Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

STEELWELD CONSTRUCTION/ JOVEN STA. ANA AND JOSEPHINE STA. ANA, Petitioners,	**G.R. No. 200986**
	Present:
- versus -	GESMUNDO, *C.J.*, *Chairperson*, CAGUIOA, LAZARO-JAVIER, LOPEZ, M., and LOPEZ, J., *JJ.*
SERAFIN H. ECHANO, RENATO L. SALAZAR, AND ROBERTO E. COPILLO, Respondents.	**Promulgated:** SEP 29 2021

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 122075:

a) Resolution[2] dated November 29, 2011 dismissing petitioners' action for *certiorari* for failure to file a motion for reconsideration of the National Labor Relations Commission's (NLRC) impugned Resolution in NLRC LAC No. 11-002695-10, NLRC RAB-IV-01-

[1] *Rollo*, pp. 8-30.
[2] Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion, *id.* at 36-37.

00023-10 R1, RAB IV-01-00137-10 RI and RAB IV-02-00362-10 RI; and

b) Resolution[3] dated March 8, 2012, denying petitioners' motion for reconsideration.

Antecedents

On February 16, 2010, respondents Serafin H. Echano (Echano), Renato L. Salazar (Salazar), and Roberto E. Copillo (Copillo) sued petitioners Steelweld Construction and its President Joven Sta. Ana, and Architect Josephine Sta. Ana (petitioners),[4] for illegal dismissal, underpayment and non-payment of wages, separation pay, holiday pay, 13th month pay, overtime pay, and moral and exemplary damages.[5]

Echano essentially alleged that sometime in 2006, petitioners hired him as carpenter for its construction projects. He was also given additional assignment as "*bodegero*" to safeguard the construction materials at petitioners' jobsite in Floraville Subdivision, Mayamot, Antipolo City. He was required to work from 8 o'clock in the morning until 2 o'clock in the morning of the next day, Mondays to Sundays. Petitioners also required him to report for work during holidays.[6]

Sometime in January 2009, he was diagnosed with tuberculosis. On February 7, 2009, petitioners ordered him to go on leave of absence, which he heeded. After completing his three (3) months of treatment, he reported back for work. But just after two (2) months, he was, this time, ordered to go on "sick leave" for another three (3) months, which he again heeded. After completing his second round of sick leave, he reported back for work on November 13, 2009. The first thing he did was present his medical certificate of fitness to work, but petitioners no longer took him back.[7]

For his part, Salazar claimed that sometime in 2005, petitioners hired him as a painter. His work schedule went from 8 o'clock in the morning until 5 o'clock in the afternoon, Mondays to Saturdays. From 2005 to December 4, 2009, petitioners asked him to work during the holidays, albeit without holiday pay. Petitioners never paid him his 13th month pay.[8] On June 28, 2009, he and his co-workers wrote petitioners for their grievances. But petitioners simply ignored them. Then, on December 4, 2009, petitioners illegally terminated him.[9]

As for Copillo, he averred that sometime in 2001, petitioners hired him also as a painter. He worked from 8 o'clock in the morning until 5 o'clock in

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[3] *Id.* at 39-40.
[4] *Id.* at 43.
[5] *Id.* at 65; See also 108.
[6] *Id.* at 65.
[7] *Id.* at 66.
[8] *Id.* at 67.
[9] *Id.* at 68.

the afternoon, Mondays to Saturdays. Since he got hired in 2001, he reported for work during holidays, *sans* any holiday pay. He wrote petitioners on June 28, 2009 to demand for better working conditions.[10] Thereafter, he received a Notice to Explain dated November 12, 2009 why he should not be subjected to disciplinary action for violating company rules and regulations. The notice though failed to specify the alleged rules he violated. On December 12, 2009, petitioners barred his entry into the company premises.[11]

In response, petitioners countered that Steelweld is a corporation engaged in the construction business and respondents were its project employees. Respondents' employment got terminated because the projects where they were respectively assigned already got completed. They submitted in evidence the supposed employment contracts of Echano, Salazar, and Copillo, albeit the same did not bear their signatures.

