**SUPREME COURT**
**THIRD DIVISION**

**PRUDENCIO J. TANJUAN,**
***Petitioner*,**

***-versus-***

**G.R. No. 155278**
**September 16, 2003**

**PHILIPPINE POSTAL SAVINGS BANK, INC.; PEDRITO TORRES; and CHAIRMAN and MEMBERS OF THE BOARD,**
***Respondents*.**
**x----------x**

## D E C I S I O N

**PANGANIBAN, *J.*:**

Well-settled is the rule that technical rules of procedure shall not be strictly applied in labor cases. Pursuant to this policy, employers may, on cogent grounds, be allowed to present, even on appeal, evidence of business losses to justify the retrenchment of workers.

## The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the May 28, 2002 Decision[2] and September 12,

2002 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 67233. The CA disposed as follows:

> "WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. Consequently, the Resolution dated August 31, 2001 issued by the National Labor Relations Commission in CA No. 026604-00/NCR-30-11-00567-99 is hereby AFFIRMED with MODIFICATION in the sense that in the event petitioner Prudencio J. Tanjuan is absolved from any liability arising from the act or omission complained of in OMB-0-98-2342 filed before the Office of the Ombudsman, respondent Philippine Postal Savings Bank, Inc. is hereby ordered to promptly release his separation pay, after the usual clearance/s as required by law."[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

## The Facts

The CA narrated the facts as follows:

> "Petitioner Prudencio J. Tanjuan (petitioner for brevity) was employed by respondent Philippine Postal Savings Bank, Inc. (respondent PPSBI for brevity), a government financing institution and a subsidiary of the Philippine Postal Corporation (Philpost), as Property Appraisal Specialist and Officer-in-Charge of its Credit Supervision and Control Department. At the time material to this case, he was on his fourth year of service.
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> "On November 13, 1998, respondent Pedrito Torres (respondent Torres for brevity), PPSBI's President and Chief Executive Officer, issued Memorandum 145-98 addressed to petitioner and five (5) other employees belonging to its Accounts Management Department and Credit Supervision and Control Department charging them with negligence in the performance of duties and misrepresentation in violation of Article VI, Sections 2 (d) and 3 (d) of the bank's rules and

regulations for approving the applications for loan of Corinthian de Tagaytay and Clavecilla Marine Service. They were given five (5) days within which to submit their written explanations otherwise they shall be considered to have waived the filing of the same.

"On November 27, 1998, petitioner submitted his written explanation alleging that he merely reviewed and validated the findings of the Property Appraiser.

"On January 11, 1999, OP Order No. 003-99 was issued by respondent Torres to petitioner informing him of his preventive suspension for a period of ninety (90) days in view of the pending administrative investigation against him. The next day, petitioner, represented by counsel, wrote respondent Torres asking for the lifting of the order of preventive suspension on the ground that pursuant to Secs. 24 and 36 of The Ombudsman Act of 1989 (R.A. No. 6770), only the Ombudsman may preventively order his suspension. Respondent Torres, on January 14, 1999, replied that the preventive suspension was an internal decision of respondent PPSBI in connection with the pending administrative case against petitioner and not pursuant to any complaint filed with the Office of the Ombudsman. Moreover, being a subsidiary of a government-owned and controlled corporation with [an] original charter, the pertinent civil service rules and regulations are not applicable to respondent PPSBI.

"In riposte, petitioner countered that his preventive suspension should therefore not exceed thirty (30) days in accordance with the provisions of the Labor Code, as amended.

"As a result of petitioner's manifestation, on February 1, 1999, respondent Torres issued OP Order No. 011-99 ordering the amendment of the order of preventive suspension against the former from ninety (90) days to thirty (30) days. Consequently, petitioner's suspension would only be up to February 11, 1999, after which he could already report back to work.

"On April 27, 1999, the Board of Directors of respondent PPSBI issued Board Resolution No. 99-14 approving the bank's reorganization via retrenchment of employees and re-alignment of functions and positions for the purpose of preventing further serious losses. In furtherance of the Board's decision, a letter dated July 15, 1999 was released by respondent Torres addressed to all employees of respondent PPSBI, informing them of the impending reorganization and enjoining them to apply for their desired plantilla positions under the new organizational set-up not later than July 20, 1999, otherwise they shall not be included in the selection process and shall be deemed to have opted to be separated instead. Petitioner did not apply for any position in the new organizational set-up.

