

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**BENEDICTO A. CAJUCOM VII,
*Petitioner,***

-versus-

**G.R. No. 149090
February 11, 2005**

**TPI PHILIPPINES CEMENT
CORPORATION, TPI PHILIPPINES
VINYL CORPORATION, AND THUN
TRITASAVIT,**

Respondents.

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DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated April 6, 2001 and the Resolution^[2] dated July 18, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 58076, entitled “*Benedicto A. Cajucum VII vs. TPI Philippines Cement Corporation, TPI Philippines Vinyl Corporation, Thun Tritasavit and the National Labor Relations Commission.*”

The factual antecedents are:

TPI Philippines Cement Corporation (TP Cement) and TPI Philippines Vinyl Corporation (TP Vinyl), *respondents*, are wholly-owned subsidiaries of Thai Petrochemical Industry Public Company, Ltd. Both respondent companies were registered with the Securities and Exchange Commission. On June 1, 1995, respondents employed Atty. Benedicto A. Cajucom VII, *petitioner*, as Vice-President for Legal Affairs with a monthly salary of ₱70,000.00.

As a result of the economic slowdown then experienced in this country, respondent TP Cement, having no viable projects, shortened its corporate term from 50 years to 2 years and 7 months. In fact, it was dissolved on January 27, 1998. With respect to respondent TP Vinyl, it shifted its business from production to marketing and trading of Thai Petrochemical products.

Thus, respondents implemented cost-cutting measures resulting in the retrenchment or termination from the service of their employees, including petitioner.

On December 3, 1998, respondents sent petitioner a notice terminating his services effective December 30, 1998. Simultaneously, respondents, on the same day, filed with the Department of Labor and Employment (DOLE) an “Establishment Termination Report” of petitioner’s retrenchment from the service. Petitioner contested respondents’ action, claiming that his retrenchment was based erroneously on respondents’ probable losses, instead of their actual, substantial and imminent losses, as shown by the following: (1) an increase or raise in his monthly salary from ₱70,000.00 in 1995 to ₱80,000.00 in 1996; (2) hiring by respondents of more marketing and accounting employees for the period from July 1997 to December 1998; (3) acquisition, in 1998, of a warehouse; and (4) expansion in 1998 of their operations by including sales and marketing of oil products. Petitioner further claimed that respondents were motivated by revenge in terminating his services. This stemmed from his October 7, 1996 memorandum to respondents’ Executive Vice-President Thun Tritasavit, also a *respondent* herein, questioning his financial transactions detrimental to respondents’ interests.

Eventually, or on January 12, 1999, petitioner filed with the Office of the Labor Arbiter a complaint for illegal dismissal against respondents, docketed as NLRC-NCR Case No. 00-01-00485-99.

On March 31, 1999, the Labor Arbiter rendered a Decision holding that respondents failed to adduce sufficient evidence to show that their alleged losses are substantial and imminent and concluded that petitioner was illegally dismissed from employment. The dispositive portion of the Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered ordering respondents TPI Phils. Cement Corp., TPI Phil. Vinyl Corp., and Thun Tritasavit, jointly and solidarily to:

1. reinstate complainant Benedicto A. Cajucom VII to his former position without loss of seniority rights and privileges with backwages of P240,000.00, subject to adjustment upon actual reinstatement;
2. pay complainant moral and exemplary damages at P5,000,000.00.

SO ORDERED.”

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated October 29, 1999 reversing the Labor Arbiter’s Decision. In concluding that the termination from the service of petitioner is justified, the NLRC held:

“The appeal is meritorious.

Respondents, as early as April 1996, began downsizing their operations. More than a year after such initial cost cutting measure or on September 1997, when they sensed a continuous business decline and difficulty in implementing their projects, respondents decided to reduce their office space by moving to a smaller and cheaper three-storey building at Bagtikan St., Makati City. This is to reduce rental costs. Respondents, sometime in April 1998, also reduced their office space from its

original 725-square meter area to 76 square meters. These changes are known to complainant.

