SUPREME COURT
SECOND DIVISION

TRENDLINE EMPLOYEES ASSOCIATION-SOUTHERN PHILIPPINES FEDERATION OF LABOR (TEA-SPFL), AND ITS MEMBERS LUISA ALCANO, ESMERALDO ALMEDILLA, MARILOU AMISTOSO, CYNTHIA ARES, FE AUREA, SHIRLEY ANNE BULAWIN, MARY FE CABASAG, CORNELIA CASTILLON, GINA COLANCE, BERNADETH DENSING, MILAGROS LAMAYO, EMMA MAMUGAY, ALMA NANAMAN, LINA NARZOLES, ELSIE ONES, VILMA PABELLION, ELENA PALAHANG, BELLA REMO, IMELDA SALAZAR, HERANI CECILIA SANGUILA, MELITA SANCHEZ, DORIE TINGCANG and ELSA TUASTOMBAN,
***Petitioners*,**

-versus-

G.R. No. 112923
May 5, 1997

NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION, and TRENDLINE DEPARTMENT STORE and/or EDUARDO YAP, Proprietor,
***Respondents*.**
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R E S O L U T I O N

ROMERO, *J.*:

This Petition for *Certiorari* assails the Resolution of the National Labor Relations Commission (NLRC) dated May 6, 1993, affirming the Labor Arbiter's decision which dismissed herein petitioners' complaint for lack of merit, as well as the resolution dated July 19, 1993, denying petitioners' motion for reconsideration.

Petitioners are members of Trendline Employees Association (the Union), a local union of Southern Philippines Federation of Labor, the bargaining agent of the regular rank-and-file employees voluntarily recognized by private respondent Trendline Department Store (Trendline).

The case stemmed from a deadlock in negotiations between the Union and private respondents regarding the former's demand for an increase of P25.00 in daily wages, as mandated by the minimum wage law, which the latter refused to grant. This eventually led to the filing of a complaint against private respondents for alleged violation of labor standards law.

On July 6, 1989, the Union filed a notice of strike with the National Conciliation and Mediation Board (NCMB) on account of deadlock in collective bargaining, violation of labor standards, and unfair labor practices, specifically, coercion, retaliatory measures, threats, demotion and transfer of union members.

Conciliation proceedings were then conducted under the auspices of NCMB Executive Conciliator/Mediator Pilar Tamboboy. Efforts to resolve the dispute amicably eventually became the precursor of this present petition. The NCMB proceeded to invite the parties for a series of talks wherein private respondent Eduardo Yap indicated to petitioners that the demands set forth in their proposal could not be accommodated without reducing manpower and that Trendline would be forced to cease operations if retrenchment is not resorted to.

The Union thereafter proposed the following amounts as retrenchment payment, to wit: (a) payment of one (1) month salary for every year of service computed at P64.00 per day at 30 working days a month or P1,920.00 per month; (b) payment of 13th month pay for 1989 computed at one-half (½) month salary or P960.00; and (c) salary payment for the month of July based on the number of days worked.

Respondent Yap accepted this proposal in spite of limited resources, and as proof of his intention to comply with his part of the bargain, he even secured loans from the bank and other creditors to pay the retrenchment benefits of all 47 union officers and members.

When details of the retrenchment program had been finally ironed out on July 20, 1989, respondent alleged that the union officers and members "abandoned" their work and waited for the payment of their respective retrenchment benefits. Twenty-six of them, including the President, Treasurer and three Directors accepted, upon execution of quitclaims and release waivers, the grant under the supervised payment conducted by the NCMB. However, private respondents interpreted this act as an abandonment of work and thus were constructively dismissed.

On July 26, 1989, the Union filed before the Sub-Regional Arbitration Branch XII, Iligan City, a complaint against private respondents for unfair labor practice and illegal dismissal, with claims for damages and attorney's fees.

In a decision dated October 19, 1989, Labor Arbiter Nicodemus G. Palangan upheld the validity of petitioners' dismissal.

