EN BANC

G.R. No. 178083 - FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP), Petitioner v. **PHILIPPINE AIRLINES, INC., PATRIA CHIONG, and THE COURT OF APPEALS,** Respondents.

A.M. No. 11-10-1-SC – IN RE: LETTERS OF ATTY. ESTELITO P. MENDOZA RE: G.R. NO. 178083 – FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP) v. PHILIPPINE AIRLINES, INC., ET AL.

Promulgated:

March 13, 2018

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DISSENTING OPINION

LEONEN, *J.*:

I dissent.

This is an extraordinary case. Like in the Book of Revelation,[1] it involves the miraculous resurrection of the dead: in this case, a dead case.

The *ponencia* recommends acting for respondent Philippine Airlines, Inc. (Philippine Airlines) on what amounts to a third motion for reconsideration. This is notwithstanding a unanimous decision of a Division in favor of petitioner, another unanimous decision of the same Division denying the motion for reconsideration and, again, another unanimous decision of another Division denying the second motion for reconsideration.

The reopening of a final case was done through a back door: an administrative matter docketed separately from this case.

The July 22, 2008 Decision[2] and the October 2, 2009 Resolution[3] denying Philippine Airlines' Motion for Reconsideration attained finality on November 4, 2009. They may not be set aside, even by this Court sitting *en*

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1 *See* Revelation 20, Revised Standard Version of the Bible.
2 Rollo (G.R. No. 178083), pp. 10–58.
3 617 Phil. 687 (2009) [Per J. Ynares-Santiago, Special Third Division].

banc. The July 22, 2008 Decision and the October 2, 2009 Resolution have become immutable, and all proceedings subsequent to their issuance—the grant of leave to file a Second Motion for Reconsideration to Philippine Airlines; the September 7, 2011 Resolution denying Philippine Airlines' Second Motion for Reconsideration; the filing of mere letters questioning the internal procedures of this Court; the October 4, 2011 *En Banc* Resolution recalling the September 7, 2011 Resolution; and the March 13, 2012 Resolution of the Court *En Banc* confirming the recall of the September 7, 2011 Resolution, assuming jurisdiction over this case, and ordering the re-raffle to either Justices Peralta or Bersamin—did not prevent the judgment in this case from becoming final.

I

To recall, the Flight Attendants and Stewards Association of the Philippines (FASAP) filed its Petition for Review on Certiorari questioning the legality of Philippine Airlines' retrenchment program implemented in 1998. The Petition was docketed as G.R. No. 178083.

In the Decision[4] dated July 22, 2008, the Third Division of this Court granted FASAP's Petition and declared the retrenchment program of Philippine Airlines illegal. The dispositive portion of the July 22, 2008 Decision read:

> WHEREFORE, the instant petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE and a new one is rendered:
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> 1. FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;
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> 2. ORDERING Philippine Airlines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of

[4] 581 Phil. 228 (2008) [Per J. Ynares-Santiago, Third Division].

service;

3. ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

Costs against respondent PAL.

SO ORDERED.[5]

The Decision, penned by Justice Consuelo Ynares-Santiago, was concurred in by all the Members of the Third Division: Justices Ma. Alicia Austria-Martinez, Minita Chico-Nazario, Antonio Eduardo Nachura, and Teresita Leonardo-De Castro.

Philippine Airlines filed a Motion for Reconsideration of the July 22, 2008 Decision, which the Special Third Division denied with finality in the Resolution[6] dated October 2, 2009:

> **WHEREFORE,** for lack of merit, the Motion for Reconsideration is hereby **DENIED with FINALITY**. The assailed Decision dated July 22, 2008 is **AFFIRMED with MODIFICATION** in that the award of attorney's fees and expenses of litigation is reduced to P2,000,000.00. The case is hereby **REMANDED** to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.
>
> No further pleadings will be entertained.
>
> **SO ORDERED.**[7]

Justice Ynares-Santiago remained the *ponente*, and the October 2, 2009 Resolution was concurred in by Justices Chico-Nazario, Nachura, Peralta, and Bersamin. Justice Peralta replaced Justice Austria-Martinez who had already retired, and Justice Bersamin replaced Justice Leonardo-De Castro who had inhibited herself from participating in the deliberations of Philippine Airlines' Motion for Reconsideration.

Philippine Airlines, through counsel, received a copy of the October 2, 2009 Resolution on October 20, 2009.[8] On November 3, 2009, Philippine Airlines filed a Second Motion for Reconsideration of the July 22, 2008 Decision, contending that the Court did not resolve all of the issues it raised in its First Motion for Reconsideration.

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5 Id. at 271–272.
6 617 Phil. 687 (2009) [Per J. Ynares-Santiago, Special Third Division].
7 Id. at 723.
8 *Rollo* (G.R. No. 178083), p. 2220, Philippine Airlines' Second Motion for Reconsideration.

This Second Motion for Reconsideration was denied with finality by the Second Division in the Resolution[9] dated September 7, 2011:

> To conclude, the rights and privileges that PAL unlawfully withheld from its employees have been in dispute for a decade and a half. Many of these employees have since then moved on, but the arbitrariness and illegality of PAL's actions have yet to be rectified. This case has dragged on for so long and we are now more than duty-bound to finally put an end to the illegality that took place; otherwise, the illegally retrenched employees can rightfully claim that the Court has denied them justice.
>
> **WHEREFORE**, the Court resolves to deny with finality respondent PAL's second motion for reconsideration. No further pleadings shall be entertained. Costs against the respondents. Let entry of judgment be made in due course.
>
> **SO ORDERED.**[10]

A series of letters dated September 13, 16, 20, and 22, 2011 were then filed by Atty. Estelito P. Mendoza, counsel for Philippine Airlines. The letters were all addressed to the Clerk of Court *En Banc*, not to the Justices of this Court, and questioned the transfer of the case among the Divisions. Instead of being filed under G.R. No. 178083, the letters were docketed as a separate administrative matter, A.M. No. 11-10-1-SC.

Still in A.M. No. 11-10-1-SC, the Court *En Banc* assumed jurisdiction over G.R. No. 178083 on October 4, 2011 and resolved[11] to recall the September 7, 2011 Resolution of the Second Division. FASAP assailed this October 4, 2011 Resolution in a Motion for Reconsideration, arguing immutability of final judgments.

The Court *En Banc* then issued a Resolution[12] dated March 13, 2012. It confirmed its recall of the Second Division's September 7, 2011 Resolution and re-raffled G.R. No. 178083 to a new Justice.

II

The present *ponencia* resolves Philippine Airlines' Second Motion for Reconsideration of the July 22, 2008 Decision and FASAP's Motion for Reconsideration of the March 13, 2012 Resolution confirming the recall of the September 7, 2011 Resolution that initially denied Philippine Airlines' Second Motion for Reconsideration. The present *ponencia* exists on the

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9 Id. at 3568–3571.
10 Id. at 3569–3570.
11 *Rollo* (A.M. No. 11-10-1-SC), pp. 16–17.
12 684 Phil. 55 (2012) [Per J. Brion, En Banc].

premise that the grant of leave to file the Second Motion for Reconsideration and the recall of the September 7, 2011 Resolution prevented the July 22, 2008 Decision and the October 2, 2009 Resolution denying Philippine Airlines' First Motion for Reconsideration from becoming final and executory.[13]

This premise is false. The judgment in this case became final and executory as early as November 4, 2009.

