

# CHANROBLES PUBLISHING COMPANY

## SUPREME COURT FIRST DIVISION

**RODOLFO FUENTES, RAINERIO  
DURON, JULIET VISTAL, ELENA  
DELLOMES, LEODEGARIO  
BALHINON, ROGELIO MALINAO, LILY  
BASANEZ, MALIZA ELLO, VILMA  
NOQUERA, JESSICA CASTILLO,  
ROGELIO TABLADILLO, REMELDA  
VISCAYA, MELANIA VISCAYA, CELIA  
LUBRICO, EDITH LLACUNA, ELPIDIO  
FERRER, NORBERTO MIRANDA,  
FERNANDO MIRANDA, CORDIO  
DUMAY, LEONARDO DELA VEGA,  
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LEOPOLDO ABAA, PAULINO ASIS, JR.,  
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FABON, MARCIANA OSOK, BEBIANO  
OSOK, FRANCISCO SEMULTA,  
MARCIA LLAMES, PRINCIPE DANIEL,  
MARIA BAYA, NENITA RASONABLY,  
SORIANO PENALOSA, JOSE  
PENALOSA, RODOLFO VILLAR,  
REMEGIAS DEMINGOY, TEODORO  
TUGOGON, DIONISIO APOLINARIO,  
EDYING DE LA CRUZ, RODOLFO  
BUTAUAN, CRISPIN FABON, ARCADIO  
FABON, NENITA SARDINOLA, ALEX  
LICAYAN, MARIO DAL, BADON  
EDUARDO, FELISA VILLAREL, EMILY  
GARAN, ROGELIO GARAN, RODOLFO  
COLITE, RODOLFO MENIANO,  
ROMERO TERRY, ZOILO VALLEJOS,  
VIRGINIA BANDERA, BLANDINA**

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CRESENCIO CARLON, NOTARTE  
LEONARDA, EFREN CANTERE,  
ROWENA CAGUMAY, ALFONSO  
PARAJES, VIOLETA MONTECLAR,  
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ANGELICO NUNEZ, JR., NICOLAS  
CANAL, HERMOGENA TAGLOCOP,  
ALEJO BAUMBAD, CARLITO DE LA  
PENA, AMANCIO ABOYLO, JERRY  
PARALES, LYDIA ALLADO, AGAPITO  
ODAL, MAGNO BARIOS, FLORENDO  
MARIANO, SOLATORIO BONIFACIO,  
RENE DEMINGOY, FELIMON  
ADORNO, VIRGILLO INOCENCIO,  
RUEL INOCENCIO, AVELINO LUNA,  
ALLAN MARCELLANA, FELIX  
SANCHEZ, AVELINO PANDI, VILLA  
SORIO, NOEL LAS PENAS, FRANCISCO  
GARDO, ROGELIO CULLABA, GEORGE  
RAGAR, CARMELITO CABRIADAS,  
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ALLADO, MARLINO MARTINEZ, LINO  
MARTINEZ, ERNESTO OLARAN,  
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SOBIONO, MARGARITO DUMALAGAN,  
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ROCERO, PABLITO DAPAR,  
FRANCISCA CABALHIN, FORTUNATA  
BAUMBAD, CARMEN RADAY,  
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ANTONIO VALLAR, BERNADITH  
TOLOZA, EMETERIA FERRER,  
CLANICA CABALES, CLAUDIO  
OJUylan, ERLINDA BLANCO, ROSITA  
DURON, FRANCISCA ADLAWON,  
CARDINAL MAGLISANG, JOVEN ASIS,  
JOSE FLORES, ALICIA FLORES,

**JULIETO ADORNO, LORENZO  
CANINES, ISAAC CELLASAY, ANDRES  
INDIABLE, ARSENIO DURON,  
NARCISA MALASPINA, ROQUE  
SUBAAN, GRACE DURON, JAIME  
BALMORIA, PEDRO PECASALES,  
PRIMITORAGAS and GRACE GOMA,  
*Petitioners,***

***-versus-***

**G.R. No. 110017  
January 2, 1997**

**NATIONAL LABOR RELATIONS  
COMMISSION, 5<sup>TH</sup> DIVISION,  
CAGAYAN DE ORO CITY, AGUSAN  
PLANTATION INC., AND/OR CHANG  
CHEE KONG,**

***Respondents***

X-----X

## **DECISION**

**BELLOSILLO, J.:**

The State is bound under the Constitution to afford full protection to labor and when conflicting interests of labor and capital are to be weighed on the scales of social justice the heavier influence of the latter should be counterbalanced with the sympathy and compassion the law accords the less privileged workingman. This is only fair if the worker is to be given the opportunity and the right to assert and defend his cause not as a subordinate but as part of management with which he can negotiate on even plane. Thus labor is not a mere employee of capital but its active and equal partner.<sup>[1]</sup>

Petitioners, numbering seventy-five (75) in all, seek to set aside the decision of respondent National Labor Relations Commission dated 27 November 1992 reversing that of the Labor Arbiter which granted their claims, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioners were regular employees of private respondent Agusan Plantations, Inc., which was engaged in the operation of a palm tree plantation in Trento, Agusan del Sur, since September 1982. Claiming that it was suffering business losses which resulted in the decision of the head office in Singapore to undertake retrenchment measures, private respondent sent notices of termination to petitioners and the Department of Labor and Employment (DOLE).

On 31 October 1990 petitioners filed with the DOLE office in Cagayan de Oro City a complaint for illegal dismissal with prayer for reinstatement, backwages and damages against private respondent Agusan Plantation, Inc., and/or Chang Chee Kong. In their answer respondents denied the allegations of petitioners and contended that upon receipt of instructions from the head office in Singapore to implement retrenchment, private respondents conducted grievance conferences or meetings with petitioners' representative labor organization, the Association of Trade Unions through its national president Jorge Alegarbes, its local president and its board of directors. Private respondents also contended that the 30-day notices of termination were duly sent to petitioners.

After both parties submitted their position papers articulating their respective theses, the Labor Arbiter rendered a decision on 27 May 1992 in favor of petitioners ordering private respondents to pay the former separation pay equivalent to fifteen (15) days pay for every year of service plus salary differentials and attorney's fees.

On appeal by respondents to the National Labor Relations Commission, the decision of the Labor Arbiter was reversed on 27 November 1992.

Petitioners elevated their plight to this Court on a special civil action for *certiorari* under Rule 65 of the Rules of Court alleging that respondent NLRC gravely abused its discretion amounting to lack or

excess of jurisdiction in ruling that petitioners were legally terminated from their employment. They argued that their dismissal or retrenchment did not comply with the requirements of Art. 283 of the Labor Code.

We sustain petitioners. The ruling of the Labor Arbiter that there was no valid retrenchment is correct. Article 283 of the Labor Code clearly states:

Art 283. 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 the title, by serving 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 case 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.

Under Art. 283 therefore retrenchment may be valid only when the following requisites are met: (a) it is to prevent losses; (b) written notices were served on the workers and the Department of Labor and Employment (DOLE) at least one (1) month before the effective date of retrenchment; and, (c) separation pay is paid to the affected workers.

The closure of a business establishment is a ground for the termination of the services of an employee unless the closing is for the purpose of circumventing pertinent provisions of the Labor Code. But

while business reverses can be a just cause for terminating employees, they must be sufficiently proved by the employer.<sup>[2]</sup>

In the case before us, private respondents merely alleged in their answer and position paper that after their officials from the head office had visited the plantation respondent manager Chang Chee Kong received a letter from the head office directing him to proceed immediately with the termination of redundant workers and staff, and change the operations to contract system against direct employment. They also alleged that after five (5) years of operations, the return of investments of respondent company was meager; that the coup attempt in August 1987 as well as that of December 1989 aggravated the floundering financial state of respondent company; that the financial losses due to lack of capital funding resulted in the non-payment of long-overdue accounts; that the untimely cut in the supply of fertilizers and maturing materials and equipment parts delayed the payment of salaries and the implementation of weekly job rotations by the workers. Except for these allegations, private respondents did not present any other documentary proof of their alleged losses which could have been easily proven in the financial statements which unfortunately were not shown.

There is no question that an employer may reduce its work force to prevent losses. However, these losses must be serious, actual and real.<sup>[3]</sup> Otherwise, this ground for termination of employment would be susceptible to abuse by scheming employers who might be merely feigning losses in their business ventures in order to ease out employees.<sup>[4]</sup>

Indeed, private respondents failed to prove their claim of business losses. What they submitted to the Labor Arbiter were mere self-serving documents and allegations. Private respondents never adduced evidence which would show clearly the extent of losses they suffered as a result of lack of capital funding, which failure is fatal to their cause.

As regards the requirement of notices of termination to the employees, it is undisputed that the Notice of Retrenchment was submitted to the Department of Labor and Employment on 12 September 1990.<sup>[5]</sup> The findings of both the Labor Arbiter and NLRC

show that petitioners were terminated on the following dates in 1990 after they received their notices of termination, to wit:

<u>Name of Employee</u>	<u>Date of Notice of Termination</u>	<u>Effectivity of Termination</u>
1. Noquera, Vilma	22 Sept.	25 Sept.
2. Dumalagan, Margarito	22 Sept.	30 Sept.
3. Osok, Marciano	20 Sept.	30 Sept.
4. Abaa, Leopoldo	01 Sept.	30 Sept.
5. Aboylo, Amancio	01 Sept.	30 Sept.
6. Allado, Nestor Jr.	01 Sept.	30 Sept.
7. Bandera, Verginia	01 Sept.	30 Sept.
8. Basanez, Lily	01 Sept.	30 Sept.
9. Baumbad, Alejo	01 Sept.	30 Sept.
10. Blanco, Myrna	01 Sept.	30 Sept.
11. Blanco, Reynaldo	01 Sept.	30 Sept.
12. Canal, Marieto	01 Sept.	30 Sept.
13. Fabon, Madilyn	01 Sept.	30 Sept.
14. Ferrer, Elpidio	01 Sept.	30 Sept.
15. Meniano, Rodolfo	01 Sept.	30 Sept.
16. Nunez, Angelico	01 Sept.	30 Sept.
17. Osok, Bebiano	01 Sept.	30 Sept.
18. Penaloga, Jose Jr.	01 Sept.	30 Sept.
19. Taglocop, Hermogena	01 Sept.	30 Sept.
20. Allado, Lydio	22 Aug.	30 Sept.
21. Baya, Maria	22 Aug.	30 Sept.
22. Carlon, Flaviana	22 Aug.	30 Sept.
23. Carlon, Cresencio	22 Aug.	30 Sept.
24. Culaba, Rogelio	22 Aug.	30 Sept.
25. Cabriades, Carmelito	22 Aug.	30 Sept.
26. Dellomes, Elma	22 Aug.	30 Sept.
27. Fabon, Arcadio	22 Aug.	30 Sept.
28. Gordo, Francisco	22 Aug.	30 Sept.
29. Inocencio, Virgilio	22 Aug.	30 Sept.
30. Inocencio, Ruel	22 Aug.	30 Sept.
31. Luna, Blandina	22 Aug.	30 Sept.
32. Luna, Avelino	22 Aug.	30 Sept.
33. Lubrico, Celia	22 Aug.	30 Sept.
34. Monteclar, Violeta	22 Aug.	25 Sept.
35. Macabecha, Aquino	22 Aug.	25 Sept.

36. Melloria, Ananian	22 Aug.	25 Sept.
37. Malinao, Rogelio	22 Aug.	25 Sept.
38. Leonarda, Notarte	22 Aug.	25 Sept.
39. Parejas, Jerry	22 Aug.	25 Sept.
40. Parejas, Alfonso	22 Aug.	25 Sept.
41. Sardinola, Alfonso	22 Aug.	25 Sept.
42. Solaterio, Bonifacio	22 Aug.	25 Sept.

Culled from the above data, the termination of petitioners could not have validly taken effect either on 25 or 30 September 1990. The one-month notice of retrenchment filed with the DOLE and served on the workers before the intended date thereof is mandatory. Private respondents failed to comply with this requisite. The earliest possible date of termination should be 12 October 1990 or one (1) month after notice was sent to DOLE unless the notice of termination was sent to the workers later than the notice to DOLE on 12 September 1990, in which case, the date of termination should be at least one (1) month from the date of notice to the workers. Petitioners were terminated less than a month after notice was sent to DOLE and to each of the workers.

We agree with the conclusion of the Labor Arbiter that the termination of the services of petitioners was illegal as there was no valid retrenchment. Respondent NLRC committed grave abuse of discretion in reversing the findings of the Labor Arbiter and ruling that there was substantial compliance with the law. This Court firmly holds that measures should be strictly implemented to ensure that such constitutional mandate on protection to labor is not rendered meaningless by an erroneous interpretation of applicable laws.

We uphold the monetary award of the Labor Arbiter for: (a) the balance of the separation pay benefits of petitioners equivalent to fifteen (15) days for every year of service after finding that reinstatement is no longer feasible under the circumstances, and (b) the salary differentials for complainants who were relieved during the pendency of the case before the Labor Arbiter and full back wages for the rest of the complainants. This is in accord with Art. 279 of the Labor Code as amended by R.A. 6715 under which petitioners who were unjustly dismissed from work shall be entitled to full back wages inclusive of allowances and other benefits or their monetary

equivalent computed from the time their compensation was withheld up to the date of this Decision.

**WHEREFORE**, the Petition is **GRANTED**. The Decision of the Labor Arbiter of 27 March 1992 granting petitioners their claim for the balance of their separation pay benefits equivalent to fifteen (15) days for every year of service, and salary differentials for complainants who were relieved during the pendency of the case before the Labor Arbiter, and full back wages for the rest of the complainants is **REINSTATED**. Consequently, the Decision of the National Labor Relations Commission dated 27 September 1992 is **REVERSED** and **SET ASIDE**.

**SO ORDERED.**

**Padilla, Vitug, Kapunan and Hermosisima, Jr., JJ., concur.**

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- [1] Firestone Tire and Rubber Company vs. Firestone Tire and Rubber Company Employees Union, G. R. No. 75363, 4 August 1992.  
[2] Indino vs. NLRC, G.R. No. 80352, 29 September 1989, 178 SCRA 168.  
[3] Lopez Sugar Corporation vs. Federation of Free Workers, G. R. Nos. 75000-1, 30 August 1990, 189 SCRA 179.  
[4] Garcia vs. NLRC, G. R. No. 67825, 4 September 1987, 153 SCRA 639.  
[5] Rollo, p. 160.