

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**PAULINO BALBALEC, JUAN BOLANTE  
and ROLANDO BELENO,**  
*Petitioners,*

*-versus-*

**G.R. No. 107756  
December 19, 1995**

**NATIONAL LABOR RELATIONS  
COMMISSION and THE RURAL BANK  
OF BANGUED,**  
*Respondents.*

X-----X

**DECISION**

**KAPUNAN, J.:**

On June 30, 1989, the Rural Bank of Bangued dismissed three of its employees, namely, Paulino Balbalec, Juan Bolante and Rolando Beleno (herein petitioners) alleging that its workforce was being retrenched for losses suffered by respondent bank during the year 1984-1988. The letter of termination addressed to petitioner stressed that management's decision to dismiss them was made to "protect the bank's stability and profitability" and to "enable the bank to comply with provisions of the new minimum wage law."<sup>[1]</sup>

As a result of their termination from employment petitioners individually filed cases for unfair labor practice, illegal dismissal, unpaid salaries, reinstatement and backwages with the Cordillera Administrative Division of the National Labor Relations Commission in Baguio City. These cases were ordered consolidated and heard jointly by respondent NLRC on motion of private respondent.

In their complaint, petitioners alleged that they were singled out for dismissal after they refused to sign an agreement for deferment of wage increases under Republic Act 6727, an agreement which all of respondent bank's other employees signed, with the sole exception of petitioners.<sup>[2]</sup> Respondent bank, on the other hand, averred that retrenchment of its workforce was necessary to prevent business losses. It further alleged that said termination would not hamper its operations and denied that petitioners were singled out, claiming that the latter ranked last in seniority among its employees.

On December 20, 1990, Labor Arbiter Irenarco R. Rimando rendered his decision, the dispositive portion of which states the following:<sup>[3]</sup>

VIEWED FROM THIS LIGHT, judgment is hereby rendered with the following dispositions:

1. That there was no valid retrenchment, hence complainants were illegally dismissed. Consequently, respondent is directed to reinstate complainants to their former positions without loss of seniority rights and backwages to be computed from the time that it was withheld up to the time of their actual reinstatement.
2. That respondent should pay the benefits that are provided for by R.A. 6640 in addition to the deficiencies in the costs of living allowances that the complainants would have earned.
3. That the respondent should pay the claims of the complainants as follows:

(a) Paulino Balbalec

1. Backwages	P30,170.58
2. COLA Deficiency	3,666.10
3. Increase per R.A. 6640	<u>4,466.00</u>
Total	P38,302.68
	=====

(b) Juan B. Bolante

1. Backwages	P31,169.16
2. COLA Deficiency	3,666.10
3. Increase per R.A. 6640	<u>4,466.00</u>
Total	P39,301.26
	=====

(c) Roland Beleno

1. Backwages	P30,514.66
2. COLA Deficiency	3,666.10
3. Increase per R.A. 6640	<u>4,666.00</u>
Total	P38,646.76
	=====

4. That the complaint for unfair labor practice is hereby dismissed.

Respondent bank forthwith appealed said decision to the NLRC, which, through its Third Division, on May 14, 1991 rendered a decision sustaining the Labor Arbiter's findings and dismissing the appeal for lack of merit.<sup>[4]</sup> On motion for reconsideration, however, the NLRC in a Resolution<sup>[5]</sup> dated July 31, 1992, partially reversed itself with respect to the issue of retrenchment, upholding respondent bank's dismissal of petitioners on the basis of a valid retrenchment, and ordering the private respondent to pay separation pay equivalent to half a month's pay for every year of service, plus a penalty for the latter's failure to comply with the one month notice requirement under Article 284 of the Labor Code.

Alleging grave abuse of discretion amounting to lack or excess of jurisdiction, petitioners are before this court by way of a special civil action for *certiorari* under Rule 65 of the Revised Rules of Court, assailing respondent NLRC's resolution modifying its decision dated May 14, 1992. The sole issue for our consideration, therefore, is whether or not respondent bank's dismissal of petitioners was justified by a valid retrenchment.

