Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PASIG AGRICULTURAL DEVELOPMENT AND INDUSTRIAL SUPPLY CORPORATION and CELESTINO E. DAMIAN, Petitioners,	**G.R. No. 197852**
	Present:
	VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.*
- *versus* -	
WILSON NIEVAREZ, ALBERTO HALINA, GLORY VIC NUEVO, RICKY TORRES and CORNELIO BALLE, Respondents.	**Promulgated:** October 19, 2015

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DECISION

PERALTA, *J.*:

For this Court's resolution is a petition for review on *certiorari* dated August 10, 2011 of petitioners Pasig Agricultural Development and Industrial Supply Corporation (*PADISCOR*) and Celestino E. Damian assailing the Decision[1] dated January 25, 2011 and Resolution[2] dated July 21, 2011 of the Court of Appeals (*CA*), which affirmed with modification the Resolutions dated August 24, 2007 and October 31, 2007 of the National Labor Relations Commission (*NLRC*) and declared that the temporary suspension of respondents Wilson Nievarez, Alberto Halina, Glory Vic Nuevo, Ricky Torres and Cornelio Balle as illegal.

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1 Penned by Associate Justice Noel G. Tijam, with Associate Justices Marlene Gonzales-Sison and Danton Q. Bueser, concurring; *rollo* pp. 30-39.

2 *Id.* at 26-28.

The antecedents follow:

Petitioner Pasig Agricultural Development and Industrial Supply Corporation (*PADISCOR*) is a domestic corporation organized and existing under the Philippine laws. Petitioner Celestino E. Damian is the general manager of PADISCOR.[3]

Respondents Wilson Nievarez, Alberto Halina, Glory Vic Nuevo, Ricky Torres and Cornelio Balle are regular employees of PADISCOR. They were hired as machinist, tool keeper/timer, helper, welder, and maintenance worker with a daily wage of ₱350.00.[4]

On June 17, 2006, PADISCOR, through its administrative officer, sent notices to Nievarez, Torres and Nuevo informing them that they were temporarily laid off from employment for a period of six (6) months from July 30, 2006 to January 30, 2007. It cited that it can no longer pay their wages and other benefits due to financial losses and lack of capital. It also mentioned other factors which further burdened its efforts, such as undesirable personnel misconduct like unauthorized absences, habitual tardiness, negligence, dishonesty and others.[5]

In a Memorandum dated June 24, 2006, PADISCOR required Nievarez to submit a written explanation why a disciplinary action should not be imposed against him for his unjustified refusal to perform assigned tasks.[6] The following day, June 25, 2006, Nievarez submitted his explanation expounding on his need to receive a memorandum before he be assigned to a task as protection from unfounded accusations, and demanded an additional wage.[7]

PADISCOR dismissed the explanations and demands of Nievarez for being ridiculous and baseless. PADISCOR denied that Nievarez was transferred to another place of work or was demoted to a lesser job category. It also rejected his presumption that he was promoted. Hence, it suspended Nievarez from work for fifteen (15) days for insubordination.

On September 5, 2006, Balle and Halina received notices similar from the other respondents informing them of their temporary lay-off from employment from October 7, 2006 to April 6, 2007.[8]

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3 *Id.* at 7.
4 *Id.* at 31.
5 *Id.* at 61-63.
6 CA Decision p. 2, *id.* at 31.
7 *Rollo,* p. 69.
8 *Id.* at 66-67.

Consequently, respondents filed complaints for illegal suspension, illegal lay-off, non-payment of service incentive leave and paternity leave, damages and attorney's fees against PADISCOR and Damian.[9]

For their part, respondents claimed that as regular employees of PADISCOR, they are entitled to security of tenure and cannot be laid off without just cause.[10] They also averred that the temporary lay-off by PADISCOR is equivalent to illegal dismissal.[11] Respondents alleged that their service incentive leave pay were not paid, while Nievarez and Nuevo further claimed that their paternity benefits were also not paid. They alleged that assuming that PADISCOR was suffering financial losses, they were still entitled to separation pay.[12]

Petitioners, in their position paper, asserted that the suspension of Nievarez was valid since he was guilty of insubordination and misconduct which was a repetition of a previous offense.[13] They further alleged that Nievarez made ridiculous conditions such as written memorandum defining his duties, and a promotion or a raise in wage before he completes his assigned task.[14]

PADISCOR maintained that the six (6) months temporary lay-off of respondents was valid due to economic reasons.[15] It also alleged that it gave one-month prior notice to respondents regarding the temporary retrenchment and filed Establishment Termination Reports[16] on June 20, 2006 and September 5, 2006 with the Department of Labor and Employment (*DOLE*). It averred that there was no dismissal since the lay-off was merely temporary, thus, respondents are not entitled to separation pay.[17]

PADISCOR alleged that the claim for paternity benefit by Nievarez and Nuevo has already prescribed since the youngest son of Nievarez was born in 1993 while Nuevo's youngest child was born in 2001. There was no record that they claimed or filed for the said benefit.[18]

In the Decision[19]dated November 30, 2006, the Labor Arbiter (*LA*) dismissed the complaint for illegal lay-off and illegal suspension for lack of

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9 *Id.* at 31.
10 *Id.* at 73.
11 *Id.*
12 *Id.*
13 *Id.* at 73-74.
14 *Id.* at 74.
15 *Id.*
16 *Id.* at 64-65.
17 Supra note 14.
18 *Id.*
19 Penned by Labor Arbiter Pablo C. Espiritu, Jr.; *id.* at 71-78.

merit but awarded the payment of service incentive leave in favor of respondents. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered ordering [petitioners] to pay [respondents]'s service incentive leave for the last three (3) years in the following amounts:
>
> | | NAME | SERVICE INCENTIVE LEAVE PAY 2003 TO 2005 |
> |---|---|---|
> | 1. | WILSON NIEVAREZ | ₱3,875.00 |
> | 2. | JOSEPH NUEVO | ₱3,875.00 |
> | 3. | GLORY VIC NUEVO | ₱3,875.00 |
> | 4. | RICKY TORRES | ₱3,875.00 |
> | 5. | CORNELIO BALLE | ₱3,875.00 |
> | 6. | ALBERTO HALINA | ₱3,875.00 |
>
> The complaint for illegal lay-off, illegal suspension, and other monetary claims are hereby DISMISSED for lack of merit.
>
> SO ORDERED.[20]

The LA held that the power to instill discipline in the workplace is part of petitioner PADISCOR's management prerogative.[21] The LA also held that respondents were merely temporarily laid-off for a period of six (6) months and that such was valid since the corresponding notices to the respondents and to the DOLE were duly complied with by the petitioners.[22] The money claims of respondents were denied but they were awarded payment of service incentive leaves for the years 2003 to 2005.[23]

Respondents filed a memorandum of partial appeal, to which the NLRC, in its Resolution[24] dated August 24, 2007, ruled against them. The dispositive portion of the resolution reads:

> ACCORDINGLY, premises considered, the decision appealed from is AFFIRMED and the instant partial appeal DISMISSED for lack of merit.
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> SO ORDERED.[25]

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20 *Id.* at 78.
21 *Id.* at 75.
22 *Id.* at 76-77.
23 *Id.* at 77.
24 Penned by Commissioner Tito F. Genilo, with Commissioners Lourdes C. Javier and Gregorio O. Bilog, III, concurring; *id.* at 94-99.
25 *Rollo,* p. 99.

The NLRC rejected the respondents' allegations that they were pre-selected among employees because of union formation due to absence of substantial evidence to support such claim.[26] The NLRC held that the law has imposed a limitation of six (6) months to temporary layoff such that exceeding that period will be treated as constructive dismissal.[27] Thus, absent any evidence to the contrary, the NLRC agreed with the findings of the LA that the temporary lay-off of respondents was valid.

In a Resolution[28] dated October 31, 2007, the NLRC dismissed the Motion for Reconsideration filed by the respondents for not finding compelling reason to modify its resolution.

Respondents filed before the CA a petition for *certiorari* under Rule 65. The CA ruled that the LA and the NLRC committed grave abuse of discretion in sustaining respondents' temporary suspension from work. The *fallo* of the decision states:

> WHEREFORE, the petition is partly Granted. The assailed Resolutions, dated August 24, 2007 and October 31, 2007 of the Public Respondent National Labor Relations Commission, in NLRC CA No. 051705-07 are Affirmed with Modification in that [Respondents'] temporary suspension from services are declared illegal.
>
> This case is remanded to the Labor Arbiter [*a*] *quo* for the computation of [Respondents'] backwages due to said temporary lay-off of service.
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> SO ORDERED.[29]

The CA held that petitioners failed to prove its claim of financial losses through convincing evidence like financial statements. Thus, the said temporary lay-off of respondents was declared as illegal.[30]

Upon the denial by the CA of their Motion for Reconsideration, petitioners filed the instant petition and raised the sole issue for the resolution of this Court:

> IT IS RESPECTFULLY SUBMITTED THAT THE HONORABLE COURT OF APPEALS ERRED IN ISSUING THE DECISION DATED 25 JANUARY 2011 AND THE RESOLUTION DATED 21 JULY 2011, IN HOLDING THAT PETITIONERS' EXERCISE OF ITS MANAGEMENT PREROGATIVE TO TEMPORARILY LAY-OFF EMPLOYEES IS ILLEGAL IN VIEW OF ITS FAILURE TO PRESENT

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26 *Id.* at 97.
27 *Id.* at 98.
28 *Id.* at 102-103.
29 *Id*. at 38-39.
30 *Id.* at 38. (Emphasis omitted).

FINANCIAL STATEMENTS TO EVIDENCE ITS FINANCIAL LOSSES, CONTRARY TO PREVAILING JURISPRUDENCE THAT PRESENTATION OF FINANCIAL STATEMENTS IS NOT A REQUISITE FOR A VALID TEMPORARY LAY-OFF.[31]

This Court finds the present petition without merit.

Petitioners alleged that the CA gravely erred in ruling that the proof of losses is a condition *sine qua non* to a valid temporary lay-off. They insisted that the respondents were temporarily laid off for a period of six (6) months in accordance with Article 286[32] (now Article 301) of the Labor Code; thus, the requirements for retrenchment laid down in Article 283[33] (now Article 298) cannot be applied in the present case. Furthermore, petitioners averred that they acted in good faith when they implemented the temporary lay-off of respondents and that it was due to economic and non-economic reasons and not because of anti-unionism acts.

Lay-off is defined as the severance of employment, through no fault of and without prejudice to the employee, resorted to by management during the periods of business recession, industrial depression, or seasonal fluctuations, or during lulls caused by lack of orders, shortage of materials, conversion of the plant to a new production program or the introduction of new methods or more efficient machinery, or of automation. However, a lay-off would be tantamount to a dismissal only if it is permanent. Hence, when a lay-off is only temporary, the employment status of the employee is not deemed terminated, but merely suspended.[34]

The case of *Industrial Timber Corporation v. NLRC*[35] is instructive to the nature of lay-off, even a temporary one, as a management prerogative, to wit:

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31 *Id.* at 12.

32 Art. 286. When employment not deemed terminated. The *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

33 Art. 283. Closure of establishment and reduction of personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

34 *Lopez v. Irvine Construction Corp.*, G.R. No. 207253, August 20, 2014, 733 SCRA 589, 600.

35 339 Phil. 395 (1997).

> Closure or cessation of operations for economic reasons is, therefore, recognized as a valid exercise of management prerogative. The determination to cease operations is a prerogative of management which the State does not usually interfere with, as no business or undertaking must be required to continue operating at a loss simply because it has to maintain its workers in employment. Such an act would be tantamount to a taking of property without due process of law.[36]

There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a period or duration therefor. These employees cannot forever be temporarily laid-off. To remedy this situation or fill the hiatus, Article 286 (now Article 301) of the Labor Code may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status.[37]

Pursuant to Article 286 (now Article 301), the suspension of the operation of business or undertaking in a temporary lay-off situation must not exceed six (6) months. Within this six-month period, the employee should either be recalled or permanently retrenched. Otherwise, the employee would be deemed to have been dismissed, and the employee held liable therefor.[38]

In the case at bar, PADISCOR asserts that respondents were temporarily laid-off from work on July 30, 2006 and October 7, 2006 for a period of six months since it can no longer pay their wages and other benefits due to financial losses and lack of capital. To support its claim, it presented the following pieces of evidence: (a) Notices[39] of temporary lay-off to respondents, dated June 17, 2006 and September 5, 2006, and (b) Copies of Establishment Termination Report[40] on June 20, 2006 and September 5, 2006 evidencing the respondents' lay-off.

The LA and the NLRC gave credence to the foregoing and thus, denied the complaint for illegal suspension, illegal lay-off, non-payment of service incentive leave and paternity leave, damages and attorney's fees by the respondents against petitioner PADISCOR. However, the CA ruled that the pieces of evidence are insufficient to prove that PADISCOR has indeed suffered from financial losses and lack of capital which led to respondents being temporarily laid off.

