SyCip Salazar Hernandez & Gatmaitan

July-September 2012
Volume X, Issue 3

Employment & Immigration Update

Social Media: Ethical Concerns and the Right to Privacy

In an article published in the 09 August 2012 issue of *Law Technology News*, lawyer and media consultant Robert J. Ambrogi of Massachusetts gave some tips to keep social networking in line with ethics.

First, **remember that the same rules apply.** Blogs, social networks, Twitter, and the like remain relatively new forms of media, but the same old ethical rules apply.

Second, **do not betray client confidences**. Ambrogi cites the case of a former Illinois assistant public defender whose law license was suspended for 60 days because of her blog postings that authorities said exposed client confidences. The public defender believed and maintained that she was blogging about her clients anonymously. Bar authorities, however, concluded that she provided sufficient detail in some posts to allow specific clients to be identified. Advice: Do not blog about your own clients or cases, except as to details that have unequivocally become public, such as when a case of yours is reported in an appellate opinion.

Third, **avoid inadvertently forming attorney-client relationships**. Many lawyers do not answer questions in Q&A forums for fear of forming an attorney-client relationship. This danger exists only when the lawyer gives the prospective client a "reasonable expectation" that he or she is willing to form an attorney-client relationship. A lawyer can participate in these Q&A forums but also disavow any "reasonable expectation" by expressly using cautionary language and disclaimers in an answer. Keep your answers generic, avoid addressing highly specific facts, and expressly state that your answer should not be considered legal advice.

(Continued on page 6)

Right to Privacy

The constitutional right to privacy was discussed in the decision promulgated on 18 October 2011 by the Philippine Supreme Court (SC) in the case of *Briccio "Ricky" A. Pollo v. Chairperson Karina Constantino-David, et al. (G.R. No. 181881)*, which involved a search of an office computer assigned to a government employee who was charged administratively and eventually dismissed from the service and where the employee's personal files stored in the computer were used by the government employer as evidence of misconduct.

The majority of the SC, composed of eleven justices headed by Associate Justice Martin S. Villarama, Jr. as the ponente, upheld the government employer's policy of no expectation of privacy and waiver of privacy rights that put its employees on notice that they have no expectation of privacy in **anything** they create, store, send or receive on the office computers, and that the

(Continued on page 6)

Inside this issue

Special points of interest

Quick Quotes from Recent SC Decisions

The closure of a department or division of a company constitutes retrenchment by, and not closure of, the company itself. *(Waterfront Cebu City Hotel v. Ma. Melanie P. Jimenez, et al., G.R. No. 174214, 13 June 2012).*

To emphasize, "our empathy with the cause of labor should not blind us to the rights of management. This Court should stamp out, rather than tolerate, the commission of irregular acts wherever these are noted. Malpractices should not be allowed to continue but should be rebuked." *(Romeo E. Paulino v. National Labor Relations Commission, et al., G.R. No. 176184, 13 June 2012).*

Where a party is given the opportunity to explain his side of the case, the right to due process is deemed recognized for what is frowned upon is denial of the right to be heard. *(Vicente Villanueva, Jr. v. The National Labor Relations Commission Third Division, et al., G.R. No. 176893, 13 June 2012).*

While lawyers owe their entire devotion to the interest of their clients, they should not forget that they are also officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice. *(3rd Alert Security and Detective Services, Inc. v. Romualdo Navia, G.R. No. 200653, 13 June 2012).*

Voluntary Arbitration

SC Decision: G.R. No. 172642, 13 June 2012

In the case at bar, the deceased seafarer was employed by General Charterers Inc. (GCI) and at the time of his death was a bona fide member of the Associated Marine Officers and Seaman's Union of the Philippines (AMOSUP), GCI's collective bargaining agent. The widow claimed for death benefits through the grievance procedure of the Collective Bargaining Agreement (CBA) between AMOSUP and GCI. When the grievance procedure was "declared deadlocked", the widow filed a complaint with the National Labor Relations Commission (NLRC) against GCI for death and medical benefits and damages.

The Labor Arbiter ruled in favor of the widow which ruling was affirmed by the NLRC. Respondent employer GCI filed a special action for certiorari with the Court of Appeals (CA) questioning the jurisdiction of the NLRC. The CA ruled that while the suit filed by the widow was a money claim, the same basically involved the interpretation and application of the provisions of the subject CBA, and as such, jurisdiction belonged to the voluntary arbitrator and not the labor arbiter.

In rejecting the petitioner widow's contention based on Section 10 of Republic Act No. 8042 (otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995), the SC held that a careful reading of R.A. 8042 would show that there is no specific provision which provides for jurisdiction over disputes or unresolved grievances regarding the interpretation or implementation of a CBA. Section 10 of R.A. 8042 cited by the petitioner widow, simply speaks, in general, of "claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages". On the other hand, Articles 217(c) and 261 of the Labor Code are very specific in stating that voluntary arbitrators have jurisdiction over cases arising from the interpretation or implementation of CBAs.

Moreover, as noted by the SC, under Article 13.1 of the CBA entered into by and between respondent GCI and AMOSUP, the union to which the deceased seafarer (husband of petitioner) belonged, the parties clearly intended to bring to conciliation or voluntary arbitration any dispute or conflict in the interpretation or application of the provisions of their CBA. It is settled that when the parties have validly agreed on a procedure for resolving grievances and to submit a dispute to voluntary arbitration then that procedure should be strictly observed.

Retrenchment

SC Decision: G.R. No. 174214, 13 June 2012

Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees. It is resorted to during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery or of automation. It is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work and considerable reduction on the volume of his business.

In case of retrenchment, proof of financial losses becomes the determining factor in proving its legitimacy. In establishing a unilateral claim of actual or potential losses, financial statements audited by independent external auditors constitute the normal method of proof of profit and loss performance of a company. The condition of business losses justifying retrenchment is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns.

Retrenchment is subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence. For a valid retrenchment, the following elements must be present: **(1)** that retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious,

(Continued on page 7)

Loss of Trust and Confidence

SC Decision: G.R. No. 176184, 13 June 2012

In the case at bar, the Labor Arbiter, the NLRC and the CA all acknowledged that notwithstanding petitioner's acquittal in the criminal case for qualified theft, respondent employer had adequately established the basis for the company's loss of confidence as a just cause to terminate petitioner. The SC found that approach to be correct, since proof beyond reasonable doubt of an employee's misconduct is not required in dismissing an employee. Rather, as opposed to the "proof beyond reasonable doubt" standard of evidence required in criminal cases, labor suits require only substantial evidence to prove the validity of the dismissal.

Willful breach of trust or loss of confidence requires that the employee **(1)** occupied a position of trust or **(2)** was routinely charged with the care of the employer's property. As correctly appreciated by the CA, petitioner was charged with the care and custody of the respondent company's property.

To warrant dismissal based on loss of confidence, there must be **some basis** for the loss of trust or the employer must have reasonable grounds to believe that the employee is responsible for the misconduct that renders the latter unworthy of the trust and confidence demanded by his or her position. Here, petitioner disputes the sufficiency of respondent company's basis for loss of trust and confidence. He alleges that he did not steal the plant materials, considering that he had lawful possession. However, according to the SC, assuming that petitioner lawfully possessed the materials, the respondent company still had **ample reason or basis** to already distrust petitioner since for more than a month, he did not even inform the respondent company of the whereabouts of the plant materials. Instead, he stocked these materials at his residence even if they were needed in the daily operations of the company. In keeping with the honesty and integrity demanded by his position, he should have turned over these materials to the plant's warehouse.

The fact that petitioner did not present any documents or requisition slips at the time that the PNP took the plant materials logically excites suspicion. In addition, the respondent company

(Continued on page 7)

Payroll Reinstatement is a Management Prerogative

SC Decision: G.R. No. 187713, 01 August 2012

Article 223 of the Labor Code states that the employee entitled to reinstatement "shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll". Thus, even if the employee is able and raring to return to work, the option of payroll reinstatement belongs to the employer.

