

PHILIPPINE TOBACCO FLUE-CURING & REDRYING CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LIGAYA LUBAT, MARY JANE ESTARIS, EUFRECINA JAVIER, OFELIA PLANDEZ, ED...

G.R. No. 127395. December 10, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

This case involves two groups of seasonal workers who claimed separation benefits after the closure of petitioner's tobacco processing plant in Balintawak, Metro Manila and the transfer of its tobacco operations to Candon, Ilocos Sur. Petitioner refuses to grant separation pay to the workers belonging to the first batch (referred to as the Lubat group), because they had not been given work during the preceding year and, hence, were no longer in its employ at the time it closed its Balintawak plant. Likewise, it claims exemption from awarding separation pay to the second batch (the Luris group), because the closure of its plant was due to "serious business losses," as defined in Article 283 of the Labor Code.

In resolving this controversy, this Court issues the following rulings: (1) the aforecited Article 283 applies to both complete and partial cessation of operations; (2) "serious business losses" that would have exempted petitioner from paying separation benefits were not proven by its "recasted financial statements"; (3) the employer's refusal to rehire the first batch of employees had no legal justification and was thus an illegal dismissal; and (4) the second batch of employees are entitled to the separation pay provided by the Labor Code "in cases of closure x x x not due to serious business losses."

The Case

The foregoing points encapsulate our ruling on the present Petition for Certiorari, assailing the August 30, 1996 Decision of the National Labor Relations Commission (NLRC)[1] in NLRC NCR Case No. 00-08-06061-94 and NLRC Case No. 08-06082-94, the dispositive portion of which reads:

"WHEREFORE, the instant appeals are hereby dismissed for lack of merit."[2]

The NLRC upheld the November 27, 1995 Decision of the labor arbiter[3] which disposed:

"WHEREFORE, premises considered, respondent PHILIPPINE TOBACCO FLUE-CURING and REDYING CORPORATION is hereby ordered to pay within ten (10) days from receipt hereof herein complainants (Lubat group) their respective separation pay, equivalent to one-half month pay for every year of service considering the above stated conditions, as follows: under Lubat Group: Mary Jane Estaris - P9,206.25 (P122.75 x 15 days x 5 yrs.); Eufrecina Javier -- P9,131.25 (P121.75 x 15 days x 5 yrs.); Ofelia Plandez -- P10,957.50 (P121.75 x 15 days x 6 yrs.); Edgardo Pormento - P5,310 (P118 x 15 x 3 yrs.); Cresenciana Tiu -- P7,140 (P119 x 15 days x 4 yrs.); Ma. Victoria Leon -- P7,305 (P121.75 x 15 days x 4 yrs.); Ligaya Lubat -- P11,047.50 (122.75 x 15 days x 6 yrs.); Gellen Eulalia -- P12,888.75 (P122.75 x 15 days x 7 yrs.); and Aida Licudo -- P18,630 (P124.20 x 15 days x 10 yrs.); and [u]nder Luris group: Erlinda Borce -- P37,116 (P154.65 x 15 days x 21 yrs.) -- (less)