"A judgment becomes final and executory *by operation of law*,"[14] "not by judicial declaration."[15] A decision or resolution denying a motion for reconsideration of a decision becomes final and executory upon the lapse of 15 days[16] from the party's receipt of a copy of the decision or resolution.[17] After the lapse of the 15-day reglementary period, the finality of judgment becomes *a matter of fact*.[18]

Therefore, no motion for reconsideration of a resolution denying a motion for reconsideration of a decision may be filed *by the same party*. Allowing second and subsequent motions for reconsideration of the same decision prevents the resolution of judicial controversies. Rule 52, Section 2 of the Rules of Court explicitly prohibits second motions for reconsideration:

> Section 2. *Second motion for reconsideration.* – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

The rationale of the prohibition is further explained in *Ortigas and Company Limited Partnership v. Judge Velasco*:[19]

> A second motion for reconsideration is forbidden except for extraordinarily persuasive reasons, and only upon express leave first obtained. The propriety or acceptability of such a second motion for reconsideration is not contingent upon the averment of "new" grounds to assail the judgment, i.e., grounds other than those theretofore presented and rejected. Otherwise, attainment of finality of a judgment might be staved off indefinitely, depending on the party's ingeniousness or cleverness in conceiving and formulating "additional flaws" or "newly discovered errors" therein, or thinking up some injury or prejudice to the

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13 *Ponencia* as of July 28, 2017, p. 13.
14 *City of Manila v. Court of Appeals*, 281 Phil. 408, 413 (1991) [Per J. Cruz, En Banc].
15 *Commissioner on Internal Revenue v. Visayan Electric Company*, 125 Phil. 1125, 1127 (1967) [Per J. Sanchez, En Banc].
16 RULES OF COURT, Rule 52, sec. 1.
17 S. CT. INT. RULES, , Rule 15, secs. 1 and 2.
18 *Commissioner on Internal Revenue v. Visayan Electric Company*, 125 Phil. 1125, 1127 (1967) [Per J. Sanchez, En Banc].
19 324 Phil. 483 (1996) [Per C.J. Narvasa, Third Division].

> rights of the movant for reconsideration. "Piece-meal" impugnation of a judgment by successive motions for reconsideration is anathema, being precluded by the salutary axiom that a party seeking the setting aside of a judgment, act or proceeding must set out in his motion all the grounds therefor, and those not so included are deemed waived and cease to be available for subsequent motions.
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> For all litigation must come to an end at some point, in accordance with established rules of procedure and jurisprudence. As a matter of practice and policy, courts must dispose of every case as promptly as possible; and in fulfillment of their role in the administration of justice, they should brook no delay in the termination of cases by stratagems or maneuverings of parties or their lawyers.[20]

As an exception, by leave of court,[21] a party may file a second motion for reconsideration of the decision. The second motion for reconsideration may be subsequently granted "in the higher interest of justice." Rule 15, Section 3 of our Internal Rules provides:

> Section 3. *Second motion for reconsideration.* – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court En Banc.[22]

Nothing in Rule 15, Section 3 of the Internal Rules, however, states that the resolution denying the motion for reconsideration of a decision will not lapse into finality. The grant of leave to file a second motion for reconsideration only means that the second motion for reconsideration is no longer prohibited.[23] Regardless of the grant of leave to file a second motion for reconsideration, the resolution denying the motion for reconsideration of the decision becomes final and executory by operation of law. The grant of a second motion for reconsideration only means that the judgment, had it been entered in the book of entries of judgments, may be lifted.[24] In *Aliviado v. Procter and Gamble Philippines, Inc.*:[25]

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20 Id. at 489–490.

21 *Ortigas and Company Limited Partnership v. Judge Velasco*, 324 Phil. 483, 489 (1996) [Per C.J. Narvasa, Third Division]; *See McBurnie v. Ganzon*, 719 Phil. 680 (2013) [Per J. Reyes, En Banc].

22 S. CT. INT. RULES, , Rule 15, sec. 3.

23 *See McBurnie v. Ganzon*, 719 Phil. 680 (2013) [Per J. Reyes, En Banc].

24 *See Muñoz v. Court of Appeals*, 379 Phil. 809 (2000) [Per J. Ynares-Santiago, First Division].

25 665 Phil. 542 (2011) [Per J. Del Castillo, First Division].

> *[T]he issuance of the entry of judgment is reckoned from the time the parties received a copy of the resolution denying the first motion for reconsideration. The filing of . . . several pleadings after receipt of the resolution denying [the] first motion for reconsideration does not in any way bar the finality or entry of judgment.* Besides, to reckon the finality of a judgment from the receipt of the denial of the second motion for reconsideration would be absurd. First, the Rules of Court and the Internal Rules of the Supreme Court prohibit the filing of a second motion for reconsideration. Second, some crafty litigants may resort to filing prohibited pleadings just to delay entry of judgment.[26] (Underscoring in the original; emphasis supplied)

Philippine Airlines received a copy of the October 2, 2009 Resolution denying its Motion for Reconsideration of the July 22, 2008 Decision on October 20, 2009.[27] By operation of law, the October 2, 2009 Resolution became final and executory on November 4, 2009, 15 days after Philippine Airlines received a copy of the October 2, 2009 Resolution. Though leave to file a Second Motion for Reconsideration was granted on January 20, 2010, the grant of leave only means that the Second Motion for Reconsideration is no longer prohibited under the Rules of Court. *The grant of leave to file the Second Motion for Reconsideration did not, in any way, prevent the judgment on this case from becoming final and executory on November 4, 2009.*

Contrary to the majority opinion, the grant of leave to file a second motion for reconsideration does not "deceive the movants by allowing them to revel in some hollow victory."[28] It does not follow that when leave to file is granted, the second motion for reconsideration shall likewise be granted. Litigants have no right to such expectation.

The Court's pronouncement in *Belviz v. Buenaventura*,[29] cited by the majority opinion, does not apply in this case. *Belviz* dealt with a second motion for reconsideration already granted by this court. Here, all that was granted was the leave to file. The second motion for reconsideration, however, was already denied on September 7, 2011. To contend "[t]hat a second motion for reconsideration based on an allowable ground suspends the running of the period for appeal from the date of the filing of the motion until such time that the same was acted upon and granted"[30] is unavailing.

Therefore, on January 20, 2010, the Court's action granting leave for the Second Motion for Reconsideration was irregular.

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26 Id.
27 *Rollo* (G.R. No. 178083), p. 2220, Philippine Airlines' Second Motion for Reconsideration.
28 *Ponencia*, p. 19
29 83 Phil. 337 (1949) [Per J. Paras, First Division].
30 *Ponencia*, p. 19.

That the records of this case do not contain any notation that the October 2, 2009 Resolution had been entered in the book of entries of judgment is inconsequential. A judgment becomes final and executory by operation of law, with the date of finality of the judgment considered as the date of its entry.[31] The October 2, 2009 Resolution is already final, with November 4, 2009 being the date of its entry.

III

With the judgment having become final and executory as early as November 4, 2009, the validity of the October 4, 2011 *En Banc* Resolution recalling the Second Division's Resolution that denied Philippine Airlines' Second Motion for Reconsideration should no longer be at issue. Much issue has been made on who, under this Court's issuances on its internal procedures, is the Justice to have properly taken charge of resolving Philippine Airlines' Second Motion for Reconsideration on the first instance when this issue is not even jurisdictional. Under the Constitution, this case has been long been decided with finality by the Supreme Court of the Philippines. The Court *En Banc*, as if an appellate court in relation to the Division that rendered judgment here, has no jurisdiction to resolve Philippine Airlines' Second Motion for Reconsideration *for the second time.*

Article VIII, Section 4 of the Constitution provides:

> *Section* 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.
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> (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.
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> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: *Provided*, that no doctrine or principle of law laid down by the court

[31] RULES OF COURT, Rule 51, sec. 10.

> in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

Article VIII, Section 4 was especially relevant in *Fortich v. Corona*.[32] The case involved the Sumilao farmers who staged a hunger strike in protest of the Office of the President's March 29, 1996 Decision that converted 144 hectares of land in Bukidnon from agricultural to agro-industrial/institutional area. In its Order dated June 23, 1997, the Office of the President declared its March 29, 1996 Decision final and executory because none of the parties seasonably filed a motion for reconsideration of the decision.

However, in a November 7, 1997 Resolution or the so-called "Win/Win" Resolution, the Office of the President modified its March 29, 1996 Decision. Forty-four hectares of the former 144 were declared converted to agro-industrial/institutional area and the remaining 100 hectares were, instead, ordered distributed to the farmer-beneficiaries. This prompted petitioners, led by then Bukidnon Governor Carlos O. Fortich, to file a petition for certiorari before this Court.

In the Decision[33] dated April 24, 1998, this Court granted Governor Fortich, et al.'s petition for certiorari and voided the "Win/Win" Resolution.[34] This Court held that the Office of the President had already lost jurisdiction to modify its March 29, 1996 Decision because it was already final and executory.[35]

The April 24, 1998 Decision in *Fortich* was unanimously voted by Members of the Second Division of the Court. Justice Antonio M. Martinez wrote[36] the Decision in which Justices Florenz D. Regalado, Jose A.R. Melo, Reynato S. Puno, and Vicente V. Mendoza concurred.[37]

The farmer-beneficiaries filed motions for reconsideration of the April 24, 1998 Decision, arguing that the "Win/Win" Resolution was correctly issued so as to modify the erroneous March 29, 1996 Decision of the Office of the President. In addition, they prayed that their motions for reconsideration be elevated to the Court *En Banc* because of the supposedly novel issue involved in the case.

