SUPREME COURT
SECOND DIVISION

MAYON HOTEL & RESTAURANT, PACITA O. PO and/or JOSEFA PO LAM,
***Petitioners*,**

-versus-

G.R. No. 157634
May 16, 2005

ROLANDO ADANA, CHONA BUMALAY, ROGER BURCE, EDUARDO ALAMARES, AMADO ALAMARES, EDGARDO TORREFRANCA, LOURDES CAMIGLA, TEODORO LAURENARIA, WENEFREDO LOVERES, LUIS GUADES, AMADO MACANDOG, PATERNO LLARENA, GREGORIO NICERIO, JOSE ATRACTIVO, MIGUEL TORREFRANCA, and SANTOS BROÑOLA,
***Respondents*.**
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D E C I S I O N

PUNO, *J.*:

This is a Petition for Certiorari to reverse and set aside the Decision issued by the Court of Appeals (CA)[1] in CA-G.R. SP No. 68642,

entitled “Rolando Adana, Wenefredo Loveres, et. al. vs. National Labor Relations Commission (NLRC), Mayon Hotel & Restaurant/Pacita O. Po, et al.,” and the Resolution[2] denying petitioners’ motion for reconsideration. The assailed CA decision reversed the NLRC Decision which had dismissed all of respondents’ complaints,[3] and reinstated the Joint Decision of the Labor Arbiter[4] which ruled that respondents were illegally dismissed and entitled to their money claims.

The facts, culled from the records, are as follows:[5]

Petitioner Mayon Hotel & Restaurant is a single proprietor business registered in the name of petitioner Pacita O. Po,[6] whose mother, petitioner Josefa Po Lam, manages the establishment.[7] The hotel and restaurant employed about sixteen (16) employees.

Records show that on various dates starting in 1981, petitioner hotel and restaurant hired the following people, all respondents in this case, with the following jobs:[8]

1. Wenefredo Loveres
   Accountant and Officer-in-charge

2. Paterno Llarena
   Front Desk Clerk

3. Gregorio Nicerio
   Supervisory Waiter

4. Amado Macandog
   Roomboy

5. Luis Guades
   Utility/Maintenance Worker

6. Santos Broñola
   Roomboy

7. Teodoro Laurenaria
   Waiter

8. Eduardo Alamares
   Roomboy/Waiter

9. Lourdes Camigla
   Cashier

10. Chona Bumalay
    Cashier

11. Jose Atractivo
    Technician

12. Amado Alamares
    Dishwasher and Kitchen Helper

13. Roger Burce
    Cook

14. Rolando Adana
    Waiter

15. Miguel Torrefranca
    Cook

16. Edgardo Torrefranca
    Cook

Due to the expiration and non-renewal of the lease contract for the rented space occupied by the said hotel and restaurant at Rizal Street, the hotel operations of the business were suspended on March 31, 1997.[9] The operation of the restaurant was continued in its new location at Elizondo Street, Legazpi City, while waiting for the construction of a new Mayon Hotel & Restaurant at Peñaranda Street, Legazpi City.[10] Only nine (9) of the sixteen (16) employees continued working in the Mayon Restaurant at its new site.[11]

On various dates of April and May 1997, the 16 employees filed complaints for underpayment of wages and other money claims against petitioners, as follows:[12]

Wenefredo Loveres, Luis Guades, Amado Macandog and Jose Atractivo for illegal dismissal, underpayment of wages, nonpayment of holiday and rest day pay; service incentive leave pay (SILP) and claims for separation pay plus damages;

Paterno Llarena and Gregorio Nicerio for illegal dismissal with claims for underpayment of wages; nonpayment of cost of living allowance (COLA) and overtime pay; premium pay for holiday and rest day; SILP; nightshift differential pay and separation pay plus damages;

Miguel Torrefranca, Chona Bumalay and Lourdes Camigla for underpayment of wages; nonpayment of holiday and rest day pay and SILP;

Rolando Adana, Roger Burce and Amado Alamares for underpayment of wages; nonpayment of COLA, overtime, holiday, rest day, SILP and nightshift differential pay;

Eduardo Alamares for underpayment of wages, nonpayment of holiday, rest day and SILP and night shift differential pay;

Santos Broñola for illegal dismissal, underpayment of wages, overtime pay, rest day pay, holiday pay, SILP, and damages;[13] and

Teodoro Laurenaria for underpayment of wages; nonpayment of COLA and overtime pay; premium pay for holiday and rest day, and SILP.

On July 14, 2000, Executive Labor Arbiter Gelacio L. Rivera, Jr. rendered a Joint Decision in favor of the employees. The Labor Arbiter awarded substantially all of respondents' money claims, and held that respondents Loveres, Macandog and Llarena were entitled to separation pay, while respondents Guades, Nicerio and Alamares were entitled to their retirement pay. The Labor Arbiter also held that based on the evidence presented, Josefa Po Lam is the owner/proprietor of Mayon Hotel & Restaurant and the proper respondent in these cases.

On appeal to the NLRC, the decision of the Labor Arbiter was reversed, and all the complaints were dismissed.

Respondents filed a motion for reconsideration with the NLRC and when this was denied, they filed a petition for certiorari with the CA which rendered the now assailed decision.

After their motion for reconsideration was denied, petitioners now come to this Court, seeking the reversal of the CA decision on the following grounds:

I. The Honorable Court of Appeals erred in reversing the decision of the National Labor Relations Commission (Second Division) by holding that the findings of fact of the NLRC were not supported by substantial evidence despite ample and sufficient evidence showing that the NLRC decision is indeed supported by substantial evidence;

II. The Honorable Court of Appeals erred in upholding the joint decision of the labor arbiter which ruled that private respondents were illegally dismissed from their employment, despite the fact that the reason why private respondents were out of work was not due to the fault of petitioners but to causes beyond the control of petitioners.

III. The Honorable Court of Appeals erred in upholding the award of monetary benefits by the labor arbiter in his joint decision in favor of the private respondents, including the award of damages to six (6) of the private respondents, despite the fact that the private respondents have not proven by substantial evidence their entitlement thereto and especially the fact that they were not illegally dismissed by the petitioners.

IV. The Honorable Court of Appeals erred in holding that Pacita Ong Po is the owner of the business establishment, petitioner Mayon Hotel and Restaurant, thus disregarding the certificate of registration of the business establishment ISSUED by the local government, which is a public

document, and the unqualified admissions of complainants-private respondents.[14]

In essence, the petition calls for a review of the following issues:

1. Was it correct for petitioner Josefa Po Lam to be held liable as the owner of petitioner Mayon Hotel & Restaurant, and the proper respondent in this case?

2. Were respondents Loveres, Guades, Macandog, Atractivo, Llarena and Nicerio illegally dismissed?

3. Are respondents entitled to their money claims due to underpayment of wages, and nonpayment of holiday pay, rest day premium, SILP, COLA, overtime pay, and night shift differential pay?

