Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EXPEDITION CONSTRUCTION CORPORATION, SIMON LEE PAZ, and JORDAN JIMENEZ,* *Petitioners,*

- versus -

ALEXANDER M. AFRICA, MARDY MALAPIT, JESUS ESER, JACOB RONGCALES, JONAMEL CARO, ALFREDO RILES,* REYNALDO GARCIA, FREDDIE DELA CRUZ, JUNIE AQUIBAN, CRISINCIO GARCIA,* DINO AQUIBAN, SAMUEL PILLOS, JEFFREY A. VALENZUELA, ERWIN VELASQUEZ HALLARE and WILLIAM RAMOS DAGDAG, *Respondents.*

G.R. No. 228671

Present:

SERENO, *C.J., Chairperson,*
LEONARDO-DE CASTRO,
DEL CASTILLO,
JARDELEZA, *and*
TIJAM, *JJ.*

Promulgated:
DEC 14 2017

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DECISION

DEL CASTILLO, *J.*:

Before us is a Petition for Review on *Certiorari* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction[1] seeking to set aside the March 31, 2016 Decision[2] of the Court of Appeals (CA) in CA G.R. SP No. 142007, which dismissed the Petition for *Certiorari*[3] filed

* Also referred to as Jourdan Jimenez in some parts of the records.
* Also referred to as Alfredo Rilles in some parts of the records.
* Also referred to as Cresencio Garcia in some parts of the records.
1 *Rollo,* pp. 34-68.
2 CA *rollo,* pp. 297-310; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino.
3 Id. at 3-44.

therewith and affirmed with modification the April 30, 2015 Resolution[4] of the National Labor Relations Commission (NLRC) by ordering the reinstatement and the payment of full back wages of respondents Alexander M. Africa, Mardy Malapit, Jesus Eser, Jacob Rongcales, Jonamel Caro, Alfredo Riles, Reynaldo Garcia, Freddie Dela Cruz, Junie Aquiban, Crisincio Garcia, Dino Aquiban, Samuel Pillos, Jeffrey A. Valenzuela, Erwin Velasquez Hallare, and William Ramos Dagdag (respondents) for having been illegally dismissed. Likewise assailed is the December 9, 2016 Resolution[5] of the CA denying petitioners' Motion for Reconsideration.[6]

Factual Antecedents

Petitioner Expedition Construction Corporation (Expedition), with petitioners Simon Lee Paz and Jordan Jimenez as its Chief Executive Officer and Operations Manager, respectively, is a domestic corporation engaged in garbage collection/hauling. It engaged the services of respondents as garbage truck drivers to collect garbage from different cities and transport the same to the designated dumping site.

Respondents filed separate cases[7] (which were later on consolidated) against Expedition for illegal dismissal; underpayment and non-payment of salaries/wages, holiday pay, holiday premium, rest day premium, service incentive leave pay, 13th month pay, separation pay, and Emergency Cost of Living Allowance (ECOLA); illegal deduction; moral and exemplary damages and attorney's fees. In their Position Paper,[8] respondents alleged that in August 2013, they were illegally terminated from employment when they were prevented from entering the premises of Expedition without cause or due process. They claimed that they were regular employees of Expedition; were required to work a minimum of 12 hours a day, seven days a week, even on holidays, without rest or vacation; and, were not paid the minimum wage, holiday or premium pay, overtime pay, service incentive leave pay and 13th month pay. They also averred that the costs of repair and maintenance of the garbage trucks were illegally deducted from their salaries.

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4 Records, pp. 234-238; penned by Commissioner Pablo C. Espiritu, Jr., concurred in by Commissioner Mercedes R. Posada-Lacap, and partly concurred in by Presiding Commissioner Joseph Gerard E. Mabilog (with Dissenting Opinion).