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32 352 Phil. 461 (1998) [Per J. Martinez, Second Division]; 359 Phil. 210 (1998) [Per J. Martinez, Second Division]; 371 Phil. 672 (1999) [Per J. Ynares-Santiago, Special Second Division].
33 352 Phil. 461 (1998) [Per J. Martinez, Second Division].
34 Id. at 486.
35 Id. at 485.
36 Id. at 464.
37 Id. at 487.

In the November 17, 1998 Opinion[38] still penned by Justice Martinez,[39] the Court's Second Division denied the motions for reconsideration with finality.[40] The Court maintained that the March 29, 1996 Decision of the Office of the President was already final and executory, hence, unalterable even by this Court.[41]

Concurring in the November 17, 1998 Opinion was Justice Mendoza.[42] Justice Puno dissented and was joined by Justice Melo.[43] When the Second Division resolved the farmer-beneficiaries' first motions for reconsideration of the April 24, 1998 Decision, Justice Regalado had already retired.[44] Thus, only four (4) of the five (5) Justices who deliberated on the issues in the case and voted on the April 24, 1998 Decision voted on the first motions for reconsideration. The vote was two-two.

The farmer-beneficiaries filed motions for reconsideration of the November 17, 1998 Opinion, effectively the second motions for reconsideration filed in *Fortich.* Citing Article VIII, Section 4(3) of the Constitution, the farmer-beneficiaries argued that the two-two vote in the first motions for reconsideration fell short of the minimum of three (3) votes required to carry a decision or resolution of the Court. Since the required number of votes was not obtained, the case, insisted by the farmer-beneficiaries, should be elevated to the *en banc*.

In the Resolution[45] dated August 19, 1999, the Court in *Fortich* rejected the farmer-beneficiaries' argument and denied the second motions for reconsideration. Examining the word choices in and syntax of Article VIII, Section 4(3) of the Constitution, the Court held that only "cases" that have not obtained the required number of votes may be elevated to and "decided" by the Court *en banc*. Using the statutory construction rule of *reddendo singula singulis*,[46] the Court said that "decided" in the first

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38 359 Phil. 210 (1998) [Per J. Martinez, Second Division].

39 Id. at 214.

40 Id. at 230.

41 Id. at 221–222.

42 Id. at 230.

43 Id. at pp. 230–238. Reviewing the records of the case, Justice Puno found that six (6) months past the issuance of the March 29, 1996 Decision of the Office of the President, then President Fidel V. Ramos constituted a Presidential Fact-Finding Task Force "to conduct a comprehensive review of the proper land use of the 144-hectare Sumilao property." President Ramos, according to Justice Puno, continued to treat the farmer-beneficiaries' case before the Office of the President as "still open," a power allegedly subsumed in the President's power of control over the executive branch. In effect, Justice Puno was of the opinion that the Office of the President may still resolve the motion for reconsideration filed by the farmer-beneficiaries, this despite the Office of the President's Order dated June 23, 1997 declaring its own March 29, 1996 Decision final and executory.

44 Justice Regalado retired on October 13, 1998. The Resolution denying the first motions for reconsideration was issued on November 17, 1998.

45 371 Phil. 672 (1999) [Per J. Ynares-Santiago, Special Second Division].

46 *Reddendo singula singulis* is Latin for "referring each for each" and, as a rule of statutory construction, means that "words in different parts of statute must be referred to their appropriate connection, giving to each in its place, its proper force and effect, and, if possible, rendering none of them useless or superfluous, even if strict grammatical construction demands otherwise." *See People v. Tamani,* 154

sentence of Section 4(3), Article VIII corresponded to "cases," and "resolved" corresponded to "matters." The word "matters," however, no longer appeared in the second sentence of Article VIII, Section 4(3). According to the Court, this omission was expressly made so that only a "case" that has not obtained the required number of votes in the Division, not "matters" such as motions for reconsideration, may be elevated to and "decided" by the Court *En Banc*. When a "matter" such as a motion for reconsideration does not obtain the required number of votes, it means that the motion for reconsideration must be denied for lack of the necessary votes, not elevated to the Court *En Banc* for resolution. The assailed decision previously rendered by the Division must, therefore, stand. In this Court's own words:

> A careful reading of [Section 4(3), Article VIII of the Constitution], however, reveals the intention of the framers to draw a distinction between cases, on the one hand, and matters, on the other hand, such that *cases* are "decided" while *matters*, which include motions, are "resolved". Otherwise put, the word "decided" must refer to "cases"; while the word "resolved" must refer to "matters", applying the rule *reddendo singula singulis*. This is true not only in the interpretation of the above-quoted [Section 4(3), Article VIII], but also of the other provisions of the Constitution where these words appear.
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> With the aforesaid rule of construction in mind, it is clear that only cases are referred to the Court *en banc* for decision whenever the required number of votes is not obtained. Conversely, the rule does not apply where, as in this case, the required three votes is not obtained in the resolution of a motion for reconsideration. Hence, the second sentence of the aforequoted provision speaks only of "case" and not "matter".[47]

The reason for the rule, said this Court, is "simple."[48] Continued this Court:

> The above-quoted [Article VIII, Section 4(3)] pertains to disposition of cases by a division. If there is a tie in the voting, there is no decision. The only way to dispose of the case is then refer it to the Court *en banc*. On the other hand, if a case has already been decided by the decision and the losing party files a motion for reconsideration, the failure of the division to resolve the motion because of a tie in the voting does not leave the case undecided. There is still the decision which must stand in view of the failure of the members of the division to muster the necessary vote for its reconsideration. Quite plainly, if the voting results in a tie, the motion for reconsideration is lost. The assailed decision is not reconsidered and must therefore be deemed affirmed.[49]

Phil. 142, 147 (1974) [Per J. Aquino, Second Division] and *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 336 (2005) [Per J. Tinga, En Banc].

47 *Fortich v. Corona*, 371 Phil. 672, 679 (1999) [Per J. Ynares-Santiago, Special Second Division].

48 Id.

49 Id. at 679–680.

Voting two-two on the first motion for reconsideration, the Members of the Second Division failed to muster the minimum number of votes required to reconsider the April 24, 1998 Decision in *Fortich*. Therefore, the first motions for reconsideration were deemed denied for failure to obtain the required number of votes, and the case was not elevated *en banc*.[50] The April 24, 1998 Decision in *Fortich*, unanimously voted by the Members of the Second Division, was deemed affirmed.[51]

Fortich highlighted how a decision by any of the Divisions of this Court is a decision of *the* Supreme Court of the Philippines. The Court *En Banc* is not an appellate court to which decisions of a Division of this Court may be appealed.[52] *Fortich*, thus, affirmed Supreme Court Circular No. 2-89 on the Guidelines and Rules in the Referral to the Court *En Banc* of Cases Assigned to a Division, the relevant portions of which provide:

SUPREME COURT CIRCULAR NO. 2-89

SUBJECT : *Guidelines and Rules in the Referral to the Court En Banc of Cases Assigned to a Division*

TO : *Court of Appeals, Sandiganbayan, Court of Tax Appeals, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'A District Courts and Shari'A Circuit Courts, All Members of the Government Prosecution Service, and All Members of the Integrated Bar of the Philippines*

1. The Supreme Court sits either *en banc* or in Divisions of three, five or seven Members (Sec. 4[1] Article VIII, 1987 Constitution). At present the Court has three Divisions of five Members each.

2. A decision or resolution of a Division of the Court, when concurred in by a majority of its Members who actually took part in the deliberations on the issues in a case and voted thereon, and in no case without the concurrence of at least three of such Members, is a decision or resolution of *the* Supreme Court (Section 4[3], Article VIII, 1987 Constitution).

3. The Court *en banc* is not an Appellate Court to which decisions or resolutions of a Division may be appealed.[53]

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50 Id. at 683.
51 Id. at 680.
52 *See Aboitiz Shipping Corporation v. New India Assurance Company, Ltd.*, 557 Phil. 679, 683 (2007) [Per J. Quisumbing, Second Division].
53 SC Circ. No. 2–89 (1989).

