Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MINDANAO TERMINAL AND BROKERAGE SERVICE, INC. and/or FORTUNATO V. DE CASTRO,
Petitioners,

– versus –

NAGKAHIUSANG MAMUMUO SA MINTERBRO–SOUTHERN PHILIPPINES FEDERATION OF LABOR and/or MANUEL ABELLANA, GILBERT ABELLO, SIXTO ABELLO, JR., IRENEO ABONITA, ALIEZER ADALIM, CONSTANCIO ALBISO, NELSON ANCAJAS, ROGELIO ANOUEVO, REYNALDO ANTOQUE, DEORIDO ARIOLA, BERNARDINO AROJADO, JAIME ATILANO, ALBERTO BAHALA, RODRISITO BAHALA, JR., JOVITO BASTASA, TEODORO BASTASA, PACIANO BATICAN, BENJAMIN BAYNOSA, APOLINARIO BERNALDEZ, GODOFREDO BIOCO, ERLINDO BRIGOLI, TEODRICO CABATO, ANARITO CABUDLAN, DARIO CALIBJO, ERDIE CALIBJO, JAIME CAMINERO, BENNY CASI, EDWIN CORTEZ, ARTURO CRISMAS, ALEJANDRO DIO, CATALINO DIONGZON, JR.,

G.R. No. 174300

Present:

LEONARDO-DE CASTRO,
Acting Chairperson,
BERSAMIN,
VILLARAMA, JR.,
PEREZ,* and
REYES, *JJ.*

MANUEL DORADO, ZACARIAS DUMAYAC, ORLANDO EBERO, LEONARDO ENRIQUEZ, GABRIEL ESPERA, ROBERTO ESTRERA, JOEL FERNANDEZ, EDGARDO FLORES, RUSTICO GALAN, ELIEZER GELECANA, PRIMO GELECANA, DANIEL GIDUCOS, FELIPE GUANZON, GORDONIO HURANO, FLORENTINO IBAÑEZ, ALFRED IBORI, NICANOR INTO, ROBERT JAMILA, JESUS JANDAYAN, EWAN JUGAN, DIEGO JULATON, JOVENCIO JULATON, ANGELITO JULIANE, WILFREDO LACNO, LAGRAMA DOMINGO, CERILO MAGDASAL, FERNANDO MANGARON, JOSEPH MANGARON, EDGARDO MANGILAYA, EDGARDO MANSARON, VIRGILIO MATALANG, JEREMIAS MOLATO, CARLOS MONARES, RAMON NECESARIO, DANILO OTADAY, ROGELIO PAL, EBELIO PALMA, GAVINO PAMAN, JR., DANILO PANDAPATAN, NOLI PATRICIO, MODESTO PIOQUINIO, NEMENSIO PLASABAS, JULIUS QUIBOY, RUEL QUINILATAN, SANTOS RASONABE, ROBERTO REBUCAS, ALEJANDRO REDOBLADO, SR., DARIO REYES, RODOLFO ROCA, ROGER MAGAN, NECITO ROSOS, PANTALEON SAGAYNO, VENANCIO SAGAYNO, VICENTE SALARDE, REYNALDO SALCEDO, JOSE SALINAS, DANIEL SAPIO, ROMY SEGOVIA, JENELITO SIOCON,

RENATO SODE, EDUARDO SOLIZA, PABLITO TAC-AN, PEPITO TAGALAWAN, ARIEL TIBUS, ARTURO TOLIBAS, ROMEO TUBOG, ALFREDO VIDAD and ARNOLD TIBUS,
Respondents.

Promulgated:

DEC 0 5 2012

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D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] of the Decision[2] and Resolution[3] dated April 21, 2006 and August 7, 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 51656, which dismissed the petition for *certiorari* of petitioners Mindanao Terminal and Brokerage Service, Inc. (Minterbro) and Fortunato V. De Castro.

Minterbro is a domestic corporation managed by De Castro and engaged in the business of providing arrastre and stevedoring services to its clientele at Port Area, Sasa, Davao City.[4] It has a Contract for Use of Pier[5] with Del Monte Philippines, Inc. (Del Monte), which provides for the exclusive use by Del Monte of the Minterbro pier.[6] Thus, at the time relevant to this controversy, Del Monte was Minterbro's only client.

The docking of vessels at the piers in Davao City, including that of Minterbro, is being carried out by the Davao Pilots' Association, Inc.

[*] Per Special Order No. 1385 dated December 4, 2012

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 23-38; penned by Associate Justice Romulo V. Borja with Associate Justices Myrna Dimaranan Vidal and Ramon R. Garcia, concurring.

[3] Id. at 40-41.

[4] Id. at 25.

[5] CA *rollo*, pp. 29-31.

[6] *Rollo*, p. 26.

(DPAI).[7] In a letter[8] dated January 6, 1996, DPAI requested Minterbro to waive any claim of liability against it for any damage to the pier or vessel. DPAI alleged that Minterbro's pier vibrates everytime a ship docks due to weak posts at the underwater portion.

In a letter[9] dated January 15, 1997, Minterbro denied the request explaining that DPAI's observation had no basis as any damage to the pier was actually caused by a vessel under the control of DPAI which bumped the pier on December 28, 1996. DPAI replied in a letter[10] dated January 23, 1997 informing Minterbro of its intention to refrain from docking vessels at Minterbro's pier for security and safety reasons, until such time as Minterbro shall have caused the restoration of the original independent fenders of the said pier.

This prompted Minterbro to bring up the matter to the Philippine Ports Authority (PPA). The PPA promptly dispatched a team to conduct ocular inspection on Minterbro's pier.[11] In a communication[12] dated February 3, 1997, on the basis of its ocular inspection, the PPA advised Minterbro "to conduct a thorough investigation of the underdeck and underwater structures of the pier and initiate corrective measures if necessary." Thereafter, Minterbro, DPAI, and the PPA had a meeting and agreed that Minterbro would seek the assistance of experts for an ocular inspection and survey of the pier. Minterbro engaged the Davao Engineering Works and Marine Services (Davao Engineering) to carry out the work.[13]

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7 Id.
8 Id. at 42.
9 Id. at 44-45.
10 Id. at 46-47.
11 Id. at 27.
12 Id. at 48.
13 Id. at 27.

In its Survey Report No. 390/97[14] dated May 6, 1997, Davao Engineering stated:

> OBSERVATIONS:
>
> The Pier facilities of Minterbro at Ilang, Davao City can still be used for loading and unloading of cargoes provided, however, that docking procedures were properly carried out.
>
> The cracks and spalled concrete on the joints of the RC Piles and Pile caps [do] not affect the strength and capabilities of the Pier. However, immediate attention should be given to the Pier damages in order to prevent further deterioration of its structural members which will lead to a costly [repair] later on.[15]

Meanwhile, from January 1 until April 13, 1997, a total of sixteen (16) vessels were serviced at the Minterbro pier:

January 1997	–	7 vessels
February 1997	–	3 vessels
March 1997	–	4 vessels
April 1997	–	2 vessels[16]

Subsequently, Minterbro decided to rehabilitate the pier on August 1, 1997 and, on the same day, sent a letter to the Department of Labor and Employment (DOLE) to inform DOLE of Minterbro's intention to temporarily suspend arrastre and stevedoring operations. Minterbro alleged that, despite the condition of the pier, it was able to service 16 vessels from January 1997 to April 13, 1997 and it was ready and awaiting vessels to dock at the pier from April 14, 1997 to July 31, 1997 during which

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14 Id. at 50-55.
15 Id. at 53.
16 Id. at 83; Decision dated September 30, 1998 in NLRC CA No. M-004178-98 in Case No. RAB-11-11-01057-97 of the Labor Arbiter.

Minterbro's office, motor pool, and field personnel continued operations.[17]

On November 4, 1997, respondent Nagkahiusang Mamumuo sa Minterbro-Southern Philippines Federation of Labor composed of respondents Manuel Abellana, *et al.*, employees of Minterbro working on a rotation basis and employed for arrastre and stevedoring work depending on the actual requirements of the vessels serviced by Minterbro, filed a complaint for payment of separation pay against Minterbro and De Castro in the Regional Arbitration Branch No. XI at Davao City of the National Labor Relations Commission (NLRC).[18]

Meanwhile, on December 8, 1997, Minterbro sent a letter[19] to the PPA the pertinent portion of which reads:

> This is to advise you that we have completed the repair of our pier which we did inspite of the earlier certification issued by the Davao Engineering Works & Services, that after the latter carried out the underwater/above water ocular inspection and survey of the pier facilities, said pier can still be used for loading and unloading of cargoes provided that the docking procedures should be properly carried out.
>
> In view of the foregoing, may we request your office to render your own ocular inspection and survey for the issuance of the corresponding certification on its readiness to accept vessels for loading and unloading operations.

At the initial hearing before the Labor Arbiter on December 10, 1997, Minterbro and De Castro informed the union and its members that the rehabilitation of the pier had been completed and that they were just awaiting clearance to operate from the PPA. In a manifestation dated December 12, 1997, the union and its members stated, among others, that "they x x x are not anymore amenable to going back to work with [the]

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17 Id. at 27-28.
18 Id. at 28.
19 Id. at 67.

company, for the reason that the latter has not been operating for more than six (6) months, even if it resumes operation at a later date and would just demand that they be given Retirement or Separation Pay, as the case may be."[20]

On December 17, 1997, the PPA issued the following Certification[21] declaring Minterbro's pier as safe and ready for operation:

C E R T I F I C A T I O N

This is to certify that the repair and rehabilitation of Minterbro Wharf owned by Mindanao Terminal & Brokerage Services, Inc. located at Tibungco, Ilang, Davao City was inspected by our Engineering Services Division office on Dec. 10, 1997 and was found to be totally completed. The structural design and the supervision of work was undertaken by Bow C. Moreno, Civil Structural Design Engineering Office of San Andres St., Manila.

Further, as certified by the Structural Consultants of the Contractor, copy attached, the Port [M]anagement Office of Davao, Philippine Ports Authority has now declared Minterbro Wharf as safe and ready for operationalization.

This certification is issued for whatever purpose the Mindanao Terminal & Brokerage Services, Inc. will deem necessary.

Done in the City of Davao, Philippines, this 17th day of December 1997.

(Sgd.)
MANUEL C. ALBARRACIN
Port Manager

Thereafter, MV Uranus was serviced at the Minterbro pier on December 22 to 28, 1997.[22]

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20 Id. at 28-29.
21 Id. at 69.
22 Id. at 79; Decision dated June 15, 1998 in Case No. RAB-11-11-01057-97 of the Labor Arbiter.

On June 15, 1998, the Labor Arbiter rendered a Decision[23] with the following decretal portion:

> WHEREFORE, judgment is hereby rendered dismissing the complaint for separation pay for lack of merit and declaring the ninety-five (95) complainants named in the final list filed on February 3, 1998 to have lost their employment status for abandonment of work; and
>
> Declaring complainants Roberto D. Estrera, Sr., Gorgonio Huraño, Jeremias Molato and Constancio Albiso, who have formally withdrawn their complaint, not to have lost their employment status and ordering respondents to accept them back to their former positions without loss of seniority rights and other privileges.[24]

Aggrieved, the union members appealed the Labor Arbiter's Decision to the NLRC. In a Decision[25] dated September 30, 1998, the NLRC modified the Decision of the Labor Arbiter in this wise:

> In denying complainants their separation benefits, the Executive Labor Arbiter considered the period embraced within August 1, 1997, when respondent formally informed [the] DOLE of the temporary cessation of operation up to December 16, 1997, when respondent was issued a certificate declaring the wharf safe and ready for operations and December 22-28, 1997, when the respondent company serviced a vessel MV Uranus which obviously did not exceed six (6) months, thus denying complainants their monetary benefits. Incidentally, the period reckoned is incorrect.
>
> It is admitted by respondent that the last vessel that was serviced was on April 11-13, 1997 (MV Bosco Polar), and after the rehabilitation of the wharf, on December 22-28, 1997 (MV Uranus) was served, thereby covering a period of more or less eight months.
>
> Respondent cannot conceal or make the August 1, 1997 formal notice to DOLE or the alleged continued operations of its office personnel until July 31, 1997, an excuse to evade the mandated six (6) months period (Article 286 of the Labor Code, as amended), since the issue at bar concerns the complainants who became jobless and penniless because of the December 28, 1996 accident.
>
> With the unrefuted peculiar circumstances, complainants are therefore entitled to their claims for separation benefits.

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23 Id. at 73-80.
24 Id. at 79-80.
25 Id. at 81-85.

> Moreover, complainants cannot be considered to have abandoned their jobs for the reason that it took respondent a long period [of] time to rehabilitate the wharf causing uncertainties in their minds which culminated in the filing of the case.
>
> WHEREFORE, the assailed Decision is Modified. Respondents are ordered to pay complainants their separation benefits to be assessed and computed during the post arbitral stage of the proceedings below upon finality of the herein Decision.[26]

In a Resolution[27] dated January 25, 1999, the NLRC maintained its Decision and denied the motion for reconsideration of Minterbro and De Castro.

Thereafter, Minterbro and De Castro took the NLRC and the members of the union to task by filing a Petition for *Certiorari*[28] in the Court of Appeals asserting that the NLRC acted with grave abuse of discretion in ordering Minterbro and De Castro to pay the union members separation pay under Article 286 of the Labor Code. This was docketed as CA-G.R. SP No. 51656.

In a Decision dated April 21, 2006, the Court of Appeals dismissed the petition. It ruled that the seasonal nature of the services rendered by the members of the union did not negate their status as regular employees and that the temporary suspension of Minterbro's operations should be reckoned from April 14, 1997, the day no more vessel was serviced at Minterbro's pier after MV Bosco Polar was serviced at the said pier on April 11 to 13, 1997. Thus, pursuant to Article 286 of the Labor Code and its application in *Sebuguero v. National Labor Relations Commission*,[29] the NLRC correctly ordered Minterbro and De Castro to pay the union members their separation

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26 Id. at 84-85.
27 Id. at 86-87.
28 CA *rollo*, pp. 2-20.
29 G.R. No. 115394, September 27, 1995, 248 SCRA 532.

benefits as their temporary lay-off exceeded six months.

In a Resolution dated August 7, 2006, reconsideration was denied as the Court of Appeals found no reason to reverse its decision. Hence, this petition.

Petitioners Minterbro and De Castro insist that the Court of Appeals erred when it ruled that the union members are entitled to separation pay under Article 286 of the Labor Code. Petitioners concede that, as enunciated in *Sebuguero*, where a temporary lay-off lasts longer than six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law.[30] However, according to petitioners, the lack of arrastre and stevedoring services in the pier after the servicing of MV Bosco Polar on April 11 to 13, 1997 was a result of Del Monte's decision, for reasons unknown to Minterbro, to suddenly stop docking its vessels at Minterbro's pier. And while there were no arrastre and stevedoring services for lack of any vessel to service, Minterbro's office, motorpool and field personnel continued their work until July 31, 1997, or a day before Minterbro filed the required notices with the DOLE on August 1, 1997. The decision to rehabilitate the pier is a business decision and had nothing to do with the unfounded complaint of DPAI in January 1997 about the condition of the pier.[31]

For their part, the union members contend that the petition is flawed as it presents a question of fact, not of law. In particular, the determination of the correct reckoning date of the temporary suspension of Minterbro's business, whether April 14, 1997 or August 1, 1997, involves a review of facts and the respective evidence of the parties, which is prohibited under the

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30 *Rollo*, p. 13.
31 Id. at 12-16.

Rules of Court. Moreover, the NLRC and the Court of Appeals have already fully discussed the matter and both came to the same conclusion, that Minterbro and De Castro are liable to the union members for separation pay. The factual findings of the NLRC and the Court of Appeals should therefore be accorded respect and conclusiveness.[32]

The issue thus presented in this petition is whether the union members/employees were deprived of gainful employment on April 14, 1997 after the last vessel was serviced prior to the repair of the pier or on August 1, 1997 when repair works on the pier were commenced. Resolution of this issue will determine whether petitioners are liable for separation pay for effectively dismissing the union members through their prolonged lay-off of more than six months.

Petitioners insist on August 1, 1997 as the reckoning date and rely on Article 286 of the Labor Code. On the other hand, the union members assert that the reckoning date is April 14, 1997 and invoke *Sebuguero*.

At the outset, the Court notes that the petition is fatally defective. The issue it presents is factual, not legal.

There is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts. There is a question of fact if the issue invites a review of the evidence presented.[33]

In this case, this Court is effectively being called upon to determine who among the parties is asserting the truth regarding the date the union members were laid-off. Such venture requires the evaluation of the

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32 Id. at 104-106.

33 *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345.

respective pieces of evidence presented by the parties as well as the consideration of "the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation."[34] However, the nature of petitioners' action, a petition for review under Rule 45 of the Rules of Court, renders that very action inappropriate for this Court to take. Only questions of law should be raised in a petition for review under Rule 45.[35] While there are recognized exceptions to that rule, this case is not among them.

Moreover, this Court finds neither compelling reason nor substantial argument that will warrant the reversal of the NLRC Decision which has been affirmed by the Court of Appeals.

The NLRC and the Court of Appeals found that the union members/employees were not given work starting April 14, 1997 and that more than six months have elapsed after the union members were laid off when the next vessel was serviced at the Minterbro pier on December 22 to 28, 1997.

Minterbro claims that it had no hand whatsoever in the lack of work for the union members at the pier from April 14, 1997. It stated that it did not even have any idea as to why Del Monte suddenly stopped docking its vessels at Minterbro's pier. Nonetheless, as between petitioners and the union members, it is petitioners who had the right to demand from Del Monte to perform its obligations under the Contract for Use of Pier. Petitioners' right to compel Del Monte to comply with its contractual obligations becomes stronger in view of the following undertaking of Del Monte:

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34 *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 582-583, citing *Republic v. Sandiganbayan*, 426 Phil. 104, 110 (2002).

35 *See* Section 1, Rule 45.

October 7, 1988

Atty. Eliodoro C. Cruz
Vice-President
Mindanao Terminal and Brokerage Service, Inc.
Davao City

Dear Atty. Cruz:

With reference to our "Contract for Use of Pier", dated 3 October, 1988, (Doc. No. 348, No. 71, Book XXVI of Notary Public D. A. Soriano of Makati, Metro Manila), **we confirm our commitment to maximize the use of the [Minterbro] Pier at Ilang, Davao City and not to dock any of the vessels of our principal elsewhere** for as long as they can be accommodated therein as per your commitment in the contract and in the customary and usual manner and for the purpose which they are intended to serve.

If this reflects our understanding, please sign below and return to us our copy of this letter. This will serve as our supplemental agreement on the matter.

Very truly yours,

(Sgd.)
JUAN F. SIERRA
President

CONFORME:
Mindanao Terminal and
Brokerage Service, Inc.

By:
(Sgd.)
ELIODORO C. CRUZ
Vice-President[36] (Emphasis supplied.)

Unfortunately, petitioners failed to show any effort on their part to hold Del Monte to its end of the bargain even though the union members were being forced to be laid off. Effectively, when petitioners allowed Del Monte to abandon its agreement with Minterbro for eight months covering the middle of April 1997 until the latter part of December 1997 without holding Del Monte accountable for such breach, petitioners consented to Del

[36] CA *rollo*, p. 28.

Monte's unexplained action and the prejudice it caused to the union members.

Moreover, the communications between Minterbro and the PPA during the relevant period are telling. Among these is a letter dated February 3, 1997 from the PPA:

> 03 February 1997
>
> MR. FORTUNATO V. DE CASTRO, SR.
> General Manager
> Mindanao Terminal & Brokerage Services, Inc.
> Port Area, Sasa, Davao City
>
> Dear Mr. de Castro,
>
> We had been furnished copy of the communications of the Davao Pilot's, Association dated January 6 and 23, 1997 with the same subject on weakened pier structure of your port facility.
>
> On 22 January 1997, a PMO team was dispatched to conduct an ocular inspection. The related report is herewith furnished for your perusal.
>
> **Any report or observation of this nature from port users is considered critical and this should be investigated and verified for the safety of all parties concerned**. We therefore advise your company to conduct a thorough investigation of the underdeck and underwater structures of the pier and initiate corrective measures if necessary.
>
> Please advise this end of your action/s undertaken.
>
> Very truly yours,
>
> (Sgd.)
> MANUEL C. ALBARRACIN[37] (Emphasis supplied.)

Another material document is the letter dated December 8, 1997 from Minterbro to the PPA wherein petitioners requested the PPA to confirm the repair and rehabilitation of the Minterbro pier and issue a certification on the pier's "readiness to accept vessels for loading and unloading operations."[38]

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37 *Rollo*, p. 48.
38 Id. at 67.

Petitioners exert much effort to dissociate themselves from Del Monte's act of stopping its vessels from docking at Minterbro's pier beginning April 14, 1997. They also went to great lengths not only to refute the complaint of DPAI that Minterbro's pier is damaged and defective but also to establish that such allegedly baseless claims have no connection with the decision of the vessels not to dock at the Minterbro pier. The above communications, however, negate petitioners' contention. As early as February 1997, the PPA had already advised petitioners that the observation of DPAI that the pier had abnormal vibrations "is considered critical."[39] And in the Petition for *Certiorari*[40] and Memorandum[41] which they filed in the Court of Appeals, petitioners alleged as follows:

> 12. MINTERBRO sent copies of the Survey Report No. 390/97 to the PPA, the [Davao Pilots] Association and Del Monte Philippines, Inc. to inform them that the observation/complaint of the [Davao Pilots] Association was clearly unfounded and without any factual basis. **Despite receipt of the Survey Report, Del Monte did not dock any of its vessels at MINTERBRO's pier**.[42] (Emphasis supplied.)

The above statement shows that petitioners were fully aware that Del Monte's decision to stop docking any of its vessels at the Minterbro pier was basically related to the issue of the condition of the pier. Moreover, petitioners may not rightfully shift the blame to Del Monte in view of the following provision of their Contract for Use of Pier:

> 3. **MINTERBRO shall maintain the pier in good condition** suitable for the loading and unloading of [Del Monte] or [Del Monte]-related cargoes[.][43] (Emphasis supplied.)

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39 Id. at 48.
40 CA *rollo*, pp. 2-20.
41 Id. at 178-198.
42 Id. at 181.
43 Id. at 30.

If petitioners really believed their claim that the pier's condition was still suitable for normal operations even without having undertaken the repairs which it took starting August 1997, petitioners could have simply submitted Survey Report No. 390/97 to the PPA and requested for a certification similar to the PPA certification dated December 17, 1997. Yet, they did not. They had to rehabilitate the pier first before they requested for the certification. Furthermore, the very Survey Report No. 390/97 that petitioners use to support their claim that the claim of DPAI as to the condition of the pier is totally baseless is not completely true. As quoted by petitioners, the Survey Report states that the Minterbro pier "can still be used for loading and unloading of cargoes provided, however, that docking procedures were properly carried out."[44] This can be reasonably taken to mean as saying that the operations at the pier should now be carried out in a mistake free manner because one wrong move may prove to be disastrous. That means that every time arrastre and stevedoring services are conducted at the pier, a sword would be hanging over the heads of those working at the pier. Moreover, the said Survey Report expressly directs that "**immediate attention should be given to the Pier damages in order to prevent further deterioration of its structural members**."[45] This directive contradicts petitioners' stance that the Minterbro pier was in good condition even prior to its repair and rehabilitation in August 1997. Thus, the Court of Appeals did not err when it made the following observations:

> In view of the inspections and surveys conducted on the pier, it could not have failed to dawn upon petitioners that no vessel would take the risk of docking in their pier because of its damaged condition.[46]
>
> To Our mind, both petitioners and the Labor Arbiter failed to realize that what had been indisputably established thereby was that petitioners' pier was in critical condition[,] *i.e.*, no longer viable for docking as early as May 1996 in spite of which petitioners decided to make the necessary

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44 *Rollo*, p. 53.
45 Id.
46 Id. at 34.

> repairs only in August [1996] or four months thereafter.
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> x x x Petitioners had already been amply notified of the unstable condition of their pier which required prompt corrective action for the safety of both the facilities and the lives of the laborers therein, so that petitioners should not have insisted that their pier was still in good shape. x x x.[47]

In sum, petitioners' inaction on what they allege to be the unexplained abandonment by Del Monte of its obligations under the Contract for the Use of Pier coupled with petitioners' belated action on the damaged condition of the pier caused the absence of available work for the union members. As petitioners were responsible for the lack of work at the pier and, consequently, the layoff of the union members, they are liable for the separation from employment of the union members on a ground similar to retrenchment. In this connection, this Court has ruled:

> A lay-off, used interchangeably with "retrenchment," is a recognized prerogative of management. It is the termination of employment resorted to by the employer, through no fault of nor with prejudice to the employees, during periods of business recession, industrial depression, seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or the introduction of new methods or more efficient machinery, or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court. The requisites of a valid retrenchment are covered by Article 283 of the Labor Code.
>
> When a lay-off is temporary, the employment status of the employee is not deemed terminated, but merely suspended. Article 286 of the Labor Code provides, in part, that the *bona fide* suspension of the operation of the business or undertaking for a period not exceeding six months does not terminate employment.[48] (Citation omitted.)

When petitioners failed to make work available to the union members for a period of more than six months starting April 14, 1997 by failing to call the attention of Del Monte on the latter's obligations under the Contract of

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47 Id. at 41.

48 *De la Cruz v. National Labor Relations Commission*, 335 Phil. 932, 939-940 (1997).

Use of Pier and to undertake a timely rehabilitation of the pier, they are deemed to have constructively dismissed the union members. As this Court held in *Valdez v. National Labor Relations Commission*[49]:

> Under Article 286 of the Labor Code, the *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six months shall not terminate employment. Consequently, when the *bona fide* suspension of the operation of a business or undertaking exceeds six months, then the employment of the employee shall be deemed terminated. By the same token and applying said rule by analogy, **if the employee was forced to remain without work or assignment for a period exceeding six months, then he is in effect constructively dismissed**. (Citation omitted.)

In *Sebuguero*,[50] the Court ruled on a case regarding layoff or temporary retrenchment, which subsequently resulted to the separation from employment of the concerned employee as it lasted for more than six months, as follows:

> Article 283 of the Labor Code which covers retrenchment, reads as follows:
>
> > 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 servicing 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 closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to

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49 349 Phil. 760, 765-766 (1998); *De Guzman v. National Labor Relations Commission*, G.R. No. 167701, December 12, 2007, 540 SCRA 21, 32.

50 *Sebuguero v. National Labor Relations Commission*, supra note 29.

> 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.
>
> This provision, however, speaks of a permanent retrenchment as opposed to a temporary lay-off as is the case here. 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 may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status. [13] Six months is the period set by law that the operation of a business or undertaking may be suspended thereby suspending the employment of the employees concerned. The temporary lay-off wherein the employees likewise cease to work should also not last longer than six months. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the employer would thus be liable for such dismissal.[51] (Citation omitted.)

As the Court of Appeals did not err in ruling that *Sebuguero* applies to this case, the consequences arrived at in *Sebuguero* also apply. Lay-off is essentially retrenchment and under Article 283 of the Labor Code a retrenched employee is entitled to separation pay equivalent to one (1) month salary or one-half (½) month salary per year of service, whichever is higher.

WHEREFORE, the petition is hereby **DENIED**. The Executive Labor Arbiter of the Regional Arbitration Branch No. XI at Davao City of the National Labor Relations Commission is **DIRECTED** to ensure the prompt implementation of this Decision.

SO ORDERED.

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

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51 Id. at 542-544.

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE P. PEREZ
Associate Justice

BIENVENIDO L. REYES
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)