"On October 5, 1999, petitioner received a Notice of Termination dated October 4, 1999 informing him that pursuant to respondent PPSBI's adoption of a new organizational structure under Board Resolution No. 99-14, his employment therewith shall cease [at] the close of office hours on November 4, 1999 or thirty (30) calendar days from date of receipt of the notice on the ground of abolition of position. The Department of Labor and Employment was likewise seasonably notified prior to the effectivity date of petitioner's termination as required by law. However, the release of his separation pay of one and a half (1 1/2) months salary for every year of service was withheld in view of the pendency of a criminal case against him with the Office of the Ombudsman for alleged irregularities in the granting of loans for which he could likewise be held pecuniarily liable.

"Displeased with his termination, petitioner filed a complaint for illegal dismissal with money claims against respondent on November 15, 1999.

"Petitioner alleged that there was no just or authorized cause to warrant his termination from service and that the procedural requirements as mandated by law were not complied with. He pointed out that no other measures were first taken before resort to retrenchment or any other mode of reducing personnel was made. Moreover, respondents were guilty of bad faith in

terminating its employees considering that despite the retrenchment, new positions were created for which they were invited to apply.

"In refutation, respondents averred that in view of the dwindling financial position of the bank, the Board of Directors approved the bank's reorganization plan to prevent or minimize business losses which involved the retrenchment of employees and the subsequent right-sizing of the organization through elimination or merger of overlapping functions or divisions which resulted to the abolition of thirty-six (36) positions, one (1) of which was then occupied by petitioner. Consequently, petitioner and the DOLE were served the required termination notice one (1) month before the effectivity date of his separation from service. However, the payment of his separation pay was deferred in view of the case against him which is pending resolution before the Office of the Ombudsman [and] which could find him pecuniarily liable aside from the penalty of forfeiture of benefits. In the event though that he is exonerated, they manifested that his separation pay and other benefits shall be promptly released to him.

"As to the required proof of business losses, a reservation was made as to its submission on the ground of confidentiality of records due to the nature of respondent PPSBI's business. However, respondents avowed that the same shall be presented if and when required by the Labor Arbiter to do so.

"On June 30, 2000, Labor Arbiter Isabel G. Panganiban-Ortiguerra rendered a Decision, the dispositive portion of which reads:

> 'WHEREFORE, premises considered, judgment is hereby rendered declaring Philippine Postal Savings Bank, Inc. guilty of illegal dismissal and it is hereby ordered as follows:
>
> > '1. To reinstate complainant to his former position which may now have a different title, without loss of seniority rights and with full backwages

reckoned from the date of his dismissal up to his actual or payroll reinstatement as of this date is in the amount of P124,638.40; and

'2. To pay complainant's attorney's fee in an amount equivalent to 10% of whatever he may receive by virtue of this decision.

'The claims for moral and exemplary damages are dismissed for lack of merit.

'SO ORDERED.'

"Aggrieved, respondents appealed to the NLRC asseverating that they were denied due process of law when Labor Arbiter Panganiban-Ortiguerra allegedly hastily decided that they did not adduce evidence to support their claim of business losses to justify retrenchment. In support of their appeal, respondents submitted in evidence the following documents: (A) Audited Consolidated Statements of Condition, Income and Loss Statements for the periods 1996-1997, 1997-1998 and 1998-1999; (B) Statement of Financial Condition for the periods June 23, 1998, December 24, 1998 and December 21, 1999; (C) COA Annual Audit Report for the years ended December 31, 1997 and 1996; (D) COA Annual Audit Report for the years ended December 31, 1998 and 1997; (E) COA Annual Audit Report for the years ended December 31, 1999 and 1998; (F) PDIC Preliminary Findings as of March 31, 1996; (G) PDIC Results of Follow-Through Examination as of March 31, 1997; (H) PDIC Preliminary Findings as of May 31, 1998; (I) BSP Letter to the PPSBI Board of Directors dated December 28, 1995; (J) BSP Letter to the PPSBI Board of Directors dated March 18, 1997, with attached detailed report; (K) BSP Letter to the PPSBI Board of Directors dated May 14, 1997; and (L) BSP Letter to the PPSBI Board of Directors dated October 25, 1999.