Supreme Court Circular No. 2-89 would continue outlining the guidelines for *referring* a Division case to the Court *En Banc*:

> 4. At any time after a Division takes cognizance of a case and before a judgment or resolution therein rendered becomes final and executory, the Division may refer the case en consulta to the Court en banc which, after consideration of the reasons of the Division for such referral, may return the case to the Division or accept the case for decision or resolution.
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> 4a. Paragraph [f] of the Resolution of this Court of 23 February 1984 in Bar Matter No. 209 [formerly item 6, en banc Resolution dated 29 September 1977], enumerating the cases considered as en banc cases, states:
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> "f. Cases assigned to a division including motions for reconsideration which in the opinion of at least three (3) members merit the attention of the Court *en banc* and are acceptable by a majority vote of the actual membership of the Court *en banc*."
>
> 5. A resolution of the Division denying a party's motion for referral to the Court *en banc* of any Division case, shall be final and not appealable to the Court *en banc*.
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> 6. When a decision or resolution is referred by a Division to the Court *en banc*, the latter may, in the absence of sufficiently important reasons, decline to take cognizance of the same, in which case, the decision or resolution shall be returned to the referring Division.
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> 7. No motion for reconsideration of the action of the Court *en banc* declining to take cognizance of a referral by a Division, shall be entertained.[54]

At present, Rule 2, Section 3[55] of the Internal Rules enumerates the cases and matters cognizable by Court *En Banc*:

> Section 3. *Court en banc matters and cases.* – The Court *en banc* shall act on the following matters and cases:
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> (a) cases in which the constitutionality of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;
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> (b) cases raising novel questions of law;
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> (c) cases affecting ambassadors, other public ministers, and consuls;

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54 Id.

55 S. CT. INT. RULES, Rule 2, sec. 3 as amended.

(d) cases involving decisions, resolutions, and resolutions, and orders of the Commission on Elections and the Commission on Audit;

(e) cases where the penalty recommended or to be imposed is the dismissal of a judge, official or personnel of the Judiciary, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;

(f) cases covered by the preceding paragraph involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;

(g) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate courts;

(h) cases where a doctrine or principle laid down by the Court *en banc* or by a Division may be modified or reversed;

(i) cases involving conflicting decisions of two or more divisions;

(j) cases where three votes in a Division cannot be obtained;

(k) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;

(l) subject to Section 11(b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*;

(m) cases that the Court *en banc* deems of sufficient importance to merit its attention; and

(n) all matters involving policy decisions in the administrative supervision of all courts and their personnel.[56]

The Court *En Banc* assumed jurisdiction over this case based on Section 3(m), then Rule 2, Section 3(n) of the Internal Rules.

The enumeration in Rule 2, Section 3 of the Internal Rules on Court *en banc* matters and cases is an "amalgamation of,"[57] hence based, on Supreme Court Circular No. 2-89 as amended by the Resolution dated

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[56] Id.

[57] *Lu v. Lu Ym, Sr. et al.*, 658 Phil. 156, 175 (2011) [Per J. Carpio Morales, En Banc].

November 18, 1993[58] and Resolution dated January 18, 2000 in A.M. No. 99-12-08-SC.[59] The Resolution dated November 18, 1993 is cited as basis for adding "all other cases as the Court *en banc* by a majority of its actual membership may deem of sufficient importance to merit its attention," now found in Rule 2, Section 3(m) of the Internal Rules, in the enumeration of cases cognizable by the *en banc*.[60] The Resolution dated November 18, 1993 wholly provide:

B.M. No. 209[61]

AMENDMENTS TO SECTIONS 15 AND 16, RULE 136 OF THE RULES OF COURT AND OTHER RESOLUTIONS

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Court En Banc dated *November 18, 1993*

"Bar Matter No. 209 – In the Matter of the Amendment and/or Clarification of Various Supreme Court Rules and Resolutions. –

The Court *motu proprio* Resolved to further amend Sections 15 and 16, Rule 136 of the Rules of Court, as well as its Resolution of September 17, 1974 as amended by a Resolution dated February 11, 1975, its Resolution of February 23, 1984, and its Resolution of February 9, 1993, as follows:

Effective immediately and until further action of the Court, all pleadings, briefs, memoranda, motions, and other papers to be filed before the Supreme Court and the Court of Appeals shall either be typewritten on good quality unglazed paper, or mimeographed or printed on newsprint or mimeograph paper, 11 inches in length by 8-1/2 inches in width (commonly known as letter size) or 13 inches in length by 8-1/2 inches in width (commonly known as legal size). There shall be a margin at the top and at the left-hand side of each page not less than 1-1/2 inches in width. The contents shall be written double-spaced and only one side of the page shall be used.

In the Supreme Court, eighteen (18) legible copies of the petition shall be initially be filed, and eighteen (18) copies of subsequent pleadings, briefs, memoranda, motions and other papers shall be filed in cases for consideration of the Court *en banc* and nine (9) copies in cases to be heard before a division.

One (1) copy thereof shall be served upon each of the adverse parties in either case.

For said purpose, the following are considered *en banc* cases:

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58 *Firestone Ceramics, Inc. v. Court of Appeals,* 389 Phil. 810, 816 (2000) [Per J. Purisima, En Banc].
59 *Lu v. Lu Ym, Sr. et al.*, 658 Phil. 156, 175 (2011) [Per J. Carpio Morales, En Banc].
60 *Firestone Ceramics, Inc. v. Court of Appeals,* 389 Phil. 810, 816 (2000) [Per J. Purisima, En Banc].
61 SC Bar Matter No. 209 (1993).

1. Cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, or presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

2. Criminal cases in which the appealed decision imposes the death penalty;

3. Cases raising novel questions of law;

4. Cases affecting ambassadors, other public ministers and consuls;

5. Cases involving decisions, resolutions or orders of the Civil Service Commission, Commission on Elections, and Commission on Audit;

6. Cases where the penalty to be imposed is the dismissal of a judge, officer or employee of the Judiciary, disbarment of a lawyer, or either the suspension of any of them for a period of more than one (1) year or a fine exceeding P10,000.00, or both;

7. Cases where a doctrine or principle laid down by the Court *en banc* or in division may be modified or reversed;

8. Cases assigned to a division which in the opinion of at least three (3) members thereof merit the attention of the Court *en banc* and are acceptable to a majority of the actual membership of the Court *en banc*; and

9. All other cases as the Court *en banc* by a majority of its actual membership may deem of sufficient importance to merit its attention.

In the Court of Appeals, seven (7) legible copies of pleadings, briefs, memoranda, motions and other papers shall be filed and one (1) copy thereof shall be served on each of the adverse parties." (Internal Resolution – Not for release)

Very truly yours,

LUZVIMINDA D. PUNO
Clerk of Court
Supreme Court of the Philippines

By:

(SGD.) MA. LUISA D. VILLARAMA
Assistant Clerk of Court
Supreme Court of the Philippines

As reflected above, the Resolution dated November 18, 1993 amended Bar Matter No. 209 which further amended Rule 136, Sections 15 and 16 of the Rules of Court then in effect, i.e., the 1964 Rules of Court. Rule 136 was entitled "Court Record and General Duties of Clerks and Stenographer" and Sections 15 and 16 dealt with "unprinted papers" and "printed papers." As the Resolution dated November 18, 1993 expressly stated, it amended the Resolution dated February 9, 1993 still on the form of unprinted papers and printed papers.

In issuing the Resolution dated November 18, 1993 to amend a bar matter that dealt with the form of unprinted and printed papers, the Court could not have intended to "lay down new guidelines or rules for referral to the court en banc of cases assigned to a Division."[62] The Resolution dated November 18, 1993 explicitly stated that the enumeration of *en banc* cases is only "for [the] said purpose" of determining the number of copies to file in the Court.

The basis of the supposed residual power[63] of the Court *En Banc* to, *on its own,* take cognizance of Division cases is, therefore, suspect.

