SUPREME COURT
FIRST DIVISION

ROBERTO O. ARIOLA, FRANCO MALLARE, BENJAMIN BIETE & HERMOGENES MAMAYSON, all members of PHILEX MINES SUPERVISORY EMPLOYEES UNION,
Petitioners,

-versus-

G.R. No. 147756
August 9, 2005

PHILEX MINING CORPORATION and VOLUNTARY ARBITRATOR NORMA B. ADVINCULA,
Respondents.
x----------x

D E C I S I O N

***CARPIO, J.*:**

The Case

This is a Petition for Review[1] of the Court of Appeals' Decision[2] dated 7 September 2000 and its Resolution dated 3 April 2001. The 7 September 2000 Decision denied petitioners' petition while the 3 April 2001 Resolution denied their motion for reconsideration.

The Facts

Petitioners Roberto Ariola, Franco Mallare, Benjamin Biete and Hermogenes Mamayson ("petitioners") are former supervisors of respondent Philex Mining Corporation ("Philex"). In 1992, Philex sustained financial losses in its operations. To save costs, Philex adopted several measures including reducing personnel through early voluntary retirement and retrenchment programs. A workforce audit showed that Philex had 310[3] "excess positions." Philex re-assigned some of the employees belonging to this group while others took early retirement, leaving 241 positions for retrenchment.

On 29 April 1993, Philex and the labor union representing the rank-and-file employees[4] signed a Memorandum of Agreement ("rank-and-file's

MOA") prescribing the criteria for retrenchment.[5] The following day, 30 April 1993, the union representing the supervisory employees[6] also signed a Memorandum of Agreement ("supervisors' MOA") with Philex similarly prescribing the criteria for retrenchment.[7]

On 14 May 1993, Philex informed the Department of Labor and Employment ("DOLE"), Cordillera Administrative Region, Baguio City, of its plan to retrench 241 employees.[8]

On 1 June 1993, petitioners, with six[9] other supervisors and 49 rank-and-file employees, received from Philex termination notices informing them of their retrenchment under their respective MOAs effective 30 June 1993. Philex paid them separation pay. All of them signed Deeds of Release and Quitclaim in Philex's favor.

Claiming that Philex dismissed them illegally, these supervisors and rank-and-file employees separately submitted for voluntary arbitration by the National Conciliation and Mediation Board, Cordillera Administrative Region, Baguio City ("NCMB Baguio City"), the legality of their separation from service. The rank-and-file employees' case, docketed as Case No. 01-93, was referred to Voluntary Arbitrator Juan B. Valdez ("Arbitrator Valdez"). On the other hand, the supervisors' case, docketed as Case No. AC-528-RB-

CAR 09-003-94, was referred to Voluntary Arbitrator Norma B. Advincula ("Arbitrator Advincula").

In Case No. 01-93, Arbitrator Valdez ruled in the rank-and-file employees' favor, declared their dismissal illegal, and ordered their reinstatement. Arbitrator Valdez held that Philex failed to prove its claim of financial losses and that the criteria for retrenchment in the rank-and-file's MOA were arbitrary and inconsistent with the Collective Bargaining Agreement ("CBA") then in force. Arbitrator Valdez also held that since the rank-and-file's MOA was not ratified by the union members, it is valid only "as between the contracting parties."

Philex appealed to the Court of Appeals in CA-G.R. SP No. 39235. In its Decision of 22 July 1997, the Court of Appeals reversed Arbitrator Valdez's finding on Philex's financial condition and held that Philex had a valid reason to undertake retrenchment. Nevertheless, the appellate court affirmed Arbitrator Valdez's ruling that Philex is liable for illegal dismissal because the criteria for retrenchment in the rank-and-file's MOA were inequitable.[10]

Philex further appealed to this Court in G.R. No. 131452. In the Resolution of 14 January 1998, the Court denied Philex's petition. The Court's Resolution became final on 27 April 1998.