It is petitioners' contention that the above issues have already been threshed out sufficiently and definitively by the NLRC. They therefore assail the CA's reversal of the NLRC decision, claiming that based on the ruling in Castillo vs. NLRC,[15] it is non sequitur that the CA should re-examine the factual findings of both the NLRC and the Labor Arbiter, especially as in this case the NLRC's findings are allegedly supported by substantial evidence.

We do not agree.

There is no denying that it is within the NLRC's competence, as an appellate agency reviewing decisions of Labor Arbiters, to disagree with and set aside the latter's findings.[16] But it stands to reason that the NLRC should state an acceptable cause therefore, otherwise it would be a whimsical, capricious, oppressive, illogical, unreasonable exercise of quasi-judicial prerogative, subject to invalidation by the extraordinary writ of certiorari.[17] And when the factual findings of the Labor Arbiter and the NLRC are diametrically opposed and this disparity of findings is called into question, there is, necessarily, a re-examination of the factual findings to ascertain which opinion should be sustained.[18] As ruled in Asuncion vs. NLRC.[19]

Although, it is a legal tenet that factual findings of administrative bodies are entitled to great weight and respect, we are constrained to take a second look at the facts before us because of the diversity in the opinions of the Labor Arbiter and the NLRC. A disharmony between the factual findings of the Labor Arbiter and those of the NLRC opens the door to a review thereof by this Court.[20]

The CA, therefore, did not err in reviewing the records to determine which opinion was supported by substantial evidence.

Moreover, it is explicit in Castillo vs. NLRC[21] that factual findings of administrative bodies like the NLRC are affirmed only if they are supported by substantial evidence that is manifest in the decision and on the records. As stated in Castillo:

> Abuse of discretion does not necessarily follow from a reversal by the NLRC of a decision of a Labor Arbiter. Mere variance in evidentiary assessment between the NLRC and the Labor Arbiter does not automatically call for a full review of the facts by this Court. The NLRC's decision, so long as it is not bereft of substantial support from the records, deserves respect from this Court. As a rule, the original and exclusive jurisdiction to review a decision or resolution of respondent NLRC in a petition for certiorari under Rule 65 of the Rules of Court does not include a correction of its evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion. Thus, the NLRC's factual findings, if supported by substantial evidence, are entitled to great respect and even finality, unless petitioner is able to show that it simply and arbitrarily disregarded the evidence before it or had misappreciated the evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated. *(Citations omitted)*[22]

After careful review, we find that the reversal of the NLRC's decision was in order precisely because it was not supported by substantial evidence.

1. Ownership by Josefa Po Lam

The Labor Arbiter ruled that as regards the claims of the employees, petitioner Josefa Po Lam is, in fact, the owner of Mayon Hotel & Restaurant. Although the NLRC reversed this decision, the CA, on review, agreed with the Labor Arbiter that notwithstanding the certificate of registration in the name of Pacita Po, it is Josefa Po Lam who is the owner/proprietor of Mayon Hotel & Restaurant, and the proper respondent in the complaints filed by the employees. The CA decision states in part:

> Despite the existence of the Certificate of Registration in the name of Pacita Po, we cannot fault the labor arbiter in ruling that Josefa Po Lam is the owner of the subject hotel and restaurant. There were conflicting documents submitted by Josefa herself. She was ordered to submit additional documents to clearly establish ownership of the hotel and restaurant, considering the testimonies given by the respondents and the non-appearance and failure to submit her own position paper by Pacita Po. But Josefa did not comply with the directive of the Labor Arbiter. The ruling of the Supreme Court in Metropolitan Bank and Trust Company vs. Court of Appeals applies to Josefa Po Lam which is stated in this wise:
>
> > When the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary.
>
> Furthermore, in ruling that Josefa Po Lam is the real owner of the hotel and restaurant, the labor arbiter relied also on the testimonies of the witnesses, during the hearing of the instant case. When the conclusions of the labor arbiter are sufficiently corroborated by evidence on record, the same should be respected by appellate tribunals, since he is in a better position to assess and evaluate the credibility of the contending parties.[23] *(Citations omitted)*

Petitioners insist that it was error for the Labor Arbiter and the CA to have ruled that petitioner Josefa Po Lam is the owner of Mayon Hotel & Restaurant. They allege that the documents they submitted to the Labor Arbiter sufficiently and clearly establish the fact of ownership by petitioner Pacita Po, and not her mother, petitioner Josefa Po Lam. They contend that petitioner Josefa Po Lam's participation was limited to merely (a) being the overseer; (b) receiving the month-to-month and/or year-to-year financial reports prepared and submitted by respondent Loveres; and (c) visitation of the premises.[24] They also put emphasis on the admission of the respondents in their position paper submitted to the Labor Arbiter, identifying petitioner Josefa Po Lam as the manager, and Pacita Po as the owner.[25] This, they claim, is a judicial admission and is binding on respondents. They protest the reliance the Labor Arbiter and the CA placed on their failure to submit additional documents to clearly establish ownership of the hotel and restaurant, claiming that there was no need for petitioner Josefa Po Lam to submit additional documents considering that the Certificate of Registration is the best and primary evidence of ownership.

We disagree with petitioners. We have scrutinized the records and find the claim that petitioner Josefa Po Lam is merely the overseer is not borne out by the evidence.

First. It is significant that only Josefa Po Lam appeared in the proceedings with the Labor Arbiter. Despite receipt of the Labor Arbiter's notice and summons, other notices and Orders, petitioner Pacita Po failed to appear in any of the proceedings with the Labor Arbiter in these cases, nor file her position paper.[26] It was only on appeal with the NLRC that Pacita Po signed the pleadings.[27] The apathy shown by petitioner Pacita Po is contrary to human experience as one would think that the owner of an establishment would naturally be concerned when all her employees file complaints against her.

Second. The records of the case belie petitioner Josefa Po Lam's claim that she is merely an overseer. The findings of the Labor Arbiter on this question were based on credible, competent and substantial evidence. We again quote the Joint Decision on this matter:

Mayon Hotel and Restaurant is a [business name] of an enterprise. While petitioner Josefa Po Lam claims that it is her daughter, Pacita Po, who owns the hotel and restaurant when the latter purchased the same from one Palanos in 1981, Josefa failed to submit the document of sale from said Palanos to Pacita as allegedly the sale was only verbal although the license to operate said hotel and restaurant is in the name of Pacita which, despite our Order to Josefa to present the same, she failed to comply (p. 38, tsn. August 13, 1998). While several documentary evidences were submitted by Josefa wherein Pacita was named therein as owner of the hotel and restaurant (pp. 64, 65, 67 to 69; vol. I, rollo)[,] there were documentary evidences also that were submitted by Josefa showing her ownership of said enterprise (pp. 468 to 469; vol. II, rollo). While Josefa explained her participation and interest in the business as merely to help and assist her daughter as the hotel and restaurant was near the former's store, the testimonies of respondents and Josefa as well as her demeanor during the trial in these cases proves (sic) that Josefa Po Lam owns Mayon Hotel and Restaurant. respondents testified that it was Josefa who exercises all the acts and manifestation of ownership of the hotel and restaurant like transferring employees from the Greatwall Palace Restaurant which she and her husband Roy Po Lam previously owned; it is Josefa to whom the employees submits (sic) reports, draws money for payment of payables and for marketing, attending (sic) to Labor Inspectors during ocular inspections. Except for documents whereby Pacita Po appears as the owner of Mayon Hotel and Restaurant, nothing in the record shows any circumstance or manifestation that Pacita Po is the owner of Mayon Hotel and Restaurant. The least that can be said is that it is absurd for a person to purchase a hotel and restaurant in the very heart of the City of Legazpi verbally. Assuming this to be true, when petitioners, particularly Josefa, was directed to submit evidence as to the ownership of Pacita of the hotel and restaurant, considering the testimonies of respondents, the former should [have] submitted the lease contract between the owner of the building where Mayon Hotel and Restaurant was located at Rizal St., Legazpi City and Pacita Po to clearly establish ownership by the latter of said enterprise.