Even assuming that the Court intended to amend Supreme Court Circular No. 2-89 through the Resolution dated November 18, 1993, there must be, at the very least, a *consulta* from the Division to which the case was assigned before the Court *En Banc* assumes jurisdiction over the Division case. This is consistent with Article VIII, Section 4(1) of the Constitution: *a decision of the Division is a decision of the Supreme Court.*

Therefore, the current Rule 2, Section 3(m) of the Internal Rules must be read with section 3(l). The Court *En Banc*, on its own, *cannot* take cognizance of a Division case unless at least three (3) Members of the Division to which the case is assigned vote to refer the case to the Court *En Banc*. The Court *En Banc* has no residual power to assume jurisdiction over a Division case just because it deems it "of sufficient importance or interest."

To summarize, a case is considered decided and a decision rendered by the Supreme Court of the Philippines when a majority of the Members of the Division who actually took part in the deliberations on the issues in the case voted to concur in the decision. In no case shall the concurrence be less than three (3). When a Division already rendered a final decision or resolution in a case, the Court *En Banc* cannot set this final decision or

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62 J. Gonzaga-Reyes' Dissenting Opinion in *Firestone Ceramics, Inc. v. Court of Appeals,* 389 Phil. 810, 825 (2000) [Per J. Purisima, En Banc].

63 *Firestone Ceramics, Inc. v. Court of Appeals,* 389 Phil. 810, 818 (2000) [Per J. Purisima, En Banc].

resolution aside, even if it deems the case "of sufficient importance to merit its attention." The Court *En Banc* is not an appellate court to which decisions or resolutions rendered by a Division are appealed. Hence, when a decision or resolution of a Division is already final, the matter of referring the case to the Court *En Banc* must be favorably voted by at least three (3) Members of the Division who actually took part in the deliberations on the issues in the case.

Applying the foregoing here, the Court *En Banc* has no jurisdiction to take cognizance of the present case.

The July 22, 2008 Decision of the Third Division, unanimously voted by the Members of the Third Division, is a Decision of the Supreme Court of the Philippines. The October 2, 2009 Resolution was likewise unanimously voted by the Members of the Special Third Division. The judgment in this case attained finality on November 4, 2009, 15 days from Philippine Airlines' receipt of the October 2, 2009 Resolution denying the motion for reconsideration of the July 22, 2008 Decision.

Philippine Airlines' Second Motion for Reconsideration, the filing of which did not prevent the judgment in this case from attaining finality on November 4, 2009, was likewise unanimously denied by the Members of the Second Division in its September 7, 2011 Resolution. The judgment here having attained finality, the Court *En Banc*—as if an appellate court reviewing a case that the Supreme Court has already reviewed three (3) times—cannot now take cognizance of the case and review it for the fourth time because, suddenly, the case became of sufficient importance to merit the *En Banc*'s attention.

In the October 4, 2011 Resolution issued in A.M. No. 11-10-1-SC, the Court *En Banc* took cognizance of the case supposedly on the ground that the Members of the Second Division that resolved Philippine Airlines' Second Motion for Reconsideration deemed the case appropriate for transfer to the Court *En Banc.*[64] However, despite the meetings called to discuss "the implications of the successive retirements, transfers, and inhibitions"[65] affecting the membership of the Division to resolve Philippine Airlines' Motion to Vacate the September 7, 2011 Resolution that denied the Second Motion for Reconsideration, still, the required mode of referral to the *En Banc* is through a resolution.[66] No resolution by the Second Division can be

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[64] *Rollo,* p. 16. The Court cited as bases Sections 3(m) and (n), now 3(l) and (m) of the Internal Rules of the Supreme Court.

[65] *Ponencia*, p. 24–25.

[66] *See* Sections 3(l) and (m) in relation to section 11 of the Internal Rules of the Supreme Court, thus:

> Section 3. *Court En banc Matters and Cases.* — The Court en banc shall act on the following matters and cases:
>
> . . . .

found in the records of this case. As further declared by the Court *En Banc* in A.M. No. 11-10-1-SC, it "acted on its own"[67] and assumed jurisdiction over this case by recalling the September 7, 2011 Resolution issued by the Second Division. This cannot be done.

To reiterate, the judgment assailed in this case is already final and executory by operation of law. The First Motion for Reconsideration was already denied with finality with the concurrence of all the Members of the Special Third Division of this Court. The Second Motion for Reconsideration, despite the grant of leave to file, was likewise denied by the Second Division. Not being an appellate court in relation to the Divisions, the Court *En Banc* has no authority to recall the Division's September 7, 2011 Resolution, assume jurisdiction over this case, then resolve *anew* Philippine Airlines' Second Motion for Reconsideration.

A.M. No. 11-10-1-SC was a matter docketed as an administrative matter. It could not be another means to resurrect a case. To do so is highly irregular, suspect, and violative of due process of law. To mask this as being in the interest of justice is to mask its intention to rob labor of a case decided three (3) times in its favor.

IV

Further, with the current *ponencia*, this Court will be resolving Philippine Airlines' Second Motion for Reconsideration *for the second time*. The Court *En Banc* effectively admitted a *third* motion for reconsideration *from the same party*, in violation of its own Rules.

In my view, a unanimous vote of this Court sitting *en banc* must be required to grant Philippine Airlines' third motion for reconsideration. Any

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(l) subject to Section 11(b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court en banc;
(m) cases that the Court en banc deems of sufficient important to merit its attention[.]

. . . .

Section 11. *Actions on Cases Referred to the Court En Banc* — The referral of a Division case to the Court *en banc* shall be subject to the following rules:

(a) the resolution of a Division denying a motion for referral to the Court en banc shall be final and shall not be appealable to the Court en banc;
(b) the Court en banc may, in the absence of sufficiently important reasons, decline to take cognizance of a case referred to it and return the case to the Division; and
(c) No motion for reconsideration of a resolution of the Court en banc declining cognizance of a referral by a Division shall be entertained.

[67] *In Re: Letters of Atty. Mendoza re: G.R. No. 178083-FASAP v. PAL, Inc. et al.*, 684 Phil. 55, 92 (2012) [Per J. Brion, En Banc].

vote less than unanimous must lead to a denial with finality of Philippines Airlines' motion.

A third motion for reconsideration is a disrespect to us and our rules of procedure. A third motion for reconsideration stifles the execution of a final and executory judgment of this Court. To truly prohibit the filing of further pleadings after the finality of our judgments, second and subsequent motions for reconsideration must be denied outright or, if they must be acted upon, they should be resolved with a standard stricter than that required in resolving first motions for reconsideration.

It is in this Court's interest to grant third and subsequent motions for reconsideration *only* with a unanimous vote. A unanimous court would debate and deliberate more fully compared with a non-unanimous court because unanimity makes the grant of third and subsequent motions for reconsideration more difficult. Greater debate must be required to allow a motion not sanctioned by our Rules.[68] Unanimity prevents flip-flopping. It will shield this Court from parties who perceive themselves above the justice system.

There is no violation of due process[69] in requiring a unanimous vote instead of the majority vote required under the Constitution[70] or the two-

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[68] *See* J. Douglas' Dissenting Opinion in *Johnson v. Louisiana*, 406 U.S. 356, 383 (1972) [Per J. White, United States Supreme Court]. The issue in *Johnson* was whether a less than unanimous vote of the jury is sufficient to convict an accused under the Sixth Amendment. The United States Supreme Court ruled in the affirmative with Justice Douglas, among other Justices, dissenting. Justice Douglas was of the view that unanimity should be required for convictions because they involve the right to liberty the deprivation of which should be based on the same strict standard required for depriving the right to property, i.e., unanimous vote of a jury. Justice Douglas explained the reasons why a mere plurality vote "diminishes the reliability of a jury":

> The plurality approves a procedure which diminishes the reliability of a jury. First, it eliminates the circumstances in which a minority of jurors (a) could have rationally persuaded the entire jury to acquit, or (b) while unable to persuade the majority to acquit, nonetheless could have convinced them to convict only a lesser included offense. Second, it permits prosecutors in Oregon and Louisiana to enjoy a conviction-acquittal ratio substantially greater than that ordinarily returned by unanimous juries.
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> The diminution of verdict reliability flows from the fact that nonunaninmous juries need not debate and deliberate as fully as must unanimous juries. As soon as the requisite majority is attained, further consideration is not required either by Oregon or by Louisiana, even though the dissident jurors might, if given the chance, be able to convince the majority. . . .

Although *Johnson* involved jury voting, this Court, like a jury, is a collegial body that decides collectively through the votes of its Members. Therefore, the advantages and disadvantages of different electoral systems, such as plurarity or majoritarian systems, must equally apply to a collegial body such as this Court.

