Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

AMERICAN EXPRESS TRANSNATIONAL (now AMERICAN INTERNATIONAL TOURS, INC.) and **CARLO SEVERINO,** Petitioners, - versus - **MENANDRO T. BORRE,** Respondent. x----------x	**G.R. No. 228320** **Present:** PERALTA,*C J., Chairperson,* CAGUIOA, REYES, J. JR., and LAZARO-JAVIER, and LOPEZ, *JJ.*
MENANDRO T. BORRE, Petitioner, - versus – **AMERICAN EXPRESS TRANSNATIONAL (now AMERICAN INTERNATIONAL TOURS, INC.)** and **CARLO SEVERINO,** Respondents. x----------	**G.R. No. 228344** **Promulgated:** JUL 15 2020

DECISION

REYES, J. JR., *J.*:

Before this Court are the consolidated cases of G.R. No. 228320 and G.R. No. 228344, both petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated November 3, 2015 and Resolution[3] dated November 15, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 137597.

In G.R. No. 228320, American Express Transnational, now Adventure International Tours, Inc. (AITI), and Carlo Severino question said CA assailed Decision insofar as it awarded separation pay to Menandro T. Borre (Borre), who was adjudged to be legally dismissed from employment on just cause.

In G.R. No. 228344, on the other hand, Borre questions the assailed CA Decision in affirming with modification, the National Labor Relations Commission (NLRC) Decision dated June 19, 2014 in dismissing his illegal dismissal complaint.

The Facts

AITI hired Borre as a probationary company driver on March 1, 2005 and was regularized on September 1, 2005. On September 13, 2011, he was occupying the position of a driver/messenger.[4]

On March 8, 2013, AITI's Leisure Team, through its Sales and Marketing Assistant, Regine Margaret Yambao, requested for the services of a company driver for an official business somewhere in Libis, Quezon City for March 9, 2013. Borre was the driver scheduled to be on duty on said date and he, in fact, confirmed his availability thereon to his immediate supervisor Efren Mendoza (Mendoza). However, when Mendoza called Borre on the phone to inform him of the Leisure Team's activity, Borre merely confirmed that he would be reporting for work but refused to drive. Borre allegedly uttered the words, *"teka, 'di ako magdrive, papasok ako pero 'di ako magdrive.* Mendoza then relayed to their superior, Marsel Bambico (Bambico) , Borre's response. Bambico, in turn, responded that the company will be constrained to issue a memo for insubordination if Borre will not comply. When Mendoza apprised Borre of the management's response, Borre responded, *"[s]ige kasuhan nila ako basta 'di ako*

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1 G.R. No. 228320, *rollo*, pp. 9-32; and G.R. No. 228344, *rollo*, pp. 22-37.
2 Penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr. and Socorro B. Inting, concurring; G.R. No. 228344, id. at 41-61.
3 Id. at 63-64.
4 Id. at 43

magdrive." This narration was attested to by Mendoza through a sworn statement dated March 13, 2013.[5]

In the recent weeks prior to the above-cited incident, Borre also unjustifiably failed to perform his duty as a driver/messenger as instructed.[6] Thus, on March 18, 2013, the management served Borre a Notice to Explain, the substantial portion of which reads:

> This notice to explain is being served in relation to the incidents reported that you refused to drive for our executives on the following dates – January 20, February 8, February 11 and 12 for the reason that you left your driver's license.
>
> On March 8, [Mendoza] called and informed you that you will be assisting the Leisure Team for their product update on Saturday, March 9, which you agreed to do. That same day at around 12:00 NN, [Mendoza] called you again and informed you that the Leisure Team was also requesting for a driver to drive them to Libis for the product update. You informed [Mendoza] that you will report for work but will not drive for the Leisure Team. This incident was escalated to Ms. [Bambico]. [Mendoza] was then advised by Ms. [Bambico] that this was not acceptable and if he refuses to drive for the Leisure Team that Saturday, an insubordination memo will be issued to him. This information was relayed to you by Efren, wherein you replied stating, *"[s]ige kasuhan na nila ako basta 'di ako magdrive."*
>
> Please submit your formal explanation on this case by using attached REPLY FORM. You are being given 5 days to reply to this notice. Failure on your part to submit this requirement within the period specified means that you are depriving yourself of the chan[c]e to be heard.[7]