In the case of Echano, he was advised to rest for six (6) months after he contracted tuberculosis. But he never again reported back for work, thus, the company was constrained to terminate him for abandonment of work.[12]

With respect to Salazar, a notice of termination was sent to him on December 4, 2009 because the project he was working on, the Patio Rosario Townhomes, was already almost complete.[13]

Finally, in the case of Copillo, he got terminated because of gross and habitual neglect of duties. He was engaged to paint Unit 33 of the Patio Rosario Townhomes. In October 2009, they received a letter from the unit owner that Copillo used a wrong paint color on the living room. In his written explanation, Copillo admitted the mistake claiming though that it was unintentional. Copillo was served with another Notice to Explain dated November 12, 2009 on account of the numerous complaints they received regarding his poor performance. Eventually, the company decided to terminate his services.[14]

As for respondents' compensation and benefits, the same were paid in accordance with law, albeit they (petitioners) could not produce their payrolls and pay slips as these documents were washed out during typhoon Ondoy which hit Manila and Rizal on September 26-27, 2009.[15]

The Ruling of the Labor Arbiter

By Decision[16] dated July 22, 2010, the labor arbiter dismissed the complaint for lack of merit. The labor arbiter found that Echano's termination was justified since he failed to report for work after the lapse of his six-month

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[10] *Id.*
[11] *Id.* at 69.
[12] *Id.* at 84.
[13] *Id.* at 85.
[14] *Id.*
[15] *Id.*
[16] Penned by Labor Arbiter Enrico Angelo C. Portillo, *id.* at 64-74.

medical leave. Salazar's termination was also valid since the last project where he got assigned had already been completed. As for Copillo, he himself admitted the infraction levelled against him, hence, he was terminated for cause.[17]

Finally, the labor arbiter ruled that respondents are not entitled to 13th month pay and holiday pay since they were all hired on a **project basis.** Respondents' claim of underpayment and non-payment of wages, overtime pay, holiday pay, separation pay, and damages was likewise denied for lack of basis.[18]

The Ruling of the NLRC

The NLRC initially denied respondents' appeal for failure to pay the appeal bond. On motion for reconsideration, however, respondents clarified they were indigents represented by the Public Attorney's Office (PAO). The NLRC consequently took cognizance of the appeal and resolved it on the merits.

It found that respondents were regular employees, not project employees of Steelweld.[19] The employment contracts presented by petitioners had no evidentiary weight since they were not even signed by the respondents. The absence of the employment contracts raised a serious question on whether respondents were properly informed at the onset of their employment status as project employees.[20]

Too, respondents were illegally dismissed. Petitioners were unable to prove that Echano abandoned his work. No proof was presented either that the phase of the project where Salazar got assigned was already almost complete as of December 4, 2009. Lastly, Copillo's mistake in using a wrong paint on Unit 33 of Patio Rosario Townhomes did not amount to "gross" negligence since it was not habitual but just an isolated incident.[21]

On respondents' money claims, the NLRC ruled that they are entitled to their unpaid 13th month pay. All other money claims were denied for lack of basis. Thus, by Resolution[22] dated August 10, 2011, the NLRC ordained:

> **WHEREFORE**, the instant appeal of complainants Echano, Copillo, and Salazar is **PARTIALLY GRANTED** and the appealed decision of the Labor Arbiter is **AFFIRMED** with **MODIFICATION** as follows:

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[17] *Id.*
[18] *Id.*
[19] Sometimes, Steelweld Construction Builders and Design on the records.
[20] *Rollo*, pp. 88-89.
[21] *Id.* at 90-91.
[22] Penned by Commissioner Angelo Ang Palana, *id.* at 81-95.