[69] CONST., art. III, sec. 1 provides:
Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[70] CONST., art. VIII, sec. 4(2) provides:
Section 4.
. . . .

thirds (2/3) vote required under our Internal Rules.[71] A third motion for reconsideration is not a remedy under our existing rules of procedure. Under law or equity, a party has no vested right to file, much more, to a grant of a third or any subsequent motion for reconsideration by a mere majority vote.[72] Then, applying *Fortich* by analogy, a third motion for reconsideration that fails to muster a unanimous vote must be deemed denied. The decision, the resolution on the first motion for reconsideration, and the resolution on the second motion for reconsideration must be deemed affirmed.

The Chief Justice is on leave while Justices Carpio, Velasco, Jr., Leonardo-de Castro, and Del Castillo inhibited themselves from participating in the deliberations and voting in this case. This leaves ten (10) Justices to deliberate and vote *anew* on Philippine Airlines' Second Motion for Reconsideration. It is in this Court's interest to require ten (10) votes to grant Philippine Airlines' second, *effectively its third*, motion for reconsideration. Any less than a unanimous vote will erode the reliability and credibility of this Court.

V

Even on the merits, this case is not of sufficient importance to have merited the Court *En Banc*'s attention. There is no "higher interest of justice" to be satisfied in resolving Philippine Airlines' Second Motion for Reconsideration *for the second time*.

The then Article 283[73] of the Labor Code on retrenchment provides:

> Article 283. *Closure of Establishment and Reduction of Personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures

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(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

71 INTERNAL RULES OF THE SUPREME COURT, Rule 15, sec. 3.

72 *Concepcion v. Garcia*, 54 Phil. 81, 83 (1929) [Per J. Street, En Banc].

73 Now Article 289 of the Labor Code pursuant to Presidential Decree No. 442 (2015).

> or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

In contrast with the "just causes" for terminating employment brought about by an employee's acts, "authorized causes" such as retrenchment are undertaken by the employer. Retrenchment or *"lay-off"* is the cessation of employment commenced by the employer, devoid of any fault on the part of the workers and without prejudice to them.[74] It is "resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation."[75]

Since retrenchment is commenced by the employer, the burden of proving that the termination was founded on an authorized cause necessarily rests with the employer.[76] The employer has the duty to clearly and satisfactorily prove the elements of a valid retrenchment, which, as established in *Lopez Sugar Corp. v. Federation of Free Workers*,[77] are the following:

> Firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the *bonafide* nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means – e.g., reduction of both management and rank-

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74 *Polymart Paper Industries, Inc. v. National Labor Relations Commission,* 355 Phil. 592, 599 (1998) [Per J. Martinez, Second Division].

75 Id.

76 *See Sanoh Fulton Phils., Inc. v. Bernardo,* 716 Phil. 378 (2013) [Per J. Perez, Second Division].

77 267 Phil. 212 (1990) [Per J. Feliciano, Third Division].

> and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. – have been tried and found wanting.
>
> Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.[78] (Underscoring provided)

These "four standards of retrenchment"[79]—that the losses be substantial and not *de minimis*; that the substantial loss be imminent; that the retrenchment be reasonably necessary and would likely and effectively prevent the substantial loss; and that the loss, if already incurred, be proved by sufficient and convincing evidence—are reiterated in *Central Azucarera De La Carlota v. National Labor Relations Commission*,[80] *Polymart Paper Industries, Inc. v. National Labor Relations Commission*,[81] *F.F. Marine Corp. v. National Labor Relations Commission*,[82] and *Philippine Airlines, Inc. v. Dawal*.[83]

It is doctrine that the employer proves substantial losses by offering in evidence audited financial statements showing that it has been operating at a loss for a period of time sufficient for the employer "to [have] perceived objectively and in good faith"[84] that the business' financial standing is unlikely to improve in the future. "No evidence can best attest to a company['s] economic status other than its financial statement"[85] because "[t]he audit of financial reports by independent external auditors are strictly governed by the national and international standards and regulations for the accounting profession."[86] Auditing of financial statements prevents "manipulation of the figures . . . to suit the company's needs."[87]

In *LVN Pictures Employees and Workers Association (NLU) v. LVN Pictures, Inc.*,[88] decided in 1970, respondent corporation presented financial statements to prove a progressive pattern of loss from 1957 to 1961. By the

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78 Id. at 221–222.

79 *Central Azucarera De La Carlota v. National Labor Relations Commission,* 321 Phil. 989, 995 (1995) [Per J. Kapunan, First Division].

80 321 Phil. 989, 996 (1995) [Per J. Kapunan, First Division].

81 355 Phil. 592, 600–601 (1998) [Per J. Martinez, Second Division].

82 495 Phil. 140, 152–153 (2005) [Per J. Tinga, Second Division].

83 G.R. Nos. 173921 & 173952, February 24, 2016 [Per J. Leonen, Second Division].

84 *Philippine Tobacco Flue-Curing & Redrying Corp. v. NLRC,* 360 Phil. 218, 236–237 (1998) [Per J. Panganiban, First Division], *citing Somerville Stainless Steel Corporation v. NLRC*, 350 Phil. 859, 869 (1998) [Per J. Panganiban, First Division].

85 *Manatad v. Philippine Telegraph and Telephone Corp.,* 571 Phil. 494, 508 (2008) [Per J. Chico-Nazario, Third Division].

86 *Hyatt Enterprises of the Philippines, Inc. v. Samahan ng Mga Manggagawa sa Hyatt*, 606 Phil. 490, 507 (2009) [Per J. Nachura, Third Division].

87 Id. at 510

88 146 Phil. 153 (1970) [Per J. Ruiz Castro, En Banc].

time the corporation ceased from doing business, it incurred an aggregate loss of ₱1,560,985.14. This Court held that LVN had suffered serious business losses.[89]

In *North Davao Mining Corporation v. NLRC*,[90] decided in 1996, petitioner corporation presented financial statements to prove a progressive pattern of loss from 1988 until its closure in 1992. The company suffered net losses averaging ₱3,000,000,000.00 a year, with an aggregate loss of ₱20,000,000,000.00 by the time of its closure. This Court held that North Davao experienced serious business losses.[91]

In *Manatad v. Philippine Telegraph and Telephone Corporation*,[92] decided in 2008, respondent corporation presented financial statements proving a progressive pattern of loss from 1995 to 1999. By the year 2000, the corporation had already incurred an aggregate loss of ₱2,169,000,000.00, constraining it to retrench some of its workers. This Court held that the employer was "fully justified in implementing a retrenchment program since it was undergoing business reverses, not only for a single fiscal year, but for several years prior to and even after the program."[93]

Unlike the employers in *LVN Pictures Employees and Workers Association*, *North Davao Mining Corporation,* and *Manatad,* Philippine Airlines plainly and miserably failed to discharge its burden of proving that it had suffered substantial losses for a period of time sufficient for it to have perceived objectively and in good faith that its business standing would unlikely improve in the future. Philippine Airlines did not submit any audited financial statements before the Labor Arbiter.[94] The belatedly[95] submitted audited financial statements for the years 2002 to 2004, copies of which were annexed to Philippine Airlines' Comment on FASAP's Petition for Certiorari before the Court of Appeals, are irrelevant because they do not cover the years leading to Philippine Airlines' supposedly dire financial situation in 1998. The financial statement for the year ending March 1998 attached to Philippine Airlines' First Motion for Reconsideration before this Court was, again, belatedly filed and cannot be accepted on appeal.[96]

That FASAP failed to question Philippine Airlines' financial status during the retrenchment and in its pleadings before the Labor Arbiter, National Labor Relations Commission, and the Court of Appeals[97] does not

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89 Id. at 157 and 166.
90 325 Phil. 202 (1996) [Per J. Panganiban, En Banc].
91 Id. at 212.
92 571 Phil. 494 (2008) [Per J. Chico-Nazario, Third Division].
93 Id. at 509.
94 *Rollo* (G.R. No. 178083), p. 1534, Decision dated July 22, 2008.
95 Id. at 1537.
96 Id. at 2046, Resolution dated October 2, 2009.
97 Id. at 1552–1553, Motion for Reconsideration of July 22, 2008 Decision.

excuse Philippine Airlines' failure to present the relevant financial statements. Regardless of FASAP's supposed recognition of Philippine Airlines' grave financial condition as Justice Caguioa outlined in his Concurring Opinion,[98] the members of FASAP have no professional training to determine their employer's financial standing. *The burden is not on them to prove that Philippine Airlines was suffering from legitimate business reverses warranting retrenchment.*

Further, contrary to Philippine Airlines'[99] and Justice Caguioa's[100] points of view, this Court did not take judicial notice of Philippine Airlines' supposedly dire financial status in *Garcia v. Philippine Airlines, Inc.*,[101] *Philippine Airlines v. Kurangking*,[102] *Philippine Airlines v. PALEA*,[103] *Philippine Airlines v. NLRC*[104] and *Philippine Airlines, Inc. v. Zamora.*[105] In these cases, the courts merely recognized that Philippine Airlines was under corporate rehabilitation leading to the suspension of proceedings involving money claims against it.

