

Republic of the Philippines
Department of Labor and Employment
NATIONAL LABOR RELATIONS COMMISSION
SUB-REGIONAL ARBITRATION BRANCH NO. 09
Dipolog City

ESTRELLA GAYAPA-CO,
Complainant,

-versus-
SUB-RAB CASE NO.

NLRC

RADIO PHILIPPINES NETWORK, INC.,
ROBERT T. RIVERA, as OIC-RPN, and
RPN DXKD, Dipolog City, thru Mr. Leo
Cimafranca, OIC Station Manager.

Respondents.

X-----/

COMPLAINANT'S
POSITION PAPER

COMPLAINANT, to this Honorable Labor Arbiter, most respectfully submits her Position Paper:

PARTIES:

The complainant is ESTRELLA GAYAPA CO, 55 years of age, having been born on March 2, 1957, and a resident of 027 P. Burgos Street, Barra, Dipolog City.

PROOF:

Annex "A" = Birth Certificate.

The age of the complainant is emphasized because Section 2, Article XII of RPNEU CBA and Section 2, Article XI of DSU CBA [see Annex A], grants her the right to avail of the Optional Retirement Scheme, viz:

“Section 2. **OPTIONAL RETIREMENT** – An employee who **has reached the age of fifty [50]** and has rendered at least ten [10] years of service to the COMPANY or who has rendered at least twenty years [20] of service, regardless of age, may avail of Optional Retirement from the COMPANY and shall be paid a retirement pay in accordance...

The respondents are the following:

- a. Radio Philippines Network, Inc., located at Broadcast City, Old Balara, Capitol Hills, Diliman, Quezon City.
- b. RPN DXKD, Dipolog City, thru Leo Cimafranca, OIC Station Manager.
- c. Robert T. Rivera – Officer-in-Charge, RPN, Inc., Broadcast City, Old Balara, Capitol Hills, Diliman, Quezon City.

The respondents are engaged in the business of operating radio broadcasting and/or television stations in the Philippines. Respondents' principal office address is at Broadcast City, Old Balara, Capitol Hills, Diliman, Quezon City, with branches in the various provinces. Respondents have more than 500 workers. Complainant used to work at RPN DXKD, Dipolog City, whose station branch manager is Leo Cimafranca.

The respondents have a Collective Bargaining Agreement [CBA] with their workers.

PROOF:

Annex “**B**” = RPNEU CBA (JULY 01,2009-JUNE 30, 20120
Annex ”**C**”= DSU CBA (2003-2009)

RPNEU means Radio Philippines Network Employees Union

DSU means Directors and Supervisor Union

Although the existing RPNEU CBA had already expired last June 30, 2012. And, though the renewal of the CBA was

not achieved, because it was then overtaken by the events, among others, of the retrenchment made by the respondents, the existing CBA, however, is still valid, as its automatic renewal or extension is expressly provided by the CBA itself, viz:

“Article XXI
EFFECTIVITY OF AGREEMENT

Section 1. PERIOD OF EFFECTIVITY – The provision of this Agreement shall be effective as of 01 July 2009 and shall remain in full force and effect until 30 June 2012, or until a new Collective Bargaining Agreement is concluded by the parties, except the representation aspect which shall remain effective until 30 June 2014.

xxx

Section 3. EXTENSION OF EFFECTIVITY – If no new agreement is reached at the expiration of the Collective Bargaining Agreement, this Agreement shall remain in full force up to the time a subsequent agreement is concluded by the parties herein.” [see Annex “B”, pg. 40].

The old DSU CBA (2003-2008) is also herein adopted, because the complainant cannot be provided with the new DSU CBA for year 2009-2012, which the respondent cannot raised a defense in absent of this document. The rank-and-file themselves was provided a CBA renewal [see Annex “A”]. DSU CBA, contain the same context of provision as to OPTIONAL RETIREMENT. The difference matter only on number of the Article , which is Article XI, Section 2. Effectivity and Extension of Effectivity to remain in full force and effect, are also herein adopted.

The complainant will be adopting either the OLD DSU CBA (2003-2008) or the latest RPNEU CBA (2009-20012) provision in the next subsequent issue of concern. But other money claims, the complainant will have to adopt what is best and beneficial , as this will be qualified under substitution of the CBA provision.

Moreover, in the case of Manila Electric Co., vs. Quisumbing, et.al., G.R. No. 127598, January 27, 1999, the Supreme Court ruled that the principle of “hold-over” must apply., i.e., in the absence of a new CBA, the parties must maintain the status quo and must continue in full force and

effect the terms and conditions of the existing agreement until a new agreement is reached. In this manner, the law prevents the existence of a gap in the relationship between the collective bargaining parties [as cited in The Labor Code with Comments and Cases, Vol. II, 7th ed., 2010, by C.A. Azucena, pg. 400].

The complainant was employed last September 16, 1980. Last October 12, 2012, the complainant received a letter dated October 1, 2012 dismissing her from employment effective 15 November 2012.

But before receipt of the said letter, complainant already filed an application for optional retirement on the basis of the Collective Bargaining Agreement [CBA].

Complainant was then or had then worked for more than thirty-two [32] years.

In 1980, the complainant was appointed as Collector/Librarian of RPN DXKD, Dipolog City, but she was assigned to also work as its Bookkeeper. Thence effective October 1, 2009, the complainant was designated as Cashier and Administrative Officer, which was the last position she held until she was illegally dismissed. Her last salary was P24,666.80 per month.

The work schedule of the complainant was from Monday to Friday, from 8:00 a.m. – 5:00 p.m. [1 hour lunch break].

CAUSE OF ACTION/RELIEFS

Last December 28, 2012, the complainant filed the instant labor case against the respondents, raising as her causes of actions, the following:

A. ILLEGAL, UNFAIR AND UNREASONABLE RETRENCHMENT
[complainant received last October 4, 2012 a letter dated October 1, 2012 from OIC Robert T. Rivera dismissing her from service effective November 15, 2012]. **THUS, INCLUSIVE IS THE CLAIM FOR REINSTATEMENT WITH BACKWAGES.**

B. ILLEGAL AND DISCRIMINATORY DENIAL OF OPTIONAL RETIREMENT PRIVILEGES AND BENEFITS BASED ON COLLECTIVE BARGAINING AGREEMENT *[Before receipt of the October 1, 2012 letter of OIC Robert T. Rivera, the complainant already filed an application for optional retirement pursuant to the provisions of the Collective Bargaining Agreement [CBA]].*

C. SEPARATION PAY/RETRENCHMENT PAY WITH INTEREST.

D. LABOR OPPRESSION, DISCRIMINATION AND HARASSMENT.

E. UNPAID BENEFITS WITH INTEREST

E.1. Sick Leave Reserved

E.2. Unpaid benefits 2001-2008;
Overtime Pay for 2010 and 2011 and
other unpaid benefits.

E.3. Sick Leave Conversion 2011;
Longevity Pay 3rd Quarter 2011;
Longevity Pay 4th Quarter 2011;
Educational Assistance 2012-1;
Educational Assistance 2012-2;
Longevity Pay 1st Quarter 2012;
Longevity Pay 2nd Quarter 2012; and
Longevity Pay 3rd Quarter 2012.

F. SUBSTITUTION PAY WITH INTEREST.

G. ILLEGAL DEDUCTIONS FROM SALARY WITH INTEREST.

H. SHARE FROM PROVIDENT FUND WITH INTEREST.

I. ACCUMULATED VACATION LEAVE BENEFITS WITH INTEREST.

J. DIFFERENTIAL OF 13TH MONTH PAY; CHRISTMAS BONUS 2012; LONGEVITY PAY 4TH QUARTER 2012; SICK LEAVE CONVERSION 2012 WITH INTEREST.

K. ANNIVERSARY AWARD WITH INTEREST.

L. UNPAID SALARY WITH INTEREST.

M. ATTORNEY'S FEE.

N. DAMAGES.

Complainant then prayed and sought for the following reliefs:

A. REINSTATEMENT WITH BACKWAGES due to illegal, unfair and unreasonable retrenchment.

B. INJUNCTION AGAINST FURTHER HARASSMENT, DISCRIMINATION AND OPPRESSION.

C. Payment of:

c.1. OPTIONAL RETIREMENT PRIVILEGES AND BENEFITS BASED ON COLLECTIVE BARGAINING AGREEMENT.

c.2. SEPARATION PAY/RETRENCHMENT PAY WITH INTEREST.

c.3. UNPAID BENEFITS WITH INTEREST

C.3-A. Sick Leave Reserved

C.3-B. Unpaid benefits 2001-2008; Overtime Pay for 2010 and 2011 and other unpaid benefits.

C.3-C. Sick Leave Conversion 2011; Longevity Pay 3rd Quarter 2011; Longevity Pay 4th Quarter 2011; Educational Assistance 2012-1; Educational Assistance 2012-2; Longevity Pay 1st Quarter 2012; Longevity Pay 2nd Quarter 2012; and Longevity Pay 3rd Quarter 2012.

c.4. SUBSTITUTION PAY WITH INTEREST.

c.5. ILLEGAL DEDUCTIONS FROM SALARY WITH INTEREST.

c.6. SHARE FROM PROVIDENT FUND WITH INTEREST.

c.7. ACCUMULATED VACATION LEAVE BENEFITS WITH INTEREST.

c.8. DIFFERENTIAL OF 13TH MONTH PAY; CHRISTMAS BONUS 2012; LONGEVITY PAY 4TH QUARTER 2012; SICK LEAVE CONVERSION 2012 WITH INTEREST.

c.9. ANNIVERSARY AWARD WITH INTEREST.

c.10. UNPAID SALARY WITH INTEREST.

c.11. ATTORNEY'S FEE.

c.12. ALL OTHER BENEFITS PROVIDED FOR BY LAW.

DISCUSSION

A. ILLEGAL, UNFAIR AND UNREASONABLE RETRENCHMENT *[complainant received last October 4, 2012 a letter dated October 1, 2012 from OIC Robert T. Rivera dismissing her from service effective November 15, 2012]*. THUS, INCLUSIVE IS THE CLAIM FOR REINSTATEMENT WITH BACKWAGES.

B. ILLEGAL AND DISCRIMINATORY DENIAL OF OPTIONAL RETIREMENT PRIVILEGES AND BENEFITS BASED ON COLLECTIVE BARGAINING AGREEMENT *[Before receipt of the October 1, 2012 letter of OIC Robert T. Rivera, the complainant already filed an application for optional retirement pursuant to the provisions of the Collective Bargaining Agreement [CBA]].*

C. SEPARATION PAY/RETRENCHMENT PAY WITH INTEREST.

D. LABOR OPPRESSION, DISCRIMINATION AND HARASSMENT.

Being interrelated, the same shall be jointly discussed.

MORE THAN THIRTY-TWO LONG YEARS OF SERVICE OF THE COMPLAINANT WHO WAS OVERTASKED WITH TWO JOBS/POSITIONS WENT UNRECOGNIZED BY THE RESPONDENTS.

The complainant was employed last September 16, 1980.

In 1980, the complainant was appointed as Collector/Librarian of RPN DXKD, Dipolog City, but she was assigned to also work as its Bookkeeper.

Thence effective October 1, 2009, the complainant was designated as Cashier and Head Administrative Officer, which was the last position she held until she was illegally dismissed. Her last salary was P24,666.80.

The work schedule of the complainant was from Monday to Friday, from 8:00 a.m. – 5:00 p.m. [1 hour lunch break].

Due to the length of time, the early employment records of the complainant cannot anymore be located.

But there are other proofs of her date of employment and the length of her service. These are reflected in the Company Journals, which are deemed admissions by the respondents, of the length of complainant's employment.

PROOFS: [emphasis supplied]

Annex “**B**” : Longevity Journal Rundate Sept. 12, 2011.

“**B-1**” : Emp. No. Empl. Name Date Employed L.
Service
00968-8 Co, Estrella 09/16/1980
30-09-14

“**B-2**” : Dipolog Radio DXKD Payroll Payslip Sept.
19, 2011.
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Annex “**C**” : 2011 Xmas Assistance 1 Journal Rundate
Aug. 14, 2012.

“**C-1**” : SR No. Emp. No. Empl. Name EMP. Date
L. Service
3 00968-8 Co, Estrella 09/16/1980
31-03-15

“**C-2**” : Dipolog Radio DXKD Payroll Payslip Aug
17, 2012.
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Annex “**D**” : Wage Allowance Journal Rundate September
07, 2012

“**D-1**” : SR No. Emp. No. Employee Name
EMP. Date
3 00968-8 Co, Estrella
09/16/1980

“**D-2**” : Dipolog Radio DXKD Payroll Payslip
Sep. 7, 2012.

The length of complainant’s employment is emphasized because Section 2, Article XII of the CBA [see Annex A], grants her the right to avail of the Optional Retirement Scheme, viz:

“Section 2. **OPTIONAL RETIREMENT** – An employee who has reached the age of fifty [50] and **has rendered at least ten [10] years of service to the COMPANY or who has rendered at least twenty years [20] of service**, regardless of age, may avail of Optional Retirement from the COMPANY and shall be paid a retirement pay in accordance...

DISMISSAL FROM SERVICE.

Last October 4, 2012, the complainant received a letter dated October 1, 2012 from the respondents dismissing her from employment effective 15 November 2012.

PROOF:

Annex “**E**” : Letter dated October 1, 2012 signed by
OIC Robert T.
Rivera.

QUALIFIED TO AVAIL OF OPTIONAL RETIREMENT

But before receipt of the said letter, complainant already filed an application for optional retirement on the basis of the Collective Bargaining Agreement [CBA].

PROOF:

Annex “**E**” : Letter dated October 3, 2012 of the
complainant
Estrella G. Co applying for optional
retirement.

The basis of the complainant in availing of the optional retirement was Section 2, Article XII of the CBA [see Annex B], which provides:

“Section 2. **OPTIONAL RETIREMENT** – An employee who has reached the age of fifty [50] and has rendered at least ten [10] years of service to the COMPANY or who has rendered at least twenty years [20] of service, regardless of age, may avail of Optional Retirement from the COMPANY and shall be paid a retirement pay in accordance with the following schedule:

10 years but less than 15 years service	- 48 days per year of service
15 years but less than 20 years service	- 63 days per year of service
20 years but less than 25 years service	- 78 days per year of service
25 years or service and above	- 83 days per year of service

Moreover, the COMPANY shall also grant a CASH ADVANCE equivalent to TEN PERCENT [10%] of the covered employee’s retirement pay on the following conditions:

- a. Retirement date shall be set within one [1] year upon receipt of the 10% cash advance; remaining balance

- to be paid on the scheme mutually acceptable to the employee and management.
- b. Subject to availability of funds.”

Both in age, and in terms of the length of service, complainant was already qualified to avail of the Optional Retirement Scheme.

Computed from date of employment to date of application for optional retirement which was on October 3, 2012, complainant was then or had then worked for **thirty-two [32] years and twenty-six [26] days** [9-16-80 up to October 12, 2012].

But computed from date of employment to date of dismissal by the respondents which was effective on 15 November 2013, complainant was then or had then worked **for thirty-two [32] years, one [1] month and thirty [30] days** [9-16-80 up to November 15, 2012].

Complainant was thus already in her retireable age, or retireable based on her length of service, when she was dismissed.

Is this dependent on the availability of funds?

The first paragraph of Section 2, Article XII of RPNEU CBA [see Annex B] is very explicit that it is NOT DEPENDENT on the availability of funds. There is no qualification. So, none should be read, under the basic principle of law: “*inclusio unius est exclusio alterius*”.

It is only the second paragraph of the said Section 2, Article XII of the CBA related to the grant of a cash advance equivalent to 10% of the employee’s retirement pay which is subject to the availability of funds.

Besides, the respondents have to establish that its flag ship main office in Broadcast City with worldwide and nationwide television broadcast business (RPN-9), now become SOLAR Network and the various_____provincial stations located in different parts of the country indeed have no funds or sufficient assets and properties, or that it cannot produce such income in its ongoing operations to pay for the retirement benefits of the complainant.

