

BF METAL LABOR UNION-SUPER, PETITIONER, VS. BF METAL CORPORATION, BAYANI FERNANDO AND VOLUNTARY ARBITRATOR RENE OFRENEO, RESPONDENTS.

Ponente: BARRIOS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b3d842b0049d/>

BARRIOS, J.:

Assailed in this Petition for Review under Rule 43 of the Rules of Court is the Decision of Voluntary Arbitrator Rene E. Ofreneo issued on November 27, 2001, the fallo of which reads:

Wherefore, premises considered, the Voluntary Arbitrator rules as follows:

- The Work Rotation Program, now lifted, was valid and fair.
- The Retrenchment Program was valid and fair. However, retrenched employees who have not yet received their separation are entitled to one (1) month or 26 days per year of service.

Further, the Voluntary Arbitrator re-affirms the commitment of the CORPORATION to re-hire the retrenched employees once business is able to recover. (pp. 36-37, rollo)

The petitioner BF Metal Labor Union-Super (hereafter the petitioner) is a legitimate labor organization registered with the Department of Labor and Employment (or DOLE) and affiliated with the Solidarity of Unions in the Philippines for Empowerment and Reforms (SUPER). The respondent BF Metal Corporation (or the respondent), on the other hand, is a domestic corporation engaged in the business of construction as a specialty contractor for structural framings such as steel columns, beams, girders, trusses and others. The respondent is the employer of some of the members of the petitioner union who were retrenched beginning February 12, 2001.

According to the petitioner, thirty-six (36) retrenched employees were all regular employees of the respondent employed in its manufacturing and construction division. As regular employees, they are entitled to security of tenure and could not be dismissed without just or authorized cause. The petitioner contended that the respondent's claim of economic difficulties due to lack of projects is not one of the just or authorized causes for termination of employment and one that is even negated by the fact that the company entered into new projects from ITP, F.F. Cruz, Armaguer, RAXTHEON, ABS-CBN and Navotas Municipal Hall. Hence, the respondent was merely using its pretended financial difficulties as a ploy to bust the worker's union and to prevent its employees from joining it.

The petitioner further alleged that the respondent's implementation of work reduction/rotation affecting the regular employees was also illegal considering that new contractual employees were hired by the respondent. Moreover, the retrenchment and work reduction implemented by the respondent violated the 30-day notice requirement mandated by Article 283 of the Labor Code (vide: Complainant's Position Paper, pp. 83-92, rollo).

For its part, the respondent claimed that on February 2, 2001, its Personnel and Administrative Manager gave notice to the Labor Director of the DOLE that the corporation intends to reduce its work force by implementing a program of retrenchment and work rotation required by financial difficulties and losses from operations.

Establishment Termination Reports were also filed before the Rizal Provincial Labor and Employment office in order to effect the notices of retrenchment.

According to the respondent, the alleged illegal dismissal was filed by the petitioner for thirty (30) of its members after the notices of retrenchment were served upon them. However, thirteen (13) of the employees accepted their separation pay and signed a Release and Quitclaim and resignation letters. Two (2) of the employees were not retrenched at all and still continue to work for the company. The respondent also claimed that the petitioner surreptitiously included six (6) employees as complainants who were not included in the original case filed before the National Conciliation and Mediation Board.

The respondent further asserted that it had to resort to a program of retrenchment and work rotation due to substantial reduction in the volume of its business. It claimed that for the latter part of the year 1999 and early part of 2000, the company could barely sustained its operation and was operating at a break-even without profit margin. Also in the year 2000, the company tried to survive by selling scrap metals to meet the salaries of its employees. The company's condition worsened beginning the year 2001 when its galvanizing plant was razed by fire which destroyed twelve million pesos worth of equipments. Its Building Product Division was likewise closed down because no new orders were coming in. The respondent maintained that an employer may terminate the employment of its employees as long as the purpose is to minimize or prevent losses, and justified under Article 283 of the Labor Code (vide: Respondent's Position Paper, pp. 114-118).