of P11,598.75); Dominga Ayala -- P56,477.94 (P156.40 x 15 days x 32 yrs.) -- P18,594.06); Carmelita Apanto -- P42,720.20 (P154.65 x 15 days x 22 yrs.) -- P13,757.74); Aida Albaniel -- P6,693.75 (P148.75 x 15 days x 5 yrs.) -- P4,462.50); Salvacion Sorio -- (P51,034.50 (P154.65 x 15 days x 30 yrs.) -- P18,558.00); Petronila Samon Petronilo Samson) -- P13,567.50 (P150.75 x 15 days x 9 yrs.) P6,783.75); Erlinda Caranay -- P34,615.81 (P153.65 x 15 days x 20 yrs.) P11,479.19); Rosalie Tiu -- P11,231.25 (P149.75 x 15 days x 7 yrs.) -- P4,492.50); Milagros Quismundo -- P44,943.73 (P154.65 x 15 days x 26 yrs.) -- P16,149.78); Luz dela Cruz -- P13,567.50 (P150.75 x 15 days x 9 yrs.) -- P6,783.75); Vivian Derla -- P13,477.50 (P149.75 x 15 days x 8 yrs.) -- P4,492.50); Irene Eniego -- P7,475.31 (P149.75 x 15 days x 5 yrs.) -- (P3,755.94); Vicenta Garcia -- P44,618.56 (P155.35 x 15 days x 26 yrs.) -- P15,967.94); Yolanda Ignacio -- P7,400.31 (P148.75 x 15 days x 5 yrs.) -- P3,755.94); Adoracion Ladera P18,276 (P152.30 x 15 days x 12) -- P9,138); Luciana Luris -- P64,577.78 (P159 x 15 days x 35 yrs.) -- P18,975.97); Gloria Mendez -- P32,266.50 yrs.) -- P3,755.94); Julieta Pedrigal -- P54,622.68 (P156.40 x 15 x 32 yrs.) -- P20,449.32); Antonia Reyes -- P52,410.26 (P155.35 x 15 x 33 yrs.) -- P24,487.99); Josefa Rosales -- P32,291.83) P153.65 x 15 x 18 yrs.) -- P9,193.67); Francisca Tismo -- P25,377.67); (P153.65 x 15 x 5 yrs.) -- P9,193.58); Norma Aguirre -- P11,300.25 (P150.75 x 15 x 8 yrs.) P6,783.75); Carolina Aviso -- P4,522.50 (P150.75 x 15 x 4 yrs.) -- P4,522.50); Amelia Bautista -- P13,567.50 (P150.75 x 15 x 9 yrs.) -- P6,783.75); Rosa Borja -- P2,863.75 (P145 x 15 x 3 yrs.) -- P3,661.25); Apolonia Castillo -- P27,540 (P153 x 15 x 17 yrs.) -- P11,475); Carmelita Cayetano P34,571.25 (P153.65 x 15 x 20 yrs.) -- P11,523.75); Roselfida Centina -- P11,231.25 (P149.75 x 15 x 7 yrs.) -- P4,492.50); Patria Bustillo -- P39,461.41 (P154.65 x 15 x 24 yrs.) -- P16,212.59); Felicidad Cipriano -- P11,306.25 (P150.75 x 15 x 8 yrs.) -- P6,783.75); Marina Corpuz -- P15,716.25 (150.75 x 15 x 10 yrs.) -- P6,783.75); Matilde Corpuz -- P34,312.50 (P152.50 x 15 x 20 yrs.) -- P11,437.50); Josefina Cuenza -- P70,241.05 (P159.85 x 15 x 40 yrs.) -- P25,668.95); Bienvenida De Guzman -- P68,974.45 (P159.15 x 15 x 39 yrs.) -- P24,128.30); Eugenio dela Cruz -- P30,281.21 (P153.65 x 15 x 17 yrs.) -- P8,899.54); Maria Pineda -- P11,306.25 (P150.75 x 15 x 8 yrs.) -- P6,783.75); Panchita Narca -- P34,571.25 (P153.65 x 18 x 20) -- P11,523.75); Crisanta Mulawin -- P25,389.98 (P153.65 x 15 x 15 yrs. -- P9,181.87); Virginia Mengolio -- P34,571.25 (P153.65 x 15 x 20 yrs. -- P11,523.75); Rosario Osma -- P25,286.14 (P153. x 15 x 15 yrs.) -- P9,138.80); Arceli Madrilejo -- P51,034.50 (P154.65 x 15 x 28 yrs.) -- P13,918.50); Christopher Labrador -- P13,507.57 (P149.75 x 15 x 8 yrs.) -- P4,462.43); Candelaria Lazona -- P39,435.80 (P154.65 x 15 x 22 yrs.) -- P11,598.75); Angelita Lestingyo -- P56,469.28 (156 x 15 x 32 yrs.) -- P18,602.72); Carmelita Espiritu -- P20,499.75 (P151.85 x 15 x 13 yrs.) -- P9,111); Helen Estaris -- P11,156.25 (P148.75 x 15 x 7 yrs.) -- P4,462.50); Rosa Japson -- P29,961.75 (P153.65 x 15 x 18 yrs.) -- P11,523.75); Ardionela Lazona -- P13,479.50 (P149.75 x 15 x 8 yrs.) -- P4,490.50); Ariel Ultra -- P20,773.70 (P150.75 x 15 x 13 yrs.) -- P8,622.55); Reynante Tumbucon -- P4,343.50 (P147.75 x 15 x 7 yrs. -- P6,738.75); Antenor Remollino -- P13,609.36) P148-75 x 15 x 8 yrs.) -- P4,240.64); Alexander Remollino -- P7,425.56 (P148.75 x 15 x 5 yrs.) -- P3,760.69); Arnaldo Napalit -- P27,817.29 (P152.30 x 15 x 16 yrs. -- P8,734.71); Macario Moriel -- P37,046.96 (153.65 x 15 x 22 yrs. -- (P13,657.57); Joselito Licudo -- P5,135 (P147.75 x 15 x 4 yrs. -- P3,730.69); Paterno Lavalle -- P7,350.56 (P147.75 x 15 x 5 yrs. -- P3,730.69); Jerry Licudo -- P11,257.05 (P149.75 x 15 x 7 yrs. -- P4,466.70); Cesar Samson -- P2,918.06 (P147.75 x 15 x 3 yrs. -- P3,730.69); Eduardo Esguerra, Jr. P20,412 (P151.20 x 15 x 15 yrs. -- P13,608); Ramises Centaran -- P17,970 (P149.75 x 15 x 8 yrs. less the amount advanced to him if any; Juan Bustillo -- P9,665.26 (P148.75 x 15 x 6 yrs. -- P3,722.24); Rolando Albaniel -- P20,351.25 (P150.75 x 15 x 12 yrs. -- P6,783.75); Reynaldo Aquino -- P27,475.35 (P150.75 x 15 x 16 yrs. -- P8,704.65); Jaime Esguerra -- P3,175.20 (P151.20 x 15 x 19 yrs. -- P11,340); Armando Japson -- P11,156.25 (P148.75 x 15 x 7 yrs. -- P4,462.50); Fernando Esguerra -- P15,723[.]75 (P149.75 x 15 x 9 yrs. -- P4,492.50); Carlito Eniego -- P13,066.14 (P145.94 x 15 x 8 yrs. -- P4,446.66); Carlito Eniego -- P13,066.14 (P145.95 x 15 x 8 yrs. -- P4,446.66); Reynaldo Dayot -- P9,566.81 (P147.75 x 15 x 6 yrs. -- P3,730.69); Marcelo Dayot -- P9,074.36 (P149.75 x 15 x 7 yrs. -- P6,649.39); Rodolfo Cerbite -- P24,873.75 (P150.75 x 15 x 16 yrs. - P11,306.25); Artemio Boquilla -- P44,362.93 (P153.65 x 15 x 25 yrs. -- P13,255.82); and the following subject to the no. of years provided they rendered at least one (1) month service each season as appearing in their personnel and service records; Pascuala Aguja -- P48,399.75 (P153.65 x 15 x 26 yrs. -- P11,523.75); Eric Aguja -- P9,667.50 (P118 x 15 x 8 yrs. -- P4,492.50); Celestina Aquino -- P11,257.51 (P149,75 x 15 x 8 yrs. -- P6,712.49); Reynaldo Barquin -- P13,519.26

(P149.75 x 15 x 9 yrs. -- P6,696.99); Felomena Bagonia -- P24,716.25 (150 x 15 x 14 yrs. -- P6,783.75); Rosita Bagonia -- P42,386.26 (P149.75 x 15 x 24 years. -- P11,523.75); Regina Benitez -- P56,586.75 (P151 x 15 x 28 yrs. -- P6,833.25); Edgardo Bergano -- P9,784.75 (P149.40 x 15 x 6 yrs. -- P3,661.25); Rodolfo Borromeo -- P26,979.81 (P150 x 15 x 18 yrs. -- P13,520.19); Ludivico Dalay -- P14,180.36 (P152.50 x 15 x 10 yrs. -- P8,694.64); Ascilpiades Goyena -- P27,020.63 (P150 x 15 x 18 yrs. -- P13,479.37); Remedios Goyena -- P22,511.25 (P150 x 15 x 13 yrs. -- P6,738.75); Oscar Emnace -- P17,970 (P149.75 x 15 x 8 yrs. less the amount he received if any); Gertrudes Guiao P59,670 (P153 x 15 x 29 yrs. -- P6,885); Lolita Musne -- P53,394.36 (P154.65 x 15 x 29 yrs. -- P13,878.39); Alberto Parama -- P12,161.25 (P140 x 15 x 9 yrs. -- P6,738.75); Luningning Peralta -- P48,448.50 (P153.65 x 15 x 26 yrs. -- P11,475); Amelia Ranches -- P58,102.04 (P157.60 x 15 x 34 yrs. -- P22,273.96); Ernesto San Juan -- P11,261.25 (P149.75 x 15 x 7 yrs. -- P4,462.50); Liwayway San Juan -- P67,655.08 (P160.35 x 15 x 39 yrs. -- P26,149.67); Ricardo Triumfante -- P8,986.00 (P149.75 x 15 x 7 yrs. -- P6,738.75); Lorena Torcido -- P11,231.25 (P149.75 x 15 x 8 yrs. -- P6,738.75); Priscilla Villasin -- P64,162.50 (P147.50 x 15 x 29 yrs. less any amount she received from the respondent; Luzviminda Villegas -- P13,478 (P149.75 x 15 x 8 yrs. -- P4,492.00) Rosile Verzosa -- P13,387.50 (P149. x 15 x 8 yrs. -- P4,492.50) Charito Isidro -- P53,997 (P155.85 x 15 x 32 yrs. -- P20,811); Peter Labayne -- P17,130.36 (P150.45 x 15 x 7 yrs. -- P15,132.38); Shirley Lubat -- P13,773 (P149.75 x 15 x 8 yrs. -- P4,196.22); or a total sum of P2,811,724.33, plus ten (10%) percent attorney's fee, or a grand total sum of P3,092,896.76.

"As xxx data o[n] their salary rates were not indicated on record, the claims of complainants Milagros Calubayan, Carmencita Cruz, Armando Goyena, Erlinda Nakpil, Pacita Narca, Virgilio Punzalan, Roberto Reduta, Maritess Medina, Nestor Medina, and Dominga Siababa can not be ascertained, and therefore, the same should be dismissed but without prejudice."

"With respect to the other claims of the above Luris group including their charge of illegal dismissal, they are hereby dismissed for lack of merit."[4]

The Facts

The facts are summarized in the challenged NLRC Decision as follows:

"These refer to the consolidated cases for payment of separation pay lodged by [the] Lubat Group, and for illegal dismissal and underpayment of separation pay by [the] Luris group, with prayers for damages and attorney's fees against the above respondents.

"The record reveals that all complainants in both cases were former workers of respondent with their respective periods of employment and latest wages stated in the parties' pleadings/[a]nnexes.

"On August 1, 1994, due to supposed serious financial reverses and losses suffered by respondent and its desire to prevent further losses, a notice of permanent closure of its red[r]ying operations at Balintawak, Quezon City and transfer [of] the same to Candon, Ilocos Sur was served to the DOLE.

"On August 3, 1994, complainants were also notified of the said decision to close and transfer.

