

ANDRO T. BACANI, RONALD F. CABRERA, CAMESORO T. CABATUAN, JR., JAYSON D. DELARA, RAULE R. ARGUEL, RE-ANN D. RIVERO, CRIZALDY N. WAJE, ARIEL Y. SUA, AND CHARLIE R. SEBOLINO, PETI...

G.R. No. 271518, September 30, 2025

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

This Petition for Review on Certiorari[1] under Rule 45 assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 165065, viz.:

1)

Decision[2] dated April 28, 2023, affirming the National Relations Labor Commission's (NLRC) dismissal of the complaint for constructive dismissal, shortened workweek and nonremittance of Social Security System (SSS), Philippine Health Insurance (PhilHealth), and Pag-IBIG contributions filed by petitioners Andro T. Bacani (Bacani), Ronald F. Cabrera (Cabrera), Camesoro T. Cabatuan, Jr. (Cabatuan), Jayson D. Delara (Delara), Raule R. Arguel (Arguel), Re-ann D. Rivero (Rivero), Crizaldy N. Waje (Waje), Ariel Y. Sua (Sua), and Charlie R. Sebolino (Sebolino) (collectively, petitioners) against respondents Fiber Textile Manufacturing Corp., (FMC), Sherly Que (Sherly), Judy Que (Judy), and Jason Que (Jason); and

2)

Resolution[3] dated January 17, 2024, denying petitioners' motion for reconsideration, respectively.

Antecedents

FMC, a corporation duly organized and existing under Philippine laws, is engaged in textile manufacturing. Its factory is located at Meycauayan, Bulacan while its administrative office and warehouse used to be located at Valenzuela City. Sherly is the president while Judy and Jason are the human resource manager and plant manager, respectively, of FMC.[4]

On June 16, 2017, petitioners were employed by FMC as folding operator, chemical mixer, color man, receiver, dyeing operator, and folding operator with a salary of PHP 380.00 per day. They initially had a six-day workweek. This was, however, subsequently reduced to two to three days per week, prompting them to seek the assistance of the Department of Labor and Employment (DOLE), Malolos. FMC, Sherly, Judy, and Jason, however, failed to appear during the Single-Entry Approach (SEnA) on July 20, 2018.[5]

On July 27, 2018, petitioners went to FMC's premises but Judy angrily told Bacani, Delara, Arguel, and Rivero to look for another job, while she told the others to resign ("Huwag na babalik. Layas layas"). During a mediation conference, a certain Sammy Chua (Chua) admitted that he advised petitioners to look for another job.[6]

Petitioners thus filed a complaint for constructive illegal dismissal, reduction of workweek, and nonremittance of SSS, PhilHealth, and Pag-IBIG contributions against FMC, Sherly, Judy, and Jason before the DOLE Regional Arbitration Branch III. The parties did not arrive at an amicable settlement despite conciliation. In their position paper, petitioners averred that they were dismissed from employment due to the complaint they filed before DOLE.[7]

On the other hand, FMC and its officers riposted that on July 9, 2018, the management and employees of FMC were unexpectedly prevented from entering its compound in Valenzuela City, which became the subject of a pending ejectment case. FMC was prevented from removing its properties, including its inventory in the warehouse, as well as important office documents such as payrolls.[8]

FMC reasoned out that since the raw materials were stored in the warehouse in Valenzuela City and access thereto was denied, the production in the factory in Bulacan was gravely affected. As a remedy, FMC made an unscheduled purchase of fabrics from suppliers but there was delay in the delivery. Due to the lack of materials, the number of production workers allegedly exceeded the available work in the factory. Consequently, FMC decided to temporarily implement a work rotation schedule of production personnel in the factory until the raw materials they ordered were delivered. Management called for a meeting to inform the production supervisors and personnel of the predicament and the need to implement a work rotation schedule.[9]

Thus, on July 16, 2018, FMC issued Company Memo - 81,[10] informing all personnel of the immediate implementation of the work rotation schedule. This was allegedly posted in a conspicuous place in the factory for everyone to read. The schedules prepared by the supervisor allotted each worker at least two working days in a week.[11]

Sometime in July 2018, Arguel allegedly filed for leave from July 23, 2018 to August 11, 2018 to take care of his child while his wife was in the province taking care of her mother. His leave application was approved. After his leave though, he no longer reported for work.[12]

Meanwhile, Delara was suspended for 12 days or from July 25, 2018 to August 7, 2018 for sleeping during work hours. On July 24, 2018, he received the Violations Memo, informing him of his suspension. However, he also no longer returned to work after serving his suspension.[13]

During the first week of August 2018, Bacani, Cabrera, Sua and Sebolino did not report for work on their scheduled work days. Since they were absent without leave, management called other employees to cover for them. FMC denied that Chua admitted telling petitioners to look for another job or that Judy told them to resign, get out, and never return. It maintained that there was no illegal dismissal that occurred, actual or constructive. FMC's management was thus surprised to receive the summons with a copy of the complaint for illegal dismissal filed by petitioners on the second week of August 2018.[14]

In their reply, petitioners claimed that Company Memo - 81 should not be given consideration because FMC did not report the rotation plan to the DOLE and its claim that there was a lack of raw materials was not supported by substantial evidence.[15]

Ruling of the Labor Arbiter

By Decision[*] dated June 10, 2019, Labor Arbiter Jennifer R. Santos found that Bacani, Cabrera, Delara, Arguel, Waje, Sua, and Sebolino (Bacani, et al.) were constructively dismissed, while the complaints of Cabatuan, Jr. and

Rivero were dismissed for failure to file their respective position papers. The labor arbiter awarded separation pay, backwages, service incentive leave pay (SILP), and pro rata 13[th] month pay for the year 2018, plus attorney's fees equivalent to 10% of the total monetary award to Bacani, et al.[16]

The labor arbiter cited DOLE Department Advisory No. 2, Series of 2009, which requires the employer to notify the Regional Office of the DOLE of the adoption of a flexible work arrangement. The absence of such notice resulted in the constructive dismissal of Bacani, et al. given, too, that there was no substantial evidence to prove the lack of raw materials that allegedly forced FMC to reduce the six-day workweek of the production personnel to only two to three days per week.[17]

Ruling of the National Labor Relations Commission

Under Decision[18] dated September 27, 2019, the National Labor Relations Commission (NLRC) reversed, viz.:

WHEREFORE, premises considered, the Decision of the Labor Arbiter is SET ASIDE. A new Decision is rendered:

- Dismissing the Complaint for constructive dismissal;
- Ordering Respondent Fiber[][T]extile Marketing Inc. to pay Complainants Andro T. Bacani, Ronaldo F. Cabrera, Jayson Delara, Raul R. Arguel, Crizaldy N. Waje, Ariel Y. Sua and Charlie Sebolino their SILP and 13[th] month pay for 2018; and
- Ordering Respondent Fiber[][T]extile Marking Inc. to pay ten (10%) percent of the amounts awarded for and as attorney's fees.

SO ORDERED.[19] (Emphasis in the original)

Contrary to the labor arbiter's finding, the NLRC held that the absence of notice to the DOLE Regional Office of the adoption of a flexible workweek is a mere procedural infirmity that did not affect the valid exercise of management prerogative by FMC.[20]

Under Resolution[21] dated December 19, 2019, the NLRC denied reconsideration.

Aggrieved, petitioners thus filed a petition for certiorari under Rule 65 before the Court of Appeals, ascribing grave abuse of discretion on the part of the NLRC.

Ruling of the Court of Appeals

By Decision[22] dated April 28, 2023, the Court of Appeals dismissed the petition. It did not agree with FMC's contention that petitioners belatedly raised the issue of constructive dismissal arising from the unilateral implementation of the reduced workday given that the same is necessarily part of petitioners' averment that there was lack of notice to the DOLE on the adoption of the flexible work arrangement.[23]

Nonetheless, the Court of Appeals did not find any grave abuse of discretion by the NLRC in dismissing petitioners' complaint, ordaining that the notice requirement under DOLE Department Advisory No. 2, Series of 2009, is intended only to assist and guide employers in implementing flexible work arrangements. More important, it lent credence to FMC's allegation of lack of raw materials, taking in as reference the attached verified complaint, answer, and complaint-affidavit filed in the ejectment and grave coercion cases involving FMC's office and warehouse in Valenzuela City, and thus found the implementation of reduced workdays justified. In any case, such decision was found to have been made in good faith, with the consent of production supervisors and personnel, and more important, falls within the management prerogative of FMC. Finally, it affirmed the award of 13[th] month pay, SILP, and attorney's fees.[24]

Under Resolution[25] dated January 17, 2024, the Court of Appeals denied petitioners' motion for reconsideration.

The Present Petition

Petitioners now seek affirmative relief from the Court and pray that the assailed disposition of the Court of Appeals be reversed and a new one rendered, granting their complaint for constructive dismissal.[26] They argue that the labor arbiter correctly declared that they were constructively dismissed, especially considering that FMC admitted hiring other employees in their place, belying its claim that the reduction of working days were undertaken to forestall business losses.[27]

In its Comment,[28] FMC counters that the Petition did not raise any genuinely novel question or any special and important reasons to warrant the Court's exercise of its power of review. At any rate, the NLRC correctly found and recognized the economic difficulties FMC experienced which necessitated the flexible work arrangement, which was a direct exercise of its management prerogative. To be sure, the reduction of working days or rotation of work schedule was attended with notice and prior consultation with the production supervisors and personnel. Prior to the issuance of Company Memo - 81, a meeting was arranged and called to inform the production supervisors and personnel pertaining to the lack of raw materials. During the said meeting, a unanimous consensus was reached regarding the implementation of the work rotation schedule.[29]

Issues

First, did the NLRC gravely abuse its discretion when it ruled on the issue of constructive dismissal albeit it was allegedly raised for the first time on appeal?

Second, were petitioners constructively dismissed as a result of FMC's unilateral implementation of reduced workdays sans notice to the DOLE as required under DOLE Department Advisory No. 2, Series of 2009?

Third, are petitioners entitled to monetary awards and attorney's fees?

Our Ruling

We grant the Petition.

In dealing with Rule 45 petitions arising from the Court of Appeals' review of NLRC decisions, the Court appraises the correctness of the appellate court's ruling through a distinct lens, i.e., in the same context that the petition for certiorari was presented to the Court of Appeals.[30] Thus, if the Court finds that the NLRC committed grave abuse of discretion in its assailed disposition, the petition for review on certiorari must be granted.

