SUPREME COURT
THIRD DIVISION

CLARION PRINTING HOUSE, INC., and EULOGIO YUTINGCO,
Petitioners,

-versus-

G.R. No. 148372
June 27, 2005

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (Third Division) and MICHELLE MICLAT,
Respondents.

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D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Michelle Miclat (Miclat) was employed on April 21, 1997 on a probationary basis as marketing assistant with a monthly salary of P6,500.00 by petitioner Clarion Printing House (CLARION) owned by its co-petitioner Eulogio Yutingco. At the time of her employment, she was not informed of the standards that would qualify her as a regular employee.

On September 16, 1997, the EYCO Group of Companies of which CLARION formed part filed with the Securities and Exchange

Commission (SEC) a "Petition for the Declaration of Suspension of Payment, Formation and Appointment of Rehabilitation Receiver/ Committee, Approval of Rehabilitation Plan with Alternative Prayer for Liquidation and Dissolution of Corporation"[1] the pertinent allegations of which read:

x x x

5. The situation was that since all these companies were sister companies and were operating under a unified and centralized management team, the financial requirements of one company would normally be backed up or supported by one of the available fundings from the other companies.

6. The expansion exhausted the cash availability of Nikon, NKI, and 2000 because those fundings were absorbed by the requirements of NPI and EYCO Properties, Inc. which were placed on real estate investments. However, at the time that those investments and expansions were made, there was no cause for alarm because the market situation was very bright and very promising, hence, the decision of the management to implement the expansion.

7. The situation resulted in the cash position being spread thin. However, despite the thin cash positioning, the management still was very positive and saw a very viable proposition since the expansion and the additional investments would result in a bigger real estate base which would be very credible collateral for further expansions. It was envisioned that in the end, there would be bigger cash procurement which would result in greater volume of production, profitability and other good results based on the expectations and projections of the team itself.

8. Unfortunately, factors beyond the control and anticipation of the management came into play which caught the petitioners flat-footed, such as:

    a) The glut in the real estate market which has resulted in the bubble economy for the real estate demand which

right now has resulted in a severe slow down in the sales of properties;

b) The economic interplay consisting of the inflation and the erratic changes in the peso-dollar exchange rate which precipitated a soaring banking interest.

c) Labor problems that has precipitated adverse company effect on the media and in the financial circuit.

d) Liberalization of the industry (GATT) which has resulted in flooding the market with imported goods;

e) Other related adverse matters.

9. The inability of the EYCO Group of Companies to meet the obligations as they fall due on the schedule agreed with the bank has now become a stark reality. The situation therefore is that since the obligations would not be met within the scheduled due date, complications and problems would definitely arise that would impair and affect the operations of the entire conglomerate comprising the EYCO Group of Companies.

x x x

12. By virtue of this development, there is a need for suspension of all accounts or obligations incurred by the petitioners in their separate and combined capacities in the meantime that they are working for the rehabilitation of the companies that would eventually redound to the benefit of these creditors.

13. The foregoing notwithstanding, however, the present combined financial condition of the petitioners clearly indicates that their assets are more than enough to pay off the credits.

x x x

(Emphasis and underscoring supplied)[2]

On September 19, 1997, the SEC issued an Order[3] the pertinent portions of which read:

x x x

> It appearing that the petition is sufficient in form and substance, the corporate petitioners' prayer for the creation of management or receivership committee and creditors' approval of the proposed Rehabilitation Plan is hereby set for hearing on October 22, 1997 at 2:00 o'clock in the afternoon at the SICD, SEC Bldg., EDSA, Greenhills, Mandaluyong City.
>
> x x x
>
> Finally, the petitioners are hereby enjoined from disposing any and all of their properties in any manner, whatsoever, except in the ordinary course of business and from making any payment outside of the legitimate business expenses during the pendency of the proceedings and as a consequence of the filing of the Petition, all actions, claims and proceedings against herein petitioners pending before any court, tribunal, office board and/or commission are deemed SUSPENDED until further orders from this Hearing Panel pursuant to the rulings of the Supreme Court in the cases of RCBC vs. IAC et al., 213 SCRA 830 and BPI vs. CA, 229 SCRA 223. *(Underscoring supplied)*

And on September 30, 1997, the SEC issued an Order[4] approving the creation of an interim receiver for the EYCO Group of Companies.