5 CA *rollo*, pp. 411-412.

6 Id. at 317-330.

7 See Complaints filed by: *(a)* respondents Alexander M. Africa, Mardy Malapit, Jesus Eser, Jacob Rongcales, Jonamel Caro, Alfredo Riles, Reynaldo Garcia, Freddie Dela Cruz, Junie Aquiban, Crisincio Garcia, and Dino Aquiban, on November 12, 2013, docketed as NLRC NCR Case No. 12-16015-13 (Records, pp. 1-3); *(b)* respondents Samuel Pillos and Jeffrey A. Valenzuela, on December 16, 2013, docketed as NLRC NCR Case No. 12-16159-13 (id. at 8-9); and *(c)* respondent Erwin Velasquez Hallare, on January 8, 2014, docketed as NLRC NCR Case No. 01-00166-14 (id. at 16-17).

8 Id. at 50-63.

Expedition, in its Position Paper,[9] countered that respondents were not illegally dismissed. It averred that it entered into separate contracts with the cities of Quezon, Mandaluyong, Caloocan, and Muntinlupa for the collection and transport of their garbage to the dump site; that it engaged the services of respondents, as dump truck drivers, who were oftentimes dispatched in Quezon City and Caloocan City; that the need for respondents' services significantly decreased sometime in 2013 after its contracts with Quezon City and Caloocan City were not renewed; and, that it nonetheless tried to accommodate respondents by giving them intermittent trips whenever the need arose.

Expedition denied that respondents were its employees. It claimed that respondents were not part of the company's payroll but were being paid on a per trip basis. Respondents were not under Expedition's direct control and supervision as they worked on their own, were not subjected to company rules nor were required to observe regular/fixed working hours, and that respondents hired/paid their respective garbage collectors. As such, respondents' money claims had no legal basis.

In their Reply,[10] respondents insisted that they worked under Expedition's control and supervision considering that: (1) Expedition owned the dump trucks; (2) Expedition expressly instructed that the trucks should be used exclusively to collect garbage in their assigned areas and transport the garbage to the dump site; (3) Expedition directed them to park the dump trucks in the garage located at Group 5 Area Payatas, Quezon, City after completion of each delivery; and (4) Expedition determined how, where, and when they would perform their tasks.

Respondents also adverted to petitioners' counsel's manifestation during the mandatory conciliation proceedings,[11] regarding Expedition's willingness to accept them back to work, as proof of their status as Expedition's regular employees. To further support their claim, respondents attached in their Rejoinder[12] affidavits of Eric Rosales[13] (Rosales) and Roger A. Godoy[14] (Godoy), both claiming to be former employees of Dodge Corporation/Expedition Construction Corporation and attesting that respondents were regular employees of Expedition.

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9 Id. at 36-48.
10 Id. at 77-85.
11 See Minutes of the Mandatory Conciliation and Mediation Conference dated January 28, 2014, id. at 22-23.
12 Id. at 101-105.
13 Id. at 106.
14 Id. at 108.

Ruling of the Labor Arbiter

In a Decision[15] dated June 26, 2014, the LA dismissed respondents' complaints and held that there was no employer-employee relationship between Expedition and respondents. The LA did not find any substantial proof that respondents were regular employees of Expedition. First, respondents had no fixed salary and were compensated based on the total number of trips made. Next, Expedition had no power to terminate respondents. More importantly, respondents performed their work independent of Expedition's control. The LA ruled that respondents were independent contractors, contracted to do a piece of work according to their own method and without being subjected to the control of Expedition except as to the results of their work.

Respondents appealed to the NLRC where they insisted that they were under Expedition's control and supervision and that they were regular employees who worked continuously and exclusively for an uninterrupted period ranging from four to 15 years and whose tasks were necessary and desirable in the usual business of Expedition.

Ruling of the National Labor Relations Commission

In a Resolution[16] dated September 30, 2014, the NLRC dismissed respondents' appeal and affirmed the ruling of the LA. The NLRC similarly found no evidence of an employer-employee relationship between Expedition and respondents. The NLRC did not consider as evidence the alleged admission of petitioners during the mandatory conciliation conference since statements made in these proceedings are regarded as privileged communication. Likewise, the affidavits of Rosales and Godoy did not help respondents' cause as the affiants were not employees of Expedition but of some other company.

The NLRC opined that respondents were project employees hired for a specific undertaking of driving garbage trucks, the completion and termination of which was coterminous with Expedition's contracts with the Local Government Units (LGUs). As project employees, respondents were not dismissed from work but their employment simultaneously ended when Expedition's contracts with Quezon City and Caloocan City expired. There being no illegal dismissal, the NLRC found no basis in awarding respondents their money claims.