Justice Caguioa cites *Clarion Printing House, Inc. v. National Labor Relations Commission*[106] where this Court considered the company's receivership status as proof of losses. The present case, however, is different from *Clarion*. For one, the employer in *Clarion* presented evidence before the Labor Arbiter and National Labor Relations Commission that it was placed under receivership, further proving its sustained business losses.[107] The company in *Clarion* was even liquidated and dissolved.[108] The employer in *Clarion* did not engage in any act that negated its claim of serious business losses as a ground for retrenchment. Therefore, the fact that it was on receivership sufficed to substantiate its claim of business reverses.

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98 J. Caguioa's *Concurring Opinion*, p. 10, *citing Alfelor v. Halasan*, 520 Phil. 982 (2006) [Per J. Callejo, Sr., First Division].

99 See *Rollo* (G.R. No. 178083), p. 2240, PAL's Second MR

100 Justice Caguioa's *Concurring Opinion*, p. 13.

101 558 Phil. 328 (2007) [Per J. Quisumbing, Second Division]. This Court ruled that Philippine Airlines was justified in not reinstating the employees pending the appeal before the NLRC due to the fact that it was under corporate rehabilitation.

102 438 Phil. 375 (2002) [Per J. Vitug, First Division]. The money claims for the missing luggage of respondent Spouses Kurangking and Spouses Dianalan were held to be "a financial demand that the law requires to be suspended during rehabilitation proceedings."

103 552 Phil. 118 (2007) [Per J. Chico-Nazario, Third Division]. This Court suspended the proceedings involving the award of 13th month pay to PALEA members because PAL was under corporate rehabilitation.

104 648 Phil. 238 (2010) [Per J. Leonardo-De Castro, First Division]. The proceedings involving the dismissal of respondent Quijano and her claim for separation pay was suspended because PAL was under corporate rehabilitation.

105 543 Phil. 546 (2007) [Per J. Chico-Nazario, Third Division]. The proceedings involving the dismissal of respondent Zamora and his money claims was suspended because PAL was under corporate rehabilitation.

106 500 Phil. 61 (2005) [Per J. Carpio Morales, Third Division].

107 Id. at 69.

108 Id. at 80.

In this case, however, Philippine Airlines only made a "litany of woes"[109] before the Labor Arbiter and National Labor Relations Commission "without offering any evidence to show that [those woes] translated into specific and substantial losses."[110] Philippine Airlines even submitted a "stand-alone" rehabilitation plan to the Securities and Exchange Commission, undertaking recovery on its own, and thus, belying its claim of dire financial condition.[111] Philippine Airlines eventually exited rehabilitation.[112] *Clarion*, therefore, has no application in this case.

Contrary to *Emco Plywood Corp. v. Abelgas*,[113] Philippine Airlines did not even prove that retrenching its employees was the only remaining way to lessen its purported business losses. Though not explicitly required under the Labor Code as pointed out by Philippines Airlines,[114] retrenchment must and should remain a means of *last resort* of terminating employment,[115] consistent with the constitutional policy of full protection to labor.[116] An employee dismissed, even for an authorized cause, loses his or her means of livelihood.[117] Therefore, employers must show that they utilized other less drastic measures that proved ineffective for their business to financially recover.[118] The July 22, 2008 Decision underscored that there was no evidence on record confirming that Philippine Airlines resorted in cost-cutting measures apart from lessening its fleet and the retrenchment of its employees.[119] This Court said:

> The only manifestation of PAL's attempt at exhausting other possible measures besides retrenchment was when it conducted negotiations and consultations with FASAP which, however, ended

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109 *FASAP v. PAL,* 581 Phil. 228, 258 (2008) [Per J. Carpio Morales, Third Division].
110 Id.
111 Id. at 262.
112 Id. at 245.
113 471 Phil. 460, 476 (2004) [Per J. Panganiban, First Division].
114 *Rollo* (G.R. No. 178083), p. 2281.
115 *Emco Plywood Corp. v. Abelgas,* 471 Phil. 460, 476 (2004) [Per J. Panganiban, First Division]
116 CONST., art., XIII, sec. 3 provides:
Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.
117 *Bataan Shipyard and Engineering Co., Inc. v. National Labor Relations Commission,* 244 Phil. 280, 284 (1988) [Per J. Gancayco, First Division]
118 *Emco Plywood Corp. v. Abelgas,* 471 Phil. 460, 476 (2004) [Per J. Panganiban, First Division]
119 *Rollo* (G.R. No. 178083), p. 1536, Decision dated July 22, 2008.

> nowhere. None of the plans and suggestions taken up during the meetings was implemented. On the other hand, PAL's September 4, 1998 offer of shares of stock to its employees was adopted belatedly, or only after its more than 1, 4000 cabin crew personnel were retrenched. Besides, this offer can hardly be considered to be borne of good faith, considering that it was premised on the condition that, if accepted, all existing CBA's between PAL and its employees would have to be suspended for 10 years. When the offer was rejected by the employees, PAL ceased its operations on September 23, 1998. It only resumed business when the CBA's suspension clause was ratified by the employees in a referendum subsequently conducted. Moreover, this stock distribution scheme does not do away with PAL's expenditures or liabilities, since it has for its sole consideration the commitment to suspend CBAs with its employees for 10 years. It did not improve the financial standing of PAL, nor did it result in corporate savings, *vis-a-vis* the financial difficulties it was suffering at that time.[120] (Emphasis provided)

Although, as pointed out by Justice Caguioa, an employer may resort to retrenchment on the basis of *anticipated* losses,[121] the employer must nevertheless present convincing evidence which, as jurisprudentially established, consists of the audited financial statements. Here, there was no basis for Philippine Airlines to claim that it was financially crippled by the 1997 Asian financial crisis and the massive strikes staged by its workers.[122] Assuming that Philippine Airlines sustained business losses due to the 1997 Asian financial crisis, it should have nevertheless corroborated its claim by showing how this occurrence affected its financial status. To readily accept this assertion, as stated in the *ponencia*,[123] provides a dangerous precedent. "Any employer desirous of ridding itself of its employees could . . . easily do so without need to adduce proof in support of its action."[124] Security of tenure is a constitutionally mandated right. It should not be "denied on the basis of mere speculation."[125]

That Philippine Airlines was placed under receivership did not excuse it from submitting to the labor authorities copies of its audited financial statements to prove the urgency, necessity, and extent of its retrenchment program."[126] "Employees almost always have no possession of the

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120 Id.

121 J. Caguioa's Concurring Opinion, p. 12, *citing Blue Eagle Management v. Naval*, G.R. No. 192488, April 19, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/192488.pdf> [Per J. Leonardo-De Castro, First Division].

122 *Rollo* (G.R. No. 178083), p. 1557, Motion for Reconsideration of July 22, 2008 Decision.

123 *Ponencia* as of July 28, 2017, p. 25 states:
Besides, we take notice of the fact that airline operations are capital intensive earnings are volatile because of their vulnerability to economic recession, among others. The Asian financial crisis in 1997 had wrought havoc among the Asian air carriers, PAL included. The peculiarities existing in the airlines business made it easier to believe that at the time of the Asian Financial crisis, PAL incurred liabilities amounting to ₱ 90,642, 933,919.00, which were way beyond the value of its assets that only stood at ₱85,109,075, 351.

124 *Indino v. National Labor Relations Commission,* 258 Phil. 792, 800 (1989) [Per J. Sarmiento, Second Division].