On appeal, said decision was affirmed in toto by the NLRC on May 6, 1993. Their motion for reconsideration having been denied on July 19, 1993, petitioners filed the instant petition for *certiorari*.

The instant petition must be granted.

The Court is constrained to rule that the NLRC erred in declaring petitioners to have committed acts constituting abandonment. Abandonment must not, however, be confused with retrenchment,

although they both lead to the severance of the employer-employee relationship. A distinction between the two is, therefore, in order.

In the case of Flores vs. Funeraria Nuestro,[1] the Court declared that to constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In Labor vs. NLRC,[2] we held that two elements must concur for a valid abandonment, viz.: (1) the failure to report to work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.

The filing of the complaint for illegal dismissal by petitioners on July 26, 1989, or within six days from the alleged retrenchment, negates the charge of abandonment, for it is illogical for an employee to "abandon" his employment and thereafter file a complaint for illegal dismissal. This doctrine finds support in a long line of cases.[3]

Retrenchment, on the other hand, is an authorized cause for termination of employment recognized under Article 283 of the Labor Code, which states thus:

> "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 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 a separation pay equivalent 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 one (1) whole year."

It is clear that in abandonment, the severance of employment is initiated by the employee's neglect of duty, an act solely attributable to him. In retrenchment, on the other hand, there is a valid supervening fact which results in the dismissal or lay-off of employees. Either way, the result is the termination of an employee's services. The Court is, however, convinced that neither abandonment nor a valid retrenchment ever took place in the case at bar.

Petitioners argue that they never abandoned their jobs on July 20, 1989; instead, they were prevented by security guards from entering the workplace. This assertion was completely rejected by Labor Arbiter Palangan when he stated that "security guards are not appropriate officials to make a decision for the management of respondent"[4] and that petitioners' allegation was refuted by the joint affidavit of the security guards concerned.[5] He also denied petitioners' imputation of partiality when he gave more credence to said joint affidavit than the sworn complaint of the individual employees.

There is, however, nothing on record which would justify the Labor Arbiter's conclusions. He glossed over the fact that the security guards were under the control of private respondents who alone could have authorized their actions. The security guards may not be the "appropriate officials" but, certainly, they acted as agents of the respondents.

It should be stressed, to the point of being repetitive, that the factual findings of quasi-judicial agencies like the NLRC are generally accorded, not only respect but, at times, finality if such are supported by substantial evidence.[6] In the case at bar, the Court is compelled to deviate from this well-established rule on the ground that the Labor Arbiter and the NLRC misappreciated the facts, thereby impairing petitioners' right to security of tenure as guaranteed by the Constitution[7] and the Labor Code.[8]

This leaves one other issue for this Court's consideration: Was there a valid retrenchment which would warrant the dismissal of petitioners? Again, we rule in the negative.

In the recent case of Sebuguero, et al. vs. NLRC, GTI Sportswear Corp., et al.,[9] the Court gave a comprehensive definition of retrenchment 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." Simply put, it is a reduction in manpower, a measure utilized by an employer to minimize losses incurred in the operation of its business. It is a management prerogative consistently recognized and affirmed by this Court.

To be valid, however, three requisites must concur, as provided for under Article 283 of the Labor Code, namely: (1) The retrenchment is necessary to prevent losses and the same is proven; (2) Written notice to the employees and to the DOLE at least one month prior to the intended date thereof; and (3) Payment of separation pay equivalent to one month or at least ½ month pay for every year of service, whichever is higher.

As regards the first requisite, whether or not an employer would imminently suffer serious or substantial losses for economic reasons is essentially a question of fact for the Labor Arbiter and the NLRC to determine.[10] That the matter of retrenchment benefits was negotiated before NCMB Conciliator Tamboboy is, however, immaterial as the records of the case convincingly show the paucity of facts from which one can draw the conclusion that private respondents would likely suffer serious and substantial losses.

In termination cases, the burden of proving the existence of a just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to do so inevitably results in a finding that the dismissal is unjustified.[11] In instant case, private

respondent failed to prove the existence of a just and valid cause for dismissing petitioners.

