CHANROBLES PUBLISHING COMPANY

SUPREME COURT
THIRD DIVISION

BASILIO A. BALASBAS,
***Petitioner*,**

-versus-

G.R. No. 85286
August 24, 1992

NATIONAL LABOR RELATIONS COMMISSION and VETERANS PHILIPPINE SCOUT SECURITY AGENCY,
***Respondents*.**
x----------x

D E C I S I O N

ROMERO, *J*.:

The petitioner Basilio Balasbas, questions the Decision of the National Labor Relations Commission (NLRC), Third Division, dated April 27, 1988, reversing the Decision of the Labor Arbiter and ordering instead the private respondent to pay petitioner only his 13th month pay.[1]

The facts in brief are:

Private respondent Jamilla & Company, Inc., owns a security agency named Veterans Philippine Scout Security Agency. On August 31,

1984, it hired Basilio Balasbas as operations supervisor and assigned him in the security division. Part of his job was to issue orders relative to the guards' assignments, direct work activities of the inspectors and re-screen guard applicants.[2]

On April 12, 1988 or eight months after his employment, the company handed him a termination notice advising him of his severance from the service effective immediately pursuant to a retrenchment program that was being implemented.

The same day, he filed NLRC Case No. 9-3187-85 with the Labor Arbiter for illegal dismissal, non-payment of the 13th month pay and underpayment of basic salary.[3]

Finding that the petitioner's dismissal was indeed unlawful, having been effected without proper notice as required by law, Labor Arbiter Ruben M. Alberto rendered a judgment on February 28, 1986 ordering the petitioner's reinstatement with full backwages and other benefits from the date of his dismissal until actually reinstated. Additionally, he ordered the payment of petitioner's 13th month pay for 1985 (partial) as admitted by respondent company. However, the rest of the complaint was rejected and dismissed for lack of basis or insufficiency of evidence.[4] Interposing grave abuse of discretion and serious errors in the findings of facts, the respondent company appealed to the NLRC on April 21, 1986.

On April 27, 1988, the NLRC reversed and set aside the labor Arbiter's ruling, citing in particular the petitioner's waiver of the mandatory 30-day notice required by law to justify the reversal. We quote:

x x x

> It is the posture of the respondent that it was the complainant (petitioner) who waived the 30-day notice prior to his termination to enable him to collect immediately his separation pay and other benefits, and that the complainant (petitioner) was originally earmarked for termination of employment due to just cause.

x x x

> WHEREFORE, the decision appealed from is hereby reversed and set aside, and let a new one entered ordering the respondent to pay complainant (petitioner) his 13th month pay for 1985 (partial.)[5]

Petitioner Basilio Balasbas has now elevated his case before us in this Petition for Review on *Certiorari*. Seeking the reversal of the NLRC Decision, for having been rendered with grave abuse of discretion and pleading for affirmance in toto of the Decision of the Labor Arbiter, he specifically invokes Article 277, paragraph b of the Labor Code which guarantees the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of the same Code. Thereunder, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires. Finding himself suddenly jobless, he had no choice but to accept his separation pay of P1,750.00, as well as P500.00 as extra cash bonus. He argues that his acceptance of the separation pay and other benefits should not be construed as a waiver of the 30-day notice of termination. Thus, he avers that if the alleged renunciation were true, he would not have filed a complaint. Yet, on the very same day that he received the said notice, he immediately lodged a complaint for illegal dismissal against respondent company on April 12, 1985. From there on, he has vigorously prosecuted his claim through all the stages of the proceedings.[6] Finally, he stoutly maintains that his eventual separation from employment lacks due process.

The common defense of the respondent company and the Solicitor General as that retrenchment, being a managerial prerogative resorted to by any employer when confronted by economic losses, respondent was within its rights in separating the petitioner.

It is their position that the 30-day advance notice is deemed to have been waived when the petitioner voluntarily accepted the termination

benefits. In any case, he did receive the notice when he was informed of his separation due to retrenchment, although it was made effective upon receipt. Such notice of termination constitutes substantial compliance with the requirement of notice of the law.[7]

In its memorandum of June 22, 1989, the private respondent alleges that the present petition, having been filed beyond fifteen days from notice, as provided under Section 4, rule 43 of the Rules of Court, was barred by time.[8] This fatal error is said to have the effect of defeating the petitioner's right to appeal.[9]

Finding the petition meritorious, the Court rules that the NLRC gravely abused its discretion in ordering only the payment of the petitioner's 13th month pay instead of reinstating him to his previous position with full backwages.

> Under Article 283 of the Labor Code,[10] the closure of a business establishment or reduction of personnel is a ground for the termination of the services of any employee unless the closing or retrenching is for the purpose of circumventing the provision of the law. But while business reverses can be a just cause for terminating employees, these must be sufficiently proved by the employer.[11] (Emphasis supplied.)
>
> The case of Sugar Lopez Corporation vs. Federation of Free Workers,[12] lays down the general standards under which an employer may retrench or reduce the number of his employees. 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. (Italics supplied.) 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 far-reaching nature of

> retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses.
>
> Lastly, but certainly not the least important, the alleged losses if already incurred, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.[13] (Emphasis supplied)

In the case at bar, there is a dearth of sufficient and convincing documentary evidence to bolster the claim of the respondent company that it is indeed suffering from business losses of such magnitude as to impel the retrenchment of petitioner Basilio Balasbas. The records are bereft of evidence of any application for a reduction of employees of written notice to the Department of Labor. If indeed there were, it would have been logical for the respondent company to have attached copies of the same.

Interestingly, the records, however, show that immediately after the petitioner's termination from work, the respondent company advertised and hired another employee for the position of inspector or investigator,[14] indubitable proof that the alleged retrenchment was merely a cover-up to ease out herein petitioner Basilio Balasbas.

This unlawful and unjust act of the respondent company was compounded when it dismissed the petitioner without complying with the 30-day advance notice of termination, thus affording him ample opportunity to be heard.[15] (Emphasis supplied.)

The alleged waiver by the petitioner of the 30-day notice of termination deserves scant consideration. Being an ordinary rank and file employee, the petitioner may not be expected to completely comprehend or realize the consequences of his act. This is more than adequately shown by the fact that he immediately filed a complaint for illegal dismissal on April 12, 1985,[16] the same day he was served the notice of termination of employment.

Finally, the protestation of the respondent company that the instant petition was perfected out of time is not supported by law.

On October 17, 1988, we granted the petitioner an extension of thirty days within which to file his petition and allowed him to litigate as a pauper litigant.[17] The records bear out the fact that he did meet the new deadline.

There being no proof of serious business losses or financial reverses that would justify the petitioner's dismissal and there being a failure on the part of the employer to prove that the dismissal is for a just cause, the employee is entitled to reinstatement with full backwages.[18]

WHEREFORE, the Petition is **GRANTED**. The Decision of respondent NLRC dated April 27, 1988, is hereby set aside and the Decision of the Labor Arbiter, dated February 28, 1986, is hereby **REINSTATED** with the modification that the amount of the backwages that petitioner is entitled to shall be subject to the right of the private respondent to prove and deduct whatever income may have been earned by the former in the interim from the date of his unlawful dismissal until actual reinstatement.

Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin and Davide, Jr., *JJ*., concur.

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[1] Rollo, Annex "B," pp. 18-19.
[2] Rollo, p. 172.
[3] Id., Annex "D," p. 21.
[4] Id., Annex "A," pp. 14-16.
[5] Rollo, Annex "B," pp. 17-19.
[6] Rollo, p. 174.
[7] Rollo, p. 154.
[8] Id., p. 164.
[9] Ibid., citing A.L. Ammen Transportation Co., Inc. vs. Workmen's Compensation, L-20219, September 28, 1964, 12 SCRA 27.
[10] Article 283, The Labor Code. Closure of establishment and reduction of personnel. — the employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of

the establishment or circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry (Department) of Labor and Employment at least one (1) month before the intended date thereof.

[11] Indino vs. NLRC, G.R. No. 80352, September 29, 1989, 178 SCRA 168.
[12] G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179.
[13] Supra, Lopez Sugar Corporation vs. Federation of Free Workers at 187.
[14] Rollo, p. 15.
[15] Ruffy vs. NLRC, G.R. No. 84193, February 15, 1990, 182 SCRA 365.
[16] Rollo, Annex "D," p. 21.
[17] Rollo, p. 6-A.
[18] Globe-Mackay Cable and Radio Corporation vs. NLRC, G.R. No. 82511, March 3, 1992.

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