In response, Borre submitted a handwritten explanation which reads:

> *Nais ko pong sabihin na [k]ailan ma'y hindi ko po iniiwan ang aking lisensya dahil ito po ay napakahalaga sa akin bilang* driver. *Ito po ay isang napakalaking bagay para sa aking trabaho.*
>
> *Noong* March 9, *[w]ala naman pong nag-inform sa akin na magdrive. Dahil kong meron po sana, ako po ay nakapagdrive noong araw na iyon.*[8]

On March 27, 2013, Borre received a Notice of Administrative Hearing set on April 5, 2013. In said Notice, Borre was also told that he was entitled to the assistance of a counsel.[9]

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5 Id. at 43-44.
6 Id. at 46-48.
7 Id. at 44-46.
8 Id. at 46.
9 Id.

As scheduled, a hearing was conducted on April 5, 2013, in which Borre was in attendance.[10]

After the administrative hearing, AITI conducted further investigation to verify Borre's statements, especially with regard to his claim that there was never an instance when he failed to perform his duty as a driver on account of his failure to bring his driver's license.[11]

Further investigation, however, proved that, as per sworn statement of AITI's Administrative Assistant, Priscilla Mercado (Mercado), there were three other instances when Borre refused to drive because, according to him, he left his driver's license at home. The said sworn statement detailed the circumstances surrounding Borre's refusal to drive on the pretext that he left his license at home on January 30, 2013, February 8, 2013, and February 11, 2013, which was personally witnessed by Mercado considering that among her duties was to coordinate the schedules of the company's executives when they have meetings outside which require the service of a driver.[12]

On May 15, 2013, Borre was dismissed from employment through a Notice of Termination, which reads:

> Please be informed that management has diligently examined and considered all the documents and [t]he outcome of the proceedings related to your case and noted the following:
>
> 1. You deliberately refused to provide transportation assistance to the Leisure Team during i[t]s activity on 09 March 2013, at Libis Quezon City, despite of a (sic) prior instruction from you[r] superior and even uttered defiant statement, *"[s]ige kasuhan na nila ako basta di ako magdrive,"* during your telephone conversation with Mr. [Mendoza];
>
> 2. With regard to your statement during the Administrative Hearing that you were not told that a driver would be needed for the 09 March 2[0]13 activity of the Leisure team, said event pushed through, the team was compelled to utilize the services of another company's driver, Mr. William Ayade;
>
> 3. During the Administrative Hearing held on 05 April 2013 and in your written reply t[o] the Notice to Explain, you categorically stated that you would never leave your house without your license but, based on the sworn statement of Ms. Mercado, she categorically stated that, on several occasions (January 30, February 8, and 11), you refused to drive for the company executives because you left your driver's license; and
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> 4. On 25 March 2013, Jack Mendoza called [Bambico] and informed her that you refused to go out and do messengerial work.

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10 Id.
11 Id.
12 Id. at 46-48

> Given the findings cited above[,] Management has concluded that you have violated company policies specifically:
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> > Insubordination or failure to comply with instructions related to one's duty (33.2, Class A Offense, Code of Discipline, Employees Handbook)
> >
> > Negligence of duty/carelessness resulting in customer complaint (#2.17, Class B Offense, Code of Discipline, Employee's Handbook)
>
> Consequently, it has been decided that your employment with the company has to be severed effective 15 June 2013. Management took into consideration your contribution to the company but unfortunately, it has been f[a]r outweighed by the seriousness of the violations you committed, your defiant behavior towards your superior and your predilection to commit dishonesty.
>
> Please coordinate with your immediate superior and the Human Resources and Admin department for immediate turnover of you[r] duties and company[-]issued properties.
>
> This is for your strict compliance."[13]

On May 20, 2013, Borre filed his complaint for illegal dismissal, reinstatement, damages, and attorney's fees.[14]

The Labor Arbiter Ruling

On March 20, 2014, the Labor Arbiter found Borre to be validly dismissed based on just cause. It was held that as between Borre's bare and general denial and the detailed and categorical statements of Mendoza and Mercado, the statements of the latter must prevail as it was found that these persons have no grudge against Borre or that they have ill motive against him to pin him down to cause the termination of his employment. It was also found that Borre was afforded due process in his dismissal from employment. The Labor Arbiter, disposed, thus:

> **WHERFORE**, a Decision is hereby rendered **DISMISSING**, the case for lack of merit.
>
> **SO ORDERED**.[15]

The NLRC Ruling

On appeal, the NLRC affirmed the Labor Arbiter's factual findings and ruling in its entirety in a June 19, 2014 Decision:

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[13] Id. at 48-49.
[14] Id. at 49.
[15] G.R. No. 228320, *rollo*, p. 43.