On October 10, 1997, the EYCO Group of Companies issued to its employees the following Memorandum: [5]

> This is to formally announce the entry of the Interim Receiver Group represented by SGV from today until October 22, 1997 or until further formal notice from the SEC.
>
> This interim receiver group's function is to make sure that all assets of the company are secured and accounted for both for the protection of us and our creditors.

> Their function will involve familiarization with the different processes and controls in our organization & keeping physical track of our assets like inventories and machineries.
>
> Anything that would be required from you would need to be in writing and duly approved by the top management in order for us to maintain a clear line.
>
> We trust that this temporary inconvenience will benefit all of us in the spirit of goodwill. Let's extend our full cooperation to them.
>
> Thank you. *(Underscoring supplied)*

On October 22, 1997, the Assistant Personnel Manager of CLARION informed Miclat by telephone that her employment contract had been terminated effective October 23, 1997. No reason was given for the termination.

The following day or on October 23, 1997, on reporting for work, Miclat was informed by the General Sales Manager that her termination was part of CLARION's cost-cutting measures.

On November 17, 1997, Miclat filed a complaint[6] for illegal dismissal against CLARION and Yutingco (petitioners) before the National Labor Relations Commission (NLRC).

In the meantime, or on January 7, 1998, the EYCO Group of Companies issued a Memorandum[7] addressed to company managers advising them of "a temporary partial shutdown of some operations of the Company" commencing on January 12, 1998 up to February 28, 1998:

> In view of the numerous external factors such as slowdown in business and consumer demand and consistent with Art. 286 of the Revised Labor Code of the Philippines, we are constrained to go on a temporary partial shutdown of some operations of the Company.

> To implement this measure, please submit to my office through your local HRAD the list of those whom you will require to report for work and their specific schedules. Upon revalidation and approval of this list, all those not in the list will not receive any pay nor will it be credited against their VL.
>
> Please submit the listing no later than the morning of Friday, January 09, 1998.
>
> Shutdown shall commence on January 12, 1998 up to February 28, 1998, unless otherwise recalled at an earlier date.
>
> Implementation of these directives will be done through your HRAD departments. *(Underscoring supplied)*

In her Position Paper[8] dated March 3, 1998 filed before the labor arbiter, Miclat claimed that she was never informed of the standards which would qualify her as a regular employee. She asserted, however, that she qualified as a regular employee since her immediate supervisor even submitted a written recommendation in her favor before she was terminated without just or authorized cause.

Respecting the alleged financial losses cited by petitioners as basis for her termination, Miclat disputed the same, she contending that as marketing assistant tasked to receive sales calls, produce sales reports and conduct market surveys, a credible assessment on production and sales showed otherwise.

In any event, Miclat claimed that assuming that her termination was necessary, the manner in which it was carried out was illegal, no written notice thereof having been served on her, and she merely learned of it only a day before it became effective.

Additionally, Miclat claimed that she did not receive separation pay, 13th month pay and salaries for October 21, 22 and 23, 1997.

On the other hand, petitioners claimed that they could not be faulted for retrenching some of its employees including Miclat, they drawing attention to the EYCO Group of Companies' being placed under receivership, notice of which was sent to its supervisors and rank and

file employees via a Memorandum of July 21, 1997; that in the same memorandum, the EYCO Group of Companies advised them of a scheme for voluntary separation from employment with payment of severance pay; and that CLARION was only adopting the "LAST IN, FIRST OUT PRINCIPLE" when it terminated Miclat who was relatively new in the company.

Contending that Miclat's termination was made with due process, petitioners referred to the EYCO Group of Companies' abovesaid July 21, 1997 Memorandum which, so they claimed, substantially complied with the notice requirement, it having been issued more than one month before Miclat was terminated on October 23, 1997.

