conference in the NCMB. Norlan Yap's statement thereat could not bind Yellow Bus in the absence of substantial evidence showing that said compromise agreement was entered into with the knowledge and consent of Yellow Bus. Article 1878 of the Civil Code provides:

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10 *Rollo*, p. 103.

> ART. 1878. Special powers of attorney are necessary in the following cases:
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> x x x x
>
> (3) To compromise, to submit questions to arbitration, to renounce the right to appeal x x x.

The need of a special power of attorney in order for a representative to bind its principal in a compromise agreement is also underscored in Section 8, Rule III of the 1999 NLRC Rules, which states:

> *Section 8. Authority to bind party. – Attorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure; but they cannot, without a special power of attorney or express consent, enter into a compromise agreement with the opposing party in full or partial discharge of a client's claim.*

Furthermore, there is no showing that Yellow Bus ratified the act of Norlan Yap. Its CEO, Ricardo R. Yap, even refused to acknowledge the compromise agreement.[11]

We hasten to add that the parties expressly agreed to submit the case to the voluntary arbitration when they still failed to reach a settlement. The Union should not have agreed and stood its ground if it believed that a compromise agreement had already been struck during the conciliation conference. By acquiescing to the referral to voluntary arbitration, the Union is now estopped from asserting that there was a settlement at conciliation level.

The meat of the controversy actually devolves upon the legality of the dismissal of the two company drivers, who happen to be a union officer and a member. We have scrutinized the records and hold that the Panel of Voluntary Arbitrators committed grave abuse of discretion when its finding, that the drivers were not negligent, disregarded the evidence on record.

As a matter of fact, there is nothing in the records which would support the Panel's conclusion that the drivers were driving at a moderate speed at that time when the accident happened, and that it was caused by *force majeure*. In the case of Gardonia, he admitted that he was overtaking the motorcycle on its left when said motorcycle suddenly negotiated a left turn on the intersection causing the bus to hit the motorcycle. Gardonia claimed that he blew his horn when he tried to overtake the said motorcycle.

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[11] Id. at 63-65.

Before hitting the motorcycle, Gardonia stated that he tried to apply the brakes and swerved the steering wheel to the left, but it was too late.[12] On the other hand, the bus conductor, who was traveling with Gardonia, insisted that the motorcyle was running slowly and was about to go to the left side of the road near the intersection when it was hit by the bus.[13] The bus conductor established the fault of Gardonia. Gardonia already saw that the motorcycle was swerving to the left. Both the bus, with the motorcycle ahead, were nearing an intersection. It is evidently wrong for Gardonia to proceed in the attempt to overtake the motorcycle. Section 41(c),[14] Article II of Republic Act No. 4136 prohibits the overtaking by another vehicle at any intersection of the highway. Gardonia also admitted to driving at a speed of 60-70 kilometers per hour.[15] It is reasonable to assume that he accelerated his speed while overtaking the motorcycle. Thus he did find it difficult to apply his breaks or make last-minute maneuvers to avoid hitting the motorcycle. Clearly, it was Gardonia's act of negligence which proximately caused the accident, and so he was dismissed by YBL on the ground of reckless imprudence resulting in homicide and damage to property.

Anent Querol, he claimed that a bicycle suddenly emerged from the left side of the road and crossed the highway, causing him to swerve his steering wheel to the left.[16] The bus rammed into a sugar plantation. On the contrary, the mechanic of the bus and the driver of the tow truck both asserted that they saw Querol driving the bus too fast. When they caught up with him, Querol's bus was already in the sugar plantation. The version of the mechanic and the tow truck driver was not refuted.[17] Querol was driving recklessly despite the fact that said bus was newly repaired. YBL also conducted its ocular inspection of the area and found that there was no road crossing at the scene of the incident which contradicts Querol's statement that a bicycle suddenly crossed the highway. Moreover, it was revealed that the bus was found in the sugar plantation at a distance of 60 meters from the highway.[18] This proved that the bus was running very fast. The accident is evidently caused by Querol. YBL submits that the amount of damages

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12 CA *rollo*, p. 87.

