SUPREME COURT
FIRST DIVISION

EDGE APPAREL, INC.,
***Petitioner*,**

-versus-

G.R. No. 121314
February 12, 1998

NATIONAL LABOR RELATIONS COMMISSION, Fourth Division, Cebu City; Regional Arbitration Branch No. 7, Cebu City; and JOSEPHINE ANTIPUESTO, NORINA ANDO, JULIET BAGUIO, APOLINARIA VELONTA, CORAZON PINO, and JOSEPHINE CAÑETE,
***Respondents*.**
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D E C I S I O N

VITUG, *J.*:

Pursuing its retrenchment program, petitioner Edge Apparel, Inc., dismissed private respondents Josephine Antipuesto, Norina Ando, Juliet Baguio, Apolinaria Velonta, Corazon Pino and Josephine Cañete from employment effective 03 September 1992. Feeling aggrieved, Antipuesto, et al., consulted with the Regional Director of the Department of Labor and Employment ("DOLE") who opined that it would be best for them to receive the separation pay being offered by the corporation. His advice was heeded. The subsequent receipt of their separation pay benefits, nevertheless, did not deter Antipuesto, et al., from later going through with their complaint for illegal dismissal against the corporation. The charge averred that the retrenchment program was a mere subterfuge used by Edge Apparel to give a semblance of regularity and validity to the dismissal of the complainants.

Edge Apparel countered that its financial obligations, amounting to about P8 Million, had begun to eat up most of its capital outlay and resulted in unabated losses of P681,280.00 in 1989, P262,741.00 in 1990, P162,170.00 in 1991 and P749,294.00 in 1992, constraining the company to adopt and implement a retrenchment program.

Satisfied with the legality of the retrenchment program, Labor Arbiter Nicasio C. Aniñon, on 20 June 1994, dismissed the complaint of Antipuesto, et al., against Edge Apparel.

Antipuesto, et al., appealed the decision of the Labor Arbiter to the National Labor Relations Commission ("NLRC"). In their appeal, Antipuesto, et al., claimed that the documents submitted by Edge Apparel to demonstrate its alleged losses had been "bloated" so as to reflect financial losses.

In its decision, promulgated on 26 April 1995, the NLRC held:

> "There is therefore basis in the retrenchment of these 27 workers.
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> "We note however that these 27 workers were assigned to row #8 of the sewing line for simple garments which was phased out due in fact to the dropping of this particular line of business.

"'Termination of an employee's services because of a reduction of work force due to a decrease in the scope or volume of work of the employer is synonymous to, or a shade of termination because of redundancy under Article 283 (formerly 284) of the Labor Code. Redundancy exist where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. (Tierra International Construction Corporation vs. NLRC, 77 SCRA Vol. 211)'

"In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to at least one (1) month pay or to at least one month pay for every year of service, which ever is higher. (Art. 283, Labor Code).

"Under the circumstances obtaining in this case, the termination of the 27 retrenched employees is considered a redundancy. Hence, the complainants, who were already paid the separation pay equivalent to ½ month pay per year of service, are entitled to be paid the additional separation pay equivalent to ½ month pay for every year of service.

"WHEREFORE, the respondents are ordered to pay the complainants an additional separation pay equivalent to ½ month pay for every year of service. The Decision of the Labor Arbiter is AFFIRMED in all other respects.

"SO ORDERED."[1]

Edge Apparel filed a motion for a partial reconsideration of the above decision insofar as it awarded "an additional separation pay equivalent to ½ month pay for every year of service" to the complainants. In a resolution, dated 21 June 1995, the NLRC denied the motion; thus:

> "From the foregoing, it can clearly be gleaned that row #8 in which complainants were employed, was phased out because respondent Company's 'buyers had already ceased its orders for simple style garments.' This is similar to 'dropping of a particular product line' or a 'decrease in the volume of business,' two (2) of the reasons which justify the classification of positions as redundant, as ruled in Tierra-International Construction Corporation vs. NLRC, 77 SCRA 211, cited in Our decision.
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> "Although the phasing out of row #8 was also caused by financial and business losses of respondent company, the real and proximate cause thereof was the cessation of orders from respondent Company's buyers.
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> "We, therefore, rule, as We did in Our Decision, that the cause of termination of the employment of the complainants was redundancy.
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> "WHEREFORE, the Motion for Reconsideration of respondent is hereby DENIED, for lack of merit."[2]

In its instant petition for *certiorari* and prohibition, Edge Apparel argues that —

> "RESPONDENT NLRC'S AWARD TO PRIVATE RESPONDENTS OF 'ADDITIONAL SEPARATION PAY' IS CONTRARY TO THE DOCTRINE LAID DOWN BY THIS HONORABLE COURT IN THE FACTUALLY-SIMILAR CASE OF CAFFCO INTERNATIONAL LIMITED VS. OFFICE OF THE MINISTER-MINISTRY OF LABOR AND EMPLOYMENT."[3]

The employer has a right to dismiss employees for valid causes after proper observance of due process.[4] These valid causes are categorized into two groups, i.e., " just" causes under Article 282 of the Labor Code and "authorized" causes under Articles 283 and 284 of the same code.