By Decision[9] of November 23, 1998, the labor arbiter found that Miclat was illegally dismissed and directed her reinstatement. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered ordering the respondent to reinstate complainant to her former or equivalent position without loss of seniority rights and benefits and to pay her backwages, from the time of dismissal to actual reinstatement, proportionate 13th month pay and two (2) days salary computed as follows:
>
> a.1) Backwages – 10/23/97 to 11/30/98
> P6,500.00 x 13.25 months = P86,125.00
>
> a.2) Proportionate 13th month pay
> 1/12 of P86,125 = 7,177.08
>
> b) 13th month pay - 1997
> =P6,500 x 9.75 months/12 = 5,281.25
>
> c) Two days salary
> =P6,500/26 x 2 days = 500.00
> ----------
> TOTAL P 99,083.33
> =========
>
> *(Emphasis and underscoring supplied).*

Before the National Labor Relations Commission (NLRC) to which petitioners appealed, they argued that: [10]

1. [CLARION] was placed under receivership thereby evidencing the fact that it sustained business losses to warrant the termination of [Miclat] from her employment.

2. The dismissal of [Miclat] from her employment having been effected in accordance with the law and in good faith, [Miclat] does not deserve to be reinstated and paid backwages, 13th month pay and two (2) days salary.

And petitioners pointed out that CLARION had expressed its decision to shutdown its operations by Memorandum[11] of January 7, 1998 to its company managers.

Appended to petitioners' appeal before the NLRC were photocopies of their balance sheets from 1997 to November 1998 which they claimed to "unanimously show that [petitioner] company experienced business reverses which were made the basis in retrenching."[12]

By Resolution[13] of June 17, 1999, the NLRC affirmed the labor arbiter's decision. The pertinent portion of the NLRC Resolution reads:

> There are three (3) valid requisites for valid retrenchment: (1) the retrenchment is necessary to prevent losses and such losses are proven; (2) written notices to the employees and to the Department of Labor and Employment at least one (1) month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one (1) month pay or at least ½ month pay for every year of service, whichever is higher. The two notices are mandatory. If the notice to the workers is later than the notices sent to DOLE, the date of termination should be at least one month from the date of notice to the workers.
>
> In Lopez Sugar Corporation vs. Federation of Free Workers Philippine Labor Union Association (PLUA-NACUSIP) and National Labor Relations Commission, the Supreme Court had

the occasion to set forth four standards which would justify retrenchment, being, 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 bona fide nature of the retrenchment would appear to be seriously in question; 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 course with serious consequences for the livelihood of the employees retired or otherwise laid-off; thirdly, - because of the consequential nature of retrenchment, it must be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other cost than labor costs; and lastly, - the alleged losses if already realized and the expected imminent losses sought to be forestalled, must be proven by sufficient and convincing evidence.

The records show that these requirements were not substantially complied with. And proofs presented by respondents-appellants were short of being sufficient and convincing to justify valid retrenchment. Their position must therefore fail. The reason is simple. Evidences on record presented fall short of the requirement of substantial, sufficient and convincing evidence to persuade this Commission to declare the validity of retrenchment espoused by respondents-appellants. The petition before the Securities and Exchange Commission for suspension of payment does not prove anything to come within the bounds of justifying retrenchment. In fact, the petition itself lends credence to the fact that retrenchment was not actually reinstated under the circumstances prevailing when it stated, “The foregoing notwithstanding, however, the present combined financial condition of the petitioners clearly indicates that their assets are more than enough to pay off the credits.” Verily, reading further into the petition, We are not ready to disregard the fact that the petition merely seeks to suspend payments of their obligation