> 1. Declaring complainants Serafin Echano, Roberto Copillo, and Renato Salazar as regular employees of respondent STEELWELD Construction;
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> 2. Declaring complainants Serafin Echano, Roberto Copillo, and Renato Salazar to have been illegally dismissed from their employment;
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> 3. Directing respondent STEELWELD CONSTRUCTION to reinstate complainants Serafin Echano, Roberto Copillo, and Renato Salazar to their previous post and to pay their full backwages, inclusive of allowances and other benefits, computed from the date of their illegal dismissal on 13 November 2009, December 12, 2009, and December 4, 2009, respectively, until the finality of the decision;
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> 4. Directing respondent STEELWELD CONSTRUCTION to pay complainants Serafin Echano, Roberto Copillo, and Renato Salazar their 13th month [pay] for the period of 16 February 2007 up to the date of their termination from the service on 13 November 2009, 12 December 2009, and 4 December 2009, respectively.
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> The computation made by the Computation and Examination Unit of the Commission shall form an integral part of this Decision.
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> **SO ORDERED**.[23]

Without filing a motion for reconsideration, petitioners went straight to the Court of Appeals *via* a petition for *certiorari*. They manifested that it was the negligence of their former lawyer which prevented them from seeking a reconsideration of the assailed resolution from the NLRC.[24]

The Ruling of the Court of Appeals

Under Resolution[25] dated November 29, 2011, the Court of Appeals dismissed the petition outright for petitioners' failure to file a motion for reconsideration of the questioned resolution before the NLRC.

Petitioners' motion for reconsideration was denied through Resolution[26] dated March 8, 2012.

The Present Petition

Petitioners now ask for affirmative relief against the dispositions of the Court of Appeals, claiming that the same deprived them of their right to due process and ignored the compelling reason that caused them not to file a

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[23] *Id.* at 93-94.
[24] *Id.* at 49.
[25] *Id.* at 36-37.
[26] *Id.* at 39-40.

motion for reconsideration of the NLRC Resolution dated August 10, 2011. They also ask that respondent employees be declared as project employees whose services were validly terminated.[27]

In their Comment,[28] respondents reiterate their submissions below against petitioners' plea for the reinstatement of their petition for *certiorari* before the Court of Appeals.

Petitioners' Reply[29] essentially repeats the same arguments presented in the petition.

Ruling

A motion for reconsideration is a condition sine qua non to the filing of a petition for certiorari under Rule 65 of the Rules of Court

A special civil action for *certiorari* under Rule 65 of the Rules of Court is an extraordinary remedy which can only be availed of when there is no appeal or any plain, speedy, or adequate remedy available in the ordinary course of law. It is settled that a motion for reconsideration is a plain, speedy, and adequate remedy which should be resorted to before one may avail of the extraordinary remedy of *certiorari*.[30] In ***Audi AG v. Mejia***,[31] the Court stressed that it is an indispensable condition before an aggrieved party can resort to a special civil action for *certiorari*. The purpose is to afford the tribunal, board, or office an opportunity to ratify its own errors or mistakes before the extraordinary remedy of *certiorari* comes into play through judicial process. Thus, a party's omission or failure to file a motion for reconsideration before the NLRC is a fatal infirmity which warrants the outright dismissal of the special civil action for *certiorari* it may have prematurely filed.[32]

The Court, nonetheless, has declined from applying the rule rigidly in the following instances, *viz.*:

(a) Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

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[27] *Id.* at 22-23.
[28] *Id.* at 266-283.
[29] *Id.* at 299-307.
[30] *Madarang v. Sps. Morales*, 735 Phil. 632, 646 (2014).
[31] 555 Phil. 348, 353 (2007).
[32] *Mandaue Dinghow Dimsum House, Co., Inc. v. NLRC*, 571 Phil. 108, 119 (2008).

(c) Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
(d) Where, under the circumstances, a motion for reconsideration would be useless;

(e) Where petitioner was deprived of due process and there is extreme urgency for relief;

(f) Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) Where the proceedings in the lower court are a nullity for lack of due process;

(h) Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and

(i) Where the issue raised is one purely of law or where public interest is involved.[33] (emphasis supplied)

As earlier stated, petitioners here fault their previous counsel who allegedly neglected to file a motion for reconsideration of the assailed NLRC resolution.