"Petitioner duly opposed the presentation of the aforesaid documents contending that [these] cannot be presented for the first time on appeal. Moreover, even if the same can be admitted on appeal, the aforesaid documents are insufficient to

prove the existence of business losses. Finally, petitioner posits that if serious losses were in fact incurred by respondent PPSBI, the same was due to the mismanagement of its officers which should not be borne by its rank and file employees.

"On August 31, 2001, NLRC issued a Resolution admitting the evidence presented by respondents on appeal and finding the same adequate to prove the existence of business losses on the part of respondent PPSBI."

Dissatisfied with the NLRC Decision, petitioner elevated the case to the CA.

## Ruling of the Court of Appeals

Affirming the NLRC, the CA ruled that proof of respondents' business losses had been correctly admitted, pursuant to the NLRC Rules of Procedure and the mandate of the Labor Code that technical rules of evidence are not binding in labor cases.[5] It noted that, before the labor arbiter, respondents had made a clear reservation to present the subject evidence if required to do so.

The CA thereafter held that the evidence presented had sufficiently proved the existence of business losses, and that petitioner's retrenchment was legal.

As to the withholding of petitioner's separation pay, the appellate court ruled that the pendency of the criminal complaint against him had barred Respondent PPSBI's issuance of a certificate clearing him of any accountability to the agency. Under the rules of the Commission on Audit, the accountability clearance is one of several supporting documents needed for the payment of separation pay.

Hence, this Petition.[6]

## Issues

Petitioner submits the following issues for our consideration:

"A. Whether or not the petitioner was illegally dismissed by respondents;

"B. Whether or not the Court of Appeals can disregard the findings of the Labor Arbiter [that] there was no valid retrenchment;

"C. Whether or not respondents are estopped from attaching [as] annexes to the Memorandum on Appeal evidence[e] not submitted to the Labor Arbiter after they were given opportunity to do so."[7]

Since the question of whether petitioner was validly retrenched hinges on the admission of evidence proving alleged business losses, we shall discuss issues A and B in reverse sequence.

## The Court's Ruling

The Petition has no merit.

### *First Issue: Proof of Business Losses May Be Admitted on Appeal*

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.[8] This rule applies equally to both the employee and the employer. In the interest of due process, the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities.[9] However, delay in the submission of evidence should be clearly explained and should adequately prove the employer's allegation of the cause for termination.[10]

In the instant case, it is undisputed that the evidence of business losses for the years 1996 up to 1999 was introduced before the NLRC only. The CA correctly noted, however, that respondents reserved the right to introduce the evidence to the labor arbiter, if and when required to do so. Reasons of confidentiality and the volatile nature of PPSBI's business as a banking institution prompted respondents to limit the presentation of this evidence at the outset.[11]

Indeed, it would have been foolhardy for the NLRC and the CA to reject the evidence, just because it had not been presented before the labor arbiter. Such evidence was absolutely necessary to resolve the issue of whether petitioner's employment was validly terminated. For strictly adhering to technical rules of procedure at the expense of equity, the Commission has in fact been chided by the Court in Philippine Telegraph and Telephone Corporation vs. NLRC,[12] from which we quote:

> "Thus, even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to respondent commission is enough basis for the latter to have been 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."[13]

As to petitioner's claim that he was denied due process because of the belated admission of the evidence, suffice it to say that he was given every opportunity to refute it and to submit counter-evidence. The essence of due process consists simply in according parties reasonable opportunity to be heard and to submit any evidence they may have in support of their defense.[14]

***Second Issue: The CA's Power to Review Findings of Fact***

Petitioner argues that the CA erred in disregarding the labor arbiter's factual findings. It is well to remind him that those findings were rejected in the first instance by the NLRC, pursuant to its exclusive appellate jurisdiction over all cases decided by labor arbiters.[15] Thereafter, its Decision was reviewed by the CA via a petition for certiorari under Rule 65 of the Rules of Court.

St. Martin Funeral Home vs. NLRC[16] laid down the mode of judicial review of NLRC decisions. In that case, this Court held that the proper vehicle for such review was a special civil action for certiorari under Rule 65 of the Rules of Court, and that this action should be filed in the CA in strict observance of the doctrine of the hierarchy of

courts.[17] As the rule now stands, special civil actions for certiorari of NLRC cases filed in this Court after June 1, 1999 are to be dismissed, not referred to the CA.[18]

Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902,[19] expanded the jurisdiction of the CA as follows:

> "SEC. 9. Jurisdiction. — The Court of Appeals shall exercise:
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> "(1) Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;
>
> x x x
>
> "The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings."