Also known to complainant are the voluntary termination from the service of the following: Accounting Manager on 30 September 1997; Marketing Manager on 30 December 1997; and Executive Assistant on 15 March 1998. This is also in line with the downsizing of respondents' operations.

Complainant was even consulted legally. In fact, he vehemently rejected the intention of respondents to fight the business crisis by avoiding mass lay-offs, and slashing by 15% to 20% employees' salaries.

Despite the downsizing of respondents' group of companies, which started as early as April 1996, they even increased the salary of complainant from P70,000.00 to P80,000.00 effective June 1996. In order to accommodate such increase, respondent Tritasavit agreed to deduct the same from his own salary, thereby, reducing his (respondent Tritasavit's) total monthly salary and making it lower than that of complainant. This fact is also known to complainant.

In addition to these measures being adopted by respondents, they also sold some company vehicles and used the proceeds to meet their operational expenses and pay their obligations.

We are convinced that respondents are suffering from substantial losses and serious business reverses. The audited financial reports prepared by Sycip Gorres Velayo and Co. show that as of 31 December 1997, TPI Philippines Cement Corporation incurred losses at P12,375,166.00. After the start of its business in June 1995, respondent, still having no economically-viable projects in 1996, made use of its entire paid-in capital of P12,815,000.00 for operational and administrative expenses.

On the other hand, TPI Philippines Vinyl Corporation, as of 30 June 1998, suffered losses at P14,186,907.00, which, barely three (3) months thereafter or as of 30 September 1998

increased to ₱15,236,103.00. Initially, this company was incorporated purposely to engage in manufacturing and trading of plastic raw materials, but due to continuous and worsening economic situation, as shown by its financial trend, the same incurred a deficit of ₱15,236,103.00, thus, prompting it to shift to marketing and trading of TPI products or being a mere marketing arm of Thai Petrochemicals.

Respondent was in fact very honest to complainant by forewarning him, a year in advance, of the possibility of his separation from the service, should there be no changes in the economic condition, and by helping complainant in seeking another job by referring him to other companies. These acts of respondents, to us, are clear signs of good faith.

We are persuaded that retrenchment due to substantial losses has been sufficiently established and that the dismissal of complainant pursuant to Art. 283 of the Labor Code, was justified.

WHEREFORE, premises considered, judgment is hereby rendered SETTING ASIDE the decision of the Labor Arbiter. However, respondents are ordered to pay complainant his separation pay equivalent to one month salary per year of service. Claims for moral and exemplary damages are hereby DISMISSED for utter lack of merit.

SO ORDERED.”

Both parties filed a motion for reconsideration but it was denied by the NLRC in a Resolution dated January 28, 2000.

Petitioner then filed a petition for certiorari with the Court of Appeals alleging that the NLRC committed grave abuse of discretion in finding that the termination of petitioner’s employment is justified.

On April 6, 2001, the Court of Appeals rendered the assailed Decision affirming with modification the NLRC’s Decision in the sense that respondents are also ordered to pay petitioner backwages from the

time he was dismissed “up to the time the dismissal is adjudged to be just,” thus:

“However, with respect to the monetary reward, we have to modify.

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In the recent case of *Serrano vs. NLRC, et al.*, the Supreme Court abandoned the policy of just directing the employer to indemnify the dismissed employees by imposing fines of varying amounts. In this landmark case, the High Court enunciated that, should there be any just cause for dismissing an employee under any of the causes enumerated in Art. 282 or any of the authorized causes under Art. 283 of the Labor Code as amended, but there was no prior notice or investigation, the remedy is to order the payment of full backwages although his dismissal must be upheld. His termination should not be considered void but he should simply be paid separation pay.

X X X

In their memorandum of appeal, private respondents alleged that on November 27, 1998, respondent Tritasavit left, at petitioner’s desk, the letter terminating him from the service. It was only on December 3, 1998 that respondent Tritasavit conferred with petitioner regarding the notice of termination. There is no proof that petitioner came to know of such termination before the latter date. The mere act of leaving, on November 27, 1998, the same letter at petitioner’s table, is not sufficient notice, as contemplated under the law.