Grave abuse of discretion is defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law." [31] It refers not merely to palpable errors of jurisdiction or to violations of the Constitution, the law, and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts, as here.[32]

The NLRC correctly ruled on the issue of constructive dismissal arising from illegal reduction of workdays

Going first to the procedural issue, we agree that the NLRC did not commit grave abuse of discretion in determining whether petitioners were constructively dismissed. FMC's contention that this issue was raised for the first time before the NLRC is incorrect.

The records clearly bear petitioners' allegations, as set forth in their reply before the labor arbiter, which directly attack the validity of FMC's implementation of reduced workdays under Company Memo - 81 for lack of notice

to the DOLE.[33] In fact, petitioners even identified their complaint as one for "constructive dismissal" and "reduction of workweek [sic]," among others. Verily, the NLRC was fully empowered to treat the allegations of unlawful reduction of workdays as an additional ground for constructive dismissal, the latter being a necessary consequence of the former once established.[34]

In any case, settled is the rule that in labor cases, strict adherence to the technical rules of procedure is not required. We have consistently supported the rule that labor officials should use all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, in the interest of due process.[35]

FMC is guilty of illegal reduction of workdays and rotation of work

I.

Kinds of Flexible Work Arrangements

At the outset, delineation must be made between the flexible work arrangements cognizable by issuances like the DOLE Department Advisory No. 2, Series of 2009 and other flexible work arrangements. The advent of the COVID-19 pandemic, for instance, installed changes which were carried over into the "new normal." One of these is the increasing trend of implementing flexible work arrangements such as the work-from-home (WFH) set-up and hybrid set-up in the workplace due to their benefits both to the employees and the employers.

As astutely posited by Senior Associate Justice Marvic M.V.F. Leonen (SAJ Leonen) during our deliberations, flexible work arrangements similar to the nature of WFH set-up and remote work offer several advantages—for employees, they get to enjoy greater work-life balance, reduced commute time, and improved productivity, among others; and for employers, they benefit from cost savings, access to wider talent pool, and increased employee satisfaction and retention.[36]

These innovative flexible work arrangements, however, are not the flexible work arrangements governed by DOLE Department Advisory No. 2, Series of 2009. Taking cue from the suggestion of the esteemed Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo), it is imperative that delineation be made between:

(1)

flexible work arrangements that are entered into voluntarily by employers and employees as a matter of ordinary business practice, without resulting in a reduction of employee pay or benefits; and

(2)

flexible work arrangements that result in a reduction in employee pay or benefits.

For purposes of our discussion, here, we deal only with the latter kind of flexible work arrangements, as regulated

by DOLE Department Advisory No. 2, Series of 2009. We do not endeavor to adjudicate here and now the wisdom, merits, or legality of flexible work arrangements that do not unduly encroach on the rights of the workers.

II.

Coverage of DOLE Department Advisory No. 2, Series of 2009

The scope of DOLE Department Advisory No. 2, Series of 2009 covers only the following flexible work arrangements and other similar alternative schemes that mitigate the loss of income of the employees:

III. Flexible Work Arrangements

The following are the flexible work arrangements which may be considered, among others:

1. Compressed Workweek refers to one where the normal workweek is reduced to less than six (6) days but the total number of work-hours of 48 hours per week shall remain. The normal workday is increased to more than eight hours but not to exceed twelve hours, without corresponding overtime premium. The concept can be adjusted accordingly depending on the normal workweek of the company pursuant to the provisions of Department Advisory No. 02, series of 2004, dated 2 December 2004.
2. Reduction of Workdays refers to one where the normal workdays per week are reduced but should not last for more than six months.
3. Rotation of Workers refers to one where the employees are rotated or alternately provided work within the workweek.
4. Forced Leave refers to one where the employees are required to go on leave for several days or weeks utilizing their leave credits if there are any.
5. Broken-time schedule refers to one where the work schedule is not continuous but the work-hours within the day or week remain.
6. Flexi-holidays schedule refers to one where the employees agree to avail the holidays at some other days provided there is no diminution of existing benefits as a result of such arrangement.

Under these flexible work arrangements, the employers and the employees are encouraged to explore alternative schemes under any agreement and company policy or practice in order to cushion and mitigate the effect of the loss of income of the employees.

It is readily discernible that the list provided by DOLE Department Advisory No. 2, Series of 2009 is not exclusive, and that based on the last paragraph thereof this issuance regulates only those flexible work arrangements that tend to "cushion and mitigate the effect of the loss of income of the employees" or those employed to address the economic difficulties suffered by the employer pursuant to the principle of ejusdem generis.

The purpose of the rule on ejusdem generis is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.[37]

Perceptibly, DOLE Department Advisory No. 2, Series of 2009 is a regulatory issuance that governs flexible work arrangements that are prejudicial to the employees but, nonetheless, are upheld as valid due to the unique circumstances suffered by the employer, i.e., national emergency and economic difficulties.

Other flexible work arrangements which have gained traction since the COVID-19 pandemic, such as the WFH or hybrid set-up, do not fall within the ambit of flexible work arrangements regulated by the DOLE under Department Advisory No. 2, Series of 2009 because they are not remedial measures against financial difficulties that may be experienced by the employer and do not affect the economic status of the employer or result in the diminution of the pay or benefits of the employees.

III.

Requisites for the Valid Implementation of Flexible Work Arrangements under DOLE Department Advisory No. 2, Series of 2009 and similar issuances

Per Part III of DOLE Department Advisory No. 2, Series of 2009, the normal work hours per day is eight hours, which is consistent with Book Three, Title I, Chapter I, Article 83 of the Labor Code.[38] On the other hand, the normal number of workdays per week shall be six days, or a total of 48 hours based on the normal workday of eight hours, without prejudice to firms whose normal workweek is five days or a total of 40 hours based on the normal workday of eight hours.

This does not mean, however, that employers are absolutely prohibited from reducing the normal eight-hour work day and six-day workweek. Management, after all, is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place, and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and discipline, dismissal and recall of workers. But the exercise of management prerogative is not absolute as it must be exercised in good faith and with due regard to the rights of labor.[39]

This prerogative of employers was recognized even prior to the issuance of DOLE Department Advisory No. 2, Series of 2009. In the Explanatory Bulletin on the Effect of Reduction of Workdays on Wages/Living Allowances dated July 23, 1985,[40] the DOLE ratiocinated:

In situations where the reduction in the number of regular working days is resorted to by the employer to prevent serious losses due to causes beyond his [or her] control, such as when there is a substantial slump in the demand for his [or her] goods or services or when there is lack of raw materials, it is the view of this Bureau that such reduction is valid. Such management action appears to be more humane and in keeping with sound business operations than the outright termination of the services of the employees or the total closure of the enterprise. In this jurisdiction, it is generally recognized that an employer has the prerogative to devise and adopt necessary remedial measures to save his [or her] business from serious losses that may eventually result in its total collapse. This prerogative of an employer flows from the right of ownership of property which includes the right of an employer to manage, control and protect his [or her] property in a manner that is not contrary to law, morals and public policy. If the law recognizes the right of an employer to terminate the services of his [or her] employees and even to close his [or her] enterprise if it is suffering from serious losses for reasons beyond his [or her] control, the right to reduce the number of workdays of his [or her] employees may be conceded to him [or her], which management action is less severe in terms of its effects on the earnings of the employees than their outright lay-off or terminate [sic], or the closure of the enterprise.

Reduction of Wage/Allowances

In situations described above, this Bureau is also of the view that the employer may deduct the wages and living allowances corresponding to the days taken off from the workweek, in the absence of an agreement specifically providing that a reduction in the number of workdays will not adversely affect the remuneration of the employees. This bulletin does not cover cases where there are existing agreements or employer policy or practice providing for more liberal benefits than those that would result with the application of the opinions or guidelines set forth herein in case of reduction of workdays. It also does not contemplate of situations where the employer has unilaterally reduced the number of working days, although the business is not suffering from losses or there is available work to be done by the employees, and which reduction will alter the agreement or understanding of the parties as to the number of working days that the employees will work in a week or within a payroll period. Furthermore, the explanations herein assume that the reduction of workdays and the corresponding wage/allowance deductions are done in good faith, justified by circumstance affecting the business of the employer, and are not resorted to for the purpose of defeating or circumventing the provisions of existing laws, applicable individual or collective agreement or any existing practice or policy obtaining in the establishment. (Emphasis supplied)

Echoing the same sentiment, DOLE Department Advisory No. 2, Series of 2009 affirms as valid the adoption by employers of flexible work arrangements as one of the coping mechanisms and remedial measures in times of economic difficulties and national emergencies, as it is considered a better alternative than the outright termination of the services of employees or the total closure of the establishment.[41]

Flexible work arrangements in the context of DOLE Department Advisory No. 2, Series of 2009 are those alternative arrangements or schedules other than the traditional or standard work hours, workdays and workweek,[42] and includes compressed workweek,[43] reduction of workdays, rotation of workers, forced leave,[44] broken-time schedule,[45] and flexi-holidays schedule.[46]

Here, FMC admits reducing its personnel's six-day workweek to only two to three workdays a week and rotating the schedule of jobs among them. There is thus no question that it adopted a flexible work arrangement, as defined under DOLE Department Advisory No. 2, Series of 2009, specifically the reduction of workdays, i.e., an arrangement where the normal workdays per week are reduced but should not last for more than six months,[47] and rotation of workers, i.e., an arrangement where the employees are rotated or alternately provided work within the workweek.[48] Rather, the question is whether FMC did so in compliance with the requirements under the rules.

In *Alejandro, et al. v. Philippine Pizza, Inc.*,[49] the Court quoted from NLRC Commissioner Nieves E. Vivar De-Castro's dissent, referencing, among others, DOLE Department Advisory No. 2, Series of 2009, a summary of the three conditions required before a company may adopt a flexible work arrangement.[50] Though the Court ultimately held in *Alejandro* that the said department advisory is inapplicable since the issue involved part-time workers who necessarily work less than eight hours a day, the Court finds that this enumeration of conditions correctly encapsulated the clear tenor of DOLE Department Advisory No. 2, Series of 2009. We, however, add another condition, i.e., it was sufficiently proven that the company was suffering from economic difficulties or national emergencies and its adoption of flexible work arrangement was done in good faith to cope with such circumstances.