It should thus be emphasized that respondents are still operating and going on with the usual business today and

have still several assets, in the form of cash for its daily sales and income from all its existing business endeavors, buildings, properties, and other stocks, to provide and grant retirement benefits to an employee who has spent almost all of her life in the service of the respondents.

**THE DISMISSAL/RETRENCHMENT MADE BY
THE RESPONDENTS WAS ILLEGAL/UNLAWFUL**

In terminating the complainant, OIC Robert T. Rivera stated in his letter dated October 1, 2012 *[see Annex E]*, as follows:

“ 1 October, 2012

027 P. Burgos Street
Dipolog City
Subject: Reduction of Personnel

Dear Ms. Co:

As you were aware, the Company continues to incur serious business and financial losses. The benefits of employees remain unpaid despite efforts to improve the operations of the Company. Based on its filed 2011 Financial Statements alone, the Company has suffered financial losses of more than Php 120 M, increasing the capital deficiency to more than Php2B.

The foregoing has led management to review its organization to recover its dire financial situation. We have continuously looked into how to improve efficiency and optimize our recourses. Much as we have exerted all efforts to maintain to our current business operations. This move seriously into account the Company's financial situation and the long term survival of the Company.

After careful evaluation, the Company is constrained to make the difficult decision of reducing its personnel on the ground of retrenchment due to serious business losses under Article 283 of the Labor Code. We regret to inform you that you are among those that have been considered for retrenchment. Your employment with the Company shall continue and remain effective only until 15 November 2012.

While an employer is exempt from paying separation pay in case of serious business losses, management, after due consideration and despite the lack of internal funds to support the same, has decided to extend separation pay. Management shall also settle any of your unpaid benefits. A preliminary computation of your separation pay,

including any unpaid benefits, is attached for your reference. The computation is still subject to revision to include deduction of applicable income taxes.

During the period prior to the effectivity of your separation, you are advised not to report for work to give you the opportunity to seek other employment but you will continue to receive your salaries. The Company, however, may call on you anytime for proper turn-over of work and pending assignments. Until 15 November 2012, you shall remain to be an employee and as such, you shall not commit acts prejudicial to the Company or violate its policies.

You may secure your personal belongings before the close of business today. For any questions, you may coordinate with the office of the undersigned at this contact number (020 931-8618).

We take the opportunity to express our profound gratitude for your invaluable services.

Sincerely yours,

RADIO PHILIPPINES NETWORK, INC.

By:

ROBERT T. RIVERA
Officer-in Charge

**IGNORING THE MORE THAN 32 YEARS OF
COMPLAINANT'S SERVICE WITH THE
RESPONDENTS. GROSS INSENSITIVITY OF
THE EMPLOYER TO THE WORKER.**

At the outset, the letter of OIC Rivera appears to seek sympathy on the purported company losses as basis for its decision to retrench/dismiss the complainant.

But then, the dismissal of an employee should not merely take into consideration the purported plight of the company.

The company is mandated to also look into the adverse effect of such action on the employee.

As held by the Supreme Court in *LIGNITON vs. NLRC*, G.R. No. 86339, February 5, 1993, the workers should "be treated NOT as subordinates but with respect and fairness, if not affection and gratitude that is due to an EQUAL PARTNER", viz:

"The workers are the lifeline of any country's economy. They represent the human element,

the brains and the brawn in the transformation of resources, natural and capital, into goods and services to satisfy the needs of society. without workers, capital cannot be translated into wealth. capital, by itself, is worthless, and technology is nothing without the workers to operate it. The production process becomes meaningless without the workers to execute it. And commodities and goods are of no value without the workers to buy and consume them.

The days are now gone when workers were at the mercy of the employer and could be dismissed for the flimsiest of reasons or even for no reason at all. The tyrannical employer is an anachronism in this enlightened era. The employees today, once defenseless and often oppressed, have found new strength in the protection of the law and the proud realization that they perform a SYMBIOTIC ROLE with the employer in their common enterprise. As such, they must be treated NOT as subordinates but with respect and fairness, if not affection and gratitude that is due to an EQUAL PARTNER."

In this case, the respondents never considered the complainant as its equal partner, because they totally ignored the fact that the complainant had been in their employ for **more than thirty-two [32] years**, and was **already 55 years of age**, well-within the optional retirement age as provided for under Section 2, Article XII of the CBA [see Annex B], and almost nearing the age of sixty years as provided for under Article 287, of PD No. 442 as amended by R.A. No. 7641, which provides:

"Art. 287. *Retirement*. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

"In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

"In the absence of a retirement plan or agreement providing for retirement benefits of

employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

"Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

"Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

"Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code."

The Retirement pay payable under Article 287, as amended, is **APART** from the retirement benefit claimable by the qualified employee under the Social Security Law. This has to be so because R.A. 7641 in its Section 2 states that "Nothing in this Act shall deprive any employee of benefits to which he may be entitled under existing law or company policies or practices." [The LABOR CODE With Comments And Cases, Volume II, 7th Edition, pg. 942, by C.A.AZUCENA].

Had the respondents heeded the advice of the High Court in the Lagniton case, *supra*, they could have accommodated the application for optional retirement of the complainant.

Aquino vs. Otis Elevator Company, G.R.No. 87653, February 11, 1992, an employee can claim retirement benefits and separation pay simultaneously.

THE LABOR CODE, With Comments and Cases, Volume II, 7th Edition pg. 944 by C.A. AZUCENA. It is important at the outset to note the distinction between separation pay and retirement benefits.

Separation pay is required in the cases enumerated in Article 283 and 284 of the Labor Code, which include retrenchment, and is computed at least one month salary or at the rate of one-half month salary for every year of service, whichever is higher. We have held that it is a statutory right designed to provide the employee with the wherewithal during the period that he is looking for another employment . (Quoting Santos vs.NLRC, 154 SCRA 166, 172.)

On the other hand, **retirement benefits** , are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying for his financial support, and are a form of reward for his loyalty and service to the employer.(Quoting Laginlin vs. WCC, 159 SCRA 91, 99).

Recalling decisions in BLTB Co. vs. Court of Appeals, 71 SCRA 470 [1976] and University of the East vs. UE Faculty Association (G.R.No. 74007, July 31, 1987), the Court concluded:

We have carefully examined the record, and particularly the Collective Bargaining Agreement and the Retirement Plan, and have found no specific prohibition against the payment of both benefits to the employee.

Aquino vs. Otis Elevator Company, G.R.No. 87653, February 11, 1992, the Court's examination of the CBA make the following observation and advice:

The Court feels that if the private respondent really intended to make the separation pay and the retirement benefits mutually exclusive, it should have sought inclusion of the corresponding provision in the Retirement Plan and Collective Bargaining Agreement so as to remove all possible ambiguity regarding this matter.

We may presume that the counsel of the respondent company was aware of the prevailing doctrine embodied in the cases earlier cited. Knowing this, he should have made it a point to categorically provide in the Retirement Plan and the CBA that an employee who had received separation pay would no longer be entitled to retirement benefits. Or to put it more plainly, collection of retirement benefits was prohibited if the employee had already received separation pay.

The petitioners are not pleading for generosity but demanding their rights. These rights are embodied in the Collective Bargaining Agreement, which was the result of negotiations

between the company and the employees .

Separation Pay is a statutory right of the complainant, required in Articles 283 and 284 of the Labor Code, and become mandatory obligation on the part of employer respondent.[Aquino et al. vs. NLRC and Otis Elevator Company , G.R.No. 87653, Feb. 11, 1992.]

Retirement Benefits are contractual right of the complainant embodied in the Collective Bargaining Agreement. Though, this is not mandated by law, like that of the Separation Pay, the result of the negotiations between the company and the employees under the Collective Bargaining Agreement give rise of complainant's demandable right that calls for a grant or bounty that must be given as a sort of reward for having rendered satisfactory service to the company respondent.[Aquino et al. vs. NLRC and Otis Company, G.R.No. 87653, Feb. 11, 1992.]

Again, complainant hereto asserts that she was already in her retirable age, or was already retirable based on her length of service, when she was dismissed/retrrenched. There is none in the provision of the existing CBA which says receipt of one benefit (payment of separation benefits) excludes the other (payment of retirement benefits). So then, divergent interpretations and disharmonious litigation would not arise. [Aquino et al.vs.NLRC and Otis Elevator Company, G.R.No. 87653, February 11, 1992]

DISMISSAL TO AVOID RETIREMENT BENEFITS

If it is wrong to ostensibly retire an employee who actually is retrrenched, it is likewise wrong, and probably more reprehensible, to dismiss an employee to avoid paying his retirement benefit. [THE LABOR CODE, With Comments and Cases, Volume II, 7th Edition, 2010, pg.948 by C.A.AZUCENA.]

In a 1981 case, the Supreme Court said that a company should exercise caution and care in dealing with its employees to prevent suspicion that its dismissal of an employee is only a scheme to evade its responsibility of granting retirement benefits. In the case at bar, it should not have waited until petitioner employee applied for retirement to have taken adverse action against him for a cause it had

already knowledge of. [Reyes vs, Phil. Duplicators, Inc., 109 SCRA 489 [1981].]

The herein complainant filed her application for optional retirement prior to the receipt of retrenchment order. [Annex "E" : Letter dated October 3, 2012 of the complainant Estrella G. Co applying for optional retirement] .

**ILLEGAL, UNFAIR, AND UNREASONABLE
RETRENCHMENT**

**LIMITATION ON THE POWER OF AN EMPLOYER
TO DISMISS ITS EMPLOYEES AS AN EXERCISE
OF MANAGEMENT PREROGATIVES.**

**ARBITRARY, DISCRIMINATORY AND DESPOTIC
MANNER OF DISMISSAL. NO GUIDELINE WAS
FOLLOWED IN CHOOSING WHO WILL BE
RETRENCHED.**

The respondents in this case may have thought that it was enough that the dismissal of an employee should fall under the grounds laid down under Article 282 and 283 of the Labor Code of the Philippines.

But this is wrong because the dismissal must also be **without abuse of discretion or that it must not be done in an arbitrary and despotic manner.**

Thus, as held by the Supreme Court:

“The power to dismiss is a normal management prerogative of an employer. An employer, generally, can dismiss or lay-off its employees for just or authorize cause enumerated under

Article 282 and 283 of the Labor Code. However, the right of an employer to freely discharge his employee is subject to regulation by the State, basically in the exercise of its paramount police power. This is so because the preservation of the lives of its citizens is the basic duty of the State, more vital than the preservation of corporate profits. (Manila Electric Company vs. NLRC, G.R. No. 78763, July 12, 1989).

The dismissal of an employee must be done with just or authorized cause and without abuse of discretion. It must NOT be done in an arbitrary or despotic manner. To hold otherwise would render nugatory the security of tenure clause enshrined in the Constitution (Esmalin vs. NLRC, G.R. No. 67880, September 15, 1989).

The complainant in this case shall prove that the retrenchment was done with abuse of discretion and in an arbitrary and despotic manner.

RETRENCHMENT DEFINED

The Supreme Court defines RETRENCHMENT as the termination of employment initiated by the employer, through no fault of the employee and without prejudice to the latter, and resorted to by management during periods of INDUSTRIAL RECESSION, INDUSTRIAL DEPRESSION or SEASONAL FLUCTUATIONS or during LULLS OCCASIONED BY LACK OF ORDERS, SHORTAGE OF MATERIALS, CONVERSION OF THE PLANT FOR A NEW PRODUCTION PROGRAM or OF AUTOMATION. (Sebuguero et. al., vs. NLRC, 248 SCRA 532 (1995) .

REQUIREMENTS FOR A VALID RETRENCHMENT

The requirements for valid retrenchment which must be proved by clear and convincing evidence are enunciated in the case of Asian Alcohol Corporation vs. NLRC, G.R. No. 131108, March 25, 1999, viz:

“(1) that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as

perceived objectively and in good faith by the employer [*Banana Growers Collective at Puyod Farms v. NLRC*, G.R. No. 113958, July 31, 1997; *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC*, 272 SCRA 172, 179 (1997); *Uichico v. NLRC*, 273 SCRA 43 (1997); *Lopez Sugar Corporation v. Federation of Free Workers*, 189 SCRA 179, 186 (1990); *Anino, et al. v. NLRC, et al.*, G.R. No. 123226, May 21, 1998];

(2) that the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment [*Sebuguero, et. al., vs. NLRC*, G.R. No. 115394, September 27, 1995; *Union of Filipino Workers (UFW) v. NLRC*, 221 SCRA 267, 279 (1993); *Fuentes v. NLRC*, G.R. No.110017, January 2, 1997; *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC*, 272 SCRA 172, 179 (1997); *Caffco International Limited v. Office of the Minister-Ministry of Labor & Employment*, 212 SCRA 351, 357 (1992); *Radio Communications of the Philippines, Inc. v. NLRC*, 210 SCRA 222, 225 (1992)];

(3) that the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher [*Sebuguero, et. al., vs. NLRC*, G.R. No. 115394, September 27, 1995; *Union of Filipino Workers (UFW) v. NLRC*, 221 SCRA 267, 279 (1993); *Fuentes v. NLRC*, G.R. No.110017, January 2, 1997; *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC*, 272 SCRA 172, 179 (1997); *Caffco International Limited v. Office of the Minister-Ministry of Labor & Employment*, 212 SCRA 351, 357 (1992)];

(4) that the employer exercises its prerogative to retrench employees IN GOOD FAITH for the advancement of its interest and NOT TO DEFEAT OR CIRCUMVENT THE EMPLOYEES RIGHT TO SECURITY OF TENURE [*Dela Cruz v. NLRC*, 268 SCRA 458, 467-468 (1997); *Caffco International Limited v. Office of the Minister-Ministry of Labor & Employment*, 212 SCRA 351, 357 (1992)] ; and,

(5) that the employer used FAIR AND REASONABLE CRITERIA [*Radio Communications of the Philippines, Inc. v. NLRC*, 210 SCRA 222, 225 (1992); *Rubberworld (Phils.), Inc. v. NLRC*, 175 SCRA 450, 457 (1989); *Somerville Stainless Steel Corporation v. NLRC, et al.*, G.R. No. 125887, March 11, 1998] in ascertaining who would be dismissed and who would be retained among the employees, such as STATUS [i.e., whether they are TEMPORARY, CASUAL, REGULAR OR MANAGERIAL EMPLOYEES], EFFICIENCY, SENIORITY [*Asiaworld Publishing House, Inc. v. Ople*, 152 SCRA 219, 225 (1987)], PHYSICAL FITNESS, AGE, AND FINANCIAL HARDSHIP [*Duay v. Court of Industrial Relations*, 122 SCRA 834, 839-840 (1983)] for certain workers.

RETRENCHMENT BASED ON SPECULATIVE LOSSES CAN- NOT BE COUNTENANCED

It is almost an inflexible rule that employers who contemplate terminating the services of their workers cannot be so arbitrary and ruthless as to find flimsy excuses for their decisions. This must be so considering that the dismissal of an employee from work involves not only the loss of his position but more important his means of livelihood. Applying this caveat to the case at bar, it is incumbent upon the employer before putting into effect any retrenchment process on its workforce to show by convincing evidence that it was being WRECKED by serious financial problems. By simply stating its state of insolvency or its IMPENDING DOOM will not be sufficient. Doing so would render the security of tenure of workers and employees ILLUSORY. Any employer desirous of ridding itself of employees could then easily do so without need to adduce proof in support of its action. WE CANNOT COUNTENANCE THIS! Security of tenure is a right guaranteed to employees and workers by the Constitution and should not be denied ON THE BASIS OF MERE SPECULATION [*INDINO VS. NLRC., 178 SCRA 168 (1989)*].

Tested against the requirements set in the Asian Alcohol case, *supra*, the retrenchment made by the respondents was illegal.

REQUIREMENT NO. 1

“(1) That the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer.

Until now, no documentary evidence was presented by the respondents to the complainant to justify the retrenchment.

Worst, while claiming to incur business losses, the company continued its practice of granting fat bonuses to its executive officers. For this purpose, the complainant is requesting and praying that the **respondents be directed to present and furnish the Honorable Arbiter with a**

copy of the documents showing the bonus given to its executive officers.

DOCUMENTARY PROOFS NECESSARY FOR VALID RETRENCHMENT DUE TO LOSSES

As held by the Supreme Court in *Asian Alcohol Corporation vs. NLRC*, G.R. No. 131108, March 25, 1999, viz:

“The condition of business losses is normally shown by audited FINANCIAL DOCUMENTS like the yearly BALANCE SHEETS and PROFIT AND LOSS statements as well as INCOME TAX RETURNS. It is our ruling that financial statements must be prepared and signed by independent auditors [*Wiltshire File Co., Inc. v. NLRC*, 193 SCRA 665, 670 (1991) *Banana Growers Collective at Puyod Farms v. NLRC*, 276 SCRA 544, 552-556 (1997); *Lopez Sugar Corporation v. Federation of Free Workers*, 189 SCRA 179, 190 (1990); *AG & P United Rank and File Association v. NLRC (First Division)*, 265 SCRA 159, 164-166 (1996); *Caffco International Limited v. Office of the Minister-Ministry of Labor & Employment*, 212 SCRA 351, 357 (1992)].

Unless duly audited, they can be assailed as self-serving documents [*Uichico v. NLRC*, 273 SCRA 43 (1997)].

But it is not enough that only the financial statements for the year during which retrenchment was undertaken, are presented in evidence. For it may happen that while the company has indeed been losing, its losses may be on a downward trend, indicating that business is picking up and retrenchment, being a drastic move, should no longer be resorted to [*Philippine School of Business Administration (PSBA Manila) v. NLRC*, 223 SCRA 305, 308 (1993)].

Thus, the failure of the employer to show its income or loss for the immediately preceding year or to prove that it expected no abatement of such losses in the coming years, may bespeak the weakness of its cause [*Somerville Stainless Steel Corporation v. NLRC*, et al, G.R. No. 125887, March 11, 1998].

It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future.”

Thus, it is not enough, that only the financial statements for the year during which the retrenchment was undertaken should be presented. The respondents should also present its income and loss for the IMMEDIATELY PRECEDING YEAR. For it may happen that while the company has indeed been losing, its losses may be on a DOWNWARD TREND indicating that business is picking up and retrenchment, being a drastic move, should no longer be resorted to. Hence, failure of the employer to show its income and loss for the immediately preceding year or to prove that it expected no abatement in losses in the coming years may BESPEAK THE WEAKNESS OF ITS CAUSE. The respondents must show that the financial condition of the company is not likely to improve in the near future.

IF EVER THERE WAS LOSS, THERE IS STILL NO PROOF THAT IT EXPECTS NO ABATEMENT OF SUCH LOSSES IN THE COMING YEARS.

Besides, Radio Philippines Network is now under a new management. The respondents have not shown that under the new management, the financial status of the company was in dire financial distress, OR that its financial condition in the coming years will likely not improve.

The respondents cannot just rely on the financial status of the previous management to justify the retrenchment under the new management.

The respondents are mandated to also PROVE that **it expected no abatement of such losses in the coming years, or that the condition of the company is not likely to improve in the near future.**

This is the clear import of the Supreme Court in Asian Alcohol Corporation vs. NLRC, G.R. No. 131108, March 25, 1999, viz:

It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future.”

FAILURE TO FAIRLY IMPLEMENT RETRENCHMENT PROGRAM RENDER THE RETRENCHMENT ILLEGAL.

Radio Philippines Network has a retrenchment program embodied in its CBA with its workers and employees.

“ARTICLE XIV
VOLUNTARY RETRENCHMENT PROGRAM (VRP)

In case of VOLUNTARY RETRENCHMENT PROGRAM (VRP) to be implemented by the Company, it shall guarantee to said covered employee/s a retrenchment pay in accordance of the following schedule:

One (1) but below 5 years of service	-	35
days/year of service		
5 years but below 10 years of service	-	40 days
10 years but below 15 years of service	-	43 days
15 years but below 20 years of service	-	48 days
20 years but below 25 years of service	-	53 days
25 years and above	-	60
days plus Collective Bargaining Agreement benefits under Article XII, Sections 1,2 &3. (p. 33)”		

The implementation of the retrenchment program by the respondents, however, was arbitrary and unfair.

The respondents unreasonably disregarded any valid criteria in the selection of the workers to be retrenched.

In fact, it appeared that the company selected the workers or employees who were employed longer than those who were employed earlier, in its retrenchment, just to avoid paying bigger monetary benefits or wages.

The objective was not merely to retrench but to evade the payment of higher monetary benefits and wages of the older employees.

In *Philippine Tuberculosis Society, Inc., vs. NLRC, G.R. No., 115414, August 25, 1998*, the Supreme Court affirmed the decision of the NLRC requiring the REINSTATEMENT of re-trenched employees notwithstanding its finding that the retrenchment program was justified by the losses incurred by the employer, on the ground THAT THE EMPLOYER FAILED TO IMPLEMENT THE PROGRAM FAIRLY , particularly in the employer's failure to consider SENIORITY in selecting the employees to be dismissed.

“However, the employer’s prerogative to layoff employees is subject to certain limitations set

forth in *Lopez Sugar, Corporation vs. Federation of Free Workers* [189 SCRA 170, 186-187] as follows:

Firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bonafide nature of the retrenchment would appear to be seriously in question.

Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off.

Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses. i.e., cut other costs than labor costs. **An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses.** To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — e.g. reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent

losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.

In addition to the above, the retrenchment must be implemented in a just and proper manner. As held in *Asiaworld Publishing House, Inc. vs. Ople*, there must be fair and reasonable criteria to be used in selecting employees to be dismissed, such as : (a) less preferred status (e.g. temporary employee); (b) efficiency rating; and (c) seniority”

SENIORITY RIGHTS.

The seniority of a worker for purposes of consideration in the retrenchment by an employer is well-recognized by the Supreme Court in the Philippine Tuberculosis case, *supra*.

“Seniority right is one of a criteria in selecting employees to be dismissed. Although, an employee has no inherent right to seniority. He could however , have such right based on a contract, a statute, or an administrative regulation relative thereto. Seniority rights, can be acquired by an employee through long-time employment and were said to be contractual, and not constitutional [*Enrique vs. Zamora*, G.R. No. 513882, Dec.29, 1986]. Argumentum of its unconstitutionality, there is nothing in the constitutionality of the law that runs contrary with the observance of seniority rights, this is more solicitous for the welfare and protection of labor especially in the selection process of dismissal a procedural due process that must be afforded to the employee. This is more of suppletory regulation and guidelines and not in contravene to the object of the law. By this, selecting employees to be retrenched, the employer cannot completely disregard seniority as a factor.”

Thus, the Supreme Court expressed grave alarm and concern on the retrenchment made by employers who failed to consider valid, fair, and reasonable factors in selecting the employee or worker to be retrenched.

“Nor do we think the NLRC erred in holding that though the Society was justified in ordering a retrenchment invalid. That is because in selecting the employees, the Society disregarded altogether the factor of seniority. As the NLRC noted:

We noted with concern that the criteria used by the Society failed to consider the seniority factor in choosing those to be retrenched, a failure which, to our mind, should invalidate the retrenchment, as the omission immediately makes the selection process unfair and unreasonable.

Things being equal, retaining a newly hired employee and dismissing one who had occupied the position for years, even if the scheme should result in savings for the employer, since he would be paying the newcomer a relatively smaller wage, is simply unconscionable and violative of the senior employee's tenurial rights.

In Villena vs. NLRC, 193 SCRA 686. February 7, 1991, the Supreme Court considered the seniority factor an important ingredient for the validity of a retrenchment program. According to the Court, the following legal procedure should be observed for a retrenchment to be valid:

(a) one-month prior notice to the employee as prescribed by Article 282 of the Labor Code;

and b) use of a fair and reasonable criteria in carrying out the retrenchment program, such as 1) less preferred status (as in the case of temporary employees) 2) efficiency rating, 3) seniority, and 4) proof of claimed financial losses.

Amelita Doria, one of the employees retrenched, for instance worked with the Society for 31 years, her latest position being that of a Head Nurse. From 1982 up to 1990, she was President of the QI Nurses Association. Another employee retrenched, despite being more senior than those retained, was Isabel Guille, a nurse who worked for the Society for 11 years. She was the incumbent President of the QI Nurses Association at the time of her retrenchment. Buenaventura Vazquez worked with the Society since 1958 continuously up to 1991, when he was included among those retrenched. What

makes his case particularly noticeable is that he was retrenched after he filed an application for retirement as he was already of retireable age.

Relatedly, he swears in an Affidavit that as an audit examiner, “I know full (sic) well that the PTS is not bankrupt and in financial distress as it has many real estate properties and assets to pay benefits to retiring and separate d employees. After all the PTS is a non-profit organization established for profit.”

Another is Premia Dumlao, who submitted an Affidavit attesting to the fact that she worked with the Society since 1955 continuously up to 1991, when she was retrenched despite her 37 years of service with the Society. She attests that her “retrenchment is arbitrary and illegal as the guidelines did not provide for the consideration of the ages, lengths of service and retirability of the retrenched employees.”

In the case of the complainant, she was one of the most senior employees of RPN DXKD, in term of length of service.

The others who were not retrenched included Field Reporter Renie N. Buaya, who was employed only last 2007; Technician Edgar E. Lugo who was employed only last August 2009; Technician Crisme V. Empeynado who was employed only last 2010; Garry Pegarido, who was employed only last July 2003; and Leo H. Cimafranca, the Station Manager, who was employed only last August, 1986.

As compared to the herein-complainant, who was employed last September 16, 1980, and whose last position held was as Head of the Administrative Department.

Normally, had a criteria been adopted by the respondents in the retrenchment program, the last one employed would necessarily be the first to go in consonance with the ruling of the Supreme Court in MAYA FARMS EMPLOYEES ORGANIZATION VS. NLRC, 239 SCRA 508, December 28, 1994, which adopted the LAST-IN-FIRST-OUT RULE IN RETRENCHMENT PROGRAMS.

**NO CRITERIA USED BY THE RESPONDENTS
IN
THE RETRENCHMENT OF THE COMPLAINANT**

In this case, the respondents have not shown that its selection of employees to be terminated was based on any criteria such as whether the positions of the employees are to be retained or abolished, the qualifications required by the positions to be retained, modified or created, seniority, efficiency, etc.

In terms of significance, as Cashier and Administrative Officer, the complainant retains a position of trust and significance and is absolutely necessary for the operation of the radio station.

Thus, it is so mystifying why the complainant was chosen among the several employees of RPN DXKD to be retrenched.

In its letter dated October 1, 2012 [see *Annex E*], the respondents thru OIC Robert T. Rivera did not cite any criteria in selecting the complainant as one of those to be retrenched/dismissed.

“xxx

As you were aware, the Company continues to incur serious business and financial losses. The benefits of employees remain unpaid despite efforts to improve the operations of the Company. Based on its filed 2011 Financial Statements alone, the Company has suffered financial losses of more than Php 120 M, increasing the capital deficiency to more than Php2B.

The foregoing has led management to review its organization to recover its dire financial situation. We have continuously looked into how to improve efficiency and optimize our recourses. Much as we have exerted all efforts to maintain to our current business operations. This move seriously into account the Company's financial situation and the long term survival of the Company.

After careful evaluation, the Company is constrained to make the difficult decision of reducing its personnel on the ground of retrenchment due to serious business losses under Article 283 of the Labor Code. We regret to inform you that you are among those that have been considered for retrenchment. Your employment with the Company shall continue and remain effective only until 15 November 2012.

xxx”.

In *Capitol Wireless, Inc. v. Confesor*, [G.R. No. 117174, November 13, 1996], the Supreme Court held that “in selecting

the employees to be dismissed, a fair and reasonable criteria must be used such as but not limited to: (a) less preferred status, [e.g. temporary employee]; (b) efficiency; and (c) seniority.”

No such appraisal was done in the present case. The absence of criteria in the selection of an employee to be dismissed rendered the dismissal arbitrary.

**THE COMPLAINANT AND THE OTHER
DISMISSED EMPLOYEE WERE ALL OF-
FICERS OF THE LOCAL CHAPTER OF
THE LABOR UNION.**

What could have been the possible reason for the selection of the complainant [and another employee-Jocelyn Carpio Ballares] as the workers to be retrenched?.

The reason lies on the status of the complainant and the other worker – Jocelyn Carpio Ballares – to the labor union.

The complainant was the Local Chapter Chairman of the RPNEU, labor union. The other employee who was dismissed, Jocelyn Carpio Ballares, was also the Local Chapter Secretary .

The decision of the Supreme Court in the Bataan Shipyard and Engineering Co., Inc.vs. NLRC case, *supra*, will thus apply.

“Under the circumstances obtaining in this case, We are inclined to believe that the Company had indeed been discriminatory in selecting the employees who were to be retrenched. All of the retrenched employees are officers and members of the NAFLU. The record of the case is bereft of any satisfactory explanation from the Company regarding this situation. As such, the action taken by the firm becomes highly suspect. It leads Us to conclude that the firm had been discriminating against membership in the NAFLU, an act which amounts to interference in the employees’ exercise of their right of self-organization. Under Article 249 of the Labor Code of the Philippines, such interference is considered an act of unfair labor Practice on the part of the Company, to wit —

ART. 249. *Unfair labor practices of employers.* — It shall be unlawful for an employer to commit any of the following unfair labor practices:

- (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization.;

xxx xxx xxx”

In the instant case, complainant and her companion, Jocelyn Carpio Ballares were all officers and members of RPNEU...where the action of the respondents in dismissing them happened during the peak of the renewed negotiation for the CBA.

The act of the respondents in retrenching the employees during the height of the negotiations for a new CBA can be classified as highly suspicious.

Similarly this can be called an interference that prevented the employees' vested right to self-organization.

WHILE THE EMPLOYER RETRENCHED THE WORKERS WHO WERE OFFICERS OF THE LABOR UNION, THE SAID EMPLOYER RE-HIRED AND EVEN HIRED A REPLACEMENT WHICH IS AN INDICATION THAT THERE WAS NO SUCH URGENCY FOR THE SAID RETRENCHMENT.

THERE IS NO SHOWING THAT THE RESPONDENT ADOPTED OTHER MEASURES TO FORESTALL OR PREVENT THE PURPORTED BUSINESS LOSS.

Worst of all, while the respondents tried to paint a picture that it was necessary to retrench or reduce its workers, as it was accordingly suffering from business loss, but it appears that this was merely a charade.

Thus, immediately after the dismissal of the complainant and another employee, who were all officers of the local labor union, the respondents directed the retained Station Manager, Leo H. Cimafranca to recommend the

rehiring of three employees: Renie N. Buaya, Edgar E. Lugo and Crisme V. Empeynado.

PROOF:

Annex “**G**” : Letter dated October 18, 2012 of Station Manager Leo H. Cimafranca recommending for the rehire of Renie N. Buaya, Edgar E. Lugo and Crisme V. Empeynado.

These three [3] persons are now still working with RPN DXKD until now.

On the same date, October 18, 2012, and realizing the importance of the work of the herein-complainant and the other retrenched employee, RPN DXKD also looked for and then newly hired another person, Jenny Babe M. Ello as their REPLACEMENT.

PROOF:

Annex “**H**” : Letter dated October 18, 2012 of Station Manager Leo H. Cimafranca recommending for the hiring of Jenny Babe M. Ello as replacement of Estrella G. Co and Jocelyn Carpio Ballares.

Ms. Ello is now currently working with RPN DXKD as the replacement of the complainant and the other retrenched employee.

The rehiring of the three workers, Renie N. Buaya, Edgar E. Lugo and Crisme V. Empeynado and the SEARCH for a REPLACEMENT and the HIRING OF A NEW WORKER, Jenny Babe M. Ello directly run counter to the true essence and real purpose of a valid retrenchment, which is an economic ground to reduce the number of employees.

Normally, a company resorts to retrenchment to reduce the number of its personnel for the purpose of cutting down on costs of operations in terms of salaries and wages because of losses in operation of a business occasioned by lack of work and considerable reduction in the volume of business [*Alabang Country Club vs. NLRC*, [G.R. No. 157611, August 9, 2005](#)].

But in this case, the respondents even rehired its workers and worst, even had to look for a replacement of the retrenched employees.

This just goes to show that there was NO SUCH URGENCY to make the retrenchment.

There is also no showing that the respondents have adopted other measures to prevent or forestall the purported business loss.

The High Court pronouncement in *Lopez Sugar Corporation vs. Federation of Free Workers*, 189 SCRA 179, 190, August 30, 1990, is instructive:

“We consider it may be useful to sketch the general standards in terms of which the acts of petitioner employer must be appraised. Firstly, the losses expected should be substantial and not merely de *minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the *bonafide* nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called “golden parachutes”, can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing “full protection” to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — e.g., reduction of both management and rank-and-file bonuses and salaries going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees. . . .”

The Supreme Court’s ruling in Juan Saballa, et.al., vs. NLRC, et.al., G.R. No. 102472-84, August 22, 1996, which centered on the issue of why an employer should rehire its old workers or why it will hire replacements when it supposedly had embarked on a retrenchment program should also be duly considered in this case.

“Given the preceding discussion, it is indisputable that private respondent failed to meet the above stated requirements for a valid retrenchment due to imminent business losses, since (1) the expected losses were not proven to be substantial; (2) the expected losses were not shown to be imminent as private respondent was able to afford re-hiring of some of the non-tenurial employees on "forced leave"; and (3) the retrenchment was not shown to be reasonably necessary and likely to effectively prevent the expected losses. And, neither the losses already realized nor the imminent losses sought to be forestalled were proven by sufficient and convincing evidence.

Moreover, the private respondent admitted but failed to explain why it rehired previously retrenched employees who were even non-tenurial, during the pendency of the complaints for illegal dismissal, when there were still a number of regular employees in the same situation. Petitioners also alleged that, immediately after their termination, private respondent hired replacements to fill their positions. This allegation, supported by the affidavit of petitioners' witness Marlene Cerillo, remained unrebutted and uncontroverted by private respondent. This militates strongly against private respondent's claim of good faith in implementing reductions of its work force to reduce costs. And, although Memorandum No. 24-88 set out the priorities/categories to be observed in implementing the personnel reduction program, the same was not applied to the petitioners, who, being regular employees,

did not fall under any of the categories mentioned in said memorandum, and who therefore ought not have been retrenched — at least not under said memorandum.

This Court has repeatedly enjoined employers to adopt and observe fair and reasonable standards to effect retrenchment [*Radio Communications of the Philippines, Inc. vs. National Labor Relations Commission*, 210 SCRA 222, 225, June 25, 1992 and *Asiaworld Publishing House, Inc. vs. Ople*, 152 SCRA 219, 225, July 23, 1987]. The private respondent adopted in its Memo. No. 24-88 a set of criteria in retrenching employees in accordance with its cost-reduction program, but discarded these self-imposed criteria when it came to the retrenchment of petitioners, thus rendering its action arbitrary. Further, it is undisputed that Sec. 1, Article XI of the Collective Bargaining Agreement of September 13, 1988 between private respondent and the employees' union stipulates that "seniority in service to the company shall be . . . considered in lay-off or reduction of working force. Thus, the subject retrenchment is violative of this stipulation as well. The private respondent's demonstrated arbitrariness in the selection of which of its employees to retrench is further proof of the illegality of the subject retrenchment, not to mention private respondent's bad faith. And lastly, we note that the termination was made effective five (5) days after receipt of notice. The lack of the thirty (30) days notice prior to retrenchment as required under Article 283 of the Labor Code further bolsters the conclusion that the subject retrenchment was illegal.

Thus, it is ineludible that we should agree with petitioners' contention that, contrary to the public respondent's finding, the retrenchment of petitioners by private respondent constituted illegal dismissal."

DISCRIMINATION

Not all employees of the respondents were retrenched, because there are still a lot of them retained in the provincial stations.

In fact, no one was retrenched in SURIGAO, DXKS, a sister radio station, under the umbrella of the same NETWORK.

The contention that DXKS, Surigao, could not be affected because it is the only provincial station that operates with profit cannot be given favorable reservation because DXKS is an integral part of the whole system of RPN, as a network.

When the body is sick, the whole system even to the remotest part cannot be spared to claim exemption that it is unaffected. The principle of Domino effect to all sister stations holds true to this case and can never be considered as an excuse.

Nobody should be discriminated in the retrenchment program. Nobody should be favored.

Discrimination, bias and favoritism in the retrenchment will render injustice to the retrenched workers. Both in good times and bad times, the members of RPN family will have its share of the cake. Be it sweet or bitter everyone has to accept the poison of death in the termination.

But not in the case of DXKS, SURIGAO.

Not one of the employees there was retrenched.

There was, therefore, bias and discrimination, on the company's act of implementing the retrenchment program.

In the case of RPN DXKD, Dipolog City where the complainant is working, out of the four regular employees, only two were retrenched, to include the herein-complainant and another worker, Jocelyn Carpio-Ballares. All the others were retained. Even about four [4] contractual and job-order employees were also retained.

Any explanation to the effect that the services of the retained regular employees were indispensable, as in the case of Gary Pegarido, *[the newest among the four regular, and currently holding the OIC-chief Tech position in the Technical Department]* cannot be given credence, for the very reason that FACTUALLY, when Mr. G. Pegarido went on leave of absence, even for two [2] or three [3] days, or even on occasions that he utilized and availed of his full 15 days paid vacation or sick leave privileges, the station's operation still continued. In other words, even without Mr. G. Pegarido, RPN DXKD still was able to go on air.

As the OIC- Administrative Officer, the complainant actually noticed and observed that the station's operation and programming remained unaffected, because there were several contractual workers, who could assume and who indeed assumed the technical operations of the station.

Moreover, even announcers in the production department still managed to go on air without Mr. G. Pegarido at the technical department.

With the advancement in technology and the use of the computerized system, the announcer can become a technician and radio announcer at the same time. This is an undisputed practice today.

The Daily Time Records of Mr. Garry Pegarido and the Station program log will all show that the retained employees do not necessarily occupy such positions that without them, the radio station cannot operate.

This will only show that the retrenchment made by the respondents was unreasonable, unfair, baseless, and discriminatory.

It is a long time undisputed practice that for retrenchment to be valid, it must be undertaken reasonably.

However, the manner in which the prerogative is exercised should not be tainted with abuse of discretion.

As held by the Supreme Court in *Bataan Shipyard and Engineering Co., Inc. vs. NLRC.*, G.R. No. L-78604, May 9, 1998, viz:

“It is not disputed that the retrenchment undertaken by the Company is valid. However, the manner in which this prerogative is exercised should not be tainted with abuse of discretion.

Labor is a person's means of livelihood. He cannot be deprived of his labor or work without due process of law [*Phil. Movie Pictures Workers' Association vs. Premiere Productions, Inc.*, 92 Phil. 843 (1953)].

Retrenchment strikes at the very heart of one's employment. While the right of an employer to dismiss an employee is conceded in a valid retrenchment, the right differs from and should

not be confused with the manner in which such right is exercised. It should not be oppressive and abusive manner since it affect one's person and property [De Leon vs. National Labor Relations Commission, 100 SCRA 691 (1980)]. Due process of law demands nothing less.

CONTINUATION OF DISCUSSION
MONETARY CLAIMS

The computation of the monetary claims of the complainant shall be discussed hereinafter.

RESPONDENTS' OFFER

At the outset, acting on the mistaken/wrong assumption that its retrenchment/dismissal was legal, the respondents made an offer to the complainant for the amount of P1,535,468.62, broken down as follows:

=====

A. SEPARATION PAY

RETRENCHMENT PAY			
P 24,970.80	x	32	
P 799,065.60			
		SUBTOTAL-SEPARATION	PAY
799,065.60			

B. BENEFITS

1. SICK LEAVE RESERVED (15 DAYS)			
P 24,970.80	x	12/251	1,193.82
		1,193.82	x
17,907.35			15
2. UNPAID BENEFITS			
2001 TO 2008; OT Pay for 2010/2011 and other unpaid benefits			585,469.93
Sick Leave Conversion 2011			27,123.65
Longevity Pay 3 rd Quarter 2011			9,404.78
Longevity Pay 4 th Quarter 2011			9,481.38
Educational Assistance 2012-1			24,666.80
Educational Assistance 2012-2			24,666.80
Longevity Pay 1 st Quarter 2012			9,557.13
Longevity Pay 2 nd Quarter 2012			9,632.03
Longevity Pay 3 rd Quarter 2012			9,707.78
Less: Advance or Deductions			156,333.56
553,376.72			

3. SHARE IN PROVIDENT FUND
45,682.65

4. ACCUMULATED VACATION LEAVE
P 1,193.82 x 26.75 days 31,934.77

SUBTOTAL BENEFITS
648,901.48

C. FINAL PAY

1. LAST PAY * (included in the payroll on 15 Nov. 2012 to be deposited directly to payroll account)

P 24,666.80 x 0 months

2. 13TH MONTH PAY 2012 (PRORATED)

P 24,666.80 / 12 2,055.57
2,055.57 X 10.5 months

21,583.45

3. CHRISTMAS BONUS 2012 (PRORATED)

P 24,666.80 / 6 months X 4.5 18,500.10
18,500.10 X 2 months 37,000.20

4. LONGEVITY PAY 2012- 4TH QUARTER (PRORATED)
4,892.19

5. SICK LEAVE CONVERSION 2012 (PRORATED)

P 1,193.82 X 20.13 days
24,025.69

6. OVERTIME PAY 2012

87,501.53

TOTAL BEFORE TAX

1,535,468.61

Less: TAX ON UNPAID BENEFITS AND FINAL PAY**
118,494.68

COOPERATIVE LOANS

TOTAL**

P

1,416,973.93

=====

PROOF:

Annex “I” : Computation Sheet/Payslip offered by the respondents.

Computed from date of employment to date of application for optional retirement which was on October 3, 2012, complainant was then or had then worked for thirty-two [32] years and twenty-six [26] days [9-16-80 up to October 12, 2012].

But computed from date of employment to date of dismissal by the respondents which was effective on 15 November 2013, complainant was then or had then worked for thirty-two [32] years, one [1] month and thirty [30] days [9-16-80 up to November 15, 2012].

For the more than 32 years of long, loyal and hard service of the complainant, this was only the amount offered by the respondents for the complainant.

Worst, out of the amount of P1,535,468.62, only a very small amount of P799,065.60 was allocated as separation pay for complainant's more than 32 years of service. The rest were considered accrued benefits already due to the complainant.

As summarized, this was the offer of the respondents to the complainant.

<u>A. Separation Pay [retrenchment pay]</u>	P799,065.60
<u>B. Benefits</u>	
1. Sick Leave Reserved [15] days	17,907.35
2. Unpaid Benefits	553,376.72
3. Share in Provident Fund	45,682.65
4. Accumulated Vacation Leave	31,934.77
<u>C. Final Pay</u>	87,501.53
<u>TOTAL</u>	P1,535,468.62

HOBSON'S CHOICE.

Capitalizing on the fact that it was the Christmas season, the respondents dangled an offer for the complainant to just accept the amount of P1,535,468.62 and then sign a document of Waiver for any other benefits.

The complainant pleaded that the accrued monetary awards be released ahead as anyway these benefits were already due to her.

But the respondents did not agree, and insisted that the complainant should receive the amount of P1,535,468.62 and sign the waiver.

Thus, the Christmas season passed by, without a single centavo, being enjoyed by the complainant and her family.

BIAS IN COMPENSATION SEPARATION PACKAGE TO MANAGERS, AND DISCRIMINATION AGAINST LABOR UNION OFFICERS OR LOWLY EMPLOYEES.

The compensation separation package presented by the respondents to the complainants, however, was very small.

A DIFFERENT STANDARD was adopted by the respondents in its compensation separation pay package to the MANAGERIAL EMPLOYEES who were also previously dismissed, in the persons of Romeo Sangcap, the former Station Manager; Roger Romano, the former chief of the Technical Department; and Tarcisia C. Ladera, the former Cashier and Head of the Administrative Department, of RPN DXKD, whose position the herein-complainant thereafter assumed.

Each of these persons were given a compensation separation package by the respondents of more than FOUR MILLION [P4,000,000.00] PESOS each, paid ten percent lump sum as initial payment and the balance, payable and spread out in monthly installments, every 15th and 30th of the employees' payrolls.

To date, Romeo Sangcap, Roger Romano, and Tarcisia C. Ladera continue to receive their compensation separation pay from the respondents.

But for labor union officers, and/or rank-and-file employees *[obviously the respondents did not consider the complainant as a managerial employee despite her assumption to the position left by Tarcisia C. Ladera because there was even no change or raise in her salary]* the compensation separation pay package was very miniscule.

Obviously, the respondents played favorites. The respondents paid more the managers than the rank-and-file

employees, by using a different standard of separation pay package.

**COMPLAINANT'S REACTION TO THE COMPANY-
COMPUTATION/PAYSLIP**

Collating all the applicable provisions of the Collective Bargaining Agreement [CBA] and the applicable laws, the complainant has her own computation.

In fact, complainant reacted to the offer made by the respondents by presenting to them her own computation.

PROOF:

Annex "J" : Letter dated December 7, 2012.

But the respondents ignored complainant's letter.

Hereunder is complainant's COMPUTATION OF HER ACCRUED BENEFITS, itemized into: A = In relation to the Company Payslip; B = Other Points Not Included in the Company Payslip, and C = General Reservation.

**A = IN RELATION TO THE COMPANY-PREPARED
PAYSLIP** [Annex "J"]

For item "**B. BENEFITS**" and "**C. FINAL PAY**" of the company **PAYSLIP** [Annex "J"], the following were not considered:

1. The basic salary used by the respondents in the company PAYSALIP [Annex "J"] as basis for their computation of complainant's benefits was still the rate of P24,970.80/month, as Collector/Librarian.

BUT UNDER THE CBA AND ACTUAL PRACTICE AND CUSTOM, any employee who is assigned to substitute positions of higher responsibility, shall be entitled to receive **SUBSTITUTION PAY** [see Section 11, Article XI of the CBA, hereto attached as Annex "B"], equivalent to the rates, allowances, premiums of the substituted employee for the period in excess of fifteen [15] days.

Section 6, Article V of the CBA [see Annex B], mandated that the complainant should be paid a “salary adjustment”, viz:

“Section 6. **CHANGE IN JOB CLASSIFICATION** - In the event that an employee is transferred and/or reassigned from a lower to a higher job classification level, such employee shall be granted a salary adjustment equivalent to the difference between the minimum rate of the lower level job classification, in which case, a reasonable in-step adjustment shall be given instead. No demotion in wages and job classification level shall be made in any case of transfer and/or reassignment from a higher to a lower job classification level. Immediate written notice to employee shall be given prior to any transfer or

Substitution Pay

Section 1, Article XI of the CBA [see Annex B], also provides:

“Section 11. **SUBSTITUTION PAY**- COMPANY and UNION recognize the necessity of on-the-job training as a means to foster the professional growth and enhance the employees opportunity to assume positions of higher responsibility. As part of such on-the-job training, covered employees shall from time to time be called upon to substitute in jobs/positions with higher pay; provided that in case such substitution is in excess of fifteen (15) days, the substitute employee shall be paid the rates, allowances, premiums of the substituted employee for the period in excess of fifteen (15) days.

No substitution shall be allowed or recognized unless the substitution is authorized in writing by the Department Head as recommended by the Supervisor and/or Director concerned. (p.28, CBA, Annex “B”)

Effective October 1, 2009, thru an official memorandum, the complainant was designated by outgoing RPN DXKD Station Manager Romeo D. Sangcap as OIC, Administrative Officer and Cashier, vice Tarcisia C. Ladera, who was receiving a basic salary of P31,449.08.

Copy of the memorandum was furnished to Pal A. Marquez, the Assistant General Manager News, Regional Operations & International Affairs, Lourdes O. Angeles, the

Human Resource Department Manager, and Nestor S. Sandoval, the OIC Regional Operations Manager, all of RPN Quezon City.

PROOF:

Annex "K" = Memorandum dated September 30, 2009 of Outgoing RPN DXKD Station Manager Romy D. Sangcap.

Tarcisia C. Ladera was then the Chief of the Administrative Department.

During that period last October 1, 2009, Tarcisia Ladera's position as Cashier/Administrative Officer carried a salary already of P31,449.08.

Starting October 1, 2009, complainant assumed the position and worked on the duties and responsibilities as Chief of the Administrative Department, and Cashier, of RPN DXKD.

Last January 29, 2010, RPN DXKD Station Manager Leo H. Cimafranca reminded management about it in his SM January 2010 Monthly Report to Mr. Nestor Sandoval, the Regional Operations Manager of RPN9 Quezon City.

PROOF:

Annex "L" = *SM January 2010 Monthly Report dated January 29, 2010.*

But the salary that was paid to the complainant beginning October 1, 2009, was still her old salary of P22,058.48,(Annex Q-1;Q-2) which was increased last July, 2010 to P23,666.80,(Annex R-1;R-2) and thence increased again last July, 2011 to P24,666.80(Annex S-1;S-2).This in relation to CBA increase, 1st yr.P 200.00/month; 2nd yr.P 800.00/month; 3rd yr.P 1,000.00/month, see Article VII, Section 1 and 2, pg. 12 of the CBA , 2009-2012, which read as follows:

Section 1 and 2, Article VII provides:

Section 1. SECURITY CLAUSE ON GUARANTEED SALARY INCREASE- The COMPANY agrees to implement a wage structure in the enterprise which shall fairly compensate, without discrimination, the different bargaining units within the COMPANY.

Section 2. GUARANTEED YEARLY SALARY INCREASE -
The COMPANY shall
grant a yearly across-the-board per month wage increase
to all covered employees in the bargaining unit in
accordance with the following schedules

Effective 01 July 2009	-	P 200.00/month
Effective 01 July 2010	-	800.00/month
Effective 01 July 2011	-	1,000.00/month

The guaranteed across-the-board increase under
this Section shall not be chargeable to any legislated or
government mandated wage increase but shall be
considered as an addition to any such legislated or
government mandated wage increase.

The COMPANY agrees to grant across-the board to
all rank-and-file employees increments arising out of
legislation, Executive Orders, Letters of Instructions,
Wage Orders, and Company rules and regulations.

Since the complainant is now adopting under the
Substitution status, it is deem proper that the rate of Tarcisia
C. Ladera's latest basic pay, which is **P 31,449.08** will now
be the complainant's new basic pay to consider.

As the OLD DSU CBA (2003-2008), is now expired , the
complainant under status quo doctrine, and its extension to
remain in full force and effect, as provided in DSU CBA,
Article XXI, Section 1,2, and 3, pg. 41, will have to avail of
this provision.

DSU CBA, Article XXI provides :

Section 1. This Agreement and the provisions hereof
except when expressly provided otherwise, shall become
effective as of July 01, 2003 and shall remain in full force and
effect until June 30, 2008, consistent with Section 2 of Article
VI.

Section 2. Either party may initiate negotiation for
renewal, by giving written notice to the other party within
sixty days (60) prior to the expiration of this Agreement,
consistent with the provision of Article VI, Section 2 thereof.

Section 3. Extension of Effectivity – If no new Agreement
is reached at the expiration of the Collective Bargaining
Agreement, this Agreement shall remain in full force up to
the time a subsequent agreement is concluded by the
parties herein.

Article VI, Section 1,pg. 11, of DSU CBA provides :

Section 1. Guaranteed Yearly Increase – The COMPANY shall grant a yearly across the board increase to all covered employees in the bargaining unit in accordance with the following schedule:

Effective July 1, 2003 – P	750.00
Effective July 1, 2004 -	1,356.33
Effective July 1, 2005 -	1,500.00

The computation of the yearly increase is based on a 17-man months.

The guaranteed across the board increase under this section shall not be chargeable to any legislated or government mandated wage increases but shall be considered as an addition to any such legislated or government wage increase except when authorized by law to correct wage distortions resulting from the implementation of Regional Wage Orders issued by the Tripartite Regional Wage Boards.

The COMPANY agrees to grant across the board increase to all supervisory, and directorial employees as well as any and all increments arising out of legislation, presidential decrees, executive orders, letters of instructions, wage orders, rules and regulations of the COMPANY.

On the preservation OF THE Internal EQUITY GAP that should have been applied in the 2004-2005 salary increase, the THE HUNDRED FOUR PESOS & 12/100 CTVS. (304.12) shall be added to the basic salary in the computation of retirement/resignation pay of the qualified employees, list of which is under Annex “A” of this Agreement, upon their retirement/resignation from the COMPNAY; Likewise, it is understood that the said P304.12 will be open for renegotiation when the company's financial condition improves;

Section 2. Period and Scope of Renegotiation – The parties hereby agree that sixty (60) days before the end of the third year of the effectivity of this Agreement, they shall renegotiate all provisions of this Agreement, for the

remaining life of the contract, save the matter of representation.

Under the applicable law and CBA provisions, the monthly salary that should be used as basis for computation in petitioner's claim for accrued salary differential should be P39,391.41/month, [P31,449.08/month basic + P3,608.33/month under Section 1, Article VI of the DSU CBA, pg. 11 + P 2,904 Wage Allowance, to be supported by a Payroll Journal + P1,430.00 Meal Allowance, Article X, Section 1, pg 18 of the RPNEU CBA].

EXPLANATION;

Breakdown of the **TOTAL MONTHLY PAY:**

P 31,449.08 – Basic Salary of Tarcisia C.Ladera
3,608.33 – Article VI, Section 1, pg. 11, of the DSU CBA.
2,904.00 – Wage Allowance of Supervisor [Payroll Journal
1,430.00 – Meal Allowance, Article X, Section 1, pg. 18 of the
RPNEU CBA.

1

Total P 39,391.41

DSU CBA(2003- 2008) Article XXI, pg.41

Section 1. This Agreement and the provisions hereof except when expressly provided otherwise, shall become effective as of July 01, 2003 and shall remain in full force and effect until June 30, 2008, consistent with Section 2 of Article VI.

Section 2. Either party may initiate negotiation for renewal, by giving written notice to the other party within sixty days (60) prior to the expiration of this Agreement, consistent with the provision of Article VI, Section 2 thereof.

Section 3. Extension of Effectivity – If no new Agreement is reached at the expiration of the Collective Bargaining Agreement, this Agreement shall remain in full force up to the time a subsequent agreement is concluded by the parties herein.

Article VI, pg.11

Section 1. **Guaranteed Yearly Increase** – The COMPANY shall grant a yearly across the board increase to all covered employees in the bargaining unit in accordance with the following schedule:

Effective July 1, 2003 – P	750.00
Effective July 1, 2004 -	1,356.33
Effective July 1, 2005 -	1,500.00

The computation of the yearly increase is based on a 17-man months.

The guaranteed across the board increase under this section shall not be chargeable to any legislated or government mandated wage increases but shall be considered as an addition to any such legislated or government wage increase except when authorized by law to correct wage distortions resulting from the implementation of Regional Wage Orders issued by the Tripartite Regional Wage Boards.

The COMPANY agrees to grant across the board increase to all supervisory, and directorial employees as well as any and all increments arising out of legislation, presidential decrees, executive orders, letters of instructions, wage orders, rules and regulations of the COMPANY.

On the preservation OF THE Internal EQUITY GAP that should have been applied in the 2004-2005 salary increase, the THE HUNDRED FOUR PESOS & 12/100 CTVS. (304.12) shall be added to the basic salary in the computation of retirement/resignation pay of the qualified employees, list of which is under Annex “A” of this Agreement, upon their retirement/resignation from the COMPNAY; Likewise, it is understood that the said P304.12 will be open for renegotiation when the company’s financial condition improves;

Section 2. Period and Scope of Renegotiation – The parties hereby agree that sixty (60) days before the end of the third year of the effectivity of this Agreement, they shall renegotiate all provisions of this Agreement, for the remaining life of the contract, save the matter of representation.

RPNEU CBA (2009- 2012)

ARTICLE X

Section 1. MEAL ALLOWANCE – The COMPANY agrees to pay each employee a meal allowance according to the following schedule:

	METRO MANILA	PROVINCIAL
1 st .	P 100.00/day	P 55.00/day
2 nd	100.00/ day	55.00/day
3 rd	100.00/day	55.00/day

PROOF:

Annex “**M**” = 5th par. of Section 3, Article XI of the CBA.

Annex “**N**” = Section 6, Article X of the CBA.

Annex “**O**” = Section 4, Article II of the CBA.

Annex “**P-1**” = Section 1 and 2, Article VII of the CBA.

Annex “**P-2**” = Section 2, Sub Paragraph 1 & 2 of the CBA.

Annex “**Q**” = Payroll Journal of Monthly Wage Allowance

Period: _____

“The base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that she had been receiving such as the emergency living allowances and the 13th month pay mandated under the law” [*The Labor Code, with Comments and Cases, Volume II, 7th ed., 2010, by C.A. Azucena, 853-854, citing Paramount Vinyl Product Corporation vs. NLRC, et.al., G.R. No. 81200, October 17, 1990*].

So, the backwages should be: WAGE RATE + REGULAR ALLOWANCE

Thus, the basis for the computation in the company-prepared **PAYSLIP** [Annex “J”] of complainant’s “**B.1.** Sick Leave Reserved; and **B.2.** Sick Leave Conversion 2011; Longevity Pay 3rd Quarter 2011; Longevity Pay 4th Quarter 2011; Educational Assistance 2012-1; Education Assistance 2012-2; Longevity Pay 1st Quarter 2012; Longevity Pay 2nd Quarter 2012; Longevity Pay 3rd Quarter 2012”, was wrong.

To complainant’s computation, she is entitled to a salary differential from October 1, 2009 until November 15, 2012, when she applied for optional retirement, which will reach **P362,922.70**, computed as follows:

SUMMARY OF ACCRUED SALARY DIFFERENCE
OF TARCISIA C. LADERA & ESTRELLA G. CO

NAME	DESIGNATION	SALARY RATE
TARCISIA C. LADERA	ADMIN. OFFICER / CASHIER	31449.08
ESTRELLA G. CO	BOOKKEEPER/ COLLECTOR	24666.8

YE AR	PERIOD	SALARY RATE			DIFFERE NCE	NO. OF MONTHS	TOTAL	DOCUME NTS	
		<u>Tarcisia C. Ladera</u>		<u>Estrella G. Co</u>					
		Basic	Across the Board Increase	Total					
200 9	October- December	31,449. 08		31,449. 08	22,058.48	9,390.60	3	28,171.8 0	Annex" "
201 0	January- June	31,449. 08		31,449. 08	22,058.48	9,390.60	6	56,343.6 0	Annex" "
	July- December	31449. 08	1,358.33	32,807. 41	22,058.48	10,748.93	6	64,493.5 8	Annex" "
201 1	January- June	32,807. 41		32,807. 41	23,666.80	9,140.61	6	54,843.6 6	Annex" "
	July- December	32807. 41	1,500	34,307. 41	24,666.80	9,640.61	6	57,843.6 6	Annex" "
201 2	January- June	34307. 41		34,307. 41	24,666.80	9,640.61	6	57,843.6 6	Annex" "
	July- November	34307. 41		34,307. 41	24,666.80	9,640.61	4.5	43,382.7 4	Annex" "
								362,922. 70	
					GRAND TOTAL			362,922. 70	

By the end of the third, June 30,2012, and effective 01 of July 2012, since all provisions of DSU CBA HAS TO RENEGOTIATED, for what could be the applicable across the board increase that maybe agreed, the complainant was now blind and short of knowledge of the next remaning life of the DSU CBA. That is why it can be noted in my summary July- November 2012, complainant cannot determine as to the increase amount , thus , P34,701.41 remained to be the same .

PROOF:

Annex “_____” = Section 1 & 2, Article VII

Annex “___-1” = Payroll Journal of Estrella G.Co , Oct.1-15,2009
 Annex “___-2” = Payroll Journal of Estrella G. Co, Oct.16-31,2009
 Annex “___-1” = Payroll Journal of Estrella G. Co, Jan.1-15.,2010
 Annex “___-2” = Payroll Journal of Estrella G. Co. Jan. 16-31, 2010
 Annex “___-1” = Payroll Journal of Estrella G. Co, July 1-15, 2010
 Annex “___-2” = Payroll Journal of Estrella G. Co, July 16-31, 2010
 Annex “___-1” = Payroll Journal of Estrella G. Co, January 1-15,2011
 Annex “___-2” = Payroll Journal of Estrella G. Co, January 16-31, 2011
 Annex “___-1” = Payroll Journal of Estrella G. Co, July 1-15, 2011
 Annex “___-2” = Payroll Journal of Estrella G. Co, July 16-31, 2011
 Annex “___-1” = Payroll Journal of Estrella G. Co, Jan. 1-15,2012
 Annex “___-2” = Payroll Journal of Estrella G. Co Jan. 16-31,2012
 Annex “___-1” = Payroll Journal of Estrella G. Co July 1-15,2012
 Annex “___-2” = Payroll Journal of Estrella G. Co July 16-31,2012

2. In the same item “**B BENEFITS**”, particularly “**B.2. Unpaid benefits**”, there is a notation that any amount due is “*less advances or deductions P156,333.56*” .

Complainant has NO cash advances or loan in the company, so this should be clarified.

Under Article 113 of the Labor Code, there can be no deduction of salary unless with the written permission or consent of the worker.

3. For item “**C FINAL PAY**”, particularly “**2.** 13th Month Pay 2012 [*Prorated*], **3.** Christmas Bonus 2012 [*Prorated*], **4.** Longevity Pay 2012 – 4th Quarter [*Prorated*], and **5.** Sick Leave Conversion 2012 [*Prorated*],” the basic salary used as basis for the computation should not be 24,666.80/month, but P35,057.41/month, [*P31,449.08/month basic + P3,608.33/month under Section 1 Article VI of the DSU CBA, pg.11*].

WHY NOT P39,695.53?(because 13
Month, Christmas, Longevity, Leave
Conversion are computed base on basic
salary rate...not monthly pay(39,695.53)
which include P 31,449.08 plus P3,608.33
across the board increase. Article VI, Section
1, pg.11 of the DSU CBA(2003-2008) plus the
allowance of 2,904.00 and meal allowance of
1,430.00 plus P 304.12 preservation OF THE
INTERNAL EQUITY GAP, ARTICLE VI,Section 1,
Par.5, pg.11

Moreover, the complainant questioned why the amount was prorated when the last day of service was on November 15, 2012, only barely a month before the year-end.

B = OTHER POINTS NOT INCLUDED IN THE COMPANY PAYSHEET [Annex "J"]

1 = Based on Section 15, Article X of the CBA, [Annex "B"], the complainant was entitled to receive a gift item worth P25,000.00 or its cash equivalent as ANNIVERSARY AWARD, for thirty [30] years in service. She did not receive this last 2010.

Section 15, Article X of the CBA provides:

"Section 15. **ANNIVERSARY AWARD** – As a token of recognition for services rendered, the COMPANY shall give the following awards to each employee during the anniversary of his or her employment:

10 years of service – P4,000.00 worth of barter items of employee's choice or P2,000.00 cash.
15 years of service – 14K gold ring with RPN logo
20 years of service – Gold automatic wristwatch
25 years of service – Gold automatic wristwatch worth P20, 000.00 or its cash equivalent
30 years of service – Gift item worth P25, 000.00 or its cash equivalent
35 years of service – Cash equivalent to P30,000.00"
(p24)

2 = There was an UNPAID SALARY that was due to the complainant.

Last October, 2007 until December 2, 2007, the complainant was on leave in order to prepare for, and take the Nursing Board Examination. She reported back to work on December 3, 2007. She was still included in the Payroll until December 15, 2007, considering that she had some leave credits.

But it came as a surprise that she was excluded from the company payroll starting December 16, 2007 until April 15, 2008.

The complainant was reinstated starting only in the April 16-30, 2008 company payroll.

The company Payroll for the following: Dec. 16-31, 2007; Jan. 1-15, 2008; Jan. 16-31, 2008; Feb. 1-15, 2008; Feb. 16-28, 2008; Mar. 1-15, 2008; Mar. 16-31, 2008; and April 1-15, 2008 are hereto attached for ready reference.

PROOFS:

- Annex “**O**” = Company Payroll for December 16-31, 2007.
- Annex “**P**” = Company Payroll for January 1-15, 2008.
- Annex “**Q**” = Company Payroll for January 16-31, 2008.
- Annex “**R**” = Company Payroll for February 1-15, 2008.
- Annex “**S**” = Company Payroll for February 16-28, 2008.
- Annex “**T**” = Company Payroll for March 1-15, 2008.
- Annex “**U**” = Company Payroll for March 16-31, 2008.
- Annex “**V**” = Company Payroll for April 1-15, 2008.

Complainant’s basic salary during the period from December 2007 until April, 2008 was P22,058.00/per month and an allowance of P2,250.00/month.

Thus, for the period December 16, 2007 until April 15, 2008, complainant was not paid of her salary for a total of **P97,233.92**, computed as follows:

Summary Computation of Unpaid Salary

Period	Basic	Allowance
Dec. 16 – 31, 2007	11,029.24	2,250.00
Jan. 1 – 15, 2008	11,029.24	-
Jan. 16 – 31, 2008	11,029.24	2,250.00
Feb. 1 – 15, 2008	11,029.24	-
Feb. 16 – 28, 2008	11,029.24	2,250.00
March 1 -15, 2008	11,029.24	-
March 16 – 31, 2008	11,029.24	2,250.00
April 1 – 15, 2008	<u>11,029.24</u>	-
TOTAL	88,233.92	9,000.00
Total basic salary	88,233.92	
Total allowance +	<u>9,000.00</u>	
Grand Total	97,233.92	

This matter even came to the attention of management before, as in fact, the management later on cited for disciplinary action of the cashier/administrative officer, Tarcisia A. Ladera of RPN DXKD Dipolog City.

The complainant even made a personal follow-up in Manila for two [2] occasions, but was merely told that management will still verify it. Until now, the complainant was not paid of her salary for the period December 16, 2007 until April 15, 2008.

DISMISSAL TO AVOID RETIREMENT BENEFITS

If it is wrong to ostensibly retire an employee who actually is retrenched, it is likewise wrong, and probably more reprehensible, to dismiss an employee to avoid paying his retirement benefit.[THE LABOR CODE, With Comments and Cases, Volume II, 7th Edition, 2010, pg.948 by C.A.AZUCENA.]

In a 1981 case, the Supreme Court said that a company should exercise caution and care in dealing with its employees to prevent suspicion that its dismissal of an employee is only a scheme to evade its responsibility of granting retirement benefits. In the case at bar, it should not have waited until petitioner employee applied for retirement to have taken adverse action against him for a cause it had already knowledge of.[Reyes vs, Ohil. Duplicators, Inc., 109 SCRA 489 [1981].]

SUMMARY OF COMPLAINANT’S CLAIM

1. BACKWAGES

PERIOD: NOVEMBER 16-31, 2012(Basic Pay)	P 16,824.54
ALLOWANCE	2,904.00
MEAL ALLOWANCE	<u>1,430.00</u>
	21,158.54
 DECEMBER 1-31, 2012	 37,983.08
 JANUARY 1-31, 2013	 37,983.08
 FEBRUARY 1-28, 2013	 37,983.08
MARCH 1-31, 2013	37,983.08
APRIL 1-30, 2013	<u>37,983.08</u>
P211,073.94	

Explanation:

The amount of P16,824.54 represents: 15 days basic pay[31,449.08+2,000 CBA, Across the Board, Article VII, Section 1 & 2 pg. 12 + 200.00 ,Automatic adoption of the wage increase base on the old CBA, Article XX, Section 1,2,3, pg.40 , divided by two (2)= P 16,824.54.]

Original Basic Pay... **P31,449.08** [T.C.Ladera last Basic Salary]
Allowance of **2,904.00** represents: monthly allowance, received every end of the month, separate from the basic pay. See payroll Journal, "Annex _____"

Meal Allowance of **1,430.00** is found in: [P55/day, Provincial, CBA, pg 19- Article X, Sec. 1]
Accroos-the-Board Increase **2,000.00** [Article VII, Section 1 & 2, pg.12 of the CBA
Automatic Increase from Old CBA**200.00** [Article XXI, Section 1,2,3, pg. 40 of the CBA.
Wage Order No. NCR-13 **385.00**

December 1, 2013 –April 30, 2013 amount is said to come up, a total of P189,915.40 that is five months times monthly salary of P37,983.08(37,983.08 x 5).

SUB – TOTAL FOR BACK WAQES

2. OPTIONAL RETIREMENT

) P 31,449.08 + 2,000 + 365 + 200 = P 34,014.08

Explanation:

The amount of P34,014.08 is arrived at because of the following:

Basic Salary of a Cashier/Administrative Officer = P31,449.08
Add: CBA Across-the- Board Increase 2,000.00
[Article VII,Section 1,2,pg.12]

Article VII, Section 1 & 2 provides:

Section 1 SECURITY CLAUSE ON GUARANTEED SALARY INCREASE- The COMPANY agrees to implement a wage structure in the enterprise which shall fairly compensate, without discrimination, the different bargaining units within the COMPANY.

Section 2. GUARANTEED YEARLY SALARY INCREASE - The COMPANY shall grant a yearly across-the-board per month wage increase to all covered employees in the bargaining unit in accordance with the following schedules:

Effective 01 July 2009	-	P 200.00/month
Effective 01 July 2010	-	800.00/month
Effective 01 July 2011	-	1,000.00/month

The guaranteed across-the-board increase under this Section shall not be chargeable to any legislated or government mandated wage increase but shall be considered as an addition to any such legislated or government mandated wage increase.

The COMPANY agrees to grant across-the board to all rank-and-file employees increments arising out of legislation, Executive Orders, Letters of Instructions, Wage Orders, and Company rules and regulations.

Add: Wage Order No. NCR-13 365.00

Par. 5, Section 3, Article XII, [see Annex B], and Article VII, Sub-Paragraph 3 ,pg. 13 of the CBA provides:

Paragraph 5 – The mandated salary adjustment under Wage Order No. NCR-13 in the amount of Three Hundred Sixty Five Pesos (P365.00) per month and its equivalent to provincial stations regional Wage Order issuances shall be incorporated in the computation of employees’ Compulsory, optional and loyalty separation/retirement pay uthis Article.” (p.30)....

Article VII, Section 2, Sub-Paragraph 3, pg. 13 of the CBA

The salary adjustment mandated by Wage Order No. NCR-13 in the amount of Three Hundred Sixty Five Pesos (365.00) monthly and applied/implementation to provincial stations with respect to regional wage order issuances, shall be incorporated in the computation of the employees’ separation/retirement benefits pursuant to the Agreement signed by the parties on August 14, 2009 before the NCMB .

Add: Aumatic Renewal of the old CBA increase P 200.00

Article XXI, Section 1,2,3,,pg. 40 of the 2009-2012, CBA, and Article VII,Section 1 & 2, pg. 12 of the CBA respectively provides:

Section 1. PERIOD OF EFFECTIVITY – The provision of this Agreement shall be effective as of 01 July 2009 and shall remain in full force and effect until 30 June 2012, or until a new Collective Bargaining Agreement is concluded by the parties, except the representation aspect which shall remain effective until 30 June 2014.

Section 2. RENEGOTIATION – The parties hereby agree that sixty (60) days before the end of the third year of effectivity of this Agreement, they shall negotiate all other provisions of this Agreement, save the matter of representation.

Section 3. EXTENSION OF EFFECTIVITYY – If no new agreement is reached at the expiration of the Collective Bargaining Agreement, this Agreement shall remain in full force up to the time a subsequent agreement is concluded by the parties herein.

Article VII, Section 1,2,.pg.12, respectively].

Section 1. SECURITY CLAUSE ON GUARANTEED YEARLY SALARY INCREASE- The COMPANY agrees to implement a wage structure in the enterprise which shall fairly compensate, without discrimination, the different bargaining units within the COMPANY.

Section 2. GUARANTEED YEARLY SALARY INCREASE - The COMPANY shall grant a yearly across-the-board per month wage increase to all *covered employees in the bargaining unit in accordance with the following schedules:*

Effective 01 July 2009	-	P 200.00/month
Effective 01 July 2010	-	800.00/month
Effective 01 July 2011	-	1,000.00/month

The guaranteed across-the-board increase under this Section shall not be chargeable to any legislated or government mandated wage increase but shall be considered as an addition to any such legislated or government mandated wage increase.

The COMPANY agrees to grant across-the board to all rank-and-file employees increments arising out of legislation, Executive Orders, Letters of Instructions, Wage Orders, and Company rules and regulations .

Thus : the total amount of P 34,014.08 (P 31,449.08 basic + 2,000.00 CBA, Across-the-Board Increase + 365.00 Wage Order No. NCR-13 + 200.00 Automatic Adoption of Increase based on old CBA).

Application of the 251 days factor : (Article XI,Section 4, pg.26 of the CBA)

Article XI, Section 4 provides:

Section 4. 251 DAYS FACTOR = The COMPANY shall use the 251-days factor to determine the employee’s daily wage for the computation of his/her retirement/separation benefits, overtime pay, conversion of sick leave and vacation leave, bonuses and other wage related benefits, beginning July 2007.

Formula in computing Mo.Salary to Daily salarUsing the 251 days factor/year

$$\frac{\text{Monthly Salary} \times 12}{251 \text{ days/factor/year}} = \text{Basic Daily Rate}$$

$$\frac{\text{P 34,014.08} \times 12}{251} = \text{P 1,626.17 [Basic rate per day]}$$

$$\begin{array}{lcl}
 P \ 1,626.17 \times 83 \text{ days} & = & P \ 134,972.20 \text{ (CBA,} \\
 \text{Article XII, Section 2,} & & \text{pg.29)}
 \end{array}$$

Article XII, Section 2, pg. 29, of the CBA provides :
 “Section 2. **OPTIONAL RETIREMENT** – An employee who has reached the age of fifty [50] and has rendered at least ten [10] years of service to the COMPANY or who has rendered at least twenty years [20] of service, regardless of age, may avail of Optional Retirement from the COMPANY and shall be paid a retirement pay in accordance with the following schedule:

10 years but less than 15 years year of service	- 48 days per
15 years but less than 20 years year of service	- 63 days per
20 years but less than 25 years year of service	- 78 days per
25 years or service and above	- 83 days per year of service

Moreover, the COMPANY shall also grant a CASH ADVANCE equivalent to TEN PERCENT [10%] of the covered employee’s retirement pay on the following conditions:

- a. Retirement date shall be set within one [1] year upon receipt of the 10% cash advance; remaining balance to be paid on the scheme mutually acceptable to the employee and management.
- b. Subject to availability of funds.”

$$\begin{array}{lcl}
 P \ 134,972.20 \times 33 \text{ years} & = & P \ \\
 \underline{4,454,082.79} & &
 \end{array}$$

No.of years in service

(I am qualifying herein from 32 to 33 yrs. Of service, because if this complaint will entail to go until may, 2013, this is a fractional of one yr. that can be considered another one more year from my service.)

Article XII, Section 3, Sub-Paragraph 3 pg. 30 of the CBA provides:

For the purpose of this Section, a fraction of at least six (6) months service to the COMPANY shall be considered as one (1) year.

P

The following documents will also support the petitioner's number of years in service.

The Supreme Court in the case of University of the East vs. UE Faculty Association, G.R. No. 74007, July 31, 1987, directed that it should not only be SEPARATION PAY that should be paid to the worker, BUT, also RETIREMENT PAY based on the company policy [see also *The Labor Code with Comments and Cases, Volume II, 7th ed., 2010 pgs. 942-946*].

P

SUB-TOTAL FOR OPTIONAL RETIREMENT

3. SEPARATION PAY

BASIC	=	P 31,449.08
ADD: ACROSS-THE- BOARD INCREASE		2,000.00
WAGE ORDE No.NCR-13		365.00
AUTOMATIC INCREASE BASE ON OLD CBA		200.00
ALLOWANCE	=	<u>2,904.00</u> (Payroll journal wage allowance)
		P 34,353.08
MEAL ALLOWANCE	=	<u>1,430.00</u> (P55/day, Provincial, CBA pg. 19- ArticleX- Section 1)
TOTAL MONTHLY PAY =		P38,348.08
<u>COMPUTATION:</u>		
P 38,348.08 x 33 years =	P	1,265,486.64

EXPLANATION:

In the Computation of Statutory Separation Pay, the Court said, it is an error not to integrate the allowance with the basic salary in the computation of the Separation Pay. The salary base properly used in computing the separation pay should include not just the basic salary but also the regular allowances that an employee has been receiving [*Planters Product, Inc. vs. NLRC, G.R. No. 78524, January 20, 1989.*]

In the computation of backwages and separation pay, account must be taken not only of the basic salary of the employee but also of her transportation and emergency allowances. {Santos vs. NLRC, G.R.No. 76721, September 21, 1987.},LABOR CODE with Comments and Cases, Vol.II, 7th Edition 2010 by. C.A. AZUCENA., pg.851.

Article 283 of the LABOR CODE, basic requisite of a retrenchment due to installation of labor saving devices, as to the third, the law requires that the employer has to pay a separation pay equivalent to **one (1) month** pay or at least one-half(1/2) month pay for every year of service, whichever is higher [University of the East vs. Minister of Labor, G.R.No. 74007, July 31, 1987.; .

Under the applicable law and CBA provisions, the monthly salary that should be used as basis for computation should be **P38,348.08/month** , *[P31,449.08/month basic + P365/month under Wage Order No. NCR-13, as mandated by the 5th par. of Section 3, Article XII of the CBA, pg.30, + P2,000/month under Section 1 Section 2, Article VII of the CBA, pg. 12 , + 2,904.00, wage allowance, under payroll journal, + meal allowance 1,430.00, under payroll journal+ 200.00 Automatic Increase, based on old CBA, Article VII, Section 1 & 2, pg. 12]....]*

Article XII, Section 3, Sub-Paraagraph 5, pg. 30 of the CBA provides:

Paragraph 5 – The mandated salary adjustment under Wage Order No. NCR-13 in the amount of Three Hundred Sixty Five Pesos (P365.00) per month and its equivalent to provincial stations regional Wage Order issuances shall be incorporated in the computation of employees' Compulsory, optional and loyalty separation/retirement pay under Section 1,2, and 3 of this Article." (p.30)....

Also Article VII, Section 2, Sub-Paragraph 3, pg. 13,of the CBA provides:

The salary adjustment mandated by Wage Order No. NCR-13 in the amount of Three hundred Sixty Five Pesos (P 365.00) monthly and applied/implementation to provincial stations with respect to region al wage order issuances, shall be incorporated in the computation of the employees' separation/retirement benefits pursuant to to the Agreement signed by the parties on August 14, 2009 before the NCMB. and not

Article VII, Section 1,2,.pg.12,

Section 1 SECURITY CLAUSE ON GUARANTEED SALARY INCREASE- The COMPANY agrees to implement a wage structure in the enterprise which shall fairly compensate, without discrimination, the different bargaining units within the COMPANY.

Section 2. GUARANTEED YEARLY SALARY INCREASE - The COMPANY shall grant a yearly across-the-board per month wage

increase to all covered employees in the bargaining unit in accordance with the following schedules:

Effective 01 July 2009	-	P 200.00/month
Effective 01 July 2010	-	800.00/month
Effective 01 July 2011	-	1,000.00/month

The guaranteed across-the-board increase under this Section shall not be chargeable to any legislated or government mandated wage increase but shall be considered as an addition to any such legislated or government mandated wage increase.

The COMPANY agrees to grant across-the board to all rank-and-file employees increments arising out of legislation, Executive Orders, Letters of Instructions, Wage Orders, and Company rules and regulations.

Wage Order No. NCR-13

Par. 5, Section 3, Article XII, [see Annex B], and Article VII, Sub-Paragraph 3 ,pg. 13 of the CBA provides:

Paragraph 5 – The mandated salary adjustment under Wage Order No. NCR-13 in the amount of Three Hundred Sixty Five Pesos (P365.00) per month and its equivalent to provincial stations regional Wage Order issuances shall be incorporated in the computation of employees' Compulsory, optional and loyalty separation/retirement pay uthis Article." (p.30)....

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The salary adjustment mandated by Wage Order No. NCR-13 in the amount of Three Hundred Sixty Five Pesos (365.00) monthly and applied/implementation to provincial stations with respect to regional wage order issuances, shall be incorporated in the computation of the employees' separation/retirement benefits pursuant to the Agreement signed by the parties on August 14, 2009 before the NCMB .

Add: Aumatic Renewal of the old CBA increase P 200.00

Article XXI, Section 1,2,3,,pg. 40 of the 2009-2012, CBA, and Article VII,Section 1 & 2, pg. 12 of the CBA respectively provides:

Section 1. PERIOD OF EFFECTIVITY – The provision of this Agreement shall be effective as of 01 July 2009 and shall remain in full force and effect until 30 June 2012, or until a new Collective Bargaining Agreement is concluded by the parties, except the representation aspect which shall remain effective until 30 June 2014.

Section 2. RENEGOTIATION – The parties hereby agree that sixty (60) days before the end of the third year of effectivity of this Agreement, they shall negotiate all other provisions of this Agreement, save the matter of representation.

Section 3. EXTENSION OF EFFECTIVITY – If no new agreement is reached at the expiration of the Collective Bargaining Agreement, this Agreement shall **remain in full force up to the time a subsequent agreement is concluded by the parties herein.**

Article VII, Section 1,2,.pg.12,

Section 1 SECURITY CLAUSE ON GUARANTEED SALARY INCREASE- The COMPANY agrees to implement a wage structure in the enterprise which shall fairly compensate, without discrimination, the different bargaining units within the COMPANY.

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Effective 01 July 2009	-	P 200.00/month
Effective 01 July 2010	-	800.00/month
Effective 01 July 2011	-	1,000.00/month.

The guaranteed across-the-board increase under this Section shall not be chargeable to any legislated or government mandated wage increase but shall be considered as an addition to any such legislated or government mandated wage increase.

The COMPANY agrees to grant across-the board to all rank-and-file employees increments arising out of legislation, Executive Orders, Letters of Instructions, Wage Orders, and Company rules and regulations

WAGE ALLOWANCE & MEAL ALLOWANCE will supported by a Payroll Journal Annex “____”, and Annex “_____”.

Article X, Section 1 , pg. 18, of the CBA, provides:

Section 1. MEAL ALLOWANCE – The COMPANY agrees to pay each employee a meal allowance according to the following schedule:

	METRO MANILA	PROVINCIAL
1 ST YR.	P 100.00/day	P 55.00/day

2 ND	100.00/	55.00/
3 RD	100.00/	55.00/

SUB-TOTAL	FOR	SEPARATION	PAY
1.265,486.64			

4. UNPAID BENEFITS

4-A. SICK LEAVE RESERVED

P 31,449.08 + 2,000.00 + 365 + 200= P 34,014.08
 [basic + across-the-board increase,+ wage order, ncr-13 ,CBA, pg.13, Article 7, Sub-Paragraph + Automatic Renewal of the Old CBA Increase]

$$\frac{P\ 34,014.08 \times 12}{251} = P\ 1,626.17 \text{ [BASIC RATE PER DAY]}$$
 [251 days factor, Article XI, Section 4, pg.26]

P 1,626.17 x 15 days = **P 24,392.57**
 [BASIC DAILY RATE PER DAY x 15 DAYS RESERVED-CBA, Article IX, pg.16]

Explanation:

The above computation for basic pay, from wage order, accross-the-board increase,and automatic increase based on old CBA, are all the same with the previous cited basic computation of the daily Basic Pay..... while the 15 days reserved is provided in the CBA, Article IX, Section 2, pg. 15 of the CBA.

Article IX, Section 2

Section 2. SICK LEAVE – All regular employees are entitled to the following sick leave pay benefits after each year of service in accordance with the following :

- | | |
|------------------------------|----------------------------|
| Less than 5 years of service | - 15 working days per year |
| 5 to less than 10 years | - 17 working days per year |
| 10 to less than 15 years | - 19 working days per year |

15 to less than 20 years - 21 working days per year
20 to less than 25 years - 22 working days per year
25 years of service and above - 23 working days per year

Unused sick leave for the year should be converted to cash, provided that the conversion is limited to the excess over a reserve of fifteen (15) days required to be maintained by the converted employee at all times. Such reserve may be converted to cash by the employee at his/her highest salary credit upon retirement under the modes provided in this Agreement, or honorable separation or resignation. The same may also be availed of by the employee in case of medical treatment longer than the current sick leave privileges available upon certification by the COMPANY'S Physician/s. Computation and payment of sick leave credits converted to cash shall be made every January of each year.

4-B. UNPAID BENEFITS (Adopted) 585,469.93

See company's proposal

SICK LEAVE CONVERSION (P 1,626.17 x 23 days)

37,401.91

[BASIC DAILY RATE x 23 days-adopted fr.employer's record]

LONGEVITY PAY 3RD QUARTER 2011 = P 9,404.78 (adopted)

LONGEVITY PAY 4TH QUARTER 2011 = P 9,481.38 (adopted)

LONGEVITY PAY 1ST QUARTER 2012 = P 9,557.13 (adopted)

LONGEVITY PAY 2ND QUARTER 2012= P 9,632.03 (adopted)

LONGEVITY PAY 3RD QUARTER 2012= P 9,707.78

(adopted) **47,783.10** EDUCTN'L ASSISTANCE 2012-

1 [Adjusted by Substitution] **34,014.08**

EDUCTN'L ASSISTANCE 2012-2 [Adjusted by Substitution]

34,014.08

P

SUB-TOTAL FOR UNPAID BENEFITS

5. SHARE IN PROVIDENT FUND (adopted)

45,682.65

6. ACCUMULATED VACATION LEAVE [BASIC RATE PER DAY]

(P1,626.17 x 26.75)

43,500.05

(No. of days are adopted from employer's record)

7. ADD: FINAL PAY

LAST PAY

13TH MONTH (Basic) P 34,014.08

CHRISTMAS BONUS 2012 68,028.16

(P34,014.08 x 2)

[basic pay x two months]

LONGEVITY (adopted) 4,892.19

SICK LEAVE CONVERSION 37,401.91

144,336.34

(P1,626.17 x 23 days)

[basic daily rate x 23 days-adopted]

**SUB-TOTAL FOR ADDITIONAL UNPAID
233,519.04
BENEFITS ON SHARE OF
PROVIDENT FUND, ACCUMULATED
LEAVE, AND FINAL PAY..**

P

P

8. UNPAID SALARY
[see “Annex C,D,E,F,G,H,I,J,K”]

Summary Computation of Unpaid Salary

Period	Basic	Allowance
Dec. 16 – 31, 2007	11,029.24	2,250.00
Jan. 1 – 15, 2008	11,029.24	-
Jan. 16 – 31, 2008	11,029.24	2,250.00
Feb. 1 – 15, 2008	11,029.24	-
Feb. 16 – 28, 2008	11,029.24	2,250.00
March 1 -15, 2008	11,029.24	-
March 16 – 31, 2008	11,029.24	2,250.00
April 1 – 15, 2008	<u>11,029.24</u>	<u>-</u>
TOTAL	88,233.92	9,000.00
Total basic salary	88,233.92	
Total allowance +	<u>9,000.00</u>	
Grand Total	97,233.92	

OVER ALL TOTAL FOR ACCRUED UNPAID BENEFITS... P 1,073,305.10 (UNPAID BENEFITS P 754,611.71 + SUB-TOTAL FOR ADDITIONAL UNPAID BENEFITS ON SHARE OF PROVIDENT FUND, ACCUMULATED LEAVE AND FINAL PAY(P 221,459.47) + UNPAID SALARY (P 97,233.92).

P

9. SUBSTITUTION PAY (2009-2013)
[see “Annex P”]

SUMMARY OF ACCRUED SALARY DIFFERENCE
OF TARCISIA C. LADERA & ESTRELLA G. CO

<u>NAME</u>	<u>DESIGNATION</u>	<u>SALARY RATE</u>	<u>DOCUMENTS</u>
TARCISIA C. LADERA	ADMIN. OFFICER / CASHIER	31449.08	Annex
ESTRELLA G. CO	BOOKKEEPER/ COLLECTOR	24666.8	Annex

YEAR	PERIOD	Salary Rate		Difference	NO. OF MONTHS	Total
		<u>Tarcisia C. Ladera</u>	<u>Estrella G. Co</u>			
2009	October-	31,449.08+200=3164	22,058.4	9,590.60	3	28,771.8

	December	9.08	8			
2010	January- June	31,449.08+200=3164	22,058.4			
	July-	9.08	8	9,590.60	6	57,543.6
	December	31,649.08+800=3244	22,058.4	10,390.6		
		9.08	8	0	6	62,343.6
2011	January- June	31,649.08+800=3244				
	July-	9.08	23,666.8	8,782.28	6	52,693.68
	December	32,449.08+1,000=33,449.08	24,666.8	8,782.28	6	52,693.68
2012	January- June	32,449.08+1,000=33,449.08	24,666.8	8,782.28	6	52,693.68
	July-	33,449.08+200=33,649.08	24,666.8	8,982.28	4.5	40,420.26
	November					
						347,160.30
			GRAND TOTAL			347,160.30

SUB-TOTAL ON SUBSTITUTION PAY
P 347,160.30

10. ANNIVERSARY AWARD

[CBA, Article X, Section 15, pg.24]

P - - - - -

PARTIAL TOTAL

P - - - - -

11. IF UP TO JUNE 2013

SALARY: MAY 1-31, 2013 38,348.08
JUNE 1-30, 2013 38,348.08

ADD: 2013 BENEFITS

SICK LEAVE [daily rate x 23 days] 37,401.68

[cba,Article IX,Section 2,pg.15]

(P 1,626.17 x 23)

VACATION LEAVE(daily rate x 22 days)

35,775.74

[cba, Article IX,Section 1,pg.15]

[P1,626.17 x 22 days]

(basic daily rate x 22 days)

BIRTHDAY LEAVE

1,626.17

[cba, Article IX, Section 3,pg.16]

(P 1,626.17 x 1 day)

WEDDING LEAVE

1,626.17

[cba,Article IX, Section 9,pg. 18]

(P 1,626.17 x 1 day)
SERVICE ANNIVERSARY LEAVE

1,626.17

[cba,Article IX, Section 10,pg.18]
(P 1,626.17 x 1 day)

EDUC. ASSISTANCE – 1

34,014.00

EDUC. ASSISTANCE – 2

34,014.08

[cba, Article VII, Section 4,pg.13]
(34,014.08 basic pay)

LONGEVITY 1ST & 2ND QUARTER(9,707.78x2)

19,415.56

[9,707.78 adopted from latest employer's record]

CBA,AUTOMATIC INCREASED(P200 x 12) 2,400.00

[cba, Article VII, Section 2, pg.12]
(JULY 2012- JULY 2013 , Article XXI, Section
1,Section 3,pg40)

P
GRAND TOTAL -----

7,224,636.84

BREAKDOWN:

BACKWAGES	P	211,073.94
OPTIONAL		4,454,082.79
SEPARATION PAY		1,265,486.64
UNPAID BENEFITS		763,075.67
ADDITIONAL UNPAID		233,519.04
UNPAID SALARY	97,223.92	
SUBSTITUTION PAY		347,160.30
ANNIVERSARRY AWARD		25,000.00
IF UP TO 2013		244,595.81
TOTAL	P	7,641,228.11

ARTICLE X Section 6. ADDITIONAL ALLOWANCE- The **Educational Savings Fund** in the amount of Three Thousand Five Hundred Pesos (**P3,500.00**) yearly, the **Eyeglass Subsidy** Under Section 11 of the same article worth, One Thousand Five Hundred Pesos (**1,500.00**) every three (3) years or Five Hundred Pesos (P500.00) per year and the **Birthday Leave Token** under section 3 Article IX in the amount of Three Hundred Pesos (**P300.00**) shall be cash converted in the form of allowance and paid to the employees at **THREE HUNDRED SIXTY FIVE PESOS (P365.00)** monthly (P3,500.00 + 500.00 + 300.00 = P 4,300.00/ 12 = P358.33 to P365.00) payable by the COMPANY to the employees every 15th of the month. (p.19 of CBA)

BASED ON THE FOREGOING CONSIDERATIONS,
it is respectfully prayed of this Honorable Office that the instant Position Paper be duly considered in the appreciation of the case.

Dipolog City, Philippines, April 20, 2013.

PETER Y. CO
Counsel for the Complainants
027 P. Burgos Street,
Barra, Dipolog City
PTR No. 577101 01-03-2013
IBP Lifetime No. 06834 07-18-2006
Roll No. 35379 05-20-1988
MCLE Compliance No. III-0001592 12-
31-2008
MCLE Compliance No. IV-
0000440 05-30-2012
Telefax No. [065]212-9421/Tel. No.
[065]212-3241
marshall_921@yahoo.com 0918603-
9828

VERIFICATION and SWORN STATEMENT
AGAINST FORUM SHOPPING

Republic of the Philippines)
CITY OF DIPOLOG) S.S.
X-----/

I, ESTRELLA GAYAPA CO, Filipino, of legal age, married, resident of 027 P. Burgos Street, Barra, Dipolog City, under oath, hereby depose and sayeth:

1. That I am the complainant in this case and I have caused for the preparation and filing of this Position Paper, and I have supplied all the material factual averments in the Position Paper;

2. That I have read and understood the Position Paper, and I affirm that all the allegations therein contained are true and correct of my own, direct and personal knowledge and belief, and based on authentic and credible documents in my possession;

3. That I have not commenced any other action or proceeding, nor is there any such action or proceeding, involving the same issues in the Supreme Court, the Court of Appeals or any other agency;

4. That if I should hereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, then I undertake to report that fact within five (5) days therefrom to the court or any agency wherein the original pleading and sworn statement contemplated herein had been filed.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 20th day of April, 2013, at Dipolog City, Philippines.

ESTRELLA GAYAPA CO
Affiant

SUBSCRIBED AND SWORN to before me this 20th day of April, 2013, at Dipolog City, Philippines, affiant identified thru her PRC ID Card No. 03021957, issued on June 20, 2011, which bears her photograph and signature, issued by RPN, Inc., and who avowed under penalty of law to the whole truth of the contents of the instrument or document, and that she has executed the same freely and voluntarily.

Doc. No. _____:
Page No. _____:
Book No. _____:
Norte
Series of 2013.

PETER Y. CO
Notary Public
Cities of Dipolog, Dapitan & Province of Zambo.
Until December 31, 2013
PTR No. 577101 01-03-2013 Dip. City
IBP Lifetime No. 06894 07-18-2006
Roll No. 35379 May 30, 1988
MCLE 3rd Compliance No. III-0001592 12-31-2008
MCLE 4th Compliance No. IV-0000440 05-30-2012

Quoted Articles and Section of the CBA

Par. 5, Section 3, Article XII of the CBA [see Annex B], provides:

Paragraph 5 – The mandated salary adjustment under Wage Order No. NCR-13 in the amount of Three Hundred Sixty Five Pesos (pP365.00) per month and its equivalent to provincial stations regional Wage Order issuances shall be incorporated in the computation of employees' Compulsory, optional and loyalty separation/retirement ay under Sections 1, 2 and 3 of this Article.” (p.30)

Section 6, Article X

ADDITIONAL ALLOWANCE - **The Education Saving Fund** in the amount of Three Thousand Five Hundred Pesos (**P3,500.00**) yearly, the **Eyeglass Subsidy** Under Section 11 of the same article worth, One Thousand Five Hundred Pesos (**P1,500.00**) every three (3) years of Five Hundred Pesos (P500.00) per year and the **Birthday Leave Token** under Section 3 of Article IX in the amount of of Three Hundred Pesos (**P300.00**) shall be cash converted in the form of allowance and paid to the employees at **Three Hundred Sixty Five Pesos (P365.00)** monthly (by the COMPANY to the employees every 15th of the month.

Section 1 and 2, Article VII

Section 1 SECURITY CLAUSE ON GUARANTEED SALARY INCREASE-
The COMPANY agrees to implement a wage structure in the enterprise which shall fairly compensate, without discrimination, the different bargaining units within the COMPANY.

Section 2. GUARANTEED YEARLY SALARY INCREASE - The COMPANY shall grant a yearly across-the-board per month wage increase to all covered employees in the bargaining unit in accordance with the following schedules:

Effective 01 July 2009	-	P 200.00/month
Effective 01 July 2010	-	800.00/month
Effective 01 July 2011	-	1,000.00/month

The guaranteed across-the-board increase under this Section shall not be chargeable to any legislated or government mandated wage increase but shall be considered as an addition to any such legislated or government mandated wage increase.

The COMPANY agrees to grant across-the board to all rank-and- file employees increments arising out of legislation, Executive Orders, Letters of Instructions, Wage Orders, and Company rules and regulations.

The salary adjustment mandated by Wage Order No. NCR-13 in the amount of Three Hundred Sixty Five Pesos (365.00) monthly and applied/implementation to provincial stations with respect to regional wage order issuances, shall be incorporated in the computation of the employees' separation/retirement benefits pursuant to the Agreement signed by the parties on August 14, 2009 before the NCMB.
$$P3,500.00 + 500.00 + 300.00 = 4,300.00/12 = P 358.33 \text{ rounded to } P365.00) \text{ payable}$$

AUTOMATICRENEWAL OF CBA...

NEW Pacific Timber & Supply Company, Inc., Petitioner vs. NLRC, et al, NFL, M. Akilit and 350 Others, Respondents, G.R. No. 124224, March 17, 2000.

The last sentence of Article 253 refers to the so called “automatic renewal” of a CBA. The parties shall continue the CBA in “full force and effect” until they reach a new agreement. What exactly does this mean? In one case the employer and the union had a CBA for the years 1981 through 1984. They failed to renew the CBA because of a pending case between them. Is there a CBA for 1985? That is, should the employees be given wage increase and other CBA benefits? But how much should the wage increase be? Should it be the amount given in CBA year one, or year two, or year three? The court does not specify in New Pacific Timber, a ruling that deserves close attention.... Article 253 of the Labor Code explicitly provides xxx zIt is clear from the above provision of law that until a new Collective Bargaining Agreement has been executed by and between the parties, they are duty-bound to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement. The law does not provide for any exception nor qualification as to which of the economic provisions of the existing agreement are to be retained in force and effect, therefore, it must be understood as encompassing all the terms and conditions in the said agreement.

In the case at bar, no new agreement by and between petitioner Company and NFL, nor were any of the economic provisions and /or terms and conditions pertaining to monetary benefits in the existing agreement modified or altered. Therefore, the existing CBA in its entirety continues to have legal effect.

It is the duty of both parties to the CBA to keep the status quo, and to continue in full force and effect the terms and conditions of the existing agreement during the 60-days and /or until a new agreement is reached by the parties.

To rule otherwise, i.e., that the economic provisions of the existing CBA in the instant case ceased to have force and effect in the year 1984, would be to create a gap during which no agreement would govern, from the time the old contract expired to the time a new agreement shall have been entered into. For if, as contended, by the petitioner, the economic provision of the existing CBA were to have no legal effect, what agreement as to wage increases and other money benefits would govern at all? None, it would seem, if we are to allow the logic of petitioner Company. Consequently, the employees, from the year 1985 onwards would be deprived of a substantial amount of money benefits which they could have enjoyed had the terms and conditions of the CBA remained in force and effect. Such situation runs

contrary to the very intent and purpose of Article 253 and 253- A of the Labor Code which is to curb labor unrest and to promote industrial peace..xxx

Section 4, Article II of the CBA [see Annex B], provides:
For the of the Daily Salary Rate using the 251 days factor/year

“Section 4. **251 DAYS FACTOR** - The Company shall use the 251-days factor to determine the employee’s daily wage for the computation of his or her retirement/separation benefits, overtime pay, conversion of sick leave, bonuses and other wage related benefits, beginning 1 July 2007.

Formula in Computing Mo. Salary to Daily salary using the 251 days factor/year

Monthly Salary x 2
————— = ————— Basic daily Rate
251 days Factor/year (p.26)

The monthly salary pay of P 38,148.08 is computed as basic salary rate of P 31,499.08 + P 2,000.00 across the board increase + P 365.00 Wage Order No. NCR-13 [P2,000/month under Section 1 Section 2, Article VII of the CBA, pg. 12]
Adding the wage allowances of P 2,904.00 [to be supported by a Payroll Journal]

The allowance is based on month end payroll journal, that the petitioner is receiving,

Adding another Meal Allowance to be supported by a Paroll Journal of the petitioner and as provided by the CBA, P 55.00/day, Provincial, Article X, Section 1, pg.19.]

Article X ,Section 1

Section 1. MEAL ALLOWANCE – The COMPANY agrees to pay each employee a meal allowance according to the following schedule:

	METRO MANILA	PROVINCIAL
1 ST YR.	P 100.00/day	P 55.00/day
2 nd	100.00/	55.00/
3 rd	100.00/	55.00/

PROOF:
Annex “__-1 and __-2_” Payroll Journal Oct.1-15;16-31,2009-Latest

Salary Rate of Tarcisia C. Ladera
Annex “__-1_” Payroll Journal Aug.1-15,2012, see the allowance column.
Annex”____-2” Section 1, Article X of the CBA.

ARTICLE XIV VOLUNTARY RETRENCHMENT PROGRAM (VRP)

In case of VOLUNTARY RETRENCHMENT PROGRAM (VRP) to be implemented by the Company, it shall guarantee to said covered employee/s a retrenchment pay in accordance of the following schedule:

One (1) but below 5 years of service	-	35
days/year of service		
5 years but below 10 years of service	-	40 days
10 years but below 15 years of service	-	43 days
15 years but below 20 years of service	-	48 days
20 years but below 25 years of service	-	53 days
25 years and above	-	60
days plus Collective Bargaining Agreement benefits under Article XII, Sections 1,2 &3. (p. 33)		

ADDITIONAL ALLOWANCE - The **Education Saving Fund** in the amount of Three Thousand Five Hundred Pesos (**P3,500.00**) yearly, the **Eyeglass Subsidy** UnderSection 11 of the same article worth, One Thousand Five Hundred Pesos (**P1,500.00**) every three (3) years of Five Hundred Pesos (P500.00) per year and the **Birthday Leave Token** under Section 3 of Article IX in the amount of of Three Hundred Pesos (**P300.00**) shall be cash converted in the form of allowance and paid to the employees at **Three Hundred Sixty Five Pesos (P365.00)** monthly ($P3,500.00 + 500.00 + 300.00 = 4,300.00/12 = P$

358.33 rounded to P365.00) payable by the COMPANY to the employees every 15th of the month.

THE HOBSON'S CHOICE

The HOBSON'S CHOICE is a situation where an employee is offered a choice only as to the MEANS OF THEIR TERMINATION from the service BUT NO CHOICE AS TO THE STATUS OF THEIR EMPLOYMENT.

It is a case of choosing between what is offered or HAVING NONE AT ALL.

This obtains where an employee is given no OPTIONS: to RETIRE, be RETRENCHED or be DISMISSED and in the latter case without receiving anything, and where the employee is made to understand that he has NO CHOICE but to leave the company.

This is a case of being FORCED TO SWALLOW THE BITTER PILL OF DISMISSAL ALTHOUGH AFFORDED A CHOICE TO SWEETEN HIS SEPARATION FROM EMPLOYMENT.

The Supreme Court held that retirement or separation from employment under such situation is INVOLUNTARY, hence, illegal.

Receipt by the employee of separation benefits will NOT stop him from questioning or challenging the legality of his dismissal. (SAN MIGUEL CORP. VS. NLRC., G.R.No.107693, July 23, 1998).

AUDITOR

The CA rejected Sentinel's financial statements from 1995 to 2005 (which were submitted during the compulsory arbitration) in the absence of evidence that these were "fully audited by an independent external auditor." [Sentinel Integrated Services, Inc. vs. Rio Jose Remo, GR No. 188223, July 5, 2010]

. The CA considered the hiring of a replacement (Marcelo Albay) for Remo, as an indication that Sentinel's financial distress was not as serious as it claimed, and that retrenchment was not the actual reason for Remo's

dismissal. Lastly, the CA pointed out that there was no showing that other less drastic means had been tried and found insufficient or inadequate before Sentinel resorted to retrenchment – a jurisprudential requisite in retrenchments [*Philippine Carpet Association (PHILCA) v. Sto. Tomas*, G.R. No. 168719, February 22, 2006, 483 SCRA 128]. It, therefore, opined that Sentinel did not act in good faith in terminating Remo’s employment. [Sentinel Integrated Services, Inc. vs. Rio Jose Remo, GR No. 188223, July 5, 2010]

RETAINER CONTRACT

IN CONSIDERATION for engaging the legal services of Atty. Peter Y. co, in my labor complaint against RPN, I commit to pay the following:

1. TWENTY [20%] PERCENT OF ALL MONETARY AWARDS IN THE SAID LABOR CASE.
2. I ALSO AGREE THAT THE LOAN THAT I AM STILL OBLIGATED TO PAY [P420,000.00 as of January 8, 2013] SHALL ALSO BE ENTIRELY DEDUCTED FROM WHATEVER MONETARY BENEFITS THAT WILL BE DUE TO ME FROM THE SAID LABOR CASE.

THIS CONTRACT SHALL PERSIST until finality of Decision.

BUT ALL PLEADINGS THAT WILL BE FILED IN THE CASE SHALL BE BILLED SEPARATELY FROM THE FEES HEREIN-PROVIDED, BASED ON AMOUNT OF WORK AND RESEARCH AND THE PREPARATION NEEDED TO FILE IT.

December 28, 2012, Dipolog City, Philippines.

JOCELYN CARPIO BALLARES
Client

RETAINER CONTRACT

We hereby engage the legal services of Atty. Peter Y. Co to represent us in the labor complaints that we caused to be filed.

In consideration thereof, we commit to pay the following:

A. 30% of our total monetary award as attorney's fees, inclusive of salary on reinstatement while on appeal;

B. Actual expenses of pleadings and other actual costs shall be for our account.

Dipolog City, Philippines, July 18, 2008.

Republic of the Philippines
Department of Labor and Employment
NATIONAL LABOR RELATIONS COMMISSION
SUB-REGIONAL ARBITRATION BRANCH NO. 09
Dipolog City

ELIAQUIM J. EGAY,
Complainant,

-versus-

NLRC SUB-RAB CASE NO.

BIG BROTHER, INC., and VIC
L. CEBRITAS, and ALLIED
BANK CORPORATION, repre-
sented by its Branch Manager,
Respondents.

X-----/

COMPLAINT

COMPLAINANT, to this Honorable Labor Arbiter, most respectfully
avers:

PARTIES:

- 1.** Name of Complainant: ELIAQUIM J. EGAY
Age: 54 Status: Married
- 2.** Address : Relocation site, Laoy, Olingan, Dipolog City
- 3.** Name of Respondents/Company: BIG BROTHER, INC., and VIC L. CEBRITAS; and ALLIED BANK CORPORATION [as indirect employer]
- 4.** Address of BIG BROTHER, INC.

Main Office : 1236-A Santander Street, Sampaloc, Manila
Mindanao Office : 67 Justo Ramonal Street, Cagayan de Oro City
This is the same address of VIC L. CEBRITAS

Address of ALLIED BANK CORPORATION: c/o Dipolog City branch

5. Owner/Manager/President:

BIG BROTHER, INC. : Vicente Platon [Owner/President/General Manager]
: Vic L. Cebritas as Area Supervisor

ALLIED BANK CORPORATION: Lucio Tan [Owner/President/General Manager]
c/o Branch Manager of Dipolog branch.

6. Nature of Business:

BIG BROTHER, INC. : SECURITY AGENCY

ALLIED BANK CORPORATION: COMMERCIAL BANK

7. Number of Workers: More than 50 [for the main and branch offices]

8. Date Employed : 1991
Date of Illegal Dismissal : January 31, 2007
Years in service : Fifteen [15] years

9. Nature of Work/Position : Security Guard.

10. Work Schedule: 8:00 A.M. – 10:00 P.M. Only 15 minutes noon break within the bank. EVERY MONDAY-FRIDAY.

11. Place of Work : Allied Bank Dipolog City branch.

12. Have you ever filed any similar labor case elsewhere? No.

13. Salary Rate: More than P6,000.00/month

CAUSE OF ACTION

A. ILLEGAL DISMISSAL.

B. REINSTATEMENT with BACKWAGES

C. In the alternative: SEPARATION PAY.

D. ATTORNEY'S FEES.

E. DAMAGES

RELIEFS

COMPLAINANT prays for the following:

A. REINSTATEMENT with BACKWAGES

B. In the alternative: SEPARATION PAY.

C. FIREARM BOND.

D. ATTORNEY’S FEES.

E. DAMAGES

F. ALL OTHER BENEFITS PROVIDED FOR BY
LAW.

Done in Dipolog City, Philippines, this 7th day of February, 2007.

ELIAQUIM J. EGAY
Complainant

VERIFICATION
and SWORN STATEMENT
AGAINST FORUM SHOPPING

Republic of the Philippines)
CITY OF DIPOLOG) S.S.
X-----/

I, ELIAQUIM J. EGAY, Filipino, of legal age, married, resident of Relocation site, Olingan, Dipolog City, under oath, hereby depose and sayeth:

1. That I am the complainant in this case;
2. That I have caused for the preparation and filing of this Complaint;
3. That I have supplied all the material factual averments in the Complaint;

4. That I have read and understood the Complaint, and I affirm that all the allegations therein contained are true and correct to the best of my knowledge and belief;

5. That I have not commenced any other action or proceeding, nor is there any such action or proceeding, involving the same issues in the Supreme Court, the Court of Appeals or any other agency;

6. That if I should hereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, then I undertake to report that fact within five (5) days therefrom to the court or any agency wherein the original pleading and sworn statement contemplated herein had been filed.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 7th day of February, 2007, at Dipolog City, Philippines.

ELIAQUIM J. EGAY
Affiant

SUBSCRIBED AND SWORN to before me this 7th day of February, 2007, at Dipolog City, Philippines, affiant exhibiting his community tax certificate no. _____, issued on _____, at Dipolog City.

Doc. No. 46 :
Page No. 102 :
Book No. LXIII :
Series of 2007

PETER Y. CO
Notary Public
Until December 31, 2007
PTR NO. 0383657 01-12-2007
IBP NO. 658977 07-18-2006
Dipolog City
Roll No. 35379