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THE REASONS FOR LAYOFFS BY COMPANIES ARE BASED ON THE LAYOFF PROVISIONS IN LAW NO. 11 OF 2020 CONCERNING JOB CREATION AGAINST INDUSTRIAL RELATIONS COURT DECISIONS DUE TO GROSS ERRORS (PN DECISION STUDY NUMBER 1 / PDT. SUS-PHI/2021/PN PGP)

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Abstract

District Court Decision Number 1/Pdt.Sus-PHI/2021/PN Pgp, where the position of workers tends to have no power when dealing with employers who have the power Unilateral termination of employment carried out by PT Sinarmas Multifinance to the workers, namely Welson Fransisca, Heri Ferdian and Rudi Karmidi as employees of PT Sinarmas Multifinance, they are accused of serious mistakes and layoffs by means of the first warning letters and the second warning letters without any court decision previously. With so many cases like this, workers lose the opportunity and justice legally, which will harm the workers. This study aims to find out the reasons for layoffs by PT Sinarmas Multifinance and whether they can be justified in accordance with the layoff provisions based on Law No. 11 of 2020 concerning Job Creation. Based on Law No. 11 of 2020 concerning Job Creation, it is explained that the reason for the layoffs by PT Sinarmas Multifinance cannot be justified in accordance with the layoff provisions in Article 52 paragraph 1 of PP No. 35 of 2021, between the 1st and 2nd Warning Letters given by PT. Sinarmas Multifinance. Sinarmas Multifinance has exceeded 6 months since its issuance. Then, it should be inappropriate and categorized as an act of layoff without error.

Keywords: *Workers/Laborers, Gross Mistakes, Labor Law*

INTRODUCTION

Legal protection of workers is the fulfilment of fundamental rights inherent and protected by the Constitution as stipulated in Article 27 paragraph (2) of the 1945 Constitution: "Every citizen has the right to work and a decent livelihood for humanity", and Article 33 paragraph (1) which states that "The economy is structured as a joint enterprise based on the principle of kinship". Violation of the

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fundamental rights protected by the Constitution is a violation of human rights (Latupono, 2011; Rosifany, 2020).

Justice can be interpreted as Legality, meaning that it is a quality not related to the content of the positive rule but to its application (Rozah, 2014; Sila, 2013). Justice is the application of law by that established by a legal system. Thus, justice means consciously defending the legal system in its application. This is justice based on the law (Atmadja & Gede, 2013).

An Indefinite Time Employment Agreement is an agreement between an employer and a Worker to enter into an employment agreement or employment relationship that is permanent, continuous and not limited by time (Azis et al., 2019). The Indefinite Time Work Agreement is regulated in Article 81, numbers (16) and (17) of Law Number 11 of 2020 concerning Job Creation, which amends Article 61 and inserts Article 61A and Article 60, Article 62 and Article 63 of Law Number 13 of 2003 concerning Manpower (Zubi et al., 2021).

According to Hans Kelsen, justice is legality, so the benchmark of fair law is lawful. In this case, the issue of Severance and Workers rights is caused by the company's unilateral termination of employment of the workers. Legal protection and legal justice of workers' rights is something mandated in Law No. 13 of 2003 concerning Manpower, which is deleted, amended, and inserted Article by Article by Law No. 11 of 2020 concerning Job Creation, which we know the Law on Job Creation was recently passed by the government and the House of Representatives (Rahmatsyah, 2023).

One of the many areas of Law, including Manpower, which is very important and associated with labour protection, is the field of Termination of Employment, especially termination of employment by employers (Agung, 2021; Maringan, 2015). Layoffs in labour law were a last resort after various steps had been taken but did not bring the expected results. Article 1 number 25 of Law Number 13 of 2003 concerning Manpower defines layoffs as termination of employment

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relations due to a particular matter that results in the expiration of rights and obligations between workers/workers and employers (Hatane et al., 2021; Whasimah et al., 2022).