Arbitrator Advincula's Ruling in Case No. AC-528-RB-CAR 09-003-94

In Case No. AC-528-RB-CAR 09-003-94, Arbitrator Advincula issued an Order on 14 March 1995 ordering Philex to reinstate petitioners and their co-complainants, after Philex failed to timely file its Position Paper. However, on Philex's motion, Arbitrator Advincula reconsidered and admitted Philex's Position Paper and "Supplementary" Position Paper. On 29 July 1995, Arbitrator Advincula rendered judgment finding "sufficient basis or just cause" for Philex to undertake a retrenchment.

Arbitrator Advincula also held that petitioners were barred from questioning their separation from service because they availed of the early retirement program and executed the Deeds of Release and

Quitclaim releasing Philex from further liability. Arbitrator Advincula held:

ON THE ISSUE OF WHETHER OR NOT THE RETRENCHMENT IS VALID

The factual findings of this Office show that respondent Philex Mining Corporation was merely exercising the employer's prerogative to "rightsize" the company to ensure that it will not "capsize". This prerogative is recognized by the Labor Code under Article 283.

The Supreme Court has sought to implement the aforementioned provision of the Labor Code in a number of cases affirming the right of an employer to lay off or dismiss employees justified by losses in the operation of its business.

In those cases, the Honorable Court has stressed management's prerogative to close or abolish a department or section of the employer's establishment for economic reasons. The Court reasoned out that since the greater right to close the entire establishment and cease operations due to adverse economic conditions is granted an employer, the closure of a part thereof to minimize expenses and reduce capitalization should also be recognized.

In the instant case, Philex Mining Corporation is similarly situated. The financial set backs reportedly suffered by the Company in its mining operations have to be considered in the light of its arguments and the applicable law and jurisprudence. It must be noted that respondent Company had been incurring losses in its mining business. While it might have earned other income from its investments in shares of stocks and sale of non-operating assets, the fact remains that there is a substantial proof of losses incurred in the pursuit of its primary business to sustain retrenchment. The External Audit Report prepared by the Sycip, Gorres, Velayo and Company confirms respondents' claims of losses incurred in 1992 and 1993.

ON THE ISSUE OF WHETHER OR NOT COMPLAINANTS VOLUNTARILY RETIRED FROM THE COMPANY

This Office holds that the separation of the other complainants namely, Messrs. Banayat, Mallare, Martin, Ariola, Ferraro, Mamayson, Candol, Brian and Biente (sic) may not be questioned because complainants opted to avail of the early voluntary retirement program offered by the Company, and the same were given retirement pay as evidenced by the vouchers signed by them indicating their receipt of payment of retirement gratuity from the Company together with the Deed of Quitclaim and Release executed by them ("S-1" to "S-15" of Respondent's Supplemental Position Paper). Moreover, there is no indication on the record that complainants were forced by the Company to sign the release, waiver and quitclaim. It is important to note that complainants are not ordinary laborers who may not fully understand and realize the consequences of their acts. The complainants are supervisors who are holding responsible positions in the company; hence, there is every reason to believe that they know their basic rights and that they would not allow themselves to be coerced into signing away these rights.

Thus, from the evidences presented, it clearly appears that complainants voluntarily retired from the company for a valuable consideration. The quitclaim[s] executed in favor of the company [amount] to a valid and binding agreement.

Complainants' excuse of signing the documents as an "act of survival" cannot be accepted.

In the instant case, there is no evidence that complainant supervisors were "coerced or tricked" into signing the Quitclaim and Release or that the consideration thereof was very low. Complainants are therefore bound by the conditions thereof.[11]

Petitioners appealed to the Court of Appeals.

The Ruling of the Court of Appeals

In its Decision of 7 September 2000, the Court of Appeals denied the petition for lack of merit. The appellate court no longer ruled on the validity of Philex's retrenchment program because it treated its Decision in CA-G.R. SP No. 39235 as the law of the case on that issue. Instead, it affirmed Arbiter Advincula's ruling on the ground that petitioners retired from service. The Court of Appeals also sustained Arbiter Advincula's finding that petitioners can no longer question their separation from service as they released Philex from further liability in their waivers. The Court of Appeals held:

