Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 19, 2021** *which reads as follows:*

"G.R. No. 254061 – (ECO-FORMWORK SYSTEM PHILS., INC./ BETONBAU PHILS., INC./KARL STEINER, *petitioners* v. MANUEL S. BENOLO,* HERMETES O. PABILAR, ROWEL GENITA, ROLANDO F. NAGA, and HAYDEE BALBUENA, *respondents*).** – Before this Court is a joint petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, which seeks to reverse and set aside the Decision[2] dated December 20, 2019, as well as the Resolution[3] dated October 23, 2020, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 153205. The challenged Decision annulled and set aside the Resolutions dated June 30, 2017[4] and August 22, 2017[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-001628-17. Meanwhile, the challenged Resolution denied herein petitioners' motion for reconsideration thereto.

The Facts

Eco-Formwork System Philippines Inc. (Eco-Formwork) and Betonbau Philippines Inc. (Betonbau), (collectively, petitioners) are sister companies engaged in the construction business.[6]

- over – twenty-one (21) pages ...
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* Also appearing as "Benolo S. Manuel" in other parts of the *rollo*.
** Also appearing as "Hayde Balbuena" in other parts of the *rollo*.
1 *Rollo*, pp. 3-33.
2 Id. at 35-49; penned by Associate Justice Nina G. Antonio-Valenzuela, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Louis P. Acosta.
3 Id. at 51-52; penned by Associate Justice Nina G. Antonio-Valenzuela, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Louis P. Acosta.
4 Id. at 262-273.
5 Id. at 275-278.
6 Id. at 36.

On different dates, Eco-Formwork hired the following individuals as its construction workers:[7]

Name	Position	Date Hired
Manuel S. Benolo (Benolo)	Carpenter	January 8, 1993
Hermetes O. Pabilar (Pabilar)	Carpenter	Sometime in January 1996
Rowel Genita (Genita)	Leadman/ Carpenter	Sometime in January 1996[8]
Haydee Balbuena (Balbuena)		Sometime in January 1997

On the other hand, Betonbau hired the persons listed below:[9]

Name	Position	Date Hired
Reymar Briones (Briones)	Helper/ Electrician	Sometime in June 2007
Marlon L. Rosales (Rosales)	Mason	January 9, 2010[10]
Nelte C. Malasalte (Malasalte)	Helper	Sometime in February 2006[11]
Glen Herbas (Herbas)	Carpenter	January 16, 2012
Francis O. Villareal (Villareal)	Carpenter	November 24, 2010
Reynaldo Dela Calzada (Dela Calzada)	Mason	May 5, 2005[12]
John Ernie O. Ragaodao (Ragaodao)	Riger Tower/ Helper	November 9, 2007[13]
Rolando F. Naga (Naga)	Mason	January 2001
Jenny F. Fernandez (Fernandez)	Mason	December 11, 2011[14]

They were all required to work from 7:00 a.m. to 4:00 p.m., from Monday to Saturday, and were also required to render overtime work.[15] Based on their payslips, the daily salary of Benolo, Balbuena, Briones, Rosales, Malasalte, Herbas, Villareal, Dela Calzada, Ragaodao, and Fernandez was ₱466.00 each; ₱488.00 for Genita; and ₱498.00 each for Pabilar and Naga.[16]

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7 Id. at 55.
8 Id. at 129; November 29, 1995, see Eco-Formwork's Position Paper.
9 Id. at 55.
10 Id. at 166, January 12, 2010, see Betonbau's Position Paper.
11 Id. at 165, October 6, 2009, see Betonbau's Position Paper.
12 Id. at 163-164, November 5, 2013, see Betonbau's Position Paper.
13 Id. at 165, February 3, 2010, see Betonbau's Position Paper.
14 Id. at 166, December 22, 2011, see Betonbau's Position Paper.
15 Id. at 37.
16 Id. at 55.

Prior to the present controversy, Benolo, Pabilar, Genita, Balbuena, Naga, Fernandez, and Rosales were involved in the Eaton Cooper Project[17] while Villareal, Dela Calzada, Herbas, Briones, Malasalte, and Ragaodao participated in the Burgos Substation Project.[18]

On September 27, 2014, Fernandez received a Memorandum[19] dated August 27, 2014. In the said document, he was classified as a project-based employee and was informed about the termination of his employment, effective September 27, 2014, in view of the completion of the project to which he was then assigned.

On October 18, 2014, Ragaodao, Dela Calzada, Villareal, Herbas, Malasalte, Briones, and Rosales, each received a similar Memorandum[20] dated September 19, 2014, effective the day following their receipt.

On even date, Naga, Balbuena, Pabilar, Benolo, and Genita (hereinafter referred to as respondents) respectively received a letter[21] dated September 19, 2014 with the heading "*RE: Pansamantalang Suspensiyon ng Operasyon,*" placing them on temporary lay-off status from October 19, 2014 to November 19, 2014 or up to a maximum period of six months (until April 19, 2015) due to lack of projects.

Insisting that they were all regular employees whose services cannot be terminated except for just and authorized causes and upon observance of the procedural requirements, they filed a consolidated complaint for illegal dismissal, non-payment of service incentive leave, 13th month pay and separation pay, with claims for moral and exemplary damages, as well as attorney's fees against petitioners.[22]

In their Position Paper,[23] Fernandez, Ragaodao, Dela Calzada, Villareal, Herbas, Malasalte, Briones, and Rosales (hereinafter referred to as the other complainants) denied that they were project employees. Rather, they asserted that they were hired as regular employees. They further averred that their employment was continuous and not merely intermittent and that they were performing

17 Id. at 38.
18 Id. at 163-166.
19 Id. at 111.
20 Id. at 113-119.
21 Id. at 122-127, 139-140, 151-152.
22 Id. at 263.
23 Id. at 53-66.

functions necessary and desirable to the main business of Betonbau, therefore qualifying them as regular employees. Thus, they contended that when Betonbau dismissed them solely based on the completion of the projects to which they were assigned, the same was illegal.[24]

Respondents, who were undoubtedly regular employees, argued that petitioners did not observe the proper procedure in terminating their employment on the ground of cessation of operations. According to them, petitioners failed to serve a written notice to them and to the Department of Labor and Employment (DOLE) at least one month before the intended date of closure or cessation. They received such notice on October 18, 2014, a day before its effectivity, although it was dated September 19, 2014. Moreover, they claimed that petitioners were only feigning business losses or reverses in order to ease them out. Without competent and sufficient proof to show the losses allegedly suffered by petitioners, they maintained that they were illegally dismissed.[25]

Eco-Formwork, in its Position Paper,[26] admitted that Balbuena, Pabilar, Benolo, and Genita were its regular employees. Despite their employment status, Eco-Formwork asseverated that their work still depended on the availability of projects. Citing Article 286 (now Article 301) of the Labor Code, it stressed that it was authorized to suspend its business operations for lack of projects and, in effect, put its employees on temporary lay-off for a period not exceeding six months. Hence, it concluded that Balbuena, Pabilar, Benolo, and Genita could not have been illegally dismissed, as there was no dismissal to speak of in the first place.[27]

Meanwhile, Betonbau, in its Position Paper,[28] alleged that: except for Naga, its employees involved in this case were project employees who were validly terminated upon completion of the project or a particular phase thereof for which they were hired; in compliance with DOLE Policy Instructions No. 20, it submitted an Establishment Employment Report which contained a list of those permanently dismissed as a result of the completion of the project to which they were assigned; Naga, as a regular employee, was not dismissed at all from employment but was only temporarily laid off due to lack of projects, a management prerogative sanctioned by the

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24 Id. at 57-59.
25 Id. at 59.
26 Id. at 128-137.
27 Id. at 131-132.
28 Id. at 162-174.

Labor Code; in view of the foregoing, no illegal dismissal occurred, so they were neither entitled to backwages nor to reinstatement or separation pay; and so, too, there can be no award of moral and exemplary damages.[29]

The LA Ruling

After an exchange of several other pleadings[30] between the parties, Labor Arbiter (LA) Patricio P. Libo-On rendered a Decision[31] dated February 28, 2017, the dispositive portion of which reads:

> WHEREFORE, premises considered, the complaint of Villareal, Dela Calzada, Fernandez, Herbas, Briones, Malazalte, Naga, Ragaodao and Rosales is dismissed for lack of merit.
>
> Ecoform Works System Phils. Inc. [alone] is ordered to pay complainants Benolo, Genita[,] Pabilar and Balbuena full backwages and their separation pay, in lieu of reinstatement, the computation of which is in Annex "A" which forms part of this Decision.
>
> All money claims are denied for lack of factual basis.
>
> SO ORDERED.[32]

The LA identified Benolo, Genita, Pabilar, and Balbuena as regular employees of Eco-Formwork who were supposedly placed on "floating status." He ruled that Article 286 [now Article 301] of the Labor Code did not apply absent suspension of operations or evidence of one. He held that what took place was a permanent lay-off, which requires compelling reason, such as but not limited to serious losses. According to him, where the reason given was merely completion of the project and the subsequent lack thereof, without presenting proof that there were no other projects available, the same was pure and simple illegal dismissal. By virtue of which, they were entitled to payment of full backwages and separation pay, in lieu of reinstatement, equivalent to one-half (½) month pay for every year of service.[33]

With regard to Villareal, Dela Calzada, Fernandez, Herbas, Briones, Malasalte, Naga, Ragaodao, and Rosales, the LA considered

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29 Id. at 167-172.

30 Id. at 175-178, Eco-Formwork's Reply dated March 4, 2015; Id. at 179-182, Betonbau's Reply dated March 4, 2015; Id. at 183-190, Complainants' Reply dated February 17, 2015; Id. at 196-201, Complainants' Rejoinder dated March 17, 2015; and Id. at 205-209, Consolidated Rejoinder of Eco-Formwork and Betonbau dated March 16, 2015.

31 Id. at 211-226.

32 Id. at 224.

33 Id. at 221-224.

all of them as project employees of Betonbau based on their contracts. As such, he held that they were validly terminated when the project to which they were assigned was completed and the fact of their termination by reason thereof was reported to the DOLE.[34]

Lastly, the LA denied the claims for service incentive leave and 13th month pay for failure to discuss the same in the pleadings.[35]

Respondents, along with the other complainants, filed a partial appeal[36] from the LA's Decision. In particular, they asserted that the LA erred in its pronouncement relating to money claims because it is the employer who bears the burden to prove that employees have received their wages and benefits and that the same were paid in accordance with law. Concomitantly, they claimed that petitioners utterly failed to rebut their money claims, nor did they present any evidence to disprove their entitlement thereto.[37]

Also, they were resolute in their stand that Villareal, Dela Calzada, Fernandez, Herbas, Briones, Malasalte, Naga, Ragaodao, and Rosales were regular employees, not project employees, of Betonbau. In addition to the arguments previously raised in their Position Paper, they questioned their contracts which merely stated the date of the commencement of the project to which they were assigned but not the duration of their undertaking. They posited that Betonbau's act of submitting the Establishment Employment Reports to the DOLE after they have filed the complaint was only an afterthought. [38]

Eco-Formwork likewise interposed a partial appeal[39] from the LA's Decision. Eco-Formwork reiterated that Benolo, Genita, Pabilar, and Balbuena, even if they were its regular employees, may be put on temporary lay-off due to lack of projects, in the exercise of its management prerogative. And in doing so, it complied with the requirements of due process by notifying them and submitting Establishment Employment Reports to the DOLE. Therefore, they were not at all dismissed from employment.[40]

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34 Id. at 224.
35 Id.
36 Id. at 227-243.
37 Id. at 236-239.
38 Id. at 233-236.
39 Id. at 246-260.
40 Id. at 251-254.

The NLRC Ruling

On June 30, 2017, the NLRC promulgated its Resolution,[41] finding partial merit in both appeals.

Contrary to the LA's holding, the NLRC opined that respondents, along with the other complainants, have clearly stated that they were never paid their service incentive leave and 13th month pay. In the absence of proof of payment by Eco-Formwork and Betonbau, it declared that they were entitled thereto. But for lack of specifics, the NLRC only allowed payment of service incentive leave and 13th month pay for a period of one year.

Furthermore, the NLRC gave credence to Eco-Formwork's justification that the temporary lay-off was due to lack of new projects. Thus, it found no basis to grant full backwages to Benolo, Genita, Pabilar, and Balbuena as there was no dismissal to begin with, much less illegal dismissal. Nevertheless, it awarded separation pay equivalent to one-half month pay for every year of service, a fraction of at least six months to be considered as one whole year, since they remained out of work for more than six months on account of their temporary lay-off and reinstatement was no longer feasible.[42]

However, the NLRC agreed with the findings of the LA that Villareal, Dela Calzada, Fernandez, Herbas, Briones, Malasalte, Naga, Ragaodao, and Rosales were project employees of Betonbau as they were adequately informed about their employment status in their contracts. While only the dates of commencement of the projects were indicated therein and no actual dates were mentioned as to when they would end, the NLRC ruled that there was substantial compliance when it was stated that their positions were co-terminus with their assigned projects.[43]

The *fallo* of the aforesaid Resolution states:

> WHEREFORE, premises considered, the appeal filed by complainants is **PARTIALLY GRANTED.** The 28 February 2017 Decision of Labor Arbiter Patricio P. Libo-on is **MODIFIED** in that respondents BETONBAU Phils. Inc. and Eco-Formwork Systems Phils. Inc., are hereby ordered to pay complainants Reymar Briones, Marlon L. Rosales, Nelte C. Malasalte, Glen Herbas, Francis O. Villareal, Reynaldo Dela Calzada, John Ernie

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41 Id. at 262-273.
42 Id. at 269-272.
43 Id. at 267-268.

O. Ragaodao, Rolando F. Naga, Jenny Fernandez, Benolo S. Manuel, Rowel Genita, Hermetes Pabilar and Hayde[e] Balbuena their 13th month pay and service incentive leave pay computed for in the following amounts:

REYMAR BRIONES
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

MARLON ROSALES
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

NELTE MALASALDE
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

GLEN HERBAS
1/16/2013 – 10/19/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

FRANCIS VILLAREAL
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

REYNALDO DELA CALZADA
11/5/2013 – 10/17/2014
451 x 26 x 11.40/12 = P11,139.70 (13th mo.)
(SILP-none)

JOHN ERNIE RAGAODAO
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

ROLANDO NAGA
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

JENNY FERNANDEZ
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

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BENOLO S. MANUEL
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

ROWEL GENITA
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

HERMETES PABILAR
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

HAYDE[E] BALBUENA
10/17/2013 – 10/17/2014
451 x 26 x 1 = P11,726.00 (13th mo.)
451 x 5 x 1 = P2,255.00 (SILP)

The appeal of respondent Eco-Formwork System Phils. Inc. is likewise **PARTLY GRANTED,** deleting the award of backwages and granting separation pay to complainants, [Benolo], Genita, Pabilar and Balbuena in the following amounts:

1. **BENOLO S. MANUEL**
   1/8/93 – 6/30/2017
   P458 x 26 x 24 yrs. ÷ 2 = **P142,896.00**

2. **ROWEL GENITA**
   11/29/95 – 6/30/2017
   P471 x 26 x 22 yrs. ÷ 2 = **P134,706.00**

3. **HERMETES PABILAR**
   1/11/96 – 6/30/2017
   P451 x 26 x 22 yrs. ÷ 2 = **P128,986.00**

4. **HAYDE[E] BALBUENA**
   1/30/97 – 6/30/2017
   P459 x 26 x 20 yrs. ÷ 2 = **P119,340.00**

The rest of the Decision of the Labor Arbiter not inconsistent with Our ruling is **AFFIRMED.**

SO ORDERED.[44] (Emphasis in the original)

Respondents and the other complainants sought reconsideration, but their motion was denied by the NLRC in its August 22, 2017 Resolution.[45]

[44] Id. at 270-272.
[45] Id. at 275-278.

Excluding Malasalte, they consequently filed a petition for *certiorari*[46] with the CA.

In its Resolution dated January 17, 2018, the CA dropped Rosales, Herbas, Villareal, and Dela Calzada as parties to the case for their failure to sign the verification and certification of non-forum shopping attached to the petition. [47]

Later on, the CA also dropped Briones, Ragaodao, and Fernandez in view of the settlement reached with Betonbau, as contained in its Resolution dated September 10, 2018.[48]

The CA Ruling

In the challenged Decision[49] dated December 20, 2019, the CA decreed:

> We **SET ASIDE** the NLRC Resolution dated 30 June 2017, and the NLRC Resolution dated 22 August 2017. We **RULE** as follows:
>
> 1) The respondent Betonbau Philippines, Inc. illegally dismissed Rolando F. Naga, and we **ORDER** the respondent Betonbau to pay Rolando F. Naga: a) backwages and all other benefits from the time his compensation was withheld, until finality of this Decision; b) separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of their [sic] employment up to the finality of this Decision; c) attorney's fees equivalent to ten percent (10%) of the total awards; and d) legal interest of six percent (6%) per annum of the total amount due from the finality of this Decision until full payment;
>
> 2) The respondent Eco-Formwork System Philippines Inc. illegally dismissed Manuel S. Benolo, Hermetes O. Pabilar, Rowel Genita, and Hayde[e] Balbuena, and we **ORDER** the respondent Eco-Formwork to pay Manuel S. Benolo, Hermetes O. Pabilar, Rowel Genita, and Hayde[e] Balbuena: a) backwages and all other benefits from the time their compensation was withheld, until finality of this Decision; b) separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of their employment up to the finality of

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46 Id. at 279-313.
47 Id. at 35.
48 Id.
49 Id. at 35-49.

> this Decision; c) attorney's fees equivalent to ten percent (10%) of the total awards; and d) legal interest of six percent (6%) per annum of the total amount due from the finality of this Decision until full payment;
>
> 3) we **REMAND** the case to the Labor Arbiter for the computation of the actual amounts due each petitioner [herein respondents].
>
> **IT IS SO ORDERED.**[50] (Emphasis in the original)

The CA found that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that Naga was a project employee of Betonbau. It pointed out that Betonbau itself admitted that he was its regular employee; thus, being on the same footing with Benolo, Genita, Pabilar, and Balbuena who were regular employees of Eco-Formwork. Given their employment status, the CA held that they could only be dismissed for just or authorized causes.[51]

The CA further found that when petitioners placed respondents on temporary lay-off for a period of one month, the former failed to present substantial evidence to show that they suffered shortage of projects or that there were no projects available to which the latter may be assigned. After the lapse of the said period, they did not cause the recall of respondents nor did they permanently retrench them. Even as they argued that they sent return-to-work orders, there was no evidence that respondents received the same.[52]

Therefore, the CA deemed respondents to have been constructively dismissed and awarded the following: backwages computed from the time of their temporary lay-off until the finality of the decision; separation pay equivalent to one-month salary for every year of service, as reinstatement was no longer feasible due to strained relations; and attorney's fees equivalent to ten percent (10%) of the total monetary award because they were forced to litigate to protect their rights. The CA further imposed legal interest of six percent (6%) *per annum* of the total amount due from finality of the decision until full payment.[53]

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50 Id. at 48-49.
51 Id. at 45.
52 Id. at 46-48.
53 Id. at 48-49.

Petitioners separately filed their motion for reconsideration[54] from the above Decision. Both were denied by the CA in a Resolution[55] dated October 23, 2020.

Hence, the instant petition.

The Court's Ruling

At the outset, it is pertinent to note that in the CA's Decision, only respondents Naga, Benolo, Pabilar, Genita, and Balbuena were included. Rosales, Herbas, Villareal, and Dela Calzada were excluded because of their failure to execute the verification and certification of non-forum shopping in the petition for *certiorari* before the CA.

In *Altres v. Empleo*,[56] the Court laid down, for the bench and the bar, the guidelines in determining compliance (or non-compliance) with the requirements on verification and certification of non-forum shopping, to wit:

> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) **As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.**
>
> 3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
>
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

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54 Id. at 314-322, Eco-Formwork's Motion for Reconsideration; Id. at 323-337, Betonbau's Motion for Reconsideration.

55 Id. at 51-52.

56 594 Phil. 246 (2008).

> 5) **The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.**
>
> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[57] (Emphasis supplied)

From the foregoing, it is clear that the failure of Rosales, Herbas, Villareal, and Dela Calzada to sign the verification was not fatal. Verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, as in this case, the court may simply order the correction of the unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served.[58]

On the other hand, their failure to sign the certification of non-forum shopping which would have them ordinarily dropped as parties to the case does not lie since reasonable or justifiable circumstances are extant. It must be borne in mind that they collectively filed the petition for *certiorari* before the CA with respondents. They invoked a common cause of action for illegal dismissal against petitioners, claiming that they were regular employees whose employment was terminated in the guise of either completion of project or temporary lay-off. Although it may be argued that two employers are involved in the instant case, it cannot be gainsaid that Naga, as an employee of Betonbau just like them, was able to sign the certification of non-forum shopping. In *Altres*, the signature of one substantially complies with the rule. Hence, Naga's signature should have sufficed and the CA should not have dropped Rosales, Herbas, Villareal, and Dela Calzada as parties in the petition before it.

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57 Id. at 261-262.

58 *Innodata Knowledge Services, Inc. v. Inting*, 822 Phil. 314, 355 (2017).

Instead of remanding the case to the CA, the Court deems it more practical to decide the substantive issues, including those concerning the dropped parties, so as not to further delay its disposition and finally put an end to this litigation.

The issue of whether Rosales, Herbas, Villareal, and Dela Calzada are project employees or regular employees is a question of fact that, generally, cannot be passed and ruled upon by this Court in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court.

Considering that the LA and the NLRC were uniform in holding that they, among others, were project employees and their conclusion was supported by substantial evidence, the same should be accorded not only respect, but even finality. As aptly discussed by the NLRC:

> In this case, records reveal that BETONBAU adequately informed complainants of their employment status as project employees at the time of their engagement. The projects for which they were hired were clearly indicated in their contracts.
>
> Complainants assail their project employment contracts as the same did not bear the duration of the projects and only indicated their dates of commencement. According to complainants, this did not satisfy the requirement under Department Order No. 19, Series of 1993, which dictates that the duration of the project is made clear to the employee at the time of their engagement.
>
> We disagree.
>
> The law merely requires that 'the duration of the undertaking begins and ends at determined or determinable times['']. This simply means that the duration of the undertaking is capable of being determined or fixed. While no actual dates were placed as to when the respective projects would end, such dates were however determinable. Clearly, there was substantial compliance by BETONBAU since complainants were informed that their tenure would only last as long as the projects to which they were assigned were subsisting. It was uniformly indicated in the project employment contracts that their positions were co-terminus with their assigned projects, to wit:
>
> > *"4. Sa pagtatapos ng proyekto na nakasaad dito, ang kasunduang ito ay kusang magtatapos o maglalawig at mawawalan ng bias (sic) ng walang legal na epekto."*

> Complainants next claim that on account of their being repeatedly and successively rehired they should be deemed to have acquired the status of regular employees. They insist that their work was continuous not merely intermittent. Such repeated rehiring established that the work they performed was necessary and desirable to the operations of respondents.
>
> Again, We are not convinced.
>
> Length of service of a project employee is not the controlling factor in determining the nature of his employment, but whether he had been hired for a specific project that was made known at the time of his engagement. The simple fact that complainants were repeatedly hired with lack of interval did not automatically dissolve their status as project employees. And, even if an [sic] they were required to render services necessary or desirable in the operation of their employer's business for a specified duration, such fact did not in any way impair the validity of their contracts of employment which stipulated a fixed duration therefor.[59] (Citations omitted)

Having established their status as project employees, it follows that Rosales, Herbas, Villareal, and Dela Calzada were validly terminated by Betonbau upon completion of the project for which they were hired, as evidenced by the memorandum furnished to each of them as well as the Establishment Employment Reports submitted to the DOLE.

This is in contrast with the employment status of Naga which, as correctly observed by the CA, even Betonbau admitted to be that of a regular one. There is likewise no dispute that Benolo, Pabilar, Genita, and Balbuena were all regular employees of Eco-Formwork. As such, they are entitled to security of tenure and may only be terminated for just or authorized causes. Article 294 (formerly Article 279) of the Labor Code provides:

> ART. 294. *Security of Tenure.* — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

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59 *Rollo*, pp. 267-278.

One of the authorized causes for termination under Article 298 (formerly Article 283) of the Labor Code is retrenchment, or what is sometimes referred to as lay-off:

> ART. 298. *Closure of Establishment and Reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by servicing a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Retrenchment is defined as the termination of employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business.[60]

However, Article 298 speaks of permanent retrenchment which amounts to dismissal, as opposed to a temporary lay-off which merely suspends employment,[61] as allegedly is the case here. In *PT & T Corp. v. NLRC*,[62] the Court mentioned that there is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a period or duration therefor. To remedy this situation or fill the hiatus, the Court declared that Article 286 (now Article 301) may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status.[63]

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60 *Pepsi-Cola Products Philippines, Inc. v. Molon*, 704 Phil. 120, 134-135 (2013).
61 *Innodata Knowledge Services, Inc. v. Inting*, supra note 58 at 344.
62 496 Phil. 164 (2005).
63 Id. at 177.

Pursuant to Article 301 of the Labor Code, the suspension of the operation of business or undertaking in a temporary lay-off situation must not exceed six (6) months, *viz.*:

> ART. 301. **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 military or civic duty.

After six months, employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the employer would thus be liable for such dismissal.[64]

Lay-off, whether permanent or temporary, is recognized as a valid exercise of management prerogative. The Court in the case of *Nasipit Lumber Co. v. National Organization of Workingmen (NOWM) and its 30 Members*[65] ratiocinated in this wise:

> Closure or suspension of operations for economic reasons is, therefore, recognized as a valid exercise of management prerogative. The determination to cease or suspend operations is a prerogative of management, which the State does not usually interfere with, as no business or undertaking is required to continue operating at a loss simply because it has to maintain its workers in employment. Such an act would be tantamount to a taking of property without due process of law.[66]

Corollary thereto, the burden of proving, with sufficient and convincing evidence, that such closure or suspension is *bona fide* falls upon the employer.[67] Accordingly, petitioners had the duty to present legitimate business reasons to suspend operations leading to respondents' temporary lay-off.

The Court agrees with the CA that petitioners failed to discharge the burden of proof vested upon them as employers. Records are bereft of evidence that petitioners actually suspended their operations. The supposed lay-off of respondents was hardly

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64 Id.
65 486 Phil. 348 (2004).
66 Id at 363. Citation omitted.
67 Id.

justified. Completion of project is not enough reason to temporarily suspend their employment. It cannot be overemphasized that respondents were regular employees and not project employees. Petitioners also failed to substantiate their claim that there was lack of projects or that there were no projects available to which respondents may be assigned.

The factual circumstances in the present case are very similar to the case of *Lopez v. Irvine Construction Corp.*,[68] wherein Lopez was hired by Irvine Construction as a regular employee and was later on put on temporary lay-off in view of the completion of a project in Cavite. The Court specifically ruled:

> In this case, Irvine failed to prove compliance with the parameters of Article 286 of the Labor Code. **As the records would show, it merely completed one of its numerous construction projects which does not, by and of itself, amount to a bona fide suspension of business operations or undertaking. In invoking Article 286 of the Labor Code, the paramount consideration should be the dire exigency of the business of the employer that compels it to put some of its employees temporarily out of work.** This means that the employer should be able to prove that it is faced with a clear and compelling economic reason which reasonably forces it to temporarily shut down its business operations or a particular undertaking, incidentally resulting to the temporary lay-off of its employees.
>
> Due to the grim economic consequences to the employee, case law states that **the employer should also bear the burden of proving that there are no posts available to which the employee temporarily out of work can be assigned.** x x x[69] (Emphasis supplied, underscoring omitted)

Assuming *arguendo* that there were valid and compelling reasons for petitioners to suspend operations, the Court finds that they did not comply with the one-month notice rule, which mandates that the employer should notify both the employee and the DOLE at least one month before the intended date of the permanent or temporary retrenchment. The letter, with the heading *"RE: Pansamantalang Suspensiyon ng Operasyon,"* issued to each of the respondents was dated September 19, 2014 or one month prior to the date of effectivity of their temporary lay-off, *i.e.*, October 19, 2014. However, respondents received the said letter with only a day left before the lay-off was to take effect.

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[68] 741 Phil. 728 (2014).
[69] Id. at 744.

Worse, after the lapse of the period indicated in the letter and even the maximum period of six months for *bona fide* suspension of operations, there was no showing that respondents were recalled to work or were permanently retrenched. The assertion made by petitioners that they sent return-to-work notices to respondents remains unproven.

In light of these circumstances, there can be no other logical conclusion than that respondents Naga, Benolo, Pabilar, Genita, and Balbuena were not merely temporarily laid off from work but were constructively dismissed; and since the same was effected without any valid cause and due process, the dismissal was illegal.

As a consequence, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." The two reliefs are separate and distinct.[70]

In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, or the employee decides not to be reinstated, as in this case, separation pay equivalent to one (1) month salary for every year of service is granted in lieu of reinstatement. The payment of separation pay is in addition to payment of backwages.[71] In view thereof, the Court affirms the CA's award of backwages and separation pay in favor of respondents.

The award of attorney's fees is likewise sustained. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[72] It is warranted under Article 111[73] of the Labor Code.

Finally, the CA properly imposed legal interest on the total monetary awards, in accordance with the Court's pronouncement in *Nacar v. Gallery Frames*,[74] which states: "[w]hen an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum."[75]

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70 *Advan Motor, Inc. v. Veneracion*, 822 Phil. 596, 608 (2017).
71 *Golden Ace Builders v. Talde*, 634 Phil. 364, 369 (2010).
72 *Aliling v. Feliciano*, 686 Phil. 889, 922 (2012).
73 Art. 111 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.
74 716 Phil. 267 (2013).
75 Id. at 279.

WHEREFORE, premises considered, the petition is **DENIED.** Accordingly, the challenged Decision dated December 20, 2019 and the Resolution dated October 23, 2020 of the Court of Appeals in CA-G.R. SP No. 153205 are **AFFIRMED with MODIFICATION** to read as follows:

1) Marlon L. Rosales, Glen Herbas, Francis O. Villareal, and Reynaldo Dela Calzada are declared to have been validly dismissed by Betonbau Philippines, Inc.;

2) Betonbau Philippines, Inc. illegally dismissed Rolando F. Naga, and is hereby **ORDERED TO PAY** the following: a) backwages and all other benefits from the time his compensation was withheld, until finality of this Decision; b) separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of his employment up to the finality of this Resolution; c) attorney's fees equivalent to ten percent (10%) of the total awards; and d) legal interest of six percent (6%) *per annum* of the total amount due from the finality of this Resolution until full payment;

3) Eco-Formwork System Philippines Inc. illegally dismissed Manuel S. Benolo, Hermetes O. Pabilar, Rowel Genita, and Haydee Balbuena, and is hereby **ORDERED TO PAY** each of them the following: a) backwages and all other benefits from the time their compensation was withheld, until finality of this Resolution; b) separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of their employment up to the finality of this Resolution; c) attorney's fees equivalent to ten percent (10%) of the total awards; and d) legal interest of six percent (6%) *per annum* of the total amount due from the finality of this Resolution until full payment;

4) The case is hereby ordered **REMANDED** to the Labor Arbiter for the computation of the actual amounts due each respondent.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
22-A

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