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15 Id. at 131-138; penned by Labor Arbiter Joanne G. Hernandez-Lazo.

16 Id. at 199-206, penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Commissioner Gregorio O. Bilog III.

Undaunted, respondents filed a Motion for Reconsideration[17] arguing that they were not project employees because the nature of their work was necessary and desirable to Expedition's line of business and that their continuous and uninterrupted employment reaffirmed their status as regular employees. They averred further that there was no written contract evidencing project employment nor were they informed of their status as project employees. They stressed that Expedition's right of control over the performance of their work was apparent when: (1) they were made to report everyday at the premises owned by Expedition; (2) there was an express instruction to report from Monday to Sunday; (3) they were not allowed to engage in any other project; (4) they were mandated to return the hauling truck and park the same at Expedition's premises after the garbage collection was completed; (5) Expedition determined how, where, and when they would perform their tasks; and, (6) they were not allowed to collect garbage beyond the area indicated by Expedition.

In a Resolution[18] dated April 30, 2015, the NLRC partly granted respondents' motion for reconsideration and modified its earlier Resolution of September 30, 2014. This time, the NLRC ruled that respondents were employees of Expedition in view of Expedition's admission that it hired and paid respondents for their services. The NLRC was also persuaded that Expedition exercised control on when and how respondents would collect garbage.

The NLRC, however, sustained its earlier finding that there was no illegal dismissal, ratiocinating that respondents were merely placed on a floating status when the contracts with Quezon City and Caloocan City expired and thus were merely waiting to be re-assigned to other similar work. As there was no dismissal to speak of, the NLRC ordered respondents' reinstatement but without the payment of back wages. However, due to lack of clients where respondents could be re-assigned, the NLRC opted to award separation pay in lieu of reinstatement. The dispositive portion of the Resolution reads:

> WHEREFORE, complainants-appellants' Motion for Reconsideration is hereby PARTLY GRANTED. Our Resolution dated 30 September 2014 is MODIFIED finding employer-employee relationship between complainants and the respondents and concomitantly the latter is hereby ordered to pay complainants' separation pay at the rate of ½ month salary for every year of service a fraction of at least 6 months to be considered as one (1) whole year in the following computed amounts:

[17] Id. at 209-225.

[18] Id. at 234-238; penned by Commissioner Pablo C. Espiritu, Jr., concurred in by Commissioner Mercedes R. Posada-Lacap, and partly concurred in by Presiding Commissioner Joseph Gerard E. Mabilog (with Dissenting Opinion).

1. Alexander M. Africa	426 x 13 x 12 = 66,456
2. Jesus Eser	426 x 13 x 10 = 55,380
3. Jonamel Caro	426 x 13 x 12 = 66,456
4. Reynaldo Garcia	426 x 13 x 15 = 83,070
5. Mardy Malapit	426 x 13 x 14 = 77,532
6. Jacob Rongcales	426 x 13 x 14 = 77,532
7. Alfredo Rilles	426 x 13 x 15 = 83,070
8. Freddie Dela Cruz	426 x 13 x 5 = 27,690
9. Junie Aquiban	426 x 13 x 5 = 27,690
10. Dino Aquiban	426 x 13 x 4 = 22,152
11. Samuel G. Pillos	426 x 13 x 5 = 27,690
12. William Dagdag	426 x 13 x 14 = 77,532
13. Crisincio Garcia	426 x 13 x 12 = 66,456
14. Jeffrey A. Valenzuela	426 x 13 x 5 = 27,690
15. Erwin V. Hallare	426 x 13 x 9 = 49,842

The rest of Our resolution is hereby AFFIRMED.

SO ORDERED.[19]

Expedition filed a Motion for Reconsideration[20] attributing error on the NLRC in ruling that there was an employer-employee relationship and in awarding separation pay despite the finding that there was no illegal dismissal. Expedition also questioned the NLRC's computation of separation pay and sought the remand of the case to the LA for proper determination of the correct amount. This motion, however, was denied by the NLRC in its Resolution[21] of June 30, 2015.

Expedition sought recourse to the CA via a Petition for *Certiorari.*[22]

Ruling of the Court of Appeals

On March 31, 2016, the CA rendered a Decision[23] dismissing Expedition's Petition for *Certiorari* and ruling in favor of respondents. The CA affirmed the April 30, 2015 Resolution of the NLRC insofar as the existence of an employer-employee relationship between the parties. The CA noted that respondents were hired and paid by Expedition. Further, Expedition exercised the power to provide and withhold work from respondents. Most importantly, the power of control was evident since Expedition determined how, where and when respondents would perform their tasks. The CA held that the respondents needed Expedition's instruction and supervision in the performance of their duties. The CA

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19 Id. at 237.
20 Id. at 250-264.
21 Id. at 266-268.
22 CA *rollo*, pp. 3-44.
23 Id. at 297-310.

likewise ruled that respondents were regular employees entitled to security of tenure because they continuously worked for several years for the company, an indication that their duties were necessary and desirable in the usual business of Expedition.

The CA, however, did not agree with the NLRC that respondents were on floating status since petitioners did not adduce proof of any dire exigency justifying failure to give respondents any further assignments. The CA observed that the irregular dispatch of respondents due allegedly to the decrease in the need for drivers led to the eventual discontinuance of respondents' services and ultimately, their illegal termination. Accordingly, the CA ruled that respondents were illegally dismissed when Expedition prevented them from working, and consequently, ordered their reinstatement with full back wages. The dispositive portion of the Decision reads:

> FOR THESE REASONS, the petition is DISMISSED. The Decision of the National Labor Relations Commission dated April 30, 2015 is hereby AFFIRMED with MODIFICATIONS. The respondents were illegally dismissed, and are thus entitled to reinstatement with full backwages from the time of illegal dismissal up to the finality of this Decision and attorney's fees equivalent to ten percent (10%) of the total monetary award. The monetary awards herein granted shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid. The case is remanded to the Labor Arbiter for the computation of respondents' monetary awards.
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> SO ORDERED.[24]

Expedition filed a Motion for Reconsideration[25] on the ground that the CA erred in finding that respondents were its employees and that respondents were illegally dismissed. It impugned the award of reinstatement and back wages in favor of respondents, submitting that an amount of financial assistance would be the more equitable remedy for respondents' cause. It, then, manifested its willingness to offer financial assistance to respondents in the amounts equivalent to the separation pay awarded to respondents in the April 30, 2015 NLRC Resolution.

Expedition's motion was, however, denied by the CA in its Resolution[26] dated December 9, 2016.

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[24] Id. at 309-310.
[25] Id. at 317-330.
[26] Id. at 411-412.

Issues

Hence, Expedition filed this instant Petition presenting the following grounds for review:

> [1.] THE COURT OF APPEALS GRAVELY ERRED WHEN IT UPHELD THE NLRC'S FINDING THAT THERE WAS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PETITIONER CORPORATION AND RESPONDENTS.
>
> [2.] EVEN ASSUMING ARGUENDO THAT THERE WAS EMPLOYER-EMPLOYEE RELATIONSHIP, THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENTS WERE REGULAR EMPLOYEES.
>
> [3.] THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENTS WERE ILLEGALLY DISMISSED.
>
> [4.] AGAIN, EVEN ASSUMING THAT RESPONDENTS WERE REGULAR EMPLOYEES AND THAT THEY HAD BEEN ILLEGALLY DISMISSED, THE COURT OF APPEALS GRAVELY ERRED WHEN IT AWARDED REINSTATEMENT WITH FULL BACKWAGES INSTEAD OF SEPARATION PAY ONLY.[27]

Expedition maintains that it did not exercise the power of selection or engagement, payment of wages, dismissal, and control over respondents. The CA, thus, had no legal basis in finding that respondents were its employees, much less had regular employment status with it. Expedition likewise insists that there was no illegal dismissal and that the CA erred in awarding reinstatement and backwages instead of separation pay, which was prayed for by respondents.

Our Ruling

The Petition is partly granted.

Respondents were regular employees of Expedition.

At the outset, it bears emphasis that the question of whether or not respondents were employees of Expedition is a factual issue. It is settled that only questions of law may be raised in a petition for review on *certiorari* filed under Rule 45.[28] However, there are also recognized

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[27] *Rollo*, pp. 47-48.

[28] *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 585 (2013).

exceptions to this rule, one of which is when the factual findings of the labor tribunals are contradictory to each other,[29] such as obtaining in the case at bar.

Jurisprudence has adhered to the four-fold test in determining the existence of an employer-employee relationship, to wit: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called 'control test'".[30]

In ruling that respondents were employees of Expedition, the CA found all the elements of employer-employee relationship to be present. As shown in the records, Expedition hired respondents as dump truck drivers and paid them the amount of ₱620.00 per trip. The CA held that Expedition wielded the power to dismiss respondents based on Expedition's admission that when the dispatch of drivers became irregular, it tried to accommodate them by giving trips when the need arose. The control test was likewise established because Expedition determined how, where, and when respondents would perform their tasks.

Expedition, however, proffers that the factual findings of the CA on this matter had no legal basis. It claims that respondents were never hired but were merely engaged as drivers; that they worked on their own and were not subjected to its control and supervision; that they were compensated based on output or number of trips made in a day; that they selected their own garbage collectors, chose their own route and determined the manner by which they would collect the garbage; and, that they performed their work at their own pleasure without fear of being sanctioned if they chose not to report for work.

The Court finds Expedition's position untenable. First, as clearly admitted, respondents were engaged/hired by Expedition as garbage truck drivers. Second, it is undeniable that respondents received compensation from Expedition for the services that they rendered to the latter. The fact that respondents were paid on a per trip basis is irrelevant in determining the existence of an employer-employee relationship because this was merely the method of computing the proper compensation due to respondents.[31] Third, Expedition's power to dismiss was apparent when work was withheld from respondents as a result of the termination of the contracts with Quezon City and Caloocan City. Finally, Expedition has the power of control over respondents in the performance of their work. It was held that "the power of

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29 *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 506 (2015).
30 *South East International Rattan, Inc. v. Coming*, 729 Phil. 298, 306 (2014).
31 *Chavez v. National Labor Relations Commission*, 489 Phil. 444, 457 (2005).

control refers merely to the existence of the power and not to the actual exercise thereof."[32] As aptly observed by the CA, the agreements for the collection of garbage were between Expedition and the various LGUs, and respondents needed the instruction and supervision of Expedition to effectively perform their work in accordance with the stipulations of the agreements.

Moreover, the trucks driven by respondents were owned by Expedition. There was an express instruction that these trucks were to be exclusively used to collect and transport garbage. Respondents were mandated to return the trucks to the premises of Expedition after the collection of garbage. Expedition determined the clients to be served, the location where the garbage is to be collected and when it is to be collected. Indeed, Expedition determined how, where, and when respondents would perform their tasks.

Respondents were neither independent contractors nor project employees. There was no showing that respondents have substantial capital or investment and that they were performing activities which were not directly related to Expedition's business to be qualified as independent contractors.[33] There was likewise no written contract that can prove that respondents were project employees and that the duration and scope of such employment were specified at the time respondents were engaged. Therefore, respondents should be accorded the presumption of regular employment pursuant to Article 280 of the Labor Code which provides that "employees who have rendered at least one year of service, whether such service is continuous or broken x x x shall be considered [as] regular employees with respect to the activity in which they are employed and their employment shall continue while such activity exists."[34] Furthermore, the fact that respondents were performing activities which were directly related to the business of Expedition confirms the conclusion that respondents were indeed regular employees.[35]

Having gained regular status, respondents were entitled to security of tenure and could only be dismissed for just or authorized cause after they had been accorded due process. Thus, the queries: Were respondents dismissed? Were they dismissed in accordance with law?

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32 *Almeda v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 113 (2008).
33 *Petron Corporation v. Caberte*, 759 Phil. 353, 368 (2015).
34 *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 346 (2014).
35 Id.

There was no illegal dismissal.