The general policy of labor law is to discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld. Neither does labor law authorize the substitution of judgment of the employer in the conduct of his business, unless it is shown to be contrary to law, morals, or public policy. The only condition is that the exercise of management prerogatives should not be done in bad faith or with abuse of discretion.

The SC cited with favor the explanation in its 1994 Decision in case G.R. No. 110027 as follows: "This opinion [to reinstate a dismissed employee in the payroll] is based on practical considerations. The employer may insist that the dismissal of the employee was for a just and valid cause and the latter's presence within its premises is intolerable by any standard; or such presence would be inimical to its interest or would demoralize the co-employees. Thus, while payroll reinstatement would in fact be unacceptable because it sanctions the payment of salaries to one not rendering service, it may still be the lesser evil compared to the intolerable presence in the workplace of an unwanted employee."

Quick Quotes from Recent SC Decisions

In labor cases, all that is required is for the employer to show substantial evidence to justify the termination of the employee. *(APO Cement Corporation v. Zaldy E. Baptisma, G.R. No. 176671, 20 June 2012).*

Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution. *(Duty Free Philippines Services, Inc. v. Manolito Q. Tria, G.R. No. 174809, 27 June 2012).*

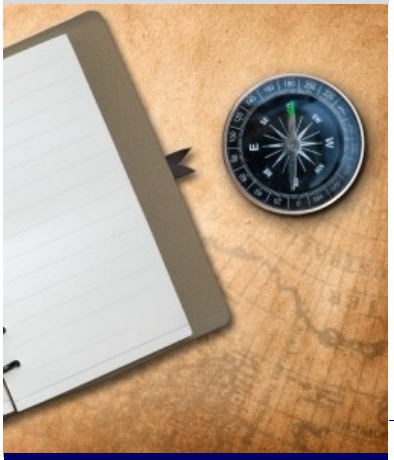
In dismissing an employee from service, the employer has the burden of proving its observance of the two-notice requirement and its accordance to the employee of a real opportunity to be heard. *(JARL Construction, et al. v. Simeon A. Atencio, G.R. No. 175969, 01 August 2012).*

A seafarer, to be entitled to disability benefits, must prove that the injury was suffered during the term of employment, and must submit himself to the company-designated physician for evaluation within three days from his repatriation. *(Wallem Maritime Services, Inc. v. Ernesto C. Tanawan, G.R. No. 160444, 29 August 2012).*

Immigration News

Unified ASEAN Visa

The Philippines is seeking to participate in an initial implementation of a unified visa for foreigners outside the Association of Southeast Asian Nations (ASEAN). The plan to implement a single visa for non-ASEAN residents will streamline travel requirements and open the region to foreign tourists similar to the Schengen visa of the European Union. Brunei, Malaysia, Singapore, Thailand and Vietnam are ready to implement the single visa and already have data facilities for the unified visa's implementation. Other members of ASEAN are the Philippines, Cambodia, Indonesia, Laos PDR and Myanmar. Implementing a unified travel visa for the region as a move to attract more tourists to the region was reportedly raised at the ASEAN foreign minister's meeting last year. The ASEAN members also plan to introduce free visas for all residents to boost inter-region tourism. [Business World 09272012 pS1/11]



Tripartite Certificate of Compliance with Labor Standards

The Tripartite Certificate of Compliance with Labor Standards (TCCLS) provided under DOLE Department Order No. 115-A Series of 2012 dated 10 September 2012 is the first level seal of good housekeeping issued by the DOLE Regional Office to enrolled establishments. The certificate is a requirement to qualify for the *Gawad Kaligtasan at Kalusugan* (GKK) and Child Labor -Free Establishment (CLFE) award. The TCCLS is a basic pre-qualification requirement to the DOLE Secretary's Labor Law Compliance Award and to the highest award, which is the Tripartite Seal of Excellence (TSE). The Secretary's Award can be acquired when the TCCLS plus two other certificates are obtained by an establishment. The TSE, as provided under Department Order No. 115-11, Series of 2011, can be obtained by an establishment upon acquiring all of the five DOLE good housekeeping certificates: the TCCLS, the CLFE, GKK, National Productivity Olympics Award, and the Outstanding LMC Award for Industrial Peace.