125 Id.

126 *Rollo* (G.R. No. 178083), p. 1535, Decision dated July 22, 2008.

company's financial statements."[127] Hence, it is the "companies such as [Philippine Airlines] [that] are required by law to file their audited financial statements before the Bureau of Internal Revenue or the Securities and Exchange Commission."[128] Considering that Philippine Airlines had the "heavy burden of proving the validity of retrenchment" and the immediate access to its own documents,[129] it should have presented the audited financial statements as to put to rest any doubt on the stated reason behind the disputed retrenchment.

I do not share the view that "to require a distressed corporation placed under rehabilitation or receivership to still submit its audited financial statements may become unnecessary or superfluous."[130] To dispense with the audited financial statements and immediately accept sheer assertions of business losses is far from the stringent substantiation requirement mandated to employers by law and jurisprudence.

It is undisputed that Philippine Airlines initially executed Plan 14 to lessen its operating losses "in the exercise of its management prerogative and sound business judgment."[131] From formerly flying 54 planes in its fleet, it then operated with 14 planes to save itself from a total breakdown.[132] Consequently, it had to allegedly reduce its manpower causing the retrenchment of 5,000 employees which included the 1,400 cabin crews who were also members of FASAP.[133]

Subsequently, however, Philippine Airlines admittedly abandoned Plan 14 and implemented Plan 22 after it had experienced "a degree of relief as a result of the suspension of payment and rehabilitation proceedings in the [Securities and Exchange Commission] and the suspension of the [Collective Bargaining Agreement]."[134] Allegedly, the choice of abandoning Plan 14 was a "business judgment . . . made in good faith and upon the advice of foreign airline industry experts."[135]

I disagree.

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[127] *Philippine Airlines, Inc. v. Dawal,* G.R. Nos. 173921 & 173952, February 24, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/173921.pdf> 21 [Per J. Leonen, Second Division]

[128] Id. at 22.

[129] Id. at 23.

[130] *Ponencia* as of July 28, 2017, p. 27.

[131] *Rollo* (G.R. No. 178083), p. 1569, Motion for Reconsideration of July 22, 2008 Decision.

[132] Id.

[133] Id.

[134] Id. at 1571–1572.
When PAL ceased its operations on September 23, 1998, President Joseph Estrada intervened through the request of PAL employees. PALEA made another offer which was ratified by the employees on October 2, 1998 and consequently accepted by PAL. On October 7, 1998, PAL partially began with domestic operation hoping "that the mutually beneficial terms of the suspension of the agreement could possibly redeem PAL."

[135] Id. at 1572.

Implementing and executing Plan 22, when Plan 14 was already made known to the employees of Philippine Airlines, constitutes bad faith retrenchment.[136] The illegal retrenchment program was founded on a *wrong premise.* The supposed implementation of Plan 14, which subsequently turned out to be Plan 22, caused the retrenchment of more workers than what was necessary.[137] As this Court observed:

> [Philippine Airlines] offered no satisfactory explanation why it abandoned Plan 14; instead, it justified its actions of subsequently recalling to duty retrenched employees by making it appear that it was a show of good faith; that it was due to its good corporate nature, that the decision to consider recalling employees was made. The truth, however, is that it was unfair for PAL to have made such a move; it was capricious and arbitrary, considering that several thousand employees who had long been working with PAL had lost their jobs, only to be recalled but assigned to lower positions (i.e. demoted), and worse, some as new hires, without due regard for their long years of service with the airline.
>
> The irregularity of PAL's implementation of Plan 14 becomes more apparent when it rehired 140 probationary cabin attendants whose services it had previously terminated, and yet proceeded to terminate the services of its permanent cabin crew personnel.[138] (Emphasis provided)

Additionally, the retrenchment program was based on *unreasonable standards* without any regard to each cabin crew's corresponding service record, thus discounting "seniority and loyalty in the evaluation of overall employee performance."[139]

There is no question that employers have the management prerogative to resort to retrenchment in times of legitimate business reverses. However, the "*right to retrench*" must be differentiated from the "*actual retrenchment program.*"[140] The manner and exercise of this privilege "must be made without abuse of discretion" and must not be "oppressive and abusive since it affects one's person and property."[141]

Philippine Airlines' failure to strictly comply with the substantive requirements of a valid retrenchment casts doubt on the true reason behind it. "[T]hat a retrenchment is anchored on serious, actual, and real losses or reverses is to say that [it was] done in good faith and not merely as a veneer to disguise the illicit termination of employees. Equally significant is an

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136 Id. at 1540, Decision dated July 22, 2008.
137 Id. at 1544.
138 Id. at 1540–1541.
139 Id. at 513, Labor Arbiter's Decision.
140 Id. at 1539, Decision dated July 22, 2008.
141 *Remerco Garments Manufacturing v. Minister of Labor and Employment,* 219 Phil. 681, 689 (1985) [Per J. Cuevas, Second Division].

employer's basis for determining who among its employees shall be retrenched."[142]

That the retrenchment affected ten (10) out of twelve (12) FASAP officers—seven (7) of them were dismissed while three (3) were demoted[143]—appears to be more than merely coincidental. As observed by the Labor Arbiter, the dismissal of the FASAP officers "virtually busted [FASAP] and rendered [it] ineffective to conduct its affairs."[144] This constitutes unfair labor practice by interfering with, restraining, or coercing employees in the exercise of their right to self-organization.[145]

Philippine Airlines having exercised its right to retrench in bad faith, the quitclaims executed by the retrenched employees should be set aside. The reason for retrenchment was not "sufficiently and convincingly established."[146] The quitclaims should be deemed involuntarily entered into, with the employees' consent obtained through fraud or mistake.[147]

This Court is aware of the corporate sector's important function in our "country's economic and social progress."[148] Embedded in its business success "is the ethos of business autonomy which allows freedom of business determination with minimal government intrusion to ensure economic independence and development in terms defined by businessmen."[149] Management choices, however, cannot be an unrestrained privilege which can outweigh the constitutionally mandated protection given to labor.[150] Employment is one's way of livelihood.[151] One "cannot be deprived of his labor or work without due process of law."[152]

VI

Third motions for reconsideration must not be favored for they go against the public policy of immutability of final judgments. Final judgments must remain unalterable, regardless of perceived errors,[153] for

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142 *Am-Phil Food Concepts, Inc. v. Padilla*, 744 Phil. 674, 690 (2014) [Per J. Leonen, Second Division]
143 *Rollo*, G.R. No. 178083, p. 510, Labor Arbiter's Decision.
144 Id.
145 LABOR CODE, art. 248(a) (renumbered as art. 258). *See Lopez Sugar Corp. v. Franco*, 497 Phil. 806 (2005) [Per J. Callejo, Sr., Second Division]
146 *F.F. Marine Corp. v. National Labor Relations Commission*, 495 Phil. 140, 158 (2005) [Per J. Tinga, Second Division]
147 Id.
148 Id. at 151.
149 Id.
150 Id.
151 *Bataan Shipyard and Engineering Co., Inc. v. National Labor Relations Commission*, 244 Phil. 280, 284 (1988) [Per J. Gancayco, First Division]
152 Id.
153 *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251, 288 (2010) [Per J. Brion, En Banc].

reasons of economy and stability. Litigation must end at some point and prevailing parties should be allowed to enjoy the fruits of their victory.[154]

The actions of the majority of this Court *En Banc* in a separate administrative matter, reviving a second motion for reconsideration already decided upon and reversing a decision decided in favor of the union three (3) times, creates an ominous cloud that will besmirch our legitimacy. The majority has created an exception to our canonical rules on immutability of judgments.

It is certainly not justice that this Court has done.

For these reasons, I dissent.

ACCORDINGLY, I vote to:

(a) **DENY WITH FINALITY** Philippine Airlines, Inc.'s Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008;

(b) **GRANT** the Flight Attendants and Stewards Association of the Philippines' Motion for Reconsideration dated October 17, 2011 and **REINSTATE** the Second Division's Resolution dated September 7, 2011; and

(c) **AFFIRM** this Court's Decision dated July 22, 2008 and Resolution dated October 2, 2009.

MARVIC M.V.F. LEONEN
Associate Justice

[154] *See Sacdalan v. Court of Appeals*, 472 Phil. 652 (2004) [Per J. Austria-Martinez, Second Division].