> WHEREFORE, the appeal filed by complainant is hereby DENIED for lack of merit. The decision dated 20 March 2014 is AFFIRMED.
>
> SO ORDERED.[16]

Borre's Motion for Reconsideration suffered the same fate in the NLRC's Resolution dated July 30, 2014, thus:

> ACCORDINGLY, the instant Motion for Reconsideration is hereby DENIED for lack of merit.
>
> No further Motions for Reconsideration shall be entertained.
>
> SO ORDERED.[17]

Undaunted, Borre then sought refuge before the CA through a Petition for *Certiorari*[18] under Rule 65.

The CA Ruling

The CA affirmed the Labor Arbiter and the NLRC's finding that Borre was legally dismissed for gross insubordination or willful disobedience. As found by both the Labor Arbiter and the NLRC, the CA ruled that Borre's act of unjustifiably refusing to drive was an open and arrogant defiance to the management's lawful directive, constitutive of willful disobedience under Article 282(a) of the Labor Code. The CA also affirmed the Labor Arbiter and the NLRC's conclusion that procedural due process was observed in Borre's dismissal.

Despite finding of a just and valid cause to dismiss Borre, however, the CA opted to grant separation pay as a form of financial assistance to Borre. Citing the cases of *Toyota Motor Phils. Corp. v. Toyota Motor Phils. Corp. Workers Assoc. (TMPCWA)*[19] and *PLDT v. NLRC*,[20] the CA ruled that while Borre's act of insubordination or disobedience may be arrogant and mean, it was not serious or grave in nature nor did it reflect on his moral character. The CA also cited Borre's long years of service to justify such award. Thus, consistent with the constitutional mandate for the promotion of social justice and the protection of the laborer's rights, for the CA, Borre is entitled to a separation pay as a form of financial assistance, equivalent to one month pay for every year of service, a fraction of six months to be considered as one whole year.

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16 Id. at 51.
17 Id. at 54-55.
18 G.R. No. 228344, *rollo*, pp. 65-76.
19 G.R. Nos. 158798-99, October 19, 2007.
20 G.R. No. 80609, August 23, 1988.

The CA disposed:

> **WHEREFORE**, in view of the foregoing premises, the NLRC Decision dated June 19, 2014 is hereby **AFFIRMED** with modification. Respondent [AITI] is ordered to **PAY** [Borre] separation pay as a form of financial assistance to be computed from the time complainant commenced employment until his termination from service.
>
> **IT IS SO ORDERED.**[21]

Both parties filed separate motions for reconsideration. On one hand, AITI assailed the award of separation pay, arguing that Borre was found to be legally dismissed on a valid and just cause, hence, not entitled to such pay. On the other hand, Borre insisted that his dismissal was illegal. In its November 15, 2016 assailed Resolution, the CA denied both motions:

> **WHEREFORE**, premises considered, the motions from both parties are hereby **DENIED** for lack of merit.
>
> **IT IS SO ORDERED.**

Hence, the parties are now before this Court with AITI assailing the CA's award of separation pay to Borre on one hand, and Borre assailing the CA's affirmance of the finding of a valid and just cause for his dismissal on the other.

The Issues

I. Was Borre validly dismissed from employment?

II. Was the award of separation pay proper?

The Court's Ruling

I.

In arguing that he was illegally dismissed, Borre insists that AITI failed to prove that he committed the infractions imputed against him. For Borre, AITI presented no evidence to substantiate the alleged incidents of insubordination or willful disobedience.

Clearly, the determination of whether the January 30, 2013, February 8, 2013, February 11, 2013, and March 9, 2013 incidents actually transpired and the ascertainment of the details surrounding said incidents involve factual issues which would require the re-evaluation of the evidence submitted by both parties.

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[21] G.R. No. 228344, *rollo*, p. 60.