To qualify for the TCCLS, an establishment must meet the following criteria: **(a)** it must be duly registered with either the Department of Trade and Industry (DTI), the Securities and Exchange Commission, the Cooperative Development Authority (CDA), DOLE or other appropriate government agencies; **(b)** it has a valid business permit from the Local Government Unit; **(c)** it has no pending case with the DOLE involving violations of General Labor Standards, Occupational Safety and Health Standards, and Child Labor Law at the time of the application; and **(d)** it has no case of Fatal Accident, Permanent Total/Partial Disability, or Occupational Illness within a period of one year at the time of application. The DOLE Regional Office shall issue TCCLS within three working days from receipt of the application. The TCCLS is valid for three years.

Permanent Total Disability Benefits of a Seafarer

SC Decision: G.R. No. 177907, 29 August 2012

Section 2(b) of Rule VII of the Implementing Rules of Book IV of the Labor Code (Amended Rules on Employees Compensation) provides in part that "a disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days". Under Section 2 of Rule X, "where injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability", temporary total disability benefits shall be paid.

In the case at bar, the seafarer (JM) was accidentally injured on board the vessel on 01 March 1999 while docked at the Port of Vungtao in Ho Chi Minh City, Vietnam and sustained an open depressed fracture on the left frontal side of his forehead, as well as damage to his left eye and frontal sinus. Since his repatriation to the Philippines on 13 March 1999, JM underwent medical treatment for his condition under the supervision of the company-designated physician at the Metropolitan Hospital. He was initially given medications to manage his condition and he went through medical procedures to repair the damage to his left eye on 22 April 1999, 14 July 1999 and 19 July 1999. JM's condition was continuously evaluated by the hospital's ophthalmologist and neurologist. On 20 October 1999, JM went through the procedure of cranioplasty to repair his fractured skull. Thereafter, JM was seen by the hospital neurologist and neurosurgeon on 11 February 2000, on which date he was pronounced fit to resume sea duties. Unmistakably, from the time JM signed off from the vessel on 13 March 1999 up to the time his fitness to work was declared on 11 February 2000, more than eleven months, or approximately 335 days, have lapsed. During this period, JM was totally unable to pursue his occupation as a seafarer.

Following the guidelines laid down in the 2008 Decision in G.R. No. 172933, it is evident that the maximum 240-day medical treatment period expired without declaration of JM's fitness to work or the existence of his permanent disability determined. Accordingly, the SC held that JM's temporary total disability should be deemed permanent entitling him to permanent total disability benefits.

Administrative Complaints Committee

The Administrative Complaints Committee (ACC) formed under DOLE Administrative Order No. 313 signed on 25 September 2012 is tasked to evaluate complaints "against all DOLE officials and employees who are non-presidential appointees" and recommend submission for preliminary investigation. Specifically, the ACC will **(i)** evaluate the sufficiency of form and substance of a complaint; **(ii)** conduct preliminary investigation and submit a preliminary investigation report—with recommendation—together with the complete records of the case to the disciplinary authority (the secretary in the central office or regional directors in regional offices); **(iii)** issue summons, subpoenas and notices, as well as interlocutory orders, by authority of the secretary/regional director, in aid of preliminary investigation; **(iv)** receive evidence and pleadings as well as other documents relative to the complaint under preliminary investigation; and **(v)** take custody of records pertinent to the conduct of the investigation and ensure their confidentiality. The ACC will take over the processing and disposition of all pending complaints.