Private respondents admitted that a notice of termination was served upon the DOLE on December 3, 1998. This is again contrary to law. The law requires that a written notice of retrenchment be filed with the DOLE one month before the intended date of retrenchment. The requirement of the law is very clear.

With respect to the payment of separation pay, Sec. 9 (b), Rule VI of the New Rules of Procedure of the NLRC provides:

‘Sec. 9. x x x

(b) Where the termination of employment is due to retrenchment to prevent losses and in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, or where the employee suffers from a disease and his continued employment is prohibited by law or is prejudicial to his health or to the health of his co-employees, the employee shall be entitled to termination pay equivalent to at least one-half month’s pay for every year of service, a fraction of at least six months being considered as one whole year. (*Emphasis ours.*)

In the case at bar, public respondent awarded petitioner one month salary pay per year of service as his separation pay. Although private respondents filed a motion for partial reconsideration regarding the same, they did not push through with it when it was denied by public respondent. Thus, the same has become final.

WHEREFORE, in view of the foregoing, the decision of the public respondent is AFFIRMED with modification that private respondents are ordered to pay petitioner backwages from the time he was dismissed from work up to the time the dismissal is adjudged to be just.

SO ORDERED.”

In a Resolution dated July 18, 2001, the Court of Appeals denied petitioner’s motion for reconsideration.

In the instant petition, petitioner contends that the Court of Appeals erred (1) in upholding, as lawful and valid, his retrenchment from employment on the basis of respondents’ evidence; and (2) in not finding that petitioner is entitled to an award of damages.

Section 1, Rule 45 of the Rules of Civil Procedure, as amended, provides that only questions of law are entertained in appeals by certiorari to the Supreme Court. However, jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court:^[3] (1) the legal conclusions made by the lower tribunal are speculative;^[4] (2) its inferences are manifestly mistaken,^[5] absurd or impossible; (3) the lower court committed grave abuse of discretion; (4) the judgment is based on a misapprehension of facts;^[6] (5) the findings of fact of the lower tribunals are conflicting;^[7] (6) the Court of Appeals went beyond the issues; (7) the Court of Appeals' findings are contrary to the admissions of the parties;^[8] (8) the Court of Appeals manifestly overlooked facts not disputed which, if considered, would justify a different conclusion; (9) the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.^[9]

Normally, the Supreme Court is not a trier of facts.^[10] However, since the findings of fact of the Labor Arbiter, on one hand, and the NLRC and the Court of Appeals, on the other, are conflicting, we shall discuss our factual findings and our determination of the main issue.

Retrenchment, under Article 283 of the Labor Code, as amended, is recognized as an authorized cause for the dismissal of an employee from the service. This article 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 operations 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 Department of Labor and Employment, at least one (1) month before the intended date thereof. x x x. **In case of retrenchment to prevent losses** and in cases of closure or cessation of operations of the 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.”

In *Trendline Employees Association-Southern Philippines Federation of Labor vs. NLRC*,^[11] we enumerated the requisites of retrenchment, thus:

“To be valid, three requisites must concur, as provided in Article 283 of the Labor Code, as amended, namely: (1) The retrenchment is necessary to prevent losses and the same is proven; (2) Written notice to the employees and to the DOLE at least one month prior to the intended date thereof; and (3) Payment of separation pay equivalent to one month pay or at least 1/2 month pay for every year of service, whichever is higher.”

We observe that the Court of Appeals, in finding that respondents suffered from financial losses and justifying the retrenchment of petitioner from the service, relied on the audited reports^[12] prepared by SyCip Gorres Velayo & Co. Such reliance is in order. In *Dela Salle University vs. Dela Salle University Employees Association*,^[13] we held:

“x x x. We believe that the standard proof of a company’s financial standing is its financial statements duly audited by independent and credible external auditors. Financial statements audited by an independent external auditor, as in the case at bar, constitute the normal method of proof of profit and loss performance of a company.”

For his part, petitioner insists that actual, not probable losses, justify retrenchment. Article 283 (quoted earlier) entails, among others, only a situation where there is “retrenchment to prevent losses.”^[14]

The phrase “to prevent losses” means that retrenchment or termination from the service of some employees is authorized to be undertaken by the employer sometime before the losses anticipated are actually sustained or realized.^[15] This is the situation in the case at bar. Evidently, actual losses need not set in prior to retrenchment.

As mandated by Article 283, the employer shall serve notice of retrenchment to prevent losses on the worker and the DOLE at least one month before the intended date thereof.

Records show that on December 3, 1998, respondents sent petitioner and the DOLE separate notices of retrenchment effective December 30, 1998. Following the provision of Article 283, these notices should have been served one month before, or on November 30, 1998. Clearly, respondents failed to comply with the one-month notice requirement. On this point, our ruling in *Agabon vs. National Labor Relations Commission*,^[16] is relevant, thus:

“Procedurally, x x x (2) if the dismissal is based on authorized causes under Articles 283 and 294, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.

From the foregoing rules four possible situations may be derived: (1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed; (2) the dismissal is without just or authorized cause but due process was observed; (3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for just or authorized cause but due process was not observed. (*Emphasis supplied*)

x x x

x x x

In the fourth situation, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, employer should be held *liable for non-compliance with the procedural requirements of due process*.

x x x

x x x

The violation of the petitioners’ right to statutory due process by the private respondent warrants the payment of indemnity in

the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at ₱30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.”

Considering that petitioner was separated from the service due to an authorized cause but that respondents did not comply with the one-month notice requirement, petitioner is entitled to an award of nominal damages which we fix at ₱20,000.00.

It bears reiterating that under Article 283, petitioner is entitled to an award of separation pay equivalent to one-half (1/2) month’s pay for every year of service (with a fraction of at least six (6) months considered one (1) whole year). Since he had been employed for four (4) years, or from June 1, 1995 to December 30, 1998, with a monthly salary of ₱80,000.00, he should be paid ₱160,000.00 as separation pay.

WHEREFORE, the petition is party **GRANTED**. The challenged Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 58076 are **AFFIRMED with MODIFICATION** in the sense that respondents are hereby ordered to pay petitioner (1) ₱160,000.00 as separation pay; and (2) ₱20,000.00 as nominal damages. No costs.

SO ORDERED.

PANGANIBAN, J., (Chairman), CORONA, CARPIO-MORALES, and GARCIA, JJ., concur.

[1] Annex “D”, Petition for Review, Rollo at 74-83.

[2] Annex “E”, id. at 85.

- [3] Fuentes vs. Court of Appeals, 335 Phil. 1163 (1997); Sarmiento vs. Court of Appeals, 353 Phil. 834, 846 (1998); Alsua-Betts vs. Court of Appeals, Nos. L-46430-31, July 30, 1979, 92 SCRA 332.
- [4] Philippine Deposit Insurance Corporation vs. Court of Appeals, 347 Phil. 741 (1997); People vs. Milan, 330 Phil. 493 (1999); Yobido vs. Court of Appeals, 346 Phil. 1 (1997).
- [5] Luna vs. Linatoc, 74 Phil. 15 (1942).
- [6] De la Cruz vs. Sosing, 94 Phil. 26, 28 (1953).
- [7] Social Security System vs. Court of Appeals, G.R. No. 100388, December 14, 2000, 348 SCRA 1.
- [8] Rizal Commercial Banking Corporation vs. Alfa RTW Manufacturing Corporation, 420 Phil. 702 (2001).
- [9] De la Cruz vs. Sosing, supra.
- [10] Far East Bank and Trust Co. vs. Court of Appeals, 326 Phil. 15 (1996).
- [11] G.R. No. 112923, May 5, 1997, 272 SCRA 172, 179-180.
- [12] Rollo at 101-113.
- [13] G.R. No. 110072, April 12, 2000, 330 SCRA 363, 383, citing Saballa vs. National Labor Relations Commission, 260 SCRA 697, 709 (1996).
- [14] Asian Alcohol Corporation vs. NLRC, G.R. No. 131108, March 25, 1999, 305 SCRA 416, 431.
- [15] Lopez Sugar Corporation vs. Federation of Free Workers, G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179.
- [16] G.R. No. 158693, November 17, 2004 at 7-8 and 16.