We find for private respondent.

The law recognizes the right of every business entity to reduce its workforce if the same is made necessary by compelling economic factors which would endanger its existence or stability. In spite of overwhelming support granted by the social justice provisions of our Constitution in favor of labor, the fundamental law itself guarantees, even during the process of tilting the scales of social justice towards workers and employees, "the right of enterprises to reasonable returns of investment and to expansion and growth."<sup>[6]</sup> To hold otherwise would not only be oppressive and inhuman,<sup>[7]</sup> but also counterproductive and ultimately subversive of the nation's thrust towards a resurgence in our economy which would ultimately benefit the majority of our people. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the workforce to forestall business losses,<sup>[8]</sup> the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.<sup>[9]</sup> Thus, Article 283 of the Labor Code provides:

Art. 283. 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 undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker 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 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 as one (1) whole year.

The above-quoted article not only contemplates the termination of employment of workers or employees to minimize established business losses but also to prevent impending losses, for the law's phraseology explicitly uses the phrase "retrenchment to prevent losses." However, retrenchment strikes at the very core of an individual's employment and the burden clearly falls upon the employer to prove economic or business losses with appropriate supporting evidence. After all, not every asserted potential loss is sufficient legal warrant for a reduction of personnel and the evidence adduced in support of a claim of actual or potential business losses should satisfy certain established standards, to wit:

1. The losses expected and sought to be avoided must be substantial and not merely de minimis;
2. The apprehended substantial losses must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer;
3. The retrenchment should reasonably be necessary and likely to prevent effectively the expected losses;
4. The losses, both the past and forthcoming, must be proven by sufficient and convincing evidence.<sup>[10]</sup>

The Labor Arbiter found, based on respondent bank's submissions that it posted losses in the amount of P12,920.22, P3,888.34 and P17,865.12 for the years 1984, 1985 and 1986, respectively. Against these losses, respondent bank registered a net income of P12,702.59 and P68,085.56 in 1988 and 1989, respectively. Concluding that "the retrenchment of personnel can only be availed of by management if

the company is losing or meeting financial reverses,” the labor arbiter declared that the private respondent was unable to sufficiently meet the standards for a valid retrenchment and held that “the financial reverses were more imaginary than real to justify the retrenchment taken by the respondent bank.”

These findings of fact are usually sacred, in the sense that this Court will not, as a general rule disturb factual findings of labor administrative officials except when there is a showing that factual evidence was either arbitrarily ignored or misapprehended. On the surface of things, the net income of respondent bank for the period 1984-1989 did not show a loss. In fact, respondent bank appeared to have actually registered a small net profit. Against this however, are the following findings established by respondent NLRC from both parties’ submissions:

First, the bank encountered financial losses in 1989, 1985 and 1986, in the amount of P12,290.22, P3,888. and P17,865.12 respectively, and its net profit of P60,085.56 would instead have been a net loss had not the bank deferred the implementation of the wage increase under R.A. 6640. In addition, the bank was faced with a serious financial problem resulting from a considerable reduction of its total resources by 27.23% and total loan investments by 35.79% from 1984 to 1988. Past due loan ratio ranged from 29.13% to 32.13% in 1986 to 1988 such that the bank was required by the Central Bank of the Philippines to set aside a reserve for bad debts in the amount of P359,464.50 as of December 31, 1988.<sup>[11]</sup>

Obviously, from the foregoing, what was “more imaginary than real,” borrowing a phrase from the Labor Arbiter’s decision, were the insubstantial profits realized by respondent bank during the period covered by the financial statements submitted in support of its claim of business loss. It should be noted, moreover, that unlike huge commercial banks with large capitalization, the bank involved in the case at bench is a small rural bank barely afloat and surviving on a measly capitalization of P500,000.00.<sup>[12]</sup> Were we to deny private respondent’s urgent request to streamline its work force to enable it to maintain stability and modest profitability, we would be sending a small financial institution teetering on the verge of financial ruin

tumbling down on the road to bankruptcy. Thus, we are in agreement with respondent NLRC in concluding that:

While there is no dispute that the complainants were terminated by the respondent bank, this Commission is persuaded, however, by the evidence that their dismissal was carried out due to retrenchment to prevent losses or the closing or cessation of operation of the establishment as borne by its losses, decrease in resources as well as increase in past due loans. The action of the respondent in placing the complainants in retrenchment should, thus, be viewed as an urgent and immediate surgical move if only to avert the eventual closure of the respondent. Retrenchment was rightfully undertaken in the case at bar by the employer/respondent rural bank before the anticipated losses are actually sustained or realized.

It need not be overemphasized that the State recognizes the pivotal role of small rural banks, such as the respondent bank, in the development of the countryside through its loan portfolios and other services to the rural folk. While courts must be constantly vigilant in validating claims of business losses to prevent unscrupulous employers from feigning such losses in order to dismiss their personnel, we are satisfied that respondent bank undertook the drastic act of cutting down its workforce in order to prevent imminent substantial loss to its business. As to petitioners' claim that they were singled out in the process because they happened to be the only employees who did not sign an agreement for deferment of wages under Republic Act 6727, suffice it to say that such assertion is merely speculative because respondent bank clearly followed the standard<sup>[13]</sup> for dismissing its personnel by selecting the last in seniority among its ten (10) employees, who happened to be herein petitioners. Moreover, it has been adequately established that their functions could be taken over by the remaining bank employees without affecting respondent bank's functions.

A last word. The validity of an employee's dismissal ought to be distinguished from the manner in which such dismissal was undertaken.<sup>[14]</sup> Under the Labor Code, the employer seeking to terminate the services of an employee is legally required to furnish written notice both to the employee concerned and the Department of

Labor at least one month before the effectivity of such termination. The purpose of such notice, if the termination is due to just or authorized causes under Articles 282 and 283 of the Labor Code respectively, is to enable the employee to make the necessary adjustments to deal with the hard times ahead. In the instant case, respondent bank sent a letter to petitioners only on June 26, 1989. The period was clearly wanting and a violation of respondent bank's responsibility to properly observe the steps required by law in the authorized dismissal of its employees. Such being the case, respondent NLRC was therefore correct in granting to herein petitioners a penalty for non-compliance with one of the mandatory provisions of Article 283 of the Labor Code, in addition to their separation pay under the terms of the same provision. Under the circumstances of the instant case, we are however of the opinion that the penalty imposed ought to be Five Thousand Pesos (P5,000.00) instead of the one month salary penalty granted by the NLRC.

**ACCORDINGLY**, finding that petitioners were dismissed on the basis of a valid retrenchment, the Resolution of Respondent NLRC dated July 31, 1992 is hereby **AFFIRMED**, with the modification that the private respondent is ordered to pay a penalty of Five Thousand Pesos (P5,000.00) to each of the petitioners for its failure to comply with the one month notice requirement under Article 283 of the Labor Code in addition to separation pay equivalent to one half month's salary for every year of service under the same provision.

**SO ORDERED.**

**Davide, Jr., Bellosillo and Hermosisima, Jr., JJ., concur.  
Padilla, J., took no part.**

---

[1] Rollo, p. 141.

[2] *Id.*, at 140.

[3] *Id.*, at 3.

[4] Rollo, pp. 38-52.

[5] *Id.*, at 27.

[6] CONST., art XIII, sec. 3.

[7] *Gregorio Araneta Employees Union vs. Roldan*, 97 Phil. 304 (1955).

- [8] Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179 (1990).
- [9] Supra, note 7.
- [10] Supra, note 8, at 186-187.
- [11] Rollo, pp. 32-33.
- [12] Rollo, p. 34.
- [13] See, Asiaworld Publishing House, Inc. vs. Ople, 152 SCRA 219 (1987), Reasonable criteria must be utilized in selecting employees to be dismissed on account of retrenchment. These include 1) less preferred status; b) efficiency rating; and c) seniority.
- [14] Bataan Shipyard and Engineering Co., Inc. vs. NLRC, 16 SCRA 273 (1988).