"On August 16, 1994, their separation benefits were given to them but allegedly [based on] wrong computation when management did not consider 3/4 of their length of service as claimed by complainants (Luris group).

"While the Lubat group were not granted xxx separation pay as their previous seasonal service [was] not continuous, and as of August, 1994, they were not employed ther[e]with as declared by respondent.

"Based on the complaint and from the above facts, the issues are as follows:

- 1) Whether or not the Lubat Group are entitled to the payment of separation pay[;]
- 2) Whether or not the Luris Group can be legally awarded separation pay differentials[,] or whether or not the

computation adopted by respondent in granting complainants' separation pay is erroneous[;] and

3) Whether or not the Luris group can be properly allowed backwages and damages by reason of their alleged illegal dismissal, and for both groups, attorney's fees[.]

"In [its] position paper respondent maintains that [the] Lubat group are not entitled to separation pay for the reason that they were not among those separated or could not have been separated from employment on August 3, 1994 due to such closure and transfer as they were not employed or did not report for work at the plant for the 1994 tobacco season as shown by [the] company's records.

"As to the Luris group, although being questioned by this group, respondent considers the following formula in determining the length of service in years as basis for computing the separation pay of this group to be fair and reasonable and xxx supported by Article 283 of the Labor Code, as amended, such as the total number of working days actually worked over total number of working days in a year (303 days), multipl[ied] by the daily rate and further multipl[ied] by 15 days.

"Respondent explains that this is so because complainants' nature of work is seasonal as they are employed every year only during the tobacco season which may fall within the months of February to November but actually work for a period of less [than] six (6) months for each season. The law qualifies tenure for purposes of separation benefits as based on 'service' and not 'employment'.

"With these considerations, respondent claims that complainants' relief for separation pay differentials must fail.

"On the charge of illegal dismissal by the Luris group, respondent asserts that complainants were separated from employment for [a] just cause that is the closure of its REDRYING operations at the Balintawak plant and the transfer of the same to Candon, Ilocos Sur which was authorized by the law and the parties' CBA.

"The decision of management to close and transfer its tobacco processing and REDRYING operations was based on the fact that it had consistently incurred a net loss from these operations, its principal line of business, although its audited financial statement showed a net profit after tax from 1990 to 1993 based on over-all operations.

"Moreover, respondent points out that as the Luris group and the DOLE were served a written notice at least one (1) month before the intended date of closure effective on Sept. 15, 1994, the due process requirement was met.

"Viewed from the above, respondent cannot prosper.

"On the other hand, the Lubat group declare that originally there were seven complainants but eight were added.

"Being seasonal workers, they were hired by respondent to operate the Balintawak factory from January to September, averaging 6 to 8 months annually.

"As alleged by them, when they reported for their annual shift, respondent refused to extend them assignment for no apparent reason up to the end of the season in August, 1994. When they ask[ed] for separation pay, respondent told them that because they were not in the payroll for 1994, no such benefit would be paid to them.

"It is their contention that complainants are entitled to separation pay [of] at least one-half month pay for every year of service[,] as they were illegally dismissed[,] to be computed each season ranging from 6 to 8 months [which] should be considered as one year, contrary to the respondent's basis which is the total no. of days they actually rendered service.

"To back up the above, complainants cite a case wherein the Supreme Court held that seasonal employees are

not strictly speaking, separated from the service but merely considered on leave of absence without pay until reemployed. Their employment relationship is never severed but only suspended.

“For the prosecution of this case, complainants were forced to hire the services of counsel for which they claim xxx attorney’s fees.

“As far as the Luris group are concerned, they state that they were factory workers of respondents numbering one hundred (100) whose names, periods of employment and latest salaries are contained in the lists attached to their position paper.

“As claimed by this group, on August 3, 1994, respondents told them that their services were already terminated and all of them dismissed as the factory would be transferred to Candon, Ilocos Sur.

“Letter-notices dated August 3, 1994, (Annexes F, F-1 and F-2 to their position paper) showing that the date when they were notified of the closure was the same date they were instantly dismissed although it is admitted in the notice that their decision to transfer was made as early as March 5, 1994.

“Furthermore, complainants question the basis of the computations of their separation benefits which should include the period when there [was] no work to be done in a year. [B]ecause of necessity, they received the short amount as their separation pay by way of voucher but ‘under protest’ as shown in Annexes C-C-1 to C-5 to their pleading.

“With the sudden transfer of the machiner[y] of respondents without giving them advance notice leaving them with insufficient separation pay, complainants experienced serious anxiety and wounded feelings for which they p[r]ay for damages including attorney’s fees.

“Consequently, complainants also pray for backwages, allowance and other benefits from the date of their illegal dismissal up to the final disposition of the case.

“Furthermore, complainants maintain that since the company is being transferred to the province, the former’s separation may be considered compulsory retirement under R.A. 7641, providing for one-half month pay benefit for every year of service, and under Section 3, Rule V, Book III of the Labor Code, as amended for which they also demand payment thereof.

“Complainants also submitted the computation of their differential in separation pay (addendum and supplemental addendum to their position paper) Annex ‘G’, ‘G-1’ to ‘G-4’.”