> from creditor banks and other financing institutions, and not because of imminent substantial financial loss. On this account, We take note of paragraph 7 of the petition which stated: "The situation resulted in cash position being spread thin. However, despite the thin cash positioning, the management was very positive and saw a very viable proposition since the expansion and the additional investments would result in a bigger real estate base which would be a very credible collateral for further expansions. It was envisioned that in the end, there would a bigger cash procurement which would result in greater volume of production, profitability and other good results based on the expectations and projections of the team itself." Admittedly, this does not create a picture of retrenchable business atmosphere pursuant to Article 283 of the Labor Code.
>
> We cannot disregard the fact that respondent-appellants failed in almost all of the criteria set by law and jurisprudence in justifying valid retrenchment. The two (2) mandatory notices were violated. The supposed notice to the DOLE (Annex "4," List of Employees on Shutdown) is of no moment, the same having no bearing in this case. Herein complainant-appellee was not even listed therein and the date of receipt by DOLE, that is, January 18, 1999, was way out of time in relation to this case. And no proof was adduced to evidence cost cutting measures, to say the least. Nor was there proof shown that separation pay had been awarded to complainant-appellee.
>
> WHEREFORE, premises considered, and finding no grave abuse of discretion on the findings of Labor Arbiter Nieves V. De Castro, the appeal is DENIED for lack of merit.

The decision appealed from is AFFIRMED in toto. *(Italics in the original; underscoring supplied; citations omitted)*

Petitioners' Motion for Reconsideration of the NLRC resolution having been denied by Resolution[14] of July 29, 1999, petitioners filed a petition for certiorari[15] before the Court of Appeals (CA) raising the following arguments:

1. PETITIONER CLARION WAS PLACED UNDER RECEIVERSHIP THEREBY EVIDENCING THE FACT THAT IT SUSTAINED BUSINESS LOSSES TO WARRANT THE TERMINATION OF PRIVATE RESPONDENT MICLAT FROM HER EMPLOYMENT.

2. THE DISMISSAL OF PRIVATE RESPONDENT MICLAT FROM HER EMPLOYMENT HAVING BEEN EFFECTED IN ACCORDANCE WITH THE LAW AND IN GOOD FAITH, PRIVATE RESPONDENT DOES NOT DESERVE TO BE REINSTATED AND PAID BACKWAGES, 13TH MONTH PAY AND TWO (2) DAYS SALARY. *(Underscoring supplied)*

By Decision[16] of November 24, 2000, the CA sustained the resolutions of the NLRC in this wise:

> In the instant case, Clarion failed to prove its ground for retrenchment as well as compliance with the mandated procedure of furnishing the employee and the Department of Labor and Employment (hereafter, DOLE) with one (1) month written notice and payment of separation pay to the employee. Clarion's failure to discharge its burden of proof is evident from the following instances:
>
> > ***First***, Clarion presented no evidence whatsoever before the Labor Arbiter. To prove serious business losses, Clarion presented its 1997 and 1998 financial statements and the SEC Order for the Creation of an Interim Receiver, for the first time on appeal before the NLRC. The Supreme Court has consistently disallowed such practice unless the party making the belated submission of evidence had satisfactorily explained the delay. In the instant case, said financial statements are not admissible in evidence due to Clarion's failure to explain the delay.
> >
> > ***Second***, even if such financial statements were admitted in evidence, they would not alter the outcome of the case as statements have weak probative value. The required method of proof in such case is the presentation of

financial statements prepared by independent auditors and not merely by company accountants. Again, petitioner failed in this regard.

Third, even audited financial statements are not enough. The employer must present the statement for the year immediately preceding the year the employee was retrenched, which Clarion failed to do in the instant case, to prove not only the fact of business losses but more importantly, the fact that such losses were substantial, continuing and without immediate prospect of abatement. Hence, neither the NLRC nor the courts must blindly accept such audited financial statements. They must examine and make inferences from the data presented to establish business losses. Furthermore, they must be cautioned by the fact that "sliding incomes" or decreasing gross revenues alone are not necessarily business losses within the meaning of Art. 283 since in the nature of things, the possibility of incurring losses is constantly present in business operations.

