SUPREME COURT
THIRD DIVISION

ALFREDO B. LUCERO,
***Petitioner*,**

-versus-

G.R. No. 126706
July 27, 1998

NATIONAL LABOR RELATIONS COMMISSION and ATLANTIC GULF AND PACIFIC CO. OF MANILA INC.,
***Respondents*.**
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D E C I S I O N

ROMERO, *J.*:

On November 11, 1981, petitioner Alfredo B. Lucero was employed as cable splicer and rigger by respondent Atlantic Gulf and Pacific Co. of Manila, Inc. (AG & P), a company engaged in the construction business. On September 17, 1991, petitioner was temporarily laid-off from the service, along with other managerial and rank-and-file employees, pursuant to Presidential Directive No. 0191 issued on July 25, 1991, instructing the Executive Vice President of AG & P to implement measures to avert further economic reversal which included, among other things, the indefinite suspension of management privileges, hiring and overtime freeze in certain areas,

stricter control of representation and entertainment expenses, temporary lay-off, and temporary suspension of marginal operations.

Prior to the implementation of the said directive, AG & P United Rank-and-File Association (URFA), the recognized collective bargaining representative for all regular rank-and-file workers, in an effort to forestall the enforcement thereof, filed a notice of strike with the National Conciliation and Mediation Board. Thereupon, AG & P and URFA agreed to submit the legality of the lay-off undertaken by the former to voluntary arbitration. In a decision dated January 7, 1992, voluntary arbitrator Romeo B. Batino upheld the right of petitioner to "exercise its management prerogative to temporarily lay off its employees owing to the unfavorable business climate being experienced by the company consequent to the financial reverses it suffered from 1987 to 1991."[1]

When the first of a series of lay-off was carried out sometime in August 1991, AG & P Supervisor's Union, an unrecognized union seeking to represent the supervisory personnel, staged a strike in all operating divisions of AG & P. This action was supported by another strike effected by Lakas Ng Manggagawa — National Federation of Labor chapter, which sought recognition as the sole bargaining representative of "regular project workers" detailed at AG & P's fabrication yard in Bauan, Batangas.

On September 7, 1991, through the intervention of Congressman Hernando B Perez, the dispute between the parties was settled and the strike lifted upon the forging of an Agreement, the salient features of which read:

> "a. Payment of financial assistance to all temporarily laid-off or to be laid-off employees equivalent to two (2) months pay, payable on 15 September 1991 and 10 December 1991, which financial assistance shall be, chargeable to the employees' separation pay or from cash benefit due them, such as retirement pay, if any;
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> b. Insofar as the laid-off or to be laid-off members of the Lakas ng Manggagawa are concerned, who are not recalled back to work within six months, they shall have the option

to decline payment of separation pay and to extend their temporary lay-off status beyond the six months period with job opening becomes available and their services are needed.

c. Hiring preference to laid-off workers in case there are job openings whenever they meet the qualifications."[2]

On September 27, 1991, petitioner received a letter from AG & P advising him of his temporary lay-off from the service. He was likewise instructed to appear before Mr. Sammy O. De Guzman of the Finance Department to collect the financial assistance equivalent to two months basic pay.

In a complaint dated September 8, 1992, for unfair labor practice and illegal dismissal filed by petitioner against AG & P, Labor Arbiter Potenciano S. Cañizares, Jr. tendered a decision dated January 14, 1993, the dispositive portion of which reads thus:

"WHEREFORE, the respondent is hereby ordered to reinstate the complainant in his previous job and to pay him backpay fixed for six months without qualification or deductions for earning elsewhere during his dismissal after the aforementioned 6-months temporary lay-off, in the amount of P19,032.00.

The aspect of reinstatement either in the job or payroll at the option of the employer being immediately executory pursuant to Article 223 of the Labor Code, the respondent is hereby directed to reinstate the complainant upon presenting himself for work by virtue of this Decision.

The respondent is further ordered to pay the complainant his financial assistance equivalent to two months basic pay which is in the amount of P6,344.00.

The claim for unfair labor practice is hereby Dismissed for lack of evidence.

SO ORDERED."[3]

On appeal, the aforesaid decision was reversed by the National Labor Relations Commission (NLRC) for lack of merit in its resolution rendered on March 28, 1996. His motion for reconsideration, having been denied on August 30, 1996, petitioner filed the instant petition for *certiorari.*

Petitioner faults the NLRC when it departed from the ruling rendered in Revidad vs. NLRC,[4] involving, as it does, identical factual circumstances as in the instant case, where AG & P was similarly ordered to pay petitioners therein their separation pay equivalent to one month pay or at least one-half (½) month pay for every year of service, whichever is higher.

Respondent, in its position paper, asserted that petitioner's employment was terminated not by the unilateral and deliberate act of the former but by operation of law, his temporary lay-off having lasted more than six months. It further claimed offering the latter the payment of his separation pay which to date has remained uncollected.

It must be noted that the decision of the NLRC failed to accord the payment of separation pay to petitioner by reason of his dismissal due to a valid retrenchment[5] undertaken by respondent AG & P. For retrenchment to be valid, Article 283 of the Labor Code, as amended, outlines the following requisites, to wit: "(1) The retrenchment is necessary to prevent losses and the same is proven; (2) Written notice to the employees and to the DOLE at least one month prior to the intended date thereof, and (3) Payment of separation pay equivalent to one month or at least ½ month pay for every year of service, whichever is higher."[6] In Sebuguero vs. NLRC,[7] the Court held that the temporary lay-off wherein the employees cease to work should not last longer than six months; after said period, the employees should either be recalled to work or permanently retrenched following the requirements of the law. In the case at bar, the losses registered in 1987, 1988, 1989, 1990 as well as the projected net loss for 1991 Cannot be viewed as inconsequential. Thus, we are of the opinion that petitioner's dismissal was for an authorized cause. Petitioner, however, pursuant to the September 7, 1991 agreement, must be granted his separation pay.

WHEREFORE, in view of the foregoing, the instant Petition is **DISMISSED** and the Decision of the National Labor Relations Commission dated March 28, 1996 is **AFFIRMED** with the **MODIFICATION** that respondent is hereby ordered to pay petitioner his separation pay equivalent to one month pay or at least one-half (½) month pay for every year of service, whichever is higher. The financial assistance which petitioner may have received shall be deducted from the separation pay to which he is entitled. No costs.

SO ORDERED.

Narvasa, *C.J.*, Kapunan and Purisima, *JJ.*, concur.

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[1] Rollo, p. 14.
[2] Ibid., p. 25.
[3] Ibid., p. 36.
[4] 245 SCRA 356 (1995).
[5] ART. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least 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 (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.
[6] Trendline Employees Association — Southern Philippines Federation of Labor vs. NLRC, 272 SCRA 172 (1997).
[7] 248 SCRA 532 (1995).