As said, the assailed Decision was rendered on November 27, 2001. Both the petitioner and the respondent moved for the reconsideration of this, but these were denied in a Resolution dated October 25, 2002.

Hence, the petitioner union representing nine (9) remaining complainants (namely: Zosimo Vasquez, Wilfredo Reyos, Cerilo Lahoy-Lahoy, Virgilio Domingo, Reynaldo Quitagon, Jose Saet, Domingo Egargo, Joel Jacinto and Alexander Obias) sought relief through this petition raising the following grounds for consideration:

I

THE PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION WHEN HE FAILED TO APPRECIATE FACTS AND EVIDENCE PRESENTED BY THE COMPLAINANTS.

II

PUBLIC RESPONDENT ERRED IN DECLARING THE ROTATION AND RETRENCHMENT PROGRAM OF THE PRIVATE RESPONDENT AS VALID.

III

QUESTION OF LAW. (pp. 13-14, rollo)

The core and encompassing issue in this petition is whether the retrenchment and work rotation program implemented by the respondent, is valid.

Retrenchment is one of the authorized causes for the dismissal of employees, resorted to by employers to avoid or minimize business losses. It is recognized under Article 283 of the Labor Code, which provides:

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 this Title, by serving a written notice on the worker 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 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 closures 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.

Thus, the requisites for valid retrenchment are the following: (1) necessity of the retrenchment to prevent losses, and proof of such losses; (2) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher (*Tanjuan vs. Philippine Postal Savings Bank, Inc.*, 411 SCRA 168).

Anent the first requisite, it should be stressed that employers cannot be denied recourses to retrenchment if it can successfully prove the existence of the following factors: (a) substantial losses which are not merely de minimis in extent; (b) imminence of such substantial losses; (c) retrenchment would effectively prevent the expected additional losses; and (d) alleged losses and expected losses must be proven by sufficient and convincing evidence (*NDC-Guthrie Plantations, Inc. vs. NLRC*, 362 SCRA 416).

In the instant case, the audited balance sheet and financial statement for the year 1999 up to 2000 (pp. 134-136, rollo) submitted by the respondent adequately supported the claim of significant losses. It appears that for the year 2000, its operating income was a negative P743,317.00 and it was able to post a positive figure only after miscellaneous income drawn from sales of scrap metals and other assets, were added to the income from operations. In the latter part of the year 1999 and early 2000, the corporation also had to resort to new loans to survive as it could barely sustain its operations and was operating at a break even profit margin. Proof was also presented supporting the respondent's claim that its financial situation worsened in 2001 when its galvanizing plant was razed by fire on February 5, 2001 (pp. 248-252, rollo). Moreover, in March 2001, the respondent even undertook cost reduction measures to further minimize business losses by implementing a scheme where its employees were to work on a rotation basis. Verily, the dire and unfavorable financial condition of the respondent justified the retrenchment of its employees and the implementation of a work rotation scheme.

Notwithstanding the propriety of the retrenchment and work rotation programs implemented, the respondent however committed a procedural lapse by its failure to serve the written notice to the retrenched employees at least one (1) month before the intended retrenchment. Where the dismissal is for an authorized cause, the lack of statutory due process will not nullify the dismissal or render it illegal or ineffectual. However, the employer is liable to pay indemnity in the form of nominal damages to an employee who was dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process (*Agabon vs. NLRC*, 442 SCRS 573). Be it noted however that the respondent paid the retrenched employees their salaries for one whole month to make up for its failure to comply with the one (1) month notice requirement. We deem it proper to consider the payments made as sufficient indemnity in favor of the employees.

Finally, We find that the Voluntary Arbitrator was justified in awarding separation pay equivalent to one (1) month salary for every year of service applying Article 283 of the Labor Code and on the basis of the agreed retrenchment program involving the respondent and the BF Metal Supervisory Employees Union.

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Guariña, III and Tagle, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.