Last, even if business losses were indeed sufficiently proven, the employer must still prove that retrenchment was resorted to only after less drastic measures such as the reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiency, reduction of marketing and advertising costs, faster collection of customer accounts, reduction of raw materials investment and others, have been tried and found wanting. Again, petitioner failed to prove the exhaustion of less drastic measures short of retrenchment as it had failed with the other requisites.

It is interesting to note that Miclat started as a probationary employee on 21 April 1997. There being no stipulation to the contrary, her probation period had a duration of six (6) months from her date of employment. Thus, after the end of the probation period on 22 October 1997, she became a regular employee as of 23 October 1997 since she was allowed to work after the end of said period. It is also clear that her probationary

> employment was not terminated at the end of the probation period on the ground that the employee failed to qualify in accordance with reasonable standards made known to her at the time of engagement.
>
> However, 23 October 1997 was also the day of Miclat's termination from employment on the ground of retrenchment. Thus, we have a bizarre situation when the first day of an employee's regular employment was also the day of her termination. However, this is entirely possible, as had in fact happened in the instant case, where the employer's basis for termination is Art. 288, instead of Art. 281 of the Labor Code. If petitioner terminated Miclat with Art. 281 in mind, it would have been too late to present such theory at this stage and it would have been equally devastating for petitioner had it done so because no evidence exists to show that Miclat failed to qualify with petitioner's standards for regularization. Failure to discharge its burden of proof would still be petitioner's undoing.
>
> Whichever way We examine the case, the conclusion is the same – Miclat was illegally dismissed. Consequently, reinstatement without loss of seniority rights and full backwages from date of dismissal on 23 October 1997 until actual reinstatement is in order.
>
> WHEREFORE, the instant petition is hereby DISMISSED and the 29 July 1999 and 7 June 1999 resolutions of the NLRC are SUSTAINED. *(Emphasis and underscoring supplied)*

By Resolution[17] of May 23, 2001, the CA denied petitioner's motion for reconsideration of the decision.

Hence, the present petition for review on certiorari, petitioners contending that:

> WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE ASSAILED DECISIONS OF HONORABLE PUBLIC RESPONDENT COMMISSION:

A. HOLDING THAT PRIVATE RESPONDENT MICLAT WAS ILLEGALLY DISMISSED; and

B. ORDERING THE REINSTATEMENT OF PRIVATE RESPONDENT MICLAT TO HER FORMER OR EQUIVALENT POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND BENEFITS AND PAYMENT OF BACKWAGES, 13TH MONTH PAY AND TWO (2) DAYS SALARY. [18]

Petitioners argue that the conclusion of the CA that no sufficient proof of financial losses on the part of CLARION was adduced is patently erroneous, given the serious business reverses it had gravely suffered as reflected in its financial statements/balance sheets, thereby leaving as its only option the retrenchment of its employees including Miclat.[19]

Petitioners further argue that when a company is under receivership and a receiver is appointed to take control of its management and corporate affairs, one of the evident reasons is to prevent further losses of said company and protect its remaining assets from being dissipated; and that the submission of financial reports/statements prepared by independent auditors had been rendered moot and academic, the company having shutdown its operations and having been placed under receivership by the SEC due to its inability to pay or comply with its obligations.[20]

Respecting the CA's holding that the financial statements CLARION submitted for the first time on appeal before the NLRC are inadmissible in evidence due to its failure to explain the delay in the submission thereof, petitioners lament the CA's failure to consider that technical rules on evidence prevailing in the courts are not controlling in proceedings before the NLRC which may consider evidence such as documents and affidavits submitted by the parties for the first time on appeal.[21]

As to the CA's holding that CLARION failed to prove the exhaustion of less drastic measures short of retrenching, petitioners advance that prior to the termination of Miclat, CLARION, together with the other companies under the EYCO Group of Companies, was placed under

receivership during which drastic measures to continue business operations of the company and eventually rehabilitate itself were implemented.[22]

Denying Miclat's entitlement to backwages, petitioners proffer that her dismissal rested upon a valid and authorized cause. And petitioners assail as grossly erroneous the award of 13th month pay to Miclat, she not having sought it and, therefore, there was no jurisdiction to award the same.[23]

The petition is partly meritorious.

