Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FERNANDO C. GOSOSO,
Petitioner,

-versus-

LEYTE LUMBER YARD AND HARDWARE, INC., and RUBEN L. YU,
Respondents.**

G.R. No. 205257

Present:

LEONEN, *J.*,
Chairperson,
HERNANDO,
CARANDANG,*
INTING, and
ROSARIO, *JJ.*

Promulgated:

January 13, 2021
Mis-DCB-tt

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the February 29, 2012 Decision[2] and December 19, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 05183.

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* Designated as additional Member per raffle dated December 21, 2020 vice *J.* Delos Santos who recused himself for having penned the assailed Resolution of the Court of Appeals.

** The Court of Appeals was dropped as party-respondent pursuant to Section 4, Rule 45 of the Rules of Court.

1 *Rollo*, pp. 9-29.

2 Id. at 30-38; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Abraham B. Boreta.

3 Id. at 39-41; penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court) and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn Lagura-Yap.

The CA reversed the rulings of the National Labor Relations Commission (NLRC) against Leyte Lumber Yard, Inc. (Leyte Lumber) and Ruben L. Yu (Yu; collectively, respondents) and reinstated the findings of the Labor Arbiter dismissing petitioner Fernando C. Gososo (Gososo)'s illegal dismissal complaint.

The Facts:

Leyte Lumber, a construction supply and hardware store, hired Gososo as a sales representative. Yu was Leyte Lumber's general manager. Gososo worked from Mondays to Saturdays from 7:00 A.M. to 5:00 P.M., and received a daily salary of ₱220.00.[4]

As a company policy, Leyte Lumber's sales representatives were prohibited from getting items or stocks from the storage area by themselves. They were to course the orders through authorized checkers before the items are released. They were also prohibited from leaving their designated work areas without their superior's consent. Moreover, they were required to submit their applications for leave days before the intended dates to allow the management ample time to approve the application and to adjust the workforce and their workload.

Gososo allegedly overstepped the boundaries of Leyte Lumber's company policies. On October 6, 2008, he was on his way to the stock room to follow up on a customer's urgent order when Yu stopped him. The next day, Yu saw Gososo step out of the store to check the availability of a ball caster having a customer's specifications in the storage area.[5]

Yu required Gososo to produce a letter of apology for the two incidents under pain of dismissal. Admitting fault, Gososo submitted a letter of apology to Yu on October 8, 2008.[6] He reasoned that he was just doing his job for the company's clients and that he never intended to neglect his duties or disobey the company policy. Yu allegedly refused to accept the letter of apology and instructed Gososo to write further in his letter the words "I am not supposed to approach the checker" and "I promise again to ask permission from manager before I can go out."[7] On October 9, 2008, Gososo submitted the revised letter of apology to Yu,[8] who told him to come back the next day.

When he returned to work on October 11, 2008, Yu allegedly told Gososo to sign a prepared document. Gososo declined since the document contained admissions of offenses that he did not commit. Irked by Gososo's refusal, Yu informed him of his termination from work. Yu allegedly even threw a pair of scissors at Gososo but missed.

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4 Id. at 112.
5 Id. at 113.
6 CA *rollo*, p. 125.
7 Id.
8 Id. at 66.

Aggrieved, Gososo filed on October 13, 2008 a Complaint for illegal constructive dismissal against respondents,[9] non-payment of salary, overtime pay, premium pay for holiday and rest day allowance, vacation and sick leave pay, separation pay, moral damages, and attorney's fees.

In their *Position Paper*, respondents posited that Gososo failed to ensure the integrity of transactions and secure company stocks. A security guard of the company attested that on October 7, 2008, she saw Gososo leave his designated work area.[10] On October 10, 2008, Gososo submitted a letter admitting to his transgressions. On the same day, respondents issued him a Memorandum[11] reminding him of the company policies he violated, with a warning that further violations shall merit dismissal from work. The Memorandum dated October 10, 2008 stated in full:

> Mr. Gososo:
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> This pertains to your behavior on October 06, 2008 towards your work without considering the policy of the company.
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> As a sales representative, you must follow the guidelines set by your superior in assisting customers or clients. Previously you were instructed not to get the items by yourself, the receipt must be forwarded to authorize checker [*sic*] for the release of said goods because they already knew by whom they will give for getting the items but instances like yours it did not happened [*sic*] because you did not follow this rule.
>
> In addition to this, there are also situations that you did not ask permission from the authorized persons if you will be coming out of the store in assisting your clients. You must always have the consent of your superior for compliance of the policy.
>
> This served [*sic*] as your last and final warning. Any misdeed action in the future will cause dismissal from work.[12]

Gososo refused to acknowledge receipt of the above Memorandum.[13] Respondents confirmed that Gososo was reprimanded on October 10, 2008 for violating standard operating procedures and established company policies. On even date, respondents claimed that Gososo filed a leave of absence for October 11, 2008[14] purportedly to attend his son's graduation, in disregard of the rule that leaves of absence must be filed and approved days before the actual date of leave.