We are not persuaded. It is hornbook doctrine that the negligence of counsel binds the client.[34] In ***Bejarasco, Jr. v. People,***[35] the Court underscored that even a counsel's mistake in the realm of procedural technique binds his or her client. For a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the management of the suit in behalf of his or her client. As such, any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself or herself.[36] Otherwise, there would be no end to litigation since every defeated party would just have to claim neglect or mistake of counsel as ground to salvage his or her case.[37]

As for the litigants themselves, they, too, have an obligation to periodically keep in touch with their counsel, check with the court, and inquire about the status of their case. "*They should not expect that all they need to do is sit back, relax and await the outcome of their case.*"[38] In other words, diligence is required not only from lawyers but also from the clients.[39] On this score, petitioners had been remiss in discharging this duty. They utterly failed to monitor their case and consequently failed to neutralize the negligence of their chosen counsel pertaining to his omission or failure to file the required motion for reconsideration of the assailed resolution of the NLRC.

Even then, we can still excuse petitioners' failure to file its required motion for reconsideration under the second exception (*i.e.*, the questions

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[33] *Olores v. Manila Doctors College,* 731 Phil. 45, 58-59 (2014).
[34] *Macondray & Co. Inc. v. Provident Insurance Corp.,* 487 Phil. 158, 161 (2004).
[35] 656 Phil. 337, 340 (2011).
[36] *Id.*
[37] *Mendoza v. Court of Appeals,* 764 Phil. 53, 65 (2015).
[38] *Macondray & Co. Inc. v. Provident Insurance Corp.*, supra at 168.
[39] *Lumbre v. Court of Appeals,* 581 Phil. 390, 403 (2008).

raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court).

In ***Abraham v. NLRC,***[40] petitioner Abraham sued respondent Philippine Institute of Technical Education (PITE) for illegal dismissal and money claims. The labor arbiter dismissed the complaint for lack of merit. On appeal, the NLRC reversed and ordered PITE to pay Abraham backwages, separation pay, and her other money claims. On PITE's motion for reconsideration, however, the NLRC reversed itself and reinstated the labor arbiter's decision. Abraham, thereafter, directly filed a petition for *certiorari* before the Court of Appeals. The petition, though, was dismissed outright for Abraham's failure to file a motion for reconsideration of the assailed NLRC resolution. But the Court reinstated the petition for *certiorari* for the Court of Appeals to resolve on the merits. The Court noted that since the issue pertaining to the employees' constructive dismissal and claim for damages were already passed upon and resolved in full before the NLRC, hence, it would be futile for petitioners to still file a motion for reconsideration.[41]

Here, the contractual relations between respondents and Steelweld, as well as the validity of respondents' dismissal, had been the core issue in the conflicting rulings of the two (2) labor tribunals. The NLRC itself had exhaustively passed upon and resolved this issue in its assailed resolution. Notably, petitioners reiterated the same issue and arguments before the Court of Appeals, *i.e.:* (1) the NLRC erred in declaring respondents as regular employees; (2) the NLRC erred in declaring that respondents were illegally dismissed, thus, entitled to full backwages; and (3) the NLRC erred in ordering the payment of 13th month pay to Echano, Salazar, and Copillo from February 16, 2007 up till their termination on November 13, 2009, December 4, 2009, and December 12, 2009, respectively.[42]

Applying ***Abraham*** here, petitioners are excused from seeking a reconsideration of the NLRC Resolution dated August 10, 2011, which consequently results in the reinstatement of their Petition for *Certiorari*[43] dated November 15, 2011.

In ***Abraham,***[44] we remanded the case to the Court of Appeals for a resolution on the merits. But here, we are not remanding the case. Instead, we will resolve the case on the merits ourselves in order to stall any further delay in the already delayed disposition of the case for the past eleven (11) years or so since it first got filed on February 16, 2010. So must it be.