> Josefa failed. We are not surprised why some employers employ schemes to mislead Us in order to evade liabilities. We therefore consider and hold Josefa Po Lam as the owner/proprietor of Mayon Hotel and Restaurant and the proper respondent in these cases.[28]

Petitioners' reliance on the rules of evidence, i.e., the certificate of registration being the best proof of ownership, is misplaced. Notwithstanding the certificate of registration, doubts were cast as to the true nature of petitioner Josefa Po Lam's involvement in the enterprise, and the Labor Arbiter had the authority to resolve this issue. It was therefore within his jurisdiction to require the additional documents to ascertain who was the real owner of petitioner Mayon Hotel & Restaurant.

Article 221 of the Labor Code is clear: technical rules are not binding, and the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice.[29] The rule of evidence prevailing in court of law or equity shall not be controlling in labor cases and it is the spirit and intention of the Labor Code that the Labor Arbiter shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.[30] Labor laws mandate the speedy administration of justice, with least attention to technicalities but without sacrificing the fundamental requisites of due process.[31]

Similarly, the fact that the respondents' complaints contained no allegation that petitioner Josefa Po Lam is the owner is of no moment. To apply the concept of judicial admissions to respondents — who are but lowly employees - would be to exact compliance with technicalities of law that is contrary to the demands of substantial justice. Moreover, the issue of ownership was an issue that arose only during the course of the proceedings with the Labor Arbiter, as an incident of determining respondents' claims, and was well within his jurisdiction.[32]

Petitioners were also not denied due process, as they were given sufficient opportunity to be heard on the issue of ownership.[33] The essence of due process in administrative proceedings is simply an

opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[34] And there is nothing in the records which would suggest that petitioners had absolute lack of opportunity to be heard.[35] Obviously, the choice not to present evidence was made by petitioners themselves.[36]

But more significantly, we sustain the Labor Arbiter and the CA because even when the case was on appeal with the NLRC, nothing was submitted to negate the Labor Arbiter's finding that Pacita Po is not the real owner of the subject hotel and restaurant. Indeed, no such evidence was submitted in the proceedings with the CA nor with this Court. Considering that petitioners vehemently deny ownership by petitioner Josefa Po Lam, it is most telling that they continue to withhold evidence which would shed more light on this issue. We therefore agree with the CA that the failure to submit could only mean that if produced, it would have been adverse to petitioners' case.[37]

Thus, we find that there is substantial evidence to rule that petitioner Josefa Po Lam is the owner of petitioner Mayon Hotel & Restaurant.

2. Illegal Dismissal: claim for separation pay

Of the sixteen employees, only the following filed a case for illegal dismissal: respondents Loveres, Llarena, Nicerio, Macandog, Guades, Atractivo and Broñola.[38]

The Labor Arbiter found that there was illegal dismissal, and granted separation pay to respondents Loveres, Macandog and Llarena. As respondents Guades, Nicerio and Alamares were already 79, 66 and 65 years old respectively at the time of the dismissal, the Labor Arbiter granted retirement benefits pursuant to Article 287 of the Labor Code as amended.[39] The Labor Arbiter ruled that respondent Atractivo was not entitled to separation pay because he had been transferred to work in the restaurant operations in Elizondo Street, but awarded him damages. Respondents Loveres, Llarena, Nicerio, Macandog and Guades were also awarded damages.[40]

The NLRC reversed the Labor Arbiter, finding that "no clear act of termination is attendant in the case at bar" and that respondents "did not submit any evidence to that effect, but the finding and conclusion

of the Labor Arbiter are merely based on his own surmises and conjectures."[41] In turn, the NLRC was reversed by the CA.

It is petitioners contention that the CA should have sustained the NLRC finding that none of the above-named respondents were illegally dismissed, or entitled to separation or retirement pay. According to petitioners, even the Labor Arbiter and the CA admit that when the illegal dismissal case was filed by respondents on April 1997, they had as yet no cause of action. Petitioners therefore conclude that the filing by respondents of the illegal dismissal case was premature and should have been dismissed outright by the Labor Arbiter.[42] Petitioners also claim that since the validity of respondents' dismissal is a factual question, it is not for the reviewing court to weigh the conflicting evidence.[43]

We do not agree. Whether respondents are still working for petitioners is a factual question. And the records are unequivocal that since April 1997, when petitioner Mayon Hotel & Restaurant suspended its hotel operations and transferred its restaurant operations in Elizondo Street, respondents Loveres, Macandog, Llarena, Guades and Nicerio have not been permitted to work for petitioners. Respondent Alamares, on the other hand, was also laid-off when the Elizondo Street operations closed, as were all the other respondents. Since then, respondents have not been permitted to work nor recalled, even after the construction of the new premises at Peñaranda Street and the reopening of the hotel operations with the restaurant in this new site. As stated by the Joint Decision of the Labor Arbiter on July 2000, or more than three (3) years after the complaint was filed:[44]

> From the records, more than six months had lapsed without petitioner having resumed operation of the hotel. After more than one year from the temporary closure of Mayon Hotel and the temporary transfer to another site of Mayon Restaurant, the building which petitioner Josefa alleged where the hotel and restaurant will be transferred has been finally constructed and the same is operated as a hotel with bar and restaurant nevertheless, none of respondents herein who were employed at Mayon Hotel and Restaurant which was also closed on April 30, 1998 was/were recalled by petitioner to continue their services.