Contrary to the CA's ruling, petitioners could present evidence for the first time on appeal to the NLRC. It is well-settled that the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases.

The settled rule is that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. In fact, labor officials are mandated by the Labor Code to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. Thus, in Lawin Security Services vs. NLRC, and Bristol Laboratories Employees' Association-DFA vs. NLRC, we held that even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to the NLRC is enough basis for the latter to be more judicious in admitting the same, instead of falling back on the mere technicality that said evidence can no longer be considered on appeal. Certainly, the first course of action would be more consistent with equity and the basic notions of fairness. *(Italics in the original; citations omitted)*[24]

It is likewise well-settled that for retrenchment to be justified, any claim of actual or potential business losses must satisfy the following standards: (1) the losses are substantial and not de minimis; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by

sufficient and convincing evidence.[25] And it is the employer who has the onus of proving the presence of these standards.

Sections 5 and 6 of Presidential Decree No. 902-A (P.D. 902-A) *("REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT")*,[26] as amended, read:

> SEC. 5 In addition to the regulatory and adjudicative functions of THE SECURITIES AND EXCHANGE COMMISSION over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:
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> x x x
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> (d) Petitions of corporations, partnerships or associations declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership, association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.
>
> SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> x x x
>
> (c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the provisions of the Rules of Court in such other cases whenever necessary in order to preserve the

rights of the parties-litigants and/or protect the interest of the investing public and creditors: Provided, however, That the Commission may in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to powers of the regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph (d) hereof:

(d) To create and appoint a management committee, board or body upon petition or motu propio to undertake the management of corporations, partnership or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants of the general public: *(Emphasis and underscoring supplied).*

From the above-quoted provisions of P.D. No. 902-A, as amended, the appointment of a receiver or management committee by the SEC presupposes a finding that, inter alia, a company possesses sufficient property to cover all its debts but "foresees the impossibility of meeting them when they respectively fall due" and "there is imminent danger of dissipation, loss, wastage or destruction of assets of other properties or paralization of business operations."

That the SEC, mandated by law to have regulatory functions over corporations, partnerships or associations,[27] appointed an interim receiver for the EYCO Group of Companies on its petition in light of, as quoted above, the therein enumerated "factors beyond the control and anticipation of the management" rendering it unable to meet its obligation as they fall due, and thus resulting to "complications and problems to arise that would impair and affect its operations" shows that CLARION, together with the other member-companies of the

EYCO Group of Companies, was suffering business reverses justifying, among other things, the retrenchment of its employees.

This Court in fact takes judicial notice of the Decision[28] of the Court of Appeals dated June 11, 2000 in CA-G.R. SP No. 55208, "Nikon Industrial Corp., Nikolite Industrial Corp., et al. [including CLARION], otherwise known as the EYCO Group of Companies vs. Philippine National Bank, Solidbank Corporation, et al., collectively known and referred as the 'Consortium of Creditor Banks,'" which was elevated to this Court via Petition for Certiorari and docketed as G.R. No. 145977, but which petition this Court dismissed by Resolution dated May 3, 2005:

> Considering the joint manifestation and motion to dismiss of petitioners and respondents dated February 24, 2003, stating that the parties have reached a final and comprehensive settlement of all the claims and counterclaims subject matter of the case and accordingly, agreed to the dismissal of the petition for certiorari, the Court Resolved to DISMISS the petition for certiorari *(Underscoring supplied)*.

The parties in G.R. No. 145977 having sought, and this Court having granted, the dismissal of the appeal of the therein petitioners including CLARION, the CA decision which affirmed in toto the September 14, 1999 Order of the SEC, the dispositive portion of which SEC Order reads:

> WHEREFORE, premises considered, the appeal is as it is hereby, granted and the Order dated 18 December 1998 is set aside. The Petition to be Declared in State of Suspension of payments is hereby disapproved and the SAC Plan terminated. Consequently, all committee, conservator/ receivers created pursuant to said Order are dissolved and discharged and all acts and orders issued therein are vacated.
>
> The Commission, likewise, orders the liquidation and dissolution of the appellee corporations. The case is hereby remanded to the hearing panel below for that purpose.
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> x x x

(Emphasis and underscoring supplied),

x x x has now become final and executory. Ergo, the SEC's disapproval of the EYCO Group of Companies' *"Petition for the Declaration of Suspension of Payment"* and the order for the liquidation and dissolution of these companies including CLARION, must be deemed to have been unassailed.

That judicial notice can be taken of the above-said case of Nikon Industrial Corp. et al. vs. PNB et al., there should be no doubt.

As provided in Section 1, Rule 129 of the Rules of Court:

> SECTION 1. Judicial notice, when mandatory. – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. *(Emphasis and underscoring supplied)*

which Mr. Justice Edgardo L. Paras interpreted as follows:

> A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court. In addition judicial notice will be taken of the record, pleadings or judgment of a case in another court between the same parties or involving one of the same parties, as well as of the record of another case between different parties in the same court. Judicial notice will also be taken of court personnel. *(Emphasis and underscoring supplied)*[29]

In fine, CLARION's claim that at the time it terminated Miclat it was experiencing business reverses gains more light from the SEC's disapproval of the EYCO Group of Companies' petition to be declared in state of suspension of payment, filed before Miclat's termination, and of the SEC's consequent order for the group of companies' dissolution and liquidation.

This Court's finding that Miclat's termination was justified notwithstanding, since at the time she was hired on probationary basis she was not informed of the standards that would qualify her as a regular employee, under Section 6, Rule I of the Implementing Rules of Book VI of the Labor Code which reads:

> SEC. 6. Probationary employment. There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

"Probationary employment shall be governed by the following rules:

x x x

> (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee" *(Emphasis and underscoring supplied)*, she was deemed to have been hired from day one as a regular employee.[30]

CLARION, however, failed to comply with the notice requirement provided for in Article 283 of the Labor Code, to wit:

> 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. *(Emphasis and underscoring supplied)*

This Court thus deems it proper to award the amount equivalent to Miclat's one (1) month salary of P6,500.00 as nominal damages to deter employers from future violations of the statutory due process rights of employees.[31]

Since Article 283 of the Labor Code also provides that "[i]n case of retrenchment to prevent losses, 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 [being] considered one (1) whole year," this Court holds that Miclat is entitled to separation pay equivalent to one (1) month salary.

As to Miclat's entitlement to 13th month pay, paragraph 6 of the Revised Guidelines on the 13th Month Pay Law provides:

> 6. 13th Month Pay of Resigned or Separated Employee
>
> An employee whose services were terminated any time before the time for payment of the 13th month pay is entitled to this monetary benefit in proportion to the length of time he worked during the calendar year up to the time of his resignation or termination from the service. Thus if he worked only from January up to September his proportionate 13th month pay shall be equivalent to 1/12 of his total basic salary he earned during that period.
>
> x x x
>
> Having worked at CLARION for six months, Miclat's 13th month pay should be computed as follows:
>
> (Monthly Salary x 6) / 12 = Proportionate 13th month pay
>
> (P6,500.00 x 6) / 12 = P3,250.00

With the appointment of a management receiver in September 1997, however, all claims and proceedings against CLARION, including labor claims,[32] were deemed suspended during the existence of the receivership.[33] The labor arbiter, the NLRC, as well as the CA should not have proceeded to resolve respondent's complaint for illegal dismissal and should instead have directed respondent to lodge her claim before the then duly-appointed receiver of CLARION. To still require respondent, however, at this time to refile her labor claim against CLARION under the peculiar circumstances of the case — that 8 years have lapsed since her termination and that all the arguments and defenses of both parties were already ventilated before the labor arbiter, NLRC and the CA; and that CLARION is already in the course of liquidation — this Court deems it most expedient and advantageous for both parties that CLARION's liability be determined with finality, instead of still requiring respondent to lodge her claim at this time before the liquidators of CLARION which would just entail a mere reiteration of what has been already argued and pleaded. Furthermore, it would be in the best interest of the other creditors of CLARION that claims against the company be finally settled and determined so as to further expedite the liquidation proceedings. For the lesser number of claims to be proved, the sooner the claims of all creditors of CLARION are processed and settled.

WHEREFORE, the Court of Appeals November 24, 2000 Decision, together with its May 23, 2001 Resolution, is **SET ASIDE** and another rendered declaring the legality of the dismissal of respondent, Michelle Miclat. Petitioners are **ORDERED**, however, to PAY her the following in accordance with the foregoing discussions:

1) P6,500.00 as nominal damages for non-compliance with statutory due process;

2) P6,500.00 as separation pay; and

3) P3,250.00 as 13th month pay.

Let a copy of this Decision be furnished the SEC Hearing Panel charged with the liquidation and dissolution of petitioner corporation for inclusion, in the list of claims of its creditors, respondent Michelle Miclat's claims, to be satisfied in accordance with Article 110 of the Labor Code in relation to the Civil Code provisions on Concurrence and Preference of Credits.

Costs against petitioners.

SO ORDERED.

PANGANIBAN, *J.*, *(Chairman)*, SANDOVAL-GUTIERREZ, CORONA, And GARCIA, *JJ.*, concur.

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[1] I Records at 137-148.
[2] Id. at 140-142.
[3] Id. at 150-153.
[4] Id. at 155-156.
[5] Id. at 114.
[6] Id. at 1.
[7] Id. at 115.
[8] Id. at 13-21.
[9] Id. at 66-68.
[10] Id. at 72-85.
[11] Id. at 115.
[12] Id. at 81.
[13] Id. at 167-174.
[14] Id. at 191-192.
[15] Court of Appeals (CA) Rollo at 2-20.
[16] Rollo at 11-17.
[17] Id. at 18.
[18] Id. at 32-33.
[19] Id. at 34.
[20] Id. at 35.
[21] Id. at 35-36.
[22] Id. at 37-38.
[23] Id. at 38-39.
[24] Philippine Industrial Security Agency Corp. vs. Dapiton, 320 SCRA 124, 136-137 (1999).
[25] Tanjuan vs. Philippine Postal Savings Bank, Inc., 411 SCRA 168, 180 (2003).
[26] Now amended by the Securities Regulation Code (SRC) which took effect on August 8, 2000. Sec. 5.2 of the SRC provides that the SEC's jurisdiction over all cases enumerated under Section 5 of PD 902-A is transferred to the

appropriate Regional Trial Court but shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of June 30, 2000 until finally disposed.

[27] Sec. 3 of PD 902-A provides that the SEC shall have "absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchises and/ or license or permit issued by the government to operate in the Philippines;" The SRC retained said power of the SEC over corporations. Paragraph (a) of Sec. 5 of said law provides that the SEC has jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/ or license or permit issued by the Government.

[28] G.R. No. 145977 Rollo at 32-47.

[29] E. PARAS, IV RULES OF COURT ANNOTATED, 3rd edition at 59 citing Graham on Evidence, 1986 edition; Cited in Republic vs. Court of Appeals, 277 SCRA 633, 641 (1997).

[30] Cielo vs. NLRC, 193 SCRA 410, 418 (1991).

[31] Jaka Food Processing Corporation vs. Darwin Pacot, Robert Parohinog, David Bisnar, Marlon Domingo, Rhoel Lescano and Jonathan Cagabcab, G.R. No. 151378, March 28, 2005. Vide Agabon vs. National Labor Relations Commission, G.R. No. 158693, November 17, 2004.

[32] Rubberworld (Phils.), Inc. vs. NLRC, 305 SCRA 721, 729-730 (1999).

[33] Pres. Decree No. 902-A (1976), sec. 6.