The nature of respondents' employment

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[40] 406 Phil. 310, 312 (2001).
[41] Supra note 33 at 60.
[42] *Rollo*, pp. 51-52.
[43] *Id.* at 41-57.
[44] *Jolo's Kiddie Carts v. Caballa,* 821 Phil. 1101, 1109 (2017).

A project employee is assigned to a project that starts and ends at a determined or determinable time.[45] The principal test to determine if employees are project employees is whether they have been assigned to carry out a **specific project or undertaking**, the duration or scope of which was specified at the time the employees **were engaged for that project.**[46] Article 295 of the Labor Code distinguishes a "project employee" from a "regular employee," *viz.*:

> ARTICLE 295. (formerly Article 280) *Regular and Casual Employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided,* That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.[47]

Here, petitioners claim that respondents were hired as project employees only, not as regular employees. We are not convinced.

First. There is no showing that upon their engagement, respondents were informed that they would be assigned to a specific project or undertaking. Neither was it established that they were made aware of the duration and scope of such project or undertaking. In ***Inocentes, Jr. v. R. Syjuco Construction, Inc.***,[48] the Court stressed that to ascertain whether employees were project employees, it is necessary to determine whether notice was given them at the time of hiring that they were being engaged just for a specific project.

Notably, the only "pieces of evidence" adduced by petitioners here were the so-called employment contracts of respondents which incidentally did not even bear the signatures of these employees. As aptly found by the NLRC, these "unsigned employment contracts" cannot be given any probative weight.[49] ***Mirandilla v. Jose Calma Development Corp.***[50] is *apropos*:

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[45] *Inocentes, Jr. v. R. Syjuco Construction, Inc.*, G.R. No. 240549, August 27, 2020.
[46] See *Goma v. Pamplona Plantation Inc.*, 579 Phil. 402, 413 (2008).
[47] Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015.
[48] Supra note 44.
[49] *Rollo*, pp. 88-89.
[50] G.R. No. 242834, June 26, 2019.

> In this case, records fail to disclose that petitioners were engaged for a specific project and that they were duly informed of its duration and scope at the time that they were engaged.
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> As for Ramon, respondents submitted his WTRs as primary proof of his alleged project employment status. While these WTRs do indicate Ramon's particular assignments for certain weeks starting from November 8, 2013 to May 27, 2015, they do not, however, indicate that he was particularly engaged by JCDC for each of the projects stated therein, and that the duration and scope thereof were made known to him at the time his services were engaged. At best, these records only show that he had worked for such projects. By and of themselves, they do not show that Ramon was made aware of his status as a project employee at the time of hiring, as well as of the period of his employment for a specific project or undertaking.
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> Likewise, same as in Ramon's case, Ranil and Edwin's project employment contracts for their engagement were not even shown. These contracts would have shed light to what projects or undertakings they were engaged; but all the same, none were submitted. As case law holds, **the absence of the employment contracts puts into serious question the issue of whether the employees were properly informed of their employment status as project employees at the time of their engagement, especially if there were no other evidence offered.** (emphasis in the original)

So must it be.

Second. Petitioners did not report the termination of the supposed project employment (on account of project completion) to the Department of Labor and Employment (DOLE), in violation of Department Order No. 19.[51] In ***Freyssinet Filipinas Corp. v. Lapuz,***[52] the Court explained that the failure on the part of the employer to file with the DOLE a termination report every time a project or its phase is completed is an indication that the workers are not project employees but regular ones.[53]

Third. It is undisputed that Steelweld is engaged in the construction business and respondents had been continuously employed with the company for many years as construction workers in its various projects: Echano for three (3) years, Salazar, four (4) years; and Copillo, eight (8) years. Their employment had not been interrupted ever since they got hired. Too, petitioners never required them to execute a new employment contract with the company each time they got assigned to a new project.