> The question to be resolved is whether the separation of herein petitioners is based on their voluntary retirement as part of the retrenchment program of private respondent or were they dismissed under the retrenchment program?
>
> If the answer is that they were dismissed, then, it follows that the same was illegal based on the final decision of this Court in CA-G.R. SP No. 39235. But if the answer is that petitioners voluntarily retired, then the finding of VA Advincula [that petitioners did so] must be sustained as it is based on law and evidence.
>
> Respondent Philex clearly outlined the courses of action it had taken at the time it began to experience huge losses in its business. It first conducted a manpower audit, then offered early/voluntary (or optional) retirement to employees who were at least 50 years old and who have served at least ten years. Only a few employees availed of this offer. After the audit was completed, several employees had already been separated from employment due to compulsory/mandatory retirement, resignation and death. It was only then that respondent implemented the retrenchment of the other employees "as a measure of last resort." *(pp. 134-135, Memorandum for Respondent Philex)*

In support of her finding that complainants (Banayat, Mallare, Martin, Ariola, Ferraro, Mamayson, Candol, Brian and Biete) had availed of the early voluntary retirement program of the company, VA Advincula mentioned in her decision the vouchers signed by them indicating their receipt of payment of retirement *(sic)*.

This is fully supported by the evidence on record. The vouchers, marked as "S-7", "S-5", "S-9" and "S-14", disclose that herein four (4) petitioners namely: Roberto O. Ariola, Franco P. Mallare, Hermogenes P. Mamayson and Benjamin D. Biete received their retirement gratuity from Philex Retirement Trust and signed the deeds of quitclaim and release after receiving additional transportation assistance from respondent company. This is not disputed by petitioners either at the arbitration level or in the present petition.

Thus, petitioners cannot avail of the final pronouncements in CA-G.R. SP No. 39235 as they were not dismissed in accordance with the criteria under the MOA which were declared invalid and inequitable but they were separated from service because they voluntarily opted for early retirement.[12]

Hence, this petition. Petitioners raise this lone issue:

> **WHETHER THE WAIVER SIGNED BY PETITIONERS IS TANTAMOUNT TO VOLUNTARY RESIGNATION.**[13]
>
> Petitioners reiterate their contention in the Court of Appeals that they did not retire and that Philex illegally retrenched them. Petitioners also contend that the quitclaims they signed do not bar them from questioning the legality of their dismissal.[14]

The Issues

The petition raises these issues:

(1) Whether petitioners retired or whether Philex dismissed them from service; and

(2) In case of the latter, whether petitioners' dismissal was illegal.

The Ruling of the Court

The petition has merit.

Not Retirement but Retrenchment

Ordinarily, the finding of Arbitrator Advincula and the Court of Appeals that petitioners were not dismissed but chose to retire is binding on this Court. However, as we held in a case[15] where we overturned the findings of fact of the trial court and the Court of Appeals, there are facts and circumstances on record in the present case which render untenable the conclusion of Arbiter Advincula and the Court of Appeals.

As basis for their findings that petitioners retired from service, the Court of Appeals and Arbitrator Advincula cited the vouchers[16] petitioners signed showing their receipt of "retirement gratuity." Although there is no dispute that petitioners received varied amounts[17] denominated in the vouchers in question as "retirement gratuity," the records show that Philex paid these amounts because of petitioners' retrenchment.

Thus, in the letter dated 1 June 1993,[18] addressed to petitioner Benjamin Biete ("Biete"), Tomas Z. Roxas, Jr. ("Roxas") of Philex Retirement Trust informed petitioner Biete that he was entitled to receive "retirement gratuity" equivalent to one month salary for every year of service because "[Biete's] separation at the instance of Philex Mining Corporation as a result of its retrenchment program is for cause beyond [Biete's] control," thus:

> **PHILEX RETIREMENT TRUST**
> **c/o AGRAVA LUCERO ROXAS & MARTINEZ**
> E1906B 19/F Tektite Towers, Tektite Road, Ortigas Center
> Pasig 1600, Metro Manila, Philippines
> Tel. Nos. 634-6711 to 634-6714
> Fax (00632) 634-6706

June 1, 1993

Mr. Benjamin D. Biete
c/o Philex Mining Corporation
Padcal, Tuba Benguet

Dear Mr. Biete:

We have been advised by Philex Mining Corporation that you will be retiring from the service effective June 30, 1993 due to "separation at the instance of Philex Mining Corporation as a result of its retrenchment program". Since your separation is for cause beyond your control, you will be entitled to payment of retirement gratuity under the Retirement Gratuity Plan.