Indeed, in *Linton Commercial Co, Inc. v. Hellera, et al.*[51] and *Intec Cebu, Inc. v. Court of Appeals*,[52] the Court held the employers therein guilty of illegal reduction of work hours and, consequently, of constructive dismissal for failure to prove, based on their financial reports, that they were truly suffering from financial losses which would justify the implementation of reduced workdays and rotation of work. *Linton*, however, notably took place before DOLE Department Advisory No. 2, Series of 2009 was issued. Under the said Advisory, flexible

work arrangements may be adopted "in times of economic difficulties and national emergencies," which does not necessarily, mean that the business is already suffering financial losses.[53]

Chief Justice Gesmundo further opined during the deliberations that the grounds for the adoption of flexible work arrangements under DOLE Department Advisory No. 2, Series of 2009 should not be limited to actual economic difficulties or national emergencies. It is enough that, as in the authorized cause of retrenchment, the employer shows that the measure implemented is "reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual, and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer." [54]

Thus, under DOLE Department Advisory No. 2, Series of 2009, a company seeking to adopt a flexible work arrangement must meet the following requisites: first, the adoption of a different work schedule or scheme is expressly and voluntarily supported by a majority of the workers affected, i.e., there should have been a consultation with the employees before a part time work arrangement is adopted and implemented; [55] second, the implementation of a non-traditional work arrangement should be temporary. [56] For reduction of workdays, specifically, the same should not exceed six months; [57] third, the DOLE Regional Office should be notified before any flexible work arrangements may be implemented; [58] and finally, the employer is suffering from actual or reasonably imminent economic difficulties or national emergencies and its adoption of flexible work arrangement was done in good faith to cope with such circumstances. [59]

IV.

Effect of failure to provide notice to the DOLE prior to the implementation of flexible work arrangements under DOLE Department Advisory No. 2, Series of 2009

Before ascertaining FMC's compliance with the foregoing requisites, the Court first reckons with this novel question: What is the effect of noncompliance with the third requisite or the reportorial requirement in DOLE Department Advisory No. 2, Series of 2009 vis-à-vis the employer's implementation of flexible work arrangements?

FMC submits, on one hand, that this is a mere procedural infirmity which does not invalidate its reduction of the personnel's workdays while petitioners asseverate, on the other, that the same amounted to their constructive dismissal, especially since the offered justification for the said reduction is unproven by substantial evidence.

We agree with FMC.

DOLE Department Advisory No. 2, Series of 2009, indeed visibly utilizes the word "shall" in imposing the notice requirement upon employers:

V. Notice Requirement

Prior to its implementation, the employer shall notify the Department through the Regional Office which has jurisdiction over the workplace, of the adoption of any of the above flexible work arrangements. The notice shall be in the Report Form attached to this Advisory.

The Regional Office shall conduct an ocular visit to validate whether the adoption of the flexible work arrangements is in accordance with this issuance. (Emphasis supplied)

The connotation of the word "shall" is settled in jurisprudence, that is, its ordinary signification is that it is

imperative, obligatory, or mandatory. Particularly, *Diokno v. Rehabilitation Finance Corporation*[60] explains that the term "shall" is a word of command, and one which has always or which must be given compulsory meaning; as denoting obligation. It has the invariable significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears.[61] Though this general interpretation admits of exceptions, we find that the same are not applicable here.

Time and again, the Court emphasized the State's interest on the protection of labor—a public policy enshrined not only in the highest law of the land, the Constitution,[62] but in various other legislation like the Civil Code[63] and the Labor Code.[64] Thus, all doubts in the implementation and interpretation of labor laws, rules, and regulations shall be resolved in favor of labor.[65]

Here, as petitioners correctly argue, it is more in accord with the dictates of social justice and policy on protection of labor to construe the word "shall" as mandatory. Perceptibly, the notice requirement under DOLE Department Advisory No. 2, Series of 2009, is not intended merely to inform, but is a preventive and regulatory measure to curb possible abuses by sly employers who might utilize flexible working arrangements to deprive laborers of work and their just compensation. Hence, why the notice is required prior to the implementation of the flexible work arrangement and why a subsequent ocular visit to check the employer's compliance with DOLE Department Advisory No. 2, Series of 2009 ensues.

As perceptibly raised by the erudite Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) during deliberations, DOLE Department Advisory No. 2, Series of 2009 provides a sound mechanism for monitoring and regulation of the adoption of flexible work arrangements through its notice requirement: the first paragraph prescribes the timing and form of the notice, while the second paragraph provides the consequence of filing it, i.e., the conduct of an ocular visit to validate whether the adoption of the flexible work arrangement is in accordance with the regulations.

On this score, it must be emphasized that flexible work arrangements which result in the diminution of the benefits and pay of workers do not enjoy any presumption of validity in their favor. By their nature, these arrangements contravene the standards on work hours prescribed by law. To reiterate, the Labor Code prescribes a normal six-day workweek comprised of a total of 48 work hours per week, without prejudice to firms whose normal workweek is five days or a total of 40 hours. This labor standard serves two important purposes for the protection of labor:

First, it standardizes the amount of remuneration to be expected by workers who worked for an entire regular workweek. For example, a worker who, per employment contract, is paid PHP 1,500.00 a day for an eight-hour workday may reasonably expect PHP 9,000.00 a week or PHP 36,000.00 a month. Consequently, reducing the number of workdays from that prescribed under the law or contract would lead to reduced remuneration based on the principle of "no work, no pay,"[66] thereby depriving the worker of a substantial amount that he or she could have earned.

Second, the prescribed number for work hours shields workers from unpaid overtime work. By setting the maximum number of work hours in a day, the Labor Code ensures that any work beyond such eight-hour maximum shall be compensated with overtime pay.[67]

Flexible work arrangements similar to those enumerated under DOLE Department Advisory No. 2, Series of 2009 disregard the foregoing protective measures. As such, by fault, flexible work arrangements of such nature are presumed illegal until proven otherwise. This is a view completely aligned with the intention of the Labor Code to

provide adequate protection in favor of labor.

But, these flexible work arrangements are nonetheless upheld as valid only because of the exceptional circumstances involved: for the employer, to mitigate its difficulties in business;^[68] and for the employees, because it is a more humane solution instead of retrenchment and reduction of personnel.^[69] In sum, they are band-aid solutions to an ailing business meant to alleviate the impact of ongoing economic difficulties or national emergencies until the business has regained sustainable and stable operations. This is precisely why flexible work arrangements of such nature are temporary in nature^[70] and why prompt notice to the DOLE is imperative before the implementation of flexible work arrangements.

Since this kind of flexible work arrangements naturally violates labor standards, they must be met with scrutiny through effective monitoring and regulation by the DOLE. Again, the only means for the DOLE to fulfill this duty is when it receives notice of the employer's intention to implement such arrangements.

Ensuring that this mechanism enshrined in DOLE Department Advisory No. 2, Series of 2009 is operational is thus paramount and legally sanctioned in light of the State's constitutional policy to protect labor. We must thus ensure that the necessary consequence of noncompliance with the notice requirement under DOLE Department Advisory No. 2, Series of 2009 shall serve as an effective deterrent against abuse by cunning employers who circumvent our labor standards.

As convincingly and uniformly raised by Chief Justice Gesmundo, SAJ Leonen, and Justice Caguioa in their respective separate opinions, however, while DOLE Department Advisory No. 2, Series of 2009 utilize the word "shall," it does not provide the penalty for the violation of the employers' obligation to notify the DOLE of the intended implementation of flexible work arrangements nor does it explicitly dictate that such noncompliance renders the adoption of the flexible work arrangement unlawful.

Notably, the language of DOLE Department Advisory No. 2, Series of 2009, Part V is reminiscent of Article 292(b) of the Labor Code on the notice requirement for termination of employees due to just and authorized causes which also uses the word "shall,:"

ARTICLE 292. [277] Miscellaneous Provisions. - ...

(a)

...

(b)

Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. (Emphasis supplied)

DOLE Department Order No. 147, Series of 2015^[71] further expounded this provision and set forth the twin-notice requirement for terminations due to just causes and the one-notice requirement for terminations due to authorized causes.

Of these two, we find that the due process requirement corresponding to authorized causes for termination is more akin to the notice requirement under DOLE Department Advisory No. 2, Series of 2009 insofar as: (i) both

involve similar grounds (retrenchment under Article 298 of the Labor Code is similar to, although more severe than, adoption of flexible work arrangements to prevent losses); (ii) in both instances, the employees are innocent of any offense against the employer; (iii) this notwithstanding, the employees still stand to be adversely affected by the business decision either through loss of employment or diminution of benefits; and (iv) both require prior notice to the DOLE as part of due process.

Section 5.3 of DOLE Department Order No. 147, Series of 2015 dictates thus:

Section 5. Due Process of Termination of Employment. In all cases of termination of employment, the standards of due process laid down in Article 299(b) of the Labor Code, as amended, and settled jurisprudence on the matter, must be observed as follows:

...

5.3. Termination of Employment Based on Authorized Causes. As defined in Articles 298 and 299 of the Labor Code, as amended, the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment (DOLE) at least thirty days (30) before the effectivity of the termination, specifying the ground or grounds for termination. (Emphasis supplied)

The mandatory tenor of the above notice requirements notwithstanding, the Court ruled in *Agabon v. NLRC*[72] that noncompliance therewith does not serve to invalidate the dismissal but only allows the aggrieved employee, whose rights to due process was violated, to claim nominal damages. We extensively elucidated in *Agabon* the far-reaching consequences of severely punishing the violation of such procedural requirement with the invalidation of an otherwise valid management action:

The unfairness of declaring illegal or ineffectual dismissals for valid and authorized causes but not complying with statutory due process may have far-reaching consequences.

This would encourage frivolous suits, where even the most notorious violators of company policy are rewarded by invoking due process. This also creates absurd situations where there is a just or authorized cause for dismissal but a procedural infirmity invalidates the termination. Let us take for example a case where the employee is caught stealing or threatens the lives of his co-employees or has become a criminal, who has fled and cannot be found, or where serious business losses demand that operations be ceased in less than a month. Invalidating the dismissal would not serve public interest. It could also discourage investments that can generate employment in the local economy.

The constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right, as in this case. Certainly, an employer should not be compelled to pay employees for work not actually performed and in fact abandoned.[73] (Emphasis supplied)

As such, we have ruled that "where the dismissal is for a just cause...the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual." [74] We find it sound to apply the same rule here as it is entirely possible that, although the employer failed to give prior notice to the DOLE, the employer had a bona fide cause to adopt a flexible work arrangement.

In such a case, the employer's failure to notify the DOLE prior to the implementation of the flexible work arrangements does not remove the tremendous effect of the national emergency or economic difficulties on the finances and operations of the employer. Thus, the consequences relevant to the situation which, in the first place, necessitated the employment of drastic measures, like reducing the work hours of employees, remain pressing and valid. Consequently, we find no reason why the employer's adoption of any of the flexible work arrangements under DOLE Department Advisory No. 2, Series of 2009, should not be upheld as lawful so long as the other

requisites for its validity are present and proved.

The employer, however, shall not escape unpunished for its utter disregard of the employee's right to due process. The employer shall still be held liable, not by invalidating its adoption of a flexible work arrangement, but by being liable to indemnify the employee for the wrong caused through the payment of nominal damages.

In the 2005 case of *Jaka Food Processing Corporation v. Pacot, et al.*[75] the Court applied the doctrine in *Agabon* to valid dismissals for authorized causes where the employer breached the dictates of statutory due process. But while nominal damages for dismissal due to just causes was pegged at PHP 30,000.00, that for authorized causes was set at the higher amount of PHP 50,000.00 because the termination was initiated by the employer's exercise of its management prerogative. We ratiocinated:

At this point, we note that there are divergent implications of a dismissal for just cause under Article 282, on one hand, and a dismissal for authorized cause under Article 283, on the other.

A dismissal for just cause under Article 282 implies that the employee concerned has committed, or is guilty of, some violation against the employer, i.e., the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in *Agabon*, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.

On another breath, a dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, i.e., when the employer opts to install labor saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.

...

For these reasons, there ought to be a difference in treatment when the ground for dismissal is one of the just causes under Article 282, and when based on one of the authorized causes under Article 283.

Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal, process was initiated by the employer's exercise of his management prerogative.[76] (Emphasis supplied)

The same can be said for the adoption of flexible work arrangements under DOLE Department Advisory No. 2, Series of 2009—it is made pursuant to the exercise of management prerogative and no fault can be imputed upon the employee. Consequently, we find that the amount of nominal damages that the employer must pay whenever it fails to comply with the notice requirement under DOLE Department Advisory No. 2, Series of 2009 shall be as equally steep as the amount imposed in cases of dismissal due to authorized causes.

Jaka Food Processing Corporation was promulgated in 2005 or 20 years ago. As raised by *SAJ Leonen*,[77] in setting the amount of nominal damages here, we must take into account the change in the purchasing power of the peso over the last two decades. The purchasing power of the peso has depreciated by 116.22% from 2005 to 2025,[78] meaning, what cost PHP 50,000.00 in 2005 amounts to around PHP 108,000.00 in 2025.

Thus, to guide the bench, the bar, and the public, we hold that:

- In cases where flexible work arrangements under DOLE Department Advisory No. 2, Series of 2009 and similar issuances were validly implemented, but the employer failed to give prior notice to the DOLE, the adoption and

implementation of the flexible work arrangements shall remain valid but the employer shall be liable for nominal damages in the amount of PHP 100,000.00 for each employee.

We find that PHP 100,000.00 is an amount high enough to serve (i) as an effective deterrent against employers from failing to comply with the notice requirement under DOLE Department Advisory No. 2, Series of 2009 and (ii) as sufficient compensation and indemnity to employees who were prejudiced by such non-compliance.

- Where, however, noncompliance with the notice requirement under DOLE Department Advisory No. 2, Series of 2009 is attended also by noncompliance with the other requisites for the valid adoption of flexible work arrangement, the adoption and implementation of such flexible work arrangement shall be declared invalid and the affected employees shall receive the proper reliefs corresponding to constructive or illegal dismissal.

V.

FMC failed to comply with the first, third, and fourth requisites for the valid implementation of flexible work arrangements under DOLE Department Advisory No. 2, Series of 2009, rendering its adoption of rotation of workers and reduction of work days illegal

We now determine whether FMC's adoption of rotation of workers' schedule and reduction of work days under DOLE Department Advisory No. 2, Series of 2009 is valid.

FMC averred that by January 2019, or six months after Company Memo - 81 was issued in July 2018, FMC reinstated the original work schedule of petitioners immediately after the replacement raw materials arrived. Petitioners, notably, did not dispute this claim. There is thus no dispute that the second requisite, i.e., the implementation of the flexible work arrangement is temporary, was complied with.

We cannot say the same, however, for the first, third, and fourth requisites.

First, the adoption of the flexible work arrangement must be expressly and voluntarily supported by a majority of the workers affected, such that there was a prior consultation with the employees. The burden to prove compliance with this requirement lies with FMC, the employer. This, FMC failed to discharge.

Here, the facts merely indicated that FMC management called for a meeting to inform the production supervisors and personnel of the predicament involving FMC's raw materials and the need to implement a work rotation schedule. Thereafter, Company Memo - 81 was issued, informing the workers of the adoption of flexible work arrangement.[79]

As SAJ Leonen and Justice Caguioa pointed out, other than this bare allegation of FMC, no proof was presented to show that the affected workers were consulted on the matter of rotation of workers' schedule or reduction of work days during the said meeting, much less, that majority of them gave their consent to the adoption of such flexible work arrangements. Informing the workers is one thing, securing their consent is another thing.

Part I of the DOLE Department Advisory No. 2, Series of 2009 requires that the flexible work arrangement be "anchored on [a] voluntary basis and conditions mutually acceptable to both the employer and employees." More, in Part IV of the said Advisory, employers are required to keep and maintain, as part of their records, the documentary requirements proving that the flexible work arrangement was voluntarily accepted to facilitate the resolution of grievances. No such document, however, can be found in the records to substantiate FMC's allegations.

Sans any evidence to prove that a majority of the affected workers in FMC truly assented to the rotation of

workers and reduction of work days, we cannot make a finding that the first requisite has been complied with. Mere allegations, after all, are not evidence and are not equivalent to proof.[80]

Next, the third requisite or the notice requirement. Albeit the labor tribunals and appellate court differed on the legal consequence of non-compliance therewith, all are uniform in their finding that FMC failed to adduce any evidence that it sent notice to the DOLE Regional Office regarding its reduction of workdays and rotation of workers. Neither did FMC, in any of its pleadings, proffer any explanation for its noncompliance. What was consistently reiterated was that the same did not render its implementation of the flexible work arrangements illegal.

Verily, FMC's failure to notify the relevant DOLE Regional Office of its intention to reduce its worker's workdays and to rotate their work prior to implementation is also beyond contention.

Finally, FMC also failed to establish the fourth requisite, i.e., that it was suffering from actual or reasonably imminent economic difficulties or national emergencies and its adoption of flexible work arrangement was done in good faith to cope with such circumstances.

Whether actual or imminent, FMC did not submit as evidence any relevant reports or documents to substantiate its claim. What it merely adduced were several pleadings—verified complaint, answer, and complaint-affidavit—from the ejectment case and grave coercion case involving its Valenzuela City compound, which was allegedly locked out, causing the lack of raw materials. But these are not proofs. These pleadings do not contain incontestable facts upon which the reduction of workdays can be justified, but mere allegations that still need to be proved during trial.

More, the lack of raw materials does not necessarily mean that FMC was suffering from economic difficulties of such gravity which rendered it incapable of sustaining its normal operations especially since, as the circumstances later on proved, it was able to shortly resolve its dilemma through negotiation and settlement and other remedies were available, such as ordering new supplies of materials, albeit the same were delivered late. Indeed, in *Linton Commercial Co. v. Hellera, et al.*, [81] the Court noted that though the employer's financial reports for 1997 to 1998 did show that it suffered from losses for that year, there remained enough earnings to sufficiently sustain its operations, rendering its reduction of workdays unjustified. The Court's following remarks in *Linton* are apropos:

A close examination of petitioner's financial reports for 1997-1998 shows that, while the company suffered a loss of [PHP] 3,645,422.00 in 1997, it retained a considerable amount of earnings and operating income. Clearly then, while *Linton* suffered from losses for that year, there remained enough earnings to sufficiently sustain its operations. In business, sustained operations in the black is the ideal but being in the red is a cruel reality. However, a year of financial losses would not warrant the immolation of the welfare of the employees, which in this case was done through a reduced workweek that resulted in an unsettling diminution of the periodic pay for a protracted period. Permitting reduction of work and pay at the slightest indication of losses would be contrary to the State's policy to afford protection to labor and provide full employment.[82] (Emphasis supplied, citations omitted)

Thus, while the Court commiserates with FMC, we do not agree that its misfortune sufficiently justified the drastic measure it employed to cope, especially as it was notably quick to put the brunt of the blow upon its workers.

All told, we find that apart from its noncompliance with the notice requirement under DOLE Department Order No. 2, Series of 2009, FMC also failed to observe the other requisites for the valid adoption of flexible work arrangements, rendering FMC's implementation of rotation of workers' schedule and reduction of work days unlawful. Thus, consistent with our guidelines above, we ordain that FMC committed illegal reduction of

workdays, which consequently reduced petitioners' salaries, amounting to constructive dismissal.

Constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[83] Here, petitioners suffered a decrease in their pay due to the unlawful adoption by FMC of rotation of workers and reduction of work days, rendering the continued employment of petitioners unreasonable or unlikely. As a matter of fact, petitioners were quick to seek assistance from DOLE regarding FMC's reduction of their six-day work week to two to three days per week.[84]

More, the facts show that petitioners were shunned from work on July 27, 2018 after, and suggestively, because, they sought assistance from the DOLE regarding the implementation of such flexible work arrangements.[85] This was also part of the arguments of petitioners in the complaint they filed before the DOLE. It was incumbent upon FMC to rebut these charges and prove that the termination of petitioners was for a valid or authorized cause,[86] but it did not nor did it even attempt to do so. Instead, FMC merely asseverated that petitioners abandoned their posts themselves.

We do not subscribe to FMC's allegations of abandonment against petitioners, contending that they were the ones who refused to return to work. Apart from bare allegations, FMC did not submit evidence to show petitioners' intent to completely sever their employments. Besides, it is settled that an employee who takes steps to protest his or her dismissal cannot logically be said to have abandoned their work. The filing of such complaint is proof enough of his or her desire to return to work, thus, negating any suggestion of abandonment.[87]

Verily, we find that petitioners were constructively dismissed by FMC.

Monetary awards

In case of constructive dismissal, much like in dismissal without just or authorized cause and due process was not observed,[88] the employee is entitled to reinstatement without loss of seniority rights and other privileges, full backwages inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld until their actual reinstatement.[89]

Thus, in *Borromeo v. Lazada E-Services Philippines, Inc.*,[90] the Court ordered petitioners therein to be reinstated and to be paid their full backwages from the time of their illegal dismissal up to the time of their actual reinstatement after finding that the respondent dismissed them without just cause and did not give them the requisite notices and opportunity to be heard.[91]

Here, we affirm the labor arbiter's dismissal of the complaint with respect to Cabatuan, Jr. and Rivero for their failure to file their respective position papers. Consequently, only petitioners Bacani, et al. are entitled to the abovementioned reliefs. However, while reinstatement is a normal consequence of illegal dismissal, where it is no longer viable as an option, such as where the parties already suffer from strained relations, separation pay equivalent to one month for every year of service should be awarded as an alternative. The payment of separation pay is in addition to the payment of backwages.[92]

Here, the labor arbiter found that there was already strained relations between the parties.[93] As such, separation pay shall be awarded in lieu of reinstatement, which shall be reckoned from the time Bacani, et al. got constructively dismissed up to the finality of this Decision.[94]

We further reinstate the ruling of the labor arbiter insofar as the award to Bacani, et al. of proportionate 13[th] month pay and SILP.[95] Too, we affirm the award of attorney's fees equivalent to 10% of the total monetary

award per statutory^[96] and case law.^[97] Finally, all monetary awards shall be subject to 6% legal interest per annum from the finality of this Decision until fully paid.^[98]

ACCORDINGLY, the Petition is GRANTED. The Decision dated April 28, 2023 and Resolution dated January 17, 2024 of the Court of Appeals in CA-G.R. SP No. 165065 are REVERSED. Respondent Fibertextile Manufacturing Corp. is liable for the constructive dismissal of petitioners Andro T. Bacani, Ronald F. Cabrera, Jayson D. Delara, Raule R. Arguel, Crizaldy N. Waje, Ariel Y. Sua, and Charlie R. Sebolino.

Respondent Fibertextile Manufacturing Corp. is ordered to PAY petitioners Andro T. Bacani, Ronald F. Cabrera, Jayson D. Delara, Raule R. Arguel, Crizaldy N. Waje, Ariel Y. Sua, and Charlie R. Sebolino:

- full backwages, inclusive of allowances, and all other benefits accruing to them from the time of their dismissal up to the finality of this Decision;
- Separation pay equivalent to one month pay for every year of service, with a fraction of at least six months considered as one whole year, computed from the date they were constructively dismissed up to the finality of this Decision; and
- Attorney's fees equivalent to 10% of the total monetary awards.

The total monetary awards shall earn 6% legal interest per annum from the finality of this Decision until fully paid.

SO ORDERED.

Hernando, Inting, Zalameda, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., Singh, and Villanueva, JJ., concur.

Gesmundo,^[*] C.J., on official leave.

Leonen,^[**] Acting C.J., see separate concurring opinion.

Caguioa,^[***] J., with separate opinion.

[*] On official leave.

[**] Acting C.J. per special order.

[***] On official business but with separate opinion

[1] Rollo, pp. 14-33.

[2] Id. at 38-56. Penned by Associate Justice Angelene Mary W. Quimpo-Sale and concurred in by Associate Justices Maria Elisa Sempio Diy and Selma P. Alaras, Sixteenth Division, Court of Appeals, Manila.

[3] Id. at 58-60. Penned by Associate Justice Angelene Mary W. Quimpo-Sale and concurred in by Associate Justices Maria Elisa Sempio Diy and Selma P. Alaras, Former Sixteenth Division, Court of Appeals, Manila.

[4] Id. at 39.

[5] Id. at 39-40.

[6] Id. at 40.

[7] Id.

[8] Id.

[9] Id. at 41.

[10] Id. at 189.

[11] Id.

[12] Id.

[13] Id. at 41-42.

[14] Id. at 42.

[15] Id.

[*] Copy of the decision not attached in the rollo.

[16] Rollo, p. 43.

[17] Id.

[18] Id. at 306-318. Penned by Commissioner Cecilio Alejandro C. Villanueva and concurred in by Commissioner Pablo C. Espiritu, Jr. and Presiding Commissioner Alex A. Lopez, Third Division, National Labor Relations Commission.

[19] Id. at 317-318.

[20] Id. at 313-318.

[21] Id. at 330-333. Penned by Commissioner Cecilio Alejandro C. Villanueva and concurred in by Commissioner Pablo C. Espiritu, Jr. and Presiding Commissioner Alex A. Lopez, Third Division, National Labor Relations Commission.

[22] Id. at 38-56.

[23] Id. at 48-54.

[24] Id. at 45-55.

[25] Id. at 58-60.

[26] Id. at 29-30.

[27] Id. at 20.

[28] Id. at 86-124.

[29] Id. at 89-90.

[30] See *UST v. Samahang Manggagawa ng UST*, 809 Phil. 212, 220 (2017) [Per J. Perlas-Bernabe, First Division].

[31] *Cruz v. People*, 812 Phil. 166, 173 (2017) [Per J. Leonen, Second Division].

[32] *Lee v. Sandiganbayan* First Division, 893 Phil. 416, 431 (2021) [Per C.J. Peralta, First Division].

[33] Rollo, pp. 225-227.

[34] See *Intec Cebu, Inc. v. Court of Appeals*, 788 Phil. 31, 41 (2016) [Per J. Perez, Third Division].

[35] *Reyes v. Rural Bank of San Rafael, Inc., et al.*, 921 Phil. 670, 680 (2022) [Per J. Hernando, Second Division], citing *Loon v. Power Master, Inc.*, 723 Phil. 515, 528 (2013) [Per J. Brion, Second Division].

[36] Fried, Jason & Hansson, David Heinemer, *Remote: Office Not Required* (2013), SAJ Concurring and Dissenting Opinion, p. 8.

[37] See *Spouses Buot v. National Transmission Corporation*, 915 Phil. 675, 687 (2021) [Per J. Inting, Second Division].

[38] LABOR CODE, Book Three, Title I, Chapter I. Hours of Work. Art. 83. Normal hours of work. The normal hours of work of any employee shall not exceed eight hours a day. . .

[39] *Royal Plant Workers Union v. Coca-Cola Bottlers Philippines, Inc.*, 709 Phil. 350, 364 (2013) [Per J. Mendoza, Third Division].

[40] Issued by DOLE Director August G. Sanchez.

[41] DOLE Department Advisory No. 2, Series of 2009, I. Purpose.

[42] DOLE Department Advisory No. 2, Series of 2009, II. Concept.

[43] Compressed Workweek refers to one where the normal workweek is reduced to less than six (6) days but the total number of work-hours of 48 hours per week shall remain. The normal workday is increased to more than eight hours but not to exceed twelve hours, without corresponding overtime premium. The concept can be adjusted accordingly depending on the normal workweek of the company pursuant to the provisions of Department Advisory No. 02, series of 2004, dated 2 December 2004 (DOLE Department Advisory No. 2, Series of 2009, III[1]).

[44] Forced Leave refers to one where the employees are required to go on leave for several days or weeks utilized their leave credits if there are any (DOLE Department Advisory No. 2, Series of 2009, III[4]).

[45] Broken-time schedule refers to one where the work schedule is not continuous but the work-hours within the day or week remain (DOLE Department Advisory No. 2, Series of 2009, III[5]).

[46] Flexi-holidays schedule refers to one where the employees agree to avail the holidays at some other days provided there is no diminution of existing benefits as a result of such arrangement (DOLE Department Advisory No. 2, Series of 2009, III[6]).

[47] DOLE Department Advisory No. 2, Series of 2009, III(2).

[48] DOLE Department Advisory No. 2, Series of 2009, III(3).

[49] G.R. No. 226371, August 8, 2022 [Notice, Second Division].

[50] *Id.*

[51] 561 Phil. 536, 550 (2007) [Per J. Tinga, Second Division].

[52] 788 Phil. 31, 41 (2016) [Per J. Perez, Third Division].

[53] *Id.* at 39.

[54] *Team Pacific Corporation v. Parente*, 877 Phil. 479, 496-497 (2020) [Per J. Leonen, Third Division].

[55] DOLE, Department Advisory No. 2, Series of 2009, I. Purpose. This Advisory is being issued to assist and guide employers and employees in the implementation of various flexible work arrangements as one of the coping

mechanisms and remedial measures in times of economic difficulties and national emergencies. Adoption of flexible work arrangements is considered as a better alternative than the outright termination of the services of the employees or the total closure of the establishment. Anchored on voluntary basis and conditions mutually acceptable to both the employers and the employees, it is recognized as beneficial in terms of reduction of business costs and helps in saving jobs while maintaining competitiveness and productivity in industries. (Emphasis supplied)

[56] DOLE, Department Advisory No. 2, Series of 2009, II. Concept. . . The effectivity and implementation of any of the flexible work arrangements provided herein shall be temporary in nature. (Emphasis supplied)

[57] DOLE Department Advisory No. 2, Series of 2009, III(2).

[58] DOLE Department Advisory No. 2, Series of 2009, V. Notice Requirement. Prior to its implementation, the employer shall notify the Department through the Regional Office which has jurisdiction over the workplace, of the adoption of any of the above flexible work arrangements. The notice shall be in the Report Form attached to this Advisory.

The Regional Office shall conduct an ocular visit to validate whether the adoption of the flexible work arrangements is in accordance with this issuance.

[59] DOLE, Department Advisory No. 2, Series of 2009, I. Purpose. This Advisory is being issued to assist and guide employers and employees in the implementation of various flexible work arrangements as one of the coping mechanisms and remedial measures in times of economic difficulties and national emergencies. Adoption of flexible work arrangements is considered as a better alternative than the outright termination of the services of the employees or the total closure of the establishment. (Emphasis supplied)

[60] 91 Phil. 608 (1952) [Per J. Labrador, En Banc].

[61] Id. at 610, citing *People v. O'Rourke*, 13 P. 2d. 989, 992, 124 Cal. App 752 (1932).

[62] CONST. (1987), art. XIII, sec. 3.

[63] CIVIL CODE, art. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

[64] LABOR CODE, art. 3. Declaration of basic policy. The State shall afford full protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race, or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

[65] See LABOR CODE, art. 4; see also CIVIL CODE, art. 1702.

[66] See *Coca-Cola Bottlers v. Iloilo Coca-Cola*, 844 Phil. 696, 720 (2018) [Per J. A. Reyes, Jr., Second Division].

[67] See LABOR CODE, art. 87.

[68] See *Alejandro v. Philippine Pizza, Inc.*, G.R. No. 226371, August 8, 2022 [Notice, Second Division].

[69] See *Philippine Graphic Arts, Inc. v. NLRC*, 248 Phil. 353, 356 (1988) [Per J. Gutierrez, Jr., Third Division].

[70] DOLE, Department Advisory No. 2, Series of 2009, II.

- [71] Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines as Amended.
- [72] 485 Phil. 248 (2004) [Per J. Ynares-Santiago, En Banc].
- [73] Id. at 485-486.
- [74] Id. at 287.
- [75] 494 Phil. 114 (2005) [Per J. Garcia, En Banc].
- [76] Id. at 120-121.
- [77] Concurring and Dissenting Opinion of SAJ Leonen, p. 7.
- [78] <https://filgit.com/philippine-inflation-calculator> (last accessed August 15, 2025).
- [79] Rollo, p. 41.
- [80] Menez v. Status Maritime Corporation, 839 Phil. 360, 369 (2018) [Per J. Caguioa, Second Division].
- [81] 561 Phil. 536 (2007) [Per J. Tinga, Second Division].
- [82] Id. at 551-552.
- [83] Panasonic Manufacturing Philippines Corporation v. Peckson, 850 Phil. 68, 79 (2019) [Per J. A. Reyes, Jr., Third Division].
- [84] Rollo, pp. 39-40.
- [85] Id.
- [86] LABOR CODE, art. 292 [277] (b).
- [87] Atienza v. Saluta, 853 Phil. 661 (2019) [Per J. J. Reyes, Jr., Second Division].
- [88] Noblado, et al. v. Alfonso, 773 Phil. 271, 286 (2015) [Per J. Peralta, Third Division].
- [89] LABOR CODE, art. 294 [279].
- [90] 952 Phil. 607 (2024) [Per J. J. Lopez, Second Division].
- [91] Id. at 631-632.
- [92] Barlolome v. Toyota Quezon Avenue, Inc., 952 Phil. 539, 557 (2024) [Per J. Lazaro-Javier, Second Division].
- [93] Rollo, p. 311.
- [94] Barlolome v. Toyota Quezon Avenue, Inc., 952 Phil. 539, 557 (2024) [Per J. Lazaro-Javier, Second Division].
- [95] Id. at 543.
- [96] LABOR CODE, art. 111 and CIVIL CODE, art. 2208.
- [97] Agapito v. Aeroplus Multi-Services, Inc., 922 Phil. 619, 634 (2022) [Per J. Lazaro-Javier, Third Division].
- [98] Nacar v. Gallery Frames, 716 Phil. 267, 283 (2013) [Per J. Peralta, En Banc].

CONCURRING OPINION

LEONEN, SAJ:

I concur in Justice Lazaro-Javier's ponencia. Petitioners were constructively dismissed due to the unilateral imposition of reduced workdays and worker rotation scheme on them. This was contrary to the requirement in Department of Labor and Employment (DOLE) Department Advisory No. 2, series of 2009, which expressly requires that flexible work arrangements be adopted "on a voluntary basis and conditions mutually acceptable to both the employer and the employees." In the absence of any proof that petitioners consented to the reduced workdays and rotation schedule implemented at respondent Fibertextile Manufacturing Corp.'s (Fibertextile) factory, the flexible work arrangement was illegal, resulting in an unconsented diminution in pay.

I likewise agree that failure to notify the DOLE Regional Office does not, by itself, render the arrangement invalid. However, such failure constitutes a procedural lapse, for which the employer may be held liable to the affected employees through the payment of nominal damages, in recognition of the violation of their right to due process.

I

DOLE Department Advisory No. 2, series of 2009 (the 2009 Advisory), then governing when petitioners filed their constructive dismissal complaint, fully states:

GUIDELINES ON THE ADOPTION OF FLEXIBLE WORK ARRANGEMENTS

I. Purpose

This Advisory is being issued to assist and guide employers and employees in the implementation of various flexible work arrangements as one of the coping mechanisms and remedial measures in times of economic difficulties and national emergencies. Adoption of flexible work arrangements is considered as a better alternative than the outright termination of the services of the employees or the total closure of the establishment. Anchored on voluntary basis and conditions mutually acceptable to both the employer and the employees, it is recognized as beneficial in terms of reduction of business costs and helps in saving jobs while maintaining competitiveness and productivity in industries.

II. Concept

The Department recognizes the desirability and practicality of flexible work arrangements that may be considered by employers after consultation with the employees, taking into account the adverse consequence of the situation on the performance and financial condition of the company.

Flexible work arrangements refer to alternative arrangements or schedules other than the traditional or standard work hours, workdays and workweek.

The effectivity and implementation of any of the flexible work arrangements provided herein shall be temporary in nature.

III. Flexible Work Arrangements

The following are the flexible work arrangements which may be considered, among others:

1. Compressed Workweek refers to one where the normal workweek is reduced to less than six (6) days but the total number of work-hours of 48 hours per week shall remain. The normal workday is increased to more than eight hours but not to exceed twelve hours, without corresponding overtime premium. The concept can be adjusted accordingly depending on the normal workweek of the company pursuant to the provisions of Department Advisory No. 02, series of 2004, dated 2 December 2004.
2. Reduction of Workdays refers to one where the normal workdays per week are reduced but should not last for more than six months.

3. Rotation of Workers - refers to one where the employees are rotated or alternately provided work within the workweek.
4. Forced Leave refers to one where the employees are required to go on leave for several days or weeks utilizing their leave credits if there are any.
5. Broken-time schedule refers to one where the work schedule is not continuous but the work-hours within the day or week remain.
6. Flexi-holidays schedule refers to one where the employees agree to avail the holidays at some other days provided there is no diminution of existing benefits as a result of such arrangement.

Under these flexible work arrangements, the employers and the employees are encouraged to explore alternative schemes under any agreement and company policy or practice in order to cushion and mitigate the effect of the loss of income of the employees.

IV. Administration of Flexible Work Arrangements

The parties to the flexible work schemes shall be primarily responsible for its administration. In case of differences of interpretation, the following guidelines shall be observed:

1. The difference shall be treated as grievances under the applicable grievance mechanism of the company.
2. If there is no grievance mechanism or if this mechanism is inadequate, the grievance shall be referred to the Regional Office which has jurisdiction over the workplace for appropriate conciliation.
3. To facilitate the resolution of grievances, employers are required to keep and maintain, as part of their records, the documentary requirements proving that the flexible work arrangement was voluntarily adopted.

V. Notice Requirement

Prior to its implementation, the employer shall notify the Department through the Regional Office which has jurisdiction over the workplace, of the adoption of any of the above flexible work arrangements. The notice shall be in the Report Form attached to this Advisory.

The Regional Office shall conduct an ocular visit to validate whether the adoption of the flexible work arrangements is in accordance with this issuance.

The 2009 Advisory was issued in the aftermath of the 2008 global financial crisis, aiming to help businesses manage the resulting economic challenges and national emergencies. It encouraged employers to adopt "flexible work arrangements" instead of outrightly terminating the services of their employees or altogether closing their establishments.

Under the 2009 Advisory, "flexible work arrangements" refer to "alternative arrangements or schedules other than the traditional or standard work hours, workdays and workweek." These include compressed workweeks, reduced workdays, rotation of workers, forced leave, broken-time schedule, and flexi-holiday schedules. Importantly, the 2009 Advisory provides that such arrangements must be "anchored on voluntary basis and conditions mutually acceptable to both the employer and the employees" and "after consultation with the employees." It likewise states that such flexible work arrangements shall only be temporary in nature.

The 2009 Advisory also requires employers to "notify the [DOLE] through the Regional Office which has jurisdiction over the workplace, of the adoption of any of stated flexible work arrangements" prior to its implementation.

From the foregoing, it is clear that a valid flexible work arrangement must be mutually agreed upon by the

employer and the employee. However, the facts in this case suggest that Fibertextile unilaterally imposed a reduced workdays and employee rotation scheme on petitioners. According to its own account, Fibertextile merely called its workers to a meeting to inform them of the temporary closure of its Valenzuela warehouse, causing the lack of materials for the workers to work on. It then issued Company Memo 81 outlining the work rotation schedule and, allegedly, posted the memorandum in a visible area in the factory for all the employees to read.[1] Beyond this bare allegation, Fibertextile has not presented any proof showing that petitioners consented to the flexible work arrangement.

It is true that employers have the management prerogative "to regulate, according to its own discretion and judgment, all aspects of employment, including . . . work assignments." [2] Nevertheless, it is equally true that all laws and regulations governing flexible work arrangements, both past and present, consistently underscore that such arrangements must be mutually agreed upon by the employer and the employee.

In its 1985 Explanatory Bulletin on the Effect of Reduction of Workdays on Wages/Living Allowances, the DOLE stated that a valid reduction of workdays, which allows the deduction of wages and living allowances corresponding to the days taken off from the workweek, "does not contemplate of situations where the employer has unilaterally reduced the number of working days[.]" Similarly, in DOLE Department Advisory No. 2, series of 2004,[3] a compressed workweek scheme shall be recognized only if the scheme was expressly and voluntarily agreed upon by majority of the covered employees.[4] Republic Act No. 11165, or the Telecommuting Act, also provides that telecommuting work arrangements may be offered to employees on a voluntary basis, under terms and conditions mutually agreed upon by the employer and employees.[5] Labor Advisory No. 9, series of 2020, or the Guidelines on the Implementation of Flexible Work Arrangements as Remedial Measure Due to the Ongoing Outbreak of Corona Virus Disease 2019 (COVID-19), is similarly worded to the 2009 Advisory, highlighting "the desirability and practicality of flexible work arrangements that may be considered by employers after consultation with the employees." [6]

The requirement for mutual consent stems from the fundamental nature of employment contracts, which are consensual and voluntary in character.[7] If an employment contract is perfected the moment an employer and employee mutually agree as to its terms, then a flexible work arrangement, which alters the original terms of employment, should likewise be perfected by voluntary and freely given consent. Employers cannot unilaterally impose a flexible work arrangement on employees, especially if its adoption reduces the employees' pay, even if temporarily. Otherwise, the flexible work arrangement is invalid, and the employer will be held liable for constructive dismissal.[8]

II

Given that flexible work arrangements are perfected by mere consent, it follows that their perfection and validity do not hinge on any specific formality or the prior performance of an act, such as notifying the DOLE of their adoption. While the 2009 Advisory uses the word "shall" in requiring notice to the DOLE, it does not expressly declare that failure to comply with this requirement renders the flexible work arrangement invalid.

In my view, failure to notify the DOLE constitutes a procedural defect that does not affect the validity of the flexible work arrangement. As long as the flexible work arrangement was mutually agreed upon by the employer and employees, it remains valid. However, the employer may be held liable for nominal damages for noncompliance with procedural due process.

The distinction between substantive and procedural compliance was also underscored in *Intec Cebu, Inc. v. Court of Appeals*. [9] In that case, the employer reduced the working days of its employees from six to as few as two to four days, citing a lack of job orders. However, the employees later learned that despite the reduction of their

workdays, the employer actually hired 188 more employees that performed the tasks that they were already doing. This led the employees to file a complaint for illegal dismissal against their employer.[10]

The employer in Intec countered that it reduced its workers' workdays to forestall business losses. It then issued a memorandum to inform the employees of the reduction of their workdays and submitted a copy of the memorandum to the DOLE five days after the memorandum's issuance.[11]

In Intec, the reduction of workdays happened in 2006, years before the DOLE issued the 2009 Advisory on the Guidelines on the Adoption of Flexible Work Arrangements. Therefore, to rule on whether the employer implemented the reduction of workdays scheme in good faith, this Court used Article 283[12] of the Labor Code on retrenchment, which then provided that the DOLE should be notified at least one month prior to the intended date of retrenchment. Considering that the employer in Intec notified the DOLE five days after it issued the memorandum adopting the reduction of workdays scheme, this Court saw this as a sign of good faith on the part of the employer.[13]

Nevertheless, despite the finding that the employer timely notified the DOLE of the reduction of workdays of its employees, this Court found that the evidence submitted by the employer did not prove that it was suffering from financial losses. It thus held that the employer in Intec committed illegal reduction of work hours and the employees were deemed constructively dismissed.[14]

Intec establishes that Article 283 of the Labor Code (now Article 298) on retrenchment can be applied suppletorily in cases where flexible work arrangements are adopted to avert business losses. The difference lies in the nature of the employment relationship: retrenchment to prevent losses severs the employer-employee relationship, while flexible work arrangements temporarily adopted to cope with economic difficulties preserve the relationship. For this reason, jurisprudence interpreting Article 298 can likewise be applied suppletorily in cases of flexible work arrangements.

One established jurisprudential principle is that the notice requirement in Article 298 of the Labor Code forms part of procedural due process, and its non-observance only renders the employer liable for nominal damages.[15] The reason is that invalidating a dismissal solely on procedural grounds would effectively undermine the employer's right to terminate employment for valid cause in the first place.[16] Nonetheless, employers cannot be allowed to disregard procedural safeguards for effecting dismissal.[17] When it is clear that proper procedure was not followed, this Court has held that the employer must still be held accountable, and the imposition of nominal damages is the appropriate sanction. In the 2004 case of *Agabon v. National Labor Relations Commission*,[18] this Court set the amount of nominal damages to PHP 30,000.00 for procedurally defective dismissals. The amount remains pegged to PHP 30,000.00 as of this year.[19]

Considering that more than 20 years have passed since *Agabon* was promulgated, the amount of nominal damages should be adjusted to reflect present-day economic conditions in order to effectively deter non-compliance with the notice rule. Given that the purchasing power of the peso has depreciated by 126.66% from 2004 up to 2025,[20] it is proposed that the nominal damages payable by an employer who fails to notify the DOLE of the adoption of a flexible work arrangement be set at PHP 60,000.00. While the amount set in *Agabon* pertains to cases involving termination of employment, it is submitted that the same amount be applied in cases of flexible work arrangements, especially as such arrangements are increasingly being utilized due to technological advancements and evolving business models.

All told, failure to notify the DOLE of the adoption of a flexible work arrangement does not invalidate the flexible work arrangement. However, the employer shall be liable for PHP 60,000 to the employees as nominal damages.

III

As previously discussed, the flexible work arrangement in this case was adopted without petitioners' consent. This resulted in the diminution in their pay, which is tantamount to constructive dismissal.[21] Therefore, respondent Fibertextile should reinstate petitioners to their former positions without loss of seniority rights and other privileges.[22] Furthermore, respondent is liable to pay petitioners backwages, inclusive of allowances and all other benefits accruing to them from the time of their dismissal until their actual reinstatement.[23]

Finally, for failure to notify the DOLE of its adoption of the flexible work arrangement, respondent shall pay each of the petitioners PHP 60,000.00 as nominal damages.

All the amounts should earn 6% legal interest per annum from the finality of the Decision until full payment.[24]

IV

Flexible work arrangements and remote work have become widely accepted as the new normal, particularly in the aftermath of the COVID-19 pandemic. These arrangements offer several advantages. For employees, they provide greater work-life balance, reduced commute time, and enhanced productivity, among others.[25] Employers, in turn, benefit from lower operational costs, access to a broader talent pool, and improved employee satisfaction and retention.[26] These arrangements also enhance organizational resilience by enabling businesses continuity during economic difficulties and national emergencies.

Nonetheless, the adoption of flexible work arrangements must not be done unilaterally or without proper compliance with legal requirements. Even if employees consent, employers must still notify the DOLE of the adoption of such arrangements. Failure to do so constitutes a procedural violation and exposes the employer to potential liability for damages.

ACCORDINGLY, I vote to GRANT the Petition and REVERSE and SET ASIDE the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 165065. Respondent Fibertextile Manufacturing Corp. should be held liable for the constructive dismissal of petitioners Andro T. Bacani, Ronald F. Cabrera, Jayson D. Delara, Raule R. Arguel, Crizaldy N. Waje, Ariel Y. Sua, and Charlie R. Sebolino. Respondent should be ORDERED to:

- REINSTATE petitioners without loss of seniority rights and other privileges;
- PAY petitioners their backwages, inclusive of allowances, and all other benefits accruing to them from the time of their dismissal until their actual reinstatement; and,
- PAY each of the petitioners PHP 60,000.00 as nominal damages.

All the monetary awards should earn 6% legal interest per annum from the finality of the Decision until full payment.

[1] Rollo, pp. 89-90, Comment/Opposition.

[2] *Intec Cebu, Inc. v. Court of Appeals*, 788 Phil. 31, 38 (2016) [Per J. Perez, Third Division].

[3] *Implementation of Compressed Workweek Schemes*.

[4] A DOLE Department Advisory No. 2, series of 2004, Specific Guideline no. 1.

[5] Republic Act No. 11165, sec. 4 provides:

SECTION 4. Telecommuting Program. — An employer in the private sector may offer a telecommuting program to its employees on a voluntary basis, and upon such terms and conditions as they may mutually agree

upon: Provided, That such terms and conditions shall not be less than the minimum labor standards set by law, and shall include compensable work hours, minimum number of work hours, overtime, rest days, and entitlement to leave benefits. In all cases, the employer shall provide the telecommuting employee with relevant written information in order to adequately apprise the individual of the terms and conditions of the telecommuting program, and the responsibilities of the employee.

[6] Labor Advisory No. 9, series of 2020, Purpose. (Emphasis supplied)

[7] *Philippines Today Inc. v. NLRC*, 334 Phil. 854, 877 (1997) [Per J. Panganiban, Third Division].

[8] See *International Hardware, Inc. v. NLRC*, 257 Phil. 261, 265-266 (1989) [Per J. Gancayco, First Division].

[9] 788 Phil. 31 (2016) [Per J. Perez, Third Division].

[10] *Id.* at 35.

[11] *Id.*

[12] Now LABOR CODE, Art. 298, which provides:

ARTICLE 298. [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.

[13] *Intec Cebu, Inc. v. Court of Appeals*, 788 Phil. 31, 38-39 (2016) [Per J. Perez, Third Division].

[14] *Id.* at 39-41.

[15] See *Agabon v. National Labor Relations Commission*, 485 Phil. 248, 285 (2004) [Per J. Ynares-Santiago, En Banc].

[16] See *Agabon v. National Labor Relations Commission*, 485 Phil. 248, 287 (2004) [Per J. Ynares-Santiago, En Banc].

[17] *Id.* at 287-288.

[18] 485 Phil. 248, 287 (2004) [Per J. Ynares-Santiago, En Banc].

[19] See *Villarico v. D.M. Consunji, Inc.*, G.R. No. 255602, March 3, 2025 [Per J. J.Y. Lopez, Special Third Division].

[20] Philippine Inflation Calculator, available at <https://filgit.com/philippine-inflation-calculator> (last accessed on August 3, 2025).

[21] See *International Hardware, Inc. v. NLRC*, 257 Phil. 261 (1989) [Per J. Gancayco, First Division].

[22] LABOR CODE, Art. 294 provides:

ART. 294. [279] Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[23] LABOR CODE, Art. 294 provides:

ART. 294. [279] Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[24] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013) [Per J. Peralta, En Banc].

[25] JASON FRIED & DAVID HEINEMEIER HANSSON, *REMOTE: OFFICE NOT REQUIRED* (2013).

[26] *Id.*

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I thank the ponente for considering my views: (a) that the notice required under Department Advisory No. 2, s. 2009 of the Department of Labor and Employment (DOLE) (DOLE DA No. 2, s. 2009) is merely a procedural requirement which does not affect the validity of a flexible work arrangement but simply makes the employer liable for nominal damages in case of non-compliance; and (b) that financial loss is not necessary to justify a flexible work arrangement under the said advisory, considering that it recognizes "economic difficulties or national emergencies," which do not equate to financial loss, as valid grounds for implementing flexible work arrangements.

To reiterate my view and add to the discussion in the ponencia, I submit that the notice requirement under DOLE DA No. 2, s. 2009—as well as under other advisories^[1] on flexible and alternative work arrangements—is a procedural mechanism designed to inform DOLE that a company will adopt or has adopted a flexible or alternative work arrangement. Upon receipt of such notice, DOLE is expected to schedule an ocular visit during which it will have the opportunity to verify whether the flexible or alternative work arrangement complies with the substantive requirements under DOLE DA No. 2, s. 2009, and other applicable labor laws and rules. This may include determining whether there are legitimate reasons for adopting the arrangement, whether the maximum hours of work per week under the Labor Code are observed, and whether the disclosed number of affected employees is accurate; ultimately, whether the implementation of the arrangement is valid and justified.