Under Article 295 of the Labor Code, one is deemed a regular employee if he or she: a) had been engaged to perform tasks which are usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is

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[51] As well as the old Policy Instructions No. 20.
[52] G.R. No. 226722, March 18, 2019.
[53] Supra note 46 at 407.

seasonal and for the duration of a season; or b) **has rendered at least one (1) year of service, whether such service is continuous or broken**, with respect to the activity for which he is employed and his employment continues as long as such activity exists.[54]

As discussed, respondents were continuously performing their respective tasks as carpenter and painters in the construction business of the company for more than one (1) year. Under the law, this is competent evidence of necessity, if not indispensability, of such activities to Steelweld's business.[55] The NLRC, therefore, properly found respondents to be regular employees of Steelweld. Consequently, respondents may only be dismissed for just or authorized cause and upon observance of due process of law.[56]

In ***University of Santo Tomas v. Samahang Manggagawa ng UST***,[57] respondents Pontesor, *et al.* were engaged to perform all-around maintenance services throughout the various facilities in UST's campus. For various periods spanning the years 1990-1999, their respective employment contracts show their positions as laborers, masons, painters, tinsmiths, electricians, carpenters, and welders were merely re-shuffled to make it appear they were engaged on a per-project basis only. Too, the cumulative period for which they were hired under each contract exceeded one (1) year. The Court ruled that since Pontesor, *et al.* were hired for more than one (1) year, by operation of law, they are deemed regular employees who enjoy security of tenure. The Court extends this protection to respondents here, as well.

Respondents were illegally dismissed

Petitioners assert that Echano was deemed to have abandoned his job when he no longer reported for work ever after his sick leave for six (6) months expired.

Abandonment requires the *deliberate and unjustified refusal* of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment.[58] To justify the dismissal of an employee on this ground, two (2) elements must concur, *viz.*: (a) the failure to report for work or absence without valid or justifiable reason; and (b) a clear intention to sever the employer-employee relationship which is manifested through the employee's overt acts.[59] These elements, however, are conspicuously absent here. For apart from petitioners' self-serving allegation, there was no proof of any overt act on the part of Echano showing his intention to abandon his work. On the contrary, records reveal that Echano sought permission to return to work and even presented a

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[54] *Pacific Metals Co., Ltd. v. Tamayo,* G.R. No. 226920, December 5, 2019.
[55] *Espina v. Highlands Camp/Rawlings Foundation, Inc.,* G.R. Nos. 220935 & 219868, July 28, 2020.
[56] Supra note 45.
[57] 809 Phil. 212, 223 (2017).
[58] *Manarpiis v. Texan Philippines, Inc.*, 752 Phil. 305, 321 (2015).
[59] *Demex Rattancraft, Inc. v. Leron,* 820 Phil. 693, 702 (2017).

fit to work medical certificate, but the company simply informed him that he should no longer report for work.[60]

In any event, even if it were true that Echano failed to report for work after his medical leave, there is no showing that petitioners sent the following notices to Echano, *viz.*: (1) first notice asking him to explain why he should not be declared to have abandoned his job; and (2) second notice to inform him of the company's decision to dismiss him on ground of abandonment.

But the most telling of all is the complaint for illegal dismissal filed by *Echano, et al.* against petitioners. An employee who takes steps to protest his or her dismissal cannot logically be said to have abandoned his work.[61]

As for Salazar, petitioners simply aver that his services were terminated since the project to which he got assigned was already nearing completion. Again, however, we reckon with the abject paucity of evidence in this regard. The inescapable conclusion is, like his co-respondents, Salazar was also terminated without just cause.

Finally, we go to Copillo's termination. Petitioners point that he got dismissed on December 12, 2009 due to, first – his negligence in using a wrong paint on Unit 33 of the Patio Rosario Townhomes; and second – there were other complaints against his poor performance.

To warrant removal from employment on ground of negligence, the negligence **must not only be gross but habitual**.[62] While Copillo admitted that he used a wrong paint on Unit 33, he convincingly explained it was an honest mistake. He said he was not instructed what specific color he should use on Unit 33.[63] Petitioner have not refuted this.