To state the facts simply, there are two groups of employees, namely, the Lubat group and the Luris group. The Lubat group is composed of petitioner’s seasonal employees who were not rehired for the 1994 tobacco season. At the start of that season, they were merely informed that their employment had been terminated at the end of the 1993 season. They claimed that petitioner’s refusal to allow them to report for work without mention of any just or authorized cause constituted illegal dismissal. In their Complaint, they prayed for separation pay, back wages, attorney’s fees and moral damages.

On the other hand, the Luris group is made up of seasonal employees who worked during the 1994 season. On August 3, 1994, they received a notice informing them that, due to serious business losses, petitioner planned to close its Balintawak plant and transfer its tobacco processing and redrying operations to Ilocos Sur. Although the closure was to be effective September 15, 1994, they were no longer allowed to work starting August 4, 1994. Instead, petitioner awarded them separation pay computed according to the following formula:

total no. of days actually worked

total no. of working days in one year

x daily rate x 15 days

In their Complaint, they claimed that the computation should be based not on the above mathematical equation, but on the actual number of years served. In addition, they contended that they were illegally dismissed, and thus they prayed for back wages.

Against these factual antecedents, the labor arbiter ordered the petitioner to pay complainants' separation pay differential plus attorney's fees in the total amount of P3,092,896.76. Dissatisfied with said Decision, Philippine Tobacco and the complainants filed their respective appeals before the NLRC.[5]

As noted earlier, the NLRC affirmed the labor arbiter's Decision. Before this Court, only Philippine Tobacco filed the present recourse, as the complainants did not question the NLRC Decision.[6]

Ruling of the NLRC

The NLRC agreed with the labor arbiter that the closure by petitioner herein of its operations at Balintawak and its transfer thereof to Ilocos Sur were due to serious financial losses. Nonetheless, both labor agencies held that the Luris and Lubat groups were entitled to separation pay equivalent to one-half (1/2) month salary for every year of service, provided that the employee worked at least one month in a given year.

The NLRC further ruled that private respondents were not entitled to back wages and damages, since the closure of the factory and the termination of their employment were due to a legally recognized cause.

Issues

Petitioner raises the following issues:

“A

SUBSTANTIAL AND UNDISPUTED EVIDENCE ON RECORD PROVES THAT THE CLOSURE OF PETITIONER'S OPERATION WAS DUE TO SERIOUS BUSINESS LOSSES AND FINANCIAL REVERSES. PRIVATE RESPONDENTS ARE NOT LEGALLY ENTITLED TO SEPARATION PAY. THE PAYMENT OF SEPARATION PAY TO THE LURIS GROUP IS BASED ONLY ON PETITIONER'S LIBERALITY.

B.

EVEN ASSUMING THAT PETITIONER'S CLOSURE WAS NOT DUE TO SERIOUS BUSINESS LOSSES AND FINANCIAL REVERSES, THE LUBAT GROUP WORKERS ARE STILL NOT ENTITLED [TO] SEPARATION PAY. THE LUBAT GROUP WERE NOT EMPLOYED WITH PETITIONER AT THE TIME OF PETITIONER'S CLOSURE.

C

EVEN ASSUMING THAT THE LURIS GROUP IS ENTITLED TO SEPARATION PAY, PETITIONER MUST NOT AND CANNOT BE LEGALLY COMPELLED TO PAY MORE THAN THE AMOUNTS ALREADY GIVEN TO THE [SAID] LURIS GROUP.”[7]

In the Court's view, three issues must be tackled: First, did petitioner prove “serious business losses,” its justification for the nonpayment of separation pay? Second, was the dismissal of the employees valid? Third, how should the separation pay of illegally dismissed seasonal employees be computed?

The Court's Ruling

The petition is not meritorious.

First Issue: Serious Business Losses Not Proven

Petitioner asserts that it submitted before the labor arbiter a Statement of Income and Expenses, as well as a recasted version thereof, showing that it had suffered serious business losses in its tobacco processing and redrying operations. Citing Article 283 of the Labor Code, it concludes that it is not obligated to award separation pay to its dismissed workers (whether belonging to the Lubat or the Luris group), because the closure of its tobacco business was due to an authorized cause.

Petitioner further claims that it complied with the procedural requirements in closing the aforementioned aspect of its business. It filed at the DOLE on August 2, 1994, a Petition for Closure. On August 3, 1994, it also sent to its employees letters informing them of its desire to close its tobacco operations in Balintawak effective September 15, 1994. The fact that it did award separation pay to private respondents was solely out of generosity, and not out of legal duty.

Article 283 of the Labor Code, which we quote below, prescribes the requisites and the procedure for an employee's dismissal arising from the closure or cessation of operation of the establishment.

“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 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 cases 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.”