Basic is the rule that factual issues are improper in Rule 45 petitions as only questions of law may be raised in a petition for review on *certiorari*. This Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are final, binding, and conclusive on the parties and upon this Court when supported by substantial evidence.[22] While there are recognized exceptions,[23] none of them avails in this case. Further, this rule holds especially true in this case where the Labor Arbiter, the NLRC, and the CA all had uniform factual findings. This Court is thus duty-bound to respect such consistent prior findings; it must be cautious not to substitute its own appreciation of facts to those of the trial tribunals which have previously weighed the parties' claims and personally assessed the evidence.[24]

Verily, not only are these findings uniform, but they are also sustained by substantial evidence. Jurisprudence dictates that for an employee to be validly dismissed on the ground of willful disobedience, the employer must prove by substantial evidence that: (a) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (b) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[25]

The fact of Borre's unjustified refusal to perform the very duty for which he was hired, constitutive of insubordination or willful disobedience, was sufficiently established by the detailed and categorical sworn statements of his supervisor, Mendoza, and AITI's Administrative Assistant, Mercado. Indeed, as between these sworn statements and Borre's bare, general, and self-serving denial, the former should prevail, especially considering that there was no allegation, much less proof, that said superiors have any ill motive to impute such charges against him to cause his dismissal from employment.

Further, the twin requirements of procedural due process (notice and hearing) were undoubtedly satisfied in this case.

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22 *Remoticado v. Typical Construction Trading Corp.*, G.R. No. 206529, April 23, 2018.

23 These exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record, *(Pascual v. Burgos,* G.R. No. 171722, January 11, 2016, 778 SCRA 189, 205-206).

24 *Ebuenga v. Southfield Agencies, Inc.*, G.R. No. 208396, March 14, 2018.

25 *Mamaril v. The Red System Company, Inc.*, G.R. No. 229920, July 4, 2018.

We, therefore find no reversible error committed by the CA in affirming the Decision of the Labor Arbiter as also affirmed by the NLRC, finding that Borre was validly dismissed.

II.

Generally, an employee dismissed for any of the just causes under Article 282 of the Labor Code,[26] is not entitled to separation pay. The law is clear. Separation pay is only warranted: (1) when the cause of termination is not attributable to the employee's fault, such as those provided under Articles 283 and 284 of the Labor Code; and (2) in cases of illegal dismissal in which reinstatement is no longer feasible. *By way of exception*, however, the Court has allowed the grant of separation pay based on equity and as a measure of social justice. This exception is justified by the positive commands for the promotion of social justice and the protection of the rights of the workers replete in our Constitution. Indeed, the enhancement of their welfare is one of the primary concerns of our fundamental law.

Decisions prior to the landmark case of *PLDT* had, however, been inconsistent in applying such exception, both with regard to the justifications considered and the amount or rate of such award. Thus, in *PLDT*, the grant of separation pay as financial assistance to employees who were terminated for just causes on grounds of equity and social justice was curbed and rationalized.[27] The Court explained that such separation pay/financial assistance shall be allowed only in those instances where the employee was validly dismissed for causes other than serious misconduct or those whose offenses are iniquitous or reflective of some depravity in their moral character. The Court recognized the harsh realities faced by employees that forced them, despite their good intentions, to violate company policies, for which the employer can rightfully terminate their employment. The Court also ruled that the award of financial assistance shall not be given to validly terminated employees, whose offenses are iniquitous or reflective of some depravity in their moral character.

In the case of *Toyota*, the Court observed that it was clearly ruled that when the employee was terminated due to (1) serious misconduct (which is the first ground for dismissal under Article 282 of the Labor Code); or (2) acts that reflect on the moral character of the employee, the NLRC or the courts should not grant separation pay based on equity and social justice. It was, however, unclear whether the ruling likewise precludes the grant of separation pay when the employee was validly terminated from work on grounds laid down in Article 282 of the Labor Code other than serious misconduct. The Court, thus, examined the past cases wherein the grant or denial of such separation pay was at issue, and concluded that when the termination is legally justified on any of the grounds under Article 282 of the Labor Code, separation pay was not allowed "because the causes for

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[26] Now Article 297 of the Labor Code.

[27] *See Supra Multi-Services, Inc. v. Labitigan*, 792 Phil. 336 (2016).

dismissal recognized under said provision were all serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees.