In any case, the supposed infraction of Copillo was hardly gross, much less, habitual. Petitioners do not dispute that it happened only once. On the so-called other infractions or complaints against Copillo's poor performance, there is no evidence at all that he was ever confronted with the same. What is on record though is that for the past eight (8) years, he did not have a rating of unsatisfactory in terms of his performance as a painter.

All told, the NLRC correctly found that respondents were illegally dismissed. As such, they are entitled to the twin remedies of: (a) reinstatement **or** separation pay equivalent to one (1) month salary for every year of service; **and** (b) backwages.[64]

Separation pay is granted when: a) the relationship between the employer and the illegally dismissed employee is already strained; and **b) a**

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[60] *Rollo*, p. 67.
[61] Supra note 58 at 322.
[62] *Kulas Ideas & Creations v. Alcoseba*, 627 Phil. 22, 32 (2010).
[63] *Rollo*, p. 91.
[64] *Ador v. Jamila and Company Security Services, Inc.*, G.R. No. 245422, July 7, 2020.

considerable length of time had already passed rendering it impossible for the employee to return to work.[65] A prayer for separation pay is an indication of the strained relations between the parties.[66] Since respondents here are opting for separation pay, in lieu of reinstatement, and considering the lapse of eleven (11) long years ever since they got illegally dismissed, their reinstatement at this time may no longer be practicable.[67] The Court, therefore, modifies the order of reinstatement of the NLRC, and in lieu thereof, orders the payment of respondents' separation pay with backwages.

We affirm the award of 13th month pay to respondents, there being no proof that petitioners paid them. Applying the three-year prescriptive period, however, the payment of 13th month pay should be reckoned from February 16, 2007 (three years prior to the filing of the illegal dismissal complaint on February 16, 2010) up to the date of the dismissal of Echano, Salazar, and Copillo on November 13, 2009, December 4, 2009, and December 12, 2009, respectively.

Finally, petitioners Joven Sta. Ana and Josephine Sta. Ana cannot be held solidarily liable with the company on the payment of respondents' monetary awards.[68] There was no indication that they acted in bad faith in causing respondents' termination.

ACCORDINGLY, the Resolutions dated November 29, 2011 and March 8, 2012 of the Court of Appeals in CA-G.R. SP No. 122075 are **REVERSED** and **SET ASIDE**.

The Resolution dated August 10, 2011 of the National Labor Relations Commission in **NLRC LAC No. 11-002695-10, NLRC RAB-IV-01-00023-10 R1, RAB IV-01-00137-10 RI and RAB IV-02-00362-10 RI** is **AFFIRMED with MODIFICATION**. Petitioner **STEELWELD CONSTRUCTION** is **ORDERED** to **PAY** respondents **SERAFIN H. ECHANO, RENATO L. SALAZAR,** and **ROBERTO E. COPILLO** the following:

a) **SEPARATION PAY EQUIVALENT** to one (1) month pay for every year of service until the finality of this Decision;

b) **FULL BACKWAGES** computed from November 13, 2009, December 4, 2009, and December 12, 2009, when their respective employment got terminated, until the finality of this Decision;

c) **THIRTEENTH MONTH PAY** computed from February 16, 2007 up to November 13, 2009, December 4, 2009, and December 12, 2009, respectively; and

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[65] See *Doctor v. NII Enterprise*, 821 Phil. 251, 268-269 (2017).
[66] *Ador v. Jamila and Company Security Services, Inc.*, supra.
[67] *Id.*
[68] See *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, 639 Phil. 1, 8 (2010).

d) Six percent (6%) legal interest *per annum* on the total monetary award computed from the finality of this Decision until fully paid.

The labor arbiter is **ORDERED** to prepare a comprehensive computation of the monetary award and cause its implementation, with utmost dispatch.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
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.

ALEXANDER G. GESMUNDO
Chief Justice