Parenthetically, the Labor Arbiter did not grant separation pay to the other respondents as they had not filed an amended complaint to question the cessation of their employment after the closure of Mayon Hotel & Restaurant on March 31, 1997.[45]

The above factual finding of the Labor Arbiter was never refuted by petitioners in their appeal with the NLRC. It confounds us, therefore, how the NLRC could have so cavalierly treated this uncontroverted factual finding by ruling that respondents have not introduced any evidence to show that they were illegally dismissed, and that the Labor Arbiter's finding was based on conjecture.[46] It was a serious error that the NLRC did not inquire as to the legality of the cessation of employment. Article 286 of the Labor Code is clear — there is termination of employment when an otherwise bona fide suspension of work exceeds six (6) months.[47] The cessation of employment for more than six months was patent and the employer has the burden of proving that the termination was for a just or authorized cause.[48]

Moreover, we are not impressed by any of petitioners' attempts to exculpate themselves from the charges. First, in the proceedings with the Labor Arbiter, they claimed that it could not be illegal dismissal because the lay-off was merely temporary (and due to the expiration of the lease contract over the old premises of the hotel). They specifically invoked Article 286 of the Labor Code to argue that the claim for separation pay was premature and without legal and factual basis.[49] Then, because the Labor Arbiter had ruled that there was already illegal dismissal when the lay-off had exceeded the six-month period provided for in Article 286, petitioners raise this novel argument, to wit:

> It is the firm but respectful submission of petitioners that reliance on Article 286 of the Labor Code is misplaced, considering that the reason why private respondents were out of work was not due to the fault of petitioners. The failure of petitioners to reinstate the private respondents to their former positions should not likewise be attributable to said petitioners as the private respondents did not submit any evidence to prove their alleged illegal dismissal. The petitioners cannot discern why they should be made liable to the private respondents for

> their failure to be reinstated considering that the fact that they were out of work was not due to the fault of petitioners but due to circumstances beyond the control of petitioners, which are the termination and non-renewal of the lease contract over the subject premises. Private respondents, however, argue in their Comment that petitioners themselves sought the application of Article 286 of the Labor Code in their case in their Position Paper filed before the Labor Arbiter. In refutation, petitioners humbly submit that even if they invoke Article 286 of the Labor Code, still the fact remains, and this bears stress and emphasis, that the temporary suspension of the operations of the establishment arising from the non-renewal of the lease contract did not result in the termination of employment of private respondents and, therefore, the petitioners cannot be faulted if said private respondents were out of work, and consequently, they are not entitled to their money claims against the petitioners.[50]

It is confounding how petitioners have fashioned their arguments. After having admitted, in effect, that respondents have been laid-off since April 1997, they would have this Court excuse their refusal to reinstate respondents or grant them separation pay because these same respondents purportedly have not proven the illegality of their dismissal.

Petitioners' arguments reflect their lack of candor and the blatant attempt to use technicalities to muddle the issues and defeat the lawful claims of their employees. First, petitioners admit that since April 1997, when hotel operations were suspended due to the termination of the lease of the old premises, respondents Loveres, Macandog, Llarena, Nicerio and Guades have not been permitted to work. Second, even after six months of what should have been just a temporary lay-off, the same respondents were still not recalled to work. As a matter of fact, the Labor Arbiter even found that as of the time when he rendered his Joint Decision on July 2000 — or more than three (3) years after the supposed "temporary lay-off," the employment of all of the respondents with petitioners had ceased, notwithstanding that the new premises had been completed and the same operated as a hotel with bar and restaurant. This is clearly dismissal — or the permanent severance or complete separation of

the worker from the service on the initiative of the employer regardless of the reasons therefor.[51]

On this point, we note that the Labor Arbiter and the CA are in accord that at the time of the filing of the complaint, respondents had no cause of action to file the case for illegal dismissal. According to the CA and the Labor Arbiter, the lay-off of the respondents was merely temporary, pending construction of the new building at Peñaranda Street.[52]

While the closure of the hotel operations in April of 1997 may have been temporary, we hold that the evidence on record belie any claim of petitioners that the lay-off of respondents on that same date was merely temporary. On the contrary, we find substantial evidence that petitioners intended the termination to be permanent. First, respondents Loveres, Macandog, Llarena, Guades, Nicerio and Alamares filed the complaint for illegal dismissal immediately after the closure of the hotel operations in Rizal Street, notwithstanding the alleged temporary nature of the closure of the hotel operations, and petitioners' allegations that the employees assigned to the hotel operations knew about this beforehand. Second, in their position paper submitted to the Labor Arbiter, petitioners invoked Article 286 of the Labor Code to assert that the employer-employee relationship was merely suspended, and therefore the claim for separation pay was premature and without legal or factual basis.[53] But they made no mention of any intent to recall these respondents to work upon completion of the new premises. Third, the various pleadings on record show that petitioners held respondents, particularly Loveres, as responsible for mismanagement of the establishment and for abuse of trust and confidence. Petitioner Josefa Po Lam's affidavit on July 21, 1998, for example, squarely blamed respondents, specifically Loveres, Bumalay and Camigla, for abusing her leniency and causing petitioner Mayon Hotel & Restaurant to sustain "continuous losses until it is closed." She then asserts that respondents "are not entitled to separation pay for they were not terminated and if ever the business ceased to operate it was because of losses."[54] Again, petitioners make the same allegation in their memorandum on appeal with the NLRC, where they alleged that three (3) years prior to the expiration of the lease in 1997, the operation of the Hotel had been sustaining consistent losses, and these were solely attributed to

respondents, but most especially due to Loveres' mismanagement and abuse of petitioners' trust and confidence.[55] Even the petition filed in this court made reference to the separation of the respondents due to "severe financial losses and reverses," again imputing it to respondents' mismanagement.[56] The vehemence of petitioners' accusation of mismanagement against respondents, especially against Loveres, is inconsistent with the desire to recall them to work. Fourth, petitioners' memorandum on appeal also averred that the case was filed "not because of the business being operated by them or that they were supposedly not receiving benefits from the Labor Code which is true, but because of the fact that the source of their livelihood, whether legal or immoral, was stopped on March 31, 1997, when the owner of the building terminated the Lease Contract."[57] Fifth, petitioners had inconsistencies in their pleadings (with the NLRC, CA and with this Court) in referring to the closure,[58] i.e., in the petition filed with this court, they assert that there is no illegal dismissal because there was "only a temporary cessation or suspension of operations of the hotel and restaurant due to circumstances beyond the control of petitioners, and that is, the non-renewal of the lease contract." [59] And yet, in the same petition, they also assert that: (a) the separation of respondents was due to severe financial losses and reverses leading to the closure of the business; and (b) petitioner Pacita Po had to close shop and was bankrupt and has no liquidity to put up her own building to house Mayon Hotel & Restaurant.[60] Sixth, and finally, the uncontroverted finding of the Labor Arbiter that petitioners terminated all the other respondents, by not employing them when the Hotel and Restaurant transferred to its new site on Peñaranda Street.[61] Indeed, in this same memorandum, petitioners referred to all respondents as "former employees of Mayon Hotel & Restaurant."[62]

These factors may be inconclusive individually, but when taken together, they lead us to conclude that petitioners really intended to dismiss all respondents and merely used the termination of the lease (on Rizal Street premises) as a means by which they could terminate their employees.

Moreover, even assuming arguendo that the cessation of employment on April 1997 was merely temporary, it became dismissal by

operation of law when petitioners failed to reinstate respondents after the lapse of six (6) months, pursuant to Article 286 of the Labor Code.