The just causes for termination of employment, enumerated in Article 282, include —

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative relative to his work;[5]

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;[6]

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;[7] and

(e) Other causes analogous to the foregoing.

An employee who is terminated from employment for a just cause is not entitled to payment of separation benefits.[8] Section 7, Rule I, Book VI, of the Omnibus Rules Implementing the Labor Code provides, thus:

> "Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice."

Article 283, in turn, specifies the authorized causes for the termination of employment, viz.:

(a) installation of labor-saving devices;

(b) redundancy;

(c) retrenchment to prevent losses; and

(d) closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of law.[9]

In addition, Article 284 provides that an employer would be authorized to terminate the services of an employee found to be suffering from any disease if the employee's continued employment is prohibited by law or is prejudicial to his health or to the health of his fellow employees.

The installation of labor-saving devices contemplates the installation of machinery to effect economy and efficiency in its method of production.[10]

Redundancy exists where the services of an employee are in excess of what would reasonably be demanded by the actual requirements of the enterprise.[11] A position is redundant when it is superfluous, and superfluity of a position or positions could be the result of a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise.[12] An employer has no legal obligation to keep on the payroll employees more than the number needed for the operation of the business.[13]

Retrenchment, in contrast to redundancy, is an economic ground to reduce the number of employees. In order to be justified, the termination of employment by reason of retrenchment must be due to business losses or reverses which are serious, actual and real.[14] Not every loss incurred or expected to be incurred by the employer will justify retrenchment,[15] since, in the nature of things, the possibility of incurring losses is constantly present, in greater or lesser degree, in carrying on the business operations.[16] Retrenchment is normally resorted to by management during periods of business reverses and economic difficulties occasioned by such events as recession, industrial depression, or seasonal fluctuations.[17] It is an act of the employer of reducing the work force because of losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business.[18] Retrenchment is, in many ways, a measure

of last resort when other less drastic means have been tried and found to be inadequate.[19] A lull caused by lack of orders or shortage of materials must be of such nature as would severely affect the continued business operations of the employer to the detriment of all and sundry if not properly addressed. The institution of "new methods or more efficient machinery, or of automation" is technically a ground for termination of employment by reason of installation of labor-saving devices but where the introduction of these methods is resorted to not merely to effect greater efficiency in the operations of the business but principally because of serious business reverses and to avert further losses, the device could then verily be considered one of retrenchment.

The payment of separation pay would be due when a dismissal is on account of an authorized cause. The amount of separation pay depends on the ground for the termination of employment. A dismissal due to the installation of labor saving devices, redundancy (Article 283) or disease (Article 284), entitles the worker to a separation pay equivalent to "one (1) month pay or at least one (1) month pay for every year of service, whichever is higher." When the termination of employment is due to retrenchment to prevent losses, or to closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay is only an equivalent of "one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher." In the above instances, a fraction of at least six (6) months is considered as one (1) whole year.

In this case, the Labor Arbiter and the NLRC both concluded that there had been a valid ground for the retrenchment of private respondents. The documents presented in evidence were found to "conclusively show that (petitioner) suffered serious financial losses."[20] The general standards or elements needed for the retrenchment to be valid — i.e., that the losses expected are substantial and not merely de minimis in extent; that the expected losses are reasonably imminent such as can be perceived objectively and in good faith by the employer; that the retrenchment is reasonably necessary and likely to effectively prevent the expected losses; and that the imminent losses sought to be forestalled are substantiated[21] — were adequately shown in the present case. The

findings of the Labor Arbiter and the NLRC would negate any impression that petitioner was guilty of bad faith or misdoing in its retrenchment policy; the NLRC stated:

> "The complainants questioned the firm's financial statements which were made the bases to support the validity of the retrenchment. The complainants pointed out in their appeal that while the gross profit on sales increased by about 26% in 1989, expenses on representation and entertainment increased by 45.65% in 1989. These expenses were manipulated, according to the complainants, to justify the retrenchment of these 27 employees.
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> "A perusal of the financial statements show that the company incurred recreation and entertainment expenses as follows: 1988 - P385,711; 1989 - P561,816; 1990 - P261,120; 1991 - P327,081; and 1992 - P374,290 for a total of P1,910,018 in five (5) years or at an average of P382,003.60 per year.
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> "These 27 retrenched employees received a daily wage of P105 in 1992. Multiplying this daily wage by 314 days will result in a yearly income of P32,970 per retrenched worker. To retain the services of these 27 workers would cost the company P964,372.50 per annum just to pay their basic wages & 13th month pay.
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> "It is therefore very clear, that the deletion of this annual entertainment & representation expense of P382,003.60 and reallocate it for the budget on salaries and wages would not be sufficient to pay the salaries of the 27 retrenched workers amounting to P964,372.50 as of 1992."[22]

Procedurally, in order to validly effect retrenchment, the employer must observe two other requirements, viz.: (a) service of a prior written notice of at least one month on the workers and the Department of Labor and Employment, and (b) payment of the due separation pay.[23] In the decision of Labor Arbiter Nicasio C. Aniñon, affirmed by the NLRC, petitioner has been found to have complied with the above requirements of the law, including the payment of separation pay equivalent to at least one month pay or to one-half

(½) month pay for every year of service, whichever is higher, with a fraction of at least six months being considered one whole year.[24]

The NLRC, unfortunately, went further by holding that the dismissal of private respondents could likewise be considered to have been occasioned by redundancy since it was only private respondents' line of work which was phased out by petitioner.

The Court agrees with the Solicitor General that here the NLRC has gravely abused its discretion. The law acknowledges the right of every business entity to reduce its work force if such measure is made necessary or compelled by economic factors that would otherwise endanger its stability or existence.[25] In exercising its right to retrench employees, the firm may choose to close all, or a part of, its business to avoid further losses or mitigate expenses.[26] In Caffco International Limited vs. Office of the Minister-Ministry of Labor and Employment,[27] the Court has aptly observed that —

> "Business enterprises today are faced with the pressures of economic recession, stiff competition, and labor unrest. Thus, businessmen are always pressured to adopt certain changes and programs in order to enhance their profits and protect their investments. Such changes may take various forms. Management may even choose to close a branch, a department, a plant, or a shop (Phil. Engineering Corp. vs. CIR, 41 SCRA 89 [1971])."[28]

Clearly, the fact alone that a mere portion of the business of an employer, not the whole of it, is shut down does not necessarily remove that measure from the ambit of the term "retrenchment" within the meaning of Section 283(c) of the Labor Code.

The Court, accordingly, must sustain the position taken by the Labor Arbiter that private respondents should only be entitled to severance compensation equivalent to one-half (½) month pay for every year of service.

WHEREFORE, the appealed Decision, promulgated on 26 April 1995, is **MODIFIED** by deleting the additional award of separation pay to private respondents decreed by the NLRC. No costs.

SO ORDERED.

Davide, Jr., *C.J., (Chairman),* Bellosillo, Panganiban and Quisumbing, *JJ.*, concur.

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[1] Rollo, pp. 19-20.
[2] Rollo, p. 24.
[3] Rollo, p. 7.
[4] Sec. 1, Rule XIV, Book V, Omnibus Rules Implementing The Labor Code.
[5] The misconduct committed by the employee must not only be serious but must be related to the performance of the duties of the employee such as would show him to be thereby unfit to continue working for the employer (Aris Philippines, Inc., vs. NLRC, 238 SCRA 59.).
The employee's willful violation of any order, regulation or instruction of his employer and his representative would constitute a ground for termination of employment. The employer's order, however, must be lawful, reasonable and in connection with the duties of the employee who must be sufficiently apprised of the rules and regulations sought to be enforced.
[6] Employers are given wide latitude of discretion in terminating employees for lack of trust and confidence; however, being subjective, this ground requires adequate factual basis to support it (See San Antonio vs. NLRC, et al., 250 SCRA 359.).
[7] As a cause for termination of employment, commission of a crime or offense by the employee against the person of his employer or any of immediate member of the family, or the duly authorized representative of the latter, need not be coupled with conviction. The dropping of the charges by the fiscal (Starlite Plastic Industrial Corp. vs. NLRC, 171 SCRA 315) or the acquittal of the employee (Mercury Drug Corporation vs. NLRC, 177 SCRA 580) would not necessarily negate the existence of lack of trust and confidence as a ground for dismissal.
[8] See San Miguel Corporation vs. NLRC, 255 SCRA 580.
[9] The closing or cessation of operation of the establishment or undertaking must be sufficiently justified by the employer.
[10] See Phil. Sheet Metal Workers' Union vs. Court of Industrial Relations, 83 Phil. 453.
[11] Wiltshire File Co., Inc., vs. NLRC, 193 SCRA 665; AG & P United Rank and File Association vs. NLRC, 265 SCRA 159.
[12] American Home Assurance Co. vs. NLRC, 259 SCRA 280.
[13] Wiltshire File Co., Inc., vs. NLRC, supra.
[14] Guerrero vs. NLRC, 261 SCRA 301.
[15] Ibid.
[16] San Miguel Jeepney Service vs. NLRC, 265 SCRA 35.

[17] See Sebuguero vs. NLRC, 248 SCRA 532, citing Jose Agaton Sibal, Philippine Legal Encyclopedia, 502.
[18] Ibid., citing LVN Pictures Employees and Workers Association vs. LVN Pictures, Inc., 35 SCRA 147 and Columbia Development Corp. vs. Minister of Labor and Employment, 146 SCRA 421.
[19] Guerrero vs. NLRC, supra.
[20] Rollo, p. 30.
[21] Lopez Sugar Corporation vs. Federation of Free Workers, Philippine Labor Union Association (PLUA-NACUSIP) and NLRC, 189 SCRA 179.
[22] Rollo, pp. 18-19.
[23] Catatista vs. NLRC, 247 SCRA 46.
[24] Rollo, p. 30.
[25] Balbalec vs. NLRC, 251 SCRA 398.
[26] Catatista vs. NLRC, supra.
[27] 212 SCRA 351.
[28] At p. 356.