The most important legal protection in termination is that it concerns the correctness of the status of workers in the employment relationship as well as the correctness of the reasons for layoffs (Razzak et al., 2023; Silalahi, 2018). The truth of the reasons for releases originating from employers can be categorized in two ways, namely, the closure of the company or the existence of labour error (Dani, 2021). This development of labour misconduct is extended in company regulations, collective labour agreements and employment agreements that usually regulate what sanctions will be imposed on workers who do not comply with superiors' orders. Generally, sanctions are in the form of verbal reprimands, written reprimands, coaching, suspensions or even termination of employment (Razak & Rajab, 2021).

Article 52, paragraph (1) of Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, states that (Monica, 2022):

> "The Employer may terminate the Employment of the Worker/Laborer for the reason that the Worker/Laborer violates the provisions stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement and has previously been given the first, second, and third warning letters successively, the Worker/Laborer is entitled to a. severance pay of 0.5 (zero point five) times the provisions of Article 40 paragraph (2); b. service award money of 1 (one) time the provisions of Article 40 paragraph (3); and c. reimbursement of rights by the provisions of Article 40 paragraph (4)."

The article above contains provisions that employers can fire their workers who are deemed to have violated employment agreements, company regulations and or collective labour agreements. However, the worker concerned must be given the first, second, and third warning letters in a row.

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The use of Article 52 paragraph (1) of Government Regulation Number 35 of 2021 as a legal basis by employers to be able to terminate employment on the grounds of gross error or error of provisions in the employment agreement without a court decision becomes a polemic in the practice of labour law (Farianto, 2021). Workers and or unions often refuse termination for the worker's fault. In the principle of Presumption of Innocence, termination of employment (layoffs) due to gross misconduct gives rise to the direction of presumption of innocence (Herdiana, 2018). This is unfair because workers' mistakes are often used as an excuse by employers to terminate employment arbitrarily (Estlund, 2002).

In contrast to the provisions of Article 158 of the Manpower Law, which, before being amended, was deleted and inserted by the Law on Job Creation, overturned by the Constitutional Court Decision Number 012/PUU-I/2003. This provision is considered to have violated the principle of proof, especially the *presumption of innocence* and equality before the law as guaranteed in the 1945 Constitution of the Republic of Indonesia. Supposedly, whether a person is guilty is decided through a court with the evidentiary law determined in Law Number 8 of 1981 concerning the Criminal Procedure Law. Then, the use of Article 52 paragraph (1) of Government Regulation Number 35 of 2021 should also look at the principle of presumption of innocence (*Presumption of Innocence*) (Rahmadani & Adha, 2022).

As in the case that the author will make the object of analysis where this is reflected in the District Court Decision Number 1/Pdt.Sus-PHI/2021/PN Pgp, where the position of workers who tend to have no power, when dealing with employers who have power, as a result, workers cannot do anything if the employer terminates employment which will adversely affect the worker. Unilateral termination of employment carried out by PT Sinarmas Multifinance to the workers, namely Welson Fransisca, Heri Ferdian and Rudi Karmidi as employees of PT Sinarmas Multifinance, they were accused of gross mistakes and

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laid off by means of the First Warning Letter and the Second Warning Letter without any previous court decision. The workers made Bipartite and Tripartite efforts (settlement by way of deliberation between workers and employers) but remained unsuccessful, so the last resort the Plaintiffs could make was through legal proceedings by filing a lawsuit with the Industrial Relations Court.

RESEARCH METHODS

This research uses normative juridical methods, where this correct knowledge can later be used to answer certain questions or ignorance (Benuf & Azhar, 2020). normative juridical, which is legal research carried out by examining library materials or secondary data as the main data covering legal principles, legal systematics, the level of legal synchronization, legal history and legal comparisons. The author conducts a research approach to the decision of the District Court Number 1 / Pdt.Sus-PHI / 2021 / PN Pgp dated March 16, 2021.

RESULT, ANALYSIS AND DISCUSSION

A. Is it justifiable the reason for the layoff by the company based on the layoff provisions in Law No. 11 of 2020 concerning Job Creation against the Decision of the Industrial Relations Court due to gross error

Based on the Industrial Relations Court Decision at the Pangkalpinang Court Number 1 / Pdt.Sus-PHI / 2021 / PN Pgp regarding the termination lawsuit, the people who filed the lawsuit were Welson Fransisca, Heri Ferdian and Rudi Karmidi. This case filed a suit at the Pangkalpinang Industrial Relations Court against PT Sinarmas Multifinance..

Welson Fransisca, Heri Ferdian and Rudi Karmidi, workers at PT Sinarmas Multifinance, were terminated from their employment relations with the company. According to PT Sinarmas Multifinance, Welson Fransisca, Heri

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Ferdian, and Rudi Karmidi have violated the provisions, each of which infringes their work, namely:

1. Welson Fransisca has committed employment violations for violating company regulations, namely audit findings in the form of fictitious agents and for providing false information.
2. Heri Ferdian has committed a work violation because it violated company regulations. The audit findings in the form of A1 units were not immediately withdrawn and had broken the company's SOP and did not reach the target.
3. Rudi Karmidi has committed a work violation for giving false information.
4. Based on the information above, PT Sinarmas Multifinance terminated the employment in writing. According to PT Sinarmas Multifinance, Welson Fransisca, Heri Ferdian, and Rudi Karmidi have committed several work violations and have been given warnings with the following details:
    a. Welson Fransisca has committed an offence, which earned the I-th Warning Letter dated March 19, 2018, and received the Second Warning Letter dated April 6, 2020.
    b. Heri Ferdian has committed an offence, which received the I-th Warning Letter dated September 2, 2019, and received the Second Warning Letter dated April 6, 2020.
    c. Rudi Karmidi has committed an offence, which received the I-th Warning Letter dated April 6, 2020.

Based on the decision of the Industrial Relations Court at the Pangkalpinang Court, it has been explained that Welson Fransisca, Heri Ferdian and Rudi Karmidi are Indefinite Time Work Agreement workers who explained that before the termination occurs, there must be an effort from the company so that there is

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no termination of employment. In Article 81, number 37 of the provisions of Article 151 Paragraph (1) of Law Number 11 of 2020 concerning Job Creation, which amends Article 151 of Law Number 13 of 2003 concerning Manpower, it is explained that employers, workers, trade unions and the government with all efforts must make efforts so that there is no termination of employment.

In addition, for this dispute, bipartite negotiations were attempted on October 03, 2020. Still, there was no agreement. Then, on October 23, 2020, Tripartite negotiations were held using mediation, and no agreement was reached, so the Mediator of the Investment Office issued a recommendation, One-Stop Integrated Licensing Service, and Manpower of Bangka Tengah Regency Number: 560/972/DPMPTK/2020 on November 19, 2020.

The recommendation proves that the parties have gone through the process of resolving industrial disconnection dispute cases at the Pangkalpinang District Court so that the Panel of Judges is authorized to examine, adjudicate and decide the case as stipulated in the provisions of Article 1 Paragraph (17) of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes which explains that the Industrial Relations court is a special court established in the environment of the district court which has the authority to examine, adjudicate and adjudicate on industrial relations disputes.

Based on the above problems, the author will analyze the reasons given by PT Sinarmas Multifinance against Welson Fransisca, Heri Ferdian and Rudi Karmidi regarding warning letters and gross errors judging from the layoff provisions in Law Number 11 of 2020 concerning Job Creation and connected with the Theory of Justice.

Analysis of the decision on Industrial Relations Disputes in the Pangkalpinang court Number 1 / Pdt.Sus-PHI / 2021 / PN Pgp contains the reasons for PT Sinarmas Multifinance to lay off the Plaintiffs, whether it can be justified by the provisions of layoffs in Law Number 11 of 2020 concerning Job

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Creation, as follows: Analysis of the reasons for layoffs by PT Sinarmas Multifinance regarding Warning Letters.

The provision of a warning letter is regulated in Article 81 number 42 of Law Number 11 of 2020 concerning Job Creation, which contains a new Article 154A paragraph (1) letter k of Law Number 13 of 2003 concerning Manpower, which reads: "Termination of employment may occur for reasons of k. the worker/labourer violates the provisions stipulated in the employment agreement, company regulations, or collective labour agreement and has previously been given the first, second, and third warning letters, respectively valid for a maximum of 6 (six) months unless otherwise stipulated in the employment agreement, company regulations, or collective labour agreement".

Based on the above provisions, the provision of warning letters can be carried out with a validity period of up to 6 months each unless otherwise specified in the employment agreement, company regulations, or collective labour agreement. Thus, an employment agreement, company regulation, or joint labour agreement can provide a warning letter validity period shorter than six months.

As for what is meant by the validity period of 6 months, if a worker commits a violation, then he is given the first warning letter. Then, if the worker again commits the breach within that validity period, the employer can provide a second warning letter, which is also valid for six months. Furthermore, suppose the worker continues to commit violations within the validity period of the double warning letters. In that case, the employer can issue a third (final) warning letter valid for six months. If workers again commit violations within that period of time, then this can be used as a reason for layoffs.

However, if the period of 6 months since the issuance of the first warning letter has been exceeded, the worker re-commits the violation. The warning letter issued by the employer is returned as the first warning and the second and third warnings. So, the termination of employment because it has been given a warning letter carried out by PT Sinarmas Multifinance should not be appropriate. Because

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in the facts of his case, Welson Fransisca, Heri Ferdian and Rudi Karmidi received the first and second warning letters exceeding the six month limit from the issuance of the first Warning Letter and did not follow the Law that has been regulated above in the form of not providing the 1st, 2nd and 3rd Warning Letters appropriately and correctly. This is further based on the Theory of Justice according to Rawls; his theory explains that everyone has the same right to the broadest essential freedom to obtain his most significant release based on a system of space that gives equal opportunities to all people.

Indonesia, as a civilized nation, has noble values that uphold humanity as contained in the Pancasila in the 2nd Precept, which reads "just and civilized humanity", and the Plaintiffs, as seekers of justice, really yearn for this case to be decided by judges who are professional and have high moral integrity, who uphold the noble values of the Indonesian nation on the importance of humanity.

As in Jurisprudence, against Cassation Decision number 461 K / Pdt.Sus-PHI / 2017, in which the Panel of Judges at the Central Jakarta District Court argues that to terminate the employment of workers, the employer must prove that they have given 3 (three) warning letters for a mistake made by workers successively to the worker. The warning letter is only valid for 6 (six) months. The basis for issuing the warning letter must also be written explicitly in the Employment Agreement, Collective Labor Agreement, or Company Regulations so that it is clear what actions of the worker is given the warning letter.

It is corroborated that Welson Fransisca, Heri Ferdian and Rudi Karmidi, in their lawsuit, stated that the termination of their employment relationship was Welson Fransisca on September 7, 2020, which was delivered orally without stages, Heri Ferdian on August 8, 2020, which was given orally without phases, Rudi Karmidi on May 8, 2020 which was given orally without degrees, then based on the provisions of the Job Creation Law Article 151 Paragraph (1), (2), (3) and Subsection (4) of the termination of employment made by the Defendants to the

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Plaintiffs by oral means without going through the stages of negotiation is not by the applicable laws and regulations. Hence, the termination is null and void.

1. Analysis of the reasons for the layoffs by PT Sinarmas Multifinance regarding Gross Mistakes

The reason why PT Sinarmas Multifinance laid off Welson Fransisca, Heri Ferdian and Rudi Karmidi who are workers at PT Sinarmas Multifinance, is because they have violated the provisions of each of their work violations, namely:

a. Welson Fransisca has committed employment violations for violating company regulations, namely audit findings in the form of fictitious agents and for providing false information.
b. Heri Ferdian has committed a work violation because it violated company regulations, namely the audit findings in the form of A1 units were not immediately withdrawn and had violated the company's SOP and did not reach the target.
c. Rudi Karmidi has committed a work violation for giving false information.

Juridically constitutionally, Termination of Employment (Layoffs) because of Error of provisions is indeed justified and regulated in this case which is discussed using Article 52 paragraph (1) of Government Regulation No. 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, that Employers can terminate the employment of Workers / Workers for reasons of Workers / Workers committing violations of the provisions stipulated in Employment Agreement, Company Regulation, or Collective Labor Agreement and has previously been given the first, second, and third warning letters successively then the Worker/ Laborer is entitled to a. severance pay of 0.5 (zero point five) times the provisions of Article 40 paragraph (2); b. service award money of 1 (one) time the provisions of Article 40 paragraph (3); and c. reimbursement of rights by the provisions of Article 40 paragraph (4).

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This regulation on termination of employment by the employer can also occur because the worker committed an employment error or violation of the provisions that we can see by Article 52 paragraph (1) of Government Regulation No. 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Work Time and Rest Time, and Termination of Employment, which explains further explanations to be able to enter the element of work error, that is:

a. The first warning letter is valid for 6 (six) months.
b. If the Worker/Laborer re-violates the provisions in the Employment Agreement, Company Regulations, or Collective Labor Agreement still within a grace period of 6 (six) months, the Employer can issue a second warning letter, which also has a validity period of 6 (six) months from the issuance of the second warning.
c. Suppose the Worker/Laborer still violates the Employment Agreement, Company Regulations, or Collective Labor Agreement provisions. In that case, the Employer may issue a third (final) warning, valid for 6 (six) months from issuing the third warning.

The above statement explains be included in the element of work error if the worker/labourer violates the provisions in the Employment Agreement, Company Regulations, or Collective Labor Agreement, which from the first warning letter is valid for 6 (six) months and if the worker makes a work mistake or a return provision error is still within a grace period of 6 (six) months then the Employer can issue a second warning letter, which also has a validity period of 6 (six) months from the issuance of the second warning and the same as the third warning letter—that way the element of provision error can be used.

However, in the judgment on Industrial Relations Disputes in the Pangkalpinang court Number 1/Pdt.Sus-PHI/2021/PN Pgp in the case on behalf of Welson Fransisca and Rudi Karmidi is a judgment using Article 52 paragraph (2), which is included in the element of Gross Error. Therefore, the Judge, in taking a decision in this case, has made a mistake by not applying the law as it

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should be where the regulation is further regulated, which can enter the element gross errors, namely:

1) commit fraud, theft, or embezzlement of goods and money belonging to the Company;
2) provide false or falsified information to the detriment of the Company;
3) intoxication, intoxicating drinking, using and circulating narcotics, psychotropics, and other addictive substances in the work environment;
4) committing immoral acts or gambling in the work environment;
5) attack, molest, threaten, or intimidate a co-worker or Employer in the work environment;
6) persuading co-workers or employers to commit acts contrary to laws and regulations;
7) carelessly or intentionally damage or allow in a state of danger the Company's property that causes losses to the Company;
8) recklessly or intentionally leaving a co-worker or Employer in a state of danger at work;
9) dismantle or divulge Company secrets that would otherwise be kept secret except for the benefit of the state or
10) commit other acts within the Company that are threatened with imprisonment of 5 (five) years or more.

From the information above, the author can conclude that Welson Fransisca has committed severe violations because it violates company regulations, namely audit findings in the form of fictitious agents and for providing false information, and Rudi Karmidi has committed work violations for giving incorrect information. Then, the element of gross error can be implemented.

However, this still causes polemics in the practice of labour rules, which the Job Creation Law has now changed. The context of companies that carry out termination of employment (Layoffs) due to gross errors is considered to have

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violated the principle of proof, especially the Principle of Presumption of Innocence and similarity before the law as guaranteed in the 1945 Constitution of the Republic of Indonesia. Supposedly, whether a person is guilty is decided through a court with the evidentiary law determined in Law Number 8 of 1981 concerning the Criminal Procedure Law.

Responding to the decision of the Industrial Relations Court at the Pangkalpinang Court Number 1 / Pdt.Sus-PHI / 2021 / PN Pgp regarding the case of termination of employment due to gross error, according to the author to conclude a case (Gross Error), it must be seen from Article 28 D paragraph (1) of the 1945 Constitution it is stated "everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law", and in subsection (2) it states "Everyone has the right to work and to receive fair and proper remuneration and treatment in an employment relationship.

Aristotle, Regarding Justice, argues that there are at least 3 differentiating it, one of which is Corrective Justice, which focuses on correcting something wrong. If an offence is violated or a mistake is committed, then corrective Justice seeks to provide adequate compensation for the aggrieved party; if a crime has been committed, then appropriate punishment must be given to the offender. After all, injustice results in the disruption of established or established "equality". Corrective Justice is in charge of rebuilding that equity. This description shows that corrective Justice is the judicial area while distributive Justice is the government's field.

All actions that contain criminal elements, referred to in Article 52 of Government Regulation No. 35 of 2021, must be proven first by a criminal court decision. This is intended because, in principle, the position of the company/employer and worker/labourer is balanced, and the company or entrepreneur cannot arbitrarily accuse its workers of having committed a criminal act and terminate employment without a criminal verdict first.

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So, with the action of PT. Sinarmas Multifinance, which carried out unilateral layoffs against Welson Fransisca, Heri Ferdian and Rudi Karmidi, has made the employment relationship between Plaintiff and Defendant no longer conducive. Thus, it is lawful to terminate the employment relationship between PT Sinarmas Multifinance and Welson Fransisca, Heri Ferdian and Rudi Karmidi, categorized as layoffs without error.

As the Supreme Court Decision No.051 PK/Pdt.Sus/2009 dated November 11, 2009, to the Decision of the Industrial Relations Court at the Central Jakarta District Court No.347/PHI. G/2007/PNJkt.Pst dated February 28, 2008 jo Supreme Court Decision No.328 K/Pdt.Sus/2008, dated July 28, 2008, has given its consideration that "an employment relationship is based on the principles and objectives of an employment relationship, that the code for an employment relationship based on the agreement of each party to bind itself to achieve a harmonious relationship and work productivity, and if one of the parties no longer wishes to be secured then it is difficult for each party to maintaining a balanced relationship, the principle of aqua that underlies Law Number 2 of 2004.

So, the reason for the layoffs by PT Sinarmas Multifinance is not the layoff provisions in Law Number 11 of 2020 concerning Job Creation against the decision of the Industrial Relations Court.

CONCLUSION

The reason for the layoffs by PT Sinarmas Multifinance is not the layoff provisions in Law Number 11 of 2020 concerning Job Creation against the decision of the Industrial Relations Court. Based on Government Regulation No.35 of 2021 Warning Letter, if the period of 6 months since the issuance of the first warning letters has been exceeded, workers re-commit violations, then the warning letter issued by the employer is returned as the first warning, as well as applies to the second and third warnings. So, the termination of employment because it has been given a warning letter carried out by PT Sinarmas

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Multifinance should not be appropriate. Because in the facts of his case, the Plaintiffs got the first and second warning letters exceeding the 6-month term limit from issuing the first Warning Letter. All actions that contain criminal elements, as referred to in Article 52 of Government Regulation No. 35 of 2021, must be proven first by a criminal court decision. So, with the action of PT. Sinarmas Multifinance, which carried out unilateral layoffs against Welson Fransisca, Heri Ferdian and Rudi Karmidi. Thus, it is lawful to terminate the employment relationship between PT—Sinarmas Multifinance and Welson Fransisca, Heri Ferdian and Rudi Karmidi, categorized as layoffs without error.

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