SUPREME COURT
SECOND DIVISION

VENANCIO GUERRERO, NORBERTO H. ESCULLAR, JOAQUIN C. SAMSON, EMERITO C. DORADO, IRENEO CONSIGNADO, RUPERTO REFRACCIO, ANTONIO FIESTA, JOSE M CAGUICLA, AMADO SALONGA, CONSTANCIO AMBRAD, ROLANDO N. ABENIO, ROGELIO E. ABENIO ROMELITO M. ARIZOBAL, TEODORO M. CAAMOAN, JR.,

***Petitioners*,**

-versus-

G.R. No. 119842
August 30, 1996

NATIONAL LABOR RELATIONS COMMISSION, R.O.H. AUTO PRODUCTS PHILS., INC. and GOEFF KEMP,

***Respondents*.**

x----------x

D E C I S I O N

PUNO, *J.*:

This is an Original Action for *Certiorari* under Rule 65 of the Revised Rules of Court to annul the Decision of respondent National Labor Relations Commission (NLRC)[1] dismissing petitioners' complaints for illegal dismissal against R.O.H Auto Products Phils., Inc. and its president, Goeff Kemp.

The petitioners are former employees of respondent R.O.H. Auto Products Phils., Inc., a corporation engaged in the manufacture of automotive steel wheels.

On March 24, 1992, members of the union in respondent company went on strike. The petitioners, however, did not participate in the strike.

Respondent company allegedly sustained huge losses as the strike virtually paralyzed its operations. To prevent further losses, respondent proposed on April 22, 1992 to the non-striking employees a "financial assistance" in exchange for their resignation. Respondent company, nevertheless, assured them priority in hiring when positions of equal stature and compensation become available.

On April 24, 1992, the petitioners availed of respondent company's offer. They signed individual Quitclaim and Release deeds upon receipt of their separation pay.

On May 3, 1992, the strike ended. The operations in respondent company resumed and all the striking employees returned to their posts. The petitioners offered to re-assume their former positions but respondent company refused to admit them. They filed separate complaints for illegal dismissal.

In a consolidated Decision dated June 29, 1993, Labor Arbiter Geobel A. Bartolabac dismissed the complaints for lack of merit, viz.:

> WHEREFORE, premises considered, the above-entitled cases are now hereby dismissed for lack of merit.
>
> Respondents (sic) R.O.H. Auto Products Phils. Inc. is, however, ordered to pay each complainant an additional financial assistance equivalent to their one month salary.[2]

This was affirmed by the NLRC in its Decision dated March 10, 1995.[3]

Hence, this petition.

The issue is whether petitioners were illegally dismissed.

We rule in the affirmative.

The law gives an employer the right to terminate the services of its employees to obviate or to minimize business losses. This right, however, may not be exercised arbitrarily or whimsically. Article 283 of the Labor Code lays down the conditions for the exercise of such rights, thus:

> Art. 283. Closure of establishment and reduction or 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 termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of

> service, whichever is higher. A fraction of at least six (6) months shall be a considered one (1) whole year. (Emphasis supplied)

The requisites for valid retrenchment under the foregoing provision are:

> (1) necessity of the retrenchment to prevent losses and proof of such losses;
>
> (2) written notice to the employees and to the Department of Labor and Employment at least one per month prior to the intended date of retrenchment; and
>
> (3) payment of separation pay equivalent to one month pay or at least ½ month pay for every year or service, whichever is higher.[4]

Considering the circumstances in the case at bar, we find that respondent company did not satisfy the legal requirements for valid retrenchment.

First, respondent company did not present sufficient evidence to prove the extent of its losses. To justify the employees' termination of service, the losses must be serious, actual and real, and they must be supported by sufficient and convincing evidence.[5] The burden of proof rests on the employer.[6] Respondent company alleged that the strike paralyzed its operations and resulted in the withdrawal of its clients' orders. Respondent company, however, failed to prove its claim with competent evidence which would show that it was indeed suffering from business losses so serious as would necessitate retrenchment or reduction of personnel.[7] As we held in Lopez Sugar Corporation vs. Federation of Free Workers:[8]

> Lastly but certainly not the least important, alleged losses if already realized, and the expected imminent losses sough to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting, standard of proof would render too easy the abuse of this ground for termination of

services of employees. In Garcia vs. National Labor Relations Commission, the Court said:

> But it is essentially required that the alleged losses in business operations must be prove[n]. Otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures in order to ease out employees.
>
> We reject respondent company's contention that it was not necessary to present proof of severity of the losses it sustained since petitioners were aware of the strike and its adverse effects on the company's operations. The rule is that not every loss incurred or expected to be incurred by a company will justify retrenchment. The losses must be substantial and the retrenchment must be reasonably necessary to avert such losses.[9]

Second, respondent company failed to prove that retrenchment was necessary to prevent further losses. There is no showing in this case that respondent company has taken other measures to abate the losses it sustained because of the strike. Retrenchment must be exercised only as at last resort, considering that it will lead to the loss of the employees' livelihood. Retrenchment is justified only when all other less drastic means have been tried and found insufficient.[10]

Respondent company did not also follow the proper procedure for retrenchment under Article 283. It did not give written notices to both the petitioners and the Department of Labor and Employment at least one (1) month prior to the retrenchment. Its purpose is to enable the proper authorities to ascertain whether retrenchment is being done in good faith and is not just a pretext for evading compliance with the just obligations of the employer to the affected employees.[11] This requirement is mandatory[12] as it is intended to protect the workers' right to security of tenure. The payment of "one (1) month salary in lieu of the notice" which was included in petitioners' separation pay cannot be considered as sufficient compliance with the requirement of the law.[13]

Finally, petitioners' availment of the "financial assistance" given by respondent company did not estop them from questioning the legality of their separation from the company. When respondent company made the offer, petitioners were made to believe that the company would cease to operate for an indefinite period of time. Hence, petitioners were constrained to accept whatever relief the respondent company offered at that time. In De Leon vs. NLRC,[14] we held that "employees who receive their separation pay are not barred from contesting the legality of their dismissal. The acceptance of those benefits (will) not amount to estoppel."

IN VIEW WHEREOF, the assailed Decision is **REVERSED** and **SET ASIDE**. Respondents R.O.H. Auto Products Phils., Inc . and Goeff Kemp are hereby ordered to **REINSTATE** the petitioners without loss of seniority rights and will full backwages minus the amount received by them as "financial assistance" upon their separation.[15] No costs.

SO ORDERED.

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

---

[1] Annex "A" of Petition; Rollo, pp. 20-27.
[2] Rollo, p. 37.
[3] Rollo, pp. 26-27.
[4] Sebugero vs. NLRC, 248 SCRA 532 (1995).
[5] Philippine School of Business Administration vs. NLRC, 223 SCRA 305 (1993); Balasbas vs. NLRC, 212 SCRA 803 (1992); Villena vs. NLRC, 193 SCRA 686 (1991); Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179 (1990).
[6] Revidad vs. NLRC, 245 SCRA 356 (1995).
[7] Balasbas vs. NLRC, 212 SCRA 803 (1992); Precision Electronics Corp. vs. NLRC, 178 SCRA 667 (1989).
[8] 189 SCRA 179 (1990).
[9] Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179 (1990).
[10] Radio Communications of the Phils. Inc. vs. NLRC, 210 SCRA 222 (1992); Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179 (1990).
[11] Revidad vs. NLRC, 245 SCRA 356 (1995).

[12] Union of Filipino Workers (UFW) vs. NLRC, 221 SCRA 267 (1993); Radio Communications of the Phils., Inc. vs. NLRC, 210 SCRA 222 (1992); AHS/Philippines Employees Union (FFW) vs. NLRC, 149 SCRA 5 (1987).
[13] Union of Filipino Workers (UFW) vs. NLRC, 221 SCRA 267 (1993); AHS/Philippine Employees Union (FFW) vs. NLRC, 149 SCRA 5 (1987).
[14] 100 SCRA 691 (1980).
[15] See De Leon vs. NLRC, 100 SCRA 691 (1980).