SUPREME COURT
THIRD DIVISION

TAGGAT INDUSTRIES, INC.,
***Petitioner*,**

-versus-

G.R. No. 120971
March 10, 1999

THE NATIONAL LABOR RELATIONS COMMISSION and ANTONIO E. JACILDO,
***Respondents*.**
x----------x

D E C I S I O N

PURISIMA, *J.*:

In this Special Civil Action for *Certiorari*, petitioner seeks the annulment of the Decision,[1] dated April 20, 1995, of the National Labor Relations Commission in NLRC Case No. RAB II CN 05-00232-93, NLRC NCR C.A. No. 008214-95, which set aside the Decision[2] of Labor Arbiter Ricardo N. Olairez, and the Resolution,[3] dated June 2, 1995, denying petitioner's motion for reconsideration dated May 26, 1995.

TAGGAT INDUSTRIES, INC., (TAGGAT) was engaged in logging business with Timber License Agreement ("TLA") No. 71.

Since April 2, 1986, TAGGAT has been under the control and supervision of the Presidential Commission on Good Government (PCGG) by virtue of a sequestration order.[4]

On November 10, 1986, Honorable Ernesto M. Maceda, the then Minister of Natural Resources, ordered the cancellation of TAGGAT'S "TLA" No. 71 in MNR Case No. 6556, which cancellation has not been lifted. Thereafter, the Department of Environment and Natural Resources prohibited TAGGAT from cutting, felling and gathering timber from its concession area.

TAGGAT claims that it suffered serious business losses and financial reverses during its last year of operation in 1986 and 1987 as shown by its financial statements[5] for those years (Annex "B" of petitioner's position paper in RAB II CN. 05-00232-93). Its business losses and financial reverses were aggravated by the foreclosure of its mortgaged assets and properties by the Philippine National Bank which, in turn, transferred its rights thereto and interests therein to the Asset Privatization Trust.

In March, 1959, private respondent Antonio E. Jacildo was first employed by TAGGAT as a motor pool superintendent and was one of the managerial employees it retained to help protect the business assets and equipment of TAGGAT, after the prohibition issued by DENR against it.

On October 15, 1991, after a period of more than 32 years, he was verbally informed that his services were no longer needed. Private respondent immediately objected to such verbal order terminating his services, pointing out that he never committed any infraction of law or company rules and regulations to warrant his dismissal. Nonetheless, TAGGAT refused to reconsider its decision to terminate the services of private respondent. From then on, the private respondent demanded from petitioner that at least, he be given his backwages, differential on his sick leave, vacation pay, separation pay, and his retirement benefits but the petitioner refused to grant private respondent's yearnings.

According to petitioner, the private respondent abandoned his work as of October 15, 1991, after the former asked the latter to prepare an

inventory of, and to turnover, all his accountabilities, which inventory indicated that on May 7, 1991, the private respondent sold a D-8 Caterpillar tractor of the company worth P1,500,000.00, to a certain Resty Cunanan without any authority; that the private respondent did not return to the company after he was confronted with the alleged illegal sale of said tractor, and only after almost two (2) years from the confrontation, did private respondent lodge his complaint for illegal dismissal.

As earlier alluded to, the private respondent presented his complaint[6] before the Arbitration Branch NLRC RAB II CN 05-0023293, originally, for illegal dismissal and non-payment of separation pay and retirement benefits. But, he later amended the complaint by including therein non-payment of wages, sick leave and vacation pay, from July 16, 1988 to October 15, 1991.[7]

After the position papers were submitted and despite the fact that there were many factual issues to be resolved, the Arbitration Branch, without conducting any hearing, came out with its decision of November 29, 1994; disposing as follows:

> "WHEREFORE, with all the foregoing considerations, judgment is hereby rendered dismissing the above-entitled case for lack of merit. All other claims are hereby dismissed.
>
> SO ORDERED."

Deciding favorably for the petitioner, Labor Arbiter Ricardo E. Olairez held that no separation benefit was forthcoming to the private respondent, the applicable law being Article 238 of the Labor Code, as amended, which provides:

> "In case of retrenchment to prevent losses and in case 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 considered one (1) whole year."

Citing settled jurisprudence,[8] the Labor Arbiter agreed with petitioner that the latter suffered business losses and therefore is not required to grant any separation pay.

From the Decision of the Arbitration Branch, private respondent gave a Notice of Appeal.[9] His appeal was then elevated to the NLRC. But during the pendency of his appeal, the private respondent died. He was then substituted by his heirs.[10]

The NLRC reversed the decision of the Labor Arbiter, disposing thus:

> "WHEREFORE, the decision appealed from is hereby set aside and new one entered ordering respondent Taggat Industries, Inc., to pay the heirs of the depressed complainant Antonio E. Jacildo the amount of PESOS ONE HUNDRED EIGHTY ONE THOUSAND FIVE HUNDRED (P181,500.000) as and for separation benefits.
>
> SO ORDERED."

Petitioner's motion for reconsideration[11] was denied by public respondent's Resolution of June 2, 1995.

Undaunted, petitioner found its way to this court via the special civil action for *certiorari* under consideration, contending that the NLRC palpably erred and acted with grave abuse of discretion in reversing the decision of the Labor Arbiter.

The Solicitor General sent in his Comment[12] in favor of the findings of the NLRC. On the other hand, in its Reply to Comment on Petition, petitioner insisted that the private respondent abandoned his work and there was no illegal dismissal to speak of, as the private respondent did not anymore report for work after he was confronted with the unauthorized and illegal sale of a company equipment.

Petitioner, by way of assignment of errors, theorizes that:

I

THE NLRC GRIEVOUSLY ERRED AND ABUSED ITS DISCRETION IN HOLDING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED.

II

THE NLRC GRIEVOUSLY ERRED AND ABUSED ITS DISCRETION IN NOT RESOLVING THAT PRIVATE RESPONDENT ABANDONED HIS WORK.

III

THAT NLRC GRIEVOUSLY ERRED AND ABUSED ITS DISCRETION IN ORDERING PETITIONER TO PAY PRIVATE RESPONDENT'S HEIRS SEPARATION BENEFITS.

Before passing upon the assigned errors, it is worthy to note that the decision of the Arbitration Branch, dated November 29, 1994, did not resolve on the issue of abandonment of work by the private respondent. Instead, it placed reliance on petitioner's retrenchment due to business losses. Petitioner never questioned such finding of retrenchment by the Labor Arbiter. It was the private respondent who appealed such decision, raising as an error the finding that he was terminated due to business losses. This lapse on the part of petitioner is procedurally fatal. Petitioner cannot now at this very late hour, assign as an error the decision of the NLRC on the matter of abandonment and/or serious misconduct.

The assigned errors have thus been simplified, such that the pivot of inquiry at bar is whether the NLRC gravely abused its discretion in reversing the finding of the Labor Arbiter that the private respondent, Antonio E. Jacildo, was illegally dismissed.

We resolve the issue in the negative. NLRC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction, under the premises. Its findings are well anchored on the evidence and it acted upon and resolved the dispute after a thorough examination and evaluation of the facts and evidence proffered by the disputants.

As was said in Villa-Rey Transit, Inc. vs. Belo, et al.[13] not every ascribed error in a proceeding is abuse of discretion. Before abuse of discretion can be imputed, the same must be too patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined, or to act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.[14] Verily, it does not necessarily follow that just because there is a reversal by the NLRC of the decision of the Labor Arbiter, grave abuse of discretion was attendant. Neither does the mere variance in the assessment of evidence by the NLRC and that of the Labor Arbiter called for another full review of the facts.[15]

As aptly stressed by the Solicitor General, the public respondent acted correctly in ruling that there was illegal dismissal as no just cause was shown for the retrenchment and removal of the private respondent.

Records show that while sufficient evidence of its business losses was submitted by the petitioner, per its financial statements for the period 1986 to December 31, 1987, the same is belied by the fact that the private respondent remained employed by petitioner until October 15, 1991, more than four (4) years since the company declared losses in 1987. Indeed, if there was any truth that the company was reeling from business reverses, it should have retrenched the private respondent as soon as the business losses became evident.

Another thing that is militative against the petitioner is the absence of evidence to show that the petitioner, if losses were truly incurred by it, undertook a retrenchment program among its employees. It took petitioner time to inform its employees, including the herein private respondent, of its course of action. Records on hand are bereft of any indication that the private respondent was ever sent a notice of retrenchment. Absent such a requirement, any action taken would necessarily be tainted with illegality or arbitrariness. Of course, the Court is mindful of the settled rule that retrenchment is one of the economic grounds resorted to by employers to dismiss employees and is recognized by Article 283 of the Labor Code, as amended.[16] However, that carries a concomitant duty on the part of the employers to justify the same,[17] and the law requires no less, since what is at stake is not only the employees' right to his position but

also his means of livelihood.[18] Every dismissal on the ground of retrenchment must therefore satisfy all the following requirements, to wit: (a) necessity of the retrenchment to prevent losses and proof of such losses, (b) written notice to the employees at least one month prior to the intended date of retrenchment, and (c) payment of separation pay equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher.[19]

In the case under scrutiny, the said requirements of law were not complied with and never observed by the simple expedient of giving verbal notice to the private respondent that his services were no longer needed.

WHEREFORE, the Petition is **DISMISSED** and the Decision of the NLRC in NLRC Case No. RAB II CN 05-00232-93, NLRC NCR CA No. 008214-95 **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Romero, Vitug, Panganiban and Gonzaga-Reyes, *JJ.*, concur.

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[1] Rollo, pp. 21-27, per Commissioner Rogelio I. Rayala, with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay concurring.
[2] Id., pp. 125-128.
[3] Id., p. 28.
[4] Id., pp. 29-30.
[5] Id., pp. 60-69.
[6] Id., pp. 31-32.
[7] Id., pp. 70-77.
[8] LVN Pictures Employees vs. LVN Pictures, 35 SCRA 15; Employees and Labor's Cooperatives vs. National Union of Restaurant, Co., and Garcia, 18 SCRA 107.
[9] Rollo, pp. 129-137.
[10] Id., pp. 142-143.
[11] Id., pp. 144-151.
[12] Id., pp. 198-209.
[13] 7 SCRA 735.
[14] Chua Huat vs. Court of Appeals, 199 SCRA 18.

[15] Villareal vs. The NLRC and Narciso Ovarino, G.R. No. 120180, January 20, 1998.
[16] Precision Electronics Corporation vs. NLRC, G.R. No. 86657, October 23, 1989.
[17] Id.
[18] Rance, et al. vs. NLRC, G.R. No. 68147, June 10, 1988.
[19] Guerrero vs. NLRC, 261 SCRA 301.