It must be noted that the present case involves the closure of merely a unit or division, not the whole business of an otherwise viable enterprise. Although Article 283 uses the phrase “closure or cessation of operation of an establishment or undertaking,” this Court previously ruled in *Coca-Cola Bottlers (Phils.), Inc. v. NLRC* that said statutory provision applies in cases of both complete and partial cessation of the business operation:

“x x x Ordinarily, the closing of a warehouse facility and the termination of the services of employees there assigned is a matter that is left to the determination of the employer in the good faith exercise of its management prerogatives. The applicable law in such a case is Article 283 of the Labor Code which permits ‘closure or cessation of operation of an establishment or undertaking not due to serious business losses or financial reverses,’ which, in our reading, includes both the complete cessation of operations and the cessation of only part of a company’s business.”[8]

In *Somerville Stainless Steel Corporation v. NLRC*,[9] the Court held that “[t]he ‘loss’ referred to in Article 283 cannot be just any kind or amount of loss; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees. To guard against this possibility of abuse, the Court laid down the following standard which a company must meet to justify retrenchment:

‘x x x Firstly, the losses expected should be substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bonafide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively

and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs other than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called 'golden parachutes,' can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing 'full protection' to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means -- e.g., reduction of both management and rank-and-file- bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. -- have been tried and found wanting.

'Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees. x x x''

To repeat, petitioner did not actually close its entire business. It merely transferred or relocated its tobacco processing and redrying operations. Moreover, it was also engaged in, among others, corn and rental operations, which were unaffected by the closure of its Balintawak plant.

Tested against the aforecited standards, we hold that herein petitioner was not able to prove serious financial losses arising from its tobacco operations. A close examination of its Statement of Income and Expenses and its recasted version thereof, which were presented in support of its contention, suggests its failure to show business losses.

In the recasted Statement, petitioner tried to prove that there was a net loss from its tobacco processing and redrying operations. It did so by subtracting all of its selling, administrative and interest expenses for a given year from the earnings in its tobacco sales for the corresponding year. This formula, however, is at best illogical and misleading. Petitioner would have us believe that all of its expenses -- selling, administrative and interest expenses -- resulted only from its tobacco processing and redrying operations, and that it incurred no expense in its other profit centers.

On the contrary, the Statement of Income and Expenses shows that the selling and administrative expenses pertain not only to the tobacco business of petitioner, but also to its corn and rental operations, and that the interest expenses pertain to all of its business operations. In fact, the aforementioned Statement shows that there was a net gain from operations in each year covered by the report. In other words, the recasted financial statement effectively modified the Statement of Income and Expenses by deducting from the tobacco operations alone the operating costs pertaining to all businesses of petitioner.

The contention of petitioner that tobacco was its main business does not justify the devious contents of the recasted financial statement. It is difficult to accept that it could not have incurred any expense in its other operations. Common sense revolts against such proposition.

Misleading is petitioner's argument that "public respondent cannot recognize petitioner's aforesaid Statement as the 'normal and reliable method of proof of the profit and loss', and at the same time inconsistently assert that the same does not show that the losses were serious or incurred solely by petitioner's tobacco operations." [10] An audited financial statement is indeed the normal method of proof. But this norm does not compel this Court to accept the contents of the said documents blindly and without thinking. As stated already, the above documents

failed to show that petitioner had incurred from its tobacco operations serious losses sufficient to justify the termination of the employment of its workers sans separation pay.

Defective Notice

Article 283 of the Labor Code also requires the employer to furnish both the employee and the Department of Labor and Employment a written Notice of Closure at least one month prior to closure. True, in the present case the Notices of Termination were given to the employees on August 3, 1994, and the intended date of closure was September 15, 1994. However, the employees were in fact not allowed to work after August 3, 1994. Therefore, the termination notices to the employees were given in violation of the requisite one-month prior notice under Article 283 of the Labor Code.

Petitioner's contention that the tobacco season was about to end anyway is without merit, because the law clearly provides, without any qualification, that the employees must be given one-month notice prior to closure. At the very least, respondent members of the Luris group were deprived of work for the remaining days of the 1994 tobacco season. Petitioner could have easily complied with the aforesaid requirement by sending the notices earlier. In fact, according to petitioner, the decision to cease its tobacco operations was made as early as March 5, 1994; hence, petitioner had plenty of time within which to send the notices.

Given the illogical and misleading entries in the Statement of Income and Expenses, as well as the recasted version thereof, and the defective Notice of Closure, this Court holds that petitioner was not able to establish that the closure of its business operations in its Balintawak plant was in fact due to serious financial losses. Therefore, under the last two sentences of Article 283 of the Labor Code, the dismissed employees belonging to the Luris group are entitled to separation pay "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."

Second Issue: Lubat Group Illegally Dismissed

Petitioner relies upon our ruling in *Mercado v. NLRC*[11] that the "employment [of seasonal employees] legally ends upon completion of the x x x season," a statement which was subsequently reiterated in *Magcalas v. NLRC*.[12] Thus, petitioner argues that it was not obliged to rehire the members of the Lubat group for the 1994 season, because their employment had been terminated at the end of the 1993 season. Since they were not employed for the 1994 season when the Balintawak plant was closed, it follows that petitioner has no obligation to award them separation pay due to the said closure.

We are not persuaded. From the facts, we are convinced that petitioner illegally dismissed the members of the Lubat group when it refused to allow them to work during the 1994 season.

This Court has previously ruled in *Manila Hotel Company v. CIR*[13] that seasonal workers who are called to work from time to time and are temporarily laid off during off-season are not separated from service in said period, but are merely considered on leave until reemployed, viz.:

"The nature of their relationship x x x is such that during off season they are temporarily laid off but during summer season they are re-employed, or when their services may be needed. They are not strictly speaking separated from the service but are merely considered as on leave of absence without pay until they are re-employed."

The above doctrine was echoed by this Court in *Industrial-Commercial-Agricultural Workers' Organization (ICAWO) v. CIR*[14] and *Visayan Stevedore Transportation Company v. CIR*.[15]

Petitioner claims that the aforecited ruling has been superseded by Article 280 of the Labor Code, which took effect on November 1, 1974. We disagree. There is no clear conflict between the above doctrine and Article 280 of the Labor Code. In fact, the same doctrine was reiterated by this Court in *Tacloban Sagkahan Rice and Corn Mills Co. v. NLRC*[16] in 1990, which was promulgated after the Labor Code took effect. Furthermore, in *Bacolod-Murcia Milling Co, Inc. v. NLRC*,[17] this Court considered a seasonal worker “in regular employment” in cases involving the determination of an employer-employee relationship and security of tenure. The Court ruled:

“While under prevailing jurisprudence, Canete may be considered as in regular employment even during those years when she was merely a seasonal worker, that legal conclusion will hold true only in cases involving the determination of an employer-employee relationship or security of tenure.”

Again in *Gaco v. NLRC*, petitioner therein was a seasonal worker employed and repeatedly rehired in a business enterprise similar to that of petitioner herein. Finding that he was in regular employment and thus entitled to separation pay for having been constructively dismissed, the Court stated:

“It may appear that the work in private respondent Orient Leaf Tobacco Corporation is seasonal, however, the records reveal that petitioner Zenaida Gaco was repeatedly re-hired, sufficiently evidencing the necessity and indispensability of her services to the former’s business or trade. Furthermore, she has been employed since 1974 up to the end of the season in 1989. Owing to her length of service, she became a regular employee, by operation of law, one year after she was employed.”[18]

From the foregoing, it follows that the employer-employee relationship between herein petitioner and members of the Lubat group was not terminated at the end of the 1993 season. From the end of the 1993 season until the beginning of the 1994 season, they were considered only on leave but nevertheless still in the employ of petitioner.

The facts in the above-mentioned cases are different from those in *Mercado v. NLRC*[19] and in *Magcalas v. NLRC*. [20] In *Mercado*, although respondent constantly availed herself of petitioners’ services from year to year, it was clear from the facts therein that they were not in her regular employ. Petitioners therein performed different phases of agricultural work in a given year. However, during that period, they were free to work for other farm owners, and in fact they did. In other words, they worked for respondent, but were nevertheless free to contract their services with other farm owners. The Court was thus emphatic when it ruled that petitioners were mere project employees, who could be hired by other farm owners. As such, their employment would naturally end upon the completion of each project or each phase of farm work which has been contracted. In *Magcalas v. NLRC*, the Court merely cited the aforequoted ruling to explain the difference among regular, project and seasonal employees. In fact, it concluded that the employees therein were regular and not project employees.

From the peculiar facts of *Mercado* and *Magcalas*, it is clear that the ruling therein is not inconsistent with *Manila Hotel*, *Gaco* and other cases. It is noteworthy that the ponente in *Mercado* concurred in the Court’s ruling in *Gaco* awarding to the seasonal employee separation pay for every year of service.

Prescinding from the above, we hold that petitioner is liable for illegal dismissal and should be responsible for the reinstatement of the Lubat group and the payment of their back wages. However, since reinstatement is no longer possible as petitioner has already closed its Balintawak plant, respondent members of the said group should instead be awarded normal separation pay (in lieu of reinstatement) equivalent to at least one month pay, or one month pay for every year of service, whichever is higher. It must be stressed that the separation pay being awarded to the Lubat group is due to illegal dismissal; hence, it is different from the amount of separation pay provided for in Article 283 in case of retrenchment to prevent losses or in case of closure or cessation of the employer’s business, in either of which the separation pay is equivalent to at least one (1) month or one-half (1/2)

month pay for every year of service, whichever is higher.

However, despite the fact that the respondent members of the Lubat group were entitled to separation pay equivalent to at least one (1) month pay, or one (1) month pay for every year of service, whichever is higher, they cannot receive more than the amount awarded to them in the NLRC Decision -- at least one (1) month or one-half (1/2) month pay for every year of service, whichever is higher -- because they did not appeal from the said Decision.[21] Therefore, no affirmative award can be given to them. In the same manner, although respondents should have been entitled to back wages because petitioner illegally deprived them of work during the 1994 season, no such award can be given to them, since they did not appeal the NLRC Decision. The elementary norms of due process prevent the grant of such awards, as the employer was not given notice that its filing of its own Petition for Certiorari would put it in jeopardy of such relief.

Third Issue: Amount of Separation Pay

Petitioner posits that the separation pay of a seasonal worker, who works for only a fraction of a year, should not be equated with that of a regular worker. Positing that the total number of working days in one year is 303 days, petitioner submits the following formula for the computation of a seasonal worker's separation pay:

“Total No. of Days Actually Worked

Total No. Of Working Days In One Year

X Daily Rate X 15 days”[22]

Agreeing with the labor arbiter and the NLRC, private respondents, on the other hand, claim that their separation pay should be based on the actual number of years they have been in petitioner's service. They cite the law on service incentive leave,[23] the implementing rules regarding the 13th month pay,[24] *Manila Hotel v. CIR*,[25] and *Chartered Bank v. Ople*[26] which allegedly stated that “each season in a year should be construed as one year of service.”[27]

The amount of separation pay is based on two factors: the amount of monthly salary and the number of years of service. Although the Labor Code provides different definitions as to what constitutes “one year of service,” Book Six[28] does not specifically define “one year of service” for purposes of computing separation pay. However, Articles 283 and 284 both state in connection with separation pay that a fraction of at least six months shall be considered one whole year. Applying this to the case at bar, we hold that the amount of separation pay which respondent members of the Lubat and Luris groups should receive is one-half (1/2) their respective average monthly pay during the last season they worked multiplied by the number of years they actually rendered service, provided that they worked for at least six months during a given year.[29]

The formula that petitioner proposes, wherein a year of work is equivalent to actual work rendered for 303 days, is both unfair and inapplicable, considering that Articles 283 and 284 provide that in connection with separation pay, a fraction of at least six months shall be considered one whole year. Under these provisions, an employee who worked for only six months in a given year -- which is certainly less than 303 days -- is considered to have worked for one whole year.

In the same manner, *Chartered Bank v. Ople*,[30] which private respondents cite, does not support their cause. The said case ruled that regular workers and those who are paid by the month are both entitled to holiday pay. On

the other hand, the law on service incentive leave pay[31] does not necessarily apply to retirement benefits or separation pay. Likewise, the provision regarding the 13th month pay[32] is not applicable to separation pay. In fact, an employee who worked for a single month in a year is entitled to a 13th month pay equivalent to only 1/12 of his or her monthly salary. Finally, *Manila Hotel Company v. CIR*[33] did not rule that seasonal workers are considered at work during off-season with regard to the computation of separation pay. Said case merely held that, in regard to seasonal workers, the employer-employee relationship is not severed during off-season but merely suspended.

WHEREFORE, the assailed Decision of Respondent NLRC is hereby AFFIRMED WITH THE MODIFICATION that private respondents are hereby awarded separation pay equivalent to one (1) month, or to one-half (1/2) month pay[34] for each year that they rendered service, whichever is higher, provided that they rendered service for at least six (6) months in a given year. The separation pay to be awarded to members of the Luris group shall be taken from the amount which petitioner has already awarded to them, and any excess need not be refunded by the workers. The ten percent (10%) attorney's fees given by the NLRC and the labor arbiter shall be based on the award modified herein.

SO ORDERED.

Davide Jr., C.J. (Chairman) , Melo, Vitug, and Quisumbing JJ., concur.

[1] Third Division. The Decision was penned by Comm. Joaquin A. Tanodra, with the concurrence of Presiding Comm. Lourdes C. Javier and Comm. Ireneo B. Bernardo.

[2] NLRC Decision, p. 18; rollo, p. 57.

[3] Felipe T. Garduque II.

[4] Decision of the labor arbiter, pp. 11-16; rollo, pp. 35-40.

[5] NLRC Decision, pp. 10-17; rollo, pp. 50-56.

[6] The case was deemed submitted for resolution on February 6, 1998, upon receipt by this Court of public respondent's Memorandum.

[7] Memorandum for Petitioner, p. 9; rollo, p. 417.

[8] 194 SCRA 592, 599, February 27, 1991, per Feliciano, J.

[9] GR No. 125887, pp. 8-9, March 11, 1998, per Panganiban, J.: quoting *Lopez v. Federation of Free Workers*, 189 SCRA 179, 190, August 30, 1990.

[10] Petitioner's Memorandum, p. 10; rollo, p. 418.

[11] 201 SCRA 332, 343, September 5, 1991, per Padilla, J.

[12] 269 SCRA 453, March 13, 1997.

[13] 9 SCRA 184, 186, September 30, 1963, per Bautista Angelo, J.

[14] 16 SCRA 562, March 31, 1966.

[15] 19 SCRA 426, February 25, 1967.

[16] 183 SCRA 425, March 21, 1990.

[17] 204 SCRA 155, 158, November 21, 1991, per Fernan, CJ.

[18] 230 SCRA 260, February 23, 1994, per Nocon, J.

[19] Supra.

[20] Supra.

[21] See *Paguio Transport v. NLRC*, GR No. 119500, August 28, 1998.

[22] Memorandum for Petitioner, p. 5; rollo, p. 413.

[23] § 3, Rule V, Book III, Rules Implementing the Labor Code.

[24] Presidential Decree No. 851.

[25] Supra.

[26] 138 SCRA 273, August 28, 1985.

[27] Memorandum for Respondents, p. 5; rollo, p. 382.

[28] Book Six of the Labor Code contains the provisions pertaining to termination of employment and computation of separation pay.

[29] Because the employees in this case worked for six to eight months for every season, the Court is not called upon to determine what rule applies when the season is less than six months. Thus, any pronouncement of the Court on this question will be hypothetical and academic.

[30] Supra.

[31] Said law states that one year of service shall mean service within 12 months whether continuous or broken.

[32] According to this law, an employee who has worked at least one month during the calendar year is entitled to 13th month pay.

[33] Supra.

[34] “Month pay” shall be understood as “average monthly pay during the last season they worked,” per explanation in the text.

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