13 Id. at 90.

14 Section 41. *Restrictions on overtaking and passing.*

(c) The driver of a vehicle shall not overtake or pass any other vehicle proceeding in the same direction, at any railway grade crossing, not at any intersection of highways unless such intersection or crossing is controlled by traffic signal, or unless permitted to do so by a watchman or a peace officer, except on a highway having two or more lanes for movement of traffic in one direction where the driver of a vehicle may overtake or pass another vehicle on the right. Nothing in this section shall be construed to prohibit a driver overtaking or passing upon the right another vehicle which is making or about to make a left turn.

15 CA *rollo*, p. 88.

16 Id. at 125.

17 Id. at 127-132.

18 Id. at 97.

incurred by the bus totaled ₱84,446.59. Querol was validly terminated for violation of Company Rules and Regulations.

Both Gardonia and Querol were dismissed for just cause. Article 282 of the Labor Code provides:

> Art. 282. *Termination by employer.* An employer may terminate an employment for any of the following causes:
>
> 1. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
> 2. Gross and habitual neglect by the employee of his duties;
> 3. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
> 4. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> Other causes analogous to the foregoing.

Article 282 of the Labor Code provides that one of the just causes for terminating an employment is the employee's gross and habitual neglect of his duties. This cause includes gross inefficiency, negligence and carelessness. Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[19]

Indeed, Gardonia and Querol were both negligent in operating the bus causing death and damages to property.

We also affirm the Court of Appeals holding that YBL failed to observe statutory due process in dismissing the two drivers.

Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code expressly states:

> Section 2. *Standard of due process: requirements of notice.*

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19 *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 589 (2013).

— In all cases of termination of employment, the following standards of due process shall be substantially observed.

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

In *Unilever Philippines, Inc. v. Rivera*,[20] this Court reiterated the procedural guidelines for the termination of employees as expounded in *King of Kings Transport, Inc. v. Mamac*:[21]

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

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their

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20 710 Phil. 124, 136-137 (2013).

21 553 Phil. 108, 115-116 (2007).

> defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
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> (3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. (Emphasis omitted)

While a hearing was conducted where the two employees were given an opportunity to air their side, there was only one notice given to the erring drivers. That same notice included both the charges for negligence and the decision of dismissal from employment. Evidently, the two employees' rights to due process were violated which warrants their entitlement to indemnity.

Finally, we affirm the award of nominal damages. Where the dismissal is based on an authorized cause under Article 283 of the Labor Code but the employer failed to comply with the notice requirement, the sanction against the employer should be stiff as the dismissal process was initiated by the employer's exercise of his management prerogative. This is different from dismissal based on a just cause under Article 282 with the same procedural infirmity. In such case, the sanction to be imposed upon the employer should be tempered as the dismissal process was, in effect, initiated by an act imputable to the employee. [22] The amount of ₱30,000.00 as nominal damages awarded by the Court of Appeals conforms to prevailing jurisprudence.[23]

WHEREFORE, the instant petition is **DENIED** and the Decision dated 31 July 2009 and Resolution dated 24 November 2009 of the Court of Appeals in CA-G.R. SP No. 00284 stating that:

> x x x The assailed decision of the Panel of Voluntary Arbitrators dated 25 August 2004 is hereby **SET ASIDE** and a new one entered upholding the legality of the dismissal but ordering petitioner to pay each of the private

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22 *Industrial Timber Corporation v. Ababon*, 515 Phil. 805, 822-823 (2006) citing *San Miguel Corporation v. Aballa*, 500 Phil. 170, 209 (2005).

23 *Libcap Marketing Corp v. Baquial*, G.R. No. 192011, 30 June 2014, 727 SCRA 520, 537; *Deoferio v. Intel Technology*, G.R. No. 202996, 18 June 2014, 726 SCRA 676, 692; *Samar-Med Distribution v. National Labor Relation Commission*, 714 Phil. 16, 32 (2013).

respondents --- Jimmy Gardonia and Francisco Querol the amount of P30,000.00, representing nominal damages for non-compliance with statutory due process.[24]

are **AFFIRMED.**

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

(On Official Leave)
FRANCIS H. JARDELEZA
Associate Justice

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24 *Rollo*, p. 69.

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, it is hereby certified 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

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Division Clerk of Court
Third Division
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