According to the records furnished to us by the Company, you attained age 42 on March 5, 1993. Since you were last hired on June 26, 1975, you have been in the employ of the Company for 18 years of completed service on the date of your retirement. Therefore, your retirement gratuity amounts to ₱87,575.04, computed as follows:

₱231.68 (your last basic daily compensation)
x 21 days x 18 years = ₱87,575.04.

Very Truly Yours,
PHILEX RETIREMENT TRUST

By:

(Sgd.)
TOMAS Z. ROXAS, JR.[19]

Clearly, under Philex's Retirement Gratuity Plan, "retirement gratuity" is paid not only to retiring employees but also to those who, like petitioners, are dismissed for cause "beyond their control" such as retrenchment. Indeed, Philex treated the "retirement gratuity" as petitioners' basic separation pay, which, with transportation allowance, comprised their "net separation pay" as indicated in Deeds of Release and Quitclaims petitioners signed.[20] Significantly, Philex

paid petitioners such separation pay after notifying them of their retrenchment.[21]

Admittedly, Biete[22] submitted to the Court of Appeals Roxas' letter only on 10 October 2000 after that court had rendered its 7 September 2000 Decision. However, at that time, petitioners did not yet file their motion for reconsideration to the 7 September 2000 Decision which they filed only on 11 October 2000. Considering the import of Roxas' letter, it was error for the Court of Appeals not to have considered the letter in resolving petitioners' motion for reconsideration.

The Court's cognizance of Roxas' letter does not deny Philex due process. In *San Mauricio Mining Co. vs. Hon. Ancheta*[23] where, as here, the Court took cognizance of a document presented for the first time in the Court of Appeals, we held:

> The document in question was petitioners' main actionable document to bolster their defense. Accordingly, the bringing out of the said document by any party at any later stage of the proceedings could not have caught petitioners by surprise. Indeed, under the rules, petitioners should have attached the same to their answer. *(Section 7, Rule 8)*
>
> Certainly, the essence of denial of due process cannot contemplate a situation wherein the party who has knowledge of and holds a document that would bring out the truth as to a given situation withholds such document, whether as a matter of forensic strategy or bad faith. Due process is no more than the indispensability of fairness and opportunity to be heard. Understandably then, it cannot be pretended that there has been denial thereof in a situation where precisely, as a matter of candidness and honesty to the court, the party claiming to be aggrieved is the one who for tactical reasons or otherwise is the one guilty of not disclosing to the court the vital document that contains the most conclusive evidence regarding the matter in dispute. *(Emphasis supplied)*
>
> This applies squarely to the present case as Roxas' letter lies at the heart of Philex's defense of payment of retirement gratuity

> to prove petitioners' alleged retirement. Philex cannot feign ignorance of this letter.

Furthermore, Philex's failure to submit other documents proving petitioners' claimed retirement, such as their applications for retirement under Philex's early voluntary retirement program[24] and their clearance slips, undermines its claim. The submission of these documents, which should indicate the reason for petitioners' separation from service, would have put to rest any doubt on the cause of such separation.

In sum, we hold that by themselves, the vouchers in question do not suffice to prove petitioners' retirement from Philex. Retirement results from a voluntary agreement between the employer and the employee where the latter, after reaching a certain age, agrees to sever his employment with the former.[25] Thus if, as in the present case, the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge.[26]

Petitioners' Retrenchment was Illegal

Article 283 of the Labor Code governs retrenchment to prevent losses, to wit:

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

> month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. *(Emphasis supplied)*

Thus, the requirements for retrenchment are: (1) it is undertaken to prevent losses, which 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;[27] (2) the employer serves written notice both to the employees and the DOLE at least one month prior to the intended date of retrenchment; and (3) the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher. The Court later added the requirements that the employer must use fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees[28] and that the retrenchment must be undertaken in good faith.[29] Except for the written notice to the affected employees and the DOLE,[30] non-compliance with any of these requirements renders the retrenchment illegal.