During the conciliation proceedings, respondent Yap merely stated that if the increase in the minimum wage law would be implemented in his establishment, it would be better to close it than operate the same at a loss. Conciliator Tamboboy took the statement at its face value and never required Yap to substantiate his claim. This is fatal to his defense. Although the Court recognizes the right of an employer to resort to retrenchment as a management prerogative, the employer must still comply with the stringent measures required by law. Trendline should have convincingly shown that it was in dire financial straits and only the retrenchment of its employees could save it from its predicament. This could have been sufficiently proved by the submission of its financial statements or records as proof of such impending financial crisis.

We have also ruled "that not every loss incurred or expected to be incurred by a company will justify retrenchment. The losses must be substantial and the retrenchment, reasonably necessary to avert such losses. Retrenchment must be exercised only as a 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."[12]

Furthermore, the conclusion of this Court is bolstered by the fact that after considering petitioners to have abandoned their jobs, private respondents claimed that "(i)f it was really true that complainants were interested to go back to work, what they could have done was to request the Conciliator, Ms. Pilar Tamboboy to set for (sic) another conciliation hearing so that (private) respondent(s) could be asked to allow complainants to return to work. This, complainants miserably failed to do. The only alternative available to complainants now is to receive their pay checks of one (1) month per year of service pursuant to what was agreed and demanded by them through negotiation."[13] What it shows is that private respondent led its employees to believe that the company was suffering losses when this allegation has not at all been substantiated. As a result, 26 of the 47 union officers and employees agreed to accept the retrenchment benefits. Evidently,

there was bad faith on the part of private respondents which should not be countenanced as being prejudicial and oppressive to labor.

In view of the foregoing finding that retrenchment was unnecessary to prevent alleged business losses which were never adequately proved by private respondents, this Court no longer finds any need to discuss whether the remaining requisites outlined under Article 238 are present in the case at bar.

WHEREFORE, the instant Petition is **GRANTED**. The challenged Decision of respondent National Labor Relations Commission in NLRC Case NCR Case No. RAB 12-07-10517-89 dated May 6, 1993, and that of Labor Arbiter Nicodemus G. Palangan in NLRC RAB XII Case No. 12-07-10517-89 to 12-07-10561-89 are **SET ASIDE** and a new one is hereby rendered:

1. DECLARING illegal and void the dismissal of petitioners by private respondents;

2. ORDERING private respondents to reinstate petitioners without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement; and

3. Private respondent, Trendline Department Store, is directed to REINSTATE the twenty-six (26) employees immediately to positions substantially equivalent to their former positions without loss of seniority rights and with backwages but the amounts received as retrenchment benefits are to be deducted therefrom.

Costs against private respondents.

SO ORDERED.

Regalado, Puno, Mendoza and Torres, Jr., *JJ.*, concur.

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[1] 160 SCRA 568 (1988).

[2] 248 SCRA 183 (1995).
[3] Flores vs. Funeraria Nuestro, 160 SCRA 568 (1988); Asphalt vs. Leogardo, 162 SCRA 312 (1988); Judric vs. Inciong, 115 SCRA 887 (1982); Artemio Labor vs. NLRC, 248 SCRA 183 (1995).
[4] Rollo, p. 9.
[5] Ibid., p. 17.
[6] Sol Laguio, et al. vs. NLRC, Well World Toys, Inc., et al., G.R. No. 108936, October 4, 1996.
[7] Sec. 3, Article XIII (Social Justice and Human Rights).
[8] Article 279, Labor Code.
[9] 248 SCRA 532 (1995).
[10] Lopez Sugar Corp. vs. Federation of Free Workers, 189 SCRA 179 (1990).
[11] Gloria de la Cruz vs. NLRC, G.R. No. 119536, February 17, 1997.
[12] Venancio Guerrero, et al. vs. NLRC, G.R. No. 119842, August 30, 1996.
[13] Rollo, p. 83.