Regarding the justification for implementing flexible or alternative work arrangements, it should be evaluated based on the stated purpose or policy in the relevant advisory. DOLE DA No. 2, s. 2009, recognizes "economic difficulties and national emergencies,"^[2] which may or may not involve financial loss, as valid grounds for adopting such arrangements. Lack of raw materials—like in this case—can (to borrow the words of Chief Justice Alexander G. Gesmundo during the deliberations) constitute a reasonably imminent or actual economic difficulty because it would hinder normal operations and prevent meeting current demands. In any case, regardless of the purpose or policy outlined in the advisory, flexible or alternative work arrangements must always be implemented in good faith and for legitimate reasons.

Now, on the issue of constructive dismissal, I subscribe to the observations of Senior Associate Justice Marvic M.V.F. Leonen that respondent Fibertextile Manufacturing Corp. (FMC) failed to discharge its burden of proving that a consultative meeting was held with the affected FMC employees and a resulting agreement was reached prior to the issuance of Company Memo No. 81.[3] While both the National Labor Relations Commission (NLRC) and the Court of Appeals (CA) found that the flexible work arrangements were mutually agreed upon, the records of the case reveal that such finding is merely based on FMC's bare allegations.[4]

As I had mentioned during the deliberations, DOLE DA No. 2, s. 2009 requires that the flexible work arrangements be "anchored on [a] voluntary basis and conditions mutually acceptable to both the employer and the employee." [5] The advisory also requires employers to keep and maintain, as part of their records, documents proving that the flexible work arrangement was voluntarily accepted.[6] Aside from the clear mandate of DOLE DA No. 2, s. 2009, the principle of non-diminution of benefits—which prohibits the unilateral withdrawal or diminution of benefits already enjoyed by employees[7]—also makes the express consent of the affected employees indispensable. Therefore, without such an agreement, the diminution of benefits resulting from the implementation of the flexible work arrangement shall amount to constructive dismissal.

Here, FMC implemented a work rotation schedule, where each worker is allotted at least two working days in a week.[8] This resulted in the reduction of the affected employees' salaries. Thus, it was incumbent upon FMC to prove that the affected employees voluntarily agreed to such arrangement and that the resulting reduction in their salaries and benefits was a result of this agreement. FMC's insistence on its unsubstantiated claims that a meeting was held between the management and production personnel and that they arrived at a unanimous consensus that the implementation of the work rotation schedule is mutually acceptable,[9] and that they reported to work and were paid according to their work schedules,[10] is simply untenable.

Consequently, the flexible work arrangement implemented by FMC, which resulted in the unilateral diminution of benefits of its affected employees, is invalid. I therefore agree with the conclusion reached in the ponencia that FMC is liable for constructive dismissal.

Nevertheless, I maintain my reservations on two findings:

(a) That FMC failed to sufficiently prove lack of access to raw materials

The ponencia found the evidence presented by FMC to prove lack of access to raw materials wanting. According to the ponencia, verified and sworn pleadings from the ejectment and grave coercion cases "do not contain incontestable facts upon which the reduction of workdays can be justified, but mere allegations that still need to be proved during trial." [11] The ponencia further held that "lack of raw materials does not necessarily mean that FMC was suffering from economic difficulties of such gravity which rendered it incapable of sustaining its normal operations, especially since, as the circumstances later on proved, it was able to shortly resolve its dilemma." [12] Thus, the ponencia concluded that FMC was unable to satisfy the requisite—that it was suffering from actual or reasonable imminent economic difficulty.

Respectfully, I disagree.

Technical rules of evidence are not strictly binding in labor cases.[13] As a result, affidavits may be sufficient to establish substantial evidence in such cases.[14] The pleadings in the ejectment and grave coercion cases submitted by FMC should be treated similarly and given credence, especially since they were verified or sworn statements submitted in a court of law and the prosecutorial office. Significantly, both the NLRC and the CA found that these pleadings establish that FMC officers and employees were prevented from entering the premises where FMC's warehouse is located.

As held by the NLRC—

[FMC] submitted various documents such as the court pleadings filed in relation to the civil case for ejectment over the property where [FMC's] administrative office/warehouse is located. Respondents also submitted the criminal Complaint-Affidavit they filed against certain individuals, George Yu and Robert Que, stating that the latter commanded several security personnel and welded the gates of the facility in Valenzuela, effectively depriving [FMC] of access to their property. Finally, [FMC] submitted evidence of additional orders for raw materials from China to prove that it took measures to resume normal operations as soon as possible while the warehouse is beyond the company's access. We do not believe that all these litigations and waybill receipts are mere fabrications of [FMC] in order to justify the implementation of the rotation plan.[15]

Similarly, the CA held—

The verified complaint, answer and complaint-affidavit sufficiently established that [FMC] and its officers and employees were prevented from accessing their office and warehouse that housed their raw materials for production, with the office and warehouse located in Valenzuela. Since [FMC] was unable to retrieve the raw materials in its Valenzuela warehouse, this adversely affected the production activities in its Bulacan factory. Without raw materials, the production personnel had nothing to work on. As a result, there was an excess of production personnel compared to the available work on hand. To continue normal operations would understandably result in loss on the part of [FMC] as it would be forced to continue paying employees who had no work to perform.[16]

As pointed out by the NLRC, the fact that FMC made unscheduled orders for new raw materials also lends credence to the allegations contained in the pleadings that FMC lacked access to its raw materials in the warehouse. The new materials started arriving between December 2018 and January 2019.[17] The work rotation schedule was then gradually removed as the raw materials arrived, and the normal work schedule resumed in January 2019.[18]

While FMC was eventually able to remedy its situation, the fact remains that FMC had no raw materials to work with for half of the year. Without the raw materials, production was expected to halt or be significantly affected. FMC could not have maintained normal operations without sustaining losses—situation that DOLE DA No. 2, s. 2009 aimed to address when it recognized flexible work arrangements as "coping mechanisms and remedial measures in times of economic difficulties." FMC does not need to wait for losses due to halted production, as a reasonably imminent economic difficulty is enough to justify resort to flexible work arrangements.

(b) That FMC barred petitioners Andro T. Bacani, et al. (Bacani, et al.) from work on July 27, 2018

In holding FMC liable for constructive dismissal, the ponencia likewise held that "the facts show that [Bacani, et al.] were shunned from work on July 27, 2018 after, and suggestively, because, they sought assistance [from DOLE] regarding the implementation of such flexible work arrangement." [19]

I take exception to this finding, as it is unsupported by evidence, and no such finding was made by the labor tribunals or the CA, since their discussions focused on FMC's non-compliance with the notice requirement under DOLE DA No. 2, s. 2009. In fact, the NLRC even dismissed Bacani, et al.'s allegations—

Anent Complainant's claim that they were verbally dismissed by Respondents by telling them to resign or to apply for a new employment, We found no evidence to sustain the allegation. The acts of Complainant in reporting for work and receiving their salary even after the alleged incident when they were told to resign clearly indicate that they were not constructively dismissed based only on these alleged remarks. To Us, these remarks were not proven and remained as bare and unsubstantiated allegations.[20]

Indeed, records show that the accusation was based solely on petitioners Andro T. Bacani and Raul Arguel's joint

sworn statement,[21] which was denied by respondent Anita Que in her affidavit.[22] Both affidavits are uncorroborated. Therefore, the circumstances remain disputed. Be it as it may, Bacani, et al. were already constructively dismissed when FMC unilaterally implemented the flexible work arrangements on July 16, 2018 through Company Memo No. 81. Thus, it was no longer necessary to rule on whether FMC barred Bacani, et al. from the work.

In all, I agree with the conclusion that FMC constructively dismissed Bacani, et al., and I concur in the result on the basis of the reasons explained above.

[1] DOLE Department Advisory No. 02, s. 2004 (Implementation of Compressed Work Week Schemes), Department Advisory No. 02, s. 2009 (Guidelines on the Adoption of Flexible Work Arrangements), Department Advisory No. 04, s. 2010 (Guidelines on the Implementation of Flexible Work Arrangements and the Exemption from the Nightwork Prohibition for Women Employees in the Business Process Outsourcing Industry), and Labor Advisory No. 9, s. 2020 (Guidelines on the Implementation of Flexible Work Arrangements as Remedial Measure due to the Ongoing Outbreak of COVID-19).

[2] Emphasis supplied.

[3] See SAJ Leonen, Concurring Opinion, p. 4.

[4] Rollo, pp. 52-53, CA Decision dated April 28, 2023 and NLRC Decision dated September 27, 2019, pp. 11-12 (attached to rollo, no rollo pagination).

[5] DOLE Department Advisory No. 2, s. 2009, Part I.

[6] Id. at Part IV.

[7] TSPIC Corporation v. TSPIC Employees Union, 568 Phil. 774, 790 (2008) [Per J. Velasco, Jr., Second Division].

[8] Ponencia, p. 4.

[9] Comment/Opposition dated October 28, 2024, pp. 22-23 (attached to rollo, no rollo pagination).

[10] Id. at 29.

[11] Ponencia, p. 23.

[12] Id. at 24.

[13] LABOR CODE, art. 227.

[14] Punongbayan and Araullo v. Lepon, G.R. No. 174115, 772 Phil. 311, 323 (2015) [Per J. Jardeleza, Third Division].

[15] NLRC Decision dated September 27, 2019, pp. 9-10 (attached to rollo, no rollo pagination).

[16] Rollo, pp. 51-52.

[17] Id. at 52. See also Affidavit of Merlita Morales dated November 14, 2018, p. 1 (attached to rollo, no rollo pagination) and the waybill receipts attached to the Appeal Memorandum dated July 19, 2019 (Annex D to D4 and H to H7) (attached to rollo, no rollo pagination).

[18] Rollo, p. 52.

[19] Ponencia, p. 25.

[20] NLRC Decision dated September 27, 2019, pp. 11-12 (attached to rollo, no rollo pagination).

[21] Titled "Magkakasamang Sinumpaang Salaysay" (attached to rollo, no rollo pagination).

[22] Dated December 12, 2018 (attached to rollo, no rollo pagination).

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