International Seafarers' Bill of Rights

The Philippines officially became the 30th member-state of the International Labor Organization (ILO) to ratify the Maritime Labor Convention 2006 (MLC 2006), dubbed the international seafarers' bill of rights. The Convention embodies a comprehensive range of labor standards for the world's 1.2 million merchant sailors.

Around 300,000 overseas Filipino seafarers and 60,000 domestic seafarers stand to benefit from the MLC 2006, according to DOLE Secretary Rosalinda Baldoz. The provisions of MLC 2006 will help to meet the demand of quality shipping, which is crucial to the global economy. It will apply to all ships engaged in commercial activities with the exception of fishing vessels and traditional ships (such as dhows and junks). The Convention sets minimum requirements for seafarers to work on a ship and contains provisions on conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health and medical care, and welfare and social security protection.

According to the Filipino Shippers Association (FSA), the government would have to complete all efforts under all circumstances in order that the Philippines' position as the primary source of able and qualified maritime professionals for the world's merchant fleet is maintained. The FSA has been actively involved in the conceptualization, drafting and eventual adoption of the MLC 2006, including its subsequent ratification by the Senate.

Death Compensation Benefits of Repatriated Seafarer Under International CBA

SC Decision: G.R. No. 191563, 20 June 2012

The inquiry presented to the SC in the above case was whether or not within the purview of the International Bargaining Forum/Associated Marine Officers' and Seamen's Union of the Philippines/International Mariners Management Association of Japan Collective Bargaining Agreement (IBF/AMOSUP/IMMAJ CBA), the death of the seafarer more than a year from his repatriation can be considered as one occurring while he was still in the employment of respondents. The SC ruled in the affirmative, finding that the deceased seafarer was repatriated and entitled to medical assistance and sick pay for a period of 130 days from repatriation and subsequently died of symptoms which were the cause of his earlier repatriation. The SC cited the following pertinent provisions of the IBF/AMOSUP/IMMAJ CBA: **(a)** Article 22.1(b) considers an employment as terminated if a seafarer signs off from the vessel due to sickness, but subject to the provisions of Article 29; **(b)** Article 29.1 provides that the death of a seafarer, for any cause, is compensable when it occurs while he is in the employment of the company; **(c)** Article 29.4 clarifies that the seafarer shall be considered as in the employment of the company "for so long as the provisions of Article 25 and 26 apply and provided the death is directly attributable to sickness or injury that caused the seafarer's employment to be terminated in accordance with Article 22.1(b)". Articles 25 and 26 refers to continued entitlement to medical attention and sick pay.

Immigration News

The ACR I-Card

In a notice issued by Commissioner Ricardo A. David, Jr. of the Bureau of Immigration (BI), which was published on page 4 of the Manila Bulletin on 27 August 2012, it explained that the Alien Certificate of Registration Identity Card (ACR I-Card) is evidence of a lawful sojourn/residence in the Philippines and serves as a re-entry and exit permit to and from the Philippines. The Notice further stressed that the ACR I-Card is indispensable to every foreigner who was issued an immigrant or non-immigrant visa by the BI. It warned that any foreigner without his or her ACR I-Card shall be deemed incompletely documented, and would be penalized for violation of the Alien Registration Act of 1950 and Philippine Immigration Act of 1940. It advised foreigners who have not secured their ACR I-Card from the BI to claim them at the window of the Executive Office, Ground Floor, BI Main Building, Magallanes Drive, Intramuros, Manila. The ACR I-Cards should be claimed within the next 90 days from the publication of the Notice or until 26 November 2012. Failure to claim shall result in the cancellation of the ACR I-Card without prejudice to reapplication for a new ACR I-Card. Also, the list of the names of foreigners with unclaimed ACR I-Cards can be assessed from the BI website at www.immigration.gov.ph.

Data Privacy Act of 2012

The Data Privacy Act of 2012 (Republic Act No. 10173) approved on 16 August 2012 declares that it is the policy of the State "to protect the fundamental human right of privacy of communication while ensuring free flow of information to promote innovation and growth. The State recognizes the vital role of information and communications technology in nation-building and its inherent obligation to ensure that personal information in information and communications systems in the government and in the private sector are secured and protected." (Sec. 2)

Cybercrime Prevention Act of 2012

The Cybercrime Prevention Act of 2012 (Republic Act No. 10175) approved on 12 September 2012 declares that "The State recognizes the vital role of information and communications industries such as content production, telecommunications, broadcasting electronic commerce, and data processing, in the nation's overall social and economic development. The State also recognizes the importance of providing an environment conducive to the development, acceleration, and rational application and exploitation of

(Continued on page 7)

Social Media: Ethical Concerns and the Right to Privacy

(Continued from page 1)

Fourth, **do not solicit**. Ethical rules prohibit lawyers from soliciting potential clients for pecuniary gain. Fear of solicitation keeps lawyers off of Twitter, Facebook and other social networks. Such fear is unfounded. No question, a lawyer could solicit through any of these media, but the lawyer would have to be trying very hard to do so. For it to be solicitation, it has to be targeted at a specific individual and intended to be perceived as an offer to provide legal services. Merely engaging with the public in an online forum of any kind is not solicitation.

Fifth, **make no false or misleading statements**. If the profession were to have only one ethical rule, it would be this: Do not misrepresent yourself, your services or your capabilities. Social media offer a powerful form of marketing, especially for young and less-experienced lawyers. In the enthusiasm to build a practice, lawyers should be cautious not to overstate their capabilities and experience.

Sixth, **become competent in technology and social media**. You will not find anything in any of the ethical rules about competence in technology. Yet it only makes sense: The best way to stay out of trouble with any medium is to understand how it works. If you are uneducated about technology and social media, you are more susceptible to tripping up. It is suggested that the comment to the rule on competence be amended to require that lawyers not only maintain in law and practice, but also in "the benefits and risks associated with technology".

Seventh, **use common sense**. It all comes back to this. Exercise common sense in your use of social media and you are unlikely to get into trouble. Think carefully about that blog post before you hit publish.

Right to Privacy

(Continued from page 1)

government employer may monitor the use of the computer resources using both automated or human means which implies that on-the-spot inspections may be done to ensure that the computer resources were used only for legitimate business purposes.

On the other hand, Associate Justice Lucas P. Bersamin (joined by three other justices) submitted a concurring and dissenting opinion which, while upholding the legality of the government employer's policy, held that the government employee concerned was entitled to a reasonable expectation of privacy in respect of the communications created, stored, sent or received *after office hours* through the office computer as to which he must be protected, considering that OM No. 10 (the office memorandum containing the government employer's policy) contained an exception that actually gave the employee concerned *privileged access* to the Internet for knowledge search, information exchange, and others; and has explicitly allowed him to use the office's computer resources for personal purposes *after* office hours, such that he could rightfully invoke the constitutional protection to the privacy of his communication and correspondence.

Regarding the impact of technological changes to the right of privacy, Justice Bersamin voiced his apprehension that the majority ruling about the decreased expectation of privacy in the workplace may generate an unwanted implication for employers in general to henceforth consider themselves authorized, without risking a collision with the constitutionally-protected right to privacy, to probe and pry into communications made during work hours by their employees through the use of their computers and other digital instruments of communication. Thus, the employers may possibly begin to monitor their employees' phone calls, to screen incoming and outgoing emails, to capture queries made through any of the Internet's efficient search engines (like Google), or to censor visited websites (like Yahoo, Facebook or Twitter) in the avowed interest of ensuring productivity and supervising use of business resources, which will be unfortunate.

Justice Bersamin voted to deny the petition subject to the qualification that the employee's right to privacy should be respected as to the files created, stored, sent or received *after office hours*; and to the further qualification that the decision be held to apply *pro hac vice* ("for this one particular occasion").

Loss of Trust and Confidence

(Continued from page 3)
received a security report stating that petitioner had engaged in the illicit disposal of the company's plant materials, which were recovered during the search conducted at his residence. Thus, respondent employer reasonably suspected petitioner of staling the company's property.

In a final effort to impugn his dismissal, petitioner claims that he could only be faulted for breaching respondent company's rules and regulations which prohibited the employees from bringing home company materials. By admitting that he breached company rules, petitioner buttressed his employer's claim that he committed serious misconduct.

According to the SC, given these circumstances, it would have been unfair for the respondent company to keep petitioner in its employ. Petitioner displayed actions that made him untrustworthy. The SC held that, as a measure of self-protection, the respondent company validly terminated petitioner's services for serious misconduct and loss of confidence.

Retrenchment

(Continued from page 2)
actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; **(2)** that the employer served written notice both to the employees and to the Department of Labor and Employment (DOLE) at least one month prior to the intended date of retrenchment; **(3)** that the employer pays the retrenched employees' separation pay equivalent to one month pay or at least half-month pay for every year of service, whichever is higher; **(4)** that the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and **(5)** that the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

In the case at bar, all the above elements were successfully proven by petitioner. First, the huge losses suffered by the Club for the past two years had forced petitioner to close it down to avert further losses which would eventually affect the operations of petitioner. Second, all 45 employees working under the Club were served with notice of termination. The corresponding notice was likewise served to the DOLE one month prior to retrenchment. Third, the employees were offered separation pay most of whom have accepted and opted not to join the complaint. Fourth, cessation of or withdrawal from business operations was *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees. As a matter of fact, the Club has not resumed operations. Neither is there a showing that petitioner carried out the closure of the business in bad faith. No labor dispute existed between management and the employees when the latter were terminated. Finally, the SC affirmed the NLRC's award and computation of separation pay in favor of the recipients.

Workplace Tips

Ask permission to use your iPad or smartphone during a meeting. Explain at the beginning if you will be using the device to take notes; otherwise people may assume that you are multitasking and not giving the meeting your full attention. [Adapted from "Smartphones Should Know Their Place at Work", Eilene Zimmerman, *The New York Times*, www.nytimes.com.]

Project professionalism by speaking clearly. Check your voicemail message to make sure you aren't saying "Gonna" instead of "Going to" and "Didja" when you mean "Did you". [Adapted from "Is Your Diction Affecting Your Professional Image", Barbara Pachter, Pachter's Pointers, www.barbarapachtersblog.com.]

Clear confusion when someone babbles on about a theory or buries you in jargon. Ask for an example. Say "Tell me what that looks like in practice". [Adapted from "PowerPhrase: Show Me", Meryl Runion, SpeakStrong, www.speakstrong.com.]

(Continued from page 6)
information and communications technology (ICT) to attain free, easy, and intelligible access to exchange and/or delivery of information; and the need to protect and safeguard the integrity of computer, computer and communications systems, networks, and databases, and the confidentiality, integrity, and availability of information and data stored therein, from all forms of misuse, abuse, and illegal access by making punishable under the law such conduct or conducts. In this light, the State shall adopt sufficient powers to effectively prevent and combat such offenses by facilitating their detection, investigation, and prosecution at both the domestic and international levels, and by providing arrangements for fast and reliable international cooperation." (Sec. 2)

Inspirational Quotes

"The greatest power that a person possesses is the power to choose." - J. Martin Kohe

"The spirit of liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can save it." - Learned Hand, in a 1944 Central Park address

"The character of our children tomorrow depends on what you put into their hearts today." - Proverbs 2

SyCip Salazar Hernandez & Gatmaitan

Managing Partner: Rafael A. Morales

Human Resource Practice Group (HRPG) Department Head: Lozano A. Tan

Of Counsel, Editor-in-Chief: Juan C. Reyes, Jr.

Of Counsel: Rene Y. Soriano

Partners: Luisito V. Liban, Dante T. Pamintuan, Leslie C. Dy, Amer Hussein N. Mambuay, Rodelle B. Bolante, Marianne M. Miguel

Special Counsel: Marietta A. Tibayan

Senior Associates: Russel L. Rodriguez, Ronald Mark C. Lleno, Maria Jennifer Z. Barreto, Joan A. De Venecia, Romeo D. Lumagui, Jr.

Associates: Leah C. Abutan, Margarita R. Alias, Joanna Eileen M. Capones, Easter Princess U. Castro, Rosalyn S. Co-Uy, Ryan D. Co, Barbara Anne A. Gandionco, Joanna Marie O. Joson, Maria Christina C. Ortua, Emmar Benjoe B. Panahon, Joan Mae S. To, Diana Grace L. Uy, Ma. Viola B. Vista, Benjamin C. Yan

Coordinators: Susan P. Añonuevo, Benjamin P. Araneta, Katherine Mae P. Sarmiento

Feedback and Inquiries: info@syciplaw.com

Working in a 'Third Place'

Instead of working at the office (the 'first place') or home (the 'second place'), people are taking their laptop, tablet, and/or smartphone to libraries, business lounges, business centers, co-working hubs and coffee shops. There's no single, definitive 'third place' to work; people opt for the place that best suits their location, working style and schedule. The trend for third place working goes hand in hand with the spread of more flexible work practices, such as giving people choice over where and when they work. A big 72% of businesses globally say this leads directly to greater productivity.

Across Europe, flexible workspaces are opening closer to, or actually at, the places where people live and travel. The French and Dutch rail operators, SNCF and NS Trains, have joined forces with Regus to open walk-in business lounges at busy rail stations. Shell and Regus are piloting instant-access workspace at gas station forecourts in Europe. Regus and Extra Motorway Services are opening drop-in work places next to key highways in the U.K. Those new networks of third places mean that, instead of being forced to travel to an office tower that happened to be convenient in the 1980s, people can access equivalent facilities—WiFi, meeting space, printers and the networking opportunities that coalesce around them—at a place nearer where they want to be. It could be close to home, customers, or near shops and leisure facilities.

Giving employees more freedom to choose where they work can improve well-being, employee engagement, and performance. The fact that 72% of firms relate productivity to flexible working is evidence of that. Rigid, office-bound working practices hold corporations back from boosting productivity. Employees are already yearning to loosen their ties with the fixed office; with the help of third spaces, employers should let them cut the knot. [Filippo Sarti, CEO of Regus Asia; Philippine Daily Inquirer 09032012 pB3-2]

Fashion Law

Fashion law is a burgeoning niche practice in New York and Los Angeles, both hubs of the approximately $200 billion U.S. apparel market, with both legal firms and design houses hiring specialist attorneys who are charged to negotiate real estate deals, advise on mergers and acquisitions, deal with employment disputes and, in some of the most high-profile work, litigate copyright claims.

Fashion got its law school start six years ago when New York's Fordham Law School began offering courses. Since then, such classes have become part of the curriculum elsewhere, including New York University School of Law and Benjamin N. Cardozo School of Law. Loyola Law School in Los Angeles plans to launch its first fashion law course in January. Gibson, Dunn and Crutcher LLP, with its 80-attorney fashion, retail and consumer products practice group, is one of the few major law firms to have a dedicated fashion practice. Barbara Kolsun, general counsel at Stuart Weitzman and former general counsel at Kate Spade and 7 For All Mankind, who wrote the first textbook on fashion law in 2010, cited the industry's worldwide trillion dollar impact as a reason for increased specialization. She hires law students who want to work in fashion law to intern at Stuart Weitzman and many have gone on to work in-house at places like Coach and Burberry.

Fashion law attorneys cite a desire to work in a creative industry even if their work is on the paper-pushing side, noting that fashion is an industry forced to reinvent itself with each season and attorneys in the industry must change with it. One lure is the novel legal issues the industry presents but that it has its brick-and-mortar appeal, too. [Reuters; BusinessWorld 09242012 pS2/9]