Verily, the appellate court, pursuant to the exercise of its original jurisdiction over petitions for certiorari, has the power to review NLRC cases. Such review extends to the factual findings of the labor arbiter when, as in this case, these are at variance with those of the NLRC.[20]

The CA thus acted within its power when it disregarded the labor arbiter's findings and upheld the contrary ruling of the NLRC. In turn, the factual findings of the former affirming those of the latter are generally binding on this Court and will not as a rule be reviewed on appeal.[21] Petitioner has not shown any reason for us to depart from this rule.

### *Third Issue: Validity of Petitioner's Retrenchment*

This Court has consistently recognized and affirmed the employer's management right and prerogative to terminate the services of its employees in order to obviate or minimize business losses.[22]

Retrenchment, one of the authorized causes for termination under the Labor Code, has been defined as "the termination of employment initiated by the employer through no fault of the employees and without prejudice to the latter, resorted by management during periods of business recession, industrial depression, or seasonal fluctuations[;] or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation."[23]

For the exercise of such prerogative, Article 283 of the Labor Code provides these conditions:

> "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. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a 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 considered as one (1) whole year." (Emphasis supplied)

Thus, the requisites for valid retrenchment are the following: (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 (DOLE) at least one month prior to the intended date of retrenchment; and (3) payment of separation pay

equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.[24]

There is no dispute that respondents have seasonably complied with the procedural requirement of serving written notice to petitioner and the DOLE. On the other hand, the withholding of separation pay, which has not been raised as an issue in this Petition, was satisfactorily resolved by the CA.

The only remaining question is whether respondents have sufficiently and convincingly established business reverses of the kind or the amount that would justify the retrenchment. As this Court has held, before any reduction of personnel becomes legal, any claim of actual or potential business losses must satisfy established standards as follows: (1) the losses incurred 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 the 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] The employer has the burden of proving that the losses are serious, actual and real.[26]

In the instant case, both the NLRC and the CA found that the audited financial statements submitted by respondents adequately supported their claim of actual, real and substantial losses. The Court had previously ruled that financial statements audited by independent external auditors constituted the normal method of proof of the profit-and-loss performance of a company.[27] The CA appreciated the evidence as follows:

> "A perusal of respondent PPSBI's audit reports conducted by no less than the Commission on Audit (COA) pursuant to Section 4, Article IX-D of the Constitution and Section 43 of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines, for the years 1996, 1997, 1998 and 1999 reveal the following significant facts:
>
> | | Surplus (Deficit) | Undivided profits (net loss) |
> |---|---|---|
> | 1996 | P11,413,884.00 | 22,617,592.00 |
> | 1997 | 33,569,370.00 | 2,950,989.00 |

| | | |
|---|---|---|
| 1998 | 35,875,290.00 | 31,374,806.00 |
| 1999 | 66,274,745.00 | 79,588,715.00 |

> "Based on the foregoing, the losses alleged by respondents to have been the primary reason for the Board of Directors' decision to effect retrenchment and reorganization were clearly not at all fictitious, imaginary or mere conjectures as claimed by petitioner. Furthermore, the fact that respondent PPSBI was being regularly monitored by the Bangko Sentral ng Pilipinas (BSP) and the Philippine Deposit Insurance Corporation (PDIC) due to its precarious financial position for several years positively affirms respondents' asseveration of continuous serious business losses. There is then no doubt that respondent PPSBI, prior to, at the time [of], and immediately after the termination of petitioner, was suffering from real and serious business losses."[28]

The findings of the CA affirming those of the NLRC showed real and grave financial reverses, which made downsizing the only recourse for the bank to follow.[29] Indeed, the retrenchment of petitioner was the consequence of the bank's reorganization and a cost-saving device recognized by jurisprudence.[30]

**WHEREFORE**, the Petition is **DENIED**, and the assailed Decision and Resolution **AFFIRMED**. Costs against petitioner.

**SO ORDERED.**

**Puno, Sandoval-Gutierrez, Corona and Carpio Morales, *JJ.*, concur.**

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[1] Rollo, pp. 7-25.
[2] Id., pp. 26-39. Penned by Justice Martin S. Villarama Jr. and concurred in by justices Conchita Carpio Morales (now a member of this Court) and Mariano C. del Castillo.
[3] Id., p. 40.
[4] Id., p. 39.
[5] Article 221 of the Labor Code, as amended, provides in full:

"ART. 221. Technical rules not binding and prior resort to amicable settlement. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

"Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction."

[6] The case was deemed submitted for decision on July 3, 2003, upon the Court's receipt of respondents' Memorandum signed by Atty. Giovanni S. Manzala. Petitioner's Memorandum, which was received on June 18, 2003, was signed by Atty. Vicente C. Angeles.

[7] Petitioner's Memorandum, p. 3; rollo, p. 143. Original in upper case.

[8] Philippine Industrial Security Agency Corporation vs. Dapiton, 377 Phil. 951, December 8, 1999; Favila vs. NLRC, 367 Phil. 584, June 16, 1999; Panlilio vs. NLRC, 346 Phil. 30, October 17, 1997; Nagkakaisang Manggagawa sa Sony (NAMASO) vs. NLRC, 338 Phil. 716, May 5, 1997; AG & P United Rank & File Association vs. NLRC, 332 Phil. 937, November 29, 1996; Anderson vs. NLRC, 322 Phil. 122, January 22, 1996; Lopez Jr. vs. NLRC, 315 Phil. 717, July 6, 1995; Bristol Laboratories Employees' Association vs. NLRC, 187 SCRA 118, July 2, 1990; Haverton Shipping Ltd vs. NLRC, 220 Phil. 356, April 15, 1985.

[9] Article 221 of the Labor Code, as amended.

[10] AG & P United Rank & File Association vs. NLRC, supra; citing Anderson vs. NLRC; supra.

[11] Respondents' Memorandum of Appeal to the NLRC, p. 3; rollo, p. 94.

[12] 183 SCRA 451, March 21, 1990.

[13] Id., pp. 457-458, per Regalado. J.

[14] Favila vs. NLRC, supra; citing PMI Colleges vs. NLRC, 277 SCRA 462, August 14, 1997.

[15] Article 217 (b) of the Labor Code, as amended.

[16] 356 Phil. 811, September 16, 1998.

[17] The Supreme Court and the CA have concurrent original jurisdiction over petitions for certiorari under §5(1) of Article VIII of the Constitution and §9(1) of BP 129, respectively.

[18] See AM No. 99-2-01-SC. The former practice was to refer the cases to the CA for proper disposition. Exceptions were cases in which the memoranda of both parties had been filed with the Court prior to the promulgation of St. Martin, and in which the Court opted to take cognizance of the case for final

disposition. Rural Bank of Alaminos Employers Union (RBAEU) vs. NLRC, 376 Phil. 18, October 29, 1999; citing St. Martin Funeral Home, supra.

[19] "An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose Section Nine of Batas Pambansa Blg. 129, as amended, known as the Judiciary Reorganization Act of 1980." Effective March 18, 1995.

[20] Samson vs. NLRC, 386 Phil. 669, April 12, 2000; PAL vs. NLRC, 384 Phil. 828, March 16, 2000; Jo vs. NLRC, 381 Phil. 428, February 2, 2000.

[21] Villalon vs. CA, 377 Phil. 556, December 2, 1999; Cebu Shipyard and Engineering Works, Inc. vs. William Lines, Inc., 366 Phil. 439, May 5, 1999; Villaluz vs. CA, 344 Phil. 77, September 5, 1997.

[22] Trendline Employees Association-Southern Philippines Federation of Labor (TEA-SPFL) vs. NLRC, 338 Phil. 681, May 5, 1997.

[23] Sebuguero vs. NLRC, 248 SCRA 532, 542, September 27, 1995, per Davide Jr., J. (now CJ).

[24] Guerrero vs. NLRC, 329 Phil. 1069, August 30, 1996.

[25] Bolo-Medellin Sugarcane Planters Association, Inc. vs. NLRC, 357 Phil. 110, 120, September 25, 1998, citing several cases.

[26] TEA-SPFL vs. NLRC, supra.

[27] Bogo-Medellin Sugarcane Planters-Association, Inc. vs. NLRC, supra.

[28] CA Decision, pp. 8-9; rollo, pp. 33-34.

[29] NLRC Decision, p. 8; rollo, p. 75.

[30] Dole Philippines, Inc. vs. NLRC, 417 Phil. 428, September 13, 2001.