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36 *Id.* at 404-405.
37 *PT & T Corp. v. NLRC*, 496 Phil. 164 (2005).
38 *Id.* at 177.
39 *Supra* note 5; *supra* note 8.
40 *Supra* note 16.

As allegation is not evidence, it is settled that the burden of evidence lies with the party who asserts the affirmative of an issue.[41] This Court is not impressed with petitioners' bare claim of financial losses to justify the temporary lay-off of respondents. The documents they presented are scant to substantiate its claim. While the law and jurisprudence acknowledge that the closure or suspension of operations of employers due to economic reasons is a valid exercise of management prerogative, it does not exempt employers from complying with the requirements laid down by the law.

Jurisprudence, in both a permanent and a temporary lay-off, dictates that the one-month notice rule to both the DOLE and the employee under Article 283 (now Article 298) is mandatory.[42] Also, in both cases, the lay-off, as an exercise of the employer's management prerogative, must be exercised in good faith - that is, one which is intended for the advancement of employers' interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[43]

In light of the well-entrenched rule that the burden to prove the validity and legality of the termination of employment falls on the employer[44] and the requisites provided by Article 286 (now Article 301) of the Labor Code, PADISCOR should have established the *bona fide* suspension of its business operations or undertaking that would have resulted in the temporary lay-off of the respondents for a period not exceeding six (6) months in accordance with the Labor Code.

In the present case, PADISCOR failed to prove its compliance with the said requisites. In invoking such article in the Labor Code, the paramount consideration should be the dire exigency of the business of the employer that compels it to put some of its employees temporarily out of work.[45] This means that the employer should be able to prove that it is faced with a clear and compelling economic reason which reasonably forces it to temporarily shut down its business operations or a particular undertaking, incidentally resulting to the temporary lay-off of its employees.[46]

Contrary to petitioners' claim, the CA did not rule that the presentation of financial statements of the company showing such financial difficulties is a condition *sine qua non* to a valid temporary lay-off. Instead, the CA ruled that petitioners failed to substantiate their claim that PADISCOR was suffering from financial losses and lack of capital which compelled it to temporarily lay-off the respondents from employment.

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41 *Manila Mining Corporation v. Amor, et al.*, G.R. No. 182800, April 20, 2015.
42 *Lopez v. Irvine Construction, Corp., et al., supra* note 34, at 602.
43 *Id.*
44 *Id.* at 603.
45 *Id.* at 605.
46 *Id.*

We held in the case of *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*,[47] that the normal method of discharging the burden in proving by sufficient and convincing evidence the claim of losses is by the submission of financial statements duly audited by independent external auditors.[48] The CA aptly observed that no financial statements or documents were presented to support PADISCOR's claim of loss. Instead, petitioners argued that the fact that they advised respondents to immediately resume employment is evidence of their good faith. The financial statements or documents could have established that the temporary lay-off from employment of respondents is indeed *bona fide* in character, but the petitioners failed to present any.

Therefore, we rule that although PADISCOR complied with the one-month notice rule to the DOLE and the employees, it failed to prove that such temporary lay-off, as exercise of its management prerogative, was made in good faith. Due to the grim consequences to the employee such that he or she does not receive any salary or financial benefit provided by law during the period of temporary lay-off,[49] this Court holds that the employer should have sufficiently proven through clear and convincing evidence the existence of the dire exigency of its business that compels it to put some of its employees temporarily out of work before a temporary lay-off be considered as valid.

Verily, PADISCOR cannot conveniently suspend the work of any of its employees in the guise of a temporary lay-off when it has failed to show compliance with the legal parameters under Article 286 (now Article 301) of the Labor Code. With PADISCOR being unsuccessful to prove such compliance, the resulting legal conclusion is that respondents had been constructively dismissed; however, we note that the respondents, with the exception of Balle who had already found another employment, have already resumed employment with PADISCOR. Therefore, respondents are entitled to payment of full backwages and other benefits for the period that they were laid-off from employment.[50]

WHEREFORE, the petition for review on *certiorari* dated August 10, 2011 of petitioners Pasig Agricultural Development and Industrial Supply Corporation (*PADISCOR*) and Celestino E. Damian is hereby

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47 639 Phil. 1 (2010).

48 *Id.* at 12.

49 *Exocet Security and Allied Services Corporation, v. Serrano*, G.R. No. 198538, September 29, 2014, 737 SCRA 40, 50.

50 Art. 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.

DENIED. The Decision dated January 25, 2011 and Resolution dated July 21, 2011 of the Court of Appeals are hereby **AFFIRMED.**

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
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