In the present case, Philex's financial condition before and at the time of petitioners' retrenchment justified petitioners' retrenchment. An independent auditor[31] confirmed Philex's claim of financial losses, finding that Philex suffered an operational loss of ₱33,743,000 in 1992. This ballooned to ₱283,173,000 in 1993, beyond Philex's projected loss of ₱187 million. Thus, Philex could ill afford to experiment with other cost-cutting measures before resorting to retrenchment as the situation called for immediate and drastic action.

Philex also complied with the requirements in Article 283 to serve written notices of retrenchment to petitioners and to the DOLE a month before the effective date of retrenchment and to pay petitioners separation pay equivalent to one month pay for every year of service.

What Philex failed to do was implement its retrenchment program in a just and proper manner. One of the criteria for retrenchment in the supervisors' MOA is inconsistent with Article XVIII[32] of the CBA. The system in the supervisors' MOA for computing demerits points,

based on the formula[33] provided in the rank-and-file's MOA, evaluates the employee's disciplinary record over a three-year period, regardless of the penalty involved. This contravenes Article XVIII of the CBA which provides that offenses punishable by "reprimands and warnings of separation" will be stricken-off the record every February 1st of each year. Since the supervisors' union did not ratify the MOA, the MOA cannot prevail over the CBA.

Philex's failure to use a reasonable and fair standard in the computation of the supervisors' demerits points is not merely a procedural but a substantive defect which invalidates petitioners' dismissal. When the defect is procedural, the dismissal remains valid because the basis of the dismissal is not in any way affected by such defect. The dismissal of an employee who commits a crime against an employer cannot be invalidated because of lack of notice of dismissal to the employee. The lack of notice does not in any way erase or mitigate the crime.

In *Agabon vs. National Labor Relations Commission*[34] and *Jaka Food Processing Corporation vs. Pacot*,[35] the Court sustained the dismissals for just cause under Article 282 and for authorized cause under Article 283 of the Labor Code, respectively, despite non-compliance with the statutory requirement of notice and hearing. The grounds for the dismissals in those cases, namely, neglect of duty and retrenchment, remained valid because the non-compliance with the notice and hearing requirement in the Labor Code did not undermine the validity of the grounds for the dismissals. Indeed, to invalidate a dismissal merely because of a procedural defect creates absurdity and runs counter to public interest. We explained in *Agabon*:

> The unfairness of declaring illegal or ineffectual dismissals for valid or authorized causes but not complying with statutory due process may have far-reaching consequences.
>
> This would encourage frivolous suits, where even the most notorious violators of company policy are rewarded by invoking due process. This also creates absurd situations where there is a just or authorized cause for dismissal but a procedural infirmity invalidates the termination. Let us take for example a case where the employee is caught stealing or threatens the lives of

> his co-employees or has become a criminal, who has fled and cannot be found, or where serious business losses demand that operations be ceased in less than a month. Invalidating the dismissal would not serve public interest. It could also discourage investments that can generate employment in the local economy.[36]

On the other hand, a substantive defect invalidates a dismissal because the ground for such dismissal is negated by such substantive defect, rendering the dismissal without basis. In the present case, the inconsistency between the supervisors' MOA and the CBA is a substantive defect because what the CBA removes from petitioners' record the supervisors' MOA treats as a factor in evaluating petitioners' demerits points. Under Article XVIII of the CBA, petitioners and their co-supervisors will not get demerits points for sanctions of reprimands and warnings of separation. This is not true under the supervisors' MOA. In short, if the CBA governs instead of the MOA, petitioners may not fall under those to be retrenched. Thus, the use of the MOA instead of the CBA becomes a substantive defect.

Furthermore, Philex implemented the supervisors' MOA arbitrarily. Philex does not explain why it retrenched petitioners Biete and Hermogenes Mamayson ("Mamayson") even though Biete received the highest rating (79.86) in his unit of four supervisors (EDP-PADCAR (Systems Development)) and Mamayson received the third highest rating (61.87) in his unit of seven supervisors (Banget Industrial Maintenance).[37]

In *Philippine Tuberculosis Society, Inc. vs. NLU*,[38] this Court invalidated a retrenchment program for its improper implementation despite proof of financial losses. We held:

> 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.

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*.

Indeed, there is substantial evidence in the record to support the NLRC's finding that the Society suffered financial distress as a result of growing deficits which were not likely to abate. Petitioner presented to the NLRC the balance sheets, financial statements, and the reports of its external auditors for the years 1989 and 1990.

Nor do we think the NLRC erred in holding that though the Society was justified in ordering a retrenchment, its implementation of the scheme rendered the retrenchment invalid. That is because in selecting the employees, the Society disregarded altogether the factor of seniority.

Petitioners are thus entitled to reinstatement with full backwages.[39] However, the amounts petitioners received as net separation pay should be deducted from their backwages.[40] If reinstatement is no longer possible because the positions petitioners held no longer exist, Philex shall pay backwages as computed above plus, in lieu of reinstatement, separation pay equal to one-half month pay for every year of service.

Petitioners are not Estopped from Questioning the Validity of their Dismissal

Contrary to the Court of Appeals' ruling, petitioners are not precluded from questioning the validity of their dismissal. The Court finds credence in petitioners' claim that economic necessity constrained them to accept Philex's monetary offer and sign the Deeds of Release and Quitclaim.[41] That petitioners are supervisors and not rank-and-file employees does not make them less susceptible to financial offers, faced as they were with the prospect of unemployment. This Court has allowed supervisory employees to seek payment of benefits[42] and a manager to sue for illegal dismissal[43] even though, for a consideration, they executed deeds of quitclaims releasing their employers from liability.

The Court of Appeals' Decision in CA-G.R. SP No. 39235 is not the Law of the Case for this Petition

The Court of Appeals' ruling in CA-G.R. SP No. 39235 dated 22 July 1997 — finding the retrenchment criteria in the rank-and-file's MOA inequitable, thus rendering illegal the termination of the respondents in that case — shares similarities with the Court's findings in the present case. However, the appellate court's Decision in that case does not constitute the law of the case for this appeal. "Law of the case" is defined as:

> The opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[44] *(Emphasis supplied)*

This principle generally finds application in cases where an appellate court passes on a question and remands the case to the lower court for further proceedings. The question there settled becomes the law of the case upon subsequent appeal.[45] Thus, the court reviewing the succeeding appeal will not re-litigate the case but instead apply the ruling in the previous appeal. This enables the appellate court to perform its duties satisfactorily and efficiently which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case and upon any and subsequent appeal.[46]

Here, the present petition is not a new appeal of CA-G.R. SP No. 39235. That case and this petition originated in separate complaints filed with the NCMB Baguio City and were elevated on appeal, first to the Court of Appeals and later to this Court, in separate proceedings. Furthermore, the respondents in CA-G.R. SP No. 39235 were dismissed under the rank-and-file's MOA while petitioners were dismissed under the supervisors' MOA. Although these MOAs share some common criteria, this by itself, does not make the Court of Appeal's ruling in CA-G.R. SP No. 39235 the law of the case here

because the supervisors' MOA contain other criteria which the Court of Appeals did not review in CA-G.R. SP No. 39235.

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the Decision dated 7 September 2000 and the Resolution dated 3 April 2001 of the Court of Appeals. We **ENTER** another judgment finding petitioners to have been illegally dismissed and ordering respondent Philex Mining Corporation to reinstate petitioners with full backwages, provided that the amounts petitioners received as net separation pay shall be deducted from their backwages. If reinstatement is no longer possible because the positions petitioners held no longer exist, respondent Philex Mining Corporation shall pay backwages as computed above plus, in lieu of reinstatement, separation pay equal to one-half month pay for every year of service.

SO ORDERED.

Davide, Jr., *C.J.*, *Chairman*, Quisumbing, Ynares-Santiago, and Azcuna, *JJ.*:

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.
[2] Penned by Associate Justice Ma. Alicia Austria-Martinez with Associate Justices Salvador J. Valdez, Jr. and Renato C. Dacudao, concurring.
[3] Forty-nine supervisors, 30 clerical personnel, and 231 rank-and-file employees.
[4] National Mines & Allied Workers Union Local 101 *(NAWAMU-LOCAL 101)*.
[5] The rank-and-file's MOA pertinently provides *(Rollo, pp. 44-46)*:

> 2. Performance. This factor shall be divided into two (2) parts, namely:
> 2.1. Attendance – Maximum 40 points credit
> Each employee shall be credited up to a maximum of 40 points, depending on the actual number of days worked in accordance with the table below:

Actual Days worked (includes O.B.) *(Ave. for the last 3 years)*	Credit Points
265 days and above	40
259 – 264 days	36
253 – 258 days	32
247 – 252 days	28
241 – 246 days	24

235 – 240 days	21
229 – 234 days	16
223 – 228 days	12
217 – 222 days	11
211 – 216 days	4
205 – 210 days	2
204 days and below	0

2.2 Disciplinary action - Maximum 20 points credit

Each employee shall be automatically credited 20 points. However, demerit points shall operate as a deduction from the automatic credit for every disciplinary action meted against the employee with the table below:

DA for the first three (3) years

Type of Offense	Demerits
Calling for Reprimand	2 pts. per DA
Calling for Suspension 1 – 3 days	3 pts. per DA
Calling for Suspension 4 – 7 days	4 pts. per DA
Calling for Suspension over 7 days	5 pts. per DA
Dischargeable Offense but reconsidered	10 pts. per DA

[6] Philex Mines Supervisory Employees Union *(PMSEU)*.

[7] The supervisors' MOA provides *(CA Records, p. 145)*:

MEMORANDUM AGREEMENT

WHEREAS, the PMSEU and Management held a Special meeting at Pasig on April 30, 1993 to discuss the present critical situation of the company.

WHEREAS, Management briefed the PMSEU officers of the loss Philex is suffering as a result of the collapse of the metal price; increase in smelter/treatment charges, increase in power cost and other factors which necessitates and makes (sic) imperative that cost reduction measures be undertaken including the urgent need of the reduction of personnel;

WHEREAS, the reduction of personnel is being undertaken on the following schedule/and reduction:

STS 130
PT 60
OAC 50
SSU 760

total reduction 1,000 the schedule being an offer of EVR not later than May 15, 1993 and any balance will be by retrenchment per detail discussed during the briefing. All to be completed on EVR not later than [May] 31, 1993 and retrenchment not later than June 30, 1993.

Now therefore, in order to implement the eventual retrenchment net of EVR the following formula has been discussed.

CRITERIA FOR STS

1. Performance using PA. . . . . 35 points
2. Seniority 1 & ½ points per year of service to a maximum of 30 points for employees who have rendered more than (sic) 20 years of service . . . . . 30 points
3. Position or nature of the job
   Determination of the point credit shall be by the Promo board.
4. Special Commendation . . .. 10 points
   Adopting R & F Formula
5. Demerits points . . . . . 20 points
   Adopting the R & F formula

In witness whereof the parties hereby confirm with this minutes the foregoing [points] agreed on April 30, 1993 at Pasig Philex Office.

[8] CA Records, p. 134.
[9] Rodolfo Banayat, Precillo Martin, Primo Ferraro, Marcos Caswang, Viviano Candol and Timoteo Brian.
[10] Rollo, pp. 41-47.
[11] Ibid., pp. 29-34.
[12] Ibid., pp. 59-61.
[13] Ibid., p. 12.
[14] Ibid., pp. 3-19.
[15] Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., G.R. No. L-46908, 17 May 1980, 97 SCRA 734.
[16] All dated 30 June 1993.
[17] Petitioners received the following amounts as "retirement gratuity": Benjamin Biete – P87,575.04; Hermogenes Mamayson – P74,103.75; Roberto Ariola – P34,292.16; Franco Mallare – P121,979 *(CA Records, pp. 93, 101, 105 and 107)*.
[18] The same day petitioners were served notices of retrenchment.
[19] CA Rollo, p. 184. *(Emphasis supplied)*
[20] CA Records, pp. 92, 100, 104 and 106.
[21] Petitioners were separated from Philex under similar circumstances. Thus the Court can assume that Philex Retirement Trust also sent letters to the rest of petitioners with substantially the same content as the letter sent to Biete, the only difference being the computation of the "retirement gratuity" due to each.
[22] Thru his wife Adelaida M. Biete.
[23] 195 Phil. 503 (1981), Resolution; 192 Phil. 624 (1981), Decision. Reported in the Resolution as San Mauricio Mining Co., Inc., et al. vs. Hon. Ancheta, etc., et al. and in the Decision as San Mauricio Mining Co., et al. vs. Hon. Ancheta, etc., et al.
[24] The Court notes that Philex's second (and apparently last) notice of offer to pay retirement benefits dated 26 April 1993 provides that the offer is good only until 15 May 1993 and that the retirement pay will be given not later than 15 June 1993 *(CA Records, p. 111)*.
[25] Producers Bank of the Philippines vs. NLRC, 359 Phil. 45 (1998).

[26] De Leon vs. National Labor Relations Commission, G.R. No. L-52056, 30 October 1980, 100 SCRA 691.

[27] Lopez Sugar Corporation vs. Federation of Free Workers, G.R. Nos. 75700-01, 30 August 1990, 189 SCRA 179.

[28] This requirement was first recognized in Duay, et al. vs. CIR et al. *(207 Phil. 710 [1983])* and subsequently reiterated in Asiaworld Publishing House, Inc. vs. Ople *(G.R. No. L-56398, 23 July 1987, 152 SCRA 219)*, Villena vs. NLRC *(G.R. No. 90664, 7 February 1991, 193 SCRA 686)*, Radio Communications of the Philippines, Inc. vs. NLRC *(G.R. Nos. 101181-84, 22 June 1992, 210 SCRA 222)*, Saballa vs. National Labor Relations Commission *(G.R. Nos. 102472-84, 22 August 1996, 260 SCRA 697)* and Asian Alcohol Corporation vs. NLRC *(G.R. No. 131108, 25 March 1999, 305 SCRA 416)*.

[29] Asian Alcohol Corporation vs. NLRC, supra note 28.

[30] Jaka Food Processing Corporation vs. Pacot, G.R. No. 151378, 28 March 2005 citing Agabon vs. National Labor Relations Commission, G.R. No. 158693, 17 November 2004, 442 SCRA 573.

[31] Sycip, Gorres, Velayo & Company.

[32] "Written reprimands and warnings of separation imposed on covered employees for violation of company rules and regulations which are Annex "2" of this Collective Bargaining Agreement, shall be cleared and/or stricken off the record every February 1 of the year." *(Emphasis supplied) (Rollo, p. 46)*

[33] "2.2 Disciplinary action - Maximum 20 points credit
Each employee shall be automatically credited 20 points. However, demerit points shall operate as a deduction from the automatic credit for every disciplinary action meted against the employee with the table below:

DA for the first three (3) years

Type of Offense	Demerits
Calling for Reprimand	2 pts. per DA
Calling for Suspension 1 – 3 days	3 pts. per DA
Calling for Suspension 4 – 7 days	4 pts. per DA
Calling for Suspension over 7 days	5 pts. per DA
Dischargeable Offense but reconsidered	10 pts. per DA."

(Emphasis supplied) (CA Records, p. 145).

[34] G.R. No. 158693, 17 November 2004, 442 SCRA 573.

[35] Supra note 30.

[36] Supra note 34.

[37] CA Records, pp. 62, 67.

[38] 356 Phil. 63 (1998), internal citations omitted; See also Gregorio Araneta University Foundation vs. NLRC *(G.R. Nos. 75925-26, 29 October 1987, 155 SCRA 301)* where, despite proof of losses to justify a retrenchment, the Court invalidated the retrenchment for non-compliance with the retrenchment guidelines as approved by the Secretary of Labor.

[39] Article 279, LABOR CODE.
[40] See Lopez Sugar Corporation vs. Federation of Free Workers, supra note 27.
[41] Rollo, p. 14.
[42] Blue Bar Coconut Phils., Inc. vs. NLRC, G.R. No. 95914, 5 May 1992, 208 SCRA 371.
[43] De Leon vs. National Labor Relations Commission, supra note 26.
[44] People vs. Pinuila, et al., 103 Phil. 992 (1958) citing 21 C.J.S. 330.
[45] See Trinidad vs. Roman Catholic Archbishop of Manila, 63 Phil. 881 (1934).
[46] People vs. Pinuila, et al., supra note 44 citing 5 C.J.S. 1274.