According to respondents, Gososo did go on an unapproved leave on October 11, 2008 and even allegedly extended his absence. These prompted

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[9] Id. at 134.
[10] Id. at 65.
[11] Id. at 64.
[12] Id.
[13] Id.
[14] Id. at 64.

respondents to issue Gososo another Memorandum on October 13, 2008 wherein they requested him to report back to work, otherwise he will be considered to have abandoned his work. The October 13, 2008 Memorandum reads:

> Mr. Gososo:
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> This pertains to your leave on October 11, 2008 wherein you proceed to absent until this day without any clarifications of your leave form. You did not follow the required number of days before submitting the said leave form in order to meet the pre-requisite for approval.
>
> In connection also to your memo dated October 10, 2008, you refused to admit that you violate some policy of the company that in the first place you have a letter apologizing [for] what you have done. Stated therein was only a final warning in order for you not to do it again not to terminate but still insisted to bring it outside [*sic*]. The company did not allow that kind of act because we already give that memo to you and we see to it that you have read and understood.
>
> In regard to this, you are hereby requested to report to the office regarding this matter upon receipt of this letter or else we will consider that you abandoned already your work.[13]

Gososo, however, did not report back to work.[14]

Ruling of the Executive Labor Arbiter (Arbiter):

In ruling in favor of the respondents, the Arbiter opined that from the very start, Gososo had no intention of keeping his position and had overtly planned to leave his employment since he can no longer endure the "tyrannical management" by Yu. Gososo could not have been dismissed by respondents or become a target of a pair of scissors thrown by Yu on October 11, 2008 simply because he was not around, having continued on his unapproved leave to attend his son's graduation. In his April 7, 2009 Decision,[15] the Arbiter disposed of Gososo's complaint in this manner:

> **WHEREFORE**, this case is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED**.[16]

Gososo went up to the NLRC on appeal.

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[13] Id. at 46; Decision of the Executive Labor Arbiter.
[14] Id. at 58-63, Position Paper of Respondent.
[15] Id. at 40-48; penned by Executive Labor Arbiter Jesselito B. Latoja.
[16] Id. at 48.

Ruling of the NLRC:

Interpreting all the prevailing circumstances in Gososo's favor, the NLRC reversed the ruling of the Arbiter and found him to have been illegally dismissed by respondents. It pointed out that Yu terminated Gososo from employment and that the latter took immediate steps to protest his lay-off, facts which negate any claim of abandonment against Gososo. The labor tribunal also granted Gososo's monetary claims. The NLRC so ruled in its August 28, 2009 Decision:[17]

> **WHEREFORE**, premises considered, the decision of Executive Labor Arbiter Jesselito B. Latoja is hereby REVERSED and SET ASIDE. A NEW Decision is entered declaring the illegal dismissal of complainant.
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> Respondents Leyte Lumber Yard, Inc. and Ruben Yu are hereby ordered to pay complainant, jointly and severally the following:
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> 1. Backwages ----------₱ 61,013.33
> 2. Separation Pay ---------- ₱102,960.00
> 3. Moral Damages ---------- ₱ 20,000.00
> 4. Exemplary Damages ---------- ₱ 20,000.00
>
> ₱203,973.33
>
> 5. Attorney's Fee ---------- ₱ 20,397.33
>
> T o t a l ---------- ₱224,370.66
>
> **SO ORDERED.**[18]

As the NLRC denied[19] respondents' Motion for Reconsideration, they filed a Petition for *Certiorari*[20] under Rule 65 with the CA questioning the NLRC's dispositions.

Ruling of the CA:

The appellate court overturned the ruling of the labor tribunal and reinstated the Decision of the Labor Arbiter dismissing the labor complaint. It held that Gososo's claim of illegal dismissal was supported only by his bare and self-serving allegations. There was likewise no evidence that Gososo was dismissed in the first place. Adopting a substantial portion of the Arbiter's Decision, the CA ruled in this wise:

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17 *Rollo*, pp. 43-56; penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Violeta Ortiz-Bantug.

