

EIGHTH DIVISION

[CA-G.R. SP NO. 133423, October 21, 2014]

**EMMANUEL GARGANTILLA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND ASIAN TERMINAL
INCORPORATED / MAXILINDA M. LEE, RESPONDENTS.**

JUDGEMENT BASED ON COMPROMISE

GARCIA-FERNANDEZ, J.:

This is a special civil action under Rule 65 of the 1997 Rules of Civil Procedure seeking to set aside the decision and resolution of the National Labor Relations Commission (NLRC) promulgated on August 30, 2013 and October 30, 2013, respectively.

On 24 July 2012, petitioner Emmanuel Gargantilla filed a complaint for illegal dismissal with prayer for reinstatement and non-payment of 13th month pay against his employers respondents Asian Terminal, Inc. and Maxilinda M. Lee. The complaint was amended on 6 August 2012 by deleting the claim of non-payment of 13th month pay and changing the prayer for reinstatement to separation pay. On 17 September 2012, petitioner filed another amended complaint claiming 13th month pay, service incentive leave pay, damages and attorney's fees.

Petitioner alleged in his position paper that he started working as stevedore on 29 June 1998; that sometime in August 2010, he went to respondents' office but "was told by the desk officer, a certain Mr. Barrameda, that there was already no job for him and that his name was already deleted from the respondent company's database"; that he was dismissed without just cause and due process; that he is entitled not only to backwages and separation pay as a result of his illegal dismissal, but also service incentive leave pay, 13th month pay, moral and exemplary damages and attorney's fees.

Private respondents alleged before the Labor Arbiter that petitioner is a casual reserve employee (CRE) or "extra"; that he was not required to work everyday but only worked when his services were needed; that as an "extra", he was only deployed when the company's regular workers could not meet the demands of their business operations or when there is unusually heavy volume of work; that it is only when the company needed the services of the CREs that their number/s would be called; that the CREs including petitioner reports when "they feel there is a possibility of being called, keeping in mind the rotation scheme in place"; that if petitioner's deployment during his entire employment were to be computed annually, his tenure would amount to approximately one year.

The Labor Arbiter decided in favor of petitioner holding that private respondents failed to document their policy on the "employment of worker"; that respondents "failed to dispose of their burden of proving complainant's legal termination"; and