This ruling was adopted and further expounded in the case of *Central Philippines Bandag Retreaders, Inc. v. Diasnes*:[28]

> To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family grounds under Article 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.

Summarily, therefore, it has long been settled that separation pay or financial assistance, or whatever other name it is called,[29] shall not be granted to all employees when the cause of their dismissal is any of the grounds provided under Article 282 of the Labor Code. Relaxation of this rule, pursuant to the principle of social justice may be warranted *only when exceptional or peculiar circumstances* attend the case.

In the recent case of *Digital Telecommunications Phils., Inc. v. Ayapana*,[30] the Court awarded separation pay as a measure of social justice despite finding that the employee was validly dismissed due to willful breach of trust. The Court, while mindful of the prevailing rule established in *Toyota*, considered the dismissed employee's receipt of several commendations, awards, and promotional increases throughout his service with his employer. More importantly, the grant of such separation pay was justified by the fact that while it was clear that the employee's act constitutes a willful breach of trust and confidence, it was found that the latter was primarily actuated by zealousness to perform his job rather than any intent to misappropriate funds, a circumstance which is clearly exceptional to a case of employment termination.

Likewise, in *International School Manila v. International School Alliance of Educators*,[31] the Court also awarded separation pay to the dismissed teacher despite finding that the dismissal was valid on the ground of gross inefficiency. The Court ratiocinated that despite a finding of gross

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28 580 Phil. 177 (2008).
29 Id.
30 G.R. No. 195614, January 10, 2018.
31 726 Phil. 147 (2014).

inefficiency, which constitutes a just cause for termination of employment under Article 282(b) of the Labor Code,[32] it was also found that said dismissed teacher's inefficiency or her inadequacies as a teacher did not stem from a reckless disregard of the welfare of her students or of the other issues raised by the school regarding her teaching. The Court observed that "far from being tainted with bad faith, her failings appeared to have resulted from [mere] lack of necessary skills, in-depth knowledge, and expertise to teach Filipino language at the standards required of her by the School." It was noted that said teacher was first hired as a Spanish language teacher, but due to lack of available Spanish classes in subsequent years and also due to the retirement of a Filipino teacher, she was assigned to teach Filipino classes, which apparently was not her area of expertise. This peculiar circumstance, coupled with the fact that no other infraction or administrative case was imputed against her in her almost two decades of service in the School, justified the Court's award of separation pay as a measure of social justice.

In *Nissan Motors Phils., Inc. v. Angelo*,[33] despite a finding that the dismissal was legal due to causes under Article 282 of the Labor Code, the Court ruled that respondent was entitled to a separation pay as a measure of financial assistance considering the latter's length of service and his poor physical condition, which was one of the reasons why he filed leaves of absences for which he was found guilty of gross and habitual negligence.

The attendant circumstances in the instant case considered, we find that the grant of separation pay by the CA to Borre was unjustified. Foremost, the cause of the termination of his employment amounts to willful disobedience under Article 282(a) of the Labor Code. More importantly, his repeated refusal to perform the very job he was hired for manifests nothing but his utter disregard for his employment and his employer's interest. Lastly, unlike in the cases above-cited, we find no exceptional or peculiar circumstance in this case that would warrant such generosity to award separation pay or financial assistance to a simply malfeasant employee. To rule otherwise, would simply be to distort the meaning of social justice. As we have explained in *PLDT*:

> The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty, but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This

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32 *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014).
33 637 Phil. 150 (2011).

> great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[34]

In view thereof, not even his 8 years of service would justify entitlement to a separation pay as a measure of social justice. If his length of service alone is to be regarded as justification for moderating the penalty of dismissal, such gesture will simply become a reward for his willful disobedience.[35]

WHEREFORE, the petition in G.R. No. 228320 is **GRANTED**. On the other hand, the petition in G.R. No. 228344 is **DENIED** for lack of merit. Accordingly, the Decision dated November 3, 2015 and Resolution dated November 15, 2016 of the Court of Appeals are hereby **AFFIRMED with MODIFICATION** that the award of separation pay in favor Menandro T. Borre is **DELETED**.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

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34 Supra note 20

35 *See Security Bank Savings Corporation v. Singson*, 780 Phil. 860 (2016); and *Nuez v. National Labor Relations Commission*, 309 Phil. 476 (1994).

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice