REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **02 September 2020** *which reads as follows*:

"**G.R. No. 252798 (*Yokohama Tire Philippines, Inc. v. Alliance of Yokohama Employees*)**. – After carefully reviewing the allegations, arguments, and issues in the instant Petition for Review on *Certiorari*,[1] the Court resolves to **DENY** the same for the following reasons: (1) the petition lacks proper and valid certification against forum shopping; and (2) petitioner Yokohama Tire Philippines, Inc. (petitioner) failed to show that the Court of Appeals (CA) committed any reversible error in its assailed Decision[2] dated 20 August 2019 in CA-G.R. SP No. 156629 as modified by its assailed Resolution[3] dated 30 June 2020.

The petition lacks proper and valid certification against forum shopping in accordance with Section 4 (e),[4] Rule 45 of the Rules of Court in relation to Section 5, Rule 7[5] of the same Rules in that it is signed by the

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1 *Rollo*, pp. 3-43.

2 Penned by Associate Justice Perpetua Susana T. Atal-Paño, with Associate Justices Mariflor P. Punzalan Castillo and Myra V. Garcia-Fernandez, concurring, id. at 49-68.

3 Id. at 70-74.

4 **Section 4.** *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and **(e) contain a sworn certification against forum shopping** as provided in the last paragraph of section 2, Rule 42. (Emphasis supplied)

5 **Section 5.** *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that

counsel without proof of authority to sign for petitioner. This is sufficient ground for the dismissal of the petition pursuant to Section 5, Rule 45 of the same Rules.[6]

It must be noted that the Corporate Secretary's Certificate[7] attached to the petition only authorizes a certain "Egelberto Dolo" to execute and sign the verification and certification against forum shopping. Meanwhile, Laguesma Magsalin & Consulta Law Office was merely appointed as petitioner's attorney-in-fact and counsel to represent the latter in the proceedings before the National Labor Relations Commission (NLRC), the National Conciliation and Mediation Board (NCMB), the CA, and the Court, with specific additional powers to negotiate, conclude, enter into, and execute a compromise or amicable settlement in connection with or in furtherance of the instant case. In *Hydro Resources Contractors Corporation v. National Irrigation Administration*,[8] the Court held that the lawyer of the party, in order to validly execute the certification, must be "specifically authorized" by the client for that purpose. This is reiterated in *Altres v. Empleo*,[9] where the Court emphasized that 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.

In any case, even if the Court does away with the aforesaid procedural defect, the instant Petition remains to be unmeritorious. Petitioner failed to sufficiently show that the CA committed any reversible error that warrants the exercise of the Court's discretionary appellate jurisdiction.

As correctly held by the CA, under the clear and unambiguous language of the Collective Bargaining Agreement (CBA), the rank-and-file employees of petitioner are entitled to rice incentive based on zero major accident within said bargaining unit and not on company-wide basis.

Section 2, Article XV of the CBA between petitioner and Alliance of Yokohama Employees (respondent union) states:

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fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

6 **Section 5.** *Dismissal or denial of petition.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

7 *Rollo*, p. 45.

8 484 Phil. 581, 599 (2004).

9 594 Phil. 246, 262 (2008).

Section 2
Rice Subsidy – All regular employees shall receive rice subsidy effective October 01, 2016 as follows:

a) Guaranteed – 8 sacks rice @50 kilos/sack
b) Incentive based: Safety Findings – 2 sacks rice @50 kilos/sack
c) Incentive based: Zero MAJOR accident every 6 months – 2 sacks rice @50 kilos/sack

To be distributed in accordance with the schedule in the company guidelines to be issued.[10]

A simple reading of Section 2, Article XV of the CBA between petitioner and respondent union would tell us that "zero major accident" relates to *regular employees* as it is them who will be entitled to the rice incentive as stated in the first paragraph of the said provision. These regular employees, as correctly pointed out by the Voluntary Arbitrator (VA) and the CA, exclusively refer to the *regular rank-and-file employees*. For petitioner to say that the term *regular employees* pertains to all of its regular employees, including supervisory and confidential employees, is absurd and illogical. Why would the parties include other employees in the grant of rice incentive in a CBA that is essentially and exclusively a contract between petitioner and respondent union representing the rank-and-file employees? Section 2, Article XV, read together with the other provisions of the CBA, should lead any reasonable mind to conclude that these regular employees refer to *regular rank-and-file employees* as defined under Section 2, Article XV of the CBA or those rank-and-file employees/workers who have completed and passed petitioner's requirements for regularization *as distinguished from probationary rank-and-file employees*.

Preceding from the above discussion, the provision on rice incentive did not include any qualification that it shall be granted if there is zero major accident on company-wide basis. Indeed, if the parties to the CBA intended that the zero major accident basis must pertain to all the workforce of petitioner regardless of rank and position, the same should have been categorically stated in the CBA. In the absence thereof, major accidents which befell on petitioner's supervisory employees do not bar the rank-and-file employees from receiving the zero major accident rice incentive provided in their CBA. Petitioner cannot also insist on its previous practice of granting rice incentive only if there is zero major accident among all their employees regardless of rank and position. The Court agrees with the CA that the CBA, being the law between the parties, must be complied with and that the same has supervened the previous company practice. Where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law.[11]

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[10] *Rollo*, p. 147.
[11] *Hongkong Bank Independent Labor Union v. Hongkong and Shanghai Banking Corp. Limited*, G.R. No. 218390, February 28, 2018, 857 SCRA 1, 23.

The Court likewise finds no error on the part of the CA in ruling that the rank-and-file employees of petitioner are entitled to two (2) sacks of rice, and not only one (1) as interposed by petitioner, at 50 kilos each every six (6) months of zero major accident within their unit. Again, Section 2, Article II of the CBA is very clear on this matter. Further, if the parties to the CBA intended that the rank-and-file employees of petitioner are entitled only to one sack of rice every six months or two sacks of rice for one year (two six-month period), the same should have been clearly stated in the CBA like what petitioner and the Alliance of Yokohama Supervisors (AYS), certified bargaining representative of supervisory employees, did in their CBA which reads:

> **Section 2**
>
> Rice Subsidy – All covered employees shall receive rice subsidy effective October 01, 2016 as follows:
>
> 1) Guaranteed – 8 sacks of rice at 50 kilos/sack
> 2) Incentive based: Safety Findings – 2 sacks of rice at 50 kilos per sack
> 3) **Incentive based: ZERO MAJOR Accident every six (6) months – 1 sack of rice at 50 kilos per sack**
>
> to be distributed in accordance with the schedule in the COMPANY guidelines to be issued.[12] (Emphasis supplied)

Moreover, the Court notes that petitioner never raised the aforesaid issue during the proceedings before the VA. Records would show that during the grievance meeting between petitioner and respondent union, and in the proceedings before the VA, the only issue raised and ruled upon is whether or not the CBA provision on rice incentive is conditioned on company-wide zero major accident. In fact, the issue on the number of sacks of rice to be released to the concerned employees is not raised in petitioner's Petition for Review[13] filed with the CA on 16 July 2018. It was only raised for the first time in a manifestation with motion filed on 19 July 2019.[14] Clearly, petitioner's argument that its rank-and-file employees are only entitled to one (1) sack of rice at 50 kilos each every six (6) months is an afterthought which should not have been considered by the CA at the first chance. It is axiomatic that issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process.[15] Accordingly, it was an error for the CA, in the first place, to rule on the said issue in its 20 August 2019 Decision. Hence, the modification of the same in the CA's 30 June 2020 Resolution, ruling that the rank-and-file employees are entitled to two (2) sacks of rice at 50 kilos each every six (6) months of zero major accident is in order, and need not be disturbed.

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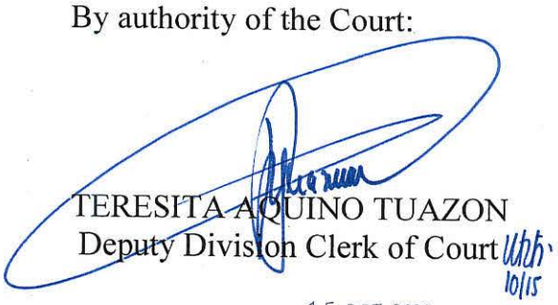
12 *Rollo*, p. 83.
13 Id. at 228-256.
14 CA *rollo*, pp. 251-254.
15 *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 752, 760 (2013).

10/15

SO ORDERED. (*Baltazar-Padilla, J., on leave.*)"

By authority of the Court:



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15 OCT 2020

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