We are not impressed by petitioners' claim that severe business losses justified their failure to reinstate respondents. The evidence to prove this fact is inconclusive. But more important, serious business losses do not excuse the employer from complying with the clearance or report required under Article 283 of the Labor Code and its implementing rules before terminating the employment of its workers.[63] In the absence of justifying circumstances, the failure of petitioners to observe the procedural requirements set out under Article 284, taints their actuations with bad faith, especially since they claimed that they have been experiencing losses in the three years before 1997. To say the least, if it were true that the lay-off was temporary but then serious business losses prevented the reinstatement of respondents, then petitioners should have complied with the requirements of written notice. The requirement of law mandating the giving of notices was intended not only to enable the employees to look for another employment and therefore ease the impact of the loss of their jobs and the corresponding income, but more importantly, to give the Department of Labor and Employment (DOLE) the opportunity to ascertain the verity of the alleged authorized cause of termination.[64]

And even assuming that the closure was due to a reason beyond the control of the employer, it still has to accord its employees some relief in the form of severance pay.[65]

While we recognize the right of the employer to terminate the services of an employee for a just or authorized cause, the dismissal of employees must be made within the parameters of law and pursuant to the tenets of fair play.[66] And in termination disputes, the burden of proof is always on the employer to prove that the dismissal was for a just or authorized cause.[67] Where there is no showing of a clear, valid and legal cause for termination of employment, the law considers the case a matter of illegal dismissal.[68]

Under these circumstances, the award of damages was proper. As a rule, moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act

oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[69] We believe that the dismissal of the respondents was attended with bad faith and meant to evade the lawful obligations imposed upon an employer.

To rule otherwise would lead to the anomaly of respondents being terminated from employment in 1997 as a matter of fact, but without legal redress. This runs counter to notions of fair play, substantial justice and the constitutional mandate that labor rights should be respected. If doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter — the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[70] It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor.[71] The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection of labor.[72]

We therefore reinstate the Labor Arbiter's decision with the following modifications:

(a) Separation pay for the illegal dismissal of respondents Loveres, Macandog and Llarena; (Santos Broñola cannot be granted separation pay as he made no such claim);

(b) Retirement pay for respondents Guades, Nicerio, and Alamares, who at the time of dismissal were entitled to their retirement benefits pursuant to Article 287 of the Labor Code as amended;[73] and

(c) Damages for respondents Loveres, Macandog, Llarena, Guades, Nicerio, Atractivo, and Broñola.

3. Money claims

The CA held that contrary to the NLRC's ruling, petitioners had not discharged the burden of proving that the monetary claims of the

respondents have been paid.[74] The CA thus reinstated the Labor Arbiter's grant of respondents' monetary claims, including damages.

Petitioners assail this ruling by repeating their long and convoluted argument that as there was no illegal dismissal, then respondents are not entitled to their monetary claims or separation pay and damages. Petitioners' arguments are not only tiring, repetitive and unconvincing, but confusing and confused — entitlement to labor standard benefits is a separate and distinct concept from payment of separation pay arising from illegal dismissal, and are governed by different provisions of the Labor Code.

We agree with the CA and the Labor Arbiter. Respondents have set out with particularity in their complaint, position paper, affidavits and other documents the labor standard benefits they are entitled to, and which they alleged that petitioners have failed to pay them. It was therefore petitioners' burden to prove that they have paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege nonpayment, the general rule is that the burden rests on the defendant to prove nonpayment, rather than on the plaintiff to prove non payment.[75] This petitioners failed to do.

We also agree with the Labor Arbiter and the CA that the documents petitioners submitted, i.e., affidavits executed by some of respondents during an ocular inspection conducted by an inspector of the DOLE; notices of inspection result and Facility Evaluation Orders issued by DOLE, are not sufficient to prove payment.[76] Despite repeated orders from the Labor Arbiter,[77] petitioners failed to submit the pertinent employee files, payrolls, records, remittances and other similar documents which would show that respondents rendered work entitling them to payment for overtime work, night shift differential, premium pay for work on holidays and rest day, and payment of these as well as the COLA and the SILP – documents which are not in respondents' possession but in the custody and absolute control of petitioners.[78] By choosing not to fully and completely disclose information and present the necessary documents to prove payment of labor standard benefits due to respondents, petitioners failed to discharge the burden of proof.[79] Indeed, petitioners' failure to submit the necessary documents which

as employers are in their possession, inspite of orders to do so, gives rise to the presumption that their presentation is prejudicial to its cause.[80] As aptly quoted by the CA:

> When the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary.[81]

Petitioners next claim that the cost of the food and snacks provided to respondents as facilities should have been included in reckoning the payment of respondents' wages. They state that although on the surface respondents appeared to receive minimal wages, petitioners had granted respondents other benefits which are considered part and parcel of their wages and are allowed under existing laws.[82] They claim that these benefits make up for whatever inadequacies there may be in compensation.[83] Specifically, they invoked Sections 5 and 6, Rule VII-A, which allow the deduction of facilities provided by the employer through an appropriate Facility Evaluation Order issued by the Regional Director of the DOLE.[84] Petitioners also aver that they give five (5) percent of the gross income each month as incentives. As proof of compliance of payment of minimum wages, petitioners submitted the Notice of Inspection Results issued in 1995 and 1997 by the DOLE Regional Office.[85]

The cost of meals and snacks purportedly provided to respondents cannot be deducted as part of respondents' minimum wage. As stated in the Labor Arbiter's decision:[86]

> While petitioners submitted Facility Evaluation Orders (pp. 468, 469; vol. II, rollo) issued by the DOLE Regional Office whereby the cost of meals given by petitioners to respondents were specified for purposes of considering the same as part of their wages, We cannot consider the cost of meals in the Orders as applicable to respondents. respondents were not interviewed by the DOLE as to the quality and quantity of food appearing in the applications of petitioners for facility evaluation prior to its

> approval to determine whether or not respondents were indeed given such kind and quantity of food. Also, there was no evidence that the quality and quantity of food in the Orders were voluntarily accepted by respondents. On the contrary; while some of the respondents admitted that they were given meals and merienda, the quality of food served to them were not what were provided for in the Orders and that it was only when they filed these cases that they came to know about said Facility Evaluation Orders (pp. 100; 379, vol. II, rollo; p. 40, tsn, June 19, 1998). petitioner Josefa herself, who applied for evaluation of the facility (food) given to respondents, testified that she did not inform respondents concerning said Facility Evaluation Orders (p. 34, tsn, August 13, 1998).

Even granting that meals and snacks were provided and indeed constituted facilities, such facilities could not be deducted without compliance with certain legal requirements. As stated in Mabeza vs. NLRC,[87] the employer simply cannot deduct the value from the employee's wages without satisfying the following: (a) proof that such facilities are customarily furnished by the trade; (b) the provision of deductible facilities is voluntarily accepted in writing by the employee; and (c) the facilities are charged at fair and reasonable value. The records are clear that petitioners failed to comply with these requirements. There was no proof of respondents' written authorization. Indeed, the Labor Arbiter found that while the respondents admitted that they were given meals and merienda, the quality of food served to them was not what was provided for in the Facility Evaluation Orders and it was only when they filed the cases that they came to know of this supposed Facility Evaluation Orders.[88] Petitioner Josefa Po Lam herself admitted that she did not inform the respondents of the facilities she had applied for.[89]

Considering the failure to comply with the above-mentioned legal requirements, the Labor Arbiter therefore erred when he ruled that the cost of the meals actually provided to respondents should be deducted as part of their salaries, on the ground that respondents have availed themselves of the food given by petitioners.[90] The law is clear that mere availment is not sufficient to allow deductions from employees' wages.

More important, we note the uncontroverted testimony of respondents on record that they were required to eat in the hotel and restaurant so that they will not go home and there is no interruption in the services of Mayon Hotel & Restaurant. As ruled in Mabeza, food or snacks or other convenience provided by the employers are deemed as supplements if they are granted for the convenience of the employer. The criterion in making a distinction between a supplement and a facility does not so much lie in the kind (food, lodging) but the purpose.[91] Considering, therefore, that hotel workers are required to work different shifts and are expected to be available at various odd hours, their ready availability is a necessary matter in the operations of a small hotel, such as petitioners' business.[92] The deduction of the cost of meals from respondents' wages, therefore, should be removed.

We also do not agree with petitioners that the five (5) percent of the gross income of the establishment can be considered as part of the respondents' wages. We quote with approval the Labor Arbiter on this matter, to wit:

> While complainants, who were employed in the hotel, received various amounts as profit share, the same cannot be considered as part of their wages in determining their claims for violation of labor standard benefits. Although called profit share, such is in the nature of share from service charges charged by the hotel. This is more explained by respondents when they testified that what they received are not fixed amounts and the same are paid not on a monthly basis (pp. 55, 93, 94, 103, 104; vol. II, rollo). Also, petitioners failed to submit evidence that the amounts received by respondents as profit share are to be considered part of their wages and had been agreed by them prior to their employment. Further, how can the amounts received by respondents be considered as profit share when the same are based on the gross receipt of the hotel? No profit can as yet be determined out of the gross receipt of an enterprise. Profits are realized after expenses are deducted from the gross income.

On the issue of the proper minimum wage applicable to respondents, we sustain the Labor Arbiter. We note that petitioners themselves have admitted that the establishment employs "more or less sixteen

(16) employees,"[93] therefore they are estopped from claiming that the applicable minimum wage should be for service establishments employing 15 employees or less.

As for petitioners repeated invocation of serious business losses, suffice to say that this is not a defense to payment of labor standard benefits. The employer cannot exempt himself from liability to pay minimum wages because of poor financial condition of the company. The payment of minimum wages is not dependent on the employer's ability to pay.[94]

Thus, we reinstate the award of monetary claims granted by the Labor Arbiter.

4. Conclusion

There is no denying that the actuations of petitioners in this case have been reprehensible. They have terminated the respondents' employment in an underhanded manner, and have used and abused the quasi-judicial and judicial processes to resist payment of their employees' rightful claims, thereby protracting this case and causing the unnecessary clogging of dockets of the Court. They have also forced respondents to unnecessary hardship and financial expense. Indeed, the circumstances of this case would have called for exemplary damages, as the dismissal was effected in a wanton, oppressive or malevolent manner,[95] and public policy requires that these acts must be suppressed and discouraged.[96]

Nevertheless, we cannot agree with the Labor Arbiter in granting exemplary damages of P10,000.00 each to all respondents. While it is true that other forms of damages under the Civil Code may be awarded to illegally dismissed employees,[97] any award of moral damages by the Labor Arbiter cannot be based on the Labor Code but should be grounded on the Civil Code.[98] And the law is clear that exemplary damages can only be awarded if plaintiff shows proof that he is entitled to moral, temperate or compensatory damages.[99]

As only respondents Loveres, Guades, Macandog, Llarena, Nicerio, Atractivo and Broñola specifically claimed damages from petitioners, then only they are entitled to exemplary damages.

Finally, we rule that attorney's fees in the amount to P10,000.00 should be granted to each respondent. It is settled that in actions for recovery of wages or where an employee was forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees.[100] This case undoubtedly falls within this rule.

IN VIEW WHEREOF, the petition is hereby **DENIED**. The Decision of January 17, 2003 of the Court of Appeals in CA-G.R. SP No. 68642 upholding the Joint Decision of July 14, 2000 of the Labor Arbiter in RAB V Case Nos. 04-00079-97 and 04-00080-97 is **AFFIRMED**, with the following **MODIFICATIONS**:

(1) Granting separation pay of one-half (1/2) month for every year of service to respondents Loveres, Macandog and Llarena;

(2) Granting retirement pay for respondents Guades, Nicerio, and Alamares;

(3) Removing the deductions for food facility from the amounts due to all respondents;

(4) Awarding moral damages of P20,000.00 each for respondents Loveres, Macandog, Llarena, Guades, Nicerio, Atractivo, and Broñola;

(5) Deleting the award of exemplary damages of P10,000.00 from all respondents except Loveres, Macandog, Llarena, Guades, Nicerio, Atractivo, and Broñola; and

(6) Granting attorney's fees of P10,000.00 each to all respondents.

The case is **REMANDED** to the Labor Arbiter for the **RECOMPUTATION** of the total monetary benefits awarded and due to the employees concerned in accordance with the decision. The Labor Arbiter is **ORDERED** to submit his compliance thereon within

thirty (30) days from notice of this decision, with copies furnished to the parties.

SO ORDERED.

Austria-Martinez, Callejo Sr., Tinga, and Chico-Nazario, *JJ.*, concur.

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[1] Dated January 17, 2003, penned by Court of Appeals Justice Tria Tirona and concurred in by JJ. Barrios and Sundiam; Rollo, pp. 75-86.
[2] Promulgated on March 21, 2003; Rollo, pp. 88-89.
[3] In NLRC CA-025902-00, penned by Commissioner Victoriano R. Calaycay, and concurred in by Commissioners Raul T. Aquino and Angelita A. Gacutan, dated August 31, 2001. This was followed by the Resolution denying the employees' (respondents herein) Motion for Reconsideration dated October 8, 2001; Rollo, pp. 256-278.
[4] Joint Decision of RAB V Case Nos. 04-00079-97, 04-00080-97, and 04-00079-97, dated July 14, 2000.
[5] Rollo, pp. 75-77.
[6] See Complainants' (Respondents herein) Position Paper, dated July 3, 1997, Rollo, p. 144; and Petition, Rollo, p. 15.
[7] Id.
[8] Rollo, pp. 144 -178.
[9] Complainants' (respondents herein) Position Paper, dated July 3, 1997; Rollo, p. 144.
[10] Rollo, pp. 15-16.
[11] Id.
[12] Rollo, pp. 90-105. See complainants' (respondents herein) Position Paper with annexes, dated July 3, 1997; Rollo, pp. 144-178.
[13] Amended Complaint, Rollo, p. 116.
[14] Rollo, pp. 34-35.
[15] G.R. No. 104319, June 17, 1999 (308 SCRA 326).
[16] Coca-Cola Bottlers, Philippines, Inc. vs. Hingpit, G.R. No. 127238, August 25, 1998 (294 SCRA 594).
[17] Id.
[18] See Jo vs. NLRC, G.R. No. 121605, February 2, 2000 (324 SCRA 437); PAL, Inc. vs. NLRC, G.R. No. 126805, March 16, 2000 (328 SCRA 273); and Villar vs. NLRC, G.R. No. 130935, May 11, 2000 (331 SCRA 686).
[19] G.R. No. 129329, July 31, 2001 (362 SCRA 56). See Philippine Employ Services and Resources, Inc. vs. Paramio, G.R. No. 144786, April 15, 2004 (427 SCRA 732).
[20] At p. 62.
[21] G.R. No. 104319, June 17, 1999 (308 SCRA 326).
[22] At pp. 334-335.

[23] Rollo, pp. 79-80. The quoted ruling from Metropolitan Bank and Trust Company vs. CA, G.R. No. 122899, June 8, 2000 (333 SCRA 212, 219), was in turn, merely citing one of the pronouncements made in Manila Bay Club Corp. vs. CA, G.R. No. 110015, October 13, 1995 (249 SCRA 303, 306).
[24] Petition, Rollo, pp. 61-62.
[25] Id.
[26] Joint Decision of Labor Arbiter, Rollo, p. 188.
[27] Rollo, p. 227.
[28] Rollo, pp. 190-191.
[29] Havtor Management Phils., Inc. vs. NLRC, G.R. No. 146336, December 13, 2001 (372 SCRA 271).
[30] Labor Code, Art. 221.
[31] Taberrah vs. NLRC, G.R. No. 117742, July 29, 1997 (276 SCRA 431). See Samahan ng Mangagawa sa Moldex Products, Inc. vs. NLRC, G.R. No. 119467, February 1, 2000 (324 SCRA 242); Samar II Electric Cooperative, Inc. vs. NLRC, G.R. No. 116692, March 21, 1997 (270 SCRA 290); Domasig vs. NLRC, G.R. No. 118101, September 16, 1996 (261 SCRA 779); and Sigma Personnel Services vs. NLRC, G.R. No. 108284, June 30, 1993 (224 SCRA 181).
[32] Domasig vs. NLRC, G.R. No. 118101, September 16, 1996 (261 SCRA 779).
[33] Robusta Agro Marine Products, Inc. vs. Gorombalem, G.R. No. 80500, July 5, 1989 (175 SCRA 93).
[34] Damasco vs. NLRC, G.R. No. 115755, December 4, 2000 (346 SCRA 714). See Ginete vs. Sunrise Manning Agency, G.R. No. 142023, June 21, 2001 (359 SCRA 404); and Robusta Agro Marine Products, Inc. vs. Gorombalem, G.R. No. 80500, July 5, 1989 (175 SCRA 93).
[35] See Marquez vs. Secretary of Labor, G.R. No. 80685, March 16, 1989 (171 SCRA 337).
[36] Id.
[37] Coca-Cola Bottlers Philippines, Inc. vs. NLRC, G.R. No. 78787, December 18, 1989 (180 SCRA 195), citing Sec. 3(e), Rule 131, Rules of Court. See People vs. Balansag, 60 Phil. 266 (1934); and Cuyugan vs. Dizon, 79 Phil. 80 (1947).
[38] Amended Complaint, Rollo, p. 116.
[39] Joint Decision, Rollo, p. 192.
[40] We note that respondent Broñola was not included in this award, probably overlooked because he had alleged illegal dismissal only in an amended complaint filed on May 27, 1997. Amended Complaint, Rollo, p. 116.
[41] NLRC decision, Rollo, pp. 269-272.
[42] Petition, Rollo, pp. 42-43.
[43] Rollo, p. 36.
[44] Rollo, pp. 191-192.
[45] Joint Decision, Rollo, pp. 192-193.
[46] Id, pp. 207-228.
[47] Article 286 of the Labor Code provides: When Employment Not Deemed Terminated. The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by

the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[48] See VH Manufacturing, Inc. vs. NLRC, G.R. No. 130957, January 19, 2000 (322 SCRA 417).

[49] Petitioners' position paper, Rollo, p. 110.

[50] Rollo, pp. 43-44.

[51] Jo Cinema Corporation vs. Abellana, G.R. No. 132837, June 28, 2001 (360 SCRA 142).

[52] See Rollo, p. 7.

[53] Petitioners' position paper, Rollo, p. 110.

[54] Petitioner Josefa Po Lam claimed that respondents, specifically Loveres, Camigla and Bumalay, had absolute control of the entire operations of Mayon Hotel & Restaurant, such that respondents "have abused the leniency of Mrs. Josefa [Po Lam] and because of [respondents'] indiscretions the business Mayon Hotel & Restaurant sustained continuous losses until it is closed." See Affidavit, Rollo, pp. 141-143.

[55] Memorandum on Appeal, Rollo, pp. 210, 218-219.

[56] Petition, Rollo, pp. 47-51.

[57] Memorandum on Appeal, Rollo, p. 219.

[58] Id.

[59] Petition, Rollo, pp. 44, 47, 49.

[60] Petition, Rollo, pp. 49-51.

[61] Petitioners' Memorandum on Appeal (NLRC), Rollo, pp. 207-228. Parenthetically, petitioners appealed to the NLRC the ruling of the Labor Arbiter on the following: that (a) Josefa Po Lam is the real owner of Mayon Hotel & Restaurant; (b) the Facility Evaluation Order cannot be deemed part of the minimum wage; and (c) computation of the applicable minimum wage.

[62] Memorandum on Appeal, Rollo, pp. 209, 210.

[63] Needle Queen Corp. vs. Nicolas, G.R. Nos. 60741-43, December 22, 1989 (180 SCRA 568).

[64] NDC-Guthrie Plantations, Inc. vs. NLRC, G.R. No. 110740, August 9, 2001 (362 SCRA 416).

[65] Cheniver Deco Print Technics Corporation vs. NLRC, G.R. No. 122876, February 17, 2000 (325 SCRA 758).

[66] Hantex Trading Co., Inc. vs. CA, G.R. No. 148241, September 27, 2002 (390 SCRA 201). See Uichico vs. NLRC, G.R. No. 121434, June 2, 1997 (273 SCRA 35).

[67] See VH Manufacturing, Inc. vs. NLRC, G.R. No. 130957, January 19, 2000 (322 SCRA 417); Columbus Philippine Bus Corporation vs. NLRC, G.R. Nos. 114858-59, September 7, 2001 (364 SCRA 606); and Hyatt Taxi Services, Inc. vs. Catinoy, G.R. No. 143204, June 26, 2001 (359 SCRA 686).

[68] Sevillana vs. I.T. (International) Corp., G.R. No. 99047, April 16, 2001 (356 SCRA 451).

[69] Equitable Banking Corp. vs. NLRC, G.R. No. 102467, June 13, 1997 (273 SCRA 352); Litonjua Group of Companies vs. Vigan, G.R. No. 143723, June 28, 2001 (360 SCRA 194); and Airline Pilots Association of the Philippines vs. NLRC, G.R. No. 115224, July 26, 1996 (259 SCRA 459). See Maglutac vs. NLRC, G.R. No. 78345, September 21, 1990 (189 SCRA 767), citing Guita vs. Court of Appeals, 139 SCRA 576.

[70] Asuncion vs. NLRC, G.R. No. 129329, July 31, 2001 (362 SCRA 56); and Nicario vs. NLRC, G.R. No. 125340, September 17, 1998 (295 SCRA 619).

[71] Nicario vs. NLRC, G.R. No. 125340, September 17, 1998 (295 SCRA 619), citing Prangan vs. NLRC, G.R. No. 126529 (April 15, 1998).

[72] Sarmiento vs. Employees' Compensation Commission, No. L-68648, September 24, 1986 (144 SCRA 421).

[73] Joint Decision, Rollo, p. 192.

[74] Rollo, p. 82.

[75] Sevillana vs. I.T. (International) Corp., G.R. No. 99047, April 16, 2001 (356 SCRA 451).

[76] As stated in the Joint Decision, Rollo, pp. 193-194:

> In defense against the claims of respondents, petitioner submitted the affidavit of respondents Loveres and Llarena executed allegedly during an ocular inspection of the DOLE Regional Office whereby said respondents admitted as having rendered eight hours of work a day only. The same however, does not bear the signature of the Labor Inspector who conducted said inspection to prove that respondents gave the information therein freely and voluntarily before the Labor Inspector (pp. 64, 65; vol. I, rollo). While the Notice of Inspection Results issued in 1995 and 1997 by the DOLE Regional Office on account of an inspection conducted on Mayon Hotel and Restaurant shows that petitioners complied with the mandated Wage Order applicable during said period (pp. 68 and 69; vol.1, rollo), the same cannot prove that respondents were indeed paid of (sic) all the labor standard benefits they ought to receive for their services rendered. A case in point is Paterno Llarena, Jr. who in his affidavit (p. 65; vol. I, rollo), states that his salary was P75.00/day (item 10) which is paid in the frequency of twice a month (item 9) from which the value of the food given to him was deducted in the amount of P38.00 per pay day (item 18) hence P76.00/month which if divided by the number of days he rendered services, say 26 days a month, is P2.92/day which if added to his daily wage of P75.00 is P77.92/day thus, in 1995, is less than the minimum wage applicable in Legazpi City. Also, if indeed an actual ocular inspection was conducted by a Labor Inspector of DOLE and the employees of Mayon Hotel and Restaurant were individually interviewed insofar as their employment was concerned, how come that Luis Guades, who by his appearance can be readily seen as too old, as in fact he was 79 years old, and Gregorio Nicerio, 66 in 1997, were still employed at Mayon Hotel and Restaurant. The labor inspectors of DOLE are trained not only to investigate matters concerning wages but are deemed to know the various laws, issuances, policies and regulations concerning employment of workers. We are surprised why [petitioner Josefa Po Lam], who had been inspected by the DOLE yearly, cannot submit the DTR/logbook,

payrolls/payslips of her employees which, by law, she must maintain and keep. Against the evidences of petitioners, we are constrained to consider the testimonies of respondents that they were compelled to sign their affidavits by Josefa Po Lam during inspections (pp. 57, 102, 108; vol. II, rollo) hence, the affidavits of respondents during an ocular inspection were not their own voluntary act and therefore inadmissible.

[77] Joint Decision, Rollo, p. 181.

[78] As stated in the Joint Decision, Rollo, p. 181:

> After parties failed to agree on an amicable settlement of these cases, we directed them to submit their respective position paper [and] attached (sic) thereto are (sic) the affidavit of their witnesses and documentary evidences such as complainants' DTR/logbook, payrolls/payslips and/or vouchers in support of their respective claims and/or defenses.
>
> When respondents failed to timely comply as directed, we reiterated in our order [the requirement of] their submission of complainant[s'] records of employment particularly their DTR/logbook and payroll/payslips covering three years backdated from their last date of employment.
>
> Respondents, in their position paper, contends (sic) that complainants were paid in accordance with the mandated wages applicable in Legazpi City as other than their wages they were given meals the amount of which [is] part of their salaries. Except to submit affidavits executed by some of herein complainants during an ocular inspection conducted by an inspector of the Department of Labor and Employment; notices of inspection result and Facility Evaluation Orders issued by DOLE, respondents failed to submit complainants' DTR and payrolls/payslips to prove the latter's working time and the compensation they actually received for their services rendered.

[79] National Semiconductor (HK) Distribution Ltd. vs. National Labor Relations Commission, G.R. No. 123520, June 26, 1998 (291 SCRA 348). See Building Care Corporation vs. National Labor Relations Commission, G.R. No. 94237, February 26, 1997 (268 SCRA 666).

[80] See National Semiconductor (HK) Distribution, Ltd. vs. NLRC, G.R. No. 123520, June 26, 1998 (291 SCRA 348).

[81] Metropolitan Bank and Trust Company vs. CA, G.R. No. 122899, June 8, 2000 (333 SCRA 212, 219), citing Manila Bay Club Corp. vs. CA, et al., 249 SCRA 303, 306 (1995).

[82] Petitioners' Position Paper, Rollo, pp. 106-108.

[83] Id.

[84] Id.

[85] Joint Decision, Rollo, pp. 118-119.

[86] Rollo, pp. 194-195.

[87] G.R. No. 118506, April 18, 1997 (271 SCRA 670).

[88] Rollo, p. 95.

[89] Id.

[90] Id, p. 196.

[91] Id.

[92] Id.

[93] Petition, Rollo, p. 15, adopting the statement of facts of the NLRC.

[94] Vda. de Racho vs. Municipality of Ilagan, No. L-23542, January 2, 1968 (22 SCRA 1).

[95] Equitable Banking Corp. vs. NLRC, G.R. No. 102467, June 13, 1997 (273 SCRA 352).

[96] Nadura vs. Benguet Comsolidated, Inc., No. L-17780, August 24, 1962 (5 SCRA 879).

[97] Maglutac vs. NLRC, G.R. No. 78345, September 21, 1990 (189 SCRA 767), citing Primero vs. Intermediate Appellate Court, G.R. No. 72644 (December 14, 1987), 156 SCRA 435.

[98] Id.

[99] Article 2234 of the Civil Code provides:

> While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages may have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[100] Litonjua Group of Companies vs. Vigan, G.R. No. 143723, June 28, 2001 (360 SCRA 194). Article III of the Labor Code and Rule VIII, Sec. II, Book III of the Omnibus Rules Implementing the Labor Code, provide:

> Art. III. Attorney's fees. - (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
>
> x x x x x x x x x
>
> Sec. II. Attorney's fees. - Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.
>
> Sir: I was not sure about this part of the draft. It may be argued that since the law merely requires "entitlement" to moral damages, and the evidence on record support such entitlement, then moral and exemplary damages may also be awarded to the other respondents, even if they failed to specifically claim for damages. In Nadura vs. Benguet Consolidated, Inc. (decided on August 26, 1962), the Court awarded exemplary damages and attorney's fees to an employee, without finding cause to award moral damages.
>
> And yet, in later cases [e.g., Primero vs. IAC (December 14, 1987) and Maglutac vs. NLRC (September 21, 1990)], it was ruled that the award of damages by the Labor Arbiter must be grounded on the Civil Code provisions on damages.