18 Id. at 55-56.

19 Id. at 58-59; per February 26, 2010 NLRC Resolution, penned by Commissioner Aurelio D. Menzon and concurred in by Commissioners Julie C. Rendoque and Violeta Ortiz-Bantug.

20 CA *rollo*, pp. 3-24.

> **WHEREFORE**, the petition for *certiorari* is **GRANTED**. The Decision dated August 28, 2009 and the Resolution dated February 26, 2010 of the National Labor Relations Commission (NLRC), Fourth Division, Cebu City, in NLRC VAC-05-000707-09, are **ANNULLED** and **SET ASIDE**. The Decision dated April 7, 2009 of Labor Arbiter Jesselito B. Latoja in NLRC Case No. RAB VIII 10-00316-08, dismissing the case for lack of merit, is **REINSTATED**.
>
> **SO ORDERED**.[21]

The CA did not reconsider its Decision.[22] Gososo now appeals to this Court.

Petitioner's Arguments:[23]

Gososo disputes the CA's reliance on the Arbiter's conclusion that he abandoned his work on October 11, 2008. According to petitioner, it was incorrect to assume that he persisted in not reporting for work on that date even if his leave application was not approved. He maintains that in the morning of October 11, 2008, respondent Yu insisted that he sign a Memorandum setting out acts that he did not commit, and when he refused to do so, respondent Yu fired him from his post. From that point on, there was no need to follow up the approval or non-approval of his application for leave. He knew he had no job to return to. He did attend his son's graduation in the late afternoon of the same day of October 11, 2008, and filed the complaint for illegal dismissal on the next working day or on October 13, 2008.

Petitioner also insists that the appellate court should have considered his immediate filing of the illegal dismissal complaint to have negated the charge of abandonment. Respondents had the burden of proof to show a deliberate and unjustified refusal on petitioner's part to resume his employment without any intention of returning. This, according to petitioner, respondents failed to discharge. His going on an unauthorized leave is not tantamount to abandonment of work. Besides, he reported for work on October 11, 2008 but was bullied to sign an incriminating document, and when he refused to sign the same, he was dismissed from work outright.

Respondents' Claims:[24]

Respondents counter that the Arbiter and the appellate court correctly found that petitioner really abandoned his work. They stress that (1) petitioner could not conform to the "tyrannical management of men" by Yu; (2) he pushed through with his unauthorized leave of absence by not reporting for work beginning October 11, 2008; and (3) he never returned for work

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[21] *Rollo*, p. 37.
[22] Id. at 39-41.
[23] Id. at 21-25.
[24] Id. at 107-110.

thereafter. He was not illegally dismissed.

Issues

1. Whether the CA correctly determined that petitioner Gososo abandoned his work and was legally dismissed by respondents Leyte Lumber and Yu; and

2. Whether petitioner is entitled to separation pay and his other money claims.

Our Ruling

The Court grants the Petition in part.

The burden of proving a claim falls on the party alleging its affirmative.[25] In labor cases, substantial evidence is the basic minimum of required proof – or that amount of evidence a reasonable mind might accept as adequate to support a conclusion.[26]

In illegal dismissal cases, the employee must first establish by substantial evidence the fact of dismissal before the employer is charged with the burden of proving its legality.[27]

Petitioner never proved that he was dismissed in the first place. He simply alleged that on October 11, 2008, upon his refusal to sign a document prepared by respondent Yu, the latter "flared up with his usual hot temper and told [the former] that he is terminated from work on that very day," and "even threw sharp scissors towards [him, which], almost hit by a narrow margin."[28] This barely measured up to the minimum evidential requirement from petitioner. Mere acts of hostility, however grave, committed by the employer towards the employee cannot on their lonesome be construed as an overt directive of dismissal from work.

Assuming that petitioner was truly dismissed from employment, he still failed to demonstrate that respondents did it constructively. *Doctor v. Nii Enterprises (Doctor)*[29] defined constructive dismissal, *viz.*:

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[25] *Cosue v. Ferritz Integrated Development Corporation*, 814 Phil. 77, 87 (2017).

[26] Id.

[27] *Santos v. U-Need Supermart, Inc.*, G.R. No. 202737, June 6, 2019; citing *Noblejas v. Italian Maritime Academy Phils., Inc.*,735 Phil. 713 (2014).

[28] Gososo's Position Paper before the Labor Arbiter, p. 3 thereof, CA *rollo*, p. 114; Gososo's Comment to respondents' Petition for Certiorari before the CA, p. 4 thereof, CA *rollo*, p. 148; Gososo's present appeal before this Court, p. 3 thereof, *rollo*, p. 11.

[29] 821 Phil. 251 (2017).

> Constructive dismissal has often been defined as a "dismissal in disguise" or "an act amounting to dismissal but made to appear as if it were not." It exists where there is cessation of work because **continued employment is rendered impossible, unreasonable or unlikely**, as an offer involving a demotion in rank and a diminution in pay. In some cases, while no demotion in rank or diminution in pay may be attendant, constructive dismissal may still exist **when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign**. Under these two definitions, what is essentially lacking is the voluntariness in the employee's separation from employment.[30] (Emphasis supplied.)

Petitioner insists that he was forced to sign a prepared incriminatory letter and then fired when he refused to do so. This statement does not fit the above legal definition provided in *Doctor*. No proof other than petitioner's bare allegations supported this claim. It is settled that bare allegations deserve no legal credit for being self-serving.

Even if these accusations were adequately corroborated, respondent Yu's rebuke of petitioner, while overbearing and intimidating, was reasonably incited by the latter's violations of respondent Leyte Lumber's company practices. It cannot be considered as tantamount to unequivocal acts of discrimination, insensibility, or disdain as to render petitioner's continued employment as unbearable.

In fine, the Court finds no working basis to declare that petitioner had been dismissed, whether legally, illegally, or constructively.

At the same time, we find petitioner not guilty of abandonment.

Abandonment requires the concurrence of the following: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[31] Abandonment is a matter of intention and cannot lightly be presumed from equivocal acts.[32] Absence must be accompanied by overt acts pointing definitely to the fact that the employee simply does not want to work anymore.[33] The burden of proof to show that there was unjustified refusal to go back to work rests on the employer.[34]

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30 Id. at 267-268; citing *Galang v. Boie Takeda Chemicals, Inc.*, 790 Phil. 582 (2016).

31 Id.

32 *Pu-od. v. Ablaze Builders, Inc.*, 820 Phil. 1239, 1254 (20176), citing *Josan. v. Aduna*, 682 Phil. 641, 648 (2012).

33 *Santos v. U-Need Supermart, Inc.*, supra, note 27.

34 Id.

Respondents did not discharge this burden of proof of abandonment. They just surmised that petitioner had no intent to return to work when he allegedly went on an unapproved leave of absence on October 11, 2008, of which respondents were also the approving authority. No attendance sheet of any sort was submitted to substantiate this claim by respondents. Neither was it shown that respondents actually denied the application for leave and made the disapproval known to petitioner.

There was also no evidence or mention of the exact number of required days before respondents' employees could properly file their applications for leave of absence. Nor was it established in the records whether this policy had actually ripened into company practice. To merely state that employees must file their applications "days before" their intended dates of absence is too self-serving to be given credit. Records also fail to show with any clarity whether petitioner had truly violated this rule of prior notice when he filed his application for leave, especially when the said application for leave was not even dated.[35]

It is more curious, misleading even, for respondents to impress upon Us that petitioner had absented himself for a prolonged period of time. It was on October 11, 2008, a Saturday, that petitioner supposedly absented himself, and it was just on October 13, 2008, the immediately succeeding Monday, that respondents declared his post to be in danger of being considered abandoned.

Moreover, while respondents issued the October 13, 2008 Memorandum requiring petitioner to return to work, records do not disclose whether petitioner was actually furnished copies of this Memorandum. To claim that petitioner blatantly disregarded respondents' return-to-work order in their October 13, 2008 Memorandum,[36] when petitioner was never shown to have received a copy of the same, speaks volumes of petitioner's vague intent to abandon his work and respondents' attempt to tweak facts in their favor.

In any case, mere absence or simple failure to report for work is not abandonment,[37] more so if the employee was able to lodge his complaint before the labor tribunals with haste. An immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement,[38] is inconsistent with a charge of abandonment.[39] Indeed, employees like petitioner herein who take steps to protest their alleged dismissal cannot be said to have abandoned their work.[40]

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35 CA *rollo*, p. 67.
36 Per respondents' admissions in their *Position Paper* before the Labor Arbiter, *id.* at 60.
37 *Santos v. U-Need Supermart, Inc.*, supra, note 27.
38 Dorsal page of petitioner's *pro-forma* complaint before the NLRC, CA *rollo*, p. 134.
39 *Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 401 (2013).
40 *Santos v. U-Need Supermart, Inc.*, supra, note 27.

Where the employee fails to prove the fact of his or her illegal dismissal, and the employer has also not demonstrated that the employee abandoned his or her work, the case usually ends with the employee's reinstatement without the payment of backwages. Should reinstatement be rendered impossible by strained relations of the parties, become unreasonable with the passage of time since the legal controversy, or otherwise attained impossibility or impracticability due to the present prevailing circumstances, equity impels the Court to award the petitioner separation pay equivalent to one-month salary for every year of service, computed up to the time he stopped working for respondents.

The Court has had occasion to withhold the grant of separation pay where there was no dismissal, no abandonment, and reinstatement was no longer feasible.[43] In the earlier cases with factual backgrounds similar hereto, it had been ruled that the parties shall bear their respective losses and are placed on equal footing.[44]

A slew of more recent and analogous cases, however, dictated the trend favoring such award of separation pay.

In *AIP Construction v. Marquina*,[45] respondents were initially directed to be reinstated to their former work. Considering, however, the length of time that had passed and the impossibility and unreasonableness of an order of reinstatement, the Court instead awarded them separation pay of one (1)-month salary for every year of service up to the time respondents stopped working.

A similar directive was issued in *Doctor*.[46] The Court considered the respondent employers' own allegations that they had already reduced their workforce and that the petitioning employees had no more place in the company.

In *Dee Jay's Inn and Cafe v. Raneses*,[47] it was emphasized that where the employee was neither found to have been dismissed nor to have abandoned work, the general course of action is for the tribunals to dismiss the complaint, direct the employee to return to work, and order the employer to re-accept the employee. Citing *Nightowl Watchman & Security Agency, Inc. v. Lumahan*,[48] if a considerable length of time had already passed, 10 years in the case of *Dee Jay's Inn*, and reinstatement of the dismissed employee is rendered impossible, an award of separation pay is proper in lieu of

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[43] *HSY Marketing Ltd., Co. v. Villastique*, 793 Phil. 560 (2016); *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142 (2011); *Leonardo v. National Labor Relations Commission*, 389 Phil. 118 (2000).

[44] Id.

[45] G.R. No. 229225, September 11, 2019 (Notice).

[46] *Santos v. U-Need Supermart, Inc.*, supra, note 27.

[47] 796 Phil. 574 (2016).

[48] 771 Phil. 391 (2015).

reinstatement. The separation pay is equivalent to one (1)-month salary per year of service up to the time the employee stopped working.

Here, petitioner alleged that he had been under the respondents' employ since 1991 but presented no substantiating proof. His Social Security System Employment History shows that his employment with respondent Leyte Lumber commenced only on January 1, 1996.[47] For want of records and evidence, the court reckons the computation of the separation pay only from the year 1996 until the time petitioner stopped reporting for work in 2008.

The separation pay awarded to petitioner shall be computed as follows:

Number of Workdays per Month	6 days/week; 24 days/month
Daily Wage	₱220.00/day
Monthly Wage	₱5280.00/month
Number of Years Employed	12 years (January 1996-October 2008)[48]
Total Separation Pay	**₱63,360.00**

This amount shall bear interest at the rate of six percent (6%) per *annum* from date of finality of this Decision until fully paid.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED in PART**. The assailed February 29, 2012 Decision and December 19, 2012 Resolution of the Court of Appeals in CA-G.R. CEB-SP No. 05183 are **AFFIRMED with MODIFICATION**. The dismissal of petitioner Fernando C. Gososo's complaint for illegal dismissal **STANDS.**

Upon a correlative finding of lack of abandonment of work, petitioner is entitled to reinstatement to his former position without payment of backwages. As reinstatement is already rendered impossible under the present circumstances, respondents are **ORDERED** to pay petitioner separation pay, in lieu of reinstatement, computed at one (1)-month salary for every year of service until petitioner stopped working for respondents, in the amount of ₱63,360.00. This amount shall bear interest at the rate of six percent (6%) per *annum* from date of finality of this Decision until fully paid.

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[47] Per petitioner's SSS online employment history records, Annex A, petitioner's *Position Paper* before the Labor Arbiter, CA *rollo*, p. 124.

[48] A fraction of at least six (6) months being considered as one whole year, per Section 4(b), Rule I, Book Six, Omnibus Rules Implementing the Labor Code.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

ROSMARI D. CARANDANG
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ATTESTATION

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

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice