Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ABOITIZ POWER RENEWABLES, INC./TIWI CONSOLIDATED UNION (APRI-TCU) ON BEHALF OF FE R. RUBIO, MA. VICTORIA A. BELMES, ELEANORE D. DALDE, RICARDO B. COMPETENTE, and VICENTE A. MIRANDILLA; APRI-TIWI EMPLOYEES LABOR UNION (APRI-TIELU) ON BEHALF OF VIRGILIO G. MACINAS, ROY D. DACULLO, ARNEL C. REPOTENTE, and JAIME B. SARILLA; and APRI-TIWI GEOTHERMAL POWER PLANT PROFESSIONAL/TECHNICAL EMPLOYEES UNION-DIALOGWU (APRI-TGPPPTEU-D) ON BEHALF OF VENER I. DELA ROSA, ARVID G. MUNI, ALVIN Y. SALONGA, ALVIN M. ENGUERO, MA. BLANCA I. FALCON, and SALVE V. LIZARDO, *Petitioners,* *- versus -* **ABOITIZ POWER RENEWABLES, INC., MICHAEL B. PIERCE, ATTY. MARTIN JOHN YASAY, JUAN FELIPE ALFONSO, ARNEL SUMAGUI, WILFREDO G. SARMAGO, and ROBERTO L. URBANO,** *Respondents.*	**G.R. No. 237036** Present: PERLAS-BERNABE, *J.*, Chairperson, HERNANDO, INTING, DELOS SANTOS, and GAERLAN,* *JJ.* Promulgated: 08 JUL 2020

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* Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

DECISION

DELOS SANTOS, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to set aside the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 141100 promulgated on February 21, 2017 and its Resolution[3] dated January 11, 2018, affirming the Decision[4] of the National Labor Relations Commission (NLRC) rendered on December 18, 2014, which upheld the findings of the Labor Arbiter that the employees represented by the three petitioner unions were not illegally dismissed.

The Parties

Aboitiz Power Renewables, Inc. (APRI) is a corporation engaged in the operation of the Tiwi Geothermal Power Plant in Tiwi, Albay. Respondents Michael Pierce (Pierce), Atty. Martin John Yasay (Atty. Yasay), Juan Felipe Alfonso, Arnel Sumagui, Wilfredo Sarmago, and Roberto Urbano were included in the complaint for illegal dismissal and unfair labor practice in their capacity as officers of APRI.[5]

The three (3) petitioners are unions representing former employees of APRI, who were allegedly illegally dismissed in September 2013. The three (3) unions are: (a) Aboitiz Power Renewables, Inc.-Tiwi Consolidated Union (APRI-TCU), the supervisory union, which was in the process of negotiating their economic proposal; (b) APRI Tiwi Employees Labor Union (APRI-TIELU), which represents the rank-and-file employees and was about to conclude their collective bargaining agreement (CBA); and (c) APRI-Tiwi Geothermal Power Plant Professional/Technical Employees Union-Dialogwu (APRI-TGPPPTEU-D), which represents the professional/technical employees and was undergoing a petition for certification election before Med Arbiter in the Department of Labor and Employment (DOLE) Regional Office.[6]

Petitioner APRI-TCU represents the following supervisory employees: Fe R. Rubio, Ma. Victoria A. Belmes, Eleanore D. Dalde,

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1 *Rollo*, pp. 11-39.
2 Penned by Associate Justice Rosmari D. Carandang (now a member of this Court), with Associate Justices Mario V. Lopez (now a member of this Court) and Myra V. Garcia-Fernandez, concurring; id. at 40-66.
3 Id. at 67-69.
4 Penned by Commissioner Mercedes R. Posada-Lacap, with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley, concurring; id. at 92-144.
5 Id. at 42.
6 Id.

Ricardo B. Competente, and Vicente A. Mirandilla. Meanwhile, APRI-TIELU represents the following rank-and-file: Virgilio G. Macinas, Roy D. Dacullo, Arnel C. Repotente, and Jaime B. Sarilla. Lastly, petitioner APRI-TGPPPTEU-D represents the following employees: Vener I. Dela Rosa, Arvid G. Muni, Alvin Y. Salonga, Alvin M. Enguero, Ma. Blanca I. Falcon, and Salve V. Lizardo.

The Facts and the Antecedent Proceedings

The facts of the case, as culled from the assailed Decision and the records, are as follows:

On September 16, 2013, APRI called for a town hall meeting, wherein the employees were informed that the company will implement a redundancy program that would result in the removal of around twenty percent (20%) of its current employees. According to Atty. Yasay, APRI's Assistant Vice President for Legal and Commercial Services, the program was being carried out in light of the declining steam production in the Tiwi Plant. APRI also cited the adoption of the Oracle Enterprise Business Suit, which streamlined its supply and financial system, as the further cause for the redundancy of several positions within the company. In the afternoon of the same day, APRI's representatives began to individually meet the employees. The affected employees were informed that their position in the company was found to be redundant and that their employment will be terminated on October 20, 2013. They were given and made to sign a Notice of Redundancy[7] dated September 20, 2013, which served as the written notice of their inclusion in the redundancy program. They were also made to sign a Release, Waiver and Quitclaim[8] and were given the option of signing a letter[9] addressed to Pierce, APRI's President and Chief Operating Officer. In the said letter, it was stated that the employees recognize the company's right to exercise the redundancy program and that they exercise the option not to report for work from the receipt of the Notice of Redundancy up to October 20, 2013, the date when their termination becomes effective.

As a consequence of their termination because of the redundancy program, the affected employees were given two (2) manager's checks.[10] The first check represented the separation pay, which was composed of the

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7 Id. at 472-473, 480-481, 489-490, 498-499, 507-508, 516-517, 525-526, 534-535, 543-544, 551-552, 560-561, 569-570, 578-579, 587-588, 595-596, 604-605, 613-614, 621-622, 630-631, 639-640, 648-649, 657-658, 666-667, 674-675.

8 Id. at 477-479, 485-487, 494-496, 503-505, 512-514, 521-523, 530-532, 539-541, 547-549, 556-558, 565-567, 574-576, 583-585, 592-594, 600-602, 609-611, 617-619, 626-628, 635-637, 644-646, 653-655, 662-664, 671-673, 679-681.

9 Id. at 474-475, 482-483, 491-492, 500-501, 509-510, 518-519, 527-528, 536-537, 545-546, 553-554, 562-563, 571-572, 580-581, 589-590, 597-598, 606-607, 615-616, 623-624, 632-633, 641-642, 650-651, 659-660, 668-669, 676-677.

10 Id. at 476, 484, 493, 502, 511, 520, 529, 538, 546, 555, 564, 573, 582, 591, 599, 608, 625, 634, 643, 652, 661, 670, 678.

following:

1. Separation pay of one (1) month of the basic salary rate per year of service in May 26, 2009 to May 31, 2011;
2. Separation pay of one and a half (1.5) month of basic salary rate per year of service in June 1, 2011 to the present;
3. Converted unused vacation leaves;
4. Converted unused sick leaves;
5. Pro-rated 13th month pay;
6. Salary from September 21 to October 20, 2013; and
7. Last salary pay.[11]

The second manager's check was in the amount of ₱400,000.00, as the one-time special assistance to each of the affected employees.[12]

In addition to the affected employees who assented to the redundancy program, some employees[13] also tendered their voluntary resignation. These employees likewise received two (2) manager's checks[14] consisting of the same components as those affected by the redundancy program, and were also made to sign a Release, Waiver and Quitclaim.[15]

Feeling aggrieved that they were forced to accept the redundancy program or forced to resign, the said employees had the incident of their termination recorded through a police blotter. Subsequently, they also filed complaints for illegal dismissal, illegal suspension (for employee Felicito Torrente), unfair labor practice for union busting, and claims for 13th month pay, retirement benefits, damages, and attorney's fees.[16]

In their complaint, employees contended that: (1) APRI failed to comply with the notice requirement for redundancy; (2) the Notice of Redundancy given to them and the notice to the DOLE contained self-serving allegations without any evidence that justified the exercise of the redundancy program as an authorized cause for termination; (3) APRI has not shown that it was overmanned and failed to show proof on the decline on steam production that justified its redundancy program; and (4) APRI failed to show the criteria used to determine which employees will be removed due to redundancy in their positions. Lastly, they alleged that their removal was equivalent to union busting and unfair labor practice since it came amidst the negotiations between their respective unions and APRI.[17]

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11 Id. at 43.
12 Id.
13 Id. at 102-103; Angel M. Barredo, Emil B. Chiong, Ricardo B. Competente, Vener I. Dela Rosa, Maria C. Jebulan, Vicente A. Mirandilla, Arvid G. Muni, Crispin B. Pabeliña.
14 Id. at 689, 694, 699, 704, 709, 714, 719, 724.
15 Id. at 690-692, 695-697, 700-702, 705-707, 710-712, 715-717, 720-722, 725-727.
16 Id. at 44.
17 Id.