In illegal dismissal cases, the employer has the burden of proving that the termination was for a valid or authorized cause. However, it is likewise incumbent upon an employee to first establish by substantial evidence the fact of his dismissal from employment[36] by positive and overt acts of an employer indicating the intention to dismiss.[37] It must also be stressed that the evidence must be clear, positive and convincing.[38] Mere allegation is not proof or evidence.[39]

In this case, there was no positive or direct evidence to substantiate respondents' claim that they were dismissed from employment. Aside from mere assertions, the record is bereft of any indication that respondents were barred from Expedition's premises. If at all, the evidence on record showed that Expedition intended to give respondents new assignments as a result of the termination of the garbage hauling contracts with Quezon City and Caloocan City where respondents were regularly dispatched. Despite the loss of some clients, Expedition tried to accommodate respondents and offered to engage them in other garbage hauling projects with other LGUs, a fact which respondents did not refute. However, instead of returning and waiting for their next assignments, respondents instituted an illegal dismissal case against Expedition. Note that even during the mandatory conciliation and mediation conference between the parties, Expedition manifested its willingness to accept respondents back to work. Unfortunately, it was respondents who no longer wanted to return to work. In fact, in their complaints, respondents prayed for the payment of separation pay instead of reinstatement.

Here, there was no sufficient proof that respondents were actually laid off from work. Thus, the CA had no basis in ruling that respondents' employment was illegally terminated since the fact of dismissal was not adequately supported by substantial evidence. There being no dismissal, the *status quo* between respondents and Expedition should be maintained. However, it cannot be denied that their relationship has already been ruptured in that respondents are no longer willing to be reinstated anymore. Under the circumstances, the Court finds that the grant of separation pay as a form of financial assistance is deemed equitable.

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[36] *Carique v. Philippine Scout Veterans Security and Investigation Agency, Inc.*, 769 Phil. 754, 762 (2015).
[37] *Noblejas v. Italian Maritime Academy Phils., Inc.*, 735 Phil. 713, 722 (2014).
[38] *Tri-C General Services v. Matuto*, 770 Phil. 251, 262 (2015).
[39] *Villanueva v. Philippine Daily Inquirer, Inc.* 605 Phil. 926, 937 (2009).

As a measure of social justice, the award of separation pay/financial assistance has been upheld in some cases[40] even if there is no finding of illegal dismissal. The Court, in *Eastern Shipping Lines, Inc. v. Sedan*,[41] had this to say:

> x x x We are not unmindful of the rule that financial assistance is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Neither are we unmindful of this Court's pronouncements in *Arc-Men Food Industries Corporation v. NLRC*, and *Lemery Savings and Loan Bank v. NLRC*, where the Court ruled that when there is no dismissal to speak of, an award of financial assistance is not in order.
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> But we must stress that this Court did allow, in several instances, the grant of financial assistance. In the words of Justice Sabino de Leon, Jr., now deceased, financial assistance may be allowed as a measure of social justice [under] exceptional circumstances, and as an equitable concession. The instant case equally calls for balancing the interests of the employer with those of the worker, if only to approximate what Justice Laurel calls justice in its secular sense.

In a Manifestation[42] submitted before the CA, Expedition expressed willingness to extend gratuitous assistance to respondents and to pay them the amounts equivalent to the separation pay awarded to each respondent in the April 30, 2015 NLRC Resolution. In view of this and taking into account respondents' long years of service ranging from four to 15 years, the Court finds that the grant of separation pay at the rate of one-half (½) month's salary for every year of service, as adjudged in the April 30, 2015 Resolution of the NLRC, is proper.

WHEREFORE, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The assailed Decision dated March 31, 2016 and Resolution dated December 9, 2016 of the Court of Appeals in CA-G.R. SP No. 142007 are **AFFIRMED** with **MODIFICATION** that the awards of reinstatement, back wages, attorney's fees and legal interest are **DELETED** there being no illegal dismissal. The award of separation pay, as a form of financial assistance, in the National Labor Relations Commission's Resolution dated April 30, 2015 is **REINSTATED**.

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40 *Luna v. Allado Construction Co., Inc.*, 664 Phil. 509, 524-527 (2011); *Piñero v. National Labor Relations Commission*, 480 Phil. 534, 543-544 (2004); *Indophil Acrylic Mfg. Corporation v. National Labor Relations Commission*, 297 Phil. 803, 810 (1993).

41 521 Phil. 61, 70 (2006).

42 CA *rollo*, pp. 406-408.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice