

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**BANANA GROWERS COLLECTIVE AT
PUYOD FARMS AND INDIVIDUAL
GROWERS; CYNTHIA P. ZAFRA,
MILAGROS P. CEGSIACO, MARCELA
PUYOD, LUCIANO PUYOD II, MYRNA
P. SOLSKI, CONCEPCION P. YULO,
EVELYN PUYOD, MAURO PUYOD,
SYLVIA P. RIETA and JACQUELENE P.
MARCELINO,**

Petitioners,

-versus-

**G.R. No. 113958
July 31, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION, NATIONAL
FEDERATION OF LABOR (NFL),
ESPERIDION GALLEGO, JULIE
TAMON, DIONISIO GEMOTA,
FLORENTINO HINDAP, ANTONIO
ALINSOLORIS, CRESENCIO BASTIDA,
SAMUEL ALBURO, VICENTE
SUHAYON, EDUARDO MAPATOL,
SOFRONIO AMISTOSO, RIO BERNAL,
DOMINADOR ESCOTO, SOTERO BYCO,
NESTOR AMPARIAS, WILLIAM
EQUNA, ORENCIO BOLANIO,
DOMINGO GAUCO, LUCIANO
CARCELLER, SIXTO SUHAYON,
CERENIO MAPICRE, JAIME ABANA,**

**ALBRANDO GAMAY, RUPERTO
GARADO, MANALO DAROY, DELIO
DELAFUENTE, CARMELO PUSTA and
RAMON HINDAP,**

Respondents.

X-----X

DECISION

ROMERO, J.:

In this Petition for *Certiorari*, the petitioners pray for the reversal of the Resolution of the Fifth Division of the National Labor Relations Commission (NLRC) in Cagayan de Oro City which held that petitioners illegally dismissed private respondent agricultural workers on the ground of retrenchment in the Puyod Farms.

Federico Puyod, Sr. operated a banana farm in Mabuhay, Carmen, Davao del Norte. In 1988, Puyod Farms hired private respondent workers, except for Reo (Rio) Bernal and Nestor Amperias (Amparias) who were hired in January, 1989. Private respondents worked on the farms with such assignments as spraying, bagging, injecting chemicals, weeding, pruning and “deleafing.” Because eleven (11) farms were fully planted with bananas for export, the Banana Growers Collective was formed.

Petitioners claim that upon the demise of Federico Puyod, Sr., his heirs, named Cynthia P. Zafra, Milagros P. Cegsiaco, Marcela Puyod, Luciano Puyod II, Myrna P. Solski, Concepcion P. Yulo, Mauro P. Puyod, Sylvia P. Rieta and Jacqueline P. Marcelino, partitioned Puyod Farms among themselves. They individually managed their respective shares in the banana farms with each of them maintaining separate payrolls for his or her workers. Such partition allegedly led to the dissolution of the Banana Growers Collective.

In the course of its more than 20 years’ existence planting giant Cavendish banana variety, Puyod Farms entered into various

contracts. One was with STANFILCO which entailed the marketing of produce, with STANFILCO providing technical assistance in the planting and development of the banana farms. Apparently in pursuance of the contract, STANFILCO sent the heirs of Federico Puyod, Sr. a letter which in part reads:

“January 30, 1990

To Cynthia Zara
Jacqueline Marcelino
Luciano Puyod
Federico Puyod
Myrna Zolski
Sylvia Rieta
Rosario Sonya Puyod

As per schedule, we will convert approximately 50 hectares of your old giant cavendish farms to Ecuadorian dwarf this year. Chopping will start 1st week of period 3, 1990 (sic).

Starting January, 1990, we will have to stop some regular farm operations until conversion is fully completed. Our selected contractors will take over most of the conversion labor requirements in all operations like nursery, land preparations and care of young plants until flowering. This means you have to reduce your regular force from the time of chopping up to the time of harvest.

x x x”^[1]

On February 2, 1990, petitioners notified private respondents of their retrenchment on account of STANFILCO’s directive for the reduction of workers which would take effect “30 days from February 2, 1990.” On even date, petitioners filed with the Department of Labor and Employment Regional Office No. XI, Davao City, an “Employer’s Report” dated January 30, 1990 pertinent to the retrenchment they were seeking to implement on March 5, 1990.

Meanwhile, in September 1989, private respondents organized a labor union. On October 17, 1989, they filed a petition for certification

election.^[2] A few months thereafter, their employer notified them that their employment would be terminated on account of a retrenchment program. Hence, on March 12, 1990, private respondents filed with the Labor Arbiter a complaint for illegal dismissal with prayer for reinstatement and payment of backwages and attorney's fees.

Efforts exerted towards conciliation having failed, the parties were directed to submit their respective position papers. Petitioners claimed that the retrenchment was in pursuance of the contract with STANFILCO, which, if left unimplemented, would result in the total cessation of their business operations. On the other hand, private respondents contended that the retrenchment program was nothing but a sham because petitioners had already converted farm Nos. 1, 2 and 3 from Cavendish bananas to Ecuadorian variety. In fact, private respondents did the replanting of the farm and their services were retained for its normal operations. However, when the other farms were similarly converted, they were dismissed from employment even as petitioners hired more workers for the other farms. Private respondents concluded that the real reason for their dismissal was their having engaged in union activities.

In his decision of November 5, 1990, the Labor Arbiter dismissed the complaint for illegal dismissal. His finding was that procedural due process was observed in dismissing the workers concerned; that the organization of the labor union had to give way to the right of the employer to retrench its workers for economic reasons and in furtherance of managerial prerogative, and that failure to retrench would violate contractual obligations with STANFILCO which might eventually lead to total cessation of business operations. He added that the dismissal was based on an authorized cause and that the system of conversion of the farm did not violate the provisions of law on the security of tenure of workers.

Private respondents appealed to the NLRC, which, on October 7, 1993 issued the Resolution^[3] being questioned here which disposes of the appeal as follows:

“WHEREFORE, the decision appealed from is Annulled and Set Aside and a new one entered declaring that complainants were illegally dismissed. Accordingly, respondents are ordered and

directed to reinstate complainants to their former positions without diminution of seniority rights and to pay them backwages effective from their date of termination up to their actual reinstatement without qualification or deduction subject to the three (3) years limitation. However, in case the reinstatement of complainants is no longer feasible, the determination of which is tasked to the Arbitration Branch of origin at the execution stage, respondents are ordered to pay complainants separation pay at the rate of one (1) month salary for every year of service, a fraction of six (6) months to be considered as one (1) whole year. In the computation of separation pay, the period wherein backwages are awarded shall be included. With costs against respondents.

SO ORDERED.”

The reversal of the decision of the Labor Arbiter is anchored on the following findings of the NLRC:

- (1) It was not established by evidence that in cases of conversion or replanting of farms, the standard operating procedure or policy of STANFILCO is the replacement of workers by STANFILCO contractors.
- (2) Complainants were the only workers dismissed from employment, notwithstanding that the conversion of farm Nos. 1, 2 and 3 was undertaken by additional workers hired by petitioners herein so that the inevitable conclusion is that respondents were dismissed on account of their union activities, and
- (3) The replanting of farm Nos. 1, 2 and 3 did not affect the workers, except for private respondents, as far as retrenchment was concerned.

Petitioners filed a motion for the reconsideration of the Resolution which the NLRC denied on December 21 1993. The Commission stressed that “(t)he termination of complainants on the pretext of retrenchment which was closely timed with the conduct of certification election is not mere coincidence or accident.” It added

that because petitioners could not explain why herein private respondents were singled out for dismissal, there was no doubt that the termination of their services was “motivated by anti-union feelings.”

Hence, the instant petition for *certiorari* alleging that the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction when it rendered the Resolutions of October 7, 1993 and December 21, 1993.

Retrenchment is a management prerogative, a means to protect and preserve the employer’s viability and ensure his survival. This Court has always respected this prerogative during trying times but there must be faithful compliance by management with the substantive and procedural requirements laid down by law and jurisprudence.^[4]

The Labor Code, as amended, recognizes retrenchment as a mode of terminating an employment relationship. The Code provides as follows:

“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 workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. 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 one (1) whole year.”

Under this provision, there are three basic requisites for a valid retrenchment. These are: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees

and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment, and (c) payment of separation pay equivalent to one month pay or at least one-half (1/2) month's pay for every year of service, whichever is higher.^[5]

Of necessity, the determination of the validity of the NLRC's award of separation pay necessitates prior consideration of whether or not the first two requisites for a valid retrenchment are present. It is undisputed in instant case that the second requirement of written notice to the DOLE and the employees concerned at least a month before the retrenchment has been satisfactorily fulfilled by petitioners. What needs close examination is the first requirement, i.e. that the retrenchment is necessary to prevent losses and that such losses are proven.

There are four standards of retrenchment that must be observed to comply with the law. First, the losses expected should be substantial and not merely de minimis. Second, the substantial loss apprehended must be reasonably imminent, as perceived objectively and in good faith by the employer. Third, because of the consequential nature of retrenchment, it must be reasonably necessary and likely to prevent the expected losses. Fourth, the alleged losses, if already incurred, must be proved by sufficient and convincing evidence.^[6]

Unfortunately for petitioners, there is no proof of such imminent and substantial losses that they would incur in the event that the retrenchment of private respondents is not enjoined. Petitioners' broad and sweeping conclusion that there would be total cessation of business operations should STANFILCO's condition of retrenchment is not implemented, which the Labor Arbiter blindly accepted as fact, is their sole basis in filing this petition. What is on record, however, is simply that they are expecting losses in the event that the retrenchment should not be pushed through on account of the contractual obligation they have with STANFILCO. However, under the law, even such expectation must be supported by sufficient evidence.

It should be observed that Art. 283 uses the phrase "retrenchment to prevent losses." This phrase means that retrenchment or termination of the services of some employees must be undertaken by the

employer sometime before the anticipated losses are actually sustained. The lawmaker did not intend that the losses shall have in fact materialized, otherwise the law could be vulnerable to attack for nonobservance of the constitutional mandate against undue taking of property for the benefit of another.^[7] As this Court said in *Revidad vs. NLRC* :

“At the other end of the spectrum, it seems equally clear that not every asserted possibility of loss is sufficient legal warrant for the reduction of personnel. In the nature of things, the possibility of incurring losses is constantly present, in greater or lesser degree, in the carrying on of business operations, since some, indeed many, of the factors which impact upon the profitability or viability of such operations may be substantially outside the control of the employer.”^[8]

Hence, the need for concrete and substantial proof of imminently expected losses. To reiterate, in this case, there is no such proof other than the bare claim of petitioners that they face total cessation of business operations should the requirement of STANFILCO for retrenchment be disregarded. On the other hand, that the retrenchment is not all that necessary is indicated by private respondents’ un rebutted claim that even after farm Nos. 1, 2 and 3 had been planted to a new variety of bananas, they were still hired for the normal operation of the farms. Coupled with this is STANFILCO’s admission that it was contracting the services of outside workers to undertake the conversion of the other farms.

Business losses, as a just cause for retrenchment, must be proved for they can be feigned.^[9] Considering that in termination cases, the employer bears the burden of proof to show that the dismissal is for a just cause, otherwise the dismissal is deemed unjustified and the dismissed employees should be reinstated,^[10] petitioners should have presented proof of imminent economic or business reverses with clear and convincing evidence as a form of affirmative defense.^[11] They could have at least presented financial statements by independent auditors on the possible imminent and substantial losses they would incur should private respondents be retained as workers. More importantly, they should have shown they had instituted cost reduction measures before undertaking retrenchment that, under the

law, is a remedy of last resort.^[12] These, the petitioners failed to do and hence, they must bear the consequence of their neglect.

While the Court is unprepared to agree with private respondents that petitioners' decision to retrench was impelled by the union activities in the farm, thereby exposing petitioners to the charge of union-busting, the Court is convinced that the compelling reason for retrenchment is the contract between petitioners and STANFILCO.

Every individual has autonomy to enter into any contract. However, the contractual stipulations must not be contrary to law, morals, good customs, public order, or public policy.^[13] More important, such a valid contract must be complied with in good faith, as this Court has had occasion to declare in a case involving the observance of a collective bargaining agreement:

“It is a fundamental postulate that however broad the freedom of contracting parties may be, it does not go so far as to countenance disrespect for or failure to observe a legal prescription. The statute takes precedence; a stipulation in a collective bargaining agreement must yield to it. That is to adhere to the rule of law.”^[14]

Moreover, the unyielding dictum is that the law is considered built into every contract.

In the same manner, in the contractual agreement between petitioners and STANFILCO the law must take precedence. While both parties may enter into a business arrangement for the common aim of attaining mutual financial gains, they are expected to scrupulously observe the law, such as those mandating security of tenure of workers and the law against unlawful retrenchment.

It is the inescapable conclusion here that private respondents were illegally dismissed from employment. Hence, they are entitled to reinstatement without loss of seniority rights and with backwages for the full time that they have remained unemployed. Receipt of full backwages, not just for a three-year period as decreed by the NLRC, is mandated by Republic Act No. 6715 (which took effect on March 21, 1989) and a host of jurisprudential pronouncements considering that

this case transpired when said law was already in full force and effect.^[15]

Separation pay may, however, be awarded in lieu of reinstatement if reinstatement can no longer be effected, as when the positions previously held by the employees no longer exist or when strained relations result from loss of trust and confidence.^[16] But none of these circumstances has been proven in this case. While we are aware that there may be other reasons for denying reinstatement,^[17] the petitioners have not established any which could provide them basis for the termination of private respondents' employment.

WHEREFORE, the instant Petition for *Certiorari* is hereby **DISMISSED**. The questioned Resolutions are **AFFIRMED** subject to the **MODIFICATION** that private respondents shall be reinstated to their former or equivalent positions without loss of seniority rights and with full backwages from the time of the termination of their employment until their reinstatement. Costs against petitioners.

SO ORDERED.

Regalado, Puno and Mendoza, JJ., concur.
Torres, Jr., J., is on leave.

[1] Rollo, pp. 17-18.

[2] Individual petitioners here filed a petition for *certiorari* before this Court through G.R. No. 95108 entitled Cegsiaco, et al. vs. Hon. Ruben Torres, etc., et al." They sought to enjoin the conduct of a certification election at the farms. On October 1, 1990, the Court issued the temporary restraining order prayed for. However, the petition was rendered moot and academic by the collective bargaining agreement entered into by the petitioners and their workers and hence, on February 6, 1995, the Court considered the case closed and terminated. Entry of judgment was made on March 13, 1995.

[3] Penned by Presiding Commissioner Musib M. Buat and concurred in by Commissioners Oscar Abella and Leon Gonzaga, Jr.

[4] Central Azucarera de la Carlota vs. NLRC, G.R. No. 100092, December 29, 1995, 251 SCRA 589, 595.

[5] Sebuguero vs. NLRC, G.R. No. 115394, September 27, 1995, 248 SCRA 532, 544.

- [6] Central Azucarera de la Carlota vs. NLRC, supra., at pp. 595-596 citing Lopez Sugar Corporation vs. Federation of Free Workers, G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 79.
- [7] Revidad vs. NLRC, G.R No. 111105, June 27, 1995, 245 SCRA 356, 368.
- [8] Ibid. citing Lopez Sugar Corporation vs. Federation of Free Workers, et al., supra.
- [9] Philippine School of Business Administration vs. NLRC, G.R. No. 106621, June 8, 1993, 223 SCRA 305, 309 citing Villena vs. NLRC, G.R. No. 90664, February 7, 1991, 193 SCRA 686; Garcia vs. NLRC, G.R. No. 67825, September 4, 1987, 153 SCRA 639.
- [10] Molave Tours Corporation vs. NLRC, G.R No. 112909, November 24, 1995, 250 SCRA 325 329; Magnolia Corporation vs. NLRC, G.R. No. 116813, November 24, 1995, 250 SCRA 332, 338; Golden Donuts, Inc. vs. NLRC, G.R. Nos. 105758-59, February 21, 1994, 230 SCRA 153, 161.
- [11] Revidad vs. NLRC, supra, at pp. 368, citing Precision Electronics Corporation vs. NLRC, G.R. No. 86657, October 23, 1989, 178 SCRA 667.
- [12] Radio Communications of the Philippines, Inc. vs. NLRC, G.R Nos. 101181-84, June 22, 1992, 210 SCRA 222, 225 citing Lopez Sugar Corporation vs. Federation of Free Workers, supra.
- [13] Art. 1306, Civil Code.
- [14] Lakas ng Manggagawang Makabayan (LMM) vs. Abiera, L-29474, December 19, 1970, 36 SCRA 437, 444.
- [15] See: Balladares, Jr. vs. NLRC, G.R. No. 111342, June 19, 1995, 245 SCRA 213, 217.
- [16] Vallacar Transit, Inc. vs. NLRC, G.R. No. 109809, July 17, 1995, 246 SCRA 460. 463.
- [17] See: Globe-Mackay Cable and Radio Corporation vs. NLRC, G.R. No. 82511. March 3, 1992, 206 SCRA 701, 709-710.