APRI, for its part, countered that the removal of the employees was a valid exercise of its prerogative to declare redundant positions. According to APRI, there were two circumstances that led for it to carry out a right-sizing study, which thereby revealed the redundancy in the staffing of the company, to wit: (1) there was a decline in the steam production in its geothermal plant in Tiwi, which meant that the plant was not utilizing its full capacity; and (2) the use of upgraded version of Oracle Business Enterprise, that interfaced its Supply Management Systems to its Financial Systems.[18]

Moreover, APRI emphasized that it complied with the requisites for a valid dismissal on the ground of redundancy. It was claimed that the notice of redundancy to the employees and the notice to the DOLE were both compliant to the thirty (30) day period required by law. APRI asserted that the affected employees received not only the required separation pay but also an additional ₱400,000.00, which was over and above of what it was bound to give. Lastly, APRI pointed out that the right-sizing study led the company to come up with fair and reasonable criteria to be used in determining which employees would be subject to the redundancy program. APRI maintained that the redundancy program was implemented in good faith.[19]

As regards employees who were allegedly forced to resign, APRI claimed that these employees voluntarily resigned having executed written resignations which contain words of gratitude, which was an indicia of voluntariness of their resignations. Finally, as to the allegation of union busting or unfair labor practice, APRI argued that these issues were moot and already academic considering that during the mandatory conference, the parties had limited the issue to the validity of the redundancy program.[20]

Ruling of the Labor Arbiter

On March 21, 2014, Executive Labor Arbiter (ELA) Jose C. Del Valle, Jr. (Del Valle, Jr.) rendered a Decision[21] dismissing the complaints for illegal dismissal for lack of merit. ELA Del Valle, Jr. ratiocinated that the employees were legally and validly dismissed due to the implementation of APRI's redundancy program. He found that: (1) APRI complied with the requisites for a valid redundancy program, *i.e.*, written notices were sent to and received by the affected employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (2) employees were given separation pay and an additional ₱400,000.00 as an act of grace; (3) APRI used fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished; and (4) there was good faith on the part of APRI in abolishing the redundant positions. He rejected

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18 Id. at 44-45.
19 Id. at 45.
20 Id.
21 Not attached to the *rollo*.

the employees' assertion of unfair labor practice and union busting, and held that the fact that APRI implemented the redundancy program in the midst of negotiation for CBA alone will not suffice to declare the company guilty of unfair labor practice.[22]

Feeling aggrieved, the affected thirty-two (32) employees[23] filed an appeal before the NLRC. Some of these employees were members of the three (3) petitioner unions.

Ruling of the NLRC

In a Decision[24] dated December 18, 2014, the NLRC also found that APRI had properly carried out its redundancy program, thus, it ruled that the dismissal of the employees on the basis of redundancy of their respective positions was valid. It likewise ruled that the resignation of the following employees: Angel M. Barredo, Emil B. Chiong, Ricardo B. Competente, Vener I. Dela Rosa, Maria C. Jebulan, Vicente A. Mirandilla, Arvid G. Muni, and Crispin B. Pabeliña, were voluntary and valid. Lastly, it was held that the employees failed to show that the actions of APRI constitute unfair labor practice. According to the NLRC, in order to prove that the employer committed unfair labor practice under the Labor Code, substantial evidence is required to support the claim, in which the employees failed to show.

The affected employees filed a Motion for Reconsideration[25] but was denied in a Resolution[26] dated March 31, 2015.

Accordingly, three (3) petitions were filed before the CA to appeal the Decision of the NLRC, namely: (1) CA-G.R. SP No. 139214, entitled, *Felecito C. Torrente, et al. vs. NLRC and AP Renewables, Inc.* (Torrente case); (2) CA-G.R. SP No. 140436, entitled, *Engr. Tito Brizuela, Jr. vs. NLRC and AP Renewables Inc., et al.* (Brizuela case); and (3) CA-G.R. SP No. 141100, entitled, *APRI-TICU, et al. vs. AP Renewables, Inc. et al.* (Unions' case). Both the Brizuela case and the Unions' case were consolidated with the Torrente case (the case with the lowest docket number) on August 14, 2015 and on October 5, 2015, respectively.

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22 *Rollo*, pp. 45-46.

23 Id. at 97-99; Ricardo B. Competente, Vicente A. Mirandilla, Tito L. Brizuela, Jr., Felecito C. Torrente, Ma. Victoria A. Belmes, Fe. R. Rubio, Eleanore D. Dalde, Crispin B. Pabeliña, Arvid G. Muni, Alvin Y. Salonga, Emil B. Chiong, Maria C. Jebulan, Emmanuel R. Pesebre, Jaime M. De Jesus, Jr., Vicente Jonas C. Zepeda, Vener I. Dela Rosa, Alvin M. Enguero, Jaime B. Sarilla, Arnel C. Repotente, Roy D. Dacullo, Angel M. Barredo, Asterio C. Credo, Jr., Jose D. Cañezo, Jr., Odon Q. Verbo, Jr., Bonifacio R. Brosas, Miguel C. Comot, Jr., Sandie C. Ner, Elmer C. Dacuno, Raul C. Brosas, Virgilio G. Macinas, Ma. Blanca I. Falcon, Salve V. Lizardo.

24 Id. at 92-144.

25 Not attached to the *rollo*.

26 Not attached to the *rollo*.

Judgment of the CA

At the outset, the CA dismissed the Torrente case citing that the petitioners therein filed their Motion for Reconsideration before the NLRC beyond the ten (10) day reglementary period. Thus, the CA held that the Decision of the NLRC was already final as to them.[27]

Anent the cases of Brizuela and the three unions, the CA affirmed the ruling of the Labor Arbiter (LA) and the NLRC that the employees were validly dismissed on account of APRI's implementation of its redundancy program. According to the CA, all the four (4) requisites for a valid implementation of the program were sufficiently proven by APRI.[28] The CA likewise ruled that the petitioners failed to present substantial evidence in support of their charge of unfair labor practice against APRI.[29] The CA disposed, thusly:

> **WHEREFORE, premises considered**, the consolidated petitions are **DENIED**, there being no grave abuse of discretion on the part of the public respondent in rendering the assailed Decision dated December 18, 2014 and the Resolution dated March 31, 2015.
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> **SO ORDERED.**[30] (Emphasis on the original)

Dissatisfied, Brizuela and the three (3) unions filed their motions for reconsideration, which were denied in a Resolution[31] dated January 11, 2018. In the said resolution, the CA noted that based on their records, petitioners in the Torrente case filed a petition for review on *certiorari* under Rule 45 before the Supreme Court docketed as G.R. No. 230254.

This is an appeal by the unions in behalf of their members or officers, who were affected by the subject redundancy program and those who were allegedly forced to resign.

Issues

(1) Whether or not the CA erred in upholding the validity of APRI's Redundancy Program;

(2) Whether or not the CA erred in upholding the validity of the dismissal from employment of petitioners' officers and members; and

(3) Whether or not CA erred in discounting unfair labor practice in the form of union busting against APRI and the other respondents.

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27 *Rollo*, p. 53.
28 Id. at 54.
29 Id. at 64-65.
30 Id. at 65.
31 Id. at 67-69.

Our Ruling

The Court denies the petition.

Prefatorily, it should be noted that in a Resolution[32] dated July 31, 2017, this Court resolved to deny the petition in G.R. No. 230254 or the Torrente case. In the said Resolution, this Court affirmed the findings of the CA that the Decision of the NLRC as to the said case had now attained finality due to the failure of the petitioners to file a motion for reconsideration within the ten (10) day period. More pointedly, this Court reiterated therein the settled rule that factual findings of the CA, which coincide with those of the LA and the NLRC are generally accorded respect and finality by this Court.

Even then, in this petition for review on *certiorari*, petitioners claimed that there was a gross misappreciation of the evidence, which warrants consideration of this Court. Essentially, petitioners asked for the review of the factual findings of the LA, NLRC, and the CA.

It is settled that only questions of law may be raised on appeal under this remedy for the reason that this Court is not a trier of facts. Nevertheless, this Court may review the facts where: (1) the findings and conclusions of the LA, on one hand, and the NLRC and the CA, on the other, are inconsistent on material and substantial points; (2) the findings of the NLRC and the CA are capricious and arbitrary; and (3) the CA's findings that are premised on a supposed absence of evidence are in fact contradicted by the evidence on record.[33]

In the case of *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*,[34] this Court reiterated the adoption of particular parameters of judicial review from the CA's Rule 65 Decision on a labor case, to *wit*:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.* In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC

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[32] Id. at 1270-1271.
[33] *Soriano, Jr. v. NLRC*, 550 Phil. 111, 125 (2007).
[34] 809 Phil. 106 (2017).

decision challenged before it.[35] (Emphasis in the original)

Thus, the ultimate question to resolve is whether the CA correctly ruled that the NLRC did not commit grave abuse of discretion in finding that: (1) there was a redundancy; (2) there was no illegal dismissal; and (3) there was no unfair labor practice. Here, the LA, the NLRC, and the CA were unanimous in concluding that the petitioners, who are officers or members of the petitioner unions, were legally dismissed by reason of a valid redundancy program by APRI, and that APRI did not commit unfair labor practice in the form of union busting.

The Court finds that the CA was correct in its determination that the NLRC did not commit grave abuse of discretion. The Decision of the NLRC was premised on substantial evidence and was consistent with law and jurisprudence.

Redundancy is an authorized cause for termination of employment under Article 298 (formerly Article 283) of the Labor Code. It exists when "the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise." It can be due to "a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise." The determination of whether the employees' services are no longer necessary or sustainable, and therefore, properly terminable for redundancy, is an exercise of business judgment. In making such decision, however, management must not violate the law nor declare redundancy without sufficient basis. To ensure that the dismissal is not implemented arbitrarily, jurisprudence requires the employer to prove, among others, its *good faith in abolishing the redundant positions* as well as *the existence of fair and reasonable criteria in the selection of employees who will be dismissed from employment due to redundancy.* Such fair and reasonable criteria may include, but are not limited to: (*a*) less preferred status, *i.e.*, temporary employee; (*b*) efficiency; and (*c*) seniority.[36]

In upholding the legality of the employees' dismissal, the NLRC ruled that the evidence submitted by APRI showed compliance to all the four (4) requisites for a valid implementation of the redundancy program. These included the following: (1) written notice served on both the employees and the DOLE one (1) month prior to the intended date of dismissal;[37] (2) payment of separation pay and the additional ₱400,000.00;[38] (3) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished;[39] and (4) good faith in abolishing the

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35 Id. at 121, citing *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012) and *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

36 *Coca-Cola Femsa Philippines v. Macapagal*, G.R. No. 232669, July 29, 2019. (Citations omitted)

37 *Rollo*, p. 116.

38 Id. at 124.

39 Id. at 125.

redundant positions.[40]

The good faith of APRI can be gleaned from its showing that the services of the affected employees were indeed in excess of what is required by the company. Meanwhile, the Right-Sizing Program,[41] the study in which the redundancy program was based, showed the implementation guidelines and criteria used by APRI in determining redundant positions, which this Court also found to be fair and reasonable.

As regards the claim of unfair labor practice in the form of union busting, this Court finds that the record of this case is also bereft of any substantial evidence to support the charge against APRI.

Unfair labor practice refers to acts that violate the workers' right to organize. There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. To prove the existence of unfair labor practice, substantial evidence has to be presented.[42]

Petitioners' assertion that APRI's redundancy program was meant to interfere with or frustrate petitioners' union activities and negotiation of CBA was a bare conclusion and unsupported by sufficient proof.

In sum, this Court finds that the rulings of the LA, the NLRC, and the CA were predicated on the evidence on record and prevailing jurisprudence. We also found no compelling reason to depart from the general rule that the unanimous findings of these three tribunals are binding upon this Court.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 141100 dated February 21, 2017 and the Resolution dated January 11, 2018 are hereby **AFFIRMED**.

SO ORDERED.

EDGARDO L. DELOS SANTOS
Associate Justice

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[40] Id. at 128.
[41] Id. at 426-471.
[42] *San Fernando Coca-Cola Rank-and-File Union v. Coca-Cola Bottlers Philippines, Inc.*, 819 Phil. 326, 337-330 (2017), citing *Zambrano v. Philippine Carpet Manufacturing*, 811 Phil. 569 (2017).

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second 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.